

**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 **September 25, 2014**, at 10:00 a.m.
in Room 310 of the County Administration Center
1600 Pacific Highway, San Diego, 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 **September 25, 2014**, at 10:00 a.m.
in Room 310 of the County Administration Center
1600 Pacific Highway, San Diego, 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 **September 25, 2014**, at 10:00 a.m.
in Room 310 of the County Administration Center
1600 Pacific Highway, San Diego, 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**

DAVE THOMAS, 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 **September 25, 2014**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 3395
[Heat Illness Prevention](#)

Descriptions of the proposed changes are as follows:

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Section 3395
 Heat Illness Prevention

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

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

The proposed amendments are needed to clarify, make more specific, and strengthen the requirements of Section 3395 in order to prevent heat illness and to ensure that emergency medical services are provided without delay.

Currently, Section 3395 requires that drinking water and access to shade be provided to employees. Section 3395 specifies that shade be erected at temperatures above 85 degrees Fahrenheit (^o F); that it accommodate 25% of the employees; and that employees be allowed and encouraged to take a cool-down rest in the shade for at least five minutes. Section 3395 also requires additional precautionary measures when the outdoor temperature is at or above 95^o F and that employees be observed for alertness and signs or symptoms of heat illness. In addition, Section 3395 requires that employers have emergency procedures for responding to symptoms of possible heat illness and that employees and supervisors be trained regarding those procedures.

The proposed amendments would revise the requirements of Section 3395 by: (1) specifying that drinking water must be provided at no cost and be fresh, pure, suitably cool and located within 400 feet unless prohibited by site conditions; (2) requiring that shade be present when the temperature exceeds 80^o F, be sufficient to accommodate all employees on break, and be located within 700 feet of employees unless that is not feasible; (3) requiring that an employee taking a cool-down rest be encouraged to remain in the shade until symptoms have abated and be monitored by the employer during this recovery period; (4) lowering the threshold temperature for initiating high heat procedures from 95^o F to 85^o F; (5) specifying that high heat procedures include the means for observing employees for signs and symptoms of heat illness, designation of an employee at the worksite who is authorized to call for emergency medical services, and a pre-shift meeting to cover high heat precautions; (6) requiring a net ten minute recovery period (which may be concurrent with other required breaks) for every two hours that an employee in agriculture works continuously in temperatures equal to or exceeding 95^o F; (7) specifying that workers receive additional training on the right to exercise their rights under the heat illness standard without fear of retaliation, procedures for acclimatization, and appropriate first aid and emergency response to heat illness; (8) adding new elements to the required written heat illness prevention procedures, which would now be called a heat illness prevention plan; and (9) requiring that supervisors take immediate action if an employee exhibits symptoms of heat illness and prohibiting an employer from sending home an employee who was exhibiting signs or symptoms of heat illness without first offering onsite first aid or providing emergency medical services.

The overall intent of the proposed amendments is to improve worker safety in all outdoor places of employment and reduce the incidence of heat illness.

The proposed amendments and this rulemaking:

- Are based on the following authority and reference: Labor Code Section 142.3, which requires California to adopt occupational safety and health regulations that are equivalent to or more protective of worker health and safety than federal occupational safety and health regulations, and designates the Board as “the only agency in the state authorized to adopt occupational safety and health standards.” (Labor Code Section 142.3(a)(1).)
- Differ from existing federal regulations in that the federal Occupational Safety and Health laws and regulations do not include a specific and comprehensive standard to address the prevention of heat illness.
- Are not inconsistent or incompatible with existing state regulations. After conducting an evaluation for any regulations related to heat illness prevention in the work place, the Board has determined that these are the only regulations concerning this topic, and therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations.
- Will enhance employee safety by clarifying and making more specific the current requirements for providing water and shade to workers, minimizing disincentives for drinking water and taking rest periods, requiring additional observation and training during high heat periods, and improving procedures for accessing first aid and emergency medical services.

Proposed Amendments

The Board proposes to amend the Heat Illness Prevention regulation at Title 8, California Code Regulations, Section 3395 in several respects, as indicated below.

Subsection (b) Definitions.

Existing subsection (b) of Section 3395 includes a definition of the term “Shade.” This definition would be modified by adding at the end of the definition the phrase “that does not discourage access.”

Subsection (c) Provision of water.

Subsection (c) details requirements for providing drinking water to employees exposed to heat while working outdoors. The Board proposes to modify this subsection by further specifying that:

The water provided shall be fresh, pure and suitably cool, and shall be provided to employees free of charge.

and

The water shall be located as close as practicable to the areas where employees are working and shall not in any event be farther than 400 feet walking distance from any employee at any time other than when the employee is using a restroom or travelling between the restroom and an area where employees are working unless the employer can demonstrate that conditions prohibit locating the drinking water within the prescribed distance.

Subsection (d) Access to shade.

Subsection (d) currently sets forth requirements for providing shade, including the amount of shade that must be available and the outdoor temperature at which it must be provided. The proposed amendments would modify these requirements in several respects.

Paragraph (1) of subsection (d) would be revised to change the overall shade requirement from “at least enough to accommodate 25% of the employees on the shift at any time” to “at least enough to accommodate the number of employees on meal, rest, or recovery periods.” At the end of paragraph (1), the requirement to locate the shade as close as practicable to where employees are working would be modified by adding the following limitation: “but no farther than 700 feet walking distance from the area where any employee is working unless the employer can demonstrate that terrain or other conditions prohibit locating the shaded area within the prescribed distance.”

Paragraph (2) of subsection (d) would be modified by lowering the trigger temperature at which shade is required to be available from 85° F to 80° F.

Paragraph (3) of subsection (d) would be revised by deleting the phrase “for a period of no less than five minutes at a time” in the first sentence and adding the following sentence at the end of the paragraph.

An employee who takes a cool-down rest shall be encouraged to remain in the shade and shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time needed to access the shade.

A new paragraph (4) would be added as follows:

If an employee exhibits signs or reports symptoms of heat illness, the employer shall monitor the employee during the cool down rest or recovery period to determine if signs or symptoms are abating or worsening. If signs or symptoms worsen or do not resolve, the employer shall provide appropriate first aid and/or emergency medical services.

A clarifying amendment would be made to the “Exceptions” at the end of subsection (d), specifying that those exceptions only apply to paragraphs (1) and (2) and not to paragraphs (3) or (4).

Subsection (e) High-heat procedures.

Subsection (e) sets forth high heat procedures that an employer is required to implement when the temperature reaches 95° F. These proposals would lower the trigger temperature for high-heat procedures from 95° F to 85° F and add several additional specific requirements.

To paragraph (2)’s requirement to “observ[e] employees for alertness and signs or symptoms of heat illness,” these proposals would add the following:

The employer shall ensure effective employee observation/monitoring by implementing one or more of the following:

- (A) Supervisor or designee observation of 20 or fewer employees, or
- (B) Mandatory buddy system, or
- (C) Regular communication with sole employee such as by radio or cellular phone, or
- (D) Other effective means of observation.

A new paragraph (3) would be added, requiring that the employer “designat[e] an employee on each worksite authorized to call for emergency medical services,” and the current paragraph (3) would be renumbered (4).

Existing paragraph (4) pertaining to the supervision of a new employee becoming acclimated to high heat conditions would be deleted, and acclimatization requirements revised and incorporated into the employer’s written procedures covered in subsection (g) below.

The Board also proposes to add new paragraphs (5) and (6) to this subsection as follows:

- (5) Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.
- (6) For employees employed in agriculture, the following shall also apply:
For every two hours an employee works continuously outdoors during temperatures of 95 degrees or above, the employer shall ensure that the employee takes a minimum ten minute net recovery period. The recovery period required by this paragraph shall be taken, insofar as practicable, near the end of each second hour of work in which temperatures are 95 degrees or greater. This recovery period may be provided concurrently with any other meal or rest period required by Industrial Welfare Commission Order No. 14 if the timing of the recovery period coincides with a required meal or rest period. For purposes of this section, “recovery period” is defined in Labor Code Section 226.7(a).

Subsection (f) Training.

Subsection 3395(f) sets forth requirements for employee and supervisor training on heat illness prevention procedures. These proposals would make revisions to four of the nine elements of employee training under subsection (f)(1). The requirements in paragraph (f)(1)(B) covering the employer’s procedures for complying with the heat illness regulation would be revised to include specific references to the employer’s responsibility to provide water, shade, cool-down rests, and access to first aid as well as the employees’ right to exercise rights under the heat illness regulation without retaliation.

Paragraphs (f)(1)(D) and (E) would be expanded to read as follows:

- (D) The concept, importance, methods of acclimatization and the employer’s procedures under subsection (g)(3).
- (E) The different types of heat illness, and the common signs and symptoms of heat illness, and appropriate first aid and/or emergency responses to the different types of heat illness, and in addition, that heat illness may progress quickly from mild symptoms and signs to serious and life threatening illness.

Paragraph (f)(1)(G) would be revised by adding the words “signs or” before the word “symptoms,” and paragraph (f)(2)(C) would be modified by inserting the words “signs or reports” between the words “exhibits” and “symptoms,” so that the full phrase reads “exhibits signs or reports symptoms.”

Subsection (g) Written procedures.

Current paragraph (3) of subsection (f), pertaining to written procedures, would be redesignated as a new subsection (g) and substantially rewritten to read as follows:

Written procedures. The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The heat illness prevention plan shall, at a minimum, contain:

- (1) Procedures for the provision of water and access to shade.
- (2) The high heat procedures referred to in subsection (e).
- (3) Procedures for the close supervision of all employees during periods when it is predicted that the high temperature for the day will be 80 degrees Fahrenheit or more and ten degrees Fahrenheit or more above the average high daily temperature in the preceding five days, and for an employee newly assigned to high heat areas by a supervisor or designee, for the first 14 days of the employee's employment by the employer.
- (4) Emergency Response Procedures:
 - (A) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.
 - (B) Responding to signs and symptoms of possible heat illness, including but not limited to first aid measures and how emergency medical services will be provided.
 - (C) Contacting emergency medical services and, if necessary, transporting employees to a place where they can be reached by an emergency medical provider.
 - (D) Ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

Subsection (h)

These proposals would also add a new subsection (h) to Section 3395, detailing observation and response requirements in the event signs or symptoms of heat illness are observed or reported.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

The Board has made a preliminary determination that 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 these proposals will not significantly affect housing costs.

Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made an initial determination that these proposals 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.

The Board has also made an initial determination that these proposals may have private sector costs for some businesses, including some small businesses. Specifically, as set forth in much greater detail in the Initial Statement of Reasons, an employer with a large dispersed or mobile workforce may incur one-time costs for portable coolers (*e.g.* “igloos” at an estimated cost of \$55 per unit) or portable shade structures (estimated cost of \$100 per unit) to ensure the accessibility of sufficient water and shade available within the distance limits specified in these proposals. A business of any size may incur one-time costs in modifying its written heat illness plan, including the cost of translating the plan if a majority of the employees speak another language.

The proposed new subsection (e)(6), mandating a recovery break every two hours when employees work continuously in temperatures of 95° or above and applicable only to agriculture, would impose a cost on employers in terms of the compensation required for any breaks that are in addition to the paid breaks required by Wage Order No. 14. While the Division of Occupational Safety and Health believes that agricultural employers customarily adjust working hours to avoid sustained periods of work in high heat, an employer with a crew of 100 workers earning an effective rate of \$15 per hour would incur an additional cost of \$250 for providing an additional compensated break that was not required by Wage Order No. 14.

The Board invites additional comment on these projected impacts.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative individual would necessarily incur in reasonable compliance with the proposed amendments. Because the potential cost impacts identified above are all associated with taking additional measures for an employee workforce, they would not be incurred by a sole proprietor who has no employees. The Board also believes that only a small fraction of affected employers will incur additional costs to comply with the more specific requirements set forth in the proposed amendments, and therefore that a representative or typical business will not incur costs.

Costs or Savings in Federal Funding to the State

These proposals 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 below 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 Board has determined that the proposed standard does 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 175000 through 17630.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, the potential economic impacts identified above are likely to be incurred, if at all, by larger businesses with larger workforces, and primarily in the agriculture sector. Section 3395 currently requires employers to provide water, shade, high heat procedures, and training, and the principal purpose of these proposals is to clarify, strengthen, and make those requirements more specific.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses because the proposed changes will clarify and strengthen these standards to prevent against heat illness.

BENEFITS OF THE REGULATION

The proposed amendments will reduce the risk of serious injury and death due to heat illness in the affected industries. Better hydration and access to shade as well as an additional mandated recovery period (for agricultural workers working extended hours in very high heat) should also improve worker productivity.

ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

In drafting these proposals, the Division of Occupational Safety and Health considered several alternative proposals for revising or complying with specific standards. The use of a buddy system to monitor employees working in high heat conditions was suggested as an alternative to other employee monitoring options and was incorporated into the proposals. The Division considered but rejected clearly more expensive and sometimes impractical alternatives, including proposed requirements to equip all employees with an individual portable source of water or to require a specific ratio of supervisors to workers in high heat conditions.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF TEXT OF PROPOSED AMENDMENTS AND INFORMATION PERTAINING TO THE PROPOSED ACTION

A copy of the regulation with proposed amendments shown 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 **September 19, 2014**. 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 **September 25, 2014**, 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 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

DAVE THOMAS, Chairman