

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 4, New Section 1530.1
of the Construction Safety Orders

Control of Employee Dust Exposure from Concrete and Masonry Operations**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/or sufficiently related modifications that are the result of public comments and Board staff evaluation.

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed. However, these 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:

Title of the standard

A modification is proposed so that the term “concrete or masonry” is used in the title of the proposed standard. That term is defined in the standard, and using the defined term in the title promotes internal consistency and clarity.

Subsection (a). Exception 7

A modification is proposed to add the word “powered” before the word “shears,” to clarify the operation to which the Exception applies. A modification is also proposed to add the phrase “having a dust containment device” at the end of the sentence, thereby adding an important safety feature.

Subsection (b)(2). Definition of “Powered tools or equipment”

A modification is proposed to subsection (b)(2) by adding “or equipment for” and deleting “in” in the first line of the definition. The definition is also modified by replacing “and” with “or” at the beginning of the second sentence of the definition. These modifications are made in the interest of clarity of the proposed definition.

Subsection (b)(3). Definition of “Dust containment device”

A definition is added so that the meaning of the term, added in subsection (a), Exception (7), may be clearly understood by employers.

Subsection (c). Exception 1

Modifications are proposed to clarify that Exception 1 applies only when an operation does not result in employee exposure exceeding a Permissible Exposure Limit (PEL) without regard to use of personal protective equipment such as a respirator. This change is necessary in order to ensure that the effect of this exception is consistent with well-accepted industrial hygiene practice that assessments of the need for implementation of engineering measures to control employee exposures to a hazardous substance are made without regard to use of personal protective equipment such as respirators.

Subsection (c). Exception 2

A modification is proposed to Exception 2 to clarify that it applies to operations when they are conducted on a rooftop, not when they are performed by an employee on the ground, on a scaffold, or on any surface other than a roof. The exception addresses the concern that implementing dust control measures where employees are working on rooftops could impair employee safety.

Subsection (e)(1)(B)

A modification is proposed to clarify the originally proposed term “process isolation.” The term is proposed to be modified to “isolation of the process,” and adds language to clarify that it refers to the use of distance, enclosure or other method to physically remove the process of concern, as applicable, from the immediate proximity of the operator or other employees. Making the meaning of the provision clearer will promote compliance.

Summary and Response to Oral and Written Comments:

I. Written Comments

Nancy Moorhouse, Vice President and Director of Safety, Teichert Construction Teichert Materials, by letter dated November 14, 2007.

Comment #1:

The proposal as written ties controls to either wet methods or exhaust ventilation. The construction industry should be allowed to decide what controls are best based on the configuration of the workplace as long as no one on the site is exposed in excess of the PEL.

Response:

The Board thanks Ms. Moorhouse for her comment and has addressed it in the response to the written comment from Bo Bradley.

Comment #2:

With regard to Exception 4 to proposed subsection (a), definitions of plumbing and landscaping should be included in the standard. Also, there may be confusion regarding jack-hammering incidental to work involving asphaltic concrete or pavement being construed as masonry material.

Response:

The Division's primary concern when evaluating whether Exception 4 to subsection (a) could apply to a particular operation they are conducting is whether the operation is incidental to the extent that the exposure to crystalline silica or other dust would be expected to be well below the applicable PEL. For example, the unanticipated jack-hammering of a 1-foot square area of concrete as part of a residential plumbing or landscaping project, as such an operation would generally be recognized in those industries, could qualify for the Exception. By contrast, for example, an employer carrying out a contract that specified jack-hammering of a 10 square foot area of sidewalk would not qualify for the Exception. The main concern is whether the operation is truly incidental to the main operation in the sense that it is very unlikely to result in a PEL exceedance. Also it should be noted that asphaltic concrete can release airborne crystalline silica from the rock aggregate it contains. However, when this work is incidental to plumbing or landscaping activity, as discussed above, it would qualify for the Exception.

Comment #3:

The proposal will result in added training costs to employers for additional occupational exposure monitoring. Cal/OSHA standards already clearly require that if there is a potential for an exposure hazard, the employer is responsible to verify if the hazard is present or not.

Response:

The Board does not believe that the proposed standard will result in significantly increased costs for monitoring of employee exposures to crystalline silica and other particulate that can be associated with cutting, grinding, coring or drilling of concrete or masonry materials. The advisory committee for this standard discussed at length operations that should be excluded from coverage on the basis of a presumption that they do not generate significant levels of airborne dust. A specific example of this is Exception 3 to proposed subsection (a) for downward drilling. There was extensive discussion of the potential of drilling operations to generate significant dust exposures and it was generally agreed that downward drilling specifically, as reflected by the Exception, would not be expected to generate such exposures in most cases. As the commenter notes, Cal/OSHA standards, specifically Title 8, Section 5155(e)(1), already require air monitoring of employee exposures when it is reasonable to suspect that employees may be exposed to concentrations of airborne contaminants in excess of the levels specified in Section 5155. The operations covered by the proposed standard are those with significant potential for creating hazardous airborne exposures for employees for which employers, if they are conducting them on anything more than an incidental basis, should already be conducting monitoring of employee exposures and implementing dust control and personal protective measures where the monitoring indicates excessive exposures may occur. The Board believes that while the requirements of the proposed standard will not significantly increase air monitoring costs as suggested by the commenter, the attention the standard brings to the problem it addresses may indeed prompt employers to re-assess the need in their operations to conduct the air monitoring that is already required by Section 5155.

Bo Bradley, Director Safety, Health & Regulatory Services, Associated General Contractors of California, by letter dated November 20, 2007.

Comment:

Ms. Bradley's letter asked that in proposed subsection (b)(3), the definition of "dust reduction system" be modified to include "other effective methods in accordance with 5141." Ms. Bradley's letter explains that making this modification to the definition of "dust reduction system" would allow for new technology or other effective methods to be utilized for control of employee dust exposures from operations covered by the proposed standard.

Response:

The Board appreciates the intent of Ms. Bradley's comment to see that the proposed standard not limit the technology that an employer may use to satisfy its requirement for use of a dust reduction system during the conduct of operations covered by the standard. However, Exception 1 to subsection (c) of the proposal allows an operation to be excepted from the requirement for use of a dust reduction systems where it can be reliably demonstrated not to exceed applicable PELs for particulate. This exception has the effect of satisfying the commenter's request for the proposed standard to allow for new technology or other effective methods to be utilized to control employee exposures to hazardous particulate from operations covered by the proposed standard.

The Board thanks Ms. Bradley for her comment and for her and her organization's participation throughout the rulemaking process for this standard.

Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors (CALPASC), by letter dated December 11, 2007.

Letters and electronic mail expressing support for Mr. Wick's comments were received from:

Mark Bowman, Knack Construction Inc.
Bill Larson, Peterson Brothers Construction, Inc.
Randy Newhard, New Way Landscape & Tree Services
Jon Parry, Bemus Landscape, Inc.
Dan Smith, Town & Country Roofing
Victor Thibeault, PBC
Ben Vilorio, Vilorio Construction
Meredith Brownson, for Marne Construction
Meredith Brownson, for Jezowski & Markel Contractors, Inc.
Thomas Calhoun, Calhoun Construction, Inc.
Greg Colgate, Ancient Art, Inc.
Erin Dees, SelectBuild
Doug Grote, Just-Star Construction, Inc.
Mark Louvier, Trimco Finish

Julie Trost, California Conference of Mason Contractors Associations, Inc.
Kevin D. Bland, for California Framing Contractors Association

Comment #1:

In the first sentence of proposed subsection (c) following “or,” the word “powered” should be added to modify the term “equipment” for clarity. Similarly, in subsection (a)(7) the word “powered” should be added before “shears” for clarity.

Response:

The term “powered tools or equipment” is specifically defined in proposed subsection (b)(2) and so the Board declines to modify this term as it appears in proposed subsection (c) because such a modification could detract from the clarity of the proposed standard as written. However, the Board believes adding the term “powered” before the word “shears” in proposed Exception 7 to subsection (a), would add clarity, and therefore, this change is made in the modified proposal.

Comment #2:

The Exception to subsection (a)(7) allowing a “dust reduction blade” should be modified to ensure that the blade is used with a dust containment device; therefore, the clause “with a containment device attached” should be added following the word “blade” in that sentence.

Response:

The Board appreciates the commenter suggesting a readily available approach that may provide additional assurance for protection of employees whose employers choose to operate under Exception 7 to subsection (a). The Division has clarified with Mr. Wick what is meant in the comment by a “containment device,” and this is reflected in a definition for this term being added to the proposal.

Comment #3:

In proposed subsection (c), Exception 2 does not allow the employer to recommend, offer, or require N95 rated dust masks as an added measure or precaution; therefore, a sentence should be added to the end of that exception which reads: “When the employer offers, recommends, or requires an N95 rated dust mask, it shall be considered ‘voluntary’ under the requirement of Section 5144 of the General Industry Safety Orders.”

Response:

The Board understands the commenter’s desire to simplify the requirements for provision of filtering facepiece dust masks by roofing employers. However, the Board declines to make the requested change, as it would conflict with significant substantive requirements of Section 5144 with respect to required use of respirators, including N95 filtering facepieces. The Board notes, as suggested in the comment, that Section 5144 already provides for more limited requirements where respirators, including N95 filtering facepieces, are used on a voluntary basis as specifically detailed in that section.

The Board thanks Mr. Wick and his organization for this comment and for his and his organization's participation throughout the rulemaking process.

Danielle Lucido, Staff Attorney, Worksafe, by letter dated December 13, 2007

Comment #1:

In Exception 1 to proposed subsection (c), the language "demonstrated reliably by air sampling," is unduly vague. Without a protocol for air sampling, whether the exception applies to a particular operation is unclear and is likely to be difficult to enforce.

Response:

The language is consistent with the requirements of Section 5155(e) to monitor employee exposure and that the monitoring be done by someone competent in industrial hygiene practice. Such industrial hygiene practice is well understood by the regulated community and includes that monitoring of employee exposures be conducted during the specific operation it is intended to represent in order to reliably demonstrate the level of exposure by air sampling. Therefore, the Board declines to make any modifications to the proposal in response to this comment.

Comment #2:

As to Exception 1 to proposed subsection (c), it is unclear from the language of the proposed standard whether the exception applies to those operations that do not result in employee exposure exceeding the PELs listed in Section 5155 without administrative controls and/or personal protective equipment. Worksafe believes the Standards Board should clarify the application of this exception by explicitly stating that an operation is excepted only where "without administrative controls or personal protective equipment" it does not result in employee exposure exceeding the PELs for an applicable particulate listed in Section 5155. Unless the standard is clarified in this manner, it is in conflict with other regulations and the laws which require that worker protection follow a hierarchy of controls that begins with engineering controls as the preferable way to protect workers.

Response:

The Board agrees with the commenter that the Exception should be modified to make it clear that personal protective equipment is not to be considered in the exposure assessment, and this change is made in the proposal. However, the Board does not agree with the commenter that administrative controls should be excluded from the operation of the Exception. Title 8, Section 5141 allows for use of administrative controls for harmful exposures only when feasible engineering controls have been implemented but do not achieve full compliance with applicable exposure limits. The Board believes that Section 5141 adequately addresses the comment by its specified hierarchy of controls for addressing harmful exposures and further that reliance on Section 5141 does not undermine the intent of the proposal to encourage the use of dust reduction systems with dust-generating operations conducted on concrete or masonry.

Comment #3:

The term “process isolation” used in proposed subsection (e)(2) Training is not defined in the proposed standard. This term should be defined so that its intended meaning is clear to employers, employees, and others who use the standard.

Response:

The paragraph referred to in the comment is at proposed subsection (e)(1)(B). It was previously, in error, numbered in the original proposal as subsection (e)(5)(B) and may have caused some confusion for which the Board apologizes. In response to the comment, the Board has modified the original proposal by using the more easily understood phrase “isolation of the process,” and then specifying that the phrase refers to the distance, enclosure or other method to physically remove the process from the immediate proximity of the operator or other employees. The Board believes that this modification will clarify the meaning of the originally proposed term “process isolation” as requested by the commenter.

Comment #4:

Proposed subsection (a) provides exceptions from the scope and application of the proposed standard for seven types of operations and materials. However, employers using these operations and materials are still required to comply with the requirements of Section 5141 for control of harmful employee exposures, including control of exposures to below applicable PELs found in Section 5155. To ensure that employers making use of the exceptions for certain operations and materials listed in proposed subsection (a) are complying with these standards, they should be required to send air sampling reports to Cal/OSHA.

Response:

The Board understands the concern underlying this comment. However, the Board does not believe the suggested modification of the proposal is warranted. The Division reviews air-sampling records for crystalline silica and other chemical hazards in the course of inspections of individual employers. Employers must be mindful that even though an operation or material may be among those excepted from coverage by the proposed standard, as clearly indicated by the Note in proposed subsection (a), other Title 8 requirements still apply which require controlling employee exposures below the PELs specified in Section 5155.

The Board thanks the commenter for her comments and for her and her organization’s participation throughout the rulemaking process.

Teresa A. Harrison, Acting Regional Administrator, Region IX, U.S. Department of Labor, Occupational Safety and Health Administration by letter dated November 29, 2007.

Comment:

Fed OSHA has no specific dust reduction criteria during concrete and masonry activity, therefore, the proposed standard is more effective than the federal standard.

Response:

The Board thanks Ms. Harrison for her comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the December 13, 2007, Public Hearing in Sacramento, California

Comment:

Statements of support for the proposal were received from the following:

Julie Trost, California Conference of Mason Contractor Associations, Inc.
Kevin MacDonald, Townsend & Schmidt Masonry
Rick Smith, General Masonry, Inc.
Morgan Nolde, Roofers and Waterproofers Local 81
Dave Danner, Bricklayers, Tilelayers, and Allied Craftworkers Local 3

Response:

The Board thanks these individuals for their statements in support of the proposed standard.

Comment:

Statements of support for the written comments submitted by Bruce Wick of CALPASC were expressed by:

Dan Schuetz, for Associated General Contractors
Greg Peterson, Eagle Roofing Products
Joel Guth, Masonry Technology, Inc.
Kevin Bland, for Masonry Institute of America, California Framing Contractors Association, and Roofing Contractors Association
Wade Woodward, Old Country Roofing
Steve Johnson, Associated Roofing Contractors of the Bay Area Counties

Response:

The Board thanks these individuals for their participation in the rulemaking process.

Comment:

A statement of support for the written comment submitted by Bo Bradley of Associated General Contractors was made by Dan Schuetz for Associated General Contractors.

Response:

The Board thanks Mr. Schuetz for his participation in the rulemaking process.

Wilfrid "Buck" Cameron, Center for Construction Research and Training (CPWR)

Comment:

In Exception No. 1 to subsection (c), the language should be amended to clarify that the exception refers to the total generation of dust or the total exposure, meaning that if the work were divided among ten people, the permissible exposure would not be ten times the PEL.

Response:

The Board was not clear what was meant by the comment so staff called the commenter and his intent was to support the written comment about air sampling that Ms. Lucido submitted on the behalf of Worksafe. The Board therefore, refers the commenter to the response to Ms Lucido's written comment #1.

Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors (CALPASC)

Comment:

Mr. Wick asked that the proposal be amended regarding roofing work. Roof work is done on a slanted surface at an elevated height, which creates a different set of issues than working on level ground without a fall hazard. He stated that although the data is unclear regarding the exposure level, the contractors are willing to work with the Division to find a solution, which has not yet been reached. The two primary issues are the use of saws or other cutting instruments on an elevated, slanted work surface and the reduction in visibility created by respirator use. Until such a solution is reached, roofing contractors are required to train as if the proposed standard were in place.

Response:

The Board was not clear what was meant by the comment so staff called the commenter. Mr. Wick indicated that the intent of his comment was to reiterate his group's concern with the potential safety issues posed by use of dust reduction systems and respirators in rooftop work, and their support for proposed Exception 2 to subsection (c) which would limit the requirements of the proposed standard for such operations to training of employees as detailed in proposed subsection (e). The Board is hopeful that ongoing discussions planned by the Division with roofing employers and others, including members of Mr. Wick's organization, will yield effective and practical solutions to the control of dust exposures in roofing operations which are not viewed by employers as unnecessarily burdensome or an added safety risk.

Board Member Frisch

Comment #1:

Dr. Frisch asked if Exception 2 to proposed subsection (c) applied solely to work on roof surfaces or whether employees working on the ground and transporting materials up to the roof would also be covered by the exception. Board Member Frisch expressed concern that the exception could apply to any roofing operation, regardless of whether it takes place on the roof or on the ground.

Response:

Exception 2 to proposed subsection (c) is intended to apply only to roofing operations with roofing tile, roofing pavers, or similar materials where such operations cannot be conducted safely. When employees work on scaffolds, on the ground, or on other surfaces on which dust control measures do not significantly increase physical safety risk, the exception is not warranted. The exception has been modified by substituting “rooftop” for “roofing.” Employers must be mindful that even if they cannot feasibly conduct these operations on surfaces other than roof surfaces, they are still obligated by Section 5155 to control employee exposures to hazardous dusts.

Comment #2:

Board Member Frisch expressed concern with comments requesting modification of requirements for respiratory protection and he cautioned against a modification of the proposal to reduce the level of respiratory protection.

Response:

The comments Board Member Frisch refers to are addressed in the response to written comment # 3 from Mr. Wick.

Steve Johnson, Associated Roofing Contractors of the Bay Area Counties

Comment:

Mr. Johnson supported all three of the written comments submitted by Mr. Wick as noted above, and said specifically with regard to written comment # 3 that employers want to be able to provide respiratory protection for their employees without fear of being cited by the Division because they provide an N95 dust mask for their employees without a written respiratory protection program being in place.

Response:

The Board has addressed the comment in the responses above to written comments from Mr. Wick. The Board thanks Mr. Johnson for his comment and for his and his organization’s participation throughout the rulemaking process on this standard.

Jim Bresnahan

Comment #1:

Mr. Bresnahan said that Exception 2 to proposed subsection (c) for roofing operations should not apply where materials covered by the exception can be cut on a scaffold, thus eliminating the competing fall risk of carrying materials up a ladder.

Response:

Mr. Bresnahan’s concern is addressed in the response to the first verbal comment above of Board Member Frisch with regard to the intent of Exception 2 to proposed subsection (c), noting that

the language of the exception has been modified to limit its application only to “rooftop” operations.

Comment #2:

Mr. Bresnahan asked that the term “isolation” in proposed subsection (e)(1)(B) be defined in the standard.

Response:

The Board thanks Mr. Bresnahan for his comment which is addressed in the response to written comment #3 from Ms. Lucido.

The Board thanks Mr. Bresnahan for his comment and for his extensive participation throughout the rulemaking process.

Board Member Rank

Comment:

Board Member Rank requested a definition of the term “voluntary” as referred to in the written comments of Mr. Wick.

Response:

This comment is addressed in the response to written comment #3 of Mr. Wick.

Board Member Kastorff

Comment:

Board Member Kastorff asked whether Section (b)(1) was intended to include asphalt.

Response:

As suggested in the response to written comment #2 of Ms. Moorhouse, airborne crystalline silica can be released from the rock aggregate contained in asphaltic concrete and so the definition in proposed subsection (b)(1) is intended to include this material.

Board Member Jackson

Comment:

Mr. Jackson expressed concern as to whether the proposal meets the statutory requirement for necessity, stating that he was unable to find anything in the documentation that showed known exposures that exceed the PEL. He stated that, as drafted, the definition in subsection (b)(1) unnecessarily assumes that all concrete products contain high enough levels of silica that there will always be an overexposure and forces the employer into a defensive posture whether or not there actually is a problem, a result that seems contrary to our basic concepts of fairness and correct procedure. He went on to state his concern about the exception for roofers, indicating that if the hazard exists for bricklayers, it exists for roofers, and if the proposal is intended to

protect employees from exposure, then it should protect all employees. Mr. Jackson also expressed concern that the proposal unnecessarily duplicates requirements that exist elsewhere, stating that the same types of training requirements already exist in Sections 1509 and 3203 and employers performing this work currently are already obligated to do appropriate training for employees and supervisors, and therefore, the Division has all of the enforcement tools needed to prevent this hazard.

Response:

With regard to necessity, in the course of the two advisory committees held in early 2007 on this proposal, the Division was provided with, and identified from its own research, numerous laboratory and field studies documenting the potential for overexposures to respirable crystalline from the operations covered by the proposed standard. The one of these that was the most clear and comprehensive was included as a Document Relied Upon in the Initial Statement of Reasons.

In light of the potential for operations covered by the proposed standard to generate significant exposures to crystalline silica and total particulate even in periods considerably shorter than eight hours, after lengthy discussion of exposure control measure alternatives there was general agreement among advisory committee participants that the specific dust control measures required by the proposed standard and specific direction to covered employers to use them are necessary to achieve effective exposure control. Such direction is not provided by the more general standards and the Board is in agreement with the advisory committee consensus on this issue.

Regarding the exclusion of roofing operations, there was also considerable time and discussion in the advisory committee devoted to determining which specific types of operations should be required to implement the dust control measures required by the proposed standard. Roofing operations were proposed to be excluded because of significant concern raised about feasibility due to competing safety risks posed by the required dust control measures. Please see the response to Board Member Frisch's oral comment.

With regard to the comment on training, the proposed requirements were reviewed at two advisory meetings in early 2007 which were well attended by both labor and employer representatives. The proposed training requirements were modified in response to comments provided in that advisory process. The training requirements proposed in subsection (e) do not duplicate requirements that exist elsewhere as suggested by the comment. Sections 1509 and 3203 contain very basic requirements for training of employees and supervisors on all workplace hazards recognized by the employer. These standards do not include details of what must be covered in such training and they do not include a specific timeframe for re-training. Based on the Division's enforcement experience and extensive testimony at the advisory committee from employees and from employers and employer representatives acknowledging the employees' concerns, it is apparent that hazardous exposures to crystalline silica and other particulate hazards are occurring frequently from operations covered by the proposed standard and that the generic training requirements of Sections 3203 and 1509 have not been sufficient to modify

employer, employee and supervisor behavior sufficiently to reliably control them. In light of this, the advisory committee believed, and the Board concurs, that a specific detailed training requirement is necessary to control the hazards of the operations covered by this proposed standard and that a specific requirement for annual training is also necessary.

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

As a result of written comments to the proposed modifications contained in the 15-Day Notice of Proposed Modifications mailed on May 29, 2008, the following nonsubstantive modifications have been made to the Informative Digest published in the California Regulatory Notice Register dated October 26, 2007.

In the definition at proposed subsection (b)(1), nonsubstantive modifications are made to the words “masonry” and “material,” making the first letter of each word lower case. Also, the definition “Powered tools or equipment” is relocated to follow “Dust reduction system” so that the definitions are listed in alphabetical order. These changes are made for consistency with other proposed definitions and usual style.

In proposed subsection (e)(2), the phrase “takes place” has been deleted in a nonsubstantive change to remove a typographical error.

Summary and Response to Written Comments:

Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors (CALPASC), by electronic mail dated June 9 and June 13, 2008.

Comment #1:

In proposed subsection 1530.1(e)(2) the phrase “takes place” appears to be a typographical error and should be deleted.

Response:

The Board thanks the commenter for pointing out this grammatical error which has been corrected in the proposal.

Comment #2:

CALPASC supports the standard with the proposed modifications issued May 29, 2008.

Response:

The Standards Board received 43 communications in support of the comments in the CALPASC letter dated June 9, 2008. The Board thanks CALPASC and its members for their participation in the rulemaking process and for their expressions of support for the proposed standard.

Comment #3:

CALPASC expects the Division to work with CALPASC to resolve the problem of employers recommending or offering dust masks for their employees to use.

Response:

The Board appreciates CALPASC letting it and the Division know of its concerns with respect to employers recommending or offering dust masks for their employees to use and the Board understands that the Division is willing to work with CALPASC representatives and members to try to address the situation.

Comment #4:

CALPASC expects Cal/OSHA Consultation to develop a training document for this standard. Employers should be able to utilize the training document to cover the general training information regarding the hazards of concrete and masonry dust. CALPASC has sent a draft document to Cal/OSHA Consultation to assist with this endeavor.

Response:

The Board appreciates the commenter's efforts to work with the Cal/OSHA Consultation Service and looks forward to seeing the end product.

Comment #5:

CALPASC would like to clarify that the periodic training in subsection 1530.1(e)(3) can be accomplished at one point in time each year when the employer will train all employees on duty of the applicable sections of the standard.

Response:

Consistent with the comment, the proposed language for subsection 1530.1(e)(3) states

Periodic training. The employer shall conduct the training required by this section at least annually.

The general intent of Title 8 standards on employee training is to enable employees to understand the workplace hazards they face, the measures the employer is taking to control them, and their own and their supervisors' roles in implementing those control measures. Training under Section 1530.1 and the other requirements listed in subsection 1530.1(a) must always be provided before the employee or supervisor engages in the work activity the training is meant to address. The annual training requirement as proposed requires that employers provide adequate refresher training for the work in which employees continue to engage and allows for any reasonable approach to making sure it is given on an annual basis, including a single scheduled refresher training session per year. However, refresher training under subsection 1530.1(e)(3) is not to be confused with training on new hazards or changed working conditions, which is required under subsection 1530.1(e)(1) and the other applicable training requirements listed in subsection 1530.1(a). These types of training must always be provided before the employee is exposed to the workplace hazards they are meant to address.

Wilfrid Cameron, on behalf of the International Union of Bricklayers and Allied Craftworkers, by electronic mail dated June 11, 2008

Comment:

In the proposed modification of subsection (e)(1)(B), the phrase “or other methods” is vague and could be misinterpreted to include the use of ineffective methods that would not meet the requirement of subsection (c) of the proposal. To minimize the possibility of confusion, modified subsection (e)(1)(B) should be further amended by substituting the phrase “to comply with subsection (c) of this section by controlling” for the existing phrase “to control.”

Response:

Subsection (e) of the proposed standard addresses training to be provided by the employer. It has no effect on the requirement of subsection (c) for a “dust reduction system” employing water or local exhaust ventilation to effectively reduce airborne particulate during operations in which powered tools or equipment are used to cut, grind, core, or drill, concrete or masonry materials. Employers are free to use any other lawful exposure control measures to supplement those prescribed by subsection (c), and may use any lawful measure to satisfy Exception 1 to subsection (c) as explained in the response below to the comment of Bo Bradley of Associated General Contractors of California. In light of this, the Board believes it is important that training provided to employees address whatever means are used by the employer to control employee exposures. However, the proposed language of subsection (e)(1)(B) with regard to training content in no way dilutes the requirement of subsection (c) for use of a “dust reduction system” as that term is defined in the proposal.

Bo Bradley, Director Safety, Health & Regulatory Services, Associated General Contractors of California, by letter received June 17, 2008

Comment #1:

The proposed rule limits the controls employers may use to only wet methods and local exhaust ventilation. Any other control (e.g., isolation, dilution ventilation, etc.) would not be permitted under the proposed rule. Contrary to the Division’s response to the same comment in the initial rulemaking, we do not believe that Exception 1 to subsection (c) would have the same effect as amending proposed subsection (b)(3) to include “other effective methods in accordance with Section 5141.”

Response:

The comment is beyond the scope of the 15-day notice process because it is addressing regulatory language from the initial proposal that was not proposed to be modified. However, the Board wishes to clarify for the commenter and the regulated community that any lawful control method by itself or in combination with others may be used to satisfy Exception 1 to subsection (c), and to supplement wet methods or local exhaust ventilation even where Exception 1 cannot be satisfied, i.e., the exposures cannot be controlled below applicable particulate permissible exposure limits (PELs) as demonstrated reliably by air sampling. If the employer, by any lawful

means they may choose and consistent with the hierarchy of Section 5141 and without respect to use of respiratory protection, can satisfy Exception 1 to subsection (c) for a particular operation, then the requirement of subsection (c) for use of a “dust reduction system” employing water or local exhaust ventilation would not apply to that particular operation to the extent that air sampling reliably demonstrates exposures are below the applicable particulate PELs. The Board hopes this clarification is helpful to the commenter and to the regulated community.

Comment #2:

Greater clarity is needed for exemption of road building contractors. Exception (4) to subsection (a) should be amended to include “road building activity” among the types of work to which the limited exception to the scope of the proposed standard should apply.

Response:

The comment is beyond the scope of the 15-day notice process because it addresses regulatory text from the original proposal that was not proposed to be modified. However, the Board notes that while road building activities are not included in subsection (a)(4), subsection (a)(6) provides for an incidental work exception that would apply if the employer can demonstrate the specific work activity is truly incidental.

Jason W. Fell, Technical Director, Drywall Information Trust Fund/NCDCA, by letter received June 12, 2008

Comment #1:

Given existing regulations, the necessity for the proposed rule is unclear.

Response:

The comment is beyond the scope of the 15-day notice process because it is not addressing regulatory language proposed to be modified from the initial proposal. The Initial Statement of Reasons for the rulemaking explains the necessity for the proposal. The necessity of the proposed standard is also addressed in the response to the verbal comment of Board member Jackson at the public hearing December 13, 2007.

Comment #2:

The proposed rule is inconsistent and in conflict with existing regulations because it does not allow employers to use whatever means are available to minimize exposure.

Response:

The comment is beyond the scope of the 15-day notice process because it is addressing regulatory language from the initial proposal that was not proposed to be modified. However, the response above to comment #1 in the June 17, 2008, letter of Bo Bradley of Associated General Contractors of California, may help to resolve the commenter’s concern.

Comment #3:

Greater clarity is needed for exemption of drywall and drywall finishing compounds. Exception (1) to subsection (a) should be modified by adding “drywall and drywall finishing products” to the other materials listed.

Response:

The comment is beyond the scope of the 15-day notice process because it addresses regulatory text from the original proposal that is not proposed here to be modified. However, the Board will respond in the interest of clarity that drywall or sheetrock fits within the definition of concrete and masonry material absent evidence that it is not composed of silica-containing gypsum or other silica-containing material meeting the definitional criteria. In most cases, drywall or sheetrock operations will not be covered by the proposed standard because it applies only to qualifying uses of powered tools or equipment, and most operations involving drywall involve the use of non-powered tools.

It is the Board’s understanding that “drywall,” as the term is generally used, consists primarily of calcined gypsum (calcium sulphate dihydroxide, or sulphate of lime) in a paper wrapping. Calcium sulphate is regulated in Section 5155 as “particulate not otherwise regulated,” with a PEL of 10 mg/m³.

The Board anticipates that there can be significant potential for exposure to silica dust and to “particulate not otherwise regulated” from work on sheetrock or drywall, especially during finishing and sanding after installation. It is therefore important that employers with such operations who are not using powered tools or equipment and thus do not fall under the proposed standard monitor their employees’ exposures to total dust and for crystalline silica as required by Section 5155 and control any exposures that exceed applicable PELs as required by Section 5141.

Kevin D. Bland, Esq., General Counsel to the California Framing Contractors Association (CFCA), by electronic mail received June 13, and June 16, 2008

Comment #1:

The CFCA strongly supports the adoption and implementation of the standard as proposed in the 15-Day Notice of Proposed Modification.

Response:

The Board thanks the commenter for his participation in the rulemaking process and support of the proposed standard.

Comment #2:

In proposed subsection 1530.1(e)(2) the phrase “takes place” appears to be a typographical error and should be deleted.

Response:

The Board thanks the commenter for pointing out this grammatical error which has been corrected in the proposal.

Julie Trost, Executive Director, California Conference of Mason Contractor Associations, Inc. (CCMCA), by electronic mail dated June 11, 2008

Comment:

The CCMCA strongly supports the adoption and implementation of the masonry dust standard. The Board received 26 communications in support of the comments in the CCMCA letter.

Response:

The Board thanks the commenters for their participation in the rulemaking process and support of the proposed standard.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENT INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do 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 standard. 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 and less burdensome to affected private persons than the adopted action.