

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

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 **November 19, 2009**, following the Public Meeting,
in the City Council Chambers of Costa Mesa City Hall,
77 Fair Drive, Costa Mesa, California.

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 **November 19, 2009**, following the Public Hearing,
in the City Council Chambers of Costa Mesa City Hall,
77 Fair Drive, Costa Mesa, California.

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, Low-Voltage Electrical Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **November 19, 2009**.

1. TITLE 8: **LOW-VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5, Group 1
[Low-Voltage Electrical Safety Orders—Addendum](#)

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 109
Section 5197
[Occupational Exposures to Food Flavorings Containing Diacetyl](#)

Descriptions of the proposed changes are as follows:

1. **TITLE 8: LOW-VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5, Group 1
Low-Voltage Electrical Safety Orders—Addendum

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board), recently updated Title 8 Low-Voltage Electrical Safety Orders (LVESO)¹ for equivalency with updates to 29 CFR Part 1910, Subpart S. That rulemaking action was pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues. That rulemaking process followed the authority listed in Labor Code Section 142.3(a)(3), sometimes referred to as a “Horcher” rulemaking; thus it was limited only to changes covered by the counterpart federal standard. However, during the course of that rulemaking, other items, outside the scope of the “Horcher” process, were noted to be ambiguous, obsolete, overlapping, conflicting, and/or unnecessary. The purpose of this rulemaking proposal is to address those items.

This proposed rulemaking action contains minor, nonsubstantive revisions which are not all discussed in this Informative Digest. However, all proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 2305.2. Application.

Subsection (b), Extent of Application, specifies effective dates for different parts of the LVESO. Subsequent to the adoption of the LVESO update, Board staff became aware that the effective date for Section 2395.6, Portable and Vehicle-Mounted Generators, was unclear. Accordingly, Section 2305.2(b) is being amended to clearly indicate that, consistent with federal standards, amendments to Section 2395.6 became effective on May 5, 2008, the same time the general update became effective. The effect of this amendment will be to simplify compliance and enforcement by clearly establishing the effective date for changes made for portable and vehicle-mounted generators.

Section 2340.12. Mechanical Execution of Work.

Subsection 2340.12 requires that electric equipment be installed in a neat and workmanlike manner. Subsection (a) provides, in relevant part, that unused openings in boxes, raceways, auxiliary gutters, cabinets, equipment cases, or housings shall be effectively closed to afford protection substantially equivalent to the wall of the equipment.

Similar requirements are found in Section 2473.1(b), which is proposed for deletion as being duplicative and overlapping with other sections of the Safety Orders, including Section 2340.12(a). One subject of the proposed deletion of subsection 2473.1(b), however, that is not covered elsewhere is the matter of unused openings in fittings. It is therefore proposed to add “fittings” to 2340.12(a) in order to maintain that requirement in the Electrical Safety Orders.

¹ Low-Voltage Electrical Safety Orders, effective May 5, 2008.

The effect of these revisions will be to assure that unused openings in fittings are effectively closed to protect employees from hazardous electrical exposures.

Section 2340.16. Work Space About Electric Equipment.

Subsection (b), Work Space, prescribes the work space to be provided for examination, adjustment, servicing, or maintenance of energized equipment. Subsection (b)(2)(A) specifies that concrete, brick or tile walls shall be considered as grounded when determining width for clear workspace requirements. A stakeholder requested clarification to the effect that any concrete, brick or tile surface be considered as grounded when determining any clear work space requirement (i.e., depth, width, height). This would be equivalent to National Fire Protection Association (NFPA) 70E-2004, Table 400.15(A)(1), Condition #2, and 2005 National Electrical Code (NEC) Table 110.26(A)(1), Condition #2. Thus it is proposed to relocate “concrete, brick, or tile” from subsection (b)(2) to Table 2340.16, Condition #2, so that it will apply to all clearances, and not just to width. The effect of this proposed relocation will be to conform Section 2340.16 of the LVESO with industry standard NFPA 70E-2004 and the 2005 Edition of the NEC.

Section 2360.3. Ground-Fault Circuit Interrupter Protection for Personnel - General Industry.

Section 2360.3 prescribes when ground-fault circuit interrupter (GFCI) protection is required during maintenance, remodeling, or repair of buildings, structures, or equipment “or during similar *construction-like* activities.” [italicized for emphasis]. Existing state Section 2405.4, Ground-Fault Circuit Protection-Construction Site, which was outside the scope of the Horcher rulemaking, contains similar, but not identical, grounding requirements for construction sites. The ambiguity of the term “construction-like” in Section 2360.3 causes it to overlap with Section 2405.4, and because of different grounding requirements for general industry versus construction, it creates confusion as to application. It is therefore proposed that the term “construction-like” be deleted from Section 2360.3(b). The effect of this change will be to clarify application of electrical standards for general industry and construction.

Section 2405.4. Ground-Fault Circuit Protection – Construction Site. Subsection (a) General.

An advisory opinion from Federal OSHA, Region 9, on the Low-Voltage Electrical Safety Orders update² noted that Section 2405.4(a) describes a construction site as “a place of employment where erection, demolition, *modification*, alteration or excavation is being performed on a building, structure or underground facility, other than mining (emphasis added).” Region 9 opines that inclusion of the term “modification” in this definition excludes GFCI protection from activities intended to be covered by general industry standards in 29 CFR 1910, Subpart S. Section 2405.4 is the state counterpart to federal 29 CFR 1926.404(b)(1) which contains ground fault protection requirements for construction. The ground fault protection requirements of 29 CFR 1926, Subpart K, do not require GFCI in all cases where they are required by 29 CFR 1910, Subpart S, because of difficulties in implementing GFCI in construction settings. Thus Region 9 was concerned that the provisions of Section 2405.4 might be applied in certain instances of remodeling and modification of existing buildings, and that these provisions would not be as effective as federal standards for general industry.

² Letter to OSHSB from US Dept. of Labor, OSHA Region 9, dated July 14, 2008.

Board staff therefore proposes to delete the term “modification” from Section 2405.4(a). The effect of this deletion will be to clarify the distinction between grounding requirements for general industry (Section 2360.3) and construction (Section 2405.4).

Section 2405.4. Ground-Fault Circuit Protection – Construction Site. Subsection (b) Construction Sites, Exception.

This subsection requires that employees on construction sites be protected by either or both ground-fault circuit interrupters as specified in subsection 2405.4(c) or by an assured equipment grounding conductor program as specified in subsection 2405.4(d) or by both. An exception to this subsection exempts from these requirements individual cord sets, supplied from any receptacle on a 15- or 20- ampere branch circuit which is part of the permanent wiring of building or structure. This exception is not supported by 29 CFR 1926.404(b)(1) or the NEC, and is less protective than the counterpart federal standard. The exception is therefore proposed for deletion. The effect of this deletion will be to provide safety at least as effective as the counterpart federal standard and the NEC.

Section 2405.4. Ground-Fault Circuit Protection – Construction Site. Subsection (d) Assured Equipment Grounding Conductor Program.

This subsection requires the employer to establish and implement an assured equipment grounding conductor program on construction sites covering all 120-volt, AC, single-phase, cord sets, receptacles which are not a part of the permanent wiring of the building or structure and equipment connected by cord and plug, which are used by employees. Modifications are proposed to (1) delete “120-volt, AC, single-phase” and (2) amend “used by employees” to read “available for use or used by employees.” The effect of these modifications will be to provide protection equivalent to 29 CFR 1926.404(b)(1)(iii).

Section 2405.4. Ground-Fault Circuit Protection – Construction Site. Note for Subsection (d) Assured Equipment Grounding Conductor Program.

A note below subsection (d)(4) provides that double-insulated tools or other similar equipment need not be grounded, and cross references to Section 2395.45(d)(5). This cross-reference is incorrect, and it is proposed to be corrected to Section 2395.45, Exception 2, which requires double-insulated equipment to be distinctively marked. The effect of this amendment will be to clarify the use of double-insulated tools and utilization equipment.

Section 2473.1. Conductors Entering Boxes, Cabinets, or Fittings.

This section prescribes protection and securing for conductors entering cutout boxes, cabinets, or fittings. Subsection (b) provides that unused openings in cabinets, boxes, and fittings shall be effectively closed. Subsection (b) is duplicative of Sections 2340.12(a) and 2473.2(a); therefore it is proposed for deletion. The effect of this deletion will be to clarify requirements by eliminating overlapping and duplication.

Section 2534.8. Disconnecting Means.

This section prescribes disconnecting means for capacitors. As presently worded, it does not require the disconnecting means to open all ungrounded conductors simultaneously. This is

contrary to NFPA 70-2005 (NEC) Section 460.8(C)(1), thus it is proposed to amend this section to be consistent with the NEC. It is also proposed to reformat the remainder of the section to be consistent with the verbiage of NEC 460.8(C). The effect of these modifications will be to conform capacitor disconnecting means to those prescribed by the 2005 edition of the NEC.

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 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 the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, 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.)

These 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 only. Moreover, these 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.)

These proposed standards 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

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

ASSESSMENT

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.

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 109
Section 5197
Occupational Exposures to Food Flavorings Containing Diacetyl

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking was generated in response to concerns of employees, employers, members of the public and members of the California legislature with respect to recently identified respiratory illnesses occupationally associated with food flavorings both in California and nationally.

Since July of 2004, the Division of Occupational Safety and Health (Division) and the California Department of Health Services (DHS)³ have identified four California flavor manufacturing industry employees who have been diagnosed with bronchiolitis obliterans. DHS and NIOSH collaborated on a cross-sectional study analyzing medical surveillance data collected from 2004 to 2008 on 584 workers from 19 California flavor-manufacturing companies; this group represents a majority of exposed workers and companies in the industry statewide. The study (not yet published) found that flavoring workers were at increased risk of severe airways obstruction as indicated by spirometry testing. To date, eight of the workers in the study have been identified by health care providers to have either bronchiolitis obliterans or fixed obstructive lung disease. Added to the 2004 index case, this brings the total number of flavorings-related lung disease cases identified in California to nine. Review of supplemental data submitted through the Flavoring Industry Safety and Health Emphasis Program (FISHEP) medical surveillance effort has identified other abnormal spirometric results, including some declines in spirometric function over time, the significance of which is still being reviewed.

Bronchiolitis obliterans is a rare and life-threatening form of obstructive lung disease characterized by significant permanent decreases in pulmonary function. It can progress to the need for a double lung transplant, or to death. Unlike asthma, which is also an obstructive lung disease, the pulmonary function of persons suffering from bronchiolitis obliterans does not improve with application of bronchodilator medications, and is therefore termed a *fixed* obstructive disease.

Exposures to food flavorings generally were not recognized as a possible cause of bronchiolitis obliterans prior to the year 2000. Generally, occupational instances of the disease had been associated with acute reactions following significant overexposures to a variety of industrial chemicals. But in late 2000, the National Institute of Occupational Safety and Health (NIOSH) recognized a new flavoring-related form of the disease that insidiously develops over time without the occurrence of a noticeable acute overexposure. NIOSH research at Midwestern microwave popcorn plants eventually associated the chemical *diacetyl* as a marker for the bronchiolitis obliterans. Diacetyl is used as a primary ingredient of many artificial butter flavors such as those used for microwave popcorn, and it is also used as a minor constituent of many other flavorings such as some fruit flavors. The risk to flavor exposed employees for development of abnormal spirometry results has been found by NIOSH to increase with increasing cumulative diacetyl exposure.

On August 18, 2006, the Division received a letter from 23 California legislators (including the chairs of the Assembly and Senate labor committees and health committees) requesting that the Division adopt first an emergency and then a permanent standard covering exposure to diacetyl. The letter called for a standard containing a “provisional” Permissible Exposure Limit (PEL) and medical surveillance and respiratory protection. On August 21, 2006, the California Occupational Safety and Health Standards Board (the Board) received a petition from the California Labor Federation and the California affiliate of the United Food and Commercial Workers International Union (UFCW) that mirrored the requests of the legislators.

In response to the petition and the letter from the legislators, a public advisory meeting was held on September 28, 2006. In January 2007, the Board granted the California Labor Federation and UFCW petition to the extent that it directed the representative advisory meeting convened the

³ In 2007, the California Department of Health Services transferred the functions relevant to this discussion to the California Department of Public Health

previous September to consider the rulemaking issues raised by the petition. To this end additional advisory meetings were held by the Division in February, March, May and July 2007. These meetings were well-attended by representatives of broad sectors of the public and important governmental institutions, including labor, diverse parts of the flavor and food manufacturing industries, public health and respiratory health experts, the DHS, NIOSH and Federal OSHA. The proposed standard is a culmination of the series of meetings in this public advisory process.

The proposed standard would apply to all flavoring and food manufacturing facilities that utilize diacetyl and food flavorings containing 1% or greater concentration of diacetyl. The proposed new rule requires covered employers to perform an exposure assessment, establish regulated areas, implement engineering and work practice controls, provide respiratory protection, provide medical surveillance including health questionnaires and pulmonary function tests, provide medical removal job protection for up to six months, provide specific hazard communication training and labeling, maintain records, make a one-time reporting to the Division, and prepare Material Safety Data Sheets for products containing more than 0.1% diacetyl.

There is no equivalent federal standard published or proposed by the Occupational Safety and Health Administration.

DOCUMENTS INCORPORATED BY REFERENCE

- California Department of Public Health. Medical Surveillance for Flavorings-Related Lung Disease Among Flavor Manufacturing Workers in California, August 2007.
- Hankinson, JL, Odencrantz, JR, Fedan, KB (1999) Spirometric reference values from a sample of the general U.S. population *Am J Respir Crit Care Med* 159,179-187
- “ATS/ERS Task Force: Standardisation of Lung Function Testing,” a five part series, *Eur Respir J* 2005; 26: 153–161, 319-338, 511-522, 720-735, 948-968.
- Sampling and Analytical Methods for Acetoin and Diacetyl, Methods ID 1012 and ID 1013, Federal OSHA Methods Development Team, OSHA Salt Lake Technical Center, Sandy, Utah, 2008.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of 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.

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 proposed standard will have a cost impact on flavoring manufacturing companies in California. Currently, there are fewer than 30 such flavor manufacturers employing in total about 750 employees. A small number, (estimated less than 10% per advisory committee discussions) of the approximately 4,700 California food manufacturers (EDD, 2006) are anticipated to utilize diacetyl containing flavorings at concentrations at or above 1% or at whose establishments employees develop fixed obstructive lung disease due to occupational exposures may be affected by the proposed standard. Currently, there have been no diacetyl related fixed obstructive lung cases identified at California workplaces other than at flavoring manufacturers, and there is no data on how many, if any, food manufacturers utilize diacetyl flavorings at the trigger concentration.

Existing California Title 8 standards require exposure assessments, utilization of engineering and work practice controls for hazardous exposures, and provision of personal protective equipment. Based on FISHEP cost estimate data, the proposed standard is expected to add a small additional increase to those existing costs to provide the specified number of exposure assessments at \$300 annually, engineering control plan elements at \$2,500 in initial costs and respiratory protection at \$200 annually. Therefore an estimate of \$3,000 initially and \$500 annually per employee in added new costs for these requirements is anticipated.

The proposed rule may result in a small increase in training costs in order for employers to properly train their employees in accordance with the training requirements in the proposal. Employers are already required to conduct periodic training as required by Title 8 Section 3203 (Injury and Illness Prevention Programs), and training on hazardous substances as required by Title 8 Section 5194 (Hazard Communication). The proposed training details can easily be incorporated into employers' existing training programs with a minimum of cost.

The proposed rule's requirement for medical surveillance will add new costs, about \$200 per exposed employee per annum based upon the experience of flavoring manufacturers in the FISHEP program. The proposed rule's medical removal benefit will add small unspecified additional costs to businesses for up to six months only when an employee has either developed or is suspected of being at risk for developing fixed obstructive lung disease. This additional cost will vary; it could be a few cents an hour to make up the difference in pay between job classifications, or it could be as much as the full pay of an employee for whom no alternative work is available. The medical removal requirement will not lead to significant costs for employers. Thus far in the California flavor manufacturing industry, less than five percent of workers undergoing medical surveillance have met criteria to be considered for medical removal.

Overall, the total additional costs for flavor manufacturers are estimated to be \$3,200 initially and \$700 annually per employee which averages out to be less than \$65,000 per facility in initial costs and \$15,000 on an annual basis. For the fewer than 30 flavoring manufacturers in California, there would be no additional initial costs over the total estimated \$2 million already

incurred, and annual costs would total less than \$500,000. This estimate is based upon informal communications between the Division and employers in the FISHEP program. This estimate does not take into account cost savings from reduced workers compensation costs due to the reduced number of illnesses resulting from implementation of engineering controls, work practice controls and respiratory protection requirements. It is expected that similar initial and continuing costs would be experienced by the small percentage of food manufacturing companies that will be impacted by this proposed regulation.

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, 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 standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed 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 November 12, 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 November 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

NOTICE OF ADOPTION OF
REGULATIONS
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS
BY THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. Title 8, Division 1, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 10, Section 3400, **Medical Services and First Aid.**

Heard at the March 19, 2009, Public Hearing; adopted on July 16, 2009; filed with the Secretary of State on August 27, 2009; and will become effective on September 26, 2009.

2. Title 8, Division 1, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 10, Section 3385(c)(2), **Foot Protection.**

Heard at the May 21, 2009, Public Hearing; adopted on July 16, 2009; filed with the Secretary of State on August 31, 2009; and will become effective on September 30, 2009.

Copies of these standards are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: <http://www.dir.ca.gov/oshsb> and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: oshsb@dir.ca.gov.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Marley Hart, Executive Officer