

**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 **March 19, 2009**, at 10:00 a.m.
in the Costa Mesa City Council Chambers,
77 Fair Drive, Costa Mesa, California 92626.

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 **March 19, 2009**, following the Public Meeting,
in the Costa Mesa City Council Chambers,
77 Fair Drive, Costa Mesa, California 92626.

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 **March 19, 2009**, following the Public Hearing,
in the Costa Mesa City Council Chambers,
77 Fair Drive, Costa Mesa, California 92626.

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 of the California Code of Regulations, as indicated below, at its Public Hearing on **March 19, 2009**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 10
Section 3400
Medical Services and First Aid

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 107
Section 5155
Airborne Contaminants

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 10
Section 3400
Medical Services and First Aid

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking is the result of the Occupational Safety and Health Standards Board (Board) Petition File No. 482 regarding first aid and medical services that was submitted on March 6, 2006, by a person requesting anonymity. On August 17, 2006, the Board granted the petition to the extent that an advisory committee be convened by the Division of Occupational Safety and Health (Division) to examine the Petitioners request. The advisory committee met on November 3, 2006.

Petition No. 482 called for mandating employee access to the 911 call system for provision of emergency medical services. The Division believes that every employer should be obligated to make effective advance preparation to ensure the delivery of emergency medical services. Several existing Title 8 regulations (specifically, Section 1512(a) and Section 3395, subsections (g) and (h)) establish this obligation for specific occupations or conditions, while Section 3220 implies such advance preparation is a more general obligation. Section 3400(f) currently obligates only those employers located at isolated locations to make provisions for emergency medical services in advance.

The effect of this proposal would be to require all employers to make effective advance plans for the delivery of emergency medical services by providing one or a combination of the following: 1) on-site medical treatment facilities, 2) appropriate means to transport injured or ill employees to a medical treatment facility, 3) or a suitable communication system with which to summon off-site medical services.

Section 3400. Medical Services and First Aid.

Subsection (b)

This subsection requires first aid training to meet certain minimum standards, such as those of the federal mine safety agency. The name of the federal mine safety agency has changed since the original adoption of this subsection, so this proposed rulemaking would make an editorial change which is necessary to correct the reference to the current name of the agency.

Subsection (c)

This subsection requires adequate first aid materials be supplied to employees. Employees are referred to as “workmen.” This proposed rulemaking action would make this reference gender neutral which is necessary to modernize the grammatical usage of this section.

Subsection (f)

Subsection (f) requires employers to develop advance plans for providing emergency medical services to seriously injured or ill employees at isolated locations. There are employment locations which, while not isolated, still require advance planning if emergency medical services are to be expeditiously and reliably delivered. The following changes to Section 3400(f) are necessary to

improve the standard to ensure that all employers are required to make effective advance preparations for medical emergencies:

1. In the first sentence:
 - a) The term “*isolated location*” would be removed. The duty of an employer to make effective advance preparations to provide emergency medical services is no different for an employer at an isolated location than for any other employer. However, the proposed new language preserves an employer’s option to provide emergency medical services via prompt transport of injured or ill employees. Thus, where appropriate and effective, employers at isolated or remote locations would still have this option available.
 - b) The word, “*effective*” would be added as the first word of the subsection to make clear that employer provisions for emergency medical services must be adequate to deliver them to the jobsite in a timely and reliable manner.
 - c) The word “*must*” is changed to “*shall*” without regulatory effect so that word usage will conform to that found throughout the rest of Title 8.
 - d) Medical “*attention*” would be changed to “*treatment*” for purposes of clarity.
 - e) The phrase “in case of serious injuries” would be changed to “in the event of serious injury or illness.” The phrase “in the event of” is more consistent with usual usage in Title 8. “Illness” is added so there is clarity that both injuries and illnesses are intended to be covered by this section.
2. The second sentence of this section makes it clear that the methods the employer chooses to provide emergency medical services must avoid unnecessary delay in providing medical treatment and that an employer is not restricted to a single method.
3. Finally, there is a list of choices that, singly or in combination, meet the criteria for the effective provision of medical services. These are the same options that are mentioned in the existing version of this subsection, but changes have been made that clarify aspects inherent in these options that must be addressed if the choices are to indeed be effective in providing medical services.
 - a) The first option covers the summoning of outside medical services via any effective electronic method, including the 911 system. In order to ensure the effectiveness of this option, wording is included to alert employers that it may be necessary to include provision for directing responding services to specific locations within a large facility or building.
 - b) The second option for an on-site treatment facility (changed from “on-the-site” for clarity) makes it clear that if an employer chooses this option, the facility must be medically adequate for treating the anticipated severity of injury or illness and readily accessible so there is no delay in providing the treatment.
 - c) The third option adds language to clarify that when transport is chosen for medical reasons, the mode of transport is both appropriate for the medical purpose and is necessary. This rewording is necessary to ensure that it is clear to employers choosing this option that their advance planning include choice of appropriate type of vehicle to transport either injured or ill employees, and that employees should be transported only when it is medically appropriate. For example, it might not be medically appropriate to transport a person with a broken back in a van over rough

back country roads. The proposed change would also change the reference from injured “person” to “employee” to be more consistent with Title 8 language usage.

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 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.)

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 amendments will not affect small businesses as defined in Government Code Section 11342.610.

ASSESSMENT

The adoption of the proposed amendments 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: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 107
Section 5155
Airborne Contaminants

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Section 5155, Airborne Contaminants, establishes minimum requirements for controlling employee exposure to specific airborne contaminants. This section specifies several types of airborne exposure limits, requirements for control of skin contact, workplace environmental monitoring through measurement or calculation, and medical surveillance requirements. California periodically amends the airborne contaminants table (Table AC-1) in this standard to keep it consistent with current information regarding harmful effects of exposure to these substances and other new substances not listed. This standard was last revised in 2006. Consistent with past practice, the substances addressed in this rulemaking originated with changes to the Threshold Limit Values (TLVs) published by the American Conference of Governmental Industrial Hygienists (ACGIH). This rulemaking considered changes in ACGIH TLVs dating from 1997.

The Division of Occupational Safety and Health (Division), in developing the current and past proposals for Table AC-1, has convened advisory committees to consider and make recommendations on the exposure limits for substances under consideration. The Airborne Contaminants Advisory Committee (Committee), which considered substances for development of this proposal, met between May 2001 and January 2004. The Committee independently evaluated the changes made to the TLVs using the ACGIH documentation, as well as documents and studies referred to in the ACGIH documentation or identified independently. The meetings of the Committee were open to the public. The Division held an additional public advisory meeting on May 18, 2005 to receive informal comments on the recommendations of the Committee which are the subject of this rulemaking. In some cases, the levels recommended by the Committee were changed based on information received at this additional advisory meeting.

The exposure limits of the following substances are proposed to be lowered:

- allyl glycidyl ether
- coal (bituminous) dust
- cyclonite
- p-dioxane
- methyl n-butyl ketone
- nickel metal, as Ni
- nickel, insoluble compounds, as Ni
- nickel, soluble compounds, as Ni
- ozone
- vinyl bromide

Exposure limits for the following substances are proposed to be added to Table AC-1 (new substances):

- 1-bromopropane, n-propyl bromide
- glyoxal, 1,2-ethanedione
- methyl vinyl ketone
- nickel subsulfide
- refractory ceramic fiber
- vinyl fluoride

In addition to the above, the following amendments and additions are made to the existing set of footnotes to Table AC-1:

Existing footnote (n) is proposed to be amended to allow for use of a smaller simpler to use sampling device for collection of samples for comparison with PELs in Table AC-1 for respirable dusts.

A new footnote (p) is proposed that allows for subtraction of ambient levels of ozone from the measured exposure level compared to the PEL. This footnote is being added in conjunction with the proposed revision to the PEL for ozone.

Existing footnote (q) is proposed to be amended to make it more generally applicable beyond glass fibers. This revision is proposed in conjunction with the proposed addition to Table AC-1 of a PEL for refractory ceramic fiber.

A new footnote (u) is proposed that requires comparison of the PEL with the sum of

measured exposure to both vapor and particulate. This footnote is proposed to be added in conjunction with the proposed addition to Table AC-1 of a PEL for glyoxal.

The effect of these amendments is to reduce the risk of material impairment of health or functional capacity for employees exposed to the above substances.

All proposed changes to Section 5155 are considered at least as effective as or more stringent than the federal OSHA requirements in Title 29, Code of Federal Regulations (29 CFR) section 1910.1000, Airborne contaminants.

COST ESTIMATES OF PROPOSED ACTION

This rulemaking proposal contains proposed revisions of permissible exposure limits (PELs) for 13 substances in an existing standard whose specific purpose is to specify PELs for a large number of toxic substances to workers may be exposed. The primary users of the substances for which revised PELs are proposed are in the private industrial and chemical sectors. These proposed new PELs are consistent with the recommendations of the American Conference of Governmental Industrial Hygienists or with scientific findings of which professional health and safety staff and consultants of these entities should be aware. Many of these entities already seek to control employee exposures to these levels in the interest of business continuity, other more general requirements to protect worker health and safety, and minimization of tort and workers' compensation liability.

The Board has received no indication that any of the proposed PEL revisions will have significant cost impacts, with the exception of those for 1-bromopropane and refractory ceramic fiber. With respect to those two, while some indication has been received in the form of comments and information that they may have a cost impact on affected employers, it has been determined after considering the input provided that they, like the other proposed PELs, will not result in significant cost impacts overall. The details of the cost comments provided are described below.

1-bromopropane. A statement was received from the International Brominated Solvents Association indicating this organization's opinion that compliance with the proposed PEL for 1-bromopropane would have an associated cost, but when asked for information on cost, a representative of the organization indicated that they preferred to wait to see the actual rulemaking proposal before responding with such information. The Board remains without any concrete information pointing to a cost impact.

Refractory ceramic fiber (RCF). Cost information regarding the proposed PEL of 0.2 f/cc for RCF was received after the special public advisory meeting of May 18, 2005, from Dr. L. Daniel Maxim of Everest Consulting Associates of Cranbury, New Jersey, who is a longtime technical consultant for the Refractory Ceramic Fibers Coalition (RCFC). In a letter dated September 27, 2007, Dr. Maxim provided information to help explain the annual compliance cost estimate of \$4.6 million for 1,263 potentially exposed California workers that had first been offered by RCFC representatives at that advisory meeting.

In response to a request for additional details on this cost estimate, a subsequent letter dated December 7, 2007, was received from Mr. John Allhouse, also of Everest Consulting. The letter details the individual item expenditures forming the basis of the \$4.6 million cost estimate provided at the May 18, 2005 meeting and is consistent with Dr. Maxim's letter of September 27, 2007.

However, the details provided by both letters indicate that about 70% of this cost estimate is for items such as a comprehensive air monitoring program, change rooms, shower rooms, lunch rooms

and other items required in many comprehensive “vertical” standards e.g., those for asbestos, and lead, but not required by the proposed PEL. The remaining 30% or \$1.4 million of the cost items detailed in Mr. Allshouse’s letter pertain to items such as HEPA vacuums, engineering controls, respirators, and respirator fit tests, the need for which could result from or be increased by the proposed PEL.

The \$1.4 million in estimated compliance cost that remains after removing measures not required by the proposed PEL must be adjusted further downward to account for current worker exposure in the state. Dr. Maxim’s letter of September 27, 2007 indicates that only about 35% of airborne exposure measurements of employees of California companies working with RCF were exposed above the proposed PEL of 0.2 f/cc, and the measurements described in his letter are consistent with other RCFC documents and statements.

If, as Dr. Maxim’s letter indicates, only 35% of the 1,263 workers estimated to be working with RCF in California will require exposure reduction measures to comply with the proposed PEL of 0.2 f/cc, then only 35% of the estimated \$1.4 million in exposure reduction costs should be considered to be applicable to the cost of compliance. This translates to 442 (35% of 1263) workers requiring exposure reduction measures costing \$490,000 (35% of \$1.4 million), for a per-worker cost of \$1109, assuming the original figure of \$4.6 million from Dr. Maxim is accurate. Since employers will likely have only a subset of employees who require these measures, the total per-employee cost for all employees employed by all employers in this industry adds important perspective, and that figure is \$490,000 divided by 1263, or \$388.

As was stated in the NIOSH Criteria Document (2006) for refractory ceramic fiber:

Because residual risks of cancer (lung cancer and pleural mesothelioma) and irritation may still exist at the REL [of 0.5 f/cm³], NIOSH further recommends that all reasonable efforts be made to work toward reducing exposures to less than 0.2 f/cm³. At this concentration, the risks of lung cancer are estimated to be 0.03 to 0.47 per 1,000 based on extrapolations of risk models from Sciences International [1998], Moolgavkar et al. [1999], and Yu and Oberdörster [2000].

Given the compliance cost analysis provided above, the overall employment cost of maintaining a workforce, the overall cost of doing business, and the positive health impacts likely to result from a reduction in the PEL, the proposed PEL will not have a significant cost impact.

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 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.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, 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.)

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

EFFECT ON SMALL BUSINESS

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

ASSESSMENT

The adoption of the proposed amendments to the 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 March 13, 2009. 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 March 19, 2009, 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 Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, 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