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AND HEALTH STANDARDS BOARD**

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Attachment No. 2

**INITIAL STATEMENT OF REASONS****TITLE 8  
CALIFORNIA CODE OF REGULATIONS****GENERAL INDUSTRY SAFETY ORDERS**

Chapter 4, Subchapter 7, Article 108, Sections 5157 and 5158;

**SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY ORDERS**

Subchapter 18, Article 4, Section 8355

**Confined Spaces****PROBLEM ADDRESSED BY PROPOSED ACTION**

Pursuant to Labor Code Section 142.3 the Standards Board is the only agency authorized to amend and adopt occupational safety and health standards that are at least as effective as federal standards. This proposal was developed by Board staff to address some concerns expressed by Division staff in a November 5, 1999 memorandum about the hazards of oxygen-enriched atmospheres and the importance of multi-employer communication in confined space operations. In response to those concerns, Board staff developed the proposal to specify that all confined space standards address the hazard of oxygen-enriched atmospheres and ensure that employers at multi-employer worksites coordinate their work activities and communicate confined space hazard information.

**SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

The purpose of the proposal is to prevent employee deaths and serious injuries by specifying that when more than one employer has employees working in or around a confined space, the employers will coordinate their operations and share information about the known or anticipated hazards within the confined space. The proposal will further specify that this coordination and sharing of hazard information occur across all industry sectors and not be limited to multi-employer situations within a specific industry or covered by only one of the three confined space standards. For employers and employees covered by section 5158, the proposal is intended to eliminate the potential for serious injuries or death to those employees required to work in or around confined spaces containing oxygen-enriched atmospheres.

The proposal is necessary to prevent additional serious injuries and/or deaths from occurring when an employer fails to communicate hazard information to another employer from a different industry sector that is covered by a different confined space standard. In 1994, two construction

employees working under the requirements of section 5158 died while working in a sewage facility. Allegedly, the construction employer was unaware that the sewage facility used oxygen to accelerate the treatment process in the sewage channel that the two employees had entered to repair. Also, the sewage facility employer was operating under the confined space requirements of section 5157 and was allegedly aware of the hazards of an oxygen-enriched atmosphere. However, the hazard information was possibly not conveyed to the construction employer since the contractor did not fall under the scope of section 5157 and/or section 5158 did not require the contractor to test for oxygen-enriched atmospheres.

This proposed rulemaking action contains several nonsubstantive, editorial, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Initial Statement of Reasons. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition, the following actions are proposed:

### **Section 5157. Permit-Required Confined Spaces.**

The purpose of amending subsection (c)(2) is to specify that when an employer is required to inform exposed employees about the hazards of a confined space, that similar information and warning be provided to other employers working in the area. The proposal is necessary to ensure that all employers and employees are warned about confined space hazards.

The purpose of amending subsection (c)(3) is to specify that when an employer determines that exposed employees will not enter a confined space and effective measures are taken to prevent such entry, that similar determinations and measures be taken when other employers are working in the area. The proposal is necessary to ensure that all employers and employees are prevented from inadvertently entering a confined space.

The purpose of amending subsection (c)(8) is to specify that the sharing of hazard information and coordination of confined space operations not be limited to employers who are covered by section 5157. The proposal is necessary to ensure that employers and their employees covered by section 5158 or 8355 share hazard information and coordinate their entry operations with the host employer who is covered by section 5157.

The purpose of amending subsection (c)(8)(A) is to allow a host employer to require contractors to comply with the confined space standard that applies to their specific industry. The proposal is necessary to ensure that host employers are not required to have a contractor comply with section 5157 when that contractor is alternatively covered by section 5158 or 8355.

The purpose of amending subsection (d)(11) is to specify that an employer's permit space program include procedures to coordinate entries with other employers covered by section 5158 or 8355. The proposal is necessary to ensure that an employer covered by section 5157 effectively shares hazard information and coordinate its entry operations with all affected employers and their employees including those covered by section 5158 or 8355.

### **Section 5158. Other Confined Space Operations.**

The purpose of amending subsection (a) is to expand the scope of the standard to cover confined spaces that have or may develop an oxygen-enriched atmosphere. The proposal is necessary to prevent employee exposure to oxygen-enriched atmospheres that pose a serious risk of fire or explosion. The necessity for this requirement is supported by a November 5, 1999 Memorandum from John Howard that documents a situation where in 1994, two construction employees died from burns they received while working in a sewage facility that had an oxygen-enriched atmosphere.

The purpose of adding a "Note" to subsection (a) is to allow employers the option of complying with section 5157 in lieu of complying with section 5158. The proposal is necessary to allow employers the flexibility of complying with the more stringent requirements of section 5157 or the existing requirements of section 5158. Allowing employers the flexibility to comply with the more stringent section 5157 will improve the protection for employees and may also be less burdensome for employers for the following two reasons: 1) employers who have varying operations that sometimes fall under the general industry standard (section 5157) and at other times fall under section 5158, may find it less burdensome and administratively complex to train and protect their employees pursuant to one standard; and, 2) since section 5157 is substantially the same as a federal OSHA standard (29 CFR 1910.146) and is based on a national ANSI consensus standard, some multi-state employers, and employers who abide by consensus standards, may find it less burdensome to comply with section 5157.

The purpose of amending subsection (b)(1)(A) is to expand the definition of a Confined Space to include oxygen enrichment as one of the conditions to consider when determining if a space meets the definition of a confined space. The proposal is necessary to prevent employee exposure to oxygen-enriched atmospheres that pose a serious risk of fire or explosion.

The purpose of adding subsection (b)(4) is to define the term "Oxygen Enrichment" as one of the conditions to consider when determining if a space meets the definition of a confined space. The definition is consistent with same term used in section 5157 and is based on the same rationale found in the preamble to the 1993 federal final rule (58 FR 1474) which also has the same defined term. The proposal is necessary to provide an adequate margin of safety and prevent employee exposure to oxygen-enriched atmospheres that pose a serious risk of fire or explosion.

The purpose of adding subsection (c)(1)(C) is to specify that an employer's operating procedures include a requirement to coordinate entries with other employers when a multi-employer operation is involved. To provide consistency of multi-employer obligations for employers covered by the 3 different sections, language is proposed to be essentially the same as section 5157(d)(11) and its counterpart federal language in 29 CFR 1910.146(d)(11). Therefore, the 1993 rationale for the federal language (54 FR 4501) provides the necessity for the specific language used in the new subsection. The proposal is necessary to ensure that the employer coordinate entry operations with all employers and their employees covered by sections 5157, 5158 or 8355 in a manner similar to the requirements of section 5157(d)(11).

The purpose of amending subsections (d)(1), (d)(3), (d)(5), (d)(6), (d)(7), (d)(8), (e)(1), (e)(1)(F) and (e)(1)(H) is to include oxygen enrichment as one of the conditions to consider when determining if a confined space is safe to enter. As required by subsection (d) for dangerous air

contamination and oxygen deficiency, confined spaces must additionally have pre-entry provisions that prevent oxygen enrichment, test for such a condition, provide additional ventilation and prohibit sources of ignition. When such pre-entry provisions do not adequately remove the risk of an oxygen-enriched atmosphere, subsection (e) would further require specific entry requirements such as the elimination of sources of ignition. The proposal is necessary to prevent employee exposure to oxygen-enriched atmospheres that pose a serious risk of fire or explosion.

The purpose of adding subsection (e)(1)(J) is to specify that an employer's confined space entry program include a requirement to coordinate entries with employers they contract with when a multi-employer operation is involved. To provide consistency of multi-employer obligations for employers covered by the 3 different sections, the language is proposed to be essentially the same as section 5157(c)(8) and its counterpart federal language in 29 CFR 1910.146(c)(8). Therefore, the 1993 rationale for the federal language provides the necessity for the specific language used in the new subsection (54 FR 4492-4493). The proposal is necessary to ensure that the employer coordinate entry operations with those employers and their employees covered by sections 5157, 5158 or 8355 in a manner similar to the requirements of section 5157(c)(8).

The purpose of adding subsection (e)(1)(K) is to specify that a contract employer's confined space entry program include a requirement to coordinate entries with the host employer when a multi-employer operation is involved. To provide consistency of multi-employer obligations for employers covered by the 3 different sections, the language is proposed to be essentially the same as section 5157(c)(9) and its counterpart federal language in 29 CFR 1910.146(c)(9). Therefore, the 1993 rationale for the federal language (54 FR 4493) provides the necessity of the specific language used in the new subsection. The proposal is necessary to ensure that the employer coordinate entry operations with all employers and their employees covered by sections 5157, 5158 or 8355 in a manner similar to the requirements of section 5157(c)(9).

### **Section 8355, Confined and Enclosed Spaces and Other Dangerous Atmospheres.**

The purpose of adding subsection (e)(6) is to specify that an employer's precautions and testing program include a requirement to coordinate entries with other employers when a multi-employer operation is involved. To provide consistency of multi-employer obligations for employers covered by the 3 different sections, the language is proposed to be essentially the same as section 5157(d)(11) and its counterpart federal language in 29 CFR 1910.146(d)(11). Therefore, the 1993 rationale for the federal language (54 FR 4501) provides the necessity of the specific language used in the new subsection. The proposal is necessary to ensure that the employer coordinate entry operations with those employers and their employees covered by sections 5157, 5158 or 8355 in a manner similar to the requirements of section 5157(d)(11).

The purpose of adding subsection (e)(7) is to specify that an employer's confined space entry program include a requirement to coordinate entries with employers they contract with when a multi-employer operation is involved. To provide consistency of multi-employer obligations for employers covered by the 3 different sections, the language is proposed to be essentially the same as section 5157(c)(8) and its counterpart federal language in 29 CFR 1910.146(c)(8). Therefore, the 1993 rationale for the federal language (54 FR 4492-4493) provides the necessity

of the specific language used in the new subsection. The proposal is necessary to ensure that the employer coordinate entry operations with all employers and their employees covered by sections 5157, 5158 or 8355 in a manner similar to the requirements of section 5157(c)(8).

The purpose of adding subsection (e)(8) is to specify that a contract employer's confined space entry program include a requirement to coordinate entries with the host employer when a multi-employer operation is involved. To provide consistency of multi-employer obligations for employers covered by the 3 different sections, the language is proposed to be essentially the same as section 5157(c)(9) and its counterpart federal language in 29 CFR 1910.146(c)(9). Therefore, the 1993 rationale for the federal language (54 FR 4493) provides the necessity of the specific language used in the new subsection. The proposal is necessary to ensure that the employer coordinate entry operations with all employers and their employees covered by sections 5157, 5158 or 8355 in a manner similar to the requirements of section 5157(c)(9).

### **REFERENCE TO COMPARABLE FEDERAL REGULATION**

1. Title 29 Code of Federal Regulations sections 1910.146 and 1915.12 Confined Space standards for general industry and shipyards has a similar oxygen testing and multi-employer worksite requirements.

### **DOCUMENTS RELIED UPON**

1. Memorandum with attachment dated November 5, 1999 from John Howard, Chief of the Division of Occupational Safety and Health, requesting a modification to sections 5157 and 5158.
2. Federal Register Volume 54 pages 4462-4563 (January 14, 1993), 29 CFR Section 1910.146, Permit-Required Confined Spaces for General Industry; Final Rule.

### **IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESSES**

No adverse impact on small businesses is anticipated from the implementation of the proposed amendments. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

### **SPECIFIC TECHNOLOGY OR EQUIPMENT**

This proposal will not mandate the use of specific technologies or equipment.

### **COST ESTIMATES OF PROPOSED ACTION**

#### **Costs or Savings to State Agencies**

It is not anticipated that the proposed additional requirements for oxygen-enriched confined spaces or multi-employer worksites will result in any significant costs or savings to state agencies.

### **Impact on Housing Costs**

The proposal will not significantly affect housing costs.

### **Impact on Businesses**

It is not anticipated that the proposed additional requirements for oxygen-enriched confined spaces or multi-employer worksites will result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with other businesses. As proposed, businesses will need to ensure that if they have confined space operations, employees must be protected from the hazards of oxygen-enriched atmospheres and communication of hazards will occur if other employers are working at the same site.

### **Cost Impact on Private Persons or Entities**

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

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

### **PLAIN ENGLISH STATEMENT**

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Board pursuant to Government Code Sections 11342(e) and 11346.2(a)(1) and are available from the agency contact person named in the notice. The informative digest for this proposal constitutes a plain English overview.

### **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.

### **ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS**

No alternatives 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 proposed action.