

**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 **September 21, 2000**, at 10:00 a.m.
in the Auditorium of the Ronald Reagan State Building
300 South Spring Street, Los Angeles, 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 **September 21, 2000**, following the Public Meeting,
in the Auditorium of the Ronald Reagan State Building
300 South Spring Street, Los Angeles, 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 **September 21, 2000**, following the Public Hearing,
in the Auditorium of the Ronald Reagan State Building
300 South Spring Street, Los Angeles, 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**

JERE W. INGRAM, 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 the General Industry Safety Orders in Title 8 of the California Code of Regulations, as indicated below, at its Public Hearing on September 21, 2000.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 14
Sections 3465(a), 3472, and 3475
Marine Terminals

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 15
Section 3482
Bulk Storage of Loose Material

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 14
Sections 3465(a), 3472, and 3475
Marine Terminals

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The 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 (OSHA) promulgated revisions to regulations addressing Longshoring and Marine Terminals on July 25, 1997, as 29 Code of Federal Regulations, Parts 1910, 1917 and 1918. The Board is relying on the explanation of the provisions of the federal regulations in the Federal Register, Volume 62, No. 143, pages 40142-40234, Friday July, 25, 1997 as the justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulation except for editorial and format differences.

As a result of a side-by-side code comparison of the State and Federal Longshoring Marine Terminal standard performed by Board staff on September 20, 1997 and Federal OSHA's review of the code comparison, Board staff determined that with the exception of two issues not addressed by Title 8, California's regulations were at least as effective as their Federal counterpart regulations.

Board staff's proposal consists of a proposed amendment to Section 3465 to address the design, construction and maintenance of dockboards in a manner which will prevent vehicles from running off the edge, which is verbatim of 29 CFR 1917.124(c)(5). It is also proposed to amend Section 3472 to require installation of a seat (lap) belt, meeting the requirements of 49 CFR 571.208-210 for a Type 1 seat belt, in the operator's seat of high speed container gantry cranes where the seat trolleys, which is verbatim of 29 CFR 1917.45(f)(5)(ii). High speed container gantry cranes are capable of hoist speeds of 360 feet per minute without a load, and trolley speeds of 500 feet per minute. The seatbelt is necessary to prevent the crane operator from falling out of the operator's seat and losing control of the crane when the seat is in motion.

This proposed rulemaking action also contains a minor nonsubstantive revision to Section 3475. This nonsubstantive revision is not discussed in this Informative Digest. However, the proposed revisions are clearly indicated in the regulatory text in underline and strikeout format.

The proposed regulations are substantially the same as the final rule promulgated by federal OSHA. Therefore, Labor Code Section 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 a federal standard; 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; 2) identify any

issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(4)(C). The regulations may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

COST ESTIMATES OF PROPOSED ACTION

According to the Federal Register, Vol. 62, No. 143, Friday July 25, 1997, Preamble, Section C, The Final Standards and Their Estimated Costs, federal OSHA estimates the total annualized costs for CFR 1917.124(c)(5), Dockboards estimated by final economic analysis to be \$139,955 and the estimated annual cost of the final rule for seatbelts mandated by 29 CFR 1917.45 (f)(5)(ii) to be \$17,537.

California's share of the national cost of complying with 29 CFR 1917.45(f)(5)(ii) and 1917.124(c)(5) is approximately 28%. This figure is based on a telephone conversation with a representative from the Pacific Maritime Association (PMA) who indicated that based on PMA data, California's civilian marine terminal labor force of approximately 7,000 workers is approximately 28% of the national civilian marine terminal labor force. When compared to the total marine terminal operation costs in California (estimated to be in the tens of millions of dollars annually), the cost to comply with the federal requirements stated above is insignificant.

Furthermore, during a May 18, 2000 conversation with a PMA representative, Board staff learned that practically all new and late model high speed bridge cranes are already equipped with a seatbelt in the operator's seat. Also, almost all dockboards are designed with sideboards designed to prevent a vehicle from running off the edge of the dockboards. The proposed requirements are consistent with industry practice and are therefore not expected to impose an adverse economic impact upon California's marine terminal industry/longshoring industry.

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 proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, 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 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, these 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 employers - state, local and private - will be required to comply with the prescribed standards.

PLAIN ENGLISH STATEMENT

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Board pursuant to Government Code Sections 11342(e) and 11346.2(a)(1) and are available from the agency contact person named in this notice. The informative digest for this proposal constitutes a plain English overview.

ASSESSMENT

The adoption of the proposed amendments to these regulations 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.

ALTERNATIVES CONSIDERED

Our agency must determine that no alternative considered by us would 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.

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 15
Section 3482
Bulk Storage of Loose Material

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking action contains numerous nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive 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 nonsubstantive revisions, the following actions are proposed:

Section 3482. Bulk Storage of Loose Material.

Section 3482 is comprised of six subsections containing requirements addressing measures to prevent accidental employee engulfment/entrapment caused by piled material and include: instruction requirements for employees who must work on piles of loose materials; the use of mechanical means/methods of moving stored material out of bins, silos, fuel houses, bunkers, etc.; the means to control or stop the flow of materials; the use of platforms or walkways; the use of hoists to support and lift the employee working on piles; and the use of boatswain's chairs, body harnesses or safety belts with lifelines. In addition, this Section requires all concrete storage bins, containers, and silos to be

equipped with conical or tapered bottoms and a means of starting the flow of material. This Section also contains outdated Title 24 references.

Revisions are proposed in subsection (b) to delete the phrase "...such a manner as to restrict breathing..." and to replace the outdated Title 24, Part 2, Section 2-1134(a) reference with the current reference found in Section 441A. The proposed revisions will clarify that all entrapments and engulfments pose a hazard and not just those that restrict breathing and will clarify which current Title 24 regulation corresponds to the requirements contained in subsection (b).

A revision is proposed to delete subsection (e) and re-letter the remaining subsections consistent with Title 8 format. The proposed revision will eliminate the outdated Title 24, Part 2, Section 2-1134(c) reference requiring conical or tapered bottoms, as this is no longer a Title 24 Building Code requirement. The proposed revision will have no other effect than to maintain consistency between existing Title 24 building standards and Title 8 with regard to the construction of bulk storage structures.

Revisions are proposed for subsection (f) to re-letter it as subsection (e) and to add the term "engulfment/entrapment" before the word "hazards". These proposed revisions will have no other effect than to clarify the hazards addressed in the regulation and the requirements contained in this subsection.

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. Board staff has not identified any state agency that utilizes concrete storage structures such as silos or requires employees to walk on or work from piled material.

Impact on Housing Costs

The proposal will not significantly affect housing costs.

Impact on Businesses

This proposal will not result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Entities

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

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 non-discretionary 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. 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 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.)

These 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, these 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 employers - state, local and private - will be required to comply with the prescribed standards.

PLAIN ENGLISH STATEMENT

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Board pursuant to Government Code Sections 11342(e) and 11346.2(a)(1) and are available from the agency contact person named in the notice. The informative digest for this proposal constitutes a plain English overview.

ASSESSMENT

The adoption of the proposed amendments to these regulations 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.

ALTERNATIVES CONSIDERED

Our agency must determine that no alternative considered by us would 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.

The above proposals do not contain building standards regulations as defined by Health and Safety Code Section 18909.

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 description of the problems addressed by the proposed actions, 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 to lessen the impact on small businesses is also 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 mailed so that they are received no later than September 15, 2000. 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 September 21, 2000 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 in the following paragraph. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal 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, California 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 the proposed action may be directed to the Executive Officer, John D. MacLeod at (916) 274-5721.

You can access the Board's monthly notice on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JERE W. INGRAM, Chairman