

**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 **June 21, 2007**, at 10:00 a.m.
in the Auditorium of the Harris State Building
1515 Clay Street, Oakland, California 94612-1499.

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 **June 21, 2007**, following the Public Meeting
in the Auditorium of the Harris State Building
1515 Clay Street, Oakland, California 94612-1499.

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 **June 21, 2007**, following the Public Hearing
in the Auditorium of the Harris State Building
1515 Clay Street, Oakland, California 94612-1499.

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, Agricultural Safety Orders, Construction Safety Orders, of the California Code of Regulations, as indicated below, at its Public Hearing on **June 21, 2007**.

1. TITLE 8: **AGRICULTURAL SAFETY ORDERS**
Chapter 4, Subchapter 7 to New Subchapter 3
New Articles 1 through 10
Relocation of Agricultural Safety Orders

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 28
Section 1704
Pneumatically-Driven Nailers and Staplers

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **AGRICULTURAL SAFETY ORDERS**
Chapter 4, Subchapter 7 to New Subchapter 3
New Articles 1 through 10
Relocation of Agricultural Safety Orders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

BACKGROUND

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking as a result of the implementation of the Title 8 Reform Project. The Reform Project was first considered in response to Executive Orders W-127-95 and W-131-96. The Executive Orders directed all state agencies to review their standards and, where possible, repeal unnecessary standards, consolidate duplicative standards, and amend existing state standards to minimize the negative impact on California business and the economy. As a result and as part of the 1997 Budget Act that the Legislature approved and the Governor signed, the Board was given authority to proceed with Title 8 Reform. Numerous advisory committee meetings were convened to consider the need for and scope of reform. During the advisory committee meetings, a consensus was reached that:

- 1) There was a need to better organize the safety orders in Title 8, Chapter 4, to make the different occupational safety and health requirements easier to locate.
- 2) Any Title 8, Chapter 4, reform activities must be limited to non-substantive revisions only.
- 3) The reform of Title 8, Chapter 4, should include a review and possible reform of all the subchapters in Chapter 4, not just Subchapter 7.
- 4) The reform of Title 8, Chapter 4, would consist of eight reform elements as described in Attachment No. 4.

This rulemaking is the second of several rulemaking packages that would be developed to implement the Title 8 Reform Project.

Reform Element 1, Parts 1 and 2.

Reform Element No. 1, Part 1, has been completed and included relocating 14 existing sections titled "Compressed Air Safety Orders" and its two Appendices, originally located in Subchapter 3, into the General Industry Safety Orders (GISO) in Group 26. The present rulemaking, Reform Element No. 1, Part 2, includes identifying all safety orders specific to the agricultural industry and relocating these standards into Subchapter 3, to be titled "Agricultural Safety Orders (AgSO)." A separate subchapter containing all agricultural related safety orders would provide one of California's largest and most hazardous industries with an industry-specific subchapter that contains safety orders unique to agricultural operations. This reform element would relocate approximately 35 existing sections from other subchapters into Subchapter 3. Both Parts 1 and 2 of Reform Element 1 are limited to non-substantive revisions only.

Therefore, the goal of the Title 8 Reform Project is to enhance the organization of Chapter 4, Title 8, CCR, by making the safety orders easier to find, more user friendly, and understandable; thereby, increasing both employer and employee awareness, understanding, and compliance with the safety orders affecting their workplace.

PROPOSED ACTION

As part of the implementation of the Title 8 Reform Project, Reform Element No.1, Part 2, the proposed rulemaking would transfer the agricultural-industry-specific safety orders from existing Subchapter 7, GISO, to new Subchapter 3, titled "Agricultural Safety Orders," in new Articles 1 through 10, thereby improving the organization of Title 8, Chapter 4.

The intent of this proposal is to make the Agricultural Safety Orders (AgSO's) easier to locate and understand by placing the sections that relate to the agricultural industry in a more logical order and location within new Subchapter 3.

This rulemaking action proposes to transfer in its entirety all the AgSO's from Subchapter 7 of the GISO's into new Subchapter 3, renamed Agricultural Safety Orders. The proposed rulemaking consists only of non-substantive, editorial, reformatting, and renumbering of articles, sections, subsections, and grammatical revisions associated with the transfer of all the AgSO's from Subchapter 7 into new Subchapter 3, as new Articles 1 through 10 of the AgSO's. These non-substantive revisions are not all discussed in this informative digest, but are clearly indicated in the regulatory text in underline and strikeout format. Additionally, any additional non-substantive revisions to the language currently contained in Subchapter 7, GISO, are shown highlighted.

It is noted that because the proposed transfer of the AgSO's is non-substantive, these proposed revisions are considered changes without regulatory effect and could be accomplished using the Title 1, Division 1, Section 100 rulemaking process. However, because of the large number of safety orders proposed to be transferred, this proposal will utilize the standard rulemaking process pursuant to the Administrative Procedure Act and Title 1 of the California Code of Regulations.

Reform Element 1, Part 2 - Subchapter 7, General Industry Safety Orders.

As indicated in Section 3202, Subchapter 7, contains safety orders that are intended to apply to all places of employment in California as defined by Labor Code Section 6303, unless the Board adopts safety orders applying to certain industries, occupations or employments, in which like conditions and hazards exist. Those orders would take precedence whenever they are inconsistent with the GISO's. Currently, the agricultural-industry-specific safety orders are found throughout Subchapter 7 and are located among thousands of other safety orders that do not apply to agricultural operations, thereby making the specific requirements regarding agricultural operations difficult to locate.

The AgSO's proposed to be transferred from Subchapter 7 to Subchapter 3 include all sections in existing Article 13, Agricultural Operations. Additionally, the proposal would transfer certain specific agricultural requirements from existing Article 27, Transportation of Employees and Materials.

This entire rulemaking proposal will have no regulatory effect upon the regulated public because the agricultural safety orders are proposed for transfer in their entirety, with non-substantial revisions for clarity, into new Articles 1 through 10, in Subchapter 3, AgSO. Therefore, this proposal would improve the accessibility of the agricultural standards by making the AgSO's easier to locate within Title 8; thereby, increasing both employer and employee awareness, understanding, and compliance with agricultural safety orders affecting their workplace.

New Subchapter 3. Agricultural Safety Orders, New Articles 1 through 10.

This rulemaking proposal would transfer all sections containing agricultural specific safety orders and related definitions currently contained in the GISO's in Subchapter 7, into new Articles 1 through 10 of new Subchapter 3, Agricultural Safety Orders.

Proposed Sections 1151, 1165, 1170, 1200, 1201, 1202, 1203, 1204, 1205, 1210, 1211, 1213, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1225, 1230, 1235, 1250, 1255, 1270, 1275, and 1280 are transferred sections that are essentially verbatim with no substantive revisions. These sections are proposed for transfer from existing Sections 3436, 3437, 3438, 3439, 3440, 3441, 3442, 3444, 3445, 3446, 3447, 3448, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458, and portions of existing Sections 3700, 3701, and 3702.

In addition, proposed Sections 1160, 1260, and 1285 include standards that would apply directly to agricultural operations. These provisions are currently contained in the general industry and construction safety orders as they also pertain to the general and construction industries. However, these proposed sections contain no new requirements, as the agricultural industry is already required to comply with these provisions. Proposed Sections 1150 and 1240 include standards that the agricultural industry is already required to comply with.

New Article 1. Introduction.

This proposal transfers portions of the provisions of existing Sections 3207, 3436, 3437, 3457, and 3700 into new Article 1, titled "Introduction," which would contain new Sections 1150 and 1151.

New Section 1150. Scope and Application.

Existing Section 3436, titled "Application" is proposed for transfer to new Section 1150, titled "Scope and Application."

The proposed editorial revision to the title of new Section 1150 would clarify this section's content by including the scope of this standard.

Existing Section 3436 contains a description of the type of operations subject to the safety orders in existing Article 13, Agricultural Operations.

The proposed amendments in new Section 1150 editorially revise the original wording from "The orders in this article ..." (indicating all safety orders in existing Article 13) to "The orders in this subchapter ..." (indicating all safety orders in Subchapter 3).

This editorial revision limits the scope and application of the relocated AgSO's to the safety orders in new Subchapter 3, AgSO's. Additionally, there are proposed editorial changes to the current language of existing Section 3436 initiated as part of the implementation of Title 8 Reform Element No. 3 to be promulgated to provide clear introductions to each subchapter in Chapter 4.

In addition, it is proposed to include the phrase "(The orders...) establish minimum occupational safety and health standards and ..." to be consistent with similar scope statements in Chapter 4. Additionally, the proposal deletes the existing language "Agricultural machinery and equipment are subject to all applicable Safety Orders except where they are inconsistent with the orders in this article." This language

is proposed to be replaced with the language “Operations, conditions, machinery and equipment not specifically covered by the safety orders in this subchapter are subject to all applicable orders contained in Chapter 4.”

This revision clearly indicates that the sections in new Subchapter 3 contain safety orders specific to agricultural operations, as identified by the new subchapter’s title, and would also aid in locating these requirements when using the table of contents.

New Section 1151. Definitions.

This proposal relocates all definitions specific to the agricultural safety orders currently in existing Section 3437 of the GISO into proposed new Section 1151, titled “Definitions.” Proposed Section 1151 contains all definitions specific to new Subchapter 3 including all definitions currently in existing Section 3437, selected definitions from existing Section 3457, and definitions consistent with language in existing Sections 3700, 3649 and 3207 for Farm Labor Vehicle, Agricultural Tractor and Qualified Person, respectively.

As noted in the proposed text, this proposal transfers all definitions currently in existing Section 3437 to proposed Section 1151. These definitions include Agricultural Equipment, Agricultural Operations, Frond, Ground Driven Components, Guard or Shield, Guarded by Location, Long-Handled Hand Tool, Nip Point, Power Take-Off (PTO) Drivelines, Power Take-Off (PTO) Shaft, Self-Propelled Agricultural Equipment, and Short-Handled Hand Tool.

This proposal also transfers specific definitions from existing Section 3457(b) to proposed Section 1151. These definitions include Agricultural Employer, Agricultural Establishment, Hand-Labor Operations, Handwashing Facility, Potable Water, and Toilet Facility.

In addition, this proposal transfers the definition of “Farm Labor Vehicle” from existing Section 3700 to proposed Section 1151.

Finally, this proposal includes definitions from existing Sections 3649 and 3207. These definitions include Agricultural Tractor and Qualified Person, respectively. These definitions apply to general industry and are also included in new Subchapter 3 because they are definitions that pertain to the agricultural industry, too.

This proposal creates a definition section at the beginning of new Subchapter 3 which would contain all definitions specific to the agricultural industry in new Subchapter 3. This proposal would aid in locating the appropriate definitions, ensures clarity of regulatory language, and improves understanding of the safety orders.

New Article 2. General Requirements.

This proposal transfers portions of the provisions of existing Section 3203 and the provisions of existing Sections 3438 and 3439 into new Article 2, titled “General Requirements,” which would contain new Sections 1160, 1165, and 1170, respectively.

New Section 1160. Injury and Illness Prevention Program.

Existing Section 3203 is proposed to be referenced in new Section 1160, titled “Injury and Illness Prevention Program.” Proposed Section 1160 includes a reference to the existing requirements of Section 3203 that every employer must establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP).

This proposal would ensure clarity that the agricultural industry is subject to the IIPP requirements of the GISO’s, and is consistent with references to Section 3203 in other industry-specific subchapters.

The proposed addition of the reference to the IIPP in new Section 1160 will have no regulatory effect on the regulated public, as agricultural employers are already required to comply with the existing requirements of Section 3203 of the GISO.

New Section 1165. Communications.

Existing Section 3438 is proposed for transfer to new Section 1165, titled “Communications.” New Section 1165 contains requirements for employee safety instructions and warnings in the language they understand.

It is proposed to include the phrase “... the employer shall provide ...” following the word “English” and to remove the unnecessary phrase “... shall be presented ...,” thereby, making this provision simpler and more direct.

These proposed editorial revisions will have no regulatory effect upon the regulated public as agricultural employers are already required to comply with the existing requirements of Section 3438.

New Section 1170. First-Aid and Medical Response.

Existing Section 3439, titled “First-Aid Kit,” is proposed for transfer to new Section 1170, titled “First-Aid and Medical Response.” New Section 1170 contains first-aid and medical response requirements.

Amendments are proposed to the title of existing Section 3439 to delete the term “Kit,” and to add the phrase “and Medical Response.” These proposed amendments to the title of existing Section 3439 better reflect the content of proposed Section 1170, and would be consistent with the Title 8 Reform Element No. 6 to be promulgated to correct inaccurate titles of various sections.

Additionally, this proposal amends the organizational format of existing Section 3439(b) and includes editorial revisions that better describe the original intent of the existing standard.

New Article 3. Field Sanitation Requirements.

This proposal transfers portions of the provisions of existing Section 3457 into new Article 3, titled “Field Sanitation Requirements,” which would contain new Sections 1200 through 1205.

Proposed Article 3 would contain the field sanitation requirements for employees working in agricultural operations and would present these requirements in a reformatted and clearer fashion.

New Section 1200. Scope and Application for Field Sanitation.

The scope of the field sanitation requirements in existing Section 3457(a) are proposed to be transferred into new Section 1200(a), and the application of the field sanitation standard indicated in existing Section 3457(c) is proposed to be transferred into new Section 1200(b) and (c). There are non-substantive revisions in wording engendered by the placement of these provisions in new Article 3.

This proposal transfers portions of the requirements of existing Section 3457(c) that currently reference existing Sections 3360 - 3368 for all agricultural operations not involving hand-labor operations into proposed Section 1200(b), deletes the term "Requirements," as this word is unnecessary and amends this standard by including the phrase "in the General Industry Safety Orders," to clarify that Sections 3360 - 3368 are contained in these orders.

In addition, it is proposed to transfer the existing requirement that "all other agricultural operations shall meet the following requirements," currently contained in existing Section 3457(c) into proposed Section 1200(c) and to amend a phrase by referencing the field sanitation requirements in proposed Sections 1200 through 1205.

New Section 1201. Potable Drinking Water Requirements for Field Sanitation.

Existing Section 3457(c)(1) is proposed to be transferred in its entirety into new Section 1201. As reflected in its proposed title, new Section 1201 contains drinking water requirements for field sanitation for specified agricultural operations.

The proposed editorial revisions to the title of new Section 1201, as noted in the text, would clarify this section's content.

New Section 1202. Toilet and Handwashing Facility Requirements for Field Sanitation.

Existing Section 3457(c)(2), titled "Toilet and handwashing facilities," is proposed to be transferred in its entirety into new Section 1202. As reflected in its proposed title, new Section 1202 contains toilet and handwashing facility requirements for specified agricultural operations.

These proposed editorial revisions to the title of new Section 1202 would clarify this section's content.

New Section 1203. Maintenance of Field Sanitation Facilities.

Existing Section 3457(c)(3), titled "Maintenance standards," is proposed to be transferred in its entirety into new Section 1203. As reflected in its proposed title, new Section 1203 contains maintenance requirements of field sanitation facilities for specified agricultural operations.

These proposed editorial revisions to the title of new Section 1203 would clarify this section's content.

New Section 1204. Reasonable Use of Field Sanitation Facilities.

Existing Section 3457(c)(4), titled "Reasonable use," is proposed to be transferred in its entirety into new Section 1204. As reflected in its proposed title, new Section 1204 contains requirements for the employer to provide the employee reasonable use of field sanitation facilities during specified agricultural operations.

These proposed editorial revisions to the title of new Section 1204, as noted in the text, would clarify this section's content.

New Section 1205. Reporting Requirements for Field Sanitation.

Existing Section 3457(d), titled "Required Reports," is proposed to be transferred in its entirety into new Section 1205. As reflected in its proposed title, new Section 1205 contains reporting requirements for employers subject to field sanitation standards.

These proposed editorial revisions to the title of new Section 1205 would clarify this section's content.

As noted in the proposed text, this proposal amends the original wording in proposed Section 1205 from "... this Section shall provide ..." to "... this Article shall provide ...," to reflect that the safety orders in existing Section 3457 are proposed for transfer to a new Article 3. Additionally, this proposal amends the original wording in existing Section 3457(d), proposed Section 1205, from "... the requirement of this subsection ..." to "... the requirement of this section ...," to reflect that the existing safety orders in Section 3457(d) are proposed for transfer to new Section 1205.

New Article 4. Employee Transportation Safety Requirements.

This proposal transfers portions of the provisions of existing Sections 3701 and 3702 into new Article 4, titled "Employee Transportation Safety Requirements," which would contain new Sections 1210 and 1211.

New Section 1210. Seatbelt Requirements for Farm Labor Vehicles.

Existing Section 3702(h) is proposed to be transferred in its entirety into new Section 1210. As reflected in its proposed title, new Section 1210 contains seatbelt requirements for farm labor vehicles.

The proposed title of new Section 1210 would clarify this section's content.

New Section 1211. Vehicle Operating Requirements.

The proposed title of new Section 1211 would clarify this section's content. The descriptive title language is proposed to be included to aid in locating these requirements when using the table of contents. Existing Section 3701(a) is proposed to be transferred in its entirety into new Section 1211.

As reflected in its proposed title, new Section 1211 contains requirements for the operation of farm labor vehicles. This section mandates persons operating a farm labor truck or a farm labor bus to possess a valid school bus driver's certificate or the appropriate class driver's license and a certificate issued by the Department of Motor Vehicles to permit the operation of farm labor vehicles.

This proposal also includes a reference in proposed subsection (b) to Article 27 of the GISO's which contains requirements for transporting employee. This proposed reference aids in identifying additional existing requirements, associated with the transportation of employees, to which agricultural operations, as defined in proposed Section 1151, may be subject to.

New Article 5. Tool Safety Requirements.

This proposal transfers the provisions of existing Section 3456 into new Article 5, titled “Tool Safety Requirements,” which would contain new Section 1213.

New Section 1213. Hand-Held Tools.

Existing Section 3456 is proposed to be transferred in its entirety into new Section 1213, titled “Hand-Held Tools.”

References to other provisions are fine-tuned for clarity and for conformance with the overall reorganization plan that this proposal implements.

New Article 6. Equipment Safety Requirements.

This proposal transfers the provisions of existing Section 3440, portions of existing Section 3441(c) through (h), Sections 3444, 3445, 3446, 3447, and 3453, into new Article 6, titled “Equipment Safety Requirements,” which would contain new Sections 1215, 1216, 1217, 1218, 1219, 1220, and 1221, respectively.

New Section 1215. Agricultural Equipment.

Existing Section 3440 is proposed to be transferred in its entirety into new Section 1215(a) through (h), titled “Agricultural Equipment.”

It is proposed in subsection (a) to reference other safety requirements regarding agricultural tractors in Article 25 of the General Industry Safety Orders.

This proposal will aid the employer in locating the agricultural tractor requirements contained in the referenced article.

It is proposed in subsection (g) to amend the existing language from “... in this article ...” to “... in this subchapter ...,” to reflect that the agricultural safety orders in existing Article 13, titled “Agricultural Operations,” are proposed for transfer into new Subchapter 3, titled “Agricultural Safety Orders.”

Additionally, existing Section 3441(c), (d), (e), (f), (g), and (h) which contains specific agricultural equipment requirements are proposed to be transferred in its entirety into new Section 1215(i) through (n).

This proposal organizes specific requirements to which agricultural equipment is subject to in one article, and in separate sections solely containing such requirements.

It is proposed to include two “NOTES” in proposed Section 1215. The proposed “NOTE 1.” referencing the standards for tractors in Article 25 of the GISO makes the employer aware that additional tractor requirements exist in the GISO that apply to tractors used in agricultural operations. The proposed “NOTE 2.” referencing standards for orchard man-lifts in Section 3641 of the GISO makes the employer aware that specific requirements exist in the GISO that apply to orchard man-lifts.

These proposed “NOTES” are informational only and, therefore, will have no regulatory effect.

New Section 1216. Horizontal Rotary Spreaders; New Section 1217. Beet Trucks; New Section 1218, Choppers; New Section 1219. Conveyors and Elevators; and New Section 1220. Vegetable-Trimming Saws.

As noted in the proposed text, the specific equipment requirements in existing Sections 3442, 3444, 3445, 3446, and 3447 are proposed for transfer verbatim with no proposed revisions to new Sections 1216, 1217, 1218, 1219, and 1220 of proposed Article 6.

New Section 1221. Applicator Rigs, Tanks, and Vessels Used for Fertilizer, Insecticide, Pesticide, and Other Chemical Solutions of a Hazardous Nature.

Existing Section 3453(a), (b), (c), (d), (e), (f), and (h) is proposed for transfer verbatim with no proposed revisions, except a minor editorial revision, into new Section 1221.

It is proposed in new Section 1221(b) to revise an incorrect chemical designation for anhydrous ammonia from “NH3” to the correct designation of “NH₃.”

New Article 7. Equipment Operating Requirements.

This proposal transfers portions of the provisions of existing Section 3441 into new Article 7, titled “Equipment Operating Requirements,” which would contain new Section 1225.

New Section 1225. Operation of Agricultural Equipment.

Existing Section 3441(a) and (b) is proposed to be transferred into new Section 1225(a) and (b), titled “Operation of Agricultural Equipment.”

This proposal amends the referenced section number from “Section 3455 of this article” to “Section 1250” in the “NOTE” of proposed subsection (a). This proposal reflects that the referenced requirements currently in existing Section 3455 are proposed for transfer to new Section 1250 of the same subchapter as new Section 1225.

New Article 8. Restricted and Hazardous Material Safety Requirements.

This proposal transfers the provisions of existing Section 3450, Section 3451, and portions of Section 3453 into new Article 8, titled “Restricted and Hazardous Material Safety Requirements,” which would contain new Sections 1230, 1235, and 1240, respectively.

New Section 1230. Formulation and Application of Restricted Materials. (Organophosphates and Carbamates, Toxicity Categories I and II).

Existing Section 3450 is proposed for transfer to new Section 1230, titled “Formulation and Application of Restricted Materials. (Organophosphates and Carbamates, Toxicity Categories I and II).” Proposed Section 1230 contains the mandate that medical requirements relating to the formulation and application of restricted materials must be as required by Title 3, Article 23 of the California Code of Regulations.

As noted in the proposed text, the reference of the title “California Administrative Code” is updated to read “California Code of Regulations” to reflect the current title.

New Section 1235. Decontamination of Equipment Used for Restricted Materials.

Existing Section 3451 is proposed for transfer verbatim with no revisions to new Section 1235, titled “Decontamination of Equipment Used for Restricted Materials.”

New Section 1240. Employee Decontamination Means Required for Aqua Ammonia Operations.

Existing Section 3453(g) is proposed for transfer to new Section 1240, with a new title “Employee Decontamination Means Required for Aqua Ammonia Operations.” Proposed Section 1240 contains eye wash requirements for operations where aqueous ammonia is used.

As noted in the proposed text, a section title is proposed to reflect the safety orders contained in proposed Section 1240. This proposal contains editorial revisions and format changes to clarify in proposed subsection (a), the original intent of this standard, that the employer is responsible to provide eyewash requirements for operations where aqueous ammonia is used in the event aqueous ammonia is spilled in the eyes of workers.

In addition, it is proposed in subsection (b) to reformat the existing language to specify the water supply requirements during aqua ammonia operations. This proposal would clarify the existing water supply requirements during aqua ammonia operations.

These eye wash requirements in proposed Section 1240 are proposed to be separated from the equipment requirements currently contained in existing Section 3453, in order to be consistent with the organization of proposed Subchapter 3.

New Article 9. Site Safety Requirements.

This proposal transfers the provisions of existing Sections 3455 and 3448 into new Article 9, titled “Site Safety Requirements,” which would contain new Sections 1250 and 1255. In addition, a new Section 1260 is proposed which would contain the existing requirements of confined space hazards contained in existing Sections 5156 and 5158.

New Section 1250. Overhead Electrical Hazards.

Existing Section 3455 is proposed to be transferred in its entirety into new Section 1250, titled “Overhead Electrical Hazards” with an editorial revision.

As stated in the “NOTE,” it is proposed to include the reference to “of the High-Voltage Electrical Safety Orders” to specifically identify the safety orders that pertain to clearance distances.

New Section 1255. Water Hazards.

Existing Section 3448 is proposed to be transferred in its entirety into new Section 1255, titled “Water Hazards” with the exception of proposing to delete the term “actual” as it is unnecessary.

New Section 1260. Confined Space Hazards.

This proposal includes new Section 1260, titled “Confined Space Hazards” that is consistent with the language of existing Section 5156 and references the confined space requirements of existing Section 5158.

As noted in the proposed text, this proposal contains a reference to the confined space requirements of existing Section 5158 for all agricultural operations as defined in new Section 1151. The proposed language in new Section 1260 is consistent with that of the scope, application, and definitions of existing Section 5156 which references existing Section 5158 for industries and operations including agricultural operations.

The proposed addition of the reference to existing Section 5158 would ensure clarity that the agricultural operations, as defined in new Section 1151, are subject to the confined space requirements of existing Section 5158 of the GISO.

This proposal will have no regulatory effect, as agricultural operations are currently required to comply with the existing requirements of Section 5158 of the GISO.

New Article 10. Operation Specific Safety Requirements.

This proposal transfers the provisions of existing Sections 3458, 3454, and 3452 into new Article 10, titled “Operation Specific Safety Requirements,” which would contain new Sections 1270, 1275, and 1280, respectively. In addition, a new Section 1285 is proposed which would contain the existing requirements of helicopter operations in existing Section 3710 of the GISO and existing Article 35 of the CSO.

New Section 1270. Date Palm Operations.

Existing Section 3458, titled “Fall Protection for Date Palm Operations,” is proposed to be transferred in its entirety into new Section 1270, with new title “Date Palm Operations.”

The proposed editorial revision to the title of new Section 1270 would provide a separate subsection, titled “Fall Protection” that specifically identifies the fall protection requirements during date palm operations.

New Section 1275. Sheepshearing Operations.

Existing Section 3454, titled “Sheepshearing,” is proposed to be transferred in its entirety into new Section 1275, with new title “Sheepshearing Operations.”

The proposed editorial revision to the title of new Section 1270 would include the term “Operations” in the title of new Section 1275. This proposal would clarify the content of this section and is also consistent with the title of proposed Article 10, titled “Operation Specific Safety Requirements,” that contains specific safety requirements of various other agricultural operations.

New Section 1280. Aircraft Crop Dusting and Spraying Operations.

Existing Section 3452, titled “Aircraft Crop Dusting and Spraying,” is proposed to be transferred in its entirety into new Section 1280, with the new title, “Aircraft Crop Dusting and Spraying Operations.”

As reflected in its new title, new Section 1280 contains the requirements for aircraft crop dusting and spraying operations that must comply with the safety requirements of Article 23 of Title 3. The proposed editorial revision to the title of new Section 1280 would include the term “Operations” in the title of new Section 1280. This proposal would clarify the content of this section and is also consistent with the title of proposed Article 10, titled “Operation Specific Safety Requirements,” that contains specific safety requirements of various other agricultural operations.

In addition, an editorial amendment is proposed in new Section 1280 so that the reference to “California Administrative Code” is updated to read “California Code of Regulations” to reflect the current title.

New Section 1285. Helicopter Operations.

This proposal includes a reference to Article 35 of the CSO’s to make it clear that all agricultural operations utilizing helicopters in their operations must comply with the existing requirements of Article 35, titled “Helicopter Operations” of the CSO. The proposed language in new Section 1285 is also consistent with the language in existing Section 3710 of the GISO for general industry operations, including agricultural operations, to comply with existing Article 35 of the CSO.

This proposed reference to Article 35 of the CSO references an article to which employers responsible for helicopter operations are currently subject to, including agricultural employers. This proposed reference aids in identifying additional existing requirements associated with helicopter operations to which agricultural operations, as defined in proposed Section 1151, may be subject to.

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.

This proposal is non-substantive and is intended to enhance the format and order of the agriculture specific safety orders. Therefore, this rulemaking is proposed to provide a positive impact on California businesses by making the standards easier to locate and understand by the regulated public.

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 standards 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 standards 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.” Because the transfer of the agriculture specific safety orders is non-substantive, this proposal will not require local agencies or school districts to incur additional costs in complying with the proposal.

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 standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards 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 standards 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 will not affect small businesses because the proposed revisions are non-substantive. The agricultural specific safety orders are proposed for transfer into Subchapter 3, with only editorial, reformatting, and renumbering of articles, sections, and subsections, and grammatical revisions associated with this proposed transfer.

ASSESSMENT

The adoption of the proposed amendments to these standards 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

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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 proposed action.

2. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 28
Section 1704
Pneumatically-Driven Nailers and Staplers

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking is the result of a petition (OSHSB Petition File No. 461) by Mr. Jim Muskovich, Safety Consultant, regarding the use of the term “unattended” in Construction Safety Orders (CSO) Section 1704(b) which currently reads:

“When not in use, or *unattended*, all pneumatically driven nailers and staplers shall be disconnected from the air supply at the tool.”

The Petitioner contended that “unattended” can be misinterpreted to mean that it is a violation for an employee to set the tool down for even a few moments in order to procure additional supplies, such as lumber or roofing materials.

The use of pneumatically-driven nailers has increased in recent years and accidents involving their use have risen correspondingly. Although engineering safeguards, including triggering control sequences, are already commonly available in the marketplace, accident statistics tend to indicate that human error, haste, lack of training, and lack of adherence to safe work practices are contributing to the number of injuries using these tools.

Section 1704 was last modified in 1987 and much has changed in the industry since that time. Both the Division of Occupational Safety and Health (Division) and the Occupational Safety and Health Standards Board (Board) staff supported the petition and proposed a comprehensive overhaul of Section 1704. Concurrently the Division submitted a Form 9, Requests for New, or Change in Existing, Safety Orders, with suggested changes to the standard on August 30, 2004, supplemented on December 10, 2004.

On October 21, 2004, the Board granted the petition to the extent that an advisory committee be convened to review construction safety orders for pneumatically-driven nailers in light of current accident statistics, industry practices and technology. The consensus recommendations of the advisory committee convened June 7, 2006, have been considered in the preparation of this rulemaking proposal.

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Subsection 1704(a), Definitions.

The existing subsection prescribes that all pneumatically-driven nailers and staplers which operate at more than 100 psi pressure at the tool shall have a safety device to prevent accidental discharge unless the muzzle is in contact with the work surface. It is proposed to move this provision to subsection (b) in order to make room for certain definitions necessary for the proper application of proposed modifications to Section 1704; i.e., definitions for “light-duty nailers and staplers” and “mode of actuation.” The effect of these proposed modifications would be to clarify the proposed standard to assure proper application and enforcement.

Subsection 1704(b), General.

The existing subsection prescribes that all pneumatically-driven nailers and staplers shall be disconnected from the air supply at the tool when not in use or unattended. It is proposed to relocate this provision to subsection (c) in order to make room for the provisions of relocated subsection (a) as follows:

Subsection (b)(1).

Existing subsection (a) is proposed to be relocated to new subsection (b)(1). Furthermore, the existing 100 psi threshold which established a requirement for a work piece contact device is proposed to be replaced with an exception for light-duty nailers and staplers. This change was recommended by the advisory committee as the 100 psi threshold, also contained in counterpart federal standards [29 CFR 1926.503(b)(3)], is obsolete. The 100 psi threshold is subject to manipulation; i.e., operators in the field can set their tools to operate just below the 100 psi threshold in order to avoid the requirement. The proposed exception uses the defined term “light-duty nailers and staplers” which cannot easily be manipulated through subterfuge. The effect of this proposed modification would be to provide worker safety more effective than the federal standard by establishing clarifying applicability, consistent with current technology.

Subsection (b)(2).

This new subsection is proposed to prescribe that pneumatically-driven nailers and staplers shall be operated and maintained in accordance with the manufacturer’s operating and safety instructions. The effect of this amendment would be to establish criteria for the safe operation and maintenance of pneumatically-driven nailers and staplers.

Subsection (b)(3).

This new subsection is proposed to prescribe that personal protective equipment shall be utilized in accordance with CSO Section 1514. Although adherence to all applicable provisions of the safety orders is implicit, the effect of this cross-reference will be to add emphasis to this important safety practice.

Subsection (b)(4).

This new subsection is proposed to prescribe that operating controls shall not be removed, tampered with, altered, or otherwise disabled. The effect of this amendment would be to prohibit the common practice of disabling factory installed safety devices in the field (altering and/or removing trigger and/or work piece springs) in order to increase production.

Subsection (b)(5).

This new subsection is proposed to prescribe that pneumatically-driven nailers and staplers shall be connected to the air supply with a safety disconnect to prevent the tool from becoming accidentally disconnected. The effect of this amendment would be to prevent or minimize hazards created if the tools were to become disconnected from its air supply (e.g. operator thrown off balance, hose whip, tool sliding out of control off roof) and to provide equivalency with counterpart federal standards [29 CFR 1926.302(b)(1)].

Subsection (b)(6).

This new subsection is proposed to prescribe that tools shall be equipped with a fitting that will discharge all compressed air in the tool at the time the fitting or hose coupling is disconnected. The effect of this amendment would be to ensure there will be no residual pressure to accidentally discharge the nailer or stapler once it is disconnected from its air source.

Subsection (c).

The existing subsection (c) prescribes that hoses exceeding 1/2-inch inside diameter shall have a safety device at the source of supply or branch line to reduce pressure in case of hose failure. It is proposed to relocate this provision to subsection (e) in order to accommodate amendments and reformatting of the foregoing sections.

Existing subsection (b) is proposed to be relocated to subsection (c) and modified to prescribe specific conditions under which the tool shall be disconnected from its air supply. They are: (1) when performing any maintenance or repair on the tool, (2) when clearing a jam, (3) whenever the operator leaves the working level where the tool is, or (4) whenever the worker is over 25 feet from or is out of sight of the tool. The effect of these amendments would be to eliminate the ambiguity that was the subject of the petition and to clarify specific tasks requiring complete de-energization of the tool.

Subsection (d).

Existing subsection (d) prescribed safety precautions, including fall protection based on roof pitch. The portion of the existing subsection that requires the operator to wear a safety belt with a lanyard when the tool is used on a roof of 1/3 pitch or steeper is proposed for deletion for the following reasons: (1) the

existing requirement for the use of a safety belt conflicts with fall protection requirements elsewhere in the safety orders (Articles 24 and 30) and (2) the 1/3 pitch fall protection trigger presently specified is inconsistent with fall protection triggers elsewhere in the safety orders. Furthermore, the existing fall protection requirements are based on pitch rather than slope. Pitch is not a term commonly used in the industry and creates confusion. The effect of this deletion would be to promote consistency by eliminating overlaps and conflicts with other parts of the safety orders.

The portion of the existing subsection that requires that on roofs of 1/4 pitch or steeper, the air hose shall be secured at roof level in such a manner as to provide ample, but not excessive, amounts of hose is also proposed for modification. It is proposed to replace the use of "pitch" with "slope" and to set the trigger at roofs sloped steeper than 7:12, which is consistent with other triggers for roofing [i.e. CSO 1716.2(g), and 1731(c)].

Subsection (e).

Existing subsection (c) is proposed to be relocated to new subsection (e) in order to accommodate amendments and reformatting of the foregoing sections as described above.

Subsection (f).

This new subsection is proposed to prescribe that the employer's written Code of Safe Practices shall include provisions for training specific for the use of pneumatically-driven nailers and staplers where applicable. The effect of this amendment would be to emphasize that safety training for pneumatically-driven nailers and staplers should be included in the employer's Code of Safe Practices when applicable to assure that workers using pneumatically-driven nailers and staplers are properly trained on their safe operation and maintenance.

Subsection (g).

This new subsection is proposed to prescribe training in addition to that required by CSO 1509 and GISO 3203(a)(7) before workers can use pneumatically driven nailers. This section also prescribes refresher training, remedial training, and the general content of the training, as well as a requirement that the training be conducted by a qualified person. The effect of this amendment would be to assure safe operation of pneumatic nailers by training workers in the hazards and by instructing them in the safe handling and operation of pneumatic nailers.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

The training costs associated with this proposal are negligible since employers are already required to conduct periodic training and toolbox or tailgate safety meetings as required by CSO 1509 and GISO 3203 (Injury and Illness Prevention Training Programs). The proposed training standards can easily be incorporated into those training elements. The advisory committee estimated that any training costs would be more than offset by anticipated savings derived from reduced workers compensation and liability insurance costs. Furthermore, the proposed standard does not impose unique requirements on state government. All employers - state, local and private - will be required to comply with the prescribed standards.

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. Additional costs that may be incurred for additional training required by this proposed standard cannot be accurately determined; however, an advisory committee convened to review and comment on this proposal indicated that they anticipated that additional costs for training would be more than offset by savings resulting from reduced workers compensation and liability insurance costs.

Cost Impact on Private Persons or Businesses

The proposed standard may result in a small increase in training costs in order for employers to properly train their employees in accordance with the training requirements of Section 1704(f). Employers are already required to conduct periodic training and toolbox or tailgate safety meetings as required by CSO 1509 and GISO 3203 (Injury and Illness Prevention Training Programs), and the proposed training standards can easily be incorporated into those training elements. The advisory committee that assisted in developing this proposal estimated that any training costs would be more than offset by anticipated savings deriving from reduced workers compensation and liability insurance costs.

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 standard(s).

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

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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 proposed action.

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 June 15, 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 June 21, 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