

**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 16, 2012**, 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 16, 2012**, 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 16, 2012**, 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**

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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 and Logging and Sawmill Safety Orders as indicated below, at its Public Hearing on **August 16, 2012**.

1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7  
Article 7, Section 3328(b)  
**Machinery and Equipment, Used and Operated**
  
2. TITLE 8:     **LOGGING AND SAWMILL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 13  
Article 11, Section 6325  
**Fueling of Helicopters Used in Logging Operations**

Descriptions of the proposed changes are as follows:

1. TITLE 8:      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7  
Article 7, Section 3328(b)  
**Machinery and Equipment, Used and Operated**

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

This rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of S & S Services, Docket Nos. 08-R2D1-2131 and 2132 dated June 17, 2010, and the OSHAB Denial of the Division of Occupational Safety and Health (Division) Petition for Reconsideration in that matter. The Division issued a serious violation citation under Section 3328(b) for using a personnel lift without installing the outriggers as recommended by the manufacturer. As stated in the OSHAB Decision, the use of the lift without its outriggers is not in accordance with the manufacturer's operating instruction and led to the lift becoming unstable and toppling resulting in serious employee injury. However, the improper use of the lift as described in the Decision does not violate Section 3328 which only requires employers to ensure that manufacturer's inspection and maintenance recommendations are followed. As a result, the Administrative Law Judge held that the Division did not prove the alleged violation of Section 3328(b).

This proposal is needed in addition to Section 3328(a), since Section 3328(a) is limited to dangers relating to "speeds, stresses, or loads," while manufacturers' recommendations might well address additional hazards associated with the machinery or equipment to which the recommendations apply. 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 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 systems for machinery and equipment except as it pertains to a particular machine, tool or component.
- 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 responding to a lack of guidance as it pertains to the use or operation of machinery and equipment. This proposal directs users to follow the manufacturer's recommendations when using or operating machinery and equipment unless otherwise directed by other Title 8 standards that may be more stringent or provides alternatives not mentioned by the manufacturer.

## **Section 3328. Machinery and Equipment.**

### **Subsection (b)**

Existing Section 3328 establishes requirements for machinery and equipment to be adequately designed, operated and maintained to ensure employee safety. However, Section 3328(b) is silent in regard to the use or operation of machinery and equipment in accordance with the manufacturer's operating instructions. This deficiency could result in the unsafe use of equipment or machinery leading to serious injury or fatality. The proposed amendment adds the words "used and operated" to ensure that machinery and equipment is used and operated in accordance with the manufacturer's recommendations. The subsequent exception to subsection (b) gives notice that other Title 8 standards may permit the operation of machinery and equipment in a manner that may deviate from the manufacturer's recommendations in which case those specific standards have precedence. The amendment will provide clarity for employers, promote consistency among Title 8 standards and ensure that machinery and equipment is used and operated safely.

### **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 expands the scope of the standard to direct users to follow the manufacturer's recommendations when using or operating machinery and equipment as they would during inspection and maintenance.

#### **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 standard 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 standard 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.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard 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.)

This proposed standard does 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 adverse economic impact is anticipated. The proposal would provide businesses, small or large, clear direction in the use and operation of machinery and equipment as recommended by the manufacturer. This regulatory proposal will promote worker safety by specifying safe practices already developed by the manufacturer of the machinery and equipment.

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.

2. TITLE 8:      **LOGGING AND SAWMILL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 13  
Article 11, Section 6325  
**Fueling of Helicopters Used in Logging Operations**

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

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking as a staff proposal to amend Section 6325(e) of the Logging and Sawmill Safety Orders (LSSO) to prohibit grounding of the aircraft and fuel supply, thereby making Section 6325(e) consistent with Section 1905 of the Construction Safety Orders (CSO). This proposal removes obsolete requirements regarding fueling procedures for helicopters in the logging industry. Specifically, consistent with current Federal Aviation Administration (FAA) recommendations and the National Fire Protection Association (NFPA) prohibition of grounding the aircraft and fueling equipment, the amendment deletes the grounding requirement.

An FAA Safety Alert for Operators dated November 23, 2010, states in part that, “Before fueling, the aircraft must be bonded to the fuel source to equalize static electricity between the fuel source and the aircraft. Grounding of the aircraft and/or fuel truck is no longer recommended because it does not prevent sparks at the fuel source, and the grounding cable may not be sufficient to discharge the electrical current.” Further, Chapter 5.4.1 of NFPA 407-2007 states in part, “Grounding during aircraft fueling shall not be permitted.” Title 8, LSSO Section 6325 has not been amended since 1985.

Board staff contacted several area helicopter flying services regarding the practice of grounding and bonding the aircraft and fuel source. The operations contacted indicated that they are not grounding either the aircraft or the fuel source but strictly bonding the aircraft to the fuel supply. Board staff also learned that, in terms of the effectiveness and safety of the proposal to eliminate the grounding requirement, the engine type, refueling method (hot or cold) and fuel type make no difference. Consequently, to ensure Section 6325 is kept up to date with the latest aircraft fueling and static discharge control methodology, Board staff proposes to amend Section 6325 consistent with the FAA and NFPA. 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 provide specific provisions dealing with helicopter operations. Federal OSHA standards are silent in the use of aircraft for logging operations and do not address bonding or grounding before and during aircraft fueling. This proposal will minimize electrical discharges and the potential for fire and explosion which could result in serious employee injury or fatality.

- 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 is consistent with current FAA and NFPA standards prohibiting grounding the aircraft before and during fueling operations. The amendment will align the CSO and LSSO regarding helicopter fueling operations and ensure Section 6325 is kept up to date with the latest aircraft fueling and static discharge control methodology.

### **Section 6325. Fueling and Fueling Area.**

Existing Section 6325 describe helicopter operations and fueling area requirements in preparation for fueling helicopters.

### **Subsection (e)**

Existing subsection 6325(e) sets forth requirements for refueling helicopters used in the logging/sawmill industry. The proposed amendment revises Section 6325(e) by deleting the words, "...and grounded, with a driven rod attached to the rear of the fuel pump..." This amendment will provide consistency with FAA guidance and NFPA standards and reduce static discharge to minimize the potential for fire and explosion which could result in serious employee injury or fatality.

## **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. This proposal removes obsolete requirements regarding fueling procedures for helicopters in the logging industry to be consistent with the FAA and NFPA. Therefore, the Board believes the proposal will not have any adverse cost impact upon employers.

### **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 amendment 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.)

This 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 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 helicopter logging operations clear direction in the latest accepted methodology for fueling the aircraft. This regulatory proposal will promote worker safety by minimizing the potential for fire or explosion from static electrical discharge consistent with the FAA and NFPA recommendations.

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 August 10, 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 August 16, 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.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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JOHN D. MACLEOD, Chairman