

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb

**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 1903 of the Construction Safety Orders

Landing Operations-Note to Section 1903**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive and sufficiently related modification that is the result of public comments and/or Board staff evaluation.

Section 1903. Landing Operations.

This section contains various construction industry helicopter landing protocols to ensure the aircraft will land safely thereby ensuring the safety of the pilot, crew, passengers and persons on the ground. An amendment was proposed to change the Note to an Exception statement, specifically excluding helicopters involved in an in-flight emergency from having to comply with Section 1903 landing requirements. A modification is proposed to clarify that the Note applies to all of Section 1903. The proposed modification is necessary to clarify to the employer that his/her helicopter operations are exempt from the landing requirements in Section 1903 in the event of a helicopter in-flight emergency.

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS:**I. Written Comments****Mr. David Shiraishi, Area Director, Region IX, OSHA, U.S. Department of Labor, by letter dated May 14, 2014.****Comment:**

Mr. Shiraishi commented that Federal OSHA has reviewed the proposal and found it to be commensurate with federal standards.

Response:

The Board thanks Mr. Shiraishi for his comments and participation in the Board's rulemaking process.

Mr. Sutter Fox, Captain, US Coast Guard Retired, by e-mail with attachment to Mr. Jack Kastorff, dated May 4, 2014 and forwarded to the Standards Board by e-mail dated May 8, 2014.

Comment:

Mr. Fox commented he is not sure that the proposal targets the right paragraphs, or if the wording change in the Exception is an improvement. Mr. Fox shared his concerns regarding subsections (e) and (f) of Section 1903 of the Construction Safety Orders stating that subsection (e) isn't part of the proposed change, but asked if he would be "able to land a helo on a single square foot?"

He suggested that subsection (f), which addresses 12x12 landing sites, should require a consideration of wheel or skid configurations and dimensions.

Mr. Fox further stated regarding the new exception change from emergency to inflight emergency, that there are many times when a ground emergency might induce a change for safety. Considering fire, engine fire, ground resonance, landing gear collapse, etc., might not be covered by the new wording.

Response:

In regard to Mr. Fox's comment considering whether the proposal targets the right paragraphs, the purpose of the amendment is to replace the informational "NOTE" with an enforceable "Exception". The Exception pertains to all of the Section 1903 regulatory text that immediately precedes it.

The amendment does not apply to ground based emergencies triggered by emergency medical or search and rescue actions, law enforcement, or emergencies created by some type of natural disaster such as flood, fire or earthquake. The preceding activities do fall within the scope of Section 1903 pursuant to Section 3710. However, to the extent that any Federal regulations or laws conflict with any Section 1903 requirements, those Federal regulations or laws may preempt the State requirements.

The thoughts expressed by Mr. Fox pertaining to subsections (e) and (f) are outside the scope of the proposal.

The Board thanks Mr. Fox for his comments and participation in the Board's rulemaking process.

Mr. Steve Workman, Departmental Safety Coordinator and Deputy Darren Dollard, Aerial Support Detail, San Diego County Sheriff's Department, by letter dated May 5, 2014.

Comment:

The commenters stated that the rationale of the State of California for this proposal is “to clarify that consistent with FAA standards, Section 1903 landing zone requirements are waived in the event of an in-flight emergency.” Their position is that the current language in Section 1903(a) already covers this matter in any circumstance, including in-flight emergencies. The foundation of their opposition is the possible future interpretation of the language in the proposal if adopted as currently stated. They are concerned that changing a “NOTE” to an enforceable “Exception” and limiting that exception to in-flight emergencies adds unnecessary challenges to their current standard operating procedures which they believe to be in compliance with FAA regulations. They consider operations such as Search and Rescue and Fire Suppression to be emergencies and apply the exception as currently noted.

The commenters also state that during Search and Rescue and Fire Suppression operations their Aerial Support To Regional Enforcement Agencies (ASTREA) pilots choose safe landing sites that may not specifically meet Section 1903(b). ASTREA pilots often are landing in some extremely unconventional locations and this proposal would remove their discretion during emergency operations. The commenters opined that perhaps it would suit both the State’s and the public safety agencies’ concerns to change the proposal to the following: EXCEPTION: Except in an in-flight emergency, or during Search and Rescue, Law Enforcement, and Fire Suppression operations performed by public safety agencies.

Response:

This proposal applies to public safety agency operations pursuant to Section 3710. (See the above response to Mr. Sutter Fox by e-mail May 18, 2014).

The proposal is needed to render what is an exception by the nature of the construction of the sentence in the Note which is unenforceable, to an enforceable exception statement.

The Board thanks Mr. Workman and Deputy Dollard for their comments and participation in the Board’s rulemaking

process. II. Oral Comments

Oral comments received at the May 15, 2014, Public Hearing in Walnut Creek, California.

Mr. Bill Jackson, Board Member

Comment:

Mr. Jackson asked Board staff to explain in their response to comments why they are changing from “emergencies” to only “in-flight emergencies.”

Response:

The fundamental purpose of this rulemaking proposal is to covert an unenforceable Note into an enforceable Exception. There is also a distinction between search and rescue, law enforcement, medical emergencies (EMT) and an in-flight emergency where the rotorcraft (helicopter) experiences a mechanical, hydraulic or electrical failure which threatens to bring the aircraft down uncontrollably, or make a landing perilous. In the latter case, Section 1903 landing protocols are waived in deference to the pilot-in-command getting a compromised helicopter on the ground safely. The Division and Board staff are in agreement that waiving Section 1903 landing protocols is reasonable in an in-flight emergency but not in situations where poor landing site conditions may threaten the safety of both the helicopter occupants and victims and personnel on the ground.

**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-Day Notice of Proposed Modifications mailed on July 11, 2014.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by 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 adopted action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.