

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Article 19, Sections 8495, 8496, 8497 and 8500
of the Tunnel Safety Orders

Cranes and Derricks in Construction – Underground and Demolition**SUMMARY**

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates that the Board adopt standards at least as effective as federal standards addressing occupational safety and health issues.

On August 9, 2010, the U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) issued a final standard updating the requirements for cranes and derricks used in construction work (CDAC). However, due to federal formatting, the final federal standard inadvertently did not apply to demolition and underground construction work. Federal OSHA therefore issued on August 17, 2012, a Direct final rule and Notice of proposed rulemaking to apply the updated standards for cranes and derricks in construction to demolition and underground construction work as well.

California adopted the 2010 federal CDAC standard using the Horcher process; however, due to differences in formatting between state and federal, the federal omissions and oversights did not affect state standards in the same way. Nevertheless, some state modifications are necessary to conform state standards for cranes and derricks used in demolition and underground construction to the latest federal rule.

The current state standards for cranes and derricks used in demolition and underground construction are found in the General Industry Safety Orders, the Tunnel Safety Orders, and the Construction Safety Orders. Due to format differences between the proposed federal and state standards, Board staff recommends that this rulemaking be done via conventional rulemaking procedures (vis-à-vis Horcher) to afford the public with an opportunity to comment on all aspects of the proposed changes.

The Board is relying on the explanation of the federal standards found in Federal Register, Volume 77, No. 160, pages 49722-49728 and 49741-49748, August 17, 2012, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards which will have the same effect as the federal standards except where existing state standards provide a higher level of safety.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to improve and provide worker safety at places of employment in California regarding cranes and derricks involved in demolition and underground construction work.

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 standards, in that it references General Industry Safety Orders, Group 13 standards for Cranes and Other Hoisting Equipment. The federal standards cross-reference to 29 CFR Part 1926, Subpart CC, Cranes and Derricks in Construction. California's Tunnel Safety Orders have historically used horizontal standards for cranes and derricks contained in the General Industry Safety Orders. Modifications to existing text in order to provide equivalency with federal standards are clearly indicated in strikeout and underline form in the text.
- 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.
- Is the least burdensome effective alternative. The proposal retains existing standards to the maximum extent possible and only modifies and amends existing standards where necessary to provide safety equivalent to recently promulgated federal standards as required by California Labor Code Section 142.3.

Section 8495, Hoisting Equipment and Systems, subsection (a)(11).

This subsection requires a non-combustible hoist house to be constructed such that, wherever possible, a clear and unobstructed view of the shaft collar is provided. A new subsection (A) is proposed to add that a fire extinguisher is to be mounted in each hoist house. The necessity for this addition is to clarify Division of Occupational Safety and Health (Division) enforcement policy and to conform to federal OSHA requirements.

Section 8495(b), Personnel Hoisting Systems, subsection (5).

This subsection requires personnel hoists to be equipped with two brakes. One is to be an automatic brake that will be applied whenever the power fails, is shut off or when the power control lever is in the “off” position. The other is to be a hand or foot brake that operates on the hoist drum. It is proposed to modify this requirement to require “at least two brakes” and to clarify that a broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this section. The necessity for these modifications is to provide equivalency with federal standards for underground construction.

Section 8495(c)(4), Shaft Conveyances.

This subsection specifies minimum thicknesses and maximum mesh for side casings of conveyances used for moving personnel. It is proposed to modify these specifications to comply with more protective federal standards. The necessity for these modifications is to provide safety at least as effective as federal standards.

Section 8496(c)(3), Shafts and Raises Under Construction.

This subsection provides that in areas of shaft construction where buckets or cages without guides are used for handling personnel and material, the travel speed of the conveyance shall not exceed 200 feet per minute. It is proposed to add that, where practicable, governor controls shall be installed and used during personnel hoisting. This modification recognizes that speed governors are only available on hoists and may not be practicable for personnel hoisting using cranes. The necessity for this amendment is to provide equivalency with federal standards.

Section 8500, Hoisting Operations, subsection (p).

This subsection provides that personnel and materials shall not be hoisted together in the same conveyance unless the cage operator is protected from shifting materials. An amendment is proposed to add that personnel may only ride in a cab or skip with materials when the conveyance is controlled by the operator riding in that conveyance. The necessity for this amendment is to provide equivalency with federal standards.

Section 8500, Hoisting Operations, subsection (t). (New subsection)

This new subsection will (1) clarify requirements that materials being raised or lowered are to be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft, and (2) add a requirement for flashing warning lights to be located at the shaft bottom and subsurface shaft entrances to warn employees whenever a load is above or whenever the load is being moved in the shaft. The necessity for these modifications is to provide equivalency with federal standards.

This regulatory proposal is intended to provide worker safety at places of employment in California.

REFERENCE TO COMPARABLE FEDERAL STANDARD

The Occupational Safety and Health Standards Board is proposing this rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues. In conformance

with Government Code Section 11346.9(c), the Board provides the following information. Federal OSHA promulgated standards addressing cranes and derricks used in demolition and underground construction on August 17, 2012, as 29 Code of Federal Regulations, Part 1926, modifications of Subparts S and T. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 77, No. 160, pages 49722-49728 and 49741-49748, August 17, 2012, as the justification for the Board's proposed rulemaking action.

DOCUMENT RELIED UPON

Federal Register, Volume 77, No. 160, pages 49722-49730 and 49741-49749, August 17, 2012.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or 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.

Economic Impact Analysis

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.¹

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.

¹ Federal Register, Vol. 77, No. 160, pp. 49725-49727

This regulatory proposal is intended to provide worker safety at places of employment in California.

Cost Impact on Private Persons or Businesses

Based on a federal final economic analysis², the Board believes that any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action are expected to be insignificant and cannot be accurately determined.

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

² Ibid.

These proposed standards 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

The Board has determined that the proposed amendments may affect small businesses. However, no significant adverse economic impacts are anticipated because changes are minor modifications of existing state standards necessary to be equivalent to a recently promulgated federal direct final rule.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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.

Benefits of the Regulation: Clarifications will provide improved guidance for employers in providing safe working conditions for cranes and derricks used in underground construction and demolition.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.