

**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 **June 20, 2013**, at 10:00 a.m.  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, 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 **June 20, 2013**, at 10:00 a.m.  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, 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 **June 20, 2013**, at 10:00 a.m.  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, 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**

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DAVE THOMAS, 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, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **June 20, 2013**.

1. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 4, Section 1533  
**[Internal Combustion Engine-Driven Equipment \(Technical Amendments\)](#)**

Descriptions of the proposed changes are as follows:

1. TITLE 8:        **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 4, Section 1533  
**[Internal Combustion Engine-Driven Equipment \(Technical Amendments\)](#)**

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

Section 1533 addresses the operation of internal combustion engine (driven) equipment inside buildings and in shafts, culverts, pipelines or other excavations that are 20 feet or less in depth and the employer's duty to provide ventilation to prevent the buildup of airborne contaminants to levels that could be unsafe and/or unhealthful due to the operation of this equipment. This Section specifies types of ventilation systems that are to be used and flow rates to ensure adequate dilution of contaminants to safe and healthful levels. There is also a cross-reference to the confined space safety orders and Section 5155 of the General Industry Safety Orders (GISO), which pertains to the table of airborne contaminants.

Section 1533 requires employers to provide mechanical ventilation at flow rates specified in the safety order. The employer's duty to comply and provide mechanical ventilation applies whether the employees are working in buildings or in enclosed structures or in shafts, culverts, pipelines and other excavations 20 feet or less in depth. Concern from stakeholders has arisen over the effect of the term "or other excavations" as used in subsections (a) and (b). In the absence of a definition for what are the "other excavations" referred to in subsections (a) and (b), Board staff believes that the phrase "other excavations" imposes a duty to comply beyond the intent of the standard and therefore proposes to strike language referring to other excavations in subsection (a). The intent being to restrict the employer's duty to comply with the mechanical ventilation provisions to those shafts, culverts, pipelines and excavations that either present or could foreseeably present an employee airborne contamination overexposure.

In addition, based on discussions with the Division of Occupational Safety and Health and construction industry stakeholders, staff proposes technical amendments that refine the application of the mechanical ventilation methods set forth in Section 1533 to shafts 20 feet or less in depth, pipes and culverts where the potential for hazardous accumulation of airborne contaminants exists or could be anticipated to exist. A new subsection (c) is proposed which cross references existing, extensive air quality standards for work in excavations that are more than 4 feet in depth. Excavations 4 feet or less in depth are covered by Title 8, Article 108 confined space standards and airborne contaminant standards contained in Section 5155. 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 mirror 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 standards, in that presently, California's safety orders on this subject are more prescriptive in terms of defining what constitutes adequate ventilation in shafts, pipelines, culverts and other excavations and are addressed in separate subchapters in Title 8.

Shafts greater than 20 feet are addressed by the Tunnel Safety Orders and those 20 feet or less are addressed by the Construction Safety Orders, (CSO). California's safety orders on the subject of internal combustion engines and mechanical ventilation contained in the CSO have no federal construction industry standards (29 CFR1926) equivalent.

- 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).
- Is the least burdensome effective alternative. This rulemaking proposal was developed with the assistance of representatives from Associated General Contractors of California (AGC-CA) and an AGC-CA member contractor and the Division of Occupational Safety and Health, Research and Standards Unit.

The following amendments are proposed:

### **Section 1533. Internal Combustion Engines.**

This section consists of three subsections which address scope and application of the safety orders in terms of when employees operate internal combustion engine-driven equipment when working inside buildings and structures and shafts, culverts, pipelines and other excavations 20 feet or less in depth in terms of the employer's duty to provide mechanical ventilation at flow rates specified in the regulatory text. Section 1533 also contains cross references to GISO, Section 5155 pertaining to airborne contaminants and the confined space safety orders.

#### **Subsection (a)**

Amendments are proposed in subsection (a) to delete the words "or other excavations" in the first sentence and to place the word "and" before "pipelines" to clarify that the standard is not open-ended in terms of scope, and applies only to those specific work locations called forth in subsection (a). The effect of this proposed amendment is to clarify the application of the safety order to the employer.

#### **Subsection (b)**

Amendments are proposed in subsection (b) consisting of rearrangement of the wording in the first sentence related to the operation of internal combustion engine-driven equipment, and the addition of wording that clarifies that the employer's duty to provide mechanical ventilation is triggered when a hazardous atmosphere exists or could be reasonably expected to exist in shafts 20 feet or less in depth and culverts and pipelines. Additionally, the word "engine's" would be changed to "engine".

The proposed amendments will clarify to the employer, that when employees work in shafts that are 20 feet or less in depth, culverts, and pipelines, they are to provide mechanical ventilation only when it is necessary, either due to the existence or foreseeable risk of excessive employee air contaminant exposure.

### **Subsection (c)**

A new subsection (c) is proposed to cross reference the excavation operation employee protection requirements contained in Section 1541(g). The proposed amendment will clarify to the employer that Title 8 excavation standards also address hazardous atmospheres in excavations and that those standards also apply whenever any employee enters an excavation that is greater than 4 feet in depth, consistent with Section 1533.

## **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 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.

The proposal is an amendment of existing CSO Section 1533 that makes the regulatory text less ambiguous (i.e., an ambiguous term is deleted, and an applicable CSO provision is cross referenced).

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

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposal is merely a clarification of the existing standard consistent with its intent and does not encumber the employer with any new or additional regulatory obligations. This regulatory proposal will provide worker safety at places of employment in California.

Therefore, the proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

## **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 **June 14, 2013**. 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 **June 20, 2013**, 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](mailto: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.

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DAVE THOMAS, Chairman