

**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 **December 12, 2002**, at 11:00 a.m.  
in the Auditorium of the State Resources Building,  
1416 Ninth 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 **December 12, 2002**, following the Public Meeting,  
in the Auditorium of the State Resources Building,  
1416 Ninth 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 **December 12, 2002**, following the Public Hearing,  
in the Auditorium of the State Resources Building,  
1416 Ninth 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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JERE W. INGRAM, 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, Unfired Pressure Vessel Safety Orders and Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on December 12, 2002.

1. TITLE 8:     **UNFIRED PRESSURE VESSEL SAFETY ORDERS**  
Chapter 4, Subchapter 1  
Sections 451 and 527  
Scope and Application of Article 7  
**Liquefied Natural Gas**
  
2. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7. Article 98  
Section 5006 and New Section 5006.1  
**Crane Operator Qualifications and Certification**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:**        **UNFIRED PRESSURE VESSEL SAFETY ORDERS**  
                            Chapter 4, Subchapter 1  
                            Sections 451 and 527  
                            Scope and Application of Article 7  
                            **Liquefied Natural Gas**

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

The existing statement of scope and application found at the beginning of Article 7 of the Unfired Pressure Vessel Safety Orders has created substantial confusion among the regulated public as to whether the provisions of Article 7 apply to mobile liquid natural gas refueling operations. Specifically, the language of Section 451 and the introductory language of Article 7 contain wording that create a substantial question as to whether the provisions of Article 7, specifically Section 527, are intended to apply to the delivery of natural gas from LNG refueling trucks into LNG-powered vehicles or storage vessels or systems. This is because Section 451 and the introductory language of Article 7 suggest that the Unfired Pressure Vessel Safety Orders and Article 7 do not apply to operations to which regulations enforced by the California Highway Patrol apply. Section 935 of Title 13 of the California Code of Regulations contains provisions applicable to vehicles equipped with LNG fuel systems, including a requirement that the vehicles be equipped with methane gas detection systems.

This clarity issue was brought to the Division's attention by an inquiry from the City of Los Angeles in which the City expressed confusion over whether Section 527 was intended to apply to mobile liquid natural gas refueling operations. The inquiry was made because of the City's plans to establish fueling operations involving the dispensing of LNG from mobile supply trucks as well as from stationary tanks. The Division has on occasion advised the public that Article 7, including Section 527, applies to mobile liquid natural gas refueling operations. The proposed amendments to Section 451 and the introductory language to Article 7 will resolve the clarity issue by making it clear that Article 7 does apply to these LNG delivery operations.

In addition, it was brought to the Division's attention by the City of Los Angeles that Section 527 requires the odorization of natural gas. The requirement for odorization exists because natural gas has no odor and can exist in hazardous concentrations that go undetected because of its odorless quality. Odorization renders natural gas readily detectable in low concentrations by the human sense of smell.

While it is not feasible at this time to odorize LNG, the extreme explosive and flammable nature of LNG makes it imperative that a means exist to warn those present of the existence of LNG leaks. The proposed amendment to Section 527 will fill this gap by requiring that LNG delivery operations take place while methane gas detection systems are in operation, thus providing a safe alternative to the odorization requirement.

#### **Section 451. Unfired Pressure Vessels Not Subject to These Safety Orders.**

##### **Section 451(c)**

Existing Section 451 specifies those unfired pressure vessels that are not subject to the Unfired Pressure Vessel Safety Orders. Section 451(c) specifies, “Natural gas vessels and installations and air brake tanks subject to the jurisdiction and inspection of the Public Utilities Commission, the Department of Transportation, or the Highway Patrol.” In order to eliminate inconsistencies between this section and the proposed amendments to Article 7, an amendment is proposed to Section 451(c) to make it clear that its exclusions do not apply to Article 7 of these Orders. It is also proposed to revise “Highway Patrol” to read, “Department of the California Highway Patrol.” The proposed amendment will have no effect other than to provide clarity and harmony within existing regulations.

### **Article 7. Compressed and Liquefied Natural Gas System.**

The existing scope and application of Article 7 states that the provisions of Article 7 apply to the storage, dispensing and use of natural gas as a motor fuel except in vehicles that are licensed to travel on highways, for which the standards of the California Highway Patrol apply. It is proposed to replace the phrase, “except in vehicles that are licensed to travel on highways, for which the standards of the California Highway Patrol apply” with “but do not apply to the storage or use of natural gas on public roads and highways.” The proposed revision will clarify that Article 7 applies generally to the storage, dispensing and use of natural gas as a motor fuel, but specifically does not apply to the storage or use of natural gas on public roads or highways. The proposed revision will have no effect on the regulated public.

### **Section 527. Control of Products in Tanks and Cylinders.**

Existing Section 527 addresses minimizing natural gas contaminants so as to prevent adverse effects on storage and utilization equipment and the odorization of natural gas for leak detection purposes. It is proposed to reformat this section, consistent with other sections contained in these Orders, into 3 subsections: (a) General, (b) Compressed Natural Gas, and (c) Liquefied Natural Gas. The existing odorization requirement in existing subsection (b) is proposed to apply to Compressed Natural Gas only since, due to its chemical properties, odorization of LNG is not feasible. It is also proposed to revise the phrase, “1/5 the lower limit of flammability” with “20 percent of the lower explosive limit”, with regard to the concentration of gas in air that must be detectable, to be consistent with current industry terminology. And, new subsection (c) is proposed which will address the monitoring and warning of methane gas leaks with regard to the delivery and storage of LNG as follows:

#### (c) Liquefied Natural Gas.

The delivery of LNG into any vessel or system covered by these Orders shall be subject to monitoring by a methane gas detection system, as follows:

(1) Each methane gas detection system required by this section shall provide a warning when a methane gas concentration exceeding 20 percent of the lower explosive limit is detected. The warning shall be plainly audible and visible to those within the zone of potential exposure to fire or explosion of the vessel, system, or delivery operation.

(2) Where LNG is delivered into a vessel or system that is part of a motor vehicle, the methane gas detection system shall function continuously during the course of the delivery operation so that methane leaks exceeding 20 percent of the lower explosive limit will be detected in the immediate vicinity of the operation.

(3) Where LNG is delivered to any other vessel or system covered by these Orders, the methane gas detection system shall function continuously during the course of the delivery operation so that methane gas leaks exceeding 20 percent of the lower explosive limit will be detected in the immediate vicinity of the operation and the entire vessel or system into which the LNG is delivered. After delivery is completed, the methane gas detection system shall be operated continuously in the immediate vicinity of the entire vessel or system into which the LNG was delivered for as long as the vessel or system contains LNG.

(4) Nothing in this section is intended to supercede or alter the applicable requirements of 13 CCR Section 935.

The proposed amendments will require that a methane gas detection system be provided in the immediate vicinity of an LNG dispensing operation and storage vessel/system and will ensure that methane gas leaks are detected and that personnel working within the vicinity of such operations/systems are appropriately alerted.

### **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**

The Board has made an initial 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 proposed changes to section 527 codify practices already implemented by the effected businesses within the state. The cost of not implementing the proposed changes, the risk of explosions and fires, far outweighs whatever minor costs may be incurred by businesses currently not complying with the general practices of the industry.

#### **Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impact 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 regulations do not impose a local mandate. 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 regulations 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 regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations 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 regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments may affect small businesses.

### **ASSESSMENT**

The adoption of the proposed amendments to these regulations 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.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7, Article 98  
Section 5006 and New Section 5006.1  
**Crane Operator Qualifications and Certification**

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

This proposal separates California’s existing Section 5006 operator qualifications requirements into two distinct sections. Existing Section 5006 remains intact and applies to all cranes with the exception of mobile

cranes having a boom length of more than 25 feet or a maximum rated lifting capacity of more than 15,000 pounds and tower cranes. A new Section 5006.1 is created that will address mobile cranes of a certain size limit and tower cranes and contains language that addresses operator qualifications, certificates of competency, physical examinations, certifying entity acceptance, substance abuse testing, written and practical (hands-on) examinations, re-certification, trainees and effective dates.

Existing Section 5006 of the GISO addresses the issue of qualifications for employees who operate cranes or hoisting apparatus and requires the employer to ensure that employees who operate such equipment are qualified to do so before being permitted to operate the equipment. However, the regulation is silent as to what constitutes a “qualified” operator as it does not specify minimum criteria for competency, physical ability, training, testing, etc.

California’s Group 13 safety orders which includes Section 5006 do not specify a threshold lifting capacity that could be used to determine applicability of the safety orders. Therefore, any equipment which is classified as a crane or hoisting apparatus under current Group 13 regulations is covered by existing Section 5006. The U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) addresses the issue of crane operator qualifications indirectly in 29 CFR 1926 Subpart N, Cranes, Derricks, Hoists, Elevators and Conveyors, specifically Part 1926.550, which regulates cranes and derricks. With specific regard to mobile cranes and tower cranes (the two types of cranes addressed in the proposed new Section 5006.1), Part 1926.550 states that all crawler, locomotive and truck cranes (includes mobile cranes) are to meet the applicable requirements for design, inspection, construction, testing, maintenance and operation as prescribed by the American National Standards Institute (ANSI) B30.5-1968 standard. It is in the operation section of this standard that operator qualifications (which includes testing) are addressed. However, they are not addressed to the same extent as contained in this proposal that, in part, is based on more comprehensive requirements set forth in the more recent American Society of Mechanical Engineers (ASME) B30.5a-1995 standard.

This proposal is the result of two petitions, OSHSB File Nos. 404 and 409 submitted by Ms. Bo Bradley, Associated General Contractors (AGC) of California and Mr. Brad Closson, North American Crane Bureau (NACB), respectively. The Petitioners opined that California’s existing Section 5006, Crane Operator Qualifications requirements were too vague/non-specific to be effective in ensuring that crane operators are qualified to operate cranes and hoisting equipment. Both petitions proposed amendments to Title 8 crane regulations that would specifically address certificates of competency, operator physical qualifications, training, etc. The petitions were granted by the Board to the extent that an advisory committee be convened by Board staff.

#### Section 5006. Operator Qualifications.

Existing Section 5006 contains subsections (a) and (b), which in generic, performance terms only allow employers to permit employees who are trained or known to be qualified to operate cranes or hoisting apparatus. Section 5006 permits trainees to be authorized by the employer to operate cranes and/or hoisting apparatus, provided they are under the supervision of a qualified operator.

A revision is proposed to amend the section title to read “Crane and Hoisting Equipment Operators- Qualifications” and to delete the phrase “...or known to be qualified...” in subsection (a). An EXCEPTION from this section is proposed that specifically excludes mobile and tower cranes as regulated by new Section 5006.1.

The proposed revisions will clarify to the employer that Section 5006 pertains to cranes and hoisting equipment. The proposed revisions also eliminate vague and ambiguous language relating to the qualification of a crane/hoisting apparatus operator. The proposed EXCEPTION statement will clarify to the employer that mobile cranes and tower cranes regulated in Section 5006.1 are excluded from the requirements of Section 5006, which apply to all other cranes.

#### New Section 5006.1. Mobile Crane and Tower Crane-Operator Qualifications and Certification.

New Section 5006.1 consisting of six subsections (a-f) and entitled “Mobile Crane and Tower Crane-Operator Qualifications and Certification” addresses specific operator qualifications for employees who operate mobile and tower cranes and includes the following: certificates of competency, physical examinations and substance abuse testing, written and hands-on (practical) examinations, acceptance of the National Commission on Certifying Agencies (NCCA) accredited certifying entities, re-certification of operators, trainees, effective dates and three exceptions pertaining to the types of mobile cranes excluded, operation of digger-derrick trucks and marine terminals.

New subsection (a) addresses operator qualifications and requires that only employees issued a certificate of competency be allowed to operate cranes. The proposed subsection requires the employer to ensure that the operator has been issued a valid certificate of competency (certificate) based on the qualifications criteria specified in (a)(1)-(4). The criteria includes documentation certifying that the employee has passed a physical examination, has passed a substance abuse test, has passed a written examination, which at a minimum addresses operational characteristics and controls, emergency control skills that are appropriate for the type of crane or hoisting equipment the employee intends to operate, and has demonstrated the ability to read and comprehend the crane manufacturer’s operation and maintenance instruction materials, including load capacity information, and exhibit mathematical skills. In addition, the proposal requires those employees who are issued certificates to have knowledge depending on which type of crane(s) the employee intends to operate, of specific chapters of the ASME B30.5a-1995 (mobile cranes) or B30.4-1996 (tower cranes) standard relating to operation of the crane.

As a prerequisite to receiving the certificate of competency required in subsection (a), the employee will have to pass a “hands-on” examination to demonstrate proficiency in the specific type of crane the employee intends to operate.

The effect of the proposed regulations requires the employer to ensure that employees have obtained a certificate of competency from an accredited certifying agency prior to operating mobile or tower cranes.

New subsection (b) requires the certificate of competency to be issued by the certifying entity and be valid for a maximum of five (5) years.

New subsection (b) merely clarifies to the employer that only an accredited certifying entity may issue the certificate of competency and the length of time the certificate of competency is valid.

New subsection (c) clarifies which organizations constitute “Accredited Certifying Entities and states that any organization’s certification program that is accredited by the NCCA is a certifying agency. The role of the certifying entity is to issue the certificate of competency to the prospective mobile or tower crane operator upon a finding that the employee meets the qualifications specified in subsection (a)(1)-(4). The certifying entity may be an employer, collective bargaining organization, or other third party.

The proposed regulation will not have any direct impact upon the employer except to clarify that only certificates of competency issued by organizations accredited by the NCCA will be acceptable in terms of the requirements in new subsection (a).

New subsection (d) specifies that operators must re-certify every five years and permits operators who are able to document at least 1000 hours of experience operating a crane covered by Section 5006.1 and who meet the physical, substance abuse, and written exam requirements specified in new subsections (a)(1), (2), and (3) to re-certify without taking the hands-on examination. Employees unable to certify 1000 hours must take the hands-on examination in addition to (a)(1)-(3).

Proposed subsection (d) clarifies to the certifying entity how a crane operator with previous experience in crane operation is to re-certify pursuant to the requirements of Section 5006.1 to the extent that the operator possesses the requisite 1000 hours of documented experience operating a crane covered by this section and meets the physical and substance abuse requirements and has passed the written examination.

New subsection (e) permits trainees to operate mobile or tower cranes covered by new Section 5006.1 provided they are under the direct supervision of an operator possessing a valid certificate of competency specifically for the same type of crane the trainee intends to operate.

New subsection (e) clarifies to the employer under what conditions a trainee may be authorized to operate a mobile or tower crane.

Subsection (e) also clarifies to the employer what is meant by the phrase “direct supervision” and clarifies to the employer how trainees are to be supervised in accordance with the requirement in subsection (e).

New subsection (f) specifies the effective date for the requirements of Section 5006.1 as being June 1, 2005.

Proposed subsection (f) ensures that the California marketplace will have sufficient time for outside testing entities and those employers who seek to certify in-house to become accredited and offer/implement certifying programs that satisfy the requirements of Section 5006.1 for mobile and tower cranes.

Three “EXCEPTIONS” are proposed which will exclude: (1) mobile cranes having a boom length of less than 25 feet or a maximum rated lifting capacity of less than 15,000 pounds; (2) electric line trucks (digger/derrick trucks) as defined in Section 2700 of the Electrical Safety Orders and used by utility companies that are regulated by Section 2940.7 of the High Voltage Electrical Safety Orders; and (3) cranes used at marine terminal operations regulated under Article 14 of the GISO.

The proposed exceptions clarify which operations/equipment are excluded from the proposed requirements contained in Section 5006.1.

## **COST ESTIMATES OF PROPOSED ACTION**

### **Costs or Savings to State Agencies**

Board staff has identified two state agencies: the California Department of Transportation and the Department of Water Resources as being the two primary public agencies who own and operate mobile cranes which are covered by the proposal and, who will experience cost impact as a result of the proposed language. (See addendum to Form 399 for specific details).

### **Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

### **Impact on Businesses**

The proposal applies to tower cranes and mobile cranes with a boom length of 25 feet or more or a maximum lifting capacity of 15,000 pounds or more. These two categories represent a small percentage of the total number and type of cranes in use in California. During the course of the advisory committee and subcommittee deliberations, it became apparent to staff that California employers and organized labor have, as has been shown to be the case in the rest of the country, recognized both the value, benefit and importance of having qualified operators at the controls of their cranes. Many employers and both Operator Engineer bargaining units (Locals 12 and 3) in California currently subject their operators to not only crane operator training consistent with California's Section 3203 Injury Illness Prevention Program requirements, but to certification either in-house or by accredited certifying entities such as NCCCO. The consensus opinion of members of staff's crane operator certification/qualifications subcommittee confirms that the proposal is essentially consistent with what a significant number of employers and Labor in California have been doing for a number of years in terms of certification. Finally, some consideration should be given to the fact that the costs of certification, which include testing, physical examinations and substance abuse determinations, when amortized over a five year time period present costs that are insignificant compared to the employer's overall operating costs and the direct and indirect costs associated with a single crane accident that most likely could involve employee injuries, fatality, imperiling the public and property damage.

Therefore, The Board has made an initial 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.

### **Cost Impact on Private Persons or Businesses**

Current Title 8 regulations already require all operators of cranes and hoisting equipment in California to be qualified. The existing regulations also specify that trainees are to be permitted to operate a crane or hoisting apparatus under the supervision of a qualified operator. The proposal clarifies in specific terms what constitutes "being qualified" to operate a mobile crane and a tower crane and supervise trainees; all other types of cranes are not affected, and therefore, there will be no impact upon employers who operate cranes other than the cranes and hoisting equipment regulated by new Section 5006.1. For all other types of cranes, the existing requirements of Section 5006 remain unchanged. For those employers who operate mobile cranes covered by proposed Section 5006.1 and/or tower cranes, the overall cost impact is expected to be minimal.

Organizations such as the National Commission for the Certification of Crane Operators (NCCCO) or the North American Crane Bureau (NACB) have the capability to perform testing and certification. Staff learned that the NCCCO can feasibly modify its testing/certification programs to meet the proposed testing/certification requirements. Typical NCCCO costs for the written and practical examination that would cover mobile crane operations run approximately \$550 per operator. The costs for substance abuse testing and the physical examination are \$440 per operator. Spread out over a five-year period that would equal approximately \$198 per operator per year. This appears to be insignificant compared to overall operating costs and the cost of one crane accident which could result in significant employee injury or even fatality in addition to any collateral damage to property, structures and equipment totaling in the hundreds of thousands of dollars.

While staff has not identified any entities offering testing/certification services for tower cranes, staff learned that the NCCCO is developing a program that will be available to employers by the time the proposal becomes effective in 2005. Staff anticipates that if the proposal is adopted by the Board and becomes effective, other testing and certification entities will emerge and provide testing/certification for tower crane operators. The cost of tower crane operator testing and certification is expected to be about the same as for mobile crane operators (see approximate figures discussed above). See also the Board staff's addendum to the Form 399 which accompanies this rulemaking file.

According to the proposed effective date, employers will have until June 1, 2005 to come into compliance with the requirements. This will provide time for the California marketplace to respond to the new regulations and allow for the emergence of additional outside parties (contractors such as the NCCCO) able to provide the required training and issue certificates of competency to employees (operators) who have fulfilled the requirements of new Section 5006.1(a). The 2005 effective date will also provide sufficient time for testing protocols to be developed for tower crane operators and to allow entities who wish to become certifying entities to apply for NCCA accreditation.

### **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 regulations 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 regulations 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 regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations 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 regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments may affect small businesses.

### **ASSESSMENT**

The adoption of the proposed amendments to these regulations 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.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The above proposals do not contain building standards as defined by Health and Safety Code Section 18909.

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 December 6, 2002. 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 December 12, 2002 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@hq.dir.ca.gov](mailto:oshsb@hq.dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposal 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 John D. MacLeod, Executive Officer, or Michael 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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JERE W. INGRAM, Chairman