

**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 **August 19, 2010**, 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 **August 19, 2010**, following the Public Meeting,
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 **August 19, 2010**, following the Public Hearing,
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**

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, as indicated below, at its Public Hearing on **August 19, 2010**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 29
Section 1709
Maximum Allowable Load

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 32
Section 1742
Definitions of “Manifold” and “Header”

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 29
Section 1709
Maximum Allowable Load

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in DPS Plastering, Inc., Docket 03-R3D3-2731, dated April 2, 2008, in which the employer received a citation from the Division of Occupational Safety and Health (Division) for overloading part of a suspended ceiling structure in excess of its designed capacity. There was an employee applying the second of three coats of plaster to a suspended ceiling from a scaffold when the ceiling collapsed striking the employee and seriously injuring him. The Division's subsequent accident investigation revealed the cause of the collapse to be the failure of the ceiling suspension system.

The OSHAB Administrative Law Judge (ALJ) dismissed the citation. The standard's lack of a definition of the term "designed capacity" led the ALJ to use extrinsic definitions which in turn led him to focus on the architect's design for the structure, a focus which gave rise to evidentiary problems that resulted in the failure of the Division's case. An additional problem for the Division was the ALJ's conclusion that the cited employer, a plaster subcontractor, was not responsible for the building design, and that, for this reason as well, it was not proper to cite that employer for violating Section 1709(a).

Board staff believes Section 1709(a) should be clarified so that it may better help prevent serious injuries of the sort that befell the employee in the OSHAB matter.

Section 1709. General Requirements.

This section contains general requirements for the erection and construction of structures, including but not limited to, load bearing capacity, bracing, wood floor construction, and erection guides for trusses and beams over 25 feet long.

Existing subsection (a) prohibits any building, structure, or part thereof, or any temporary support or scaffolding from being overloaded in excess of its designed capacity.

Amendments are proposed to clarify that none of the structures indicated above are to be subjected to loads unless it is determined to be safe to do so by a qualified person who has experience in structural design. The proposed wording is derived from federal standards (29 CFR 1926.451(a)(6) and 1926.701(a)). The proposed amendment will require the employer to consult with a qualified person with experience in structural design prior to placing a load on a building, structure, structural member, or scaffold that the load can be safely supported. The proposal enhances employee safety by removing reliance on an ambiguous term "design capacity" and removing ambiguity as to who is responsible for determining the structure's ability to bear the load.

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 amendments 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, this 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 amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments 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.

2. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 32
Section 1742
Definitions of “Manifold” and “Header”

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This staff-initiated rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in Cherne Contracting Corporation, Dockets 07-R6D3-0612 through 0616, dated December 10, 2008. The employer was cited by the Division of Occupational Safety and Health (Division) for failing to have oxygen and acetylene manifold and header hose connections capped when not in use. The Division conducted a complaint-based inspection and alleged that the hose connections to the cylinders on an unattended oxy-acetylene rolling cart were not capped. OSHAB hearing testimony indicated that employer representatives were not able to state when the cylinders were last used. The Division testified that the words “regulator” and “manifold,” when used in connection with gas cylinders, are used interchangeably. However, the employer’s superintendent testified that the words have different meanings whereby regulators are used to control the flow of gases out of cylinders, while manifolds are devices with multiple outlets that allow a gas cylinder, or set of cylinders, to be used for more than one set-up at a time. The Division was unable to state when asked where the “header” hose of each cylinder should have been capped. The Appeals Board sided with the superintendent’s description of “manifold” and stated that there was no evidence that the employer was using a manifold in connection with the oxygen and acetylene cylinders observed by the Division. Further, there was no evidence that any “header” hose connections were uncapped. Therefore, based on the lack of evidence to support the allegation of the citation, the appeal was granted.

This rulemaking action proposes amendments to Section 1742, entitled “Hose and Connections,” specifically to subsection (e), to include definitions of the terms “manifold” and “header” as used in this subsection. Board staff notes the National Fire Protection Association (NFPA), Glossary of Terms,

defines these commonly used terms. Federal OSHA uses the terms “manifold” and “header” throughout 29 Code of Federal Regulations (CFR) but does not specifically define them. Federal OSHA does, however, define “header pipe,” but only as it pertains to exhaust systems and not in the context used in the welding industry. By clarifying the meaning of the aforementioned terms as used in Section 1742(e), employers will understand which devices need to be capped to control the hazards of ignition, fire and explosion.

Section 1742. Hose and Connections.

Existing Section 1742 establishes requirements for fuel gas hose systems and their connections. Existing subsection (e) requires manifold and header hose connections be capped when not in use.

Amendments are proposed to add NFPA definitions to subsection (e) of Section 1742 for the terms “header” and “manifold.” These are national consensus definitions for terms used in Article 32 with specific reference to the use of compressed gas cylinders which will clarify to employers and enforcement personnel the proper connections to be capped. Confusion on the part of the employer as to what a “header” or “manifold” is, could potentially lead to a fire and/or explosion if this equipment is not capped and fuel gas is accidentally ignited. This proposal will aid the regulated public’s understanding of the requirements of this standard.

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 amendments 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 amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments 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 August 13, 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 August 19, 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. 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

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 10, Section 1590, **Use of High Visibility Apparel—Private Roads and Off-Highway Situations.**

Heard at the March 18, 2010, Public Hearing; adopted on April 15, 2010; filed with the Secretary of State on June 2, 2010; and will become effective on July 2, 2010.

2. Title 8, Division 1, Chapter 4, Subchapter 7, General Industry Safety Orders, Article 11, Section 1599, **Traffic Control—Number of Flaggers.**

Heard at the March 18, 2010, Public Hearing; adopted on April 15, 2010, filed with the Secretary of State on May 25, 2010; and will become effective on June 24, 2010.

Copies of these standards 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.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Marley Hart, Executive Officer