

**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 **January 17, 2013**, at 10:00 a.m.  
in the Auditorium of the Harris State Building  
1515 Clay Street, Oakland, 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 **January 17, 2013**, at 10:00 a.m.  
in the Auditorium of the Harris State Building  
1515 Clay Street, Oakland, 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 **January 17, 2013**, at 10:00 a.m.  
in the Auditorium of the Harris State Building  
1515 Clay Street, Oakland, 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**

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JOHN D. MACLEOD, 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 **January 17, 2013**.

1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10, Section 3381  
**[Federal OSHA Direct Final Rule – Head Protection](#)**
  
2. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 107  
Section 5155  
**[Airborne Contaminants - Ethylbenzene](#)**

Descriptions of the proposed changes are as follows:

1. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10, Section 3381  
**Federal OSHA Direct Final Rule – Head Protection**

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

On June 22, 2012, federal OSHA issued a direct final rule related to standards for head protection. On July 23, 2012, federal OSHA issued a notice of correction (editorial only) related to the explanation for its proposed final rule related to head protection in its construction standards. The federal final rule primarily includes amended provisions for head protection in sections of its general industry standards (29 CFR 1910.135), shipyard employment standards (29 CFR 1915.155), marine terminal standards (29 CFR 1917.93), longshoring standards (29 CFR 1918.103) and construction standards (29 CFR 1926.100).

Federal OSHA’s final rule will allow use of helmets/head protection that complies with any of the three most current editions of the American National Standards Institute (ANSI) Z89.1 consensus standards for Industrial Head Protection, editions 2009, 2003, and 1997. These three editions are incorporated by reference in 29 CFR 1910.6 of the federal standards. References in its standards listing ANSI Z89.1 editions prior to 1997 are removed in the federal final rule. Federal OSHA commented that the useful life of protective helmets is limited and in general opined that industries and employers would not be impacted by the removal of references to outdated standards. Manufacturers of protective helmets design their products in accordance with the latest ANSI standards, and it is believed that it is the usual and customary practice of employers to provide head protection that complies with one of the three aforementioned ANSI standards.

California OSHA provisions in Title 8 do not have industry specific standards (vertical standards) for head protection in those industries affected by the federal final rule. The General Industry Safety Orders (GISO) Section 3202(a), in summary, states that GISO standards apply to all places of employment as defined in the California Labor Code, except that industry specific (vertical standards) take precedence wherever they are inconsistent with GISO standards.

Therefore, the GISO Section 3381 “Head Protection” provides the head protection standards for those industries affected by the federal final rule. The State is adopting similar language to that of the federal final rule. The State’s proposal requires that head protection meets the criteria in any one of the ANSI Z89.1-2009, 2003, and 1997 consensus standards for Industrial Head Protection. These standards are incorporated by reference in proposed Section 3381(b). The existing standards and several components of this proposal also include specific criteria related to helmet impact types and the use of the appropriate helmet class designation for exposure to electrical hazards. 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.

- Is initiated as a result of the federal OSHA direct final rule issued June 22, 2012, related to head protection. California standards for head protection related to those industries included in the federal final rule are provided in GISO Section 3381. With this proposal, California standards will be commensurate with provisions issued in the federal final rule. The State's standard differs from the federal final rule formatting of its standards in that federal OSHA chooses to repeat the same or similar requirements in each of its industry specific standards.
- 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. The amendments proposed in Title 8, Section 3381 are necessary to provide equivalency with federal OSHA's updated standards that will require head protection that complies with one of the three most recent editions of the consensus standards for employee head protection. The proposal will enhance employee protection from falling or flying objects and electrical hazards.

### **GISO Section 3381. Head Protection.**

Existing Section 3381 provides the requirements for head protection where there is a risk of receiving head injuries from flying or falling objects and/or electric shock and burns. These provisions provide the requirements for various protective classes of head protection (helmets) based on their ability to provide impact protection and/or electrical shock and burn hazard protection.

The existing standard incorporates by reference a number of ANSI standards for protective headwear starting with the 1969 edition to the 1997 edition of ANSI Z89.1 standards related to head protection. Existing Section 3381(b)(1) provides the requirements for helmets placed in service after October 30, 2004, and Section 3381(b) addresses helmets placed in service on or before October 30, 2004.

### **Subsection (a)**

Existing subsection (a) contains language that head protection must comply with subsections (b) and (c). An editorial revision deletes the reference to subsections (b) and (c) and states that head protection must be in accordance with "this section."

### **Subsections (b)**

Existing subsection (b) provides that when head protection is required that protective helmets be selected and used in accordance with their resistance to impact and electrical hazards. Existing subsection (b)(1) requires protective helmets placed in service after October 30, 2004, to comply with the ANSI Z89.1-1997 standard for Industrial Head Protection which is incorporated by reference.

Language is proposed for deletion in subsections (b) and (b)(1) which will remove the provision that permits protective helmets placed in service after October 30, 2004, to be limited to only the provisions in the ANSI Z89.1-1997 Industrial Head Protection standard. In lieu of the deleted language, proposed new subsections (b)(1) through (b)(3) include amendments consistent with the federal OSHA final rule

that requires head protection to meet the criteria in one of the ANSI Z89.1-2009, 2003, and 1997 consensus standards for Industrial Head Protection, which are incorporated by reference.

Amendments proposed in new subsections (b)(1) through (b)(3) will have the effect of allowing the option to use helmets that comply with any one of the three most recent editions of the head protection ANSI standards. It should be noted that proposed subsection (b)(1), reflects that the International Safety Equipment Association (ISEA) is now affiliated with the title of this consensus standard for the first time in the 2009 edition.

Existing Section 3381(b)(2) permits the use of protective helmets placed in service on or before October 30, 2004, that comply with ANSI Z89.1-1969 through 1986 standards, or that comply with the 1997 ANSI standard. This subsection is proposed for deletion because proposed subsection (b)(3) already permits compliance with the ANSI Z89.1-1997 standard, and the new federal standard removed references in its new head protection standards that permit compliance with ANSI Z89.1 editions prior to 1997. In addition, existing subsections (b)(2)(A) through (b)(2)(C) are deleted because they reference classes of helmets (e.g. A, B, C, D, or G) that pertain to the outdated ANSI standards in effect prior to 1997. The effect of these amendments is to provide consistency with federal OSHA standards and to provide head protection consistent with later editions of the ANSI head protection standards. Federal OSHA commented that it believes it is the usual practice of employers to provide head protection that complies with one of the three most recent editions of the ANSI-Z89.1 standards. It is not expected that employers would be affected by the removal of provisions related to outdated standards, some of which go back as far as 1969.

### **Subsection (c)**

A new subsection (c)(1) is proposed that requires the employer to ensure the appropriate impact type of helmet is selected and used. An informational note to this subsection is provided for clarity so that the employer will know that protective helmets are described by the impact type (either Type I or II) and electrical class. The proposed subsection will have the effect of ensuring that the employer provides the appropriate head protection for the potential hazards.

Existing language in subsection (b)(1) that pertains to helmet classifications for electrical hazards is retained as new proposed subsection (c)(2). This subsection addresses the use of appropriate classifications for helmets related to electrical hazards as designated in the ANSI Z89.1-1997, 2003, and 2009 standards. An amendment is made in the first sentence of proposed subsection (c)(2) that adds the word “electrical” to clarify that the subsection addresses classes of helmets related to electrical hazards.

Amendments are also proposed for subsections (c)(2)(A) – (C) to add the “Z89.1” reference to the ANSI standard. Further, the word “approved” is deleted, and the word “designated” is used in its place. ANSI does not “approve” helmets. ANSI provides the design and testing requirements for various classes of helmets which are used by manufacturers so that their products conform to the ANSI standard. These additional amendments are necessary to provide clarity to the provisions of subsection (c)(2). Deleted provisions in the text that follows subsection (c)(2) [from existing Section 3381, subsections (b)(2)(A) through (b)(2)(C)] are explained in the rationale under the heading “Subsection (b).”

A new proposed subsection (c)(3) requires employees exposed to high-voltage electric shock and burns to be provided head protection that meets the specifications contained in Section 9.7 ‘Electrical Insulation’ of any of the consensus standards identified in subsection (b) of Section 3381. ANSI Z89.1, Section 9.7 provides the electrical insulation requirements for all three editions of the ANSI Z89.1 standards listed in subsection (b). In updating its construction standards, in 29 CFR 1910.100, federal

OSHA has included this same provision to emphasize that employers must provide appropriate protection for employees exposed to high-voltage shock and burns. Title 8, Construction Safety Orders requirements for head protection are provided in Section 3381. The amendment will have the effect of providing equivalent standards to those in the federal final rule.

### **Subsection (d)**

Existing subsection (c), proposed as subsection (d), provides the requirements for markings that must be included on protective helmets. The existing standard requires that helmets must have the “original” marking required in the ANSI standards. An amendment replaces the word “original” with “permanent”, which is consistent with the terminology used in the ANSI standards. An additional amendment adds that helmet markings must also include the “impact type.” The amendment has the effect of providing consistency with similar provisions in the ANSI standards.

### **DOCUMENTS INCORPORATED BY REFERENCE**

1. American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) Z89.1–2009, American National Standard for Industrial Head Protection.
2. ANSI Z89.1–2003, American National Standard for Industrial Head Protection.
3. ANSI Z89.1–1997, American National Standard for Industrial Head Protection.

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. Consistent with the federal OSHA final rule, the California proposal requires that protective helmets meet the criteria in any one of the three latest editions of the ANSI consensus standards for head protection.

Federal OSHA determined that no protective helmets currently are available or in use that manufacturers tested in accordance with the ANSI 1969 and 1971 consensus standards. Further, federal OSHA believes that it is the customary and usual practice of employers in general industry and other industries such as, maritime and construction to provide head protection that complies with the 1997, 2003, or 2009 editions of ANSI Z89.1 and the proposal will not add a compliance burden for employers.

### **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 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, 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.)

This 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, this 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.)

This 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 AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposal is consistent with federal standards and it is expected that the proposed amendments are consistent with employer practices and policies for providing head protection.

Therefore, 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.

### **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 107  
Section 5155  
**[Airborne Contaminants - Ethylbenzene](#)**

### **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. The latest Airborne Contaminants standard that was approved by the Office of Administrative Law became effective March 17, 2012.

The substance ethylbenzene with its amended permissible exposure limit (PEL) in this proposal was considered by the Division of Occupational Safety and Health's 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 ethylbenzene.

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 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 ethylbenzene 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. The federal air contaminant standard for ethylbenzene has not been revised in over 40 years. During that time, considerable scientific evidence has developed supporting concern with potential effects on worker health including cancer, as well as non-cancer health effects most notably on the auditory system (hearing loss) with exposure to ethylbenzene at levels lower than the federal standard. 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 ethylbenzene 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.
- Is the least burdensome effective alternative. This rulemaking proposal was developed with the assistance of two technical advisory committees: one that considered scientific data on health risks associated with exposure to ethylbenzene, and a second that considered concerns of cost and feasibility of implementation in the workplace. These committees were comprised of subject matter experts with expertise relevant to the concerns they were considering and from a range of different institutional orientations most notably health and chemical exposure science, industry, medicine, and government. In addition, a stakeholder organization with a specific interest in the subject under consideration, the American Chemistry Council, was contacted and it responded by sending a scientific representative to present and discuss information and recommendations with the health committee. The PEL proposed is performance based and thus is consistent with the preference stated for this type of standard in Labor Code section 144.6 when dealing with toxic materials.

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

This rulemaking proposes to amend the existing PEL for ethylbenzene in workplace air. Employers with workplaces where there may be worker exposures to ethylbenzene operate primarily in the private industrial and chemical sectors. The amended PEL proposed for ethylbenzene is supported by scientific

findings of which professional health and safety staff and consultants of these employers would be expected to be cognizant. Many of the employer entities that would be affected by the proposed amended PEL for ethylbenzene already seek to control employee exposures to hazardous airborne contaminants to levels well below their existing PEL in the interest of business continuity, other more general requirements to protect worker health and safety, and minimization of tort and workers' compensation liability.

For the FAC meeting at which ethylbenzene was discussed, comment letters for this meeting were received from WorkSafe and from the Western States Petroleum Association (WSPA). The WSPA letter did not directly address cost or feasibility of the proposed amended PEL for ethylbenzene. The 2009 WorkSafe letter was more specific, suggesting that effective and less hazardous alternative to the use of ethylbenzene as a cleaning solvent are available, as well as for xylene in which ethylbenzene is a frequent significant component and which can be found used in nail salons. At the FAC meeting, a committee member presented workplace air sampling data which had been gathered at the location where he then worked, which he asserted suggested that complying with a PEL for ethylbenzene of less than 5 ppm in uses similar to those which he evaluated could impose significant costs on employers to achieve. The FAC concluded based on its members' own experience measuring workplace solvent exposures, supported in part by the data provided by the FAC member, that a PEL of 5 ppm for ethylbenzene is reasonable from the standpoint of cost and feasibility given the information available. The Standards Board concurs with that assessment in proposing 5 ppm as the amended PEL-TWA for ethylbenzene in this rulemaking.

The Standards Board also believes a STEL of six times the PEL-TWA as is being proposed is reasonable with respect to feasibility as it is consistent with the widely recognized industrial hygiene goal of maintaining short term exposures at not more than about 4 times the TWA value. Therefore, no significant cost is anticipated with the proposed STEL value of 30 ppm.

### **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 Standards 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.

For the FAC meeting at which ethylbenzene was discussed, a committee member presented workplace air sampling data which had been gathered at the location where he then worked, which he asserted suggested that complying with a PEL for ethylbenzene of less than 5 ppm in uses similar to those which he evaluated could impose significant costs on employers to achieve. The FAC concluded based on its own experience measuring workplace solvent exposures, supported in part by the data provided by the FAC member, that a PEL of 5 ppm for ethylbenzene is reasonable from the standpoint of cost and feasibility given the information available. The Standards Board concurs with that assessment in proposing 5 ppm as the amended PEL for ethylbenzene in this rulemaking.

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 Standards 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 standard.

## **EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

The Standards 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 ethylbenzene was discussed by the FAC. This committee concluded that a PEL at the lower end of the range recommended on a health basis to address cancer risk may not be economically feasible. The committee recommended, and the proposed regulatory limit reflects, this judgment on cost and feasibility resulting in a proposed PEL that is a factor of 10 higher than that level discussed in the health advisory as being appropriate to address cancer risk. In light of this, the Standards Board believes there will be no adverse economic impact on small businesses.

Therefore, 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.

### **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 **January 11, 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 **January 17, 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](mailto: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

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JOHN D. MACLEOD, Chairman