

**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 15, 2011**, at 10:00 a.m.
in the Auditorium of the State Resources Building,
1416 9th 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 15, 2011**, following the Public Meeting,
in the Auditorium of the State Resources Building,
1416 9th 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 15, 2011**, following the Public Hearing,
in the Auditorium of the State Resources Building,
1416 9th 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**

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, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **December 15, 2011**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 25
Section 1675
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 4
Sections 3276 and 3278
Single-Rail Ladders

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 35
Section 1905
Helicopter Fueling

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 25
Section 1675
 GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 4
Sections 3276 and 3278
 Single-Rail Ladders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The proposed amendments are the result of a Division of Occupational Safety and Health (Division) Form 9-070, dated April 7, 2011, to correct an unintended consequence of the recent reorganization of the Title 8 ladder standards. Prior to the reorganization, single-rail ladders (portable and fixed) were prohibited by General Industry Safety Orders (GISO), Section 3278, Use of Ladders. A single-rail ladder is a ladder with rungs, cleats or steps mounted on a single-rail instead of the normal two rails used on most other ladders. Following the January, 2010 reorganization of the ladder standards, the title of Section 3278 changed to "Use of Fixed Ladders." As a result of this change, the use of single-rail fixed ladders remained prohibited, whereas single-rail portable ladders arguably were permitted. The Division is concerned that the unintended change to Section 3278 is not at least as effective as (ALAEA) federal OSHA standards for portable ladders. Federal OSHA ladder regulations under 29 CFR Parts 1910 and 1926 prohibit the use of single-rail ladders.

The Division proposes to correct this oversight by adding a prohibition on single-rail ladders to GISO, Section 3276, Portable Ladders, and by adding definitions of "single-rail ladder" to both Sections 3276 and 3278. According to the Division, definitions are needed in both sections because the term "single-rail ladder" is often confused with the term "single ladder" which is used in both sections.

Board staff proposes to include a GISO definition for single-rail ladder in Section 3276 and a prohibition on the use of such ladders. In addition, staff proposes to define single-rail ladders in Section 3278 consistent with the existing prohibition on single-rail ladder use and prohibit single-rail ladder use in the Construction Safety Orders (CSO) to ensure that California is ALAEA federal OSHA construction standards for this issue. Single-rail ladders are already defined in the CSO, Section 1504, definitions for ladders.

Section 3276. Portable Ladders.

Subsection (b) of this section consists of definitions of terminology used in the standards that comprise this section. An amendment is proposed to add a definition for the term "single-rail ladder." This definition will clarify to the employer the meaning and application of the proposed standard prohibiting single-rail ladder use in new subsection (d). An amendment is proposed for Section 3276(d)(1) which pertains to the selection and use of portable ladders to add language that prohibits single-rail ladder use. The proposed amendment will require employers to use conventional two rail portable ladders.

Section 3278. Use of Fixed Ladders.

Subsection (a) of this section contains general safety requirements for fixed ladders intended to ensure such ladders are used safely by workers. A new subsection (b) is proposed to define what is meant by

the term single-rail ladder as used in Section 3278. This amendment will clarify to the employer the meaning of the prohibition on single-rail ladder use contained in existing subsection (a)(4).

Section 1675. General.

Existing Section 1675 requires all portable and fixed ladders used in construction to comply with Section 3276 and Section 3277, respectively. An amendment is proposed to include a reference to Section 3278, in addition to the existing reference to Section 3277, on the use of fixed ladders in Section 1675(c). The proposed amendment will clarify to the employer that the fixed ladder use requirements of Section 3278, which includes a prohibition on the use of single-rail ladders and other important safety requirements, applies to the CSO. In addition, an amendment is proposed that adds a new subsection (d) at the end of Section 1675 stating, "Single-rail ladders shall not be used," which will ensure that workers do not use an inherently unsafe ladder and which will remove any question as to whether Section 1675 is ALAEA the federal construction standards in 29 CFR1926.1053(b)(19) that prohibits the use of single-rail ladders.

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 proposal amends GISO, Sections 3276 and 3278 to clarify to the employer the prohibition on single-rail ladder use and CSO, Section 1675 to prohibit the use of single-rail ladders commensurate with the federal prohibition; thereby, rendering Title 8 ALAEA the federal standard. No cost impacts are anticipated as this revision only remedies an unintended consequence of the recent reorganization of Title 8 portable ladder standards and restores the previous regulatory requirements.

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

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 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 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.”

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 state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESS

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 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: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 35
Section 1905
Helicopter Fueling

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The proposed amendment is the result of the Occupational Safety and Health Standards Board (Board) Decision dated August 8, 2011, regarding OSHSB Petition No. 522 submitted by Mr. David Feerst, Director of Safety, Winco, Inc., (Petitioner). In an e-mail received on April 22, 2011, the Petitioner requested the Board amend the Construction Safety Orders (CSO) Section 1905(b) to remove an obsolete provision regarding fueling procedures for helicopters. Specifically, consistent with current Federal Aviation Administration (FAA) recommendations and the National Fire Protection Association (NFPA) prohibition on grounding the aircraft and fueling equipment, the Petitioner requested the Board to delete the grounding requirement before and during aircraft fueling. According to the Petitioner, eliminating the grounding requirement would reduce static electrical discharges eliminating any chance of a spark caused by a difference in potential.

Board staff notes that Section 1900 of the CSO states that regulations administered by the FAA are not superseded by these orders. An FAA Safety Alert for Operators dated November 23, 2010, states in part that, "Before fueling, the aircraft must be bonded to the fuel source to equalize static electricity between the fuel source and the aircraft. Grounding of the aircraft and/or fuel truck is no longer recommended because it does not prevent sparks at the fuel source, and the grounding cable may not be sufficient to discharge the electrical current." Further, Chapter 5.4.1 of NFPA 407-2007 states in part, "Grounding during aircraft fueling shall not be permitted." Title 8, CSO Section 1905 has not been amended since 1985.

Board staff contacted several area helicopter flying services regarding the practice of grounding and bonding the aircraft and fuel source. The operations contacted indicated that they are not grounding either the aircraft or the fuel source but strictly bonding the aircraft to the fuel supply. Consequently, to ensure Section 1905 is kept up to date in accordance with the latest aircraft fueling and static discharge control methodology, Board staff proposes to amend Section 1905 consistent with the FAA and NFPA.

Section 1905. Fueling.

Existing Section 1905 describes requirements in preparation for fueling helicopters.

Subsection (b).

Existing subsection 1905(b) states, "The helicopter and fuel supply shall be securely bonded and grounded before and during fueling operations for static electrical discharge." The proposed amendment revises Section 1905(b) by deleting the words, "...and grounded..." The amendment will provide consistency with FAA and NFPA regulations and reduce static discharge minimizing the potential for fire and explosion which could result in serious employee injury or fatality.

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 proposal reduces employer requirements by eliminating the need to ground the helicopter and fueling supply during fueling. 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

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 regulation 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 amendment 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.)

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

EFFECT ON SMALL BUSINESS

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

ASSESSMENT

The adoption of the proposed amendment to this regulation 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 December 9, 2011. 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 15, 2011, 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 Marley Hart, Executive Officer, or Mike 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