

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
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**NOTICE OF PROPOSED MODIFICATIONS TO  
CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 7, Article 12, Section 3427(a)  
of the General Industry Safety Orders**

*Tree Work – Safe Work Procedures*

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named regulations in which further modifications are being considered as a result of public comments and/or Board staff evaluation.

On July 17, 2003, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 3427(a) of the General Industry Safety Orders, California Code of Regulations. The Standards Board received written comments on the proposed revisions. The regulations have been further modified as a result of the comments and Board consideration.

A copy of the full text of the regulation as originally proposed, and a copy of the modified text clearly indicating the further modifications, is attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and staff responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on \_\_\_\_\_ at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. These regulations will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Keith Umemoto at (916) 274-5721.

**OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD**

Date:

Keith Umemoto, Executive Officer



## **REGULATIONS AS ORIGINALLY PROPOSED**

**STANDARDS PRESENTATION**  
**TO**  
**CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,  
TITLE 8, CHAPTER 4

Amend Section 3427 to read:

§3427. Safe Work Procedures.

(a) Climbing and Access.

(1) Prior to climbing the tree, the tree shall be visually inspected by a qualified person who shall to determine and ensure use of the safest method of entry into the tree, ~~as described in this section.~~

(2) The location of all electrical conductors and equipment within the work area shall be identified in relation to the work being performed.

~~(2)~~ (3) The climbing line must be crotched as soon as practicable after the employee is aloft, and a taut line-hitch tied and checked.

~~(3)~~ (4) The climbing rope shall be passed around the main leader or a major upright branch of the tree as high as necessary using branches with a wide crotch to prevent any binding of the safety rope. The crotch selected for tying-in shall be over the work area as nearly as possible, but located in such a way that a slip or fall would not permit the employee to come in contact with any electrical conductor, equipment or other hazard. The rope shall be passed around the main leader or an upright branch, using a limb as a stop. Feet, hands, and ropes should, where possible, be kept out of tight-V-shaped crotches.

~~(4)~~ (5) When working aloft, employees shall be required to wear tree workers' saddles and tie-in with an approved safety strap or rope.

~~(5)~~ (6) Employees shall remain tied in until the work is completed and they have returned to the ground, unless it is necessary to recrotch.

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NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

**PROPOSED MODIFICATIONS**  
(Modifications are indicated by  
**bold, double underline wording for new language,**  
**and bold, strikeout for deleted language.**)

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## **SUMMARY AND RESPONSE TO COMMENTS**

## SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS

### I. Written Comments

Mr. David G. Marren, Director of Regulatory Affairs, The F.A. Bartlett Tree Expert Company, by letter dated July 11, 2003.

#### Comment No. 1:

Mr. Marren wrote on behalf of the F.A. Bartlett Tree Expert Company (Bartlett Tree Experts) explaining that Bartlett Tree Experts is a full service international tree care company, providing scientific tree care to its clientele throughout the United States, Canada, England, and Ireland. Bartlett Tree Care Experts provides tree care services throughout California from locations in San Jose, Pleasant Hill, San Rafael, San Francisco, Santa Barbara, and Sonoma.

With respect to the proposed amendments to Section 3427(a)(1), Bartlett Tree Experts believes that the proposal to mandate that every tree is visually inspected by a “qualified person” prior to entering the tree is a responsible and sensible addition to California’s present law. In addition, Bartlett Tree Experts believes that it is not overly burdensome to employers to ensure that every person entering a tree is a “qualified person.”

#### Response:

The Board thanks Mr. Marren and Bartlett Tree Experts for its support of the proposal with respect to the proposed amendment that a qualified person visually inspect the tree prior to any person entering the tree. With respect to comments relating to a “qualified person” entering a tree, see the response to Comment No. 3.

#### Comment No. 2:

Mr. Marren further commented that the mandate [in proposed Section 3427(a)(1)] that a qualified person shall determine and “ensure use of the safest method of entry” into the tree is highly confusing, and needs to be clarified. Bartlett Tree Experts understands that the proposed regulation would have little meaning without some provision that the risk assessment accomplished by a qualified person is acted on accordingly. Mr. Marren states that the way the proposal is written, it appears to mandate that only aerial lift units can be used for tree work and that climbing the tree is only an option if the tree is inaccessible by aerial lift. One is led to this interpretation because it can be argued that entering a tree with an aerial lift unit is almost always safer than entering a tree with rope and saddle.

Bartlett Tree Experts provided two recommendations for how the wording in the proposal could be clarified while at the same time protecting employees from climbing a tree that is unsafe to climb. The proposed language follows:

“Prior to climbing the tree, the tree shall be visually inspected by a qualified person. If the qualified person determines that the tree is not safe to ascend using a rope and saddle, then other means of entry into the tree must be utilized,” or “Prior to climbing the tree, the tree shall be visually inspected by a qualified person who shall determine and ensure a safe method of entry into the tree.”

Response:

Board staff believes that this comment has merit. It is not the intent of the proposed regulation to prohibit the climbing of trees with rope and saddle, which is the most frequently used method to access trees. The intent of the proposed regulation is to ensure that a safe method of entry into a tree is used. Therefore, Board staff is proposing modifications to proposed Section 3427(a)(1) consistent with the second recommendation by Mr. Marren.

Comment No. 3:

Bartlett Tree Experts believes that the proposal should ensure that each and every employee who will enter the tree is a “qualified person” and that the employee entering the tree is trained to be a “qualified person.”

Response:

Board staff believes that existing regulations related to the general requirements for tree work contained in Section 3421(a) through (d) sufficiently address the training and requirements for those employees performing tree maintenance or removal work. Section 3421(a) requires an accident prevention program including employee training and instruction on safety and health hazards in accordance with Section 3203, Injury and Illness Prevention Program. Further, Section 3421(c) specifies the employees shall be trained and instructed in the hazards involved in their job assignments, including the proper use of all equipment utilized in tree work, maintenance or removal operations. The training must be documented by the employer prior to performing a job assignment. Therefore, Board staff believes that existing regulations address the training and qualifications necessary for tree workers to safely perform their required duties and that further modification to the proposal as a result of this comment is unnecessary.

The Board thanks Mr. Marren and Bartlett Tree Experts for their comments and participation in the Board’s rulemaking process.

Mr. Joseph F. Tommasi, Manager, Safety and Loss Prevention, The Davey Tree Expert Company, by letter dated July 17, 2003.

Comment:

The Davey Tree Expert Company provides utility, residential, commercial and municipal tree care services to clients across North America and specializes in utility line clearance services to multiple California utility clients. The Davey Tree Expert Company employs approximately 1300 persons in California, and the proposed regulation directly affects their operations. The Davey Tree Expert Company in cooperation with the Tree Care Industry Association reviewed the Initial Statement of Reasons for the proposal, the decisions by the Occupational Safety and Health Appeals Boards related to the proposal, and the proposed amendments.

The Davey Tree Expert Company made comments consistent with and similar to the three comments submitted by Mr. Marren, Bartlett Tree Experts that are outlined above.

Response:

The responses to Mr. Marren, Bartlett Tree Experts address the concerns expressed by Davey Tree Expert Company. The Board thanks Mr. Tommasi and Davey Tree Expert Company for their comments and participation in the Board's rulemaking process.

Ms. Cynthia Mills, CAE, President, Tree Care Industry Association, by letter dated July 17, 2003.

Comment:

The Tree Care Industry Association (TCIA) is a trade association for commercial arborist (tree care) firms throughout the United States. Specifically, TCIA has almost 200-member tree care firms in California affected by the proposal. Worker safety is a paramount concern for members and the TCIA. They reviewed the Initial Statement of Reasons for the proposal, the decisions by the Occupational Safety and Health Appeals Boards related to the proposal, and the proposed amendments.

TCIA made comments consistent with and similar to the three comments submitted by Mr. Marren, Bartlett Tree Experts that are outlined above.

Response:

The responses to Mr. Marren, Bartlett Tree Experts address the concerns expressed by Ms. Mills, on behalf of TCIA. The Board thanks Ms. Mills and TCIA for their comments and participation in the Board's rulemaking process.

II. Oral Comments

There were no oral comments received.