

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
Tel: (916) 274-5721 Fax: (916) 274-5743
Website address www.dir.ca.gov/oshsb



TITLE 8. CALIFORNIA CODE OF REGULATIONS

General Industry Safety Orders Sections 6051, 6056, and 6057 (Published on January 3, 2020)

Commercial Diving Operations

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **February 20, 2020** in the **Council Chambers** of the **Rancho Cordova City Hall, 2729 Prospect Park Drive, Rancho Cordova, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **January 3, 2020** and closes at 5:00 p.m. on **February 20, 2020**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT
OVERVIEW

The Association of Diving Contractors International contacted federal OSHA, claiming that in several specific instances California's diving regulations are not as protective as the corresponding federal regulations. Federal OSHA contacted Board staff to discuss amendments to the regulations and resolve the concerns.

In 2017, several of California's regulations were amended via Labor Code Section 142.3(a)(3) which permits an expedited rulemaking process by exempting the Board from certain provisions of the Government Code when adopting standards substantially the same as federal standards (also known as the Horcher process). For the remaining instances where the amendments could not be made via that expedited process, the Board is proposing to make the changes in accordance with the requirements of the Administrative Procedures Act (APA).

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are 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 are 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).

The proposed rulemaking brings some California requirements into conformity with existing federal regulations while also proposing amendments for which corresponding federal regulations do not exist.

Anticipated Benefit

The proposal promotes worker safety by updating commercial diving requirements to be at least as effective as their federal counterparts, and allowing for reasonable protective measures for divers engaged in technical diving operations. Additionally, the proposal corrects many errors in the existing text that could cause confusion for stakeholders seeking compliance.

The specific changes are as follows:

Section 6051. Definitions.

Section 6051 contains definitions for use in interpreting and complying with Article 152 "Diving Operations." The Board proposes to add new definitions for "Film and TV Diving", "Positive Buckling Device", and "Zoo and Aquarium Exhibit Diving" and to modify the existing definition for "Technical Diving." The changes will aid the regulated public in complying with the requirements of the associated sections.

The Board also proposes to correct all occurrences of the word “HOOKAH” to read “hookah.” The proposed change is editorial and will have no regulatory effect.

Section 6056. Basic Operation Procedures.

Section 6056 contains depth limitations, breathing gas, diver supervision, and other safety requirements for divers engaged in SCUBA diving, surface-supplied air diving, and liveboating. Existing subsection 6056(a)(1)(C) allows SCUBA diving to take place only in currents of one (1) knot or less unless the diver is line-tended. An exception to the requirement, however, is proposed for technical divers performing film and TV diving operations in a controlled environment where the current is artificially increased above one (1) knot and where, in case of an emergency, the current can be reduced to one (1) knot or less. The exception also requires the dive team to be trained to work in such conditions. The exception will allow technical divers performing film and TV diving operations to safely and feasibly produce media for film and television.

Subsection 6056(a)(1)(D) prohibits SCUBA diving in enclosed or physically confining space unless the diver is line-tended. An exception to the requirement is proposed for technical divers performing film and TV diving operations in a controlled environment where the dive team is trained to respond to emergencies which could arise under such conditions. The exception will allow technical divers performing film and TV diving operations to safely and feasibly produce media for film and television.

Subsection 6056(a)(2) provides requirements for the supervision of an in-water SCUBA diver. In order to be commensurate with federal OSHA requirements, the subsection is proposed for amendment to require a standby diver at all times while a SCUBA diver is in the water. Likewise, the federal requirements and the corresponding proposed California amendment require the in-water diver to be line-tended from the surface, or accompanied by another SCUBA diver in the water.

California opts to retain the more protective existing language requiring the companion SCUBA diver to remain in effective communication with the diver being supervised throughout the operation, instead of being “in continuous visual contact” as required by the corresponding federal regulation. The Board also proposes to match the layout of the federal text by deleting subsection 6056(a)(2)(C) and combining it with existing subsection 6056(a)(2)(B). The amendment will make the California language commensurate with federal language and render the requirements easier to understand.

Furthermore, an exception to subsection 6056(a)(2) is proposed to allow technical divers to comply with any one of the supervisory diving requirements: a standby diver, line-tending from the surface, or an in-water companion SCUBA diver. The exception will allow technical divers reasonable latitude in providing supervision to an in-water diver.

Subsection 6056(a)(5) provides requirements for diving with the use of hookah gear. Newly proposed subsection 6056(a)(5)(A) restricts hookah diving to technical diving operations only. Existing subsection 6056(a)(5)(A) is proposed to be re-lettered to 6056(a)(5)(B) and amended to

limit hookah diving to a maximum depth of 30 feet of seawater (fsw), instead of the current limit of 190 fsw. The depth limitation of 30 fsw is based on the ability of the first stage hookah regulator to properly function at the depth without the need to compensate for increased pressures at greater depths.

Newly proposed subsections 6056(a)(5)(C) and (D) require additional safety protections such as the use of a non-return valve and a safety harness that allows the hookah diver to be safely pulled from the water in an emergency.

Existing subsections 6056(a)(5)(B)-(D) are proposed to be re-lettered to subsections 6056(a)(5)(E)-(G). Existing subsection 6056(a)(5)(B), (proposed to be re-lettered to subsection (E)), is proposed for further amendment to add the word “gas” to the phrase “independent reserve breathing [gas] supply”. Additionally, the subsection is proposed for amendment to require a hookah diver to carry sufficient reserve breathing gas to return to the surface should the diver’s air supply malfunction. The existing requirement that the hookah diver be equipped with a regulator is proposed to be placed before the requirement for the reserve breathing gas to increase readability.

Finally, newly proposed subsection 6056(a)(5)(H) requires a second stage regulator used for hookah diving to be designed to function at the diver’s working depth. The above proposed amendments relating to hookah diving will ensure that technical divers can safely use hookah equipment during technical diving operations.

The semi-colon at the end of subsection 6056(b)(2)(A) is proposed to be replaced with a period. Additionally, a hyphen is proposed to be added between the words “surface” and “supplied” in subsection 6056(b)(2)(B) to match others occurrences of the word “surface-supplied” in California’s diving regulations. Neither change will have any regulatory effect.

Existing subsection 6056(b)(2)(C) is proposed for amendment to delete the word “standby” from the phrase “A standby diver equipped with surface-supplied gear...shall hose tend at the underwater point of entry...”. The use of the word “standby” conflicts with the definition of a “standby diver”, which is a topside diver ready to assist in the rescue of an in-water diver.

The existing language of subsection 6056(b)(2)(C) requires the diver(s) to be located at the underwater point of entry into an enclosed or physically confining space and not on the surface. The change will remove a potential point of confusion from the existing language and ensure that a diver working in enclosed or physically confining spaces is attended at the underwater point of entry.

Section 6057. Equipment Procedures and Requirements.

Section 6057 contains requirements for recordkeeping of alteration, maintenance, repair, testing, or calibration of dive equipment. The section also contains requirements for specific features and functions for SCUBA, surface-supplied air, and other diving equipment.

Subsection 6057(a) is proposed to be amended to add the missing word “shall” in the sentence “Each equipment modification, repair, test, calibration or maintenance service [sic] be logged...” The corresponding federal language found in 29 CFR 1910.430(a)(2) includes the word “shall”. The proposed revision will have no regulatory effect in that, notwithstanding the correction being appropriate, the preexisting sentence’s meaning had been implicitly clear.

Subsections 6057(b)(2)(B) and (C) are proposed for amendment to replace the word “must” with “shall” in the phrase “SCUBA tanks must...”, which appears in both subsections. Additionally, subsection 6057(b)(4)(A) is proposed for amendment to correct the misspelling of the word “buoyancy”.

Finally, subsection 6057(b)(7) is proposed for amendment to replace the word “at” with the word “for” in the phrase “Underwater breathing masks and helmets used at [sic] SCUBA must meet...” The word “must” is proposed for replacement with the word “shall” in this subsection as well. The proposed amendments are editorial and will have no regulatory effect.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies or School Districts: None

Cost or Savings to State Agencies: None

Cost to Any Local Government or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

Cost or Savings in Federal Funding to the State: None

Cost Impact on a Representative Private Person or Business:

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments for technical diving will preserve existing requirements for technical divers, while updating California regulations to be commensurate with their corresponding federal regulations. Although the updated regulations contain a requirement for a standby diver, they do not necessarily impose a cost impact.

Under existing requirements, a dive team consists of at least three members: an in-water diver to perform the work, a dive supervisor, and either an in-water buddy diver or a topside line-tender. The topside line-tender can serve as a standby diver in addition to his/her line-tending duties, thus obviating any potential costs of the new requirement. In situations where the employer elects to use an in-water buddy diver instead of the topside line-tender, an additional employee may be required to serve as a standby diver, thus potentially incurring costs.

The Board estimates that in the limited cases where an additional employee is needed to serve as a standby diver for commercial diving operations using SCUBA gear, the cost of the added employee could be up to \$680 for an 8-hour day. The Board estimates that such a situation would occur fewer than 100 times each year because the vast majority of commercial diving work is performed using surface-supplied air, due to its advantages in communication with the diver and its inherent safety features. Additional equipment costs are not anticipated because employers regularly stock extra gear for various uses, such as additional dive team members rotating positions in an effort to avoid decompression limits.

**Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals:
Including the Ability of California Businesses to Compete:**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. The proposed amendments for technical diving will preserve existing requirements for technical divers, while updating California regulations to be commensurate with their corresponding federal regulations. As other states are required to either follow the federal commercial diving regulations or create their own equivalent regulations, the proposed amendments (unrelated to technical diving) are the same or similar to the requirements of other states.

Significant Affect on Housing Costs: None.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment(s) may affect small businesses; however, no significant economic impact is anticipated. Although the updated regulations contain a requirement for a standby diver, they do not necessarily impose a cost impact.

Under existing requirements, a dive team consists of at least three members: an in-water diver to perform the work, a dive supervisor, and either an in-water buddy diver or a topside line-tender. The topside line-tender can serve as a standby diver in addition to his/her line-tending duties, thus obviating any potential costs from the new requirement. In situations where the employer elects to use an in-water buddy diver instead of the topside line-tender, an additional employee may be required to serve as a standby diver, thus potentially incurring costs.

The Board estimates that in the limited cases where an additional employee is needed to serve as a standby diver for commercial diving operations using SCUBA gear the cost of the added employee could be up to \$680 for an 8-hour day. The Board estimates that such a situation would occur fewer than 100 times each year because the vast majority of commercial diving work is performed using surface-supplied air, due to its advantages in communication with the diver and its inherent safety features. Additional equipment costs are not anticipated because employers regularly stock extra gear for various uses, such as additional dive team members rotating positions in an effort to avoid decompression limits.

**RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT/ANALYSIS**

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation of new businesses or the elimination of existing California businesses or affect the expansion of existing California businesses because the proposed amendments for technical diving will preserve existing requirements for technical divers, while updating California regulations to be commensurate with their corresponding federal regulations.

BENEFITS OF THE PROPOSED ACTION

The proposal promotes worker safety by updating commercial diving requirements to be at least as effective as their federal counterparts, while preserving reasonable protective measures for divers engaged in technical diving operations. Additionally, the proposal corrects many errors in the existing text that could cause confusion for stakeholders seeking compliance. No significant environmental impact is anticipated from the proposed action.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) or the back-up contact person, Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED
REGULATIONS AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other

information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.