

**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 **February 18, 2010**, 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 **February 18, 2010**, 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 **February 18, 2010**, 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

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 **February 18, 2010**.

1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 7  
Section 3308  
**Hot Pipes and Hot Surfaces**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:**        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 7  
Section 3308  
**Hot Pipes and Hot Surfaces**

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

Section 3308 addresses hot pipes and hot surfaces and stipulates how and when hot pipes and surfaces are to be insulated or guarded against inadvertent contact. As noted in the Division of Occupational Safety and Health (Division) Form 9 Request for New, or Change In Existing, Safety Order dated August 12, 2009, the language of Section 3308 is unclear both to the employer seeking guidance about when to install insulation or guard surfaces and to the Division attempting to enforce the standard. Ambiguity arises because of the standard's use of the un-quantified standard "external surface temperature sufficient to burn human tissue on momentary contact."

To bring clarity to Section 3308, Board staff, in agreement with the Division, proposes to amend Section 3308 to specify 140 degrees F as the temperature capable of causing momentary contact burns to the skin. The value is taken from the American Society of Testing Materials (ASTM) C 1055-03 (Reapproved in 2009) standard. In 2009, the ASTM subcommittee C16.30 on Thermal Measurements established a guide for what constitutes safe surface conditions and has standardized tools by which proposed or existing systems can be examined for potential burn hazard. The ASTM consulted 16 separate sources of scientific literature specific to thermal safety, human physiology and burns, and various thermal injury studies. A bibliography of human burn evaluation studies and surface hazard measurements is listed in the ASTM C 1055-03 References section.

Worker injury resulting from contact with heated surfaces can be prevented by proper design of insulation or other protective measures such as guarding. The proposed inclusion of a scientifically based threshold/trigger temperature for burn injury will ensure that employers know when to implement engineering controls and assure that their employees are effectively safeguarded.

#### **Section 3308. Hot Pipes and Hot Surfaces.**

This section requires employers to insulate or guard hot pipes and hot surfaces capable of burning human tissue on momentary contact that are located within 7 feet vertically from the floor or working level or within 15 inches measured horizontally from stairways, ramps or fixed ladders. The section also provides an exception for operations where the nature of the work or size of the parts makes guarding or insulating impracticable.

An amendment is proposed to delete the phrase "...sufficient to burn human tissue on momentary contact..." and replace this phrase with "...of 140 degrees F (60 degrees C) or higher..." The proposed amendment will clarify to the employer the surface temperature at which insulation and guarding is necessary to prevent contact burns.

There is also a non-substantive change to reference Labor Code Section 142.3 in accordance with normal Title 8 formatting and Administrative Procedure Act requirements.

## **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 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 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 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 February 12, 2010. 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 February 18, 2010, 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

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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 7, General Industry Safety Orders, Article 47, Section 4086, **Momentary Contact Devices for Portable Power Driven Augers.**

Heard at the August 20, 2009, Public Hearing; adopted on October 15, 2009; filed with the Secretary of State on December 2, 2009; and will become effective on January 1, 2010.

Copies of this standard 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