

**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 **April 17, 2014**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, 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 **April 17, 2014**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, 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 **April 17, 2014**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, 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, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **April 17, 2014**.

1. TITLE 8:
 - CONSTRUCTION SAFETY ORDERS**
Section 1514
 - GENERAL INDUSTRY SAFETY ORDERS**
Section 3380
 - Personal Protective Devices and Safeguards**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
 Section 1514
 GENERAL INDUSTRY SAFETY ORDERS
 Section 3380
 Personal Protective Devices and Safeguards

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action was initiated by Board staff upon review of the Construction Safety Orders (CSO), Section 1514. “Personal Protective Devices” and the General Industry Safety Orders (GISO), Section 3380. “Personal Protective Devices.” GISO, Section 3380(a) in part, defines the scope of Article 10. “Personal Safety Devices and Safeguards” and also provides that protection for various parts of the body means the use of safety devices and safeguards [e.g. personal protective equipment (PPE)] must be of the proper type for the exposure.

However, an informational “NOTE” that follows Section 3380(a) setting forth certain criteria for PPE is not enforceable, is outdated and contains an obsolete reference to the Bureau of Standards, which no longer exists. The “NOTE” is proposed for deletion and replaced by an amendment that would require PPE to be approved for its intended use. A definition of “approved” and what that means is provided in GISO, Section 3206 and CSO, Section 1505.

Federal standards in 29 CFR 1926.95(a) and 29 CFR 1910.132(a) for construction and general industry, respectively, clarify specific areas of the body, including the extremities that may require PPE and require such protective equipment to be maintained in a safe condition. This rulemaking also proposes similar language to that of the aforementioned federal standards in Title 8, CSO, Section 1514 and GISO, Section 3380. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Is consistent with similar federal OSHA provisions related to the use of PPE.
- 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: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).
- The proposal was developed with the review of stakeholders such as, but not limited to, representatives from the Division of Occupational Safety and Health, the Operating Engineers, The International Brotherhood of Electrical Workers, the Associated General Contractors (California), the Phylmar Regulatory Roundtable, and the Public Agency Safety Management Association. The proposal will enhance the safety of employees involved on job sites and operations where employees are safeguarded through the use of PPE.

CSO, Section 1514. Personal Protective Devices.

Existing CSO, Section 1514 includes provisions that require employees to use personal protective equipment that is approved. PPE is required to be used in accordance with the manufacturer's instructions. Protective equipment is also required to be of a design, fit and durability as to provide adequate protection against the hazards for which they are designed.

Subsection (b)

Existing subsection (b) requires protective equipment to be approved and distinctly marked to facilitate identification. An amendment for clarity is added to indicate that the definition of "approved" is provided in Section 1505.

Subsection (d)

Existing subsection (d) states that the employer shall assure that employee owned personal protective equipment complies with applicable standards (regulations) and that this equipment is maintained in a safe, sanitary condition. This subsection is proposed for deletion because its requirements are located within new proposed subsection (d).

A new subsection (d) incorporates the provisions in deleted subsection (d) and is consistent with its counterpart federal standard [29 CFR 1926.95(a)] that clarifies specific areas of the body, such as the extremities, that may require PPE. Additionally, the proposal includes words to the effect that equipment such as protective clothing, respiratory protection, and protective shields and barriers required by the safety orders must comply with applicable Title 8 standards and that they are to be maintained in a safe, sanitary condition. The effect of this amendment is to provide language for clarity and consistency with the counterpart federal standard and with similar provisions in proposed GISO, Section 3380(d).

Subsection (e)

Existing subsection (e) requires that protection used be of such design, fit and durability, and that it is reasonably comfortable and not encumber the employee's movements. The effect of this amendment is to provide consistency with GISO, Section 3380(e) to include that the protection provided shall not encumber the employee's movements necessary to perform his or her work.

GISO, Section 3380. Personal Protective Devices.

Existing Section 3380 provides a broad range of provisions applicable to the safeguarding of employees primarily through the use of PPE and devices. The provisions include the design and selection criteria for PPE. Further, this section addresses defective and damaged equipment, and covers employee training and hazard assessment. A non-mandatory Appendix A contains sample procedures to assist employers with hazard assessment procedures and the selection of PPE.

Subsection (a)

Section 3380(a) in part, defines the scope of Article 10. "Personal Safety Devices and Safeguards" and also provides that protection for various parts of the body means the use of safety devices and safeguards (e.g. personal protective equipment) must be of the proper type for the exposure. For optimal sequential formatting, subsection (a) is proposed to be numbered as subsections (a)(1) and (2). Several non-substantive editorial revisions were made in subsection (a)(1) that are not discussed. However, these editorial or grammatical revisions are clearly shown in the regulatory text.

Amendments proposed in the first two lines of subsection (a)(1) have the effect of clarifying that the terms "protection" and "protective" when used in combination with various parts of the body, including the items

listed/used in subsection (d) mean that protective equipment must be of the proper type and design to eliminate, preclude or mitigate hazards.

However, an informational “NOTE” that follows Section 3380(a) describes that safeguards, such as personal protective equipment, must be equivalent to standards approved by the American National Standards Institute (ANSI), the Bureau of Standards, or other recognized authorities. The informational “NOTE” is not enforceable and outdated in that there are a number of national consensus standards or organizations other than ANSI that provide the criteria and design for protective equipment. These include, but are not limited to, the National Fire Protection Agency, the American Society of Testing Materials, the National Institute for Occupational Safety and Health, and others. Furthermore, the reference in the “NOTE” to the Bureau of Standards is obsolete as this Bureau no longer exists.

For the aforementioned reasons, the informational “NOTE” is proposed for deletion and replaced by a new Section 3380(a)(2) that would require PPE to be approved for its intended use. A definition of “approved” is provided in GISO, Section 3206 and CSO, Section 1505. In summary, the term “approved” allows for protective equipment to meet the criteria of recognized national consensus standards or to have been certified by a National Recognized Testing Laboratory. Where such approval is not available, the term “approved” also provides that such approval may be based on an evaluation by a registered engineer with appropriate competence. The approval may also be based upon evaluation by the Division of Occupational Safety and Health.

The effect of these amendments is to ensure that PPE is designed in conformance with applicable consensus standards for the type of protective equipment provided and/or that such protective equipment is approved for its intended use.

Subsection (d)

Existing subsection (d) states that the employer shall assure that all PPE, whether employer provided or employee provided, complies with applicable Title 8 standards and that this equipment is to be maintained in a safe, sanitary condition. The federal standard for general industry in 29 CFR 1910.132(a) clarifies specific areas of the body, including the extremities, that may require PPE and also includes items such as protective clothing, respiratory protection, and shields and barriers. Existing language provides that such protective equipment is required to be maintained in a safe and sanitary condition.

Amendments proposed for subsection (d) provide that required safety devices and safeguards, including PPE for the eyes, face, head, hand, foot, and extremities (limbs), protective clothing, respiratory protection, and protective shields and barriers, comply with applicable Title 8 standards and are maintained in a safe and sanitary condition.

The listing of specific body areas mentioned above and the inclusion of protective clothing, respiratory protection, protective shields and barriers in the proposal have the effect of providing clarity and consistency with similar provisions in proposed Section 1514(d) and those listed in the federal standard. The proposal also clarifies that “required safety devices and safeguards” must meet applicable Title 8 standards and has the effect of clarifying that this equipment is also subject to Title 8 provisions.

Language referencing whether PPE is employer or employee provided is relocated within proposed subsection (d). Language that pertains to employer assurances for equipment in the second to the last line of subsection (d) is unnecessary with respect to subsection (d) as proposed and, therefore, is deleted.

Subsection (e)

Existing subsection (e) requires in part that protection be reasonably comfortable and not encumber the employee’s movements necessary to perform “his” work. A revision is made to correct the male gender reference so that the provision applies to his or her work.

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

The Board has made a 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. The proposal deletes an outdated informational “NOTE” in Section 3380 and provides that PPE must be approved for its intended use. PPE is typically manufactured in conformance with national consensus standards for the type of protection provided, and thus, nearly all PPE meets the definition of “approved” provided in the Construction and General Industry Safety Orders. The proposal also clarifies parts of the body that may require protective equipment consistent with existing regulatory requirements, and thus, will not have an economic impact.

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 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.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no adverse economic impact is anticipated. The proposal clarifies parts of the body that may require personal protective devices consistent with existing regulations that require body protection from hazards and, therefore, no adverse economic impact is anticipated.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulations 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.

BENEFITS OF THE REGULATION

An informational “NOTE” that follows existing GISO, Section 3380(a) and sets forth certain criteria for PPE is not enforceable, is outdated and contains an obsolete reference to the Bureau of Standards, which no longer exists. The “NOTE” is proposed for deletion and replaced by an amendment [proposed Section 3380(a)(2)] that would require PPE to be approved for its intended use. A definition of “approved” and what that means is provided in GISO, Section 3206 and CSO, Section 1505. This proposal affords the employer more options in the selection of PPE such as protective equipment meeting the provisions published by the American Society of Testing Materials or the National Institute for Occupational Safety and Health and others. The proposal will also assist the Division with its enforcement activities, in that the criteria for PPE would be provided in a regulation rather than an informational “NOTE.”

Several other amendments in Sections 1514(d) and 3380(d) provide clarity and awareness by listing specific areas of the body that require protection when there are hazards.

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.

Labor Code section 144.6 provides that standards dealing with toxic materials be adopted that are most adequately protective of employee health “to the extent feasible.” Discussions were held in public meetings with advisory committees for both health and feasibility assessment. These discussions addressed a number of factors relevant to consideration of a particular value for the PEL proposed in this rulemaking. These discussions are described in the minutes included in Attachment No. 4. Labor Code section 144.6 also provides that whenever practicable, standards for toxic materials be expressed in terms of objective criteria and of the performance desired. The proposal in this rulemaking is consistent with that stated preference in that it does not require particular specified equipment or methods for exposure level control, but rather provides an objectively stated performance criteria with affected employers determining the alternatives to use to achieve compliance in their particular operations involving employee exposure to the toxic material. The preference of Labor Code section 144.6 for performance based standards for toxic materials is consistent with the same stated preference contained in such Government Code section 11340.1(a).

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 **April 11, 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 **April 17, 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