

**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 **May 21, 2009**, at 10:00 a.m.  
in Room 358 of the County Administration Center,  
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 **May 21, 2009**, following the Public Meeting,  
in Room 358 of the County Administration Center,  
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 **May 21, 2009**, following the Public Hearing,  
in Room 358 of the County Administration Center,  
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**

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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 **May 21, 2009**.

1. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10  
Section 3385(c)(2)  
**Foot Protection**
  
2. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 14  
Section 3466(j)-(l)  
**Marine Terminal Operations—Vertical Tandem Lifts**
  
3. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 98  
Section 5006.1  
**Mobile and Tower Crane Operator Qualifications—Accreditation of  
Certifying Entities**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:**        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 10  
Section 3385(c)(2)  
**Foot Protection**

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

In a rulemaking that was the subject of an October 19, 2006 public hearing, the Occupational Safety and Health Standards Board (Board) considered amendments to Section 3385. The regulatory text considered at that public hearing and adopted by the Board added a reference in Section 3385(c)(2) to the “American National Standard for Men’s Safety-Toe Footwear, Z41.1-1999.” However, both the Informative Digest of Proposed Action/Policy Statement Overview and the Initial Statement of Reasons prepared for that rulemaking indicate that the national consensus standard intended for incorporation by reference was American National Standard Institute (ANSI) Z41-1999, American National Standard for Personal Protection-Protective Footwear.

In its decision rendered in PG&E (November 6, 2008), Occupational Safety and Health Appeals Board Docket No. 07-R1D3-1669, the Appeals Board noted the aforesaid discrepancy between the text of Section 3385(c)(2) as it presently reads and the manner it apparently was intended to read in accordance with the above-discussed Informative Digest of Proposed Action/Policy Statement Overview. The present proposal replaces the reference to American National Standard for Men’s Safety-Toe Footwear, Z41.1-1999 with a reference to American National Standard Institute (ANSI) Z41-1999, American National Standard for Personal Protection-Protective Footwear. The effect of this proposal is to correct Section 3385(c)(2) so that it references the intended national consensus standard.

### **DOCUMENT INCORPORATED BY REFERENCE**

American National Standard Institute (ANSI) Z41-1999, American National Standard for Personal Protection-Protective Footwear.

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

#### **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.

### **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.”

## **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 regulation 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 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, the 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.)

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

## **EFFECT ON SMALL BUSINESSES**

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.

2. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 14  
Section 3466(j)-(l)  
**Marine Terminal Operations—Vertical Tandem Lifts**

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

The Occupational Safety and Health Standards Board (Board) intends to adopt this proposed rulemaking action pursuant to Labor Code Section 142.3, which permits the Board to follow certain procedures when adopting standards that are substantially the same as federal standards addressing occupational safety and health issues.

The United States Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated a regulation addressing the subject of this rulemaking. The federal rule is set forth as 29 Code of Federal Regulations Sections 1917.71(i)-(k). These provisions are additions to Section 1917.71, the provision that constitutes the basis of Section 3466 of Title 8. The federal final rule was published in the Federal Register on December 10, 2008 (Fed. Reg., Vol. 73, No. 238, pp. 75246-90).

The subject of the newly-adopted federal provisions is a procedure known as “vertical tandem lift” (VTL) utilized at marine terminals in connection with “intermodalism.” Intermodalism refers to the containerization of cargo, and it typically involves three key components: standardized containers with uniform corner castings, interbox connectors to secure the containers, and a type of crane that has specialized features for the rapid loading and unloading of the containers. VTL is a practice by which a container crane lifts two or more containers, one on top of the other, connected by a particular type of interbox connector known as a semi-automatic twist lock.<sup>1</sup>

VTLs presently are unregulated in California. The federal standard is more effective than the current State standard, because regulating VTL affords more protection than allowing the practice to be undertaken without regulation. The proposal uses the federal wording verbatim, except that cross references to State standards are substituted for cross references to various federal standards and the State system of enumeration and formatting is used.

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<sup>1</sup> The explanations in this paragraph are derived from the discussion found at Fed. Reg., Vol. 73, No. 238, December 10, 2008, pp. 75246-47.

With the changes made in accordance with this proposal, the proposed regulation is substantially the same as the final rule promulgated by Federal OSHA. When the Board adopts a standard substantially the same as a federal standard, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written comments and the oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The regulation may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

### **COST ESTIMATES OF PROPOSED ACTION**

At Federal Register, Vol. 73, No. 238, December 10, 2008, pages 75280 to 75287, a detailed discussion of the cost impact of the federal version of this proposal is presented. A preliminary economic analysis is cited estimating a compliance cost of \$4,000 per employer with stevedore operations. The federal analysis states that when the proposal is fully complied with, no future injuries or fatalities are expected to occur while performing VTL's. Thus, the per employer compliance cost appears minimal, and that cost may well be offset by the avoidance of injury-related costs. In addition, according to the federal materials, some employer savings are expected as a result of the use of VTL's.

### **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 regulation 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 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, the 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.)

The proposed regulation 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 the 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.

3. **TITLE 8:**      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 98  
Section 5006.1  
**Mobile and Tower Crane Operator Qualifications—Accreditation of  
Certifying Entities**

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

On September 18, 2008, the Occupational Safety and Health Standards Board (Board) granted OSHSB Petition File No. 504, to the extent that Board staff convene an advisory committee to consider proposed amendments to Title 8, California Code of Regulations, Section 5006.1(c), to add the American National Standards Institute (ANSI) as an accrediting entity for crane operator certification. At the Board's monthly business meeting on January 15, 2009, the Board agreed with staff that since the inclusion of ANSI as an accrediting entity was widely supported by stakeholders, an advisory committee meeting would be unnecessary.

The Board staff proposes to amend Section 5006.1(c) to permit employers to have their crane operators certified by a certifying entity that is accredited by either the National Commission for Certifying Agencies (NCCA) or by ANSI in accordance with the American National Standards Institute (ANSI), International Organization for Standardization (ISO), and the Electrotechnical Commission (IEC) 17024:2003(E) standards for conformity assessment.

The following action is proposed:

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

This section contains requirements addressing general operator qualifications including, but not limited to, physical examinations, substance abuse testing, psychometric standards, written examinations, issuance of

certificates and recertification. Subsection (c) requires certifying entities (entities that develop and administer operator certification exams) to be accredited by the NCCA.

This proposal would amend subsection (c) to include the ANSI personnel certification accreditation program as a certifying entity. The ANSI accreditation program is based on and operated under the conformity assessment standard of the ANSI/International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) 17024:2003(E), Conformity Assessment-General Requirements for Bodies Operating Certification of Persons. This standard has characteristics similar to the NCCA accreditation program and is consistent with the 1999 Standards for Educational and Psychological Testing published jointly by the Joint Committee of the American Educational Research Association, and the National Council in Measurement in Education.

The proposal would have the effect of providing another accreditation resource as an alternative to NCCA accreditation. Certifying entities that elect to achieve ANSI/ISO/IEC accreditation would do so by following the conformity assessment requirements contained in the standard as overseen by ANSI. The accreditation process affects only those employers who elect to become their own certifying entity as set forth in Section 5006.1 and third party certifying entities that are contracted by employers to administer a crane operator certification exam(s).

### **DOCUMENTS INCORPORATED BY REFERENCE**

1. American National Standards Institute (ANSI), International Organization for Standardization (ISO), and the International Electrotechnical Commission (IEC) 17024:2003(E), Conformity Assessment-General Requirements for Bodies Operating Certification of Persons.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document 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.

#### **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.

#### **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 regulation 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 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, the 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.)

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

## **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 May 15, 2009. 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 May 21, 2009, 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](mailto: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 Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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JOHN D. MACLEOD, Chairman

NOTICE OF ADOPTION OF  
REGULATIONS  
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS  
BY THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. Title 8, Division 1, Chapter 4, Subchapter 7, General Industry Safety Orders, Articles 7 and 25, Sections 3336, 3650, and 3653, **Powered Industrial Trucks—Seat Belts.**

Heard at the September 18, 2008, Public Hearing; adopted on January 15, 2009; filed with the Secretary of State on February 13, 2009; and became effective on March 15, 2009.

Copies of this standard are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: **<http://www.dir.ca.gov/oshb>** and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: **[oshb@dir.ca.gov](mailto:oshb@dir.ca.gov)**.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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Marley Hart, Executive Officer