

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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

**TITLE 8. CALIFORNIA CODE OF REGULATIONS****General Industry Safety Orders
Sections 3420 and 3425
(Published on October 4, 2019)****Tree Work, Maintenance or Removal - Use of Portable Power Saws**

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 **November 21, 2019** in the **Auditorium** of the **Harris State Building on 1515 Clay Street, Oakland, CA 94612**. 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 **October 4, 2019** and closes at 5:00 p.m. on **November 21, 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 and health standards that are at least as effective as federal occupational safety and health standards. These proposed regulations will implement, interpret, and make specific Labor Code Section 142.3.

**INFORMATIVE DIGEST OF PROPOSED ACTION/
POLICY STATEMENT OVERVIEW**

The proposed rulemaking seeks to clarify existing regulations that were affected by a rulemaking entitled Electrical Power Generation, Transmission, and Distribution; Electrical Protective Equipment: Final Rule, which was adopted by the Board on December 17, 2017 and became effective April 1, 2018.

Section 3425(a)(2) and (a)(5) were amended to be as effective as federal standard 29 CFR 1910.269(r)(5)(iv) and (vi). Adopting the federal language verbatim appeared to have created some confusion regarding drop starting and starting power saws at an elevation. 29 CFR 1910.266(e)(2)(vi) prohibits drop starting of chain saws and 29 CFR 1910.269(r)(5)(iv) only permits saws that are not chain saws to be drop started.

In order to improve clarity and safety, amendments to Sections 3420 and 3425 are being proposed. The proposal adds a definition of “drop starting” and clearly prohibits drop starting of chain saws. In addition, the application of the work practice to ensure that there is no personnel below prior to starting a power saw is expanded to apply to all elevated work locations, not just while elevated on aerial lifts.

The specific changes are as follows:

Section 3420. Scope and Definitions.

Section 3420 contains the scope and definitions that apply to Article 12, Tree Work, Maintenance or Removal.

Subsection (b). Definitions.

The proposal adds a definition of the term “drop starting” using the federal interpretation of the term from the Response to Question No. 40 of the Federal OSHA Questions and Answers on 29 CFR 1910.269 and 29 CFR 1926, Subpart V at https://www.osha.gov/dsg/power_generation/QandAFinal.html. The addition of the definition of “drop starting” provides the meaning of the term and is necessary because the term “drop starting” or “drop started” is used in Section 3425.

Section 3425. Portable Power Hand Tools.

Section 3425 contains regulations regarding the use of portable hand tools including power saws. Chain saws are a subset of power saws.

Subsection (a). Power Saws.

The proposed amendments to subsection (a)(2) are as follows:

- Clarification of the method for starting a power saw by adding the words “held or” before the existing term “supported” and including the phrase “to prevent unintended movement of the saw” to specify the intent of the regulation.

The existing regulation requires that the power saws be started on the ground or otherwise firmly supported. However, depending on the type or size of the power saw, firmly holding the power saw prior to starting may be sufficient to prevent unintended movement.

- Deletion of the sentence “Drop starting of saws over 6.8 kilograms (15 pounds), other than chain saws, is permitted outside of the bucket of an aerial lift only if the area below the lift is clear of personnel.”

The existing regulation is proposed to be replaced with the clear prohibition for drop starting a chain saw regardless of size.

- Clarification of the existing regulation by specifying in a separate sentence that drop starting a chain saw is prohibited. This proposal is consistent with the goal of preventing unintended movement when starting the saw. The practice of drop starting is contrary to the work practice of starting the saw on the ground or when otherwise firmly supported.

The existing regulation only permits power saws, with the exception of chain saws, to be drop started. The person reading the regulatory text may inadvertently miss the requirement that chain saws are not permitted to be drop started. Therefore, this clarification makes the regulation more concise and easier to understand.

- Expansion of the scope of the existing regulation to require employees to make sure the area below is clear of personnel before starting a power saw at any elevated location.

The existing regulation requires employees using an aerial lift to make sure the area below the lift is clear of personnel prior to starting the saw. This existing requirement is proposed to be replaced with the proposal that workers at any elevated location (e.g. tree, scaffold, roof), not just on aerial lifts, ensure that there are no personnel below prior to starting the power saw. This proposal is necessary to prevent injuries in the event the operator accidentally drops the saw while in the process of starting the saw.

The proposed amendment to subsection (a)(6) is as follows:

- The proposal relocates existing subsection (a)(6) to new subsection (a)(3) to provide better organization of the power saw requirements. This relocation facilitates the planning of the work by making the reader immediately aware of the need to secure power saws heavier than 15 pounds. As a result of this relocation, existing subsections (a)(3), (a)(4), and (a)(5) are proposed to be renumbered to subsections (a)(4), (a)(5), and (a)(6), respectively.

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).

Anticipated Benefits

The proposal rephrases the existing requirements to ensure the regulation is more concise and easier to understand. The proposal to expand the requirement ensures that power saws are not started from any elevated location unless the area below is clear of personnel. This proposed work practice is reasonable and has direct consequences of preventing injuries.

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 Impacts on a Representative Private Person or Business:

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.

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 proposal rephrases the existing requirements to ensure that the regulation is more concise and easier to understand. The addition of the workplace practice to ensure that the area below an elevated location is clear of personnel prior to starting the power saw would require minimal time and effort compared to the time and cost that would be incurred if the saw accidentally fell

on an employee. The industries affected by the proposal are tree trimming companies and agricultural industries that perform pruning and trimming of trees.

Significant Affect on Housing Costs: None.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendments may affect small businesses; however, no economic impact is anticipated. The brief time and effort it takes an employee to glance at the area below to ensure there are no personnel will not result in added costs. The proposal does not impose additional equipment.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulations 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.

Employees in line-clearance tree trimming operations who are working in an aerial lift are already required to ensure that there are no personnel below. The proposal expands the application of this work practice to all general industry employees working at an elevated location, not just while on an aerial lift. There is no cost to momentarily look below to ensure that there are no personnel below the tree trimming area prior to starting a saw.

BENEFITS OF THE PROPOSED ACTION

The proposal to ensure that there are no employees below prior to starting the saw will prevent employee injuries in the event the operator accidentally drops the saw while starting the saw. In addition, the clarifying proposed revisions in the language will make it easier for employers to comply with the regulation because it provides a better understanding of what is expected from them. This proposal does not offer a direct benefit or affect the state's environment.

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 regulations 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 regulations 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) 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 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>.

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

SECTIONS 3420 AND 3425

TREE WORK, MAINTENANCE OR REMOVAL
USE OF PORTABLE POWER SAWS