

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

General Industry Safety Orders

Section 3220(b). Elements

Published on **December 30, 2016**

Emergency Action Plan (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 **February 16, 2017** in the **Council Chambers** of the **Walnut Creek City Hall, 1666 N. Main Street, Walnut Creek, California.**

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

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **December 30, 2016** and closes at 5:00 p.m. on **February 16, 2017**. 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 can 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 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.

In 2002, Federal OSHA amended its standard for Emergency Action Plans (EAP). One of the changes to the EAP standard concerned procedures for employees performing rescue or medical duties. After consultation with stakeholders, Federal OSHA realized that rescue personnel and medical personnel might only perform a single function but not necessarily both. Federal Register, Volume 67, No. 216, November 7, 2002, states "... The Agency has also changed 'rescue and medical duties' in the proposal to 'rescue or medical duties' since employees may do one or the other but not necessarily both."

The current state standard does not require, like its federal counterpart does, the employers to have an EAP that contains procedures for performing individual duties – rescue or medical. Therefore, the current state standard is not commensurate with the federal standard. Board staff proposes an amendment in order to render it commensurate with the federal standard.

California also proposes to replace language contained in Section 3220(b)(1) in its entirety with federal language contained in 29 CFR 1910.38(c)(2) verbatim because the state's language does not require the emergency evacuation procedures to identify the type of evacuation; and is therefore, not at least as effective as the federal language.

The current federal and state standards, the proposed amendment, and the impact from the proposed amendments are discussed below:

29 CFR 1910.38. Emergency Action Plans.

Paragraph 1910.38(c) of this federal standard states that an EAP must include at a minimum the six (6) elements provided in paragraphs 1910.38(c)(1) through 1910.38(c)(6).

Paragraph 1910.38(c)(2) addresses emergency evacuation procedures and states that the evacuation procedures must identify the type of evacuation and exit route assignments.

Paragraph 1910.38(c)(5) states that the EAP must include the procedures to be followed by employees performing rescue or medical duties. By using the words "rescue or medical duties" in the standard, Federal OSHA also covers employees performing rescue or medical duties separately. Federal OSHA states in an email, dated October 4, 2016, to Board staff that the intent of "or" is not that a person has to do only one of those duties, but to cover a person who may do one or another, but not necessarily both.

CCR, Title 8, Section 3220(b). Elements.

Section 3220(b)(1) and (b)(4) are the state counterparts of the federal standard 1910.38(c)(2) and (5), respectively. Currently, the existing Title 8 regulation requires that emergency escape

procedures and emergency routes are to be described in the plan. The employer's EAP also includes procedures that employees need to follow while performing rescue and medical duties. However, the existing Title 8 regulations only require escape procedures and exit route assignments as an element of the EAP without regard to the type of evacuation and still use the words "rescue and medical duties" in the language, thus does not cover an employee who may do exclusively one or another duty, but not necessarily both duties.

Proposed Amendment to Section 3220(b)(1).

As stated above, the State proposes to replace language contained in Section 3220(b)(1) with federal language contained in 29 CFR 1910.38(c)(2) verbatim because the state's language does not require the emergency evacuation procedures to identify the type of evacuation; and is therefore, not at least as effective as the federal language.

Proposed Amendment to Section 3220(b)(4).

In addition, the current California standard does not require the employers to have an EAP that contains procedures for performing individual duties – rescue or medical, and is therefore, not commensurate with the federal standard. Board staff believes the state standard needs to be amended since the rescue personnel and medical personnel performing emergency duties in California may exclusively perform one single duty and not necessarily both duties. Therefore, Board staff proposes to replace the word "and" with the word "or" in Section 3220(b)(4) to delineate the duties of EAP employees who provide rescue or medical duties, but not necessarily both duties.

The proposed language for Section 3220(b)(4) is verbatim to the language from the federal standard 1910.38(c)(5); and therefore, renders the state standard commensurate with the federal counterpart standard.

The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 67, No. 216, pages 67950 – 67965, November 7, 2002, as a justification for the Board's proposed rulemaking action.

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 standards 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 standards; and,
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking.

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulation 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 the requirement of the federal government and the Labor Code to the effect that the state regulations be at least as effective as its federal counterpart, and 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, Volume 67, No. 216, pages 67950 – 67965, November 7, 2002. This document is available online at the Federal OSHA website: <http://www.gpo.gov/fdsys/pkg/FR-2002-11-07/pdf/02-27251.pdf>
2. Email transmission from Federal OSHA, Region IX to the Standards Board, dated October 4, 2016, regarding 29 CFR 1910.38(c)(5).

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 Register, Volume 67, No. 216, November 7, 2002, pages 67950 – 67965, contains the final rule for exit routes, EAP, and fire prevention plans. The federal final rule mentions that the rule would not impose any additional costs on employers for emergency action plans. Board staff believes the proposed amendments will also not add any significant cost to California employers as this proposal does not add new equipment or work processes, and primarily serves to clarify existing requirements.

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 business. However, no economic impact is anticipated. Federal OSHA had certified that the final rule that also covered EAP did not have a significant economic effect on a substantial number of small entities. Board staff believes the proposed amendments will not have any significant economic impact on small businesses in California as well.

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 REGULATION AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation 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 regulation, 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 regulation 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 website. Copies of the text of the regulation 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>.