

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **August 15, 2013**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **August 15, 2013**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **August 15, 2013**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

DAVE THOMAS, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **August 15, 2013**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 2, Section 1504
Article 36, New Section 1929, Sections 1930 – 1932, 1934 – 1936
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 107, Section 5154
Article 109, Sections 5191, 5194
Article 134, Section 5415
Article 137, Sections 5449, 5451
Article 141, Sections 5531 – 5534, 5541 – 5543
Article 142, Sections 5545 – 5547, 5549
Article 143, Sections 5556, 5558, 5560
Article 144, Sections 5566, 5568 – 5570, 5573 – 5579
Article 145, Sections 5590, 5592, 5594, 5596 – 5599, 5601
Article 146, Section 5606
Article 147, Sections 5616 – 5622, and 5624
[Federal Final Rule, Globally Harmonized System - Update to Hazard Communication \(Safety\)](#)

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 25, Section 3650
[Powered Industrial Trucks–Excessive Loads](#)

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 107, Section 5155
[Airborne Contaminants, Naphthalene](#)

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 2, Section 1504
Article 36, New Section 1929, Sections 1930 – 1932, 1934 – 1936
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 107, Section 5154
Article 109, Sections 5191, 5194
Article 134, Section 5415
Article 137, Sections 5449, 5451
Article 141, Sections 5531 – 5534, 5541 – 5543
Article 142, Sections 5545 – 5547, 5549
Article 143, Sections 5556, 5558, 5560
Article 144, Sections 5566, 5568 – 5570, 5573 – 5579
Article 145, Sections 5590, 5592, 5594, 5596 – 5599, 5601
Article 146, Section 5606
Article 147, Sections 5616 – 5622, and 5624
[Federal Final Rule, Globally Harmonized System - Update to Hazard Communication \(Safety\)](#)

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 promulgated regulations on March 26, 2012, addressing Globally Harmonized System (GHS) updates of the Hazard Communication Standard (HCS) and related sections. The changes impact 29 CFR, Parts 1910 (general industry), 1915 (shipyards) and 1926 (construction). The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 77, No. 58, pages 17574-17896, March 26, 2012, as the justification for the Board's proposed rulemaking action. Except as noted below, the Board proposes to adopt regulations which are effectively the same as the federal regulations except where existing state standards are deemed more protective than the federal promulgation.

This proposed rulemaking action also contains non-substantive, editorial, reformatting of subsections, grammatical revisions and deletion of obsolete Title 24 cross-references. These non-substantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the proposed modifications and amendments are as follows. The effect of these changes will be to make state standards consistent with federal GHS standards while retaining more protective provisions of CCR Title 8 where they exist.

CSO Section 1504: Definitions of "Combustible Liquid," "Flammable Liquid," and classifications for flammable and combustible liquids are modified. New definitions added for "Fire Area" and "Flash point of the liquid."

CSO Sections 1929 – 1932, 1934 – 1936: Revise scope of application and criteria for handling, storage and use of flammable and combustible liquids.

GISO Section 5154: Additional federal requirements for dipping and coating operations that use flammable liquids or liquids with flashpoints greater than 199.4 ≥F (93 ≥C).

GISO Sections 5191 and 5194: Delete definitions for “Combustible Liquid,” “Flammable,” and “Flashpoint.”

GISO Section 5415: Modify definitions for “Combustible Liquid,” “Flammable Aerosol,” “Flammable Liquid,” “Flash point,” “Liquid,” “Liquid, Combustible,” and “Liquid, Flammable.” Update reference standards for flash point testing with latest editions of ASTM D-56 and ASTM D-93 which have been adopted by federal OSHA.

GISO Sections 5449 and 5451: Change references to “flammable or combustible liquids” to “flammable liquids or liquids with a flashpoint greater than 199.4°F (93°C) (formerly designated Class IIIB Combustible liquids).” Other minor changes for consistency with federal standards.

GISO Sections 5531 – 5534 and 5541 – 5543: Change terminology from classes to GHS categories, a few modifications in requirements for containers, portable tanks and storage for flammable liquids and liquids with flashpoints greater than 199.4 °F (93 °C) [formerly designated Class IIIB combustible].

GISO Sections 5545 – 5547, 5549: Changes in terminology from classes to GHS categories for flammable and combustible liquids for those portions of industrial plants where the use and handling of flammable or combustible liquids is only incidental to the principal business, such as automobile assembly, construction of electronic equipment, furniture manufacturing or other similar activities.

GISO Sections 5556, 5558, and 5560: Changes in terminology from classes to GHS categories for flammable and combustible liquids in processing plants and requirements for tank vehicle and tank car loading and unloading, including sources of ignition.

GISO Sections 5566, 5568 – 5570, 5573 – 5579: Changes in terminology from classes to GHS categories for storing and handling flammable and combustible liquids at automotive and marine service stations. Modification of Table FL-9 Electrical Equipment Classified Areas – Service Stations.

GISO Sections 5590, 5592, 5594, 5596 – 5599, 5601: Changes in terminology from classes to GHS categories for tank storage. Other modifications for consistency with federal standards.

GISO Section 5606: Minor modifications due to differences in federal and state terminology.

GISO Sections 5616 – 5622, and 5624: Changes in terminology from classes to GHS categories for storing and handling flammable and combustible liquids at bulk plants. Section 5619 bonding requirements at loading and unloading facilities modified to blend most protective provisions of federal and state.

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent

federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.

- Differs from existing federal standards where state standards are more protective; however, it is at least as effective as the federal standard. Textual differences are noted in the side-by-side.
- Is not inconsistent or 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 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.
- Is the least burdensome effective alternative. This rulemaking proposal is the result of the work of a federal advisory committee.

DOCUMENTS INCORPORATED BY REFERENCE

ASTM D56-05 (Reapproved 2010), Standard Test Method for Flash Point by Tag Closed Cup Tester, copyright ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

ASTM D 93-08, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester, copyright ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

NFPA 77, Recommended Practice on Static Electricity, 2007 Edition, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-9101.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of 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.

COST ESTIMATES OF PROPOSED ACTION

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/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made a 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. This proposal consists of a Global Harmonization Standard that all states and UN member nations are adopting; thus, it will not affect the ability of California businesses to

compete with businesses in other states. Estimated costs of compliance are presented in the preamble for the federal final rule, Fed.Reg., Vol. 77, No. 58, dated March 26, 2012, pages 17625-17649 and pages 17661-17674. The federal preamble lists the number and type of businesses impacted and estimated costs.

Cost Impact on Private Persons or Businesses

Cost impacts that a representative private person or business entity would necessarily incur in reasonable compliance with the proposed action cannot be accurately determined as they are part of a system of global harmonization which businesses throughout the United States and worldwide are adopting. Thus while there may be costs associated with compliance, there will also be costs associated with non-compliance; i.e. lost business due to incompatibility with international standards adopted by a vast majority of businesses and entities throughout the United States and throughout the world. Estimated costs of compliance are presented in the preamble for the federal final rule, Fed.Reg., Vol. 77, No. 58, dated March 26, 2012, pages 17625-17649 and pages 17661-17674. The federal preamble lists the number and type of businesses impacted and estimated costs. Note, however, that the federal preamble includes costs of compliance both with safety and health standards of the Global Harmonization Standard. This subject rulemaking only pertains to the safety aspects, which are less significant than the health aspects of the proposed global standard which are the subject of a separate rulemaking.

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 standards 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 standards 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 standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards 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 standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed will affect small businesses. However, no adverse economic impact is anticipated.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

Benefits of the Regulation:

- When completely phased-in, the GHS is anticipated to result in hundreds of millions of dollars in annual savings in the U.S.
- The proposed modifications will improve the quality and consistency of information provided to employers and employees regarding hazards and associated protective measures for flammable and combustible liquids.
- Standardized safety data sheets will enable employees exposed to workplace chemicals to more quickly obtain and more easily understand information about the hazards associated with those chemicals. The standardized format will also enable critical information to be accessed more easily and quickly during emergencies. This can reduce the risk of injury, illness, and death to exposed employees and to rescue personnel and can also reduce property damage.
- With the exception of a different treatment for Class IIIB combustible liquids (where California is more protective), the proposed rulemaking will harmonize California with global standards for flammable and combustible liquids which should help maintain California's competitiveness and improve exports and imports.

ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 25, Section 3650
Powered Industrial Trucks–Excessive Loads

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision, dated August 29, 2012, in the Matter of Otis Elevator Company Docket Nos. 10-R3D2-3832 and 3833. The Division of Occupational Safety and Health (Division) cited the employer under Section 3650(l) of the General Industry Safety Orders for failure to secure an excessively high load on a forklift. According to the Division, the overall load was excessive because it exceeded the height of the mast. OSHAB held that “excessive” is a relative term that requires a foundational comparison. Further, OSHAB opined that any size load can shift, shake or fall but does not establish that the load was of excessive width, length, or height. The Division did not present evidence regarding a norm to which a comparison could be made to show that the load was of excessive width, length, or height for the forklift in question. The citation was dismissed and the penalty vacated as the Division was unable to meet its burden to establish a violation of Section 3650(l).

This rulemaking action proposes amendments to Section 3650(l) to delete the restrictive phrase “... of excessive width, length or height...” and focus on the load’s stability and security rather than its size or dimensions. The proposal adds language to follow the industrial truck manufacturer’s recommendations for securing a load against displacement. The proposed amendment is intended to ensure that all loads on powered industrial trucks are secured to prevent instability that may result in the loss of the load and potentially injuring employees in the vicinity. The proposal adds to the clarity of the standard and enhances employee safety. Equivalent federal OSHA regulations do not address oversized loads but rather the industrial truck’s capacity to handle a load.

Title 8 addresses the operation of equipment and machinery (generically) under conditions of loading or speeds which could endanger employees as stated in Section 3328(a). However, although Section 3328 is not specific to powered industrial truck operation, it is consistent though with and complements this proposal. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- More closely aligns Title 8 with the equivalent federal standard by emphasizing the stability and security of the load rather than its size or dimensions. Differs from the existing federal regulation in that the equivalent federal regulation does not refer to the manufacturer’s recommendation for specific instructions. The proposal will ensure a safer method of load security to avoid worker injuries from load displacement.
- Is not inconsistent or 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).

- Is the least burdensome effective alternative. The proposal eliminates any confusion or doubt as to the type or size of load to secure from falling or tipping. The amendment clarifies the intent that all loads placed on powered industrial trucks are to be secured and not create an instability hazard. The inclusion of language to follow the manufacturer's recommendations for securing the load against displacement provides industry standard best practices for the given equipment.

Section 3650. Industrial Trucks. General.

Subsection (l)

Existing Section 3650 specifies the operation, design, construction and maintenance of industrial trucks. Existing subsection (l) states that, "Loads of excessive width, length or height shall be so balanced, braced and secured as to prevent tipping and falling." The proposed amendment removes the load descriptive language and maintains the requirement for load security and stability. Language is added to subsection (l) to require that loads be secured against displacement in accordance with the manufacturer's recommendations. The proposal will provide clarity to employers and enforcement personnel that any load transported on powered industrial trucks shall be stable and secured from displacement.

COST ESTIMATES OF PROPOSED ACTION

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/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made a 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. The proposal simplifies the existing standard by eliminating language that adds confusion and uncertainty as to what constitutes an excessive size load. The amendments define how a load should be secured and provides direction to follow the manufacturer's recommendations to prevent displacement of the load. The Board believes the proposal will have insignificant, if any, adverse cost impact upon employer's operations.

Therefore, the adoption of the proposed amendments to these standards 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.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts 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 regulation 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation 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 regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation 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 regulation does not impose unique requirements on local governments. All - state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

Benefits of the Regulation:

- The proposal would allow businesses, small or large, clear direction in the proper method of ensuring that loads on industrial trucks are safely and securely positioned. The adoption of this proposal will promote worker safety by specifying safe practices already developed by the manufacturer of the powered industrial truck.

ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

3. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 107, Section 5155
[Airborne Contaminants, Naphthalene](#)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Section 5155, Airborne Contaminants, establishes minimum requirements for controlling employee exposure to specific airborne contaminants. California periodically amends the airborne contaminants table (Table AC-1) in this standard to keep it consistent with current information regarding harmful effects of exposure to these substances and other new substances not listed.

For the substance Naphthalene, the existing Permissible Exposure Limit (PEL) of 10 parts per million in air (ppm) as an 8-hour time-weighted average (TWA) is proposed to be amended to a value of 0.1 ppm, along with an equivalent amendment of the existing PEL expressed in units of milligrams per cubic meter of air (mg/M³). As the proposed PEL of 0.1 ppm is equivalent to a 15-minute Short Term Exposure Limit (STEL) of 3.2 ppm, the existing STEL value for Naphthalene of 15 ppm (75 mg/M³) is proposed to be repealed. The proposed PEL amendments, including addition of a "Skin" notation, are necessary to reduce risk of both cancer and non-cancer health effects as described in the Initial Statement of Reasons for this rulemaking.

The substance Naphthalene, with the amended PEL in this proposal, was considered by the Division of Occupational Safety and Health (Division), the Health Expert Advisory Committee (HEAC), in meetings in March, June and September 2009. The HEAC considered the health basis of possible changes to the PEL based on a range of scientific information. As in the last round of work on PELs, technical assistance was provided to the Division by staff of the Office of Environmental Health Hazard Assessment in the California Environmental Protection Agency and the Hazard Evaluation System and Information Service in the California Department of Public Health. In addition, informal public comment was invited on the range for possible PELs recommended by the HEAC for potential feasibility and cost issues at a meeting of the Division's Feasibility Advisory Committee (FAC) on December 8, 2009. The meetings of both the HEAC and the FAC were open to the public.

The effect of these amendments is to reduce the risk of material impairment of health or functional capacity of employees exposed to Naphthalene.

The proposed changes to Section 5155 are considered to be at least as effective as, or more stringent than, the federal OSHA requirements for these substances found at 29 CFR 1910.1000 for Air Contaminants.

This proposed rulemaking action is not inconsistent or 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 the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their counterpart. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is "the only agency in the state authorized to adopt occupational safety and health standards." When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal standards, in that the PEL value proposed for Naphthalene is lower than that found in the federal air contaminants standard at 29 CFR 1910.1000. Labor Code section 147.1(c) mandates with respect to occupational health issues not covered by federal standards that the Division maintain surveillance, determine the necessity for standards, and develop and present proposed standards to the Standards Board. For a variety of reasons, the federal standards for air contaminants have remained largely unrevised since their promulgation in the early 1970s, with the exception of substances for which individual comprehensive chemical hazard control standards have been promulgated, primarily for carcinogens. Since the federal standards were promulgated over 40 years ago, scientific studies with experimental animals have shown that Naphthalene has the potential to cause cancer. The Standards Board believes the Division appropriately carried out its mandate under Labor Code section 147.1 to present to the Standards Board the PEL proposed for Naphthalene in this rulemaking, including a determination of necessity for the proposed amendment. In addition, the Standards Board believes that with this proposal, it is carrying out its mandate under Labor Code section 144.6 to adopt standards dealing with toxic materials which most adequately assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity, taking into account the latest available scientific data in the field and the reasonableness of the standard.
- Is not inconsistent or 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 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.

COST ESTIMATES OF PROPOSED ACTION

This rulemaking proposes revisions of the PEL for the chemical substance Naphthalene. The primary users of this substance are the private industrial and chemical sectors and it is present in a wide variety of petroleum products. The PEL proposed is consistent with recent scientific findings, of which professional health and safety staff and consultants of these employers and others with significantly exposed employees should be aware. Many of these entities already seek to control employee exposures to chemicals to levels below existing PELs in the interest of business continuity and minimization of tort and workers compensation liability. In light of this, the additional expenditures by these entities to comply with the proposed amended PEL are estimated to be insignificant to none.

The only written comment received for the meeting of the FAC on the PEL for this substance was with respect to the ease of use of an air sampling method to monitor compliance with the existing and revised PEL for Naphthalene. However, this was deemed by the Committee not to be a significant problem, or to impose potentially significant costs on employers. Based on the information discussed above, the cost estimate of the PEL recommended by the FAC and proposed in this rulemaking is not believed to be significant.

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

Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made a 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.

As noted above, at the FAC meeting addressing this substance the discussion of the one written comment received on Naphthalene concluded that acceptable workplace air sampling methods to assess compliance with the proposed PEL are available for Naphthalene. The FAC's review of a study of Naphthalene exposure levels in a range of industries resulted in a consensus recommendation for the proposed PEL of 0.1 ppm (8-hour TWA), higher than the 0.03 ppm lower end of the range of health based levels discussed in the HEAC. In light of the limited economic impact of the proposal (as a result of the FAC feasibility determination), the adoption of the proposed amendments to these standards 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.

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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the 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 standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no adverse economic impact is anticipated. The feasibility and cost of implementation of the proposed PEL for Naphthalene was discussed by the FAC. This committee concluded that no information had been presented supporting a conclusion that a PEL of 0.1 ppm would be infeasible in any particular industrial sector or operation. In light of this, the Board believes there will be no adverse economic impact on small businesses as a result of the PEL proposed for Naphthalene.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses as a result of the PEL proposed for Naphthalene. The economic impact of the proposed PEL for Naphthalene was discussed by the FAC. This committee concluded that no information had been presented supporting a conclusion that a PEL of 0.1 ppm would be infeasible in any particular industrial sector or operation. In light of this, the Board believes there will be no adverse economic impact as a result of the PEL proposed for Naphthalene.

Benefits of the Regulation:

Setting a Permissible Exposure Limit for Naphthalene that is up-to-date and consistent with current scientific information and state policies on risk assessment will send appropriate market signals to employers with respect to the costs of illness and injury which chemicals can impose on workers and their families, the government, and society at large. With appropriate market signals, employers may be better able to choose chemicals for use in the workplace that impose less of a burden on workers and society.

ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than **August 9, 2013**. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on **August 15, 2013**, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

DAVE THOMAS, Chairman