

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

General Industry Safety Orders
Sections 6052, 6056, 6056.1 (New), 6057, 6060, and 6062
(Published on June 30, 2017)

Commercial Diving Operations (HORCHER)

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **August 17, 2017** in the **Council Chambers, Room S249** of the **Pasadena City Hall, 100 North Garfield Avenue, Pasadena, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **June 30, 2017**, and closes at 5:00 p.m. on **August 17, 2017**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By fax at (916) 274-5743; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.

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

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations addressing commercial diving, as 29 Code of Federal Regulations, Part 1910, Sections 1910.410, 1910.420, 1910.421, 1910.422, 1910.423, 1910.424, 1910.425, and 1910.430. Although the federal (and corresponding California) regulations covering commercial diving have been in effect for years, a complaint filed by the Association of Diving Contractors International claimed that in several specific instances California's regulations are not as protective as OSHA's regulations. The Board is relying on the explanation of the provisions of the federal regulations in an email from OSHA dated November 26, 2014 with the subject "FW: California Diving Standards vs CFRs", as the justification for the Board's proposed rulemaking action. Federal diving regulations were issued on July 22, 1977, in Federal Register, Volume 42, No. 141, pages 37650-37674. The Board proposes to adopt regulations, which are the same as the federal regulations, except for editorial and format differences.

Federal commercial diving regulations govern health and safety practices in diving and related support operations conducted in connection with all types of work and employments, including general industry, construction, ship repairing, shipbuilding, shipbreaking and longshoring. Federal representatives requested the Board to adopt language commensurate with federal commercial diving regulations in several instances where it deems that California diving regulations are not as protective as the corresponding federal regulations. The proposed changes will bring California regulations into conformity with federal regulations regarding workplace safety and health in diving operations.

The proposed regulations are substantially the same as those promulgated by Federal OSHA; therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard. However, the Board is still providing a comment period and will convene a public hearing. The primary purposes of the written and oral comments at the public hearing are to:

1. Identify any clear and compelling reasons for California to deviate from the federal standard; and,
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking;

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

Some of the changes requested by federal OSHA are unable to be completed using the expedited HORCHER process. In such cases, Board staff will prepare rulemaking documents in accordance with the Administrative Procedures Act to be noticed at a future date.

This proposed rulemaking action 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 are provided by such things as: (1) 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, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

DOCUMENTS RELIED UPON

1. Federal Register, Vol. 42, No. 141, pp. 37669-37672, July 22, 1977.
2. Email from David Shiraishi sent on November 26, 2014 to Marley Hart with the subject "FW: California Diving Standards vs CFRs".
3. Excel file attachment to the above email, entitled "Copy of Cal vs OSHA – Diving Standards".

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.

COST ESTIMATES OF PROPOSED ACTION

This rulemaking proposal imposes no costs beyond those of the subject federal regulations with which it conforms.

According to the July 22, 1977 Federal Register, the cost impact of the new federal regulation was "an annualized yearly cost of \$22 million for the entire industry." The Federal Register explains that the estimate is "intentionally biased on the high side because it did not take into account a report by a major contractor that there would be no significant economic impact." Using online inflation calculators, \$22 million in 1977 is equivalent to about \$91 million in 2017. The US Bureau of Economic Analysis (www.bea.gov) indicates that California's Gross Domestic Product (GDP) in the industries of "Support activities for mining" and "Miscellaneous professional, scientific, and technical services"¹ account for almost 20% of the national GDP. The Board, therefore, estimates that the cost impact on California businesses is in the range of zero to \$18 million, though the actual number is expected to be on the lower end of the range.

¹ An internet search using the search term "commercial diving NAICS" produced results, which listed the following NAICS codes: 561990 - "Other Support Services", 213112 - "Support Activities for Oil and Gas Operations", and 54199003 - "All Other Professional, Scientific/Technical Services."

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment may affect small businesses; however, any economic impact is expected to be minor.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

AVAILABILITY OF THE MEMORANDUM TO THE STANDARDS BOARD MEMBERS

Upon its completion, copies of the Memorandum may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulation in an underline/strikeout format and the Notice of Proposed Action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.