

**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 20, 2009**, at 10:00 a.m.  
in the Auditorium of the State Resources Building,  
1416 9th Street, Sacramento, California 95814

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 20, 2009**, following the Public Meeting,  
in the Auditorium of the State Resources Building,  
1416 9th Street, Sacramento, California 95814

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 20, 2009**, following the Public Hearing,  
in the Auditorium of the State Resources Building,  
1416 9th Street, Sacramento, California 95814

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 **August 20, 2009**.

1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 7  
Section 3333 and Article 25, Section 3650  
[Blue Stop Signs](#)
  
2. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 47  
Section 4086  
[Momentary Contact Devices for Portable Power Driven Augers](#)

Descriptions of the proposed changes are as follows:

1. TITLE 8:            **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 7  
Section 3333 and Article 25, Section 3650  
**Blue Stop Signs**

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

This rulemaking was initiated by Board staff as the result of a recommendation from a stakeholder, Mr. John McCullough, of Wells Fargo of California Insurance Services, Inc., contained in a letter to the Board dated February 18, 2009.

In his letter, Mr. McCullough stated that Sections 3333(a) and 3650(t)(23) were not consistent with each other in the use of the terms “blue flags”, “blue stop signs” and “blue lights”. General Industry Safety Orders (GISO) Section 3650(t)(23) requires the use of blue flags or blue lights while GISO Section 3333 requires the use of blue stop signs and does not mention blue flags or blue lights. Staff concludes that the inconsistency may result in confusion over the application of Sections 3333 and 3650 with regard to the implementation of blue signal protection vital to the safety of railway personnel who could be struck and injured by inadvertent railcar movement.

The proposed amendments are as follows:

#### **Section 3333. Blue Stop Signs.**

This Section addresses the use of blue stop signs on industrial railroad sidings; along with means to prevent railcar movement; the placement of signs and signals, and the design, placement and maintenance of blue stops signs.

Subsection (a) addresses the use of blue stop signs for day and night use and blue lights when needed. Subsections (c), (d), (f) and (g) address requirements for mounting, placement and maintenance of blue stop signs and signals. Amendments of all these subsections are proposed so that all the subsections refer to blue signs, blue flags and blue lights, thereby rendering those subsections consistent with one another and with Section 3650(t)(23) noting that, in light of the wording of subsection 3333(a), it is not necessary to have the words “blue stop” precede the “signs” in subsections (c), (d), (f) and (g).

#### **Section 3650. Industrial Trucks.**

Section 3650 contains standards that include but are not limited to: powered industrial truck (PIT) design in accordance with established national consensus standards, use of front-end attachments, PIT modifications, conversion kits, and the use of trailers. This section also addresses 33 PIT and tow tractor operating rules. Rule number 23 addresses the hazard of railcar movement during loading and unloading requiring brakes and wheel chocks be used and blue flags or blue lights displayed in accordance with Section 3333 and Federal railroad standards.

An amendment is proposed to add the words “stop signs”, and “blue”. The proposed amendments will clarify to the employer that blue stop signs and blue flags are included as part of the protection that is required. The proposed amendments will render Section 3650 and Section 3333 references consistent with each other.

## **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 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.)

The proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these 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.)

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 business. However, no economic impact is anticipated.

### **ASSESSMENT**

The adoption of the proposed amendments to these regulations 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:**        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 47  
Section 4086  
**[Momentary Contact Devices for Portable Power Driven Augers](#)**

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

Section 4086 of the General Industry Safety Orders (GISO) requires all portable power pipe threading/cutting machines and portable power drives to be permanently equipped with a momentary contact device (so-called “deadman” control or “kill switch”). In the Occupational Safety and Health Appeals Board (OSHAB) Decision In the Matter of Frontier Fence, Docket Nos. 05-R2D3-4378 and 4379, dated November 7, 2007, an employee assisting in the operation of a five horsepower, two-man portable power driven auger (earth drill) was entangled by the rotating auger when the machine became stuck after coming in contact with an object below ground. Augers of this type are handled by one or two employees typically to plant large shrubs, install fences, build decks, dig mailbox holes and dig holes for other structural members. They are not related to grain augers used in agriculture to move grain from trucks and carts into storage bins.

The primary operator was not able to control the auger and it fell over onto the assisting employee's leg. The auger was not equipped with a functioning momentary contact device (MCD)<sup>1</sup> and, therefore, could not be turned off as it continued to rotate, seriously injuring the employee's leg. The Division of Occupational Safety and Health (Division) cited the employer for failing to provide an MCD on the auger; however, the OSHAB Administrative Law Judge determined that by definition, an auger is not any of the listed pieces of equipment contained in Section 4086 and dismissed the citation. As a result of this OSHAB decision, the Division is not able to cite the employer for exposing the employee to the possibility of serious physical injury by failing to use augers equipped with an MCD.

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<sup>1</sup> A momentary contact device is a type of device in which a switch, trigger or button closes or opens the circuit when it is actuated.

The purpose of this rulemaking is to amend Section 4086 to specifically require all portable power driven augers, both single and dual operator types, regardless of how they are powered (gasoline, hydraulic or electric), to be equipped with a functioning MCD.

This proposal also deletes unnecessary language pertaining to a six month effective date. The standard became effective on May 11, 1984, and enforceable six months later. There is no reason to specify a six month effective date for auger MCDs since this type of equipment is typically provided with an MCD by the manufacturer.

### **Section 4086. Momentary Contact Devices.**

This section requires all portable power pipe threading/cutting machines and portable power drives to be equipped with an MCD. Amendments are proposed to delete the six month effective date as unnecessary and include language which names portable power driven augers as listed equipment requiring an MCD. The proposal will ensure that employers understand that they must use augers that have a functional MCD, and it will provide the Division with the ability to enforce the MCD provisions of Section 4086 upon auger users, thus preventing exacerbation of contact injury (entanglement) created by an uncontrolled, rotating auger head.

Board staff consulted with manufacturers and a distributor of portable power driven augers and ascertained that the proposal is feasible and consistent with industry practice as such equipment is equipped with an MCD.

## **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 state, local and private employers 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 14, 2009. 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 20, 2009, 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 Michael 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

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JOHN D. MACLEOD, Chairman