

**NOTICE OF MODIFICATIONS TO
TEXT OF PROPOSED REGULATIONS
Modifying Regulation Concerning Time and Place of Hearing**

The Occupational Safety and Health Appeals Board (“Board”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

Pursuant to the requirements of Government Code section 11346.8, subdivision (c), and section 44 of Title 1 of the California Code of Regulations, the Board is providing notice of changes made to the proposed text of California Code of Regulations, title 8, section 376.

On June 16, 2022, the Board held a regulatory hearing regarding the proposed amendments to California Code of Regulations, title 8, sections 372.6, 372.8, 376, and 376.8. In response to public comments received during that meeting and in writing, and in response to Board staff consideration, the Board is proposing further modifications to section 376. The further modifications to the original proposed text may be found in the following subdivisions of section 376:

- Section 376, subdivision (e)—This subdivision is modified to specify that the Board will issue a notice of hearing which, among other things, will specify whether the hearing has been set for the videoconference format, and provides some instruction regarding the content of the notice. The purpose is to ensure consistency and clarity throughout the Board’s rules of practice and procedure.
- Section 376, subdivision (e)(1)(b)— This subdivision has been modified to specify that one of the factors the Appeals Board may consider when determining the date, time, length, and format of the hearing is whether multiple hearings can be set before an Administrative Law Judge on the same day without necessitating a continuance. The modification seeks to clarify that the Board does not intend to set parties or representatives for multiple hearings in one day. The purpose of these modifications is to address stakeholder concerns.
- Section 376, subdivision (e)(2)—This subdivision has been modified to specify that pre-hearing lodging of proposed exhibits shall not be required more than three working days prior to the hearing, and to specify that the Appeals Board will not review or consider any lodged documents for substance until introduced by a party or representative at hearing. The purpose of these modifications is to address stakeholder concerns. An additional subdivision reference is also added for clarity.
- Section 376, subdivision (e)(3)—This subdivision has been modified so that it additionally contemplates that if a person subpoenaed to attend a videoconference hearing does not have access to the technological equipment necessary to comply with the subpoena, the Appeals

Board will make facilities available where they can access necessary equipment. An additional subdivision reference is also added for clarity

- Section 376, subdivision (h)—This subdivision has been modified to specify that the Appeal Board may reconsider the selected format for the hearing on its own motion. The purpose is to ensure that the Appeals Board may reconsider earlier rulings, particularly as new information, facts, or considerations come to light.
- Section 376, subdivision (i)—This subdivision has been added to specify, for purposes of the Appeals Board’s rules of practice and procedure, that when a hearing is ordered to occur by videoconference, the virtual location of the hearing will constitute the place of hearing and hearing room, and any right to appear in person or personally is satisfied by the videoconference appearance. Further, it clarifies subpoenas may be issued pursuant to section 372.2, either subdivision (a) or (c), requiring attendance of a person at the videoconference place of hearing, provided the subpoena includes sufficient instruction and information on how to access and attend the virtual location. The purpose is to ensure consistency and clarity throughout the Board’s rules of practice and procedure, and to address stakeholder concerns.

A copy of the full text of the standards, with the modifications clearly indicated, is attached for your information. The additional modifications to the text of the proposed regulations are shown by using double strikeout for deletions and double underline for additions.

If you have any comments regarding the proposed changes, the Board will accept written comments between August 25 and September 9, 2022. All written comments must be submitted to the Board by 5:00 p.m. on September 9, 2022. The Board will only consider written comments received by that time. Written comments should be submitted to:

Aaron Jackson, Staff Counsel
Cal/OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Comments may also be submitted via email to ajackson@dir.ca.gov

All written comments received by September 9, 2022, which pertain to the indicated changes will be reviewed and responded to as part of the compilation of the rulemaking file. **Please limit your comments to the modification of the text.**

AUTHORITY AND REFERENCE

Labor Code (LC) section 148.7 authorizes the Board to adopt, amend, or repeal rules of practice and procedure pertaining to hearing appeals and other matters falling within its jurisdiction. The Board is charged with hearing and resolving appeals filed by employers for occupational safety and health citations issued by the Division of Occupational Safety and Health (Division).

AVAILABILITY OF DOCUMENTS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. Copies may be obtained by contacting Mr. Jackson at the contact information listed above. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the proposed regulations (as originally proposed) in underline and strikethrough can be accessed through our website at <https://www.dir.ca.gov/oshab/Rulemaking.htm>. Copies of this Notice of Modifications and the text of the modified regulations in double underline and double strikethrough can also be accessed at the above website address.