

**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 **October 18, 2012**, at 10:00 a.m.  
in the Council Chambers of the Burbank City Hall,  
275 East Olive Avenue, Burbank, 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 **October 18, 2012**, following the Public Meeting,  
in the Council Chambers of the Burbank City Hall,  
275 East Olive Avenue, Burbank, 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 **October 18, 2012**, following the Public Hearing,  
in the Council Chambers of the Burbank City Hall,  
275 East Olive Avenue, Burbank, 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 **October 18, 2012**.

1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7  
Article 2, Section 3210 and Article 35, Section 3900  
**Elevated Locations - Guardrail Exception for Portable Amusement Rides**

Descriptions of the proposed changes are as follows:

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7

Article 2, Section 3210 and Article 35, Section 3900

**Elevated Locations - Guardrail Exception for Portable Amusement Rides**

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

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking to amend Section 3210(b) of the General Industry Safety Orders (GISO) by adding a new exception (No. 10). Section 3210(b) requires the installation of guardrails, some with toeboards, at elevated work locations of specified heights (other than buildings). This rulemaking proposes the use of personal fall protection equipment where design or other work processes make installation of guardrails impracticable on portable amusement rides. The need to amend this section was originally brought to the attention of Board staff by the Division of Occupational Safety and Health (Division). The Division notes that the language of Exception No. 9 to Section 3210(b) is not applicable to portable amusement rides, and in fact, was intended to address vehicles/mobile equipment, which would include motor vehicles, trucks, tankers, rail cars and mobile construction equipment, not amusement rides. The issue of clarity as to the application of Exception No. 9 to portable amusement rides is corroborated by the Division's field enforcement experience.

Board staff notes that there are no comparable federal OSHA regulations addressing portable amusement rides. This proposal is intended to provide specificity and clarity in Title 8 by requiring that fall protection systems be provided and used by employees where guardrails are impracticable on portable amusement rides for the operations described in the proposal. 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.
- Differs from existing federal regulations, in that the federal regulations do not have specific provisions dealing with portable amusement rides. This proposal will add a new exception specifically for portable amusement rides to provide personal fall protection equipment where the design or work processes make it impracticable to install railing protection.
- 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 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. In this case, the proposal relies on relevant provisions of the Construction Safety Orders (CSO).

- Is the least burdensome effective alternative. The proposal is consistent with existing alternative methods for personal fall protection to ensure employee safety at unprotected sides of elevated work locations. This proposal requires the availability and employee use of personal fall protection equipment.

#### Section 3210. Guardrails at Elevated Locations.

Existing Section 3210 states guardrail requirements for buildings and other elevated locations where employees are exposed to falls from unprotected work locations.

#### Subsection (b).

Existing subsection (b) sets forth fall protection requirements for elevated work locations 4 feet or more in height that are not buildings or building structures. The proposed Exception No. 10 to Section 3210(b), specific to portable amusement rides, provides that, when the use of guardrail systems are rendered impracticable, employees shall be provided and shall use personal fall protection equipment in accordance with Section 1670 of the CSO. Without proposed Exception No. 10, confusion will continue as to whether alternatives to guardrails may or may not be utilized by portable amusement ride employers to protect their workers from falls from elevation. The proposal is necessary to clarify to the employer when personal protection systems may be used as an alternative to guardrails to ensure that the employee is protected from a fall when working at elevation on portable amusement rides.

#### Section 3900. Purpose.

Existing Section 3900 establishes minimum standards for the design and other work processes regarding portable amusement rides for the protection of persons using such rides. An informative Note referring to Section 3210(b), Exception No. 10, is proposed. This Note guides employers and others to the relevant fall protection provision in Section 3210(d). This proposal is necessary to clarify to employers that where railings are impracticable, employees shall be provided and use personal fall protection equipment.

### **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 obviates the need to attempt to install expensive and problematic railing systems on equipment not designed for such installation which is more costly than using personal fall protection systems.

Therefore, the adoption of the proposed amendments to these standards 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.

### **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 regulations do 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 these standards do 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.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do 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.)

These proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

## EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposal would provide businesses, small or large, clear direction to provide personal fall protection where railing protection is impracticable. This proposal will promote worker safety by requiring that employees be provided and wear personal fall protection equipment as specified by existing Title 8 standards.

Therefore, 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.

### 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.

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 **October 12, 2012**. 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 **October 18, 2012**, 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.

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JOHN D. MACLEOD, Chairman