

**NOTICE OF PROPOSED RULEMAKING
OSHAB OASIS System Rules of Practice and Procedure**

The Occupational Safety and Health Appeals Board (“Board”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board will hold a public hearing on Thursday, March 3, 2016, at its normally scheduled public meeting held at 2520 Venture Oaks Way, Suite 300 in Sacramento, CA 95833 and 100 North Barranca Street, Suite 410 West Covina, CA 91791 at 9:30 a.m. The locations are wheelchair accessible. At the hearing, any person may present statements orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Board. Comments may also be submitted by email to agonzalez5@dir.ca.gov. The written comment period closes at 5:00 p.m. on **March 3, 2016**. The Board will consider only comments received at the Board offices by that time. Submit written comments to:

Autumn Gonzalez
Cal/OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

AUTHORITY AND REFERENCE

Labor Code (LC) Section 148.7 authorizes the Board to adopt, amend, or repeal rules of practice and procedure pertaining to hearing appeals and other matters falling within its jurisdiction. The Occupational Safety and Health Appeals Board (Board) is charged with hearing and resolving appeals filed by employers for occupational safety and health citations issued by the Division of Occupational Safety and Health. The proposed regulations implement, interpret, and make specific LC Section 6603.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The Board initiates this rulemaking to update its Rules of Practice and Procedure. The mission of the Appeals Board is to fairly, timely and efficiently resolve appeals and to provide clear,

consistent guidance to the public, thereby promoting workplace safety and health. A three-member Board appointed by the Governor and confirmed by the Senate handles appeals from private and public-sector employers regarding citations issued by the Division of Occupational Safety and Health for alleged violation of workplace safety and health laws and regulations. These appeals are heard in two stages. Initial appeals are held before an Administrative Law Judge (ALJ) appointed by the Board; an appeal of the ALJ decision may be heard by the Board.

Updated and additional Rules of Practice and Procedure are required to add clarity and transparency to the Board's current practices, to add greater efficiencies in its proceedings, to bring procedural rules into conformity with the Board's current practices, and to implement the planned electronic case filing and case management software, known as the OSHAB Appeal Scheduling and Information System, or "OASIS".

Proposed rules 346 OSHAB Scheduling and Information System-OASIS, 346.1 Validity of Scanned Documents, and 346.2 Official Record and OASIS Electronic File assist in implementation of the Board's planned OASIS electronic case management system. Changes are also proposed to current rules 347 Definitions, 348 Computation of Time, 355.1 Official Address of Record, 355.2 Proper Method of Service by Appeals Board, 355.3, Service by Parties, Intervenors, Obligors and Representatives, 355.4 Filing Documents with the Appeals Board, 355.5 Form and Size Requirements for Electronically Filed Documents, 355.6 Form and Size Requirements for Paper Filed Documents, 356 Notice to Employees of Appeal and Hearing, 359 Filing of Appeal-Date, 359.1 Appeal Form, 361.3 Issues on Appeal, 376.4 Return of Exhibit, 376.8 Administrative Law Judge Preparation of Hearing Record, and 391.1 Petition for Reconsideration to allow for electronic technologies to be utilized by the Board and parties in Board proceedings. The purpose of these changes is to bring the Board's procedural rules into conformity with the Board's planned OASIS electronic case filing and case management software. Specifically, the proposed rule changes will allow for electronic submission of documents in addition to the Board's current paper submission procedures, eliminate facsimile submission, and allow for e-mail communications in certain instances. The proposed rules allow for the Board to store documents electronically, and to recognize scanned electronic documents as evidence in Board proceedings. These rules are necessary to conform the Board's rules to this new technology that the Board will be implementing in its case management process.

Other proposed rule additions and changes add greater clarity and eliminate areas of confusion in Board's procedures. The Board's Rules of Practice and Procedure are clarified in proposed revisions to rule 350.3 California Code of Judicial Ethics, 352 Ex Parte Communications, and 372.8 Discovery Exclusive Provisions to address and eliminate areas of confusion in Board proceedings.

Through regulations including 372.6 Proceeding to Compel Discovery, 383 Failure to Appear, 376 Time and Place of Hearing, 380 Briefs, and 392.5 Availability of Recording Media, this

rulemaking also conforms the Board's regulations to practices that are in current use at the Board, for greater transparency to the regulated community. Currently, Board's ALJs have broad discretionary authority under current Rule 350.1, and other rules, to regulate the conduct of proceedings before them. Board ALJs have used their discretionary authority under rule 350.1, and other rules, to formulate practices and procedures that are well-established, but are not specifically stated in the rules. These proposed changes will serve to create greater transparency in the Board appeals process, by ensuring that parties are provided with accurate Rules of Practice and Procedure that reflect the current state of Board processes, and they will serve to add greater uniformity in Board proceedings.

In order to create greater efficiency in its procedures and practices, the Board also proposes new regulations and changes to current regulations. Proposed regulation 376.7 Hearing Record will allow parties to elect to make the transcript of a court reporter the official record of a hearing, rather than the Board's electronic recording. Allowing this option will be both more efficient and more convenient for the parties. The Board also proposes to allow for the use of self-executing orders through rule 350.4; quick resolution of party status questions through amendments of rule 354 Party Status; and the use of settlement orders where parties are able to efficiently settle appeals without the use of formal Board proceedings in rule 364.2. New rule 372.9 Division's Production of Evidence at Filing of Appeal will expedite the exchange of information in the appeals process.

The Board proposes to renumber, edit cross-references to other regulations, and make other non-substantive grammatical and stylistic changes to other portions of the Board's rules of Practice and Procedure found in current rules: 356.1 Form of Participation Notice, 356.2 Responsibility of Employee to Notify Employer and Other Employees of Proceeding, 371 Prehearing Motions, 371.1 Motions Concerning Hearing Dates, 371.2 Amendments, 376.1 Conduct of Hearing, 378 Representation at Hearing, 392 Proof of Service and 392.4 Motions During Reconsideration Process. References to other rules found in these sections are amended to ensure accuracy based on changes proposed in this rulemaking package.

Anticipated Benefits of the Proposed Regulations:

These proposed regulatory changes will allow the Board to update its current regulations for increased clarity and efficiency. The changes will allow the Board to implement a new, modern computerized case management system that provides stakeholders with the capacity to file documents online. The system permits enhancements to the Board's operations, processes, and procedures, including allowing electronic/online filing and communications and enhancements to its calendaring capabilities. The Board anticipates that this new system will provide many stakeholders with an easier and more efficient means of accessing Board services, and seeks to ensure that all parties have accurate and timely information as to how to use the new electronic system. These proposed rules will update the Board's procedural rules to effectively implement

and utilize the new OASIS system, and they will ensure that all parties are provided accurate and useful information regarding the utilization of the new electronic procedures where available.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Board has concluded that the changes related to the Board's Rules of Practice and Procedure, as well as its proposed electronic scheduling and case management system, are not inconsistent with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: \$20,000 savings to OSHAB in transcription fees, the Board estimates that it will save on ordering approximately 4 transcripts at a cost of \$5000 per transcript per year. The costs of OSHAB's computer system in 2014 through 2016 have totaled \$445,116, and have included customization of software and other related costs associated with purchase and installation of the new system. Continued contract costs in fiscal year 2016/17 is \$130,294.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statewide adverse economic impact directly affecting businesses and individuals: None

Significant effect on housing costs: None

Results of the Economic Impact Analysis

The Board concludes that it is (1) unlikely that the proposed regulations will eliminate any jobs in the State of California, (2) unlikely that the proposed regulations will lead to the creation of new businesses or the elimination of existing businesses within the State of California, (3) unlikely that the proposed regulations will lead to the expansion of businesses currently doing businesses within the state of California.

Benefits of the Proposed Action: The procedural amendments directly benefit the health and welfare of California workers by adding an additional, optional means (electronic filing) by which parties may file and pursue a citation at the Appeals Board. By providing another way for the parties to access the appeals process, and by clarifying and increasing efficiency in the administrative process generally, the Occupational Safety and Health Act and public will benefit.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5 subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would 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 than the proposed action or would be more cost-effective to affective private persons and equally effective in implementing the statutory policy or other provision of law.

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.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Autumn Gonzalez
Agonzalez5@dir.ca.gov
Cal/OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Gonzalez at the above address.

AVAILABILITY OF STATEMENT OR REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons and the notices and meeting minutes of the November 6, 2014 and March 5, 2015 stakeholder meetings. Copies may be obtained by contacting Ms. Gonzalez at the contact information listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Gonzalez at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Gonzalez at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed through our website at <https://www.dir.ca.gov/oshab/Rulemaking.htm>