

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
[www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**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 **January 20, 2011**, at 10:00 a.m.  
in Room 358 of the County Administration Center,  
1600 Pacific Highway, San Diego, 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 **January 20, 2011**, following the Public Meeting,  
in Room 358 of the County Administration Center,  
1600 Pacific Highway, San Diego, 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 **January 20, 2011**, following the Public Hearing,  
in Room 358 of the County Administration Center,  
1600 Pacific Highway, San Diego, 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 of the California Code of Regulations, as indicated below, at its Public Hearing on **January 20, 2011**.

1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10  
Section 3380  
**Personal Protective Devices—Hazard Assessment and Equipment Selection (Horcher)**
  
2. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10  
New Section 3380.1  
**Employer Duty to Pay for Personal Safety Devices and Safeguards**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:**        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10  
Section 3380  
**Personal Protective Devices—Hazard Assessment and Equipment  
Selection (Horcher)**

### **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.

In preparing responses to an audit conducted by the United States Department of Labor, Occupational Safety and Health Administration (Federal OSHA), the Division of Occupational Safety and Health (Division) ascertained that California lacks provisions equivalent to 29 CFR 1910.132(d)-(f) and the related non-mandatory Appendix B. Those regulations and Appendix are in Federal Register, Volume 59, No. 66, pages 16344-16360. The Board proposes to adopt regulations which are the same as the federal regulation except for editorial and format differences.

These Federal standards specifically require employers to select and use personal protective equipment (PPE); communicate selection information to employees; verify that a workplace assessment has been performed through documentation; ensure that defective or damaged PPE is not used; to provide employee training on the use, care, and limitations of PPE including refresher training and documentation; and to verify that each affected employee has received and understood the training.

The proposed non-mandatory Appendix A to Article 10 is intended to provide compliance assistance for employers and employees in implementing requirements for a hazard assessment and the selection of personal protective equipment. The proposed Appendix A is slightly different from the Federal non-mandatory Appendix B. The deviation from federal language in non mandatory Appendix A exists with regard to Item No. 10, selection guidelines for foot protection. California references more recent editions of national consensus standards for foot protection than does Federal OSHA, which references an outdated ANSI Z41-1991 standard. This deviation is to ensure consistency between Appendix A, Item No. 10 and Title 8 foot protection standards.

An informative Note has been proposed which refers to the Non-Mandatory Appendix A as an example of procedures that would comply with the assessment standards.

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 issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 2) 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)(3). The regulation 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 ESTIMATE OF PROPOSED ACTION**

While this proposal is administrative in nature and would affect a wide variety of general industry employers, it is similar in many respects to California's Injury and Illness Prevention Program (IIPP) standards to the extent that it requires employers to determine whether occupational safety and health hazards exist in their workplaces and to take action to mitigate the hazards; these actions include training, recordkeeping and communicating to employees how they are to protect themselves from the hazards. Therefore, Board staff believes any fiscal impact arising from this proposal should be minimal in comparison to the existing cost of doing business and maintaining an IIPP program as required by General Industry Safety Orders Section 3203.

### **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 amendment 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.)

The 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, the 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.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

### **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 amendments to the regulation 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.

## **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8:**      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10  
New Section 3380.1  
**Employer Duty to Pay for Personal Safety Devices and Safeguards**

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

On November 15, 2007, at Federal Register, Volume 72, Number 220, pages 64341 through 64430 the United States Department of Labor, Occupational Safety and Health Administration (Fed-OSHA) published a Federal Final Rule for 29 CFR Parts 1910, 1915, 1917 et. seq. entitled, Employer Payment for Personal Protective Equipment (PPE). This Final Rule requires the employer to provide at no cost to the employee protective equipment when such equipment is necessary to protect employees from job-related injuries, illnesses and fatalities. These requirements address PPE of many kinds: head protection, gloves, goggles, welding helmets, safety shoes, safety glasses, face shields, chemical protective equipment, fall protection equipment and so forth. However, the Federal standards provide exceptions for employers having to pay for some items, such as non-specialty safety toe footwear or non-specialty prescription eyewear, when these items are worn off site.

California Labor Code Sections 6401 and 6403 in effect require employers to furnish and use personal safety devices and safeguards in order to render places of employment safe and healthful. The California Supreme Court in Bendix Forest Products Corporation v. Division of Occupational Safety and Health (1979), 25 Cal. 3d 465 held that California law requires an employer to pay for required PPE. However, Title 8 lacks a specific requirement in that regard. It should be noted that existing case law requiring employers to pay for PPE is more effective than the Federal standard, because California enforces the employer's duty to pay for safety devices and safeguards without the exceptions provided in the Federal standard (except for employee-provided personal safety devices and safeguards that are not required by any Title 8, Division 1 standard).

In order to make it clear that state standards (and not just case law) are at least as effective as the counterpart Fed-OSHA standard, the Board staff proposes a new Section 3380.1 based in part on Federal language contained in the aforementioned Federal Register entry and on the Labor Code and Bendix, thereby making it clear that California employers are to provide all required personal safety devices and safeguards at no cost to the employee.

The following actions are proposed:

### **New Section 3380.1. Employer Duty to Pay for Personal Safety Devices and Safeguards**

This section would clarify to the employer that required personal safety devices and safeguards shall be provided at no cost to the employee. This section would clarify the employer's responsibility (duty) to pay for required personal safety devices and safeguards whenever they are to be provided, used or worn in concert with Bendix, consistent with the Labor Code and the Federal standards.

## **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 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 amendment 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.)

The 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, the 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.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

### **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 regulation 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.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

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 January 14, 2011. 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 January 20, 2011, 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.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

---

JOHN D. MACLEOD, Chairman

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 4, Construction Safety Orders, Article 2, Section 1504 Article 21, Section 1637, and Appendix C, Plate C-17; and Subchapter 7, General Industry Safety Orders, Article 23, Section 3622, **Scaffold Plank Design Requirement.**

Heard at the June 17, 2010, Public Hearing; adopted on September 16, 2010; filed with the Secretary of State on November 2, 2010; and will become effective on December 2, 2010.

2. Title 8, Division 1, Chapter 4, Subchapter 4, Construction Safety Orders, Article 12, Sections 1600-1601, **Pile Driving and Pile Extraction.**

Heard at the May 20, 2010, Public Hearing; adopted on September 16, 2010; filed with the Secretary of State on October 27, 2010; and will become effective on November 26, 2010.

3. Title 8, Division 1, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 109, Section 5197, **Occupational Exposure to Food Flavorings Containing Diacetyl.**

Heard at the November 19, 2009, Public Hearing; adopted on September 16, 2010; filed with the Secretary of State on November 2, 2010; and will become effective on December 2, 2010.

Copies of these standards 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](mailto:oshsb@dir.ca.gov).

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

---

Marley Hart, Executive Officer