

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 18, Article 2, Section 8352
of the Ship Building, Ship Repairing and Ship Breaking Safety Orders

Scope and Application – Ship Building**SUMMARY**

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking proposal based upon a review of the application language contained in Section 8352 of the Ship Building, Ship Repairing and Ship Breaking Safety Orders. Section 8352 limits the application of Subchapter 18 safety orders to ships of wood or metal construction, while the equivalent federal regulation, 29 CFR 1915.2(a) does not limit the scope of the regulation by the type of construction materials.

This rulemaking action proposes amending Section 8352 to remove the phrase “of wood or metal construction” to bring Section 8352 into line with 29 CFR 1915.2(a). The proposed amendment is intended to be at least as effective as (ALAEA) the Federal standard which does not mention ship building construction materials.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.

- Aligns Title 8 with the equivalent federal standard by removing the Title 8, wood and metal vessel limitation. The proposal will ensure that Title 8 is ALAEA the equivalent Federal standard.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the state regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).
- Is the least burdensome effective alternative. The proposal is consistent with the existing Federal standard which applies to all vessels regardless of the materials of construction.

Section 8352. Application of These Orders.

Existing Section 8352 limits the application of Subchapter 18 to vessels or similar floating structures constructed of wood or metal irrespective of type or description. The equivalent Federal shipbuilding standard is not limited to vessels of wood or metal construction and thereby applies to all vessels regardless of construction material. The proposed amendment is necessary to render Title 8, Section 8352 ALAEA the Federal standard as required by Labor Code Section 142.3(a)(2).

DOCUMENTS RELIED UPON

- United States Department of Labor, Occupational Safety and Health Administration, Occupational Safety and Health Standards for Shipyard Employment, 29 CFR 1915.2(a), <http://www.osha.gov>, October 15, 2012.

This document is 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.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

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.

Economic Impact Analysis

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal expands the application of the existing standard by dropping all mention of shipbuilding materials. The amendment is consistent with 29 CFR 1915.2(a) and renders Title 8, Section 8352 ALAEA the Federal standard.

Therefore, the adoption of the proposed amendment to this standard will not have any effect on the creation or elimination of California jobs nor result in the creation or elimination of existing businesses or affect the expansion of existing California businesses.

This regulatory proposal is intended to provide worker safety at places of employment in California.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in

complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This 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, these proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

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

EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendment may affect small businesses. However, no adverse economic impact is anticipated. The proposal corrects an oversight in the scope and application of the State’s shipyard safety standards. Discussions with a major California shipyard stakeholder indicate that portions of California shipbuilding, ship repair and ship breaking operations are within the jurisdiction of Federal OSHA and portions are within the jurisdiction of the Division of Occupational Safety and Health. It is apparent from the stakeholder discussions that for the sake of operational efficiency, federal and state shipyard standards are applied uniformly regardless of the material of construction. Consequently, it is believed that this regulatory proposal will have minimal impact upon California shipyard employers and render Title 8 SSO at least as effective as the Federal standard as required by the California Labor Code.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.