

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS****TITLE 8: Construction Safety Orders (CSO)  
Section 1618.1. Operator Qualification and Certification.  
(Published on January 26, 2018)****Operator Qualification and Certification - Effective Dates (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 **March 15, 2018** 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 26, 2018** and closes at 5:00 p.m. on **March 15, 2018**. 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 fax at (916) 274-5743; or

By e-mail sent to [oshsb@dir.ca.gov](mailto: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 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 Cranes and Derricks in Construction: Operator Certification Extension on November 9, 2017, as 29 Code of Federal Regulations, Part 1926, Section 1926.1427(k). The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 82, No. 216, pages 51986-51998, November 9, 2017, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt a regulation that is the same as the federal regulation except for editorial and format differences.

Section 1618.1 requires the employer to ensure that, prior to operating any covered crane or derrick used in construction, the operator is either under supervised training or certified or licensed to operate the equipment in accordance with one of two listed options. The two options prescribe requirements for crane operator qualification and certification, including requirements for physical examination, written testing and a practical, "hands-on" examination. Certification is currently required by General Industry Safety Orders (GISO) Section 5006.1 for operators of all cranes in general industry with boom length 25 feet or greater or capacity 15,000 pounds or greater.

Effective November 10, 2017, Section 1618.1(e) extended certification requirements to operators of all cranes or derricks over 2,000 pounds rated capacity used in construction. The provision for certification for cranes over 2,000 pounds capacity was among vertical requirements for cranes and derricks in construction added to CCR Title 8, Article 15 on July 7, 2011, in response to federal Occupational Safety and Health Administration (OSHA) rulemaking. At that time the subpart (e) operator certification requirements were set to become effective July 7, 2015. However, on September 26, 2014, federal OSHA extended the effective date to November 10, 2017, and California followed suit on April 30, 2015, adopting the new federal effective date into CSO Section 1618.1(e). On November 9, 2017, federal OSHA again extended the certification compliance deadline for cranes and derricks in construction, this time to November 10, 2018. The federal time extension occurred one-day prior to the November 10, 2017, effective date, which did not allow the state sufficient time to conform Section 1618.1(e) with the Federal Rule.

OSHA published the final rule to extend by one year the employer duty to ensure the competency of crane operators involved in construction work. The federal preamble stated that the extension and delay were necessary to provide sufficient time for them to complete a related rulemaking to address issues with its existing Cranes and Derricks in Construction standard, including concerns regarding operator certification, qualification and competency. Since the state standards are nearly verbatim of the federal standards, these are also issues of concern to California stakeholders, and many have requested to delay the CSO effective date as well to permit California's requirements to take into account the outcome of deliberations in Washington.

This rulemaking will harmonize certain state standards for cranes and derricks used in construction with the corresponding 29 Code of Federal Regulations (CFR) 1926.1427. It should be noted that this extension will have no effect on existing certification requirements of GISO Section 5006.1.

The proposed regulation is 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 a standard 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 effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3.

The specific changes is as follows:

Extend the effective date for certification by type and capacity from November 10, 2017, to November 10, 2018. The effect of this extension will conform the state deadline for certification by type and capacity with the federal deadline.

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. 82, No. 216, pp. 51986-51998, November 9, 2017.

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.

## **COST ESTIMATES OF PROPOSED ACTION**

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 is to extend the deadline for crane operator qualification and certification consistent with a recent extension promulgated by federal OSHA. The purpose of this extension is to permit further discussion at the federal level to ultimately resolve specific requirements for competence and qualification to operate regulated equipment.

The adoption of the proposed time extension 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.

The Board is relying on the federal economic analysis and determination in the Federal Register<sup>1</sup>.

## **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. However, no economic impact is anticipated. This finding is based on the federal OSHA preamble, "Summary of Economic Impact"<sup>2</sup>

## **CONTACT PERSONS**

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is 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. Hart or Mr. Manieri at the address or telephone number listed above.

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<sup>1</sup> Federal Register, Vol. 82, No. 216, Thursday, November 9, 2017, pages 51986-51998.

<sup>2</sup> Ibid.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation(s) 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. Hart 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>.