

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

Construction Safety Orders
New Article 37
New Sections 1950 through 1962

Confined Spaces in Construction (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 **October 15, 2015** in the **Auditorium** of the **State Resources Building, 1416 9th Street, Sacramento, CA 95814**. 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

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **August 28, 2015**, and closes at 5:00 p.m. on **October 15, 2015**. 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 are to 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 fax at (916) 274-5743; or

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

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational 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 Occupational Safety and Health Standards Board (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 regulations addressing Confined Spaces in Construction; Final Rule, on May 4, 2015, as 29 Code of Federal Regulations, Part 1926, Sections 1926.1200 through 1926.1213. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 80, No. 85, pages 25366 - 25526, May 4, 2015, 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.

The proposed regulations establish requirements for work in confined spaces at construction sites. The proposed regulations require employers performing work at construction sites to identify confined spaces, notify the "Host Employer" and/or the "Controlling Employer" of the confined spaces identified, and to determine whether entry into the confined space by their employees is necessary. The proposed regulations would require employers whose employees are required to enter a confined space to establish a written confined space program and implement the provisions within the proposed regulations.

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 a standard 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 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.

This proposed rulemaking action 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: (1) 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, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

DOCUMENTS RELIED UPON

1. Federal Register, Vol. 80, No. 85, pp. 25366 – 25526, May 4, 2015.

This document is available online at the Government Publishing Office website:

<http://www.gpo.gov/fdsys/pkg/FR-2015-05-04/pdf/2015-08843.pdf>

2. Bureau of Economic Analysis – California’s Percentage of the US Gross Domestic Product (GDP) for the Construction Industry in 2013

This document is available online at the Bureau of Economic Analysis website:

<http://www.bea.gov/iTable/print.cfm?fid=57CE62226D6116E07C5FBC7799DB810B743A22B1C25AC67F9098579552CD5DB81851DAA3A6C356F9959955749AF56E8B175F12EB6F8BEECAA493BD60F04338FA>

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

Federal OSHA’s estimate of compliance costs are found at Federal Register, Vol. 80, No. 85, May 4, 2015, starting on page 25455. Federal OSHA’s review projects an annualized cost of \$60.3 million, while providing \$93.6 million in monetized benefits. The net annual monetized benefit is \$33.3 million. Based on estimates from the Federal Bureau of Economic Analysis, California’s construction sector is 11.5% of the Federal GDP for the construction sector. California’s projected annualized cost is \$6.93 million, with an annual monetized benefit of \$10.8 million. The total net annualized monetized benefit is \$3.87 million.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do 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.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

**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 regulations 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 regulations, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart or Mr. Manieri 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 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 Ms. Hart or Mr. Manieri 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 and the Notice of Proposed Action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.