

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 15, Sections 1610.3 and 1616.3 of the Construction Safety Orders; Subchapter 7, Article 91, Section 4885 and Article 98, New Section 4993.1 and Sections 4999 and 5001 of the General Industry Safety Orders

Work Area Control (Crane Swing Radius Hazards)**SUMMARY**

This proposal is the result of a Division of Occupational Safety and Health (Division) generated request to amend General Industry Safety Orders (GISO), Section 4999(j) to add protection for oilers and other employees who must work within the swing radius of a crane.

Some employees, such as oilers, have duties that require them to work immediately around the crane (oilers assist the crane operator and maintain the crane and the barricades around it). Often oilers must work in areas out of the operator's sight where the oiler can be struck by the rotating crane's counterweight and/or be pinched or crushed between the rotating parts and fixed objects or the crane's non-rotating carrier.

Section 4999(j) currently contains provisions for cranes that rotate in such a way that persons may be caught between rotating parts of the crane and outside obstructions or between parts of the crane's rotating machine deck (superstructure) and non-rotating parts (carrier). The Occupational Safety and Health Appeals Board (OSHAB) issued a Decision After Reconsideration (DAR) in 1987 that held that the provisions currently found in Section 4999(j)¹ do not apply to oilers and other essential members of the crane crew who must work immediately around the crane.

This rulemaking is proposed to protect oilers and other employees who must work within the swing radius of a crane. The Board recently adopted into the Construction Safety Orders (CSO) federal standards for cranes and derricks in construction which included 29 CFR 1926.1424, Work Area Control. The Board believes that the federal standards contain verbiage that, with minor revisions, should clarify regulatory intent to protect oilers and others who must work in

¹ The text of GISO, Section 4999(j) was formerly contained in Sections 1587.10(m) and 4999(i).

the crane swing radius. In order to add further clarity to the intent to protect oilers and other essential members of the crane crew, this proposal creates a new Section 4993.1 of the GISO to address work area control (crane swing radius hazards).

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

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 standards only to the extent necessary to clarify protections for all employees (including oilers) whose duties require them to work out of view of the operator inside the crane swing radius hazard area. The proposed standards will also harmonize existing state standards for mobile cranes in the GISO with the CSO and with federal standards for cranes and derricks in construction. Since the same cranes can and often are used in both general industry and in construction, sometimes in the same day, it is important that construction and general industry standards for cranes and derricks be harmonized.
- 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 because proposed amendments are consistent with federal standards. In lieu of a formal advisory committee, and due to the limited scope of this proposal, it has been vetted via e-mail with selected representatives of labor, management, subject matter experts and the Division of Occupational Safety and Health.

Section 1610.3. Definitions.

A new definition, “Radius (Load)” is added. This definition is based on the definition in GISO, Section 4885 with clarifying text based on a counterpart definition in ASME B30.3². This proposal is necessary to clarify the proposed revisions to Section 1616.3(b) where this term is used.

Section 1616.3. Work Area Control.

² For example, see ASME B30.3-1996, Section 3-0.2.2, definition of “radius (load)”.

This existing section prescribes requirements for protecting employees where there are accessible areas in which the equipment's rotating superstructure poses a reasonably foreseeable risk of striking and injuring an employee or pinching/crushing an employee against another part of the equipment or another object. It also contains provisions for preventing accidental contact between two or more cranes operating within the boom swing radii of one another. Revisions proposed include the following:

(a)(1) Strikes the phrase “in subsection (a)(2)” in order to clarify that all parts of Section 1616.3 apply where employees are exposed to crane swing radius hazards.

(a)(1) Strikes the parenthetical “whether permanently or temporarily mounted.” These terms are superfluous, and their inclusion may cloud the issue of what is/is not to be included as part of the superstructure.

(a)(2) EXCEPTION. A requirement is added for certain markings to be visible to employees from outside the hazard area to ensure that employees do not accidentally enter the area.

(a)(3) Requires direct employee-at-risk communication with the operator similar to lockout-tagout provisions to minimize the chances for miscommunication.

(b) Adopts federal text with revisions for California definitions and multi-employer worksite standards.

The purpose and necessity of these revisions and amendments are to clarify the intent to protect all employees (including oilers) whose duties require them to work inside the crane swing radius hazard area out of view of the operator and to require coordination of operations to prevent accidental contact between the cranes when operating in proximity to one another.

Section 4885. Definitions.

The existing definition for “Radius (Load)” is proposed to be revised with clarifying text from a counterpart definition in ASME B30.3³. The purpose and necessity of this revision are to harmonize the GISO and the CSO definitions for “radius (load)” and to clarify new Section 4993.1(b) as to when precautions must be taken where cranes are operating within proximity of each other.

New Section 4993.1. Work Area Control.

A new section is proposed to protect employees, including oilers, whose duties require them to work in areas where the equipment’s rotating superstructure poses a risk of striking, pinching or crushing them. This new section will also require precautions to be taken to prevent inadvertent contact when two or more cranes are operating within the load radii of one another. These provisions are based on recently adopted federal standards for crane work area control and swing radius hazards (29 CFR 1926.1424), and they mirror proposed changes to Section 1616.3. These standards will replace Sections 4999(j) and 5001(f) which are being placed here in order to be in a more logical location (work area control); thus, those provisions will not just be limited to when the crane is handling loads. The purpose and necessity for these amendments are to

³ Ibid.

harmonize the GISO with the CSO and to clarify the regulatory intent to protect all employees (including oilers) whose duties require them to work in the crane's crane swing radius hazard area. The purpose and necessity are also to prevent accidental contact between one or more cranes operating within the load radii of one another.

Section 4999. Handling Loads, Subsection (j).

Subsection (j) currently provides that, where a rotating crane is positioned to operate such that persons may be caught between rotating parts of the crane and outside obstructions or between parts of rotating machine deck and non-rotating parts of crane, measures shall be taken to prevent workers from entering such areas while the crane is operating. The OSHAB DAR established that these protective measures do not apply to oilers and other essential members of the crane crew whose duties require them to work in the crane swing radius hazard area, and the Division states that fatalities and serious injuries to oilers continue to occur due to this interpretation. It is proposed to relocate these requirements to a new GISO, Section 4993.1, which will be created to address work area control/swing radius hazards. The purpose and necessity of this modification are to protect all employees (including oilers) whose duties require them to work in the crane swing radius hazard area. This action will also harmonize the GISO with the CSO, thus simplifying compliance.

Section 5001. Signals, Subsection (f).

Subsection (f) currently provides that, when there is a potential for accidental contact by cranes operating within the boom swing radii of one another, the employer shall ensure effective communication to coordinate operations. It is proposed to relocate the substance of this subsection to GISO, new Section 4993.1(b). The relocated verbiage will be based on recently adopted CSO, Section 1616.3(b), which is the state counterpart of 29 CFR 1926.1424(b). The purpose and necessity for this relocation are to harmonize the GISO with the CSO and to place requirements related to work area control and swing radius hazards in a single location, thus simplifying compliance.

DOCUMENTS RELIED UPON

1. Division memo dated October 5, 2009, regarding General Industry Safety Orders, Section 4999(j) [Cal/OSHA Form 9-063] with supporting documentation including Form 9.
2. Decision After Reconsideration regarding Owl Crane and Rigging, OSHAB Docket No. 83-R5D4-619, August 19, 1987.
3. Administrative Law Judge Decision regarding Owl Crane and Rigging, OSHAB Docket No. 83-R5D4-619, March 9, 1984.
4. Federal Register, Vol. 75, No. 152, August 9, 2010, pages 48154 – 48155.
5. ASME B30.3-1996, Section 3-0.2.2, Definition of "Radius (Load)".

These documents are 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.

No significant adverse economic impacts are anticipated because changes are principally clarification of work area control provisions in recently adopted CSO crane standards, which are based on federal standards applicable in all states. In addition, the GISO standards are proposed to be revised to be consistent with the CSO regarding work area control. Since mobile cranes can and do work in both construction and general industry, this harmonization should not result in any significant additional cost to crane lessors, operators and/or owners. These proposals were vetted via an electronic advisory committee; i.e. selected members of labor, management, subject matter experts and interested government have previewed the proposal and no significant cost impact was identified.

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.

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

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 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 because the proposed modifications and clarifications will conform general industry standards with construction standards and with federal standards, thus eliminating regulatory inconsistencies and simplifying compliance.

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. To the contrary, the proposed coordination and harmonization of the CSO and the GISO standards for crane swing radius hazards is anticipated to simplify compliance and to promote operating efficiencies.