

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
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TITLE 8. CALIFORNIA CODE OF REGULATIONS

General Industry Safety Orders Appendix A to Section 5144 (Published on February 2, 2024)

Fit Testing Procedures (Mandatory) (HORCHER)

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

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **March 21, 2024** in **Room 310** of the **County Administration Center, 1600 Pacific Highway, San Diego, California** as well as via the following.

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **February 2, 2024** and closes at 5:00 p.m. on **March 21, 2024**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

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

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

AUTHORITY AND REFERENCE

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

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Board intends to adopt the proposed rulemaking action pursuant to LC 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 (Federal OSHA) promulgated regulations addressing additional ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocols effective on September 26, 2019, as 29 Code of Federal Regulations (CFR), Part 1910, Section 1910.134, Appendix A. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 84, No. 187 pages 50739-50756, September 26, 2019, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt a regulation which is the same as the federal regulation except for editorial and format differences.

Federal OSHA has approved two additional quantitative fit testing protocols for inclusion in Appendix A of the Respiratory Protection standard. The protocols are: (1) the modified ambient aerosol CNC quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators; and (2) the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. The protocols apply to employers in general industry, shipyard employment and the construction industry. Both protocols are abbreviated variations of the original Federal OSHA-approved ambient aerosol CNC quantitative fit testing protocol (often referred to as the PortaCount[®] protocol), but differ from the test by the exercise sets, exercise duration and sampling sequence. These protocols will serve as alternatives to the four existing quantitative fit testing protocols already listed in Appendix A of the Respiratory Protection standard and will maintain safety and health protections for workers while providing additional flexibility and reducing compliance burdens.

The proposed regulation is substantially the same as the final rule promulgated by Federal OSHA. Therefore, LC 142.3(a)(3) exempts the Board from the provisions of article 5 (commencing with section 11346) and article 6 (commencing with section 11349) of chapter 3.5, part 1, division 3 of title 2 of the Government Code when adopting standards substantially the same as federal standards; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to:

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

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

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are 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 LC 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 rulemakings be channeled through the Board.

DOCUMENT RELIED UPON

1. Federal Register, Volume 84, Number 187, September 26, 2019. Pages 50739-50756.
<https://www.osha.gov/sites/default/files/laws-regs/federalregister/2019-09-26.pdf>

This document is available for review BY APPOINTMENT Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Board office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California. Appointments can be scheduled via email at oshsb@dir.ca.gov or by calling (916) 274-5721.

COST ESTIMATES OF PROPOSED ACTION

According to the Final Economic Analysis and Regulatory Flexibility Certification section of the Volume 84 of the Federal Register, No. 187, September 26, 2019, there are no additional costs expected on any private- or public-sector entity, there is an anticipated annual cost savings in excess of \$4 million per year to regulated entities¹. In California, the industry-wide savings could be in excess of \$500,000 per year (California accounts for approximately 13 percent of the national workforce).

DETERMINATION OF MANDATE

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

¹ <https://www.osha.gov/sites/default/files/laws-regs/federalregister/2019-09-26.pdf>. Page 50752.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment(s) may affect small businesses. However, no economic impact is anticipated. The amendment of Appendix A for title 8 section 5144 is mandated by LC 142.3.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Autumn Gonzalez (Acting Executive Officer) or the back-up contact person, Amalia Neidhardt (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5731.

**AVAILABILITY OF TEXT OF THE PROPOSED
REGULATIONS AND RULEMAKING FILE**

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

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

Upon its completion, copies of the Memorandum may be obtained by contacting Autumn Gonzalez or Amalia Neidhardt at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

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