

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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

**FINAL STATEMENT OF REASONS****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

There are no modifications to the information contained in the Initial Statement of Reasons except for the following sufficiently related modifications, which are the result of public comments and further Board staff evaluation of the proposal.

Section 3427. Safe Work Procedures

The General Industry Safety Orders (GISO), Section 3427 contains safe work procedures for tree maintenance and removal.

Subsection (a)(1)

Existing subsection (a)(1) provides requirements for inspection of the tree to determine the safest method of entry and the location of any electrical conductors and equipment within the work area. Proposed amendments specify that a “qualified person” must visually inspect the tree to determine and ensure use of the safest method of entry into the tree. Several comment letters were received by the Board indicating that the phrase “ensure use of the safest method of entry into the tree” could be confusing and lacks clarity. Climbing trees with rope and saddle is a safe procedure in many situations and it is a common method used to access trees for maintenance or removal work. Rationale for the comments stated that it could be argued that the language is confusing and one could argue that the use of an aerial device is almost always the safest method of entry into a tree. Comments stated that the proposed language could be construed to prohibit climbing into trees with rope and saddle unless a tree is inaccessible and cannot be reached with an aerial device.

The intent of the proposed regulation is to ensure that a safe method of entry into the tree is used. Board staff believes that the comments have merit and that a qualified person must have the option to select the appropriate method for safe tree entry such as climbing with rope and saddle or by aerial device. Therefore, modifications are proposed to require that a tree be visually inspected by a qualified person who shall determine and ensure a safe method of entry into the tree. The proposed modification is necessary to provide clarity to the regulation.

Summary and Response to Oral and Written 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 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 become 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 Association. TCIA 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.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would 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 than the adopted action.

3427 fsor.doc