

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS****Construction, General Industry, and
Ship Building, Ship Repairing and Ship Breaking Safety Orders
New Sections 1535.1, 5205, 8359.1, and existing Section 5155
(Published on June 2, 2017)****Occupational Exposure to Beryllium (HORCHER)**

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **July 20, 2017** in **Room 310** of the **County Administration Center, 1600 Pacific Highway, San Diego, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **June 2, 2017** and closes at 5:00 p.m. on **July 20, 2017**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By fax at (916) 274-5743; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.

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 occupational exposure to beryllium and beryllium compounds on January 9, 2017, as 29 Code of Federal Regulations, Part 1910, Sections 1910.1000 and 1910.1024, Part 1915, Sections 1915.1000 and 1915.1024, and Part 1926, Sections 1926.55 and 1926.1124. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 82, No. 5, pages 2470-2757, January 9, 2017. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

The recently published federal final rule is written as three standards, addressing beryllium exposure in construction, general industry, and maritime. The rule establishes new permissible exposure limits of 0.2 micrograms of beryllium per cubic meter of air ($0.2 \mu\text{g}/\text{m}^3$) as an 8-hour time-weighted average and $2.0 \mu\text{g}/\text{m}^3$ as a short-term exposure limit determined over a sampling period of 15 minutes. It also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping.

The general industry standard also includes a non-mandatory appendix, which sets forth a non-exhaustive list of control options that employers can use to comply with the rule in a number of specific beryllium operations. Compliance with each of the three standards is required by March 12, 2018, except for the requirements for change rooms and engineering controls, which are required by March 11, 2019 and March 10, 2020, respectively.

California safety orders do not include a vertical standard to specifically address employee exposure to beryllium. Sections 5155 “Airborne Contaminants” and 3203 “Injury and Illness Prevention Program” require employers to protect employees from beryllium exposure in general terms, but are more performance based than the prescriptive federal regulation.

The federal final rules for construction, general industry, and maritime, will be adopted into new Sections 1535.1, 5205, and 8359.1, respectively. Existing Section 5155 will also be amended to include the new short-term exposure limit for beryllium.

The proposed regulations are substantially the same as those promulgated by Federal OSHA; 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 when adopting standards substantially the same as a federal standard. However, the Board is still providing a comment period and will convene a public hearing. The primary purposes of the written and oral comments at the public hearing are to:

1. Identify any clear and compelling reasons for California to deviate from the federal standard; and,
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and,
3. Solicit comments on the proposed effective dates.

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

This proposed rulemaking action is not inconsistent nor incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

DOCUMENTS RELIED UPON

1. 82 Federal Register 2470-2757 (January 9, 2017).

This document is 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

This rulemaking proposal imposes no costs beyond those of the subject federal regulations with which it conforms.

According to Table VIII-4: Total Annualized Costs by Sector and Six-Digit NAICS Industry, for Entities Affected by the Final Beryllium Standard; Results Shown by Size Category (3 Percent Discount Rate, 2015 Dollars), found in the January 9, 2017, Federal Register¹, the cost impacts are expected to be as follows:

Industry	Total Cost – All Employers (2015 Dollars)	California Cost – 13.8% GDP (2015 Dollars)
General Industry	\$61,972,805	\$8,552,247
Construction	\$8,509,666	\$1,174,334
Maritime	\$3,385,759	\$467,235
Total	\$73,868,230	\$10,193,816

California’s share of the nation’s GDP is 13.8% (in 2015 dollars), according to www.bea.gov. The total cost of the federal final rule on California industry is anticipated to be about \$10.2 million, as shown in the table above.

¹ <https://www.regulations.gov/document?D=OSHA-H005C-2006-0870-2043>. Accessed April 11, 2017.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment may affect small businesses. The table below reflects information from the January 9, 2017, Federal Register. Using 2015 dollars and GDP data for California, small businesses in California may experience a cost impact of approximately \$6.1 million.

Industry	Small Firms USA (SBA-Defined ²)	CA Small Firms (13.8% GDP)	Very Small Entities (<20 Employees)	CA Very Small Firms (13.8% GDP)
General Industry	\$36,113,291	\$4,983,634	\$8,624,173	\$1,190,136
Construction	\$6,867,282	\$947,685	\$4,755,152	\$656,211
Maritime	\$1,083,721	\$149,553	\$568,896	\$78,508
Total	\$44,064,294	\$6,080,873	\$13,948,222	\$1,924,855

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations without further notice even though modifications may be made to the original proposal in response to public comments or at the Board’s discretion.

² The U.S. Small Business Administration (SBA) has established two widely used size standards – 500 employees for most manufacturing and mining industries and \$7.5 million in average annual receipts for many nonmanufacturing industries – to define “Small Firms”. However, there are a number of exceptions. Please see <https://www.sba.gov/> for more information.

**AVAILABILITY OF THE MEMORANDUM TO THE
STANDARDS BOARD MEMBERS**

Upon its completion, copies of the Memorandum may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulation in an underline/strikeout format and the Notice of Proposed Action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.