

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
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NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **December 13, 2007**, at 10:00 a.m.
in the Auditorium, Room 102, of Office Building 9
744 P Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **December 13, 2007**, following the Public Meeting
in the Auditorium, Room 102, of Office Building 9
744 P Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **December 13, 2007**, following the Public Hearing
in the Auditorium, Room 102, of Office Building 9
744 P Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and Mine Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **December 13, 2007**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
New Section 1530.1
[**Control of Employee Dust Exposure from Concrete and Masonry Operations**](#)

2. TITLE 8: **MINE SAFETY ORDERS**
Chapter 4, Subchapter 17, Article 17
Section 7016(c)
[**Brakes on Haulage Vehicles—Maintenance**](#)

Descriptions of the proposed changes are as follows:

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
New Section 1530.1
[Control of Employee Dust Exposure from Concrete and Masonry Operations](#)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This is a proposal to adopt a new section in the Construction Safety Orders of Title 8 to regulate the cutting, grinding, coring, and drilling of concrete and masonry materials. The impetus for proposing this standard is widespread recognition that these operations have significant potential, and probably the greatest potential of the operations conducted in construction settings, to generate overexposure to silica dust when the dust generated by these operations is not effectively controlled.

Uncontrolled employee exposures to dusts generated from the cutting and grinding of concrete and masonry materials have been documented to greatly exceed the allowed levels (Permissible Exposure Limits - PELs) stated in Section 5155. While these exposures can frequently exceed the PEL for total airborne particulates, they are of particular concern because they have also been documented to exceed the PEL for airborne respirable crystalline silica. Respirable silica dust is a long-recognized health hazard that can cause or contribute to debilitating and sometimes fatal respiratory diseases including silicosis, lung cancer, and tuberculosis. It is also believed to result, in the absence of these specific diseases, chronic obstructive pulmonary disease (COPD) and decline in pulmonary function.

The basic approach of the proposed new rule is to require the use of water or local exhaust ventilation systems, together with appropriate training, to control the dust generated by the four general activities listed above when performed with powered tools or equipment. This practice is already widespread in the industry as the principle means of using engineering controls to capture dust and comply with applicable PELs, and this proposed rule is intended to provide a means to enforce the use of this practice by all employers so that all employees and employers are equally protected from those employers who take insufficient action to prevent overexposure.

The applicable PELs in Section 5155 include those for total and respirable crystalline silica, and for total and respirable particulate not otherwise regulated. By incorporating an exception to the requirements for use of dust reduction systems in proposed subsection (c) where applicable PELs are reliably shown not to be exceeded, the rule clarifies how employers are to achieve compliance with the requirement of Section 5141 to use engineering controls to the extent feasible to comply with applicable PELs, but does not impose requirements for a new level of dust control. The proposal does not affect the use of other measures that may be necessary to comply with the requirements of Section 5141.

This proposal was developed with the assistance of a public advisory meeting process which included two open public meetings held on January 17 and March 26, 2007. These meetings were well-attended by representatives of building contractors and contractor associations, organized labor, and equipment manufacturers.

Section 1530.1.

Subsection (a), Scope and Application.

This proposed subsection details the scope and application of the standard. The scope and application is based upon the tools used, the general types of operations conducted, and the materials being operated on. In addition, a number of specific industries and operations are specifically proposed to be excepted from coverage.

The scope is limited to “powered tools or equipment” as defined in proposed subsection (b). The scope is limited with respect to use of such tools to “cut, grind, core, or drill.” The scope of the proposed standard is limited in terms of materials covered to “concrete or masonry materials” as defined in proposed subsection (b). This element of scope is necessary and appropriate, because it is these materials which present the greatest risk of exposure.

This proposed subsection contains a note clarifying that the proposed standard does not preclude application of other Title 8 requirements applicable to operations covered by the proposed standard. A non-exhaustive list of the most prominent of such other potentially applicable Title 8 sections is included.

The proposed subsection contains an exception from coverage under the standard for seven types of operations and materials. These operations are proposed to be excepted from coverage by the standard. However, employers conducting the excepted operations must still comply with the requirements of Section 5141 for control of harmful employee exposures, including control of exposures to below applicable Permissible Exposure Limits found in Section 5155.

Subsection (b), Definitions.

This proposed subsection contains definitions of three terms: “*concrete or masonry material*,” “*powered tools or equipment*,” and “*dust reduction system*.”

The definition of “*concrete or masonry material*” clarifies for the regulated public the types of materials falling within the scope and application of the standard as stated in proposed subsection (a) and the evidence an employer must provide to rebut a presumption of application of the standard to such materials. In addition to describing the types of materials covered by the standard, this proposed definition also provides examples of such materials. The definition also provides that unless evidence is presented by the employer that a mixture or material that is stone-like in appearance and texture and otherwise appearing to be within the proposed definition does not contain any of a number of materials known to contain crystalline silica, the material shall be presumed to be concrete or masonry material and therefore within the scope and application of the standard.

The definition of “*powered tools or equipment*” clarifies to the regulated public the types of tools and equipment falling within the scope and application of the standard as stated in proposed subsection (a). The proposed definition provides that the term referred to in the scope and application of proposed subsection (a) means tools in which the motive force that disrupts concrete or masonry is provided by a source other than human energy. Examples of the types of motive force that will put tools and equipment within the proposed definition are provided.

The definition of “*dust reduction system*” clarifies to the regulated public the technology required to be applied to operations falling within the scope and application of proposed subsection (a). The proposed

definition provides that a dust reduction system, when referred to in the standard, means the application of either water or local exhaust ventilation to reduce airborne dust generated by the use of powered tools or equipment. The proposed definition in the interest of further clarification also states examples of the types of local exhaust ventilation systems that would qualify as a dust reduction system under the standard.

Subsection (c), Control of employee exposures to airborne particulate.

This proposed subsection would require that during operations covered by the standard, a dust reduction system be used to effectively reduce employee exposures to airborne particulate. This proposed subsection also contains three exceptions that would make subsection (c) inapplicable if they apply.

The first exception is for operations demonstrated reliably by air sampling not to result in a particulate exposure exceeding any of the applicable Permissible Exposure Limits in Section 5155. The PELs in Section 5155 applicable to the operations covered by this standard include those for total and respirable crystalline silica, and for total and respirable particulate not otherwise regulated.

The second exception is for operations with roofing tile, roofing pavers, or similar materials. This exception is based on concerns of infeasibility and the possibility that use of dust reduction systems in connection with roofing operations could create slipping, falling, and other hazards.

The third exception is for emergency operations of significant importance, as described in the proposed subsection, where compliance with the requirements of this section for use of a dust collection system could impair the timeliness of initiation of such an operation. This exception would be applicable only to the first two hours of the emergency operation.

Subsection (d), Safety and effectiveness of dust reduction systems.

This proposed subsection would establish standards for safe and effective operation of the dust reduction systems required by subsection (c).

Subsection (d)(1).

This proposed subsection would require that procedures be implemented to ensure that dust reduction systems maintain their effectiveness for dust reduction throughout the work shift.

Subsection (d)(2).

This proposed subsection would require that dust reduction systems used to comply with the requirement of subsection (c) installed, operated, and maintained in accordance with manufacturer recommendations.

Subsection (d)(3).

This proposed subsection would require that local exhaust ventilation systems be designed, tested, and maintained, used, and the waste materials they collect be disposed of, in compliance with applicable requirements of Sections 1530 and 5143.

Subsection (d)(4).

This proposed subsection would require that, where electrical tools are used with water as a dust reduction system, this be done in accordance with applicable requirements of the Electrical Safety Orders.

Subsection (e), Training.

Subsection (e)(1), Employee training.

This proposed subsection would require an employer whose operations include using powered tools or equipment to cut, grind, core, or drill concrete or masonry materials to provide training to all employees prior to their assignment to jobs or work areas where the employer will be conducting these operations. In addition to training prior to assignment to covered operations, this subsection would also require that employers conduct the training required by this section at least annually.

Subsection (e)(2), Supervisor training.

This proposed subsection would require that, prior to engaging in supervision of employees who will be cutting, grinding, drilling, or coring concrete or masonry materials takes place, supervisory employees be provided the same training required for non-supervisory employees as stated in subsection (e)(1). In addition, they would be required to receive training on how to identify the tasks employees will perform that may result in exposure to concrete or masonry dust, and the procedures for implementing the measures used by the employer to reduce these dust exposures.

Subsection (e)(3), Periodic training.

This subsection would require that employers with operations covered by the proposed standard conduct the training required by the proposed standard at least annually.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

For operations within the scope and application of the proposed standard, all employers are required to use dust reduction systems, and provide annual employee and supervisor training.

Exception No 1 in subsection (c) for dust-reduction systems excepts operations reliably shown not to result in employee exposures exceeding applicable Permissible Exposure Limits for particulate listed in Section 5155. Section 5141 requires control of employee exposures to hazardous airborne substances below applicable Permissible Exposure Limits. Therefore, the proposed standard rather than imposing any new or additional requirements for control of employee exposures, provides needed clarification of the existing requirement of Section 5141 with respect to the operations proposed to be covered by the standard.

The training costs associated with this proposal are negligible. Employers are already required to conduct periodic training and toolbox or tailgate safety meetings as required by Title 8 sections 1509 and 3203 (Injury and Illness Prevention Programs), and by Section 5194 (Hazard Communication). The proposed training details can be incorporated into employers' existing training programs with a

minimum of cost. The proposed standard does not impose unique requirements on state government. All state, local and private employers will be required to comply with the prescribed standards.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial 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. Minimal costs may be incurred to upgrade existing training for the specifics that would be required by the proposed standard.

Cost Impact on Private Persons or Businesses

The proposed standard may result in a small increase in training costs in order for employers to properly train their employees in accordance with the training requirements of the proposed standard. Employers are already required to conduct periodic training and toolbox or tailgate safety meetings as required by Sections 1509 and 3203 (Injury and Illness Prevention Programs), and training on hazardous substances as required by Section 5194 (Hazard Communication). The proposed training details can easily be incorporated into employers' existing training programs with a minimum of cost.

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 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 employers - state, local, and private - will be required to comply with the prescribed standard.

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 amendment to this standard 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.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **MINE SAFETY ORDERS**
Chapter 4, Subchapter 17, Article 17
Section 7016(c)
[Brakes on Haulage Vehicles—Maintenance](#)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking proposal is the result of the Occupational Safety and Health Appeals Board (OSHSB) Decision after Reconsideration in Teichert Aggregates, OSHAB Docket No. 01-R5D1-1193. In that decision, the OSHAB noted that Section 7016(c) requires that the brakes of haulage vehicles “be maintained in good condition,” that the standard does not specify what is meant by “maintained in good condition.” The OSHAB agreed with the Administrative Law Judge who heard the case that “maintained in good condition” means, at the very least, that the brakes be maintained “in accordance with the manufacturer’s recommendations, where available.” This requirement is generally applicable to machinery and equipment pursuant to Section 3328(b) of the General Industry Safety Orders (GISO). This proposal would add words derived from Section 3328(b) to Section 7016(c), thereby resolving the ambiguity noted in the OSHAB decision.

Section 7016(c) contains requirements for equipping and maintaining haulage vehicles used in mining operations. Subsection (c) concerns brakes and other holding devices. The subsection requires, among other things, that brakes “be maintained in good condition.” This proposal would remove ambiguity as to what is meant by “maintained in good condition.” The proposal does so by adding wording from GSO Section 3328(b) specifying that the brakes be “inspected and maintained as recommended by the manufacturer where such recommendations are available.”

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.

Impact on Businesses

The Board has made an initial 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.

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 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 amendment 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 undue 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 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, the 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.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard 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.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than December 7, 2007. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on December 13, 2007, will not be considered by the Board unless

the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Michael Manieri, Principal Safety Engineer, or Christina Witte, Executive Secretary, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman