

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

To : ALL STANDARDS BOARD MEMBERS

Date : August 19, 2011

From : **Occupational Safety and Health Standards Board**
Michael J. Manieri Jr., Principal Engineer-Standards

Subject : **Federal Final Rule, Standards Completion Project-Phase III**

The following information is provided in regard to the proposed revisions to the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 7, Article 9, Section 3361, Article 101, Sections 5042, 5044, 5045, 5047, and 5049, Article 107, Section 5144, Article 109, Sections 5191, 5198 and 5209 of the General Industry Safety Orders, Chapter 4, Subchapter 18, Article 4, Section 8355 of the Ship Building, Ship Repairing and Ship Breaking Safety Orders, Chapter 4, Subchapter 4, Article 4, Section 1532.1, and Article 15, Section 1615.7 of the Construction Safety Orders.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations addressing Standards Improvement Project, Phase III, on June 8, 2011, as 29 Code of Federal Regulations, Parts 1910 (general industry), 1915 (shipyards), 1917 (marine terminals), 1918 (longshoring), 1919 (gear certification), 1926 (construction) and 1928 (agriculture). The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 76, No. 110, pages 33590-33612, June 8, 2011, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

The proposed regulations address updated requirements for respiratory protection as it pertains to use and maintenance of breathing gas containers; safe operating practices for chain and wire rope slings including the labeling of chains, slings and shackles; employee lead exposure monitoring; medical removal protection, and construction industry material handling (rigging) equipment.

The proposed regulations are substantially the same as the federal standards; therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code. However, the Board is still providing a comment period

and will convene a public hearing. The primary purpose of the written comments and oral comments at the public hearing is to: (1) identify any clear and compelling reasons for California to deviate from the federal standard, (2) identify any issues unique to California related to this proposal which should be addressed in a subsequent rulemaking, and (3) solicit comments on the proposed effective date. The responses to comments will be available in the rulemaking file on this matter and will be limited to the above areas.

The regulations may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

DOCUMENTS RELIED UPON

1. Federal Register, Vol. 76, No. 110, Pages 33590-33612 (Wednesday June 8, 2011).
2. California Code of Regulation, Title 22, Division 4. Environmental Health, Chapter 15. Domestic Water Quality and Monitoring Regulations, Article 16. Secondary Water Standards (May 2, 2006).

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.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

COST ESTIMATES OF PROPOSED ACTION

According to Section IV of the Preamble to the Final Rule (page 33602), Federal OSHA has determined that the final standard is not an economically significant regulatory action under federal Executive Order 12866. This rule has no costs and will lead to cost savings to regulated entities. The final rule like the proposed rule deletes and revises a number of provisions in existing OSHA standards and is technologically feasible because it removes or reduces current requirements upon employers. In the case of this proposal a number of issues amount to technical clarifications consistent with Federal definitions. In other cases, the proposal consists of new language consistent with comparable federal language to ensure that California will be at least as effective as federal OSHA for those issues.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code

because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

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 regulations 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.

Attachments