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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 2, Section 3228
of the General Industry Safety Orders (GISO)

Number of Exits

SUMMARY

This rulemaking proposal is the result of a Division of Occupational Safety and Health (Division) Memorandum and Request for New, or Change in Existing, Safety Order dated April 24, 2007, and staff evaluation and comparison of Title 8 and Federal Occupational Safety and Health Administration (Federal OSHA) fire and life safety exit standards. Title 8 exit standards are contained in Section 3228 which requires at least one exit unless otherwise specified in Table E-1. Table E-1 provides employers with minimum egress and access requirements.

The federal OSHA exit standards are contained in 29 CFR 1910.36(b) and were promulgated on November 7, 2002, (FR No. 67:67949-67965), Exit Routes, Emergency Action Plans and Fire Prevention Plans; Final Rule. The federal standard applies to new and existing buildings. It states that at least two exit routes must be available in a workplace to permit prompt employee evacuation in the event of an emergency. These standards also address the need for more than two exits and permit a single exit route under certain circumstances.

This proposal would amend Section 3228 to include (1) language from 29 CFR 1910.36(b) that requires a minimum of two exits in the workplace, and (2) the Title 24, 2007 California Building Code, Part 2, Chapter 10, Section 1019, Number of Exits and Continuity. An exception is proposed which would allow a single workplace exit in situations where the employer demonstrates that having one exit is adequate based on occupancy, number of employees, size of the building or the arrangement of the workplace. The proposal deletes outdated Title 24 parenthetical references to building codes sections that no longer apply to the current version of the California Building Code, Table E-1, and other portions of Section 3228 that are inconsistent with the provisions added by this proposal.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3228. Number of Exits.

This section contains requirements regarding the number of workplace exits, occupancy, number of stories, occupant load, workplaces where alternative means of egress are required, placement of exits, boiler, furnace and incinerator room exits, use of fixed ladders as an exit alternative, exits for parking garages, the method of computing occupant load, and exiting floors above the second story. This section also refers to Table E-1 which contains minimum egress and access requirements based on use, occupancy load, and square feet per occupant.

Amendments are proposed to delete all of the existing regulatory text in Section 3228 and replace it with new language. The new language in subsection (a) would require a minimum of two exits in the workplace to allow for prompt evacuation of employees during an emergency. The proposed language is necessary to underscore that two exits, rather than one exit, is the general minimum exit requirement. By making this change, Section 3228 will be made consistent with the equivalent federal standard.

An Exception is proposed which would permit a single workplace exit based on occupancy size, arrangement of the workplace, building size and number of employees and type of occupancy such that all employees would be able to safely evacuate during an emergency. The proposed Exception is necessary to inform the employer of the circumstances under which one exit is acceptable. Those circumstances are stated in the same manner as an equivalent federal provision.

New subsection (b) is proposed to require more than two exits in workplaces in accordance with the occupancy factors described in the proposed regulatory text in situations where safe evacuation of the workplace is not possible with two exits. The proposed amendment would inform the employer of the circumstances under which more than two exits are necessary in certain occupancy situations. The wording mirrors the federal standard.

An informative Note is proposed to apply to subsections (a) and (b) that directs the employer to consult the Title 24, 2007 California Building Code, Part 2, Chapter 10, Section 1019, Number of Exits and Continuity, as well as the local jurisdiction fire authority for guidance in determining the number of workplace exits and the necessary distance between them. The Note is necessary to ensure that Section 3228 is at least as effective as the equivalent federal standard which contains a similar note referencing the NFPA code for determining the appropriate number of required exits.

As to the portions of Section 3228 that are deleted, the deletions are necessary to rid the standard of provisions that contradict the provisions added by this proposal or that are rendered superfluous in light of the provisions added in this proposal.

DOCUMENTS RELIED UPON

1. National Fire Protection Association (NFPA) 101, Life Safety Code, 2006 Edition.
2. Memorandum from the Division of Occupational Safety and Health, dated April 24, 2007, Form 9 Request for New or Change in Existing Safety Order with attachments.
3. 2006 International Building Code (IBC), Chapter 3, Use and Occupancy Classification.
4. 2006 IBC, Chapter 4, Special Detailed Requirements Based on Use and Occupancy.
5. 2006 IBC, Chapter 10, Means of Egress.
6. United States Department of Labor, Occupational Safety and Health Administration, Exit Routes, Emergency Action Plans, and Fire Prevention Plans; FR 67:67949-67965, Final Rule, November 7, 2002.
7. Title 24, 2007 California Building Code, Part 2, Chapter 10, Number of Exits and Continuity.

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.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

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

The Board has made a 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.

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 standards 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 the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does 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.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does 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.)

This proposed standard does 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

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

ASSESSMENT

The adoption of the proposed amendment to these standards 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 THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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.