

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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TITLE 8. CALIFORNIA CODE OF REGULATIONS

CHAPTER 3.5, SUBCHAPTER 1

SECTION 411

(PUBLISHED ON DECEMBER 3, 2021)

APPLICATIONS FOR PERMANENT VARIANCES

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

PLEASE NOTE: In accordance with [section 11133 of the Government Code](#), the January Board Meeting will be conducted via teleconference.

The Board will hold a public hearing starting at 10:00 a.m. on **January 20, 2022** 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 **December 3, 2021** and closes at 5:00 p.m. on **January 20, 2022**. 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 section 143.2 establishes the Board's authority to adopt, amend, or repeal rules of practice and procedure pertaining to hearings on applications for permanent variances, variance appeals, and other matters within its jurisdiction. The proposed regulation will implement, interpret, and make specific the provisions of Labor Code section 143.2.

INFORMATIVE DIGEST OF PROPOSED ACTION/ POLICY STATEMENT OVERVIEW

Pursuant to Labor Code section 143.2, the Board has adopted a number of regulations that govern Board consideration of permanent variances and appeals from temporary variances from occupational safety and health standards. These regulations govern the Board's procedures for filing an application for a permanent variance, prehearing proceedings, and the hearing and decision process. The Board has determined that one of these regulations, related to the filing of a variance application, requires a change in order to update and modernize the permanent variance application process for those reasons and benefits described below.

The Board proposes to amend section 411 by allowing employers to file one variance application (instead of one original and six copies) and one copy of any photographs, blueprints, or other illustrative materials (instead of six), due to the feasibility and ease of electronic copy distribution. Rather than mailing out physical copies of applications mailed by an applicant to the Board, the Board may scan a single copy and provide access to the document via online storage or email. The elimination of the requisite six copies saves printing and shipping costs for the applicant.

The Board evaluated the proposed amendments pursuant to Government Code section 11346.5, subdivision (a)(3)(D) and has determined that the changes to the regulation are not inconsistent or incompatible with existing state regulations.

Section 411 is a state regulation that is part of a federal system of occupational safety and health regulations that requires: (1) state regulations to be at least as effective as their federal counterparts; and (2) all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board). Therefore, this proposal is intended to ensure consistency and compatibility with that system's component regulations.

Anticipated Benefits

The Board's objective in the change in rule is to make the application process less burdensome and expensive for applicants by requiring only one, rather than six, copies of an application be submitted to the Board.

The proposed change has a number of benefits. A single application is less costly to print and ship for the applicant, and requiring one application rather than six copies will result in fewer applications being rejected for failing to provide the requisite number of copies. The result is that the process becomes easier for parties to navigate. The change will also require the Board

dedicate less physical space to filing and storing hardcopy variance applications, as only one, rather than six, copies of each application will be sent to the Board. Amending the regulation to require that only one variance application and one copy of illustrative materials be submitted will reduce delays in processing variance applications and modernize the regulation consistent with current practices.

The specific changes are as follows:

Section 411. Applications for Permanent Variances.

Section 411 specifies the requirements for permanent variance applications.

In subsections (b) and (b)(9), the Board proposes to allow employers to submit one variance application (instead of one original and five copies) and one copy of any photographs, blueprints, or other illustrative materials (instead of six). Due to advancing technology, the Board can scan and electronically distribute the applications to various individuals involved in the evaluation and review process.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies or School Districts: None

Cost or Savings to State Agencies: None

Cost to Any Local Government or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

Cost or Savings in Federal Funding to the State: None

Cost Impact on a Representative Private Person or Business:

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.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals: Including the Ability of California Businesses to Compete:

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

The proposed amendment will have no effect on the regulated public. Permanent variance applicants are already adhering to this requirement; the amendment will simply reduce the number of copies required when submitting variance applications and illustrative materials.

Significant Affect on Housing Costs: None.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendments will not affect small businesses. There is no negative economic impact anticipated, since the amendments eliminate the copy requirement for permanent variance applications and reduce the requirement of six copies to one copy for other materials.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

This rulemaking action will not have any effect on the creation or elimination of California jobs or the creation of new businesses or the elimination of existing California businesses or affect the expansion of existing California businesses. The amendments will reduce the number of copies required when submitting variance applications and illustrative materials, which will ultimately provide a benefit to the state's environment. Amending the regulation to require that only one variance application and one copy of illustrative materials be submitted will reduce delays in processing variance applications, which will benefit the health and welfare of California residents and worker safety by guaranteeing elevators are installed and permitted in a timely manner.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), 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 than the proposed action 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.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) or the back-up contact person, Lara Paskins (Staff Services Manager) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS AND
RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Ms. Paskins at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Shupe or Ms. Paskins at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shupe or Ms. Paskins 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 web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.