

**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 **November 15, 2007**, at 10:00 a.m.
in the Council Chambers, Second Floor of the Glendale City Hall
613 East Broadway, Glendale, California 91026.

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 **November 15, 2007**, following the Public Meeting
in the Council Chambers, Second Floor of the Glendale City Hall
613 East Broadway, Glendale, California 91026.

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 **November 15, 2007**, following the Public Hearing
in the Council Chambers, Second Floor of the Glendale City Hall
613 East Broadway, Glendale, California 91026.

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, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **November 15, 2007**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 7, Subchapter 4, Article 11
Section 1597
Jobsite Vehicles—Scope and Application

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 4
Section 3270
Safe Access to Elevated Locations

Descriptions of the proposed changes are as follows:

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Chapter 7, Subchapter 4, Article 11
 Section 1597
 Jobsite Vehicles—Scope and Application

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

This rulemaking proposal is the result of a Division of Occupational Safety and Health (Division), Request for New or Change to Existing Safety Order, Form 9-038 dated October 26, 2004. The Division requested the Standards Board (Board) consider amending the scope and application paragraph that precedes the requirements of Section 1597-Jobsite Vehicles. The Board staff and Division agree that Section 1597, which contains various vehicular safety equipment requirements, was never intended to apply to construction haulage vehicles, loaders, crawlers, bulldozers, scrapers and similar equipment. The Division is aware of concerns expressed by stakeholders regarding the application of Section 1547 to such vehicles. Consequently, the Division proposed language stating that vehicles covered by Article 10 of the CSO, which applies to haulage vehicles and earthmoving vehicles, are not subject to the vehicular safety equipment requirements contained in Section 1597, which apply to light trucks, vans, other types of jobsite vehicles used to transport employees, passenger automobiles, sport utility vehicles and vehicles not designed as haulage vehicles.

The Board staff's proposal differs slightly from that of the Division's as stated in the Form 9-038 to the extent that the wording has been revised for improved readability. This proposal is consistent with 29 CFR 1926.601(a) and 29 CFR 1926.602(a), federal OSHA standards that provide separate standards for jobsite vehicles that are, and are not, haulage and earthmoving equipment.

The following action is proposed:

Section 1597. Jobsite Vehicles.

This section consists of an opening "scope and application" statement followed by eleven subsections that address specific safety requirements.

An amendment is proposed to add language in the scope and application statement to clarify that Section 1597 does not apply to jobsite vehicles covered by Article 10 of the CSO which pertains to earthmoving and haulage vehicles. The effect of the proposed amendment is limited to this clarification.

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 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 standard 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 standard 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 standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard 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 standard does not impose unique requirements on local governments. All employers -state, local, and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard 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**
Chapter 4, Subchapter 7, Article 4
Section 3270
Safe Access to Elevated Locations

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking proposal is the result of a Division of Occupational Safety and Health (Division) Form 9 (F9-053), Request for New or Change to Existing Safety Order, dated November 9, 2006. The Division was concerned about the narrow interpretation given Section 3270 by the Occupational Safety and Health Appeals Board Decision (OSHAB) in its Docket No. 03-R1D1-4717 and 4718, dated August 2, 2006.

The OSHAB Decision indicates that the employer had failed to provide a safe means of access to the roof of a storage structure which required cleaning. The OSHAB administrative law judge (ALJ) determined that the removal of dirt and debris from the roof of the storage shed cannot be characterized as material to be handled as stated in Section 3270. Therefore, this standard has no application to the work activity which resulted in a serious employee injury. This interpretation is inconsistent with the intent of this standard, which is to ensure that workers can safely access any

elevated location where work is performed or may be performed. The proposal amends the standard in order to be consistent with the intent of the standard and overcome the OSHAB's narrow interpretation.

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 3270. Access General.

This Section contains standards requiring access to equipment and appliances (except those on roofs or dwellings and their accessory buildings) and access to permanent elevated locations where there is machinery, equipment or material that is frequently repaired, serviced, adjusted or otherwise handled. This access is to be provided by means of access runways or platforms. Various notes and exceptions refine the scope of the section's applicability.

This proposal would amend the Section to make it clear that, except for existing exceptions and limitations, this Section applies to all elevated work areas, not just those where a limited number of specified work activities take place. To this end, the first sentence of subsection (a) is replaced by language that states access is to be provided, to every permanent elevated work location by means of ladders or permanent stairways or ramps. A Note following subsection (a) is proposed to clarify where Title 8 ramp, stairway and ladder standards which are relevant to Section 3270 are found.

Subsection (b) is proposed to be revised to provide that every permanent elevated work location, as well as elevated locations where machinery, equipment are accessed by employees are to be provided with safe platforms or a maintenance runway

A new subsection (c) is proposed which relocates the existing language contained in subsection (a) and has no other effect other than to relocate an existing requirement to a location in Section 3270 that is more logical in relation to the requirements that precede it.

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 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 standard 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 standard 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 undue 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 standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard 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 standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard 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 November 9, 2007. 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 November 15, 2007, 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. 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 Michael Manieri, Principal Safety Engineer, or Christina Witte, Executive Secretary, 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