

**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



Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 13, Article 11, Section 6325
of the Logging and Sawmill Safety Orders

Fueling of Helicopters Used in Logging Operations**SUMMARY**

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking as a staff proposal to amend Section 6325(e) of the Logging and Sawmill Safety Orders (LSSO) to prohibit grounding of the aircraft and fuel supply, thereby making Section 6325(e) consistent with Section 1905 of the Construction Safety Orders (CSO). This proposal removes obsolete requirements regarding fueling procedures for helicopters in the logging industry. Specifically, consistent with current Federal Aviation Administration (FAA) recommendations and the National Fire Protection Association (NFPA) prohibition of grounding the aircraft and fueling equipment, the amendment deletes the grounding requirement before and during aircraft fueling.

An FAA Safety Alert for Operators dated November 23, 2010, states in part that, "Before fueling, the aircraft must be bonded to the fuel source to equalize static electricity between the fuel source and the aircraft. Grounding of the aircraft and/or fuel truck is no longer recommended because it does not prevent sparks at the fuel source, and the grounding cable may not be sufficient to discharge the electrical current." Further, Chapter 5.4.1 of NFPA 407-2007 states in part, "Grounding during aircraft fueling shall not be permitted." Title 8, LSSO Section 6325 has not been amended since 1985.

Board staff contacted several area helicopter flying services regarding the practice of grounding and bonding the aircraft and fuel source. The operations contacted indicated that they are not grounding either the aircraft or the fuel source but strictly bonding the aircraft to the fuel supply. Board staff also learned that, in terms of the effectiveness and safety of the proposal to eliminate the grounding requirement, the engine type, refueling method (hot or cold) and fuel type make no difference. Consequently, to ensure Section 6325 is kept up to date with the latest aircraft fueling and static discharge control methodology, Board staff proposes to amend Section 6325 consistent with the FAA and NFPA.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal regulations in that the federal regulations do not provide specific provisions dealing with helicopter operations. Federal OSHA standards are silent in the use of aircraft for logging operations and do not address bonding or grounding before and during aircraft fueling. This proposal will minimize electrical discharges and the potential for fire and explosion which could result in serious employee injury or fatality.
- Is 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 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.
- Is the least burdensome effective alternative. The proposal is consistent with current FAA and NFPA standards prohibiting grounding the aircraft before and during fueling operations. The amendment will align the CSO and LSSO regarding helicopter fueling operations and ensure Section 6325 is kept up to date with the latest aircraft fueling and static discharge control methodology.

Section 6325. Fueling and Fueling Area.

Existing subsection 6325(e) sets forth requirements for refueling helicopters used in the logging/sawmill industry. The proposed amendment revises Section 6325(e) by deleting the words, “...and grounded, with a driven rod attached to the rear of the fuel pump...” The amendment is necessary to ensure that, consistent with FAA guidance and NFPA standards, helicopter operators implement or update their fueling procedures to reduce static discharge and minimize the potential for fire and explosion which could result in serious employee injury or fatality.

DOCUMENTS RELIED UPON

1. The National Fire Protection Association (NFPA) 407-2007, “Standard for Aircraft Fuel Servicing.”

2. Department of Transportation, Federal Aviation Administration (FAA), Safety Alert for Operators (SAFO) 10020, dated November 23, 2010.
3. E-mail transmission dated April 3, 2012, from the California Office of the State Fire Marshal regarding NFPA-407 to the Board staff.
4. E-mail transmission dated April 4, 2012, from Mr. Dave Sipes, Auburn Operations Manager, Threshold Technologies, Auburn, California to the Board staff regarding jet turbine vs. reciprocating helicopter engine fueling operations.

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.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board, and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Economic Impact Analysis

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. This proposal removes obsolete requirements regarding fueling procedures for helicopters in the logging industry to be consistent with the FAA and NFPA. Therefore, the Board believes the proposal will not have any adverse cost impact upon employers.

The adoption of the proposed amendment to this standard 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.

This regulatory proposal is intended to provide worker safety at places of employment in California.

Cost Impact on Private Persons or Businesses

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.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The adoption of the proposed amendments to these regulations 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.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, 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.