

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 **July 19, 2007**, at 10:00 a.m.
in County Administration Center, Room 358
1600 Pacific Highway, San Diego, California 92101.

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 **July 19, 2007**, following the Public Meeting
in County Administration Center, Room 358
1600 Pacific Highway, San Diego, California 92101.

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 **July 19, 2007**, following the Public Hearing
in County Administration Center, Room 358
1600 Pacific Highway, San Diego, California 92101.

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

JOHN D. MACLEOD, 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, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **July 19, 2007**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 13
New Section 3458.1
Date Palm Operations—Use of Special Purpose Ladders

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 90
Section 4884
Hammerhead Tower Cranes

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 13
New Section 3458.1
Date Palm Operations—Use of Special Purpose Ladders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) received a Form 9, Request for New or Change to Existing Safety Order from the Division of Occupational Safety and Health (Division) to amend General Industry Safety Orders, (GISO) by adding new Section 3458.1 addressing ladder use during date palm cultivation and harvesting. The existing Section 3458 addresses fall protection for date palm workers but is silent on the use of ladders for access to and egress from date palm trees.

Depending on the date species, California date palms can grow to be as high as 80 feet. Under current industry practice, metal ladders typically are permanently attached to the upper section of the palm tree trunk near the crown. These ladders are accessed from the ground by portable ladders or elevating equipment. Date palm workers, known as palmeros, ascend and descend the date palm ladder to access the crown of the tree many times during each growing season to cultivate and harvest dates.

Sections 3276-3280 address generic requirements for the use of ladders, and standards for portable wood, metal, reinforced plastic and fixed ladders. Title 8 does not include standards for ladders specifically used to perform date palm harvesting and cultivation operations. These ladders have been determined to be a type of special purpose fixed ladder, as indicated in the recent California Occupational Safety and Health Appeals Board (OSHAB) Decision in the matter of Hadley Date Gardens, Inc., 03-R6D2-2359. The OSHAB determined that ladders used in date palm operations are a special purpose ladder as defined in GISO Section 3278(b) as follows:

Special-Purpose Ladder. A special-purpose ladder is a portable ladder which represents either a modification or a combination of design or construction features in one of the general-purpose types of ladders previously defined, in order to adapt the ladder to special or specific uses.

This matter came about as a result of an accident involving a date palm tree to which two ladders were used in tandem. The palmero fell from the top part of the ladder that was only secured to the date palm tree by a single piece of wire. The ladder separated from the date palm resulting in the palmero falling 35-38 feet to the ground and sustaining serious physical injury. The Division investigated the accident and issued a citation to the employer for alleged violation of Section 3279(d) which addresses standards for portable metal ladders.

The citation was appealed by the employer and the appeal was granted based on the conclusion that the ladder used by the injured palmero was not a portable metal ladder but a “special-purpose” ladder and was not covered by Section 3279(a), thereby negating the citation for 3279(d).

The Division and Board staff believes that without enforceable standards to address issues pertaining to the safe use of date palm tree ladders, further accidents could occur. According to the OSHAB decision, the employer representative stated that palmeros for Hadley make a total of 70,000 climbs per year to harvest and cultivate their trees.

New Section 3458.1 Ladders Attached to Date Palms

A new subsection (a) is proposed that would address requirements for the use of ladders that are permanently attached to date palm trees for date palm workers to ascend and descend from the tree during date palm cultivation and harvesting operations.

A new subsection (a)(1) is proposed that would require date palm tree ladders to be attached to the date palm with 12 gauge galvanized wire fasteners securely connected to the ladder section in three places. The wire fasteners would be capable of supporting a minimum, concentrated live load of at least 250 pounds. This proposed amendment will ensure that the ladder will remain securely attached and not fail catastrophically under load and thereby prevent falls, which could injure or kill the employee.

A new subsection (a)(2) is proposed to require that a corrosion resistant steel safety chain be attached to the ladder rails below the top rung and around the crown of tree, which will ensure that there is a backup anchorage to keep the ladder securely affixed to the tree trunk.

A new subsection (a)(3) is proposed to require that when ladders are used in tandem, the upper and lower ladder rails are connected by a steel safety chain. This proposal will ensure that the upper and lower ladders will remain securely in place.

A new subsection (a)(4) is proposed to prohibit more than two ladder sections from being permanently attached to the date palm tree. This requirement will limit the number of ladder sections that can be attached safely to the tree.

A new subsection (a)(5) is proposed to state that only one worker may be on a ladder section at a time. The proposed language will ensure that the ladder will not be overstressed and fail which could result in serious employee injury or fatality.

A new subsection (a)(6) is proposed to require that all safety chains have a safety factor of at least 10, which will ensure that the safety chain the employer uses will be sufficient to support the loads it bears.

A new subsection (a)(7) is proposed to require that all ladder rungs be spaced not more than 12 inches apart and be at least 12 inches in length. The proposal will ensure that employees will be provided with a secure foothold that will prevent missteps that could result in a serious fall injury or fatality.

A new subsection (a)(8) is proposed that would require the centerline distance from the ladder rung to the nearest permanent object be spaced to provide a secure foothold on the ladder rung, which also will prevent a misstep that could lead to a serious fall injury or fatality - in this case, the sort of misstep that might occur if a worker is unable to pass enough of his/her foot through the ladder rung.

A new subsection (a)(9) is proposed to limit the length of a ladder section to 15 feet. This proposal will limit ladders to a length that reasonably may be expected to effectively be secured using the galvanized wire and safety chain. In addition, limiting ladder length reduces the employee's ladder exposure.

A new subsection (b) is proposed to reference the generic safe ladder use standards contained in GISO, Section 3276, thereby reminding the employer that employees utilizing date palm tree ladders are to follow the basic safety precautions contained in Section 3276, which include correct body position, carrying loads, and other precautions relevant to protecting the employee from a fall.

A new subsection (c) is proposed that would prohibit the use of ladders made of wood and reinforced plastic from being permanently attached to date palm trees. The proposal is consistent with date industry practice since metal ladders are significantly more durable in the harsh desert climate and less prone to failure.

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. The State of California does not cultivate or harvest dates from date palm trees.

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 proposal is based on date palm industry language originating from guidelines pertaining to the use of ladders on date palm trees as described in a Memorandum from the Date Production Industry Committee to All Date Garden Owners and Operators, regarding: “*Cal/OSHA Requirements for Date Tree Worker’s*”, dated March 9, 1983. The proposal is not expected to create adverse economic impact upon the California date industry.

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 standard does 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, this standard does 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.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does 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.)

The proposed standard does 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. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard 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 90
Section 4884
Hammerhead Tower Cranes

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) received a Form 9 Request for New, or Change In Existing, Safety Order (Form 9-052) from the Division of Occupational Safety and Health (Division) requesting amendments to Section 4884. Existing Section 4884 contains standards for the design, construction and installation of various types of cranes in accordance with established national consensus standards as published by the American National Standards Institute (ANSI) and the American Society of Mechanical Engineers (ASME). Existing Section 4884(b) requires hammerhead tower cranes manufactured after May 16, 1993, to conform to the ASME B30.3-1990 standard for hammerhead tower cranes (HTC). HTC's are again addressed in subsection (c)(1)(A) which requires all cranes and derricks manufactured after September 28, 1986, through June 23, 1999 to be designed, constructed and installed in accordance with listed national consensus standards. HTC's are listed as having to conform to the ANSI B30.3-1975 standard.

Currently, Section 4884 does not address HTC's manufactured on or before September 28, 1986. Consequently, HTC's manufactured on or before September 28, 1986 are not held to any standard of construction, design, and installation that can be adhered to by the employer and enforced by the Division, posing a safety hazard to the crane operator, site employees and the general public.

A conflict exists between subsection (b) which requires all HTC's manufactured after May 16, 1993 to conform to the ASME B30.3-1990 HTC standard and subsection (c)(1)(A) which requires all HTC's manufactured after September 28, 1986, and through June 23, 1999, to conform with the ANSI B30.3-1975 HTC standard. Therefore, HTC's manufactured after May 16, 1993, and through June 23, 1999, are required to conform with two different ANSI/ASME B30.3 publications.

This proposal would specify the appropriate national consensus standards applicable to HTC's depending on their date of manufacture and would delete the reference to HTC's in subsection (c)(1)(A).

HTC's manufactured after June 23, 1999 are addressed by the ANSI/ASME B30.3-1996 standard for construction tower cranes in existing Section 4884(c)(1)(B).

Section 4884. Scope.

This section addresses the design, construction and installation of various types of cranes and derricks in accordance with applicable national consensus standards depending on when the crane or derrick was manufactured. This section also addresses the operation, testing, inspection and maintenance of cranes and derricks in accordance with the applicable requirements of Group 13. Section 4884 further requires electrically powered cranes and derricks to meet the requirements of the electrical safety orders.

Subsection (b).

Existing subsection (b) requires hammerhead tower cranes manufactured after May 16, 1993 to conform to ASME B30.3-1990, Hammerhead Tower Cranes.

An amendment is proposed to revise the wording of the opening phrase by replacing the words “after May 16, 1993 shall conform to ASME B30.3-1990, Hammerhead Tower Cranes” with the phrase “on or before June 23, 1999.” The effect of this proposal is to state the expanded scope of subsection (b).

New Subsections (b)(1) – (b)(3).

New subsection (b)(1) is proposed that would require HTC’s manufactured before September 28, 1986, to be designed, constructed and installed in accordance with the ANSI B30.3-1975 standard for HTC. The proposal would specify the standard to which older HTC’s are to be designed, constructed and installed.

New subsection (b)(2) is proposed that would require HTC’s manufactured on September 28, 1986, through May 16, 1993, to be designed, constructed and installed in accordance with the ANSI/ASME B30.3-1984 standard for HTC. The proposal would specify the standard to which HTC’s manufactured during the indicated time span are to be designed, constructed and installed.

New subsection (b)(3) is proposed that would require HTC’s manufactured after May 16, 1993, through June 23, 1999, to conform to the design, construction and installation provisions of the ASME B30.3-1990 standard for HTC. The proposal would specify the standard to which HTC’s manufactured during the indicated time span are to be designed, constructed and installed.

The effect of the proposed addition of new subsections (b)(1) – (b)(3) is to make applicable to each group of HTC’s the ANSI standard that was current at the time the HTC’s were manufactured. In addition, a “NOTE” is added to the end of subsection (b) directing the regulated public’s attention to subsection (c)(1)(B) where ANSI/ASME standards applicable to HTC’s manufactured after June 23, 1999, are referenced.

Subsection (c)(1)(A).

Existing subsection (c)(1)(A) requires cranes and derricks manufactured after September 28, 1986, and through June 23, 1999 to be designed, constructed and installed in accordance with one of the applicable national consensus standards contained in a list that follows subsection (c)(1)(A). The listed standard is ANSI B30.3-1975, Hammerhead Tower Cranes.

An amendment is proposed to include the phrase “on or” before the phrase “after September 28, 1986.” This proposal would clarify to the employer that cranes and derricks manufactured on, as well as after, September 28, 1986 are to comply with the applicable national consensus standards listed in subsection (c)(1)(A).

An amendment is proposed to delete the reference to ANSI B30.3-1975, Hammerhead Tower Cranes, which will avoid contradiction with proposed new subsections (b)(1)-(3).

Subsection (c)(1)(B).

Existing subsection (c)(1)(B) requires cranes and derricks manufactured after June 23, 1999 to be designed, constructed and installed in accordance with one of the applicable national consensus standards contained in a list that follows subsection (c)(1)(B).

An amendment is proposed to the reference of B30-3-1996, construction tower crane standard, to include the term “hammerhead tower cranes” parenthetically. This proposal will have no effect on the regulated public as it clarifies that this standard also addresses hammerhead tower cranes.

DOCUMENTS INCORPORATED BY REFERENCE

1. American National Standard, Safety Standards for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks and Slings; Hammerhead Tower Cranes, ANSI B30.3-1975.
2. American National Standard, Safety Standards for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks and Slings; Hammerhead Tower Cranes, ANSI/ASME B30.3-1984.
3. American National Standard, Safety Standards for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks and Slings; Hammerhead Tower Cranes, ASME B30.3-1990.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of 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

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. Board staff was not able to identify any state agencies that own or operate hammerhead tower cranes. Hammerhead tower cranes are used almost exclusively for high rise multi-story commercial construction. Hammerhead tower cranes used in conjunction with the construction of California facilities are generally contracted out to independent commercial high rise construction companies.

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. Board staff believes that it is not unreasonable to expect that most, if not all, hammerhead tower cranes still in use in the private sector which were manufactured prior to September 28, 1986 meet the basic ANSI B30.5-1975 standard for design, construction and installation.

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. See explanation under “Impact on Businesses.”

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 standard does 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, this standard does 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.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does 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.)

This proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard 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.

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 July 13, 2007. 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 July 19, 2007, 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@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals 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 Keith Umemoto, 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

JOHN D. MACLEOD, Chairman