

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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TITLE 8. CALIFORNIA CODE OF REGULATIONS

Subchapter 4, Construction Safety Orders
Article 15. Cranes and Derricks in Construction
Sections 1618.1 and 1618.4
(Published on May 3, 2019)

Cranes and Derricks in Construction: Operator Qualification [HORCHER]

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 **June 20, 2019** in the **Council Chambers** of the **Pasadena City Hall, 100 North Garfield Avenue, Pasadena, 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 **May 3, 2019** and closes at 5:00 p.m. on **June 20, 2019**. 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 Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations addressing Qualifications for Operators of Cranes and Derricks in Construction on November 9, 2018, as 29 Code of Federal Regulations (CFR), Part 1926, Subpart CC, Sections 1926.1427 and 1926.1430(c). The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 83, No. 218, pages 56198-56247, November 9, 2018, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

Section 1618.1. Operator training, certification and evaluation.

This section, formerly titled "Operator Qualification and Certification" has been retitled for consistency with the federal title and with federal modifications to 29 CFR 1926.1427.

Subsection 1618.1(a), General requirements for operators.

This subsection, formerly titled "Qualifications and Certification" has been retitled and modified based on 29 CFR 1926.1427(a) and (a)(1) to include a new federal requirement for evaluation of trainees and operators prior to operating any equipment covered by Article 15. Existing state requirements for training are also clarified by adding the term "operator-in-training" to assure consistency with federal standards.

Subsections 1618.1(a)(1)-(a)(3).

Cross-references have been modified as needed due to relocation of some requirements in the standard. Subsection (a)(3) also introduces the term "licensure" since operators employed by non-military government entities who only operate equipment within that entity may be licensed by that entity, in accordance with specified criteria, in lieu of being certified by an accredited crane operator certifying entity. The July 7, 2011 effective date for the employer to provide qualification or certification at no cost to operators in their employ on that date has been deleted as it has become moot in the years since adoption.

Subsection 1618.1(b), Operator training.

This subsection, relocated from existing subsection (d) supplements existing state verbiage with federal verbiage clarifying that training shall include both formal and practical elements. The existing subsection (d)(1) requirement for continuous monitoring is now covered in new subsection (b)(2).

Subsection 1618.1(b)(1), Operator training – instruction.

This new subsection incorporates federal verbiage requiring the employer to train the operator-in-training on the knowledge and skills listed in subsection (g), certification criteria.

Subsection 1618.1(b)(2)-(3), Operator training – monitoring and assignment of work during training.

For the purposes of equivalency, these two subsections adopt federal verbiage that substantially contain the same requirements that are in existing subsections (d)(1), (d)(2) and (d)(3)(C).

Subsection 1618.1(b)(4), Monitoring of operators-in-training.

This subsection prescribes that the employer is to ensure that an employee who is not qualified or certified under this section is permitted to operate equipment only as an operator-in-training and only when monitored/supervised by a qualified trainer. Most of these requirements are brought forward from subsection (d). Subsection (b)(4)(A)3., which is similar to existing section (d)(3), is amended with a federal clarification of trainer qualifications. As is currently the case, state standards do not permit the operator-in-training to continue operation of the equipment while the trainer is on break.

Subsection 1618.1(b)(5), Retraining.

This new subsection incorporates federal verbiage requiring the employer to provide retraining in relevant topics when, based on the performance of the operator or an evaluation of the operator's knowledge, there is an indication that retraining is necessary.

Subsection 1618.1(c), Operator certification and licensing.

This subsection prescribes that the employer is to ensure that each operator is certified or licensed to operate the equipment in accordance one of two following options.

Subsection 1618.1(d), Option (1): Certification by an accredited crane operator certifying entity.

The certification requirements of existing subsections (b)(1) – (b)(5) have been relocated to this subsection for consistency with federal formatting. Cross-references have been changed to accommodate this relocation. Consistent with the federal rulemaking, the existing requirement for operators to be certified by type and capacity, has been changed. Operators now only need be certified by type; however, a new federal requirement has been added in subsection (f) for operators to be evaluated to ensure they are qualified to operate the particular type, size and configuration of equipment they will be operating. Certification by type and capacity will also be permitted. As before, the state requires substance abuse testing and a physical exam in addition to the federally required written and practical tests for certification.

Subsection 1618.1(e), Option (2): Licensing by a government entity.

The licensure requirements of existing subsection (c) have been relocated to this subsection for consistency with federal formatting; only the cross-references have been changed to accommodate the relocation.

Subsection 1618.1(f), Evaluation.

This new subsection has been added for equivalency with the federal final rule.

Subsection 1618.1(f)(1).

This subsection requires the employer to ensure through an evaluation that each operator is qualified by a demonstration of: (A) the skills, knowledge, and ability to safely operate the size and configuration of equipment he/she will be operating; and (B) the ability to perform the hoisting activities required for assigned work.

Subsection 1618.1(f)(2).

There is a provision that the employer may rely on its previous assessments of the operator in lieu of conducting a new evaluation of operator's existing knowledge and skills for operators employed prior to the effective date of this standard.

Subsection 1618.1(f)(3).

This subsection prescribes qualifications for the evaluator.

Subsection 1618.1(f)(4).

This subsection requires that the evaluator must be an employee or agent of the employer. It also provides that once the evaluation is completed successfully, the operator may be permitted to operate other equipment that does not require substantially different skills, knowledge, or ability.

Subsection 1618.1(f)(5).

This subsection prescribes documentation requirements and document availability.

Subsection 1618.1(f)(6).

This subsection provides that when retraining is required, the employer shall re-evaluate the operator with respect to the subject of the retraining.

Subsection 1618.1(g), Certification criteria.

This subsection relocates the requirements of existing subsection (b)(1) for consistency with federal formatting. All provisions of existing (b)(1) are carried forward except as noted below.

Subsection 1618.1(g)(3)(A).

This subsection replaces state verbiage for written exam requirements from existing (b)(1)(C), with federal verbiage which makes more specific the required elements of the written exam.

Subsection 1618.1(g)(3)(B).

This is a new subsection that has been added for equivalency with the federal final rule. It requires that the individual be able to read and locate relevant information in the equipment manual and other materials containing information referred to in subsection (g)(3)(A).

Subsection 1618.1(h), Effective dates.

This subsection replaces and supersedes existing subsection (e) with new effective dates based on federal dates (adjusted for state adoption). The existing state dates which are being superseded and replaced are historical and are no longer applicable.

Exceptions to Section 1618.1.

The exceptions of the existing section are carried forward. Exception 1 has been amended with section cross-references consistent with federal clarifications.

Section 1618.4, Training.

Subsection 1618.4(c)(1), (formerly "Operators-in-Training for equipment where certification or qualification is required by this Article").

This subsection formerly required the employer to train each operator-in-training in the areas addressed in existing subsection 1618.1(b)(1)(C) and (D) (written and hands-on testing). It also required the employer to provide retraining if the operator-in-training did not pass a qualification

or certification test. Due to reformatting to be equivalent with federal standards, these training requirements are proposed to be relocated to subsections 1618.1 (a) and (b).

Subsection 1618.4(c)(2) (formerly “Transitional Period”), and subsection 1618.4(c)(3) formerly “Operators excepted from the requirements of Section 1618.1”).

Subsection (c)(2) formerly prescribed training requirements during the four-year phase-in period for operator certification or qualification. The phase-in period has concluded, and training requirements are now addressed in 1618.1(b) due to federal reformatting. Thus the text of existing subsection (c)(2) will be deleted and replaced with text substantively the same as existing 1618.4(c)(3) which will be renumbered to (c)(2). Thus revised subsection (c)(2) will now give direction for training requirements for operators covered under the exceptions to Section 1618.1.

Subsection 1618.4(c)(4).

Due to the deletion of existing subsection (c)(2) and the renumbering of existing (c)(3) to (c)(2) described above, subsection (c)(4) will be renumbered to (c)(3) without any changes in text.

The proposed regulations are substantially the same as the final rule promulgated by Federal OSHA. Therefore, 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 when adopting standards substantially the same as a federal standard; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and 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 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 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).

DOCUMENTS RELIED UPON

Federal Register, Vol. 83, No. 218, pp. 56198-56247 (November 9, 2018).

U.S Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 2017 Annual Averages. Data obtained at <https://www.bls.gov/cew>.

These documents 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.

DOCUMENTS INCORPORATED BY REFERENCE

29 CFR 1926, Subpart CC, Appendix C, Operator Certification: Written Examination: Technical Knowledge Criteria.

This document is too cumbersome or impractical to publish in Title 8 [or may include copyrighted items, (e.g., ANSI standards)]. 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.

Note: Existing text 1618.1(b)(3), Accredited Certifying Entity, mentions specific documents that were incorporated by reference in previous rulemakings. As the existing text for this subsection has only been moved to 1618.1(d)(2) without modification to the pre-existing Document References, we are not incorporating those documents by reference into the present Rulemaking Notice list.

COST ESTIMATES OF PROPOSED ACTION

This estimate considers only new costs for actions not already required by the existing standards. These new costs fall into three main categories: (1) evaluations to ensure operator competency, (2) documentation of those evaluations, and (3) additional training required for significant changes in equipment, configuration or tasks. Additional training and certification requirements for operators of cranes over 2000 lb. and up to 15,000 lb. and 25 foot boom length became a requirement as of November 18, 2018, and thus were also not considered in this estimate.

(1) Although evaluation and re-evaluation have been required by federal and state standards [existing Title 8, Subsection 1618.1(e)(3) and Section 3203], the new federal verbiage is more specific about when evaluation/re-evaluation is required, what is to be evaluated and how it is to be performed. The OSHA preamble estimated the total annual cost for these evaluations to be \$1,481,000 nationwide. The 12% pro-rata annual cost for California businesses for the more specific requirements of this standard are estimated to be approximately \$178,000 statewide.

(2) The revised standard does not require employers to re-evaluate operators who have already previously demonstrated that they have the skills, knowledge, and abilities to operate the employer's equipment safely. However, there will be a one-time/startup cost to document evaluations for all existing employees in addition to those hired after the effective date. The OSHA preamble estimated first year (startup) costs of \$399,000 nationwide. OSHA estimated on-going documentation costs after startup to be \$62,000 nationwide. The pro-rata statewide California costs are thus estimated to be \$48,000 start-up and \$7,400 on-going.

(3) The OSHA preamble noted that most operator training is already required. The new verbiage, however, clarifies that additional training may be required for significant changes in equipment, configuration, tasks, or when retraining is required. OSHA estimated additional training costs to be \$94,000 nationwide, thus the pro-rata cost for California is estimated to be \$11,300.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendments may affect small businesses.

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 TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, 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 without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

AVAILABILITY OF THE MEMORANDUM TO THE STANDARDS BOARD MEMBERS

Upon its completion, copies of the Memorandum 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 website. Copies of the text of the regulation in an underline/strikeout format and the Notice of Proposed Action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.