

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb

**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 88, Section 4848
of the General Industry Safety Orders

Update of Welding Fire Prevention and Suppression Procedures**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive and sufficiently related modification that is the result of public comments and/or Board staff evaluation.

Section 4848. Fire Prevention and Suppression Procedures.

This section requires employers to establish fire prevention and suppression procedures in accordance with American National Standards Institute (ANSI/ASC) and National Fire Protection Association (NFPA) national consensus standards indicated in subsection (a), which are incorporated by reference. The proposed amendments consisted of an update from the 1999 to the 2009 NFPA 51B standard and incorporation by reference of the entire document rather than only Chapter 3.

A modification is proposed to incorporate by reference only Chapters 3 through 7 of the NFPA 51B-2009 standard instead of the entire standard. The proposed modification is necessary to focus the employer on complying with only those portions of the national consensus standard that are necessary to control and/or mitigate the risk of employee injury resulting from fire and explosion during welding operations.

Summary and Response to Oral and Written Comments:**I. Written Comments**

Mr. John R. McCullough CSP, Assistant Vice President, Well Fargo Insurance Services USA, Inc., by letter dated February 25, 2010.

Comment No. 1: Mr. McCullough suggested publishing the text of the incorporated by reference NFPA 51B-2009 standard to display to the public all of the NFPA requirements, which include more than just the definitions.

Response: It is not possible to publish the referenced NFPA standard, as it would constitute a violation of copyright law, since the referenced NFPA document is copyrighted. However, as stated in the Initial Statement of Reasons, the Board makes available for public review the referenced document at the Standards Board office. The referenced NFPA 51B standard is also available for purchase through the NFPA and at discounted cost for NFPA members. The safety precautions contained in the updated NFPA 51B standard amount to inexpensive insurance against a serious fire and/or explosion which could result in loss of life, property and productivity.

Comment No. 2: The referenced NFPA 51B standard, Chapter 2.1 contains references to other national consensus standards. Mr. McCullough asked if by incorporating by reference the NFPA 51B-2009 standard the other documents contained in Chapter 2.1 are also automatically incorporated by reference.

Response: The proposal has been modified so that Chapter 2.1 is no longer being incorporated by reference.

Comment No. 3: Mr. McCullough suggested including a website address for NFPA that would link the end user with the NFPA 51B standard to make it easier for employers to know what they need to comply with.

Response: The website link provided by Mr. McCullough only provides a link to the NFPA website for the NFPA 51B-2009 standard and requires paid membership and possibly additional document purchase cost for an employer to actually be able to access and view the document. In the past the Board has rejected staff proposed language to include website addresses within the text of Title 8 standards because website addresses are known to be changed, moved or eliminated entirely thereby rendering the link useless, in which case, the standard containing the link would be misleading.

Comment No. 4: Mr. McCullough stated he did not see the need to add a new subsection (b) which contains a requirement for approved welding blankets, curtains and pads, since the referenced NFPA 51B-2009 section 5.4.2 requires the use of listed or approved welding blankets, welding pads or equivalent.

Response: Section 5.4.2 of the NFPA 51B-2009 pertains to hot work permit requirements and says nothing about listed or approved welding blankets, pads or curtains. Therefore, to assure employers utilize safe welding blankets, pads and or curtains that are designed and fabricated in accordance with appropriate national consensus standards (approved for their intended use), the proposal clarifies to employers that such equipment is to be approved as described in Section 3206 of the General Industry Safety Orders. For this reason the Board believes that subsection

(b) is not redundant; it is needed to ensure the safety of workers who need to shield combustible materials.

Mr. Ken Nishiyama Atha, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration by letter dated March 17, 2010.

Comment: The proposed modification replaces the reference to the 1999 NFPA 51B Chapter 3 with the entire 2009 NFPA 51B standard for Fire Prevention During Welding, Cutting and Other Hot Work. The proposed modification is at least as effective as the federal program.

Response: The Board thanks Mr. Nishiyama Atha for his comment and support of the rulemaking process.

II. Oral Comments

Oral comments received at the April 15, 2010, Public Hearing in Sacramento, California.

Dr. Jonathan Frisch, Occupational Safety and Health Standards Board (OSHSB) member

Comment: Dr. Frisch asked whether the ANSI Z49.1-94 standard is available to the public.

Response: The ANSI Z49.1-94 standard is still available from ANSI.

John MacLeod, Board Chairman, Mr. Bill Jackson, Mr. Willie Washington, Mr. Jack Kastorff, Dr. Jonathan Frisch, OSHSB members

Comment: The aforementioned Board members discussed the incorporation by reference of consensus standards and concerns as to whether stakeholders would have access to the documents. Mr. Washington suggested linking the documents to the searchable Title 8 Index, while Mr. Jackson noted that free access to NFPA documents is available. Mr. Kastorff stated that incorporation by reference should be avoided.

Response: Board staff incorporates by reference only those portions of the national consensus standard(s) that are relevant and necessary to an effective rulemaking proposal and will consider the feasibility of linking documents incorporated by reference in the new searchable Title 8 Index. The documents incorporated by reference into this proposal are the minimum necessary to update this standard and thereby appropriately safeguard California employees. Copyright restrictions are discussed in the response to Mr. McCullough's written Comment No. 1. In addition, having California ignore the national consensus standard and develop its own equivalent standard from scratch would mean that a great deal of delay and expense would be experienced.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on May 18, 2010.

Summary and Response to Written Comments:

Mr. John R. McCullough, CSP, Assistant Vice President, Well Fargo Insurance Services USA, Inc., by letter dated May 24, 2010.

Comment No. 1: Mr. McCullough stated that he does not disagree that the NFPA 51B-2009 is worth investing in; however, he believes more information should be provided in proposed GISO Section 4848 that could compel a company to make such an investment. Mr. McCullough asked whether the Board has requested permission from NFPA to use the document since it is available free of charge online.

Response: Mr. McCullough's comment pertains to the Board's response to Comment No. 1 from Mr. McCullough's February 25, 2010, letter. As previously stated by the Board, it is not possible to publish the referenced NFPA standards in their entirety in Title 8 as it would violate copyright law. It is not clear from Mr. McCullough's comment how much or what information would be necessary to compel an employer to purchase the referenced NFPA standard. Mr. McCullough's comment does not address any matter raised in the 15-day notice of proposed modifications, and therefore, no response is in order. Consequently, the Board believes no further modification to Section 4848 is necessary.

Comment No. 2: Mr. McCullough stated that the website link provided in his Comment No. 3 included in the February 25, 2010, letter provides free read-only access to NFPA documents and should be included in the proposal. Mr. McCullough suggested language ("the following website is for informational purposes only and...etc." that would amount to a disclaimer for website link information that may become inaccurate later on.

Response: Mr. McCullough's comment relates to the Board's response to his February 25, 2010, Comment No. 3 and does not address any matter raised in the 15-day notice of proposed modifications, and therefore, no response is in order. However, the Board has discussed the possibility of providing Internet web links within Title 8 standards but rejected that concept since website links can be removed or changed without notice thereby leaving Title 8 standards with information that is inaccurate and/or obsolete. Therefore, the Board does not believe further modifications in response to Mr. McCullough's Comment No. 2 are necessary.

Comment No. 3: Mr. McCullough states that the ANSI/ASC Z49.1-1994 is out of print and that the ANSI website refers to AWS Z49.1-2005. Mr. McCullough wondered if the information in chapters 3 and 6 were made known to the Board and would it be worthwhile for employers to purchase the code for \$92. He also asked whether there is a good argument for having these two references.

Response: This comment applies to existing language in Section 4848 that was not proposed for amendment or modification and does not address any matter raised in the 15-day notice of

proposed modifications, and therefore, no response is in order. However, Standards Board research confirms that chapters 3 and 6 requirements contained in ANSI/ASC Z49.1-1994 and AWS Z49.1-2005 are substantially the same. Consequently, no further modifications to Section 4848 are necessary.

The Board thanks Mr. McCullough for his continued interest in occupational safety and health and for participating in the rulemaking process.

Mr. Ken Nishiyama Atha, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration by letter dated May 25, 2010.

Comment: The proposed modification is at least as effective as the federal program.

Response: The Board thanks Mr. Nishiyama Atha for his comment and support of the rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by 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 adopted action.