

**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 **April 19, 2012**, at 10:00 a.m.
in the Council Chambers of the Costa Mesa City Hall,
77 Fair Drive, Costa Mesa, 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 **April 19, 2012**, following the Public Meeting,
in the Council Chambers of the Costa Mesa City Hall,
77 Fair Drive, Costa Mesa, 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 **April 19, 2012**, following the Public Hearing,
in the Council Chambers of the Costa Mesa City Hall,
77 Fair Drive, Costa Mesa, 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**

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, as indicated below, at its Public Hearing on **April 19, 2012**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 1, Section 3207
Article 20, Section 3558, and
Article 54, Section 4184
Guarding of Microtomes

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 1, Section 3207
Article 20, Section 3558, and
Article 54, Section 4184
Guarding of Microtomes

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

On August 19, 2010, the Occupational Safety and Health Standards Board (Board) granted Laboratory Corporation of America a variance from Title 8, GISO Section 4184, which contains standards addressing accidental contact with the hazardous point of operation of various types of machinery used for grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling mixing or similar processes. Microtomes use one or more of these mechanical actions to section off extremely thin slices of tissue for microscopy samples for observation under transmitted light or electron microscopy. Manual, semi and fully automatic models are manufactured. Manual and semi automatic models are operated by turning a handwheel located on the side of the machine, while automatic microtomes utilize an electric drive or a wheel to move the tissue block over a razor-sharp blade.

Accidental cuts to fingers and hands are not uncommon when using microtomes; however, these cuts are not reportable injuries. Amputation of fingertips, while rare, can occur. Generally microtome manufacturers do not provide point of operation guarding as required by Title 8, and there are no aftermarket point of operation guarding devices available. Microtomes are commonly found throughout the health care industry, academic institutions, research facilities and biological laboratory industry, to name a few, whenever tissue samples are prepared for histological or pathological microscopic evaluation and observation. Given these circumstances, Board staff is initiating this rulemaking to address the need for reasonable and practical standards to protect workers from injuries related to the use of these machines. 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 mirrors 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 regulations, in that the federal regulations do not have specific provisions dealing with microtomes, but this difference is not significant for the following reason: the State’s general machine-guarding regulations are equivalent to the general Federal machine-guarding regulations, and in the Board’s variance proceeding identified as OSHSB File No. 09-V-140, provisions of the sort contained in the present proposal were held to provide a level of safety at least equivalent to the level of safety that would be achieved by adhering to those general provisions.
- 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 issue of alternatives was encompassed in the variance proceeding identified as OSHSB File No. 09-V-140. Rather than generating sets of competing alternatives, that proceeding was synergistic and resulted in a set of variance conditions that may fairly be described as a consensus of the parties (the Board staff, the Division of Occupational Safety and Health and the Applicant, an employer whose business involves the use of microtomes). Those conditions are the basis of this proposal, the purpose of which is to allow employers to use commercially-available microtomes without seeking variances and, at the same time, to ensure that the microtomes are used safely.

Section 3207. Definitions.

This section contains alphabetized definitions for terminology used in GISO standards. A definition for the term “microtome” is proposed and will clarify to the employer the application of the proposed microtome standards in Section 3558 of this rulemaking proposal and the proposed exception to Section 4184.

Section 3558. Portable Power Driven Circular Saws (ClassA). (Repealed).

Section 3558 is proposed to be re-titled as “Microtomes (manual, semi-automatic and automatic).” It contains proposed microtome standards which address use, operation and maintenance in accordance with the manufacturer’s recommendations; a minimum clearance between any moving parts and the blade and the operators hands; the use of forceps or other tools (the proposal requires the use of forceps or tool to retrieve tissue sections) and the positioning of the foot pedal and guarding of the treadle to avoid inadvertent microtome activation. The proposal would require that adjustment, removal or replacement of microtome maintenance protocols comply with the control of hazardous energy requirements of GISO, Section 3314 and that only qualified employees, trained in accordance with the proposed requirements and Section 3203, Injury and Illness Prevention Program, requirements be permitted to operate a microtome.

The proposed amendments protect employees exposed to possible hand injury as a result of accidentally coming in contact with the microtome’s point of operation both during normal operation and whenever adjustment, replacement or maintenance activities are performed. These provisions were derived in part from conditions imposed in the Board’s variance decision regarding OSHSB File No. 09-V-140.

Section 4184. Guarding Requirements.

This section contains general requirements for the point-of-operation guarding of machinery covered by Title 8, Group 8 standards which exhibit various mechanical actions such, as (but not limited to) grinding, shearing, punching, pressing, squeezing and cutting. This section requires such machinery to be guarded in one or a combination of the ways specified in the safety orders that follow or by other means or methods which will provide equivalent protection. This standard also states that any other type of machinery used in any industry or type of work not addressed by Group 8 standards shall also be guarded at the point of operation.

An amendment is proposed to provide an exception for microtomes when used in accordance with the requirements of Section 3558 of the GISO. The proposed amendment will clarify to the employer that microtomes (defined in Section 3207), are excluded from the requirements set forth in Section 4184 so long as Section 3558 is followed.

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 an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal establishes standards for safe microtome use that are consistent with manufacturer's recommendations and industry (end-user) practices, which, in turn, are consistent with Section 3203 Injury and Illness Prevention standards for employee training. Therefore, the Board believes the proposal will have insignificant, if any, adverse cost impact upon employer's operations.

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 regulations 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 these regulations 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.)

The proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations 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 regulations 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 AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendments may affect small businesses. However, no adverse economic impact is anticipated. The proposal would allow businesses, small or large, to use commercially-available microtomes without the necessity of obtaining a variance from general point-of-operation guarding requirements. For this same reason, the adoption of this proposal will promote the creation of jobs, the creation of new businesses and the expansion of existing businesses in California; it will be easier and less costly for employers who want to use microtomes to do so. In addition, this regulatory proposal will enhance the health and welfare of California residents and will promote worker safety at places of employment in California by requiring that safe practices be followed in the operation of microtomes in places of employment.

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 April 13, 2012. 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 April 19, 2012, 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

JOHN D. MACLEOD, Chairman

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

DIVISION 1, CHAPTER 4, SUBCHAPTER 7

ARTICLE 1, SECTION 3207

ARTICLE 20, SECTION 3558, AND

ARTICLE 54, SECTION 4184

GUARDING OF MICROTOMES

NOTICE OF ADOPTION OF
REGULATIONS
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS
BY THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. Title 8, Division 1, Chapter 4, Subchapter 7, Article 54, Section 4188 of the General Industry Safety Orders, **Definition of General Purpose Die.**

Heard at the October 20, 2011, Public Hearing; adopted on November 17, 2011; filed with the Secretary of State on January 5, 2012; and became effective on February 4, 2012.

2. Title 8; Division 1; Chapter 4; Subchapter 4; Article 4; Section 1532.1; Article 15; Section 1615.7 of the Construction Safety Orders; Subchapter 7; Article 9; Section 3361; Article 101; Sections 5042, 5044, 5045, 5047, and 5049; Article 107; Section 5144; Article 109; Sections 5191, 5198, and 5209 of the General Industry Safety Orders; Subchapter 18; Article 4 Section 8355 of the Ship Building. Ship Repairing, Ship Breaking Safety Orders; **Federal Final Rule, Standards Completion Project—Phase III (Horcher).**

Heard at the November 17, 2011, Public Hearing; adopted on December 15, 2011; filed with the Secretary of State on January 18, 2012; and became effective on January 18, 2012.

Copies of this standard are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: **<http://www.dir.ca.gov/oshsb>** and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: **oshsb@dir.ca.gov**.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Marley Hart, Executive Officer