

**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 **October 15, 2009**, at 10:00 a.m.  
in the Auditorium of the Harris State Building,  
1515 Clay Street, Oakland, 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 **October 15, 2009**, following the Public Meeting,  
in the Auditorium of the Harris State Building,  
1515 Clay Street, Oakland, 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 **October 15, 2009**, following the Public Hearing,  
in the Auditorium of the Harris State Building,  
1515 Clay Street, Oakland, 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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JOHN D. MACLEOD, Chairman



Descriptions of the proposed changes are as follows:

1. TITLE 8:           **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10  
Section 3395  
**Heat Illness Prevention**

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

The Occupational Safety and Health Standards Board proposes to adopt amendments to Title 8 of the California Code of Regulations, Section 3395 of the General Industry Safety Orders. These proposed amendments are authorized by Labor Code Section 142.3.

Currently, Section 3395 requires that in outdoor places of employment, employees suffering from heat illness or believing a preventative recovery period is needed are required to be provided access to an area with shade that is either open to the air or provided with ventilation or cooling for a period of no less than five minutes. Existing Section 3395 also provides that access to shade as required by the regulation shall be permitted at all times. There is an exception to the existing requirement for shade for employees other than those in the agriculture industry, that allows for provision of cooling measures other than shade (e.g., use of misting machines) if the employer can demonstrate that these measures are at least as effective as shade in allowing employees to cool. Existing Section 3395 also includes a definition of “preventative recovery period” as well as training requirements related to prevention of heat illness.

The amendments proposed in this rulemaking would require ongoing provision of shade at temperatures above 85° F in outdoor places of employment, unrelated to an employee request. This requirement would be subject to an exception for use of cooling measures other than shade (e.g. use of misting machines) in workplaces other than agricultural workplaces. The amendments would require that additional precautionary measures to prevent heat illness be taken when the temperature of outdoor places of employment is at or above 95° F. Additionally, the proposed amendments would add several new elements to existing requirements for employee training and would eliminate the definition of “preventative recovery period.”

The effects of the proposed amendments are outlined below:

#### **Section 3395 Heat Illness Prevention in Outdoor Places of Employment.**

##### **Section 3395(a) Scope and Application.**

Existing Section 3395(a) contains an advisory note specifying that the requirements of section 3395 may be integrated into the employer’s Injury and Illness Prevention Program (IIPP) as required by Title 8 Section 3203. It is proposed to amend this note to clarify that the measures to comply with the requirements of Section 3395 may be integrated into the employers written IIPP and may also acceptably be maintained in a separate document. Because it is only an advisory note that is being amended, there is no regulatory effect from this action.

##### **Section 3395(b) Definitions.**

Existing Section 3395(b) includes a definition for the term “Preventative recovery period.” It is proposed to delete this definition, as this term would no longer be included in the proposed amended standard.

Existing Section 3395(b) includes a definition for the term “Shade.” The existing second sentence of this definition specifies that shade for the purposes of the regulation may be provided by means of canopies, umbrellas, and other temporary structures or devices. It is proposed to clarify and relocate this second sentence of the existing definition of shade from the beginning to the end of the definition and to state that natural or artificial sources of shade may be used to provide shade and that shade may be provided by any combination of these sources. The effect of this amendment is to clarify that shade adequate to allow

the body to cool may be provided from natural or artificial means that do not expose employees to unsafe or unhealthy conditions.

Existing Section 3395(b) does not include a definition of the term “Temperature.” It is proposed to add a definition of “Temperature” specifying that this term, as used in the regulation, applies to measurement in degrees Fahrenheit using a thermometer in an area where there is no shade, and that this measurement should be done with the bulb or sensor of the device shielded from direct contact with sunlight. The effect of this proposed amendment is to specify a simple and uniform technique for obtaining the workplace temperature used as the basis for several proposed new requirements of the regulation as detailed below.

#### **Section 3395(c) Provision of water.**

Existing Section 3395(c) details requirements for provision of drinking water to employees covered by the regulation. It is proposed to amend the existing language of this section to clarify that the drinking water shall be provided at no cost to the employee, and shall be fresh, pure, and suitably cool. This provision of drinking water at no cost is consistent with an employer’s obligation to pay for and provide all safety provisions and is specifically required by Labor Code section 2441. Additionally, the reference to the subsection addressing training about consumption of water is amended in accordance with the proposed renumbering of that subsection. The effect of these amendments is to clarify the requirements of the standard regarding access to drinking water. The amendment referencing subsection (f)(1)(C) is without regulatory effect.

#### **Section 3395(d) Access to shade.**

Existing Section 3395(d) requires employers with outdoor places of employment to provide access to shade for a period of no less than 5 minutes to employees suffering from heat illness or believing a preventative recovery period is needed. Existing Section 3395(d) also provides that for employers other than those in agriculture, cooling measures other than shade may be provided if the employer can demonstrate that these measures are at least as effective as shade in allowing employees to cool.

It is proposed to amend Section 3395(d) to require that when the temperature of an outdoor workplace exceeds 85° F the employer shall have and maintain one or more shade areas sufficient to accommodate 25 percent of the employees on the work shift at any time, located as close as practicable to where employees are actually working. It is further proposed to amend Section 3395(d) to require that in outdoor workplaces when temperatures do not exceed 85° F, employers shall provide shade either as required where temperatures exceed 85° F or in a timely manner in response to an employee’s request for shade. The effect of these amendments is to provide a concrete, easy to understand temperature trigger for shade requirements and clear guidelines for the minimum amount of shade needed when the temperature trigger is exceeded.

It is further proposed to amend Section 3395(d) to add a new requirement that employers with outdoor workplaces encourage employees to take a cool-down rest in the shade for a period of no less than 5 minutes if they feel they need to do so to protect themselves from overheating. The effect of this requirement is to set clear guidelines for minimum rest periods to be provided so that employees may avoid developing a heat illness.

#### **Section 3395(e) High-heat procedures.**

It is proposed to relocate the existing language of Section 3395(e) to a new Section 3395(f) and replace it with new requirements for procedures to reduce the risk of heat illness in outdoor workplaces when the temperature equals or exceeds 95° F. The newly proposed procedures, required to be implemented by employers in outdoor workplaces when practicable, are for ensuring the capability of contacting a supervisor when necessary, for observing employees for alertness and signs or symptoms of heat illness, for reminding employees throughout the work shift to drink plenty of water and for close supervision of

new employees for the first 14 days of their employment, unless they provide specified information establishing that they are acclimatized to work in heat in excess of 95° F. The effect of this proposal is to require extra precautions, where practicable, under high heat conditions that potentially pose heightened risks to employees.

### **Section 3395(f) Training.**

It is proposed to renumber existing Section 3395(e) covering employee training, as Section 3395(f) and to add additional requirements. It is proposed to add language clarifying that no employee or supervisor shall begin outdoor work to which section 3395 applies unless they have received the training required by this regulation. It is also proposed that an element of training be added on the burden of heat load on the body caused by exertion, clothing, and personal protective equipment. It is also proposed to add to the existing elements for training procedures for designating a person to be available to ensure that emergency procedures are invoked when appropriate. Also, it is proposed to add to the current procedures on which supervisors are required to be trained an element on how to monitor weather reports and how to respond to hot weather advisories. The effect of the proposed amendments is to make the required training more comprehensive and effective.

There is no equivalent federal standard published or proposed by the Occupational Safety and Health Administration.

## **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 an initial 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 impact 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 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 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 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 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.

## **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 October 9, 2009. 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 October 15, 2009, 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 Michael 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

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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 22, Sections 1637 and 1646, **Riding on Rolling Scaffolds.**

Heard at the February 19, 2009, Public Hearing; adopted on June 18, 2009; filed with the Secretary of State on July 31, 2009; and will become effective on August 30, 2009.

2. Title 8, Division 1, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 98, Section 5006.1, **Mobile and Tower Crane Operator Qualifications – Accreditation of Certifying Entities.**

Heard at the May 21, 2009, Public Hearing; adopted on June 18, 2009; filed with the Secretary of State on July 27, 2009; and will become effective on August 26, 2009.

3. Title 8, Division 1, Chapter 4, Subchapter 4, Construction Safety Orders, Article 11, Sections 1598 and 1599, **Use of High Visibility Apparel.**

Heard at the October 16, 2008, Public Hearing; adopted on June 18, 2009; filed with the Secretary of State on July 23, 2009; and will become effective on August 22, 2009.

4. Title 8, Division 1, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 14, Section 3466, **Marine Terminal Operations – Vertical Tandem Lifts.**

Heard at the May 21, 2009, Public Hearing; adopted on June 18, 2009; filed with the Secretary of State on July 24, 2009; and became effective on July 24, 2009.

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).

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Marley Hart, Executive Officer