

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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



Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 107, Section 5155
of the General Industry Safety Orders

*Methyl Hydrazine***SUMMARY**

This rulemaking action was initiated in response to Petition File No. 455 submitted to the Occupational Safety and Health Standards Board (Board) by Mr. Robert Hollenbeck, Director, Company Safety and Health, The Boeing Company. Mr. Hollenbeck's petition requested that the Board revise the permissible exposure limit (PEL) for methyl hydrazine contained in Title 8, California Code of Regulations, General Industry Safety Orders (GISO) Table AC-1 of Section 5155, Airborne Contaminants. The Petitioner noted that the Board may have inadvertently erred in designating the PEL for methyl hydrazine as a ceiling limit in the rulemaking adopted November 16, 2000, and effective February 3, 2001 (California Regulatory Notice Register 2000, No. 12-Z). The Division of Occupational Safety and Health (Division) concurred with the Petitioner's assessment that when the PEL for methyl hydrazine was last revised, it was designated as a ceiling limit in error and this is inconsistent with the statements made in the Initial Statement of Reasons for this substance. In Board staff's review of the rulemaking file, the advisory committee meeting minutes, and dialog with the advisory committee chairman, Board staff concluded that the intent of the advisory committee convened for the rulemaking adopted November 16, 2000, was to designate the PEL for methyl hydrazine as a time weighted average (TWA) rather than a ceiling limit.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 5155. Airborne Contaminants. Table AC-1**

Existing Section 5155 establishes minimum requirements for controlling employee exposure to specific airborne contaminants. Currently, the PEL for methyl hydrazine is set at 10 parts per billion (ppb) as a ceiling limit. An amendment is proposed to delete the ceiling limit designation. The deletion of the ceiling limit designation for methyl hydrazine is necessary to correct an error made in a previous rulemaking. In reviewing the minutes of the advisory committee meetings for the rulemaking adopted November 16, 2000, where methyl hydrazine was discussed, it was determined that the consensus recommendation of the committee intended

the limit for methyl hydrazine to be an eight-hour time weighted average concentration based on the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs). The deletion of the ceiling limit designation for methyl hydrazine would restore consistency to the hydrazine PELs and would safeguard employee health and safety.

DOCUMENTS RELIED UPON

1. Petition dated June 26, 2003, submitted by Robert Hollenbeck, Director, Company Safety and Health, The Boeing Company, to the Occupational Safety and Health Standards Board.
2. Division report dated September 10, 2003, from Len Welsh, Acting Chief, Division of Occupational Safety and Health to Keith Umemoto, Executive Officer, Occupational Safety and Health Standards Board.
3. Occupational Safety and Health Standards Board evaluation of the petition dated September 11, 2003.
4. Occupational Safety and Health Standards Board Decision dated November 20, 2003, in the matter of Petition File No. 455 by Robert Hollenbeck, CSP, Director, Company Safety and Health, The Boeing Company.
5. ACGIH Documentation for TLVs printed from "TLVs and Occupational Exposure values-1996," © 1996 for Methyl hydrazine.
6. List of advisory committee members, attendance sheets and meeting minutes dated March 20, 1997, May 9, 1997, June 9, 1997, September 15, 1997, September 29, 1997, November 7, 1997, December 19, 1997, January 21, 1998, March 2, 1998, and June 24, 1998.

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.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

COST ESTIMATES OF PROPOSED ACTION

Compliance with the proposed time-weighted average PEL would be less burdensome to the affected public than the current ceiling limit designation.

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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 standard does 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 amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does 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.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does 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.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

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 amendment to this standard 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 reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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.