California’s Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers the California Occupational Safety and Health Act, Labor Code section 6300 et seq., California’s program to protect the safety and health of its workers.

Cal-OSHA was created by statute in October 1973. It is approved and monitored by, and receives some funding from, the federal Occupational Safety and Health Administration (Fed-OSHA). Cal-OSHA’s regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

Cal-OSHA’s Occupational Safety and Health Standards Board (OSB), authorized in Labor Code sections 140-49, is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety regulations that affect California employers and employees. Under section 6 of the federal Occupational Safety and Health Act of 1970, California’s worker safety and health standards must be at least as effective as Fed-OSHA’s standards within six months of promulgation of a given federal standard. When adopting, amending, or repealing health and safety regulations, OSB is generally subject to the rulemaking requirements of the Administrative Procedure Act (APA), Government Code section 11340 et seq. However, under Labor Code section 142.3(a)(3), when OSB is adopting or amending a California standard to identically conform it to the applicable federal standard, OSB is exempt from certain APA requirements. The Board is authorized to grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to employees. OSB may consider petitions for new or revised regulations proposed by any interested person concerning occupational safety and health. The Board holds meetings to permit interested persons to address it on any occupational safety and health matter.

The seven members of OSB are appointed by the Governor to four-year terms. Labor Code section 141 permits Board members to continue to serve after their terms have expired until they are replaced. Under Labor Code section 140, the Board is composed of two members from the field of management, two members from labor, one occupational health member, one occupational safety member, and one member from the general public. The Governor designates OSB’s chair, who in turn appoints another member to serve in his/her absence. Under Labor Code section 142.3, the affirmative vote of at least four Board members is necessary to take regulatory action.

At this writing, OSB’s Chair is Jere W. Ingram, the occupational health member. The terms of Gwendolyn W. Berman, the occupational safety member, and William Jackson, a management member, expired on June 1, 1999; at this writing, both continue to serve on OSB because they have not been replaced. Governor Davis has yet to fill two vacant seats—one labor representative and the public member post (see LITIGATION).

Under Labor Code section 6300 et seq., the duty to investigate complaints and enforce OSB’s safety and health regulations rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil penalties for serious, willful, and repeated violations. The Division may refer egregious violations to a public prosecutor for criminal prosecution. In addition to performing routine investigations, DOSH is required by law to investigate employee complaints and accidents causing serious injuries, and to make follow-up inspections at the end of abatement periods.

The Occupational Safety and Health Appeals Board (OSHAB) adjudicates disputes arising out of DOSH’s enforcement of OSB’s standards. Cal-OSHA’s Consultation Service provides onsite health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

MAJOR PROJECTS

OSB Undertakes Title 8 Restructuring Project

OSB has begun a comprehensive project to restructure and reorganize its worker health and safety regulations in Title 8 of the CCR in order to make them better organized, more accessible, and more relevant to the safety and health concerns of today’s workplace. Title 8 contains approximately
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3,000 occupational safety and health standards that OSB has adopted and amended over the past fifty years, sometimes with little regard to organization or structure. Title 8 also contains some very old state regulations adopted prior to the creation of the Fed-OSHA and Cal-OSHA programs. Thus, Title 8 is now a labyrinthine collection of rules that is often confusing and difficult to access and understand, not only for employers and employees but for state lawmakers and regulators as well.

OSB plans a three-step process to achieve its goals for Title 8. First, OSB will restructure and reorganize its regulations so that they are presented in a more logical fashion. Next, OSB will evaluate duplicative and overlapping regulations to determine whether they can be consolidated while still retaining the current level of protection afforded California workers. OSB then plans to draft an index to the new Title 8 to increase accessibility. To carry out these steps, OSB formed a representative advisory committee to explore various options and alternatives to improve the order and presentation of Title 8 regulations.

OSB began the project in July 2000 when the Department of Finance approved a budget change proposal permitting the Board to hire a permanent full-time senior safety engineer to serve as its Title 8 Project Manager. In December 2000, OSB hired Hans Boersma, author of Cal-OSHA's popular Pocket Guide for the Construction Industry, to fill the position.

The Title 8 project is scheduled to be completed in July 2005. It will culminate in a rulemaking that will seek to codify the changes recommended by the project.

Republican Congress Kills Federal Ergonomics Regulation

On November 14, 2000, as the Clinton administration was preparing to leave office, Fed-OSHA finally published its long-awaited final ergonomics standard, a far-reaching rule that would have imposed numerous regulations on millions of employers in many industries (except the construction, maritime, and agriculture industries). The regulations would have required each covered employer to establish a comprehensive ergonomics program if at least two of its employees claimed to have experienced a sign or symptom of a work-related musculoskeletal disorder, such as carpal tunnel syndrome or low back pain.

Employers covered by the standard would have been obligated to provide information in written or electronic form to every employee about musculoskeletal disorders, how to report them, risk factors, jobs and work activities associated with such disorders, and the requirements of the ergonomics standard. If an employee reported a pain or injury that lasted for a week, the employer would have been compelled to determine whether the condition was work-related and whether a hazard existed in the workplace. If so, the employer would have been constrained to ensure that the employee received a medical examination. The standard would have required employers to remedy such workplace ergonomic hazards within 90 days or launch an ergonomics program, which could entail hiring consultants, providing injury prevention training to employees, and/or installing equipment designed to prevent such injuries.

According to the Bureau of Labor Statistics, nearly one-third of the nation’s six million workplace injuries each year stem from repetitive motion, overexertion, or vibration. Over 600,000 of these injuries are serious enough to require workplace absence. According to a January 2001 study issued by the National Academy of Sciences, work-related repetitive stress injuries “impose a significant economic burden—$50 million in compensation costs, lost wages and lost productivity.” While hailing the regulations as long-overdue, labor complained about the exceptions for the construction, maritime, and agriculture industries and noted that—even under the proposed rules—employees must be injured before employers are required to implement a preventive ergonomics program. The business community argued that the new federal standard would impose a host of confusing requirements on employers trying to ascertain their obligations. The Labor Department estimated that the rules would cost employers $4.5 billion annually, but would save approximately $9.1 billion in lost work time, medical costs, etc. However, the Small Business Administration charged that Fed-OSHA had grossly underestimated the potential cost, which it predicted could exceed $18 billion each year. Other business groups projected annual costs of implementing the standard to be as high as $125 billion.

Following George W. Bush’s election in early 2001, key congressional Republicans devised a plan to cancel the Clinton administration’s ergonomics rules by invoking the Congressional Review Act, an untested five-year-old statute that allows Congress to nullify agency rules. The law requires both chambers to pass a “resolution of disapproval” by a simple majority. The law also prevents the Senate from filibustering against such a nullification bill. On March 6, 2001, the Senate voted 56–44 to overturn the ergonomics standard; the next day, the House quickly followed suit on a 223–206 vote. President Bush subsequently signed the repeal.

Cal-OSHA closely monitored the saga of the federal ergonomics standard. Unlike the federal government, the California legislature ordered OSB to adopt an ergonomics standard in 1993 as part of an effort to overhaul the workers’ compensation system; after years of debate and controversy, OSB finally adopted section 5110, Title 8 of the CCR, in 1997, but the standard was held up in litigation until October 1996 (see LITIGATION). [17:1 CRLR 142–44; 16:2 CRLR 120–21; 16:1 CRLR 141–42] Had the federal government adopted...
an ergonomics standard, OSB would have had to scrutinize section 5110 and perhaps institute rulemaking to amend it if the federal standard provided more worker protection than section 5110. Following Congress' rejection of the ergonomics standard, Bush administration Labor Secretary Elaine Chao pledged to "pursue a comprehensive approach to ergonomics." At this writing, the Bush administration has yet to introduce an ergonomics proposal.

**Permanent Amusement Ride Safety Inspection Program**

AB 850 (Torlakson) (Chapter 585, Statutes of 1999) added section 7920 et seq. to the Labor Code, which establishes the framework for the Permanent Amusement Ride Safety Inspection Program. AB 850 was enacted in response to tragic accidents and injuries which have occurred at permanent amusement parks in California. California is home to about 70 permanent amusement parks (including six of the 15 most visited amusement parks in North America), and leads the nation in amusement ride deaths—14 since 1973. Prior to the enactment of AB 850, no reliable data were kept on injuries at amusement parks because the state did not regulate them, largely due to intense opposition from theme parks. Assemblymember Torlakson first attempted the legislation in 1998 after 18-year-old Quimby Ghilotti died in June 1997 when a water slide collapsed at Waterworld USA in Concord. That bill, AB 1940 (Torlakson), failed passage in the Assembly Committee on Labor and Employment in April 1998 due to opposition by theme parks. Torlakson reintroduced the bill in the form of AB 850 in February 1999, after a five-year-old La Jolla boy severely injured his foot on Disneyland’s Big Thunder Mountain Railroad ride in March 1998 and a 33-year-old man was killed on Christmas Eve 1998 when a metal cleat ripped off Disneyland’s Columbia sailing ship ride and struck him and his wife.

The new program will be administered by DOSH’s Elevator, Amusement Ride, and Aerial Tramway Unit. DOSH is responsible for developing the administrative regulations for the program, while OSB is responsible for drafting the technical requirements applicable to permanent amusement park rides.

**DOSH's Administrative Regulations.** To formulate a regulatory scheme for California permanent amusement rides, DOSH convened an advisory committee in January 2000. The advisory committee held meetings throughout 2000 with representatives of theme parks and child advocates in an attempt to formulate the regulations. While the advocates were arguing over the content of the regulations, a six-year-old girl broke her leg while trying to board a carousel at Marriott’s Great America in Santa Clara; nine people were injured on Disneyland’s Space Mountain roller coaster on July 31, 2000; and a four-year-old boy was critically injured on September 22, 2000 after he fell from Roger Rabbit’s Car Toon Spin at Disneyland.

On September 15, 2000, DOSH finally published notice of its intent to add new Article 6 (sections 344.5–17) to Title 8 of the CCR. Following is a synopsis of the regulations as originally published:

- Section 344.5(a) would state that Article 6 applies to permanent amusement rides operated anywhere in the state of California. However, section 344.5(b) would set forth numerous exceptions, including (1) most playgrounds operated by schools and local governments; (2) museums; (3) skating rinks, arcades, laser or paint ball war games, indoor interactive arcade games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, air boats, helicopters, airplanes, parasails, hot air balloons, theaters, amphitheaters, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, slide shows, live-animal rides or shows; and (4) permanent amusement rides operated at private events that are not open to the general public and not subject to a separate admission fee.

- Proposed section 344.6 would define several terms used throughout the rest of the proposed regulations, including "permanent amusement ride," "new permanent amusement ride," "licensed engineer," "major modification," "owner" and "operator," "qualified safety inspector," "structural inspection," "operational inspection," and "reportable injury." Of note, a "qualified safety inspector" or "QSI" is an individual certified by DOSH pursuant to section 344.9. A QSI may be employed by the owner/operator of a permanent amusement ride, an employee or agent of the insurance underwriter or insurance broker of the ride, an employee or agent of the manufacturer of the ride, a DOSH employee, or an independent consultant or contractor. A "reportable injury" is a serious injury requiring surgery or medical treatment “other than ordinary first aid.” As published, section 344.6 includes an illustrative list of reportable injuries, including loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring multiple sutures, or permanent disfigurement.

- Labor Code section 7924 requires each owner/operator of a permanent amusement ride to submit a certificate of compliance to DOSH annually. The certificate must include specified identifying information, as well as a written declaration executed by a QSI stating that he/she has inspected the permanent amusement ride within the preceding 12 months and that the ride materially conforms to the standards in Chapter.
Under section 344.8(e), the Division would be permitted to initiate a discretionary inspection whenever it: (1) receives notification or otherwise learns of an accident involving the permanent amusement ride; (2) determines that a fraudulent certificate of compliance was submitted; (3) determines that a ride has a disproportionately high incidence of accidents when compared to other rides of similar type and design; or (4) receives a complaint or otherwise becomes aware of information that one of the safety-related systems or structural components of a ride is unsafe, or that a particular practice associated with a ride is unsafe.

- Subject to two specified exceptions, proposed section 344.9 would authorize DOSH to suspend operation of a permanent amusement ride if it determines that the ride presents an imminent hazard or is otherwise unsafe for patrons. The owner/operator could appeal any Order Prohibiting Operation.

- Proposed section 344.10 governs QSI certification. A candidate for certification must either: (1) be a licensed engineer (either a California-licensed engineer or a professional engineer with equivalent licensure by another state); or (2) have a minimum of five years' experience in the amusement ride field (at least four years of which were involved in actual inspection of amusement rides), produce proof of completion of an approved QSI certification course evidencing at least 80 hours of formal education in amusement ride safety, and earn a score of at least 80% on a written examination. QSIs must renew their certificates every two years; if a QSI renewal applicant is not a licensed engineer, he/she must demonstrate completion of 30 hours of continuing education from an approved school during the prior renewal cycle.

- Proposed section 344.11 would set forth the requirements that a QSI certification course provider must demonstrate to qualify for approval by DOSH.

- Proposed section 344.12 would provide permanent amusement ride owners and operators, as well as QSI course providers, with the right to a hearing in the event DOSH seeks to revoke or suspend a certification or approval.

As a means of further ensuring due process, section 344.13 would authorize permanent amusement ride owners/operators and QSI course providers to appeal DOSH hearing decisions to the DIR Director.

- Proposed section 344.14 would set forth insurance requirements for permanent amusement rides. The regulation would permit operation of a permanent amusement ride only if the owner/operator: (1) has obtained a valid insurance policy in an amount not less than $1 million per occurrence; (2) has obtained a bond in an amount not less than $1 million; or (3) meets a financial test of self-insurance by providing a letter to DOSH attesting that the operator has total assets of at least $10 million and that the operator’s total assets exceed total liabilities by either a minimum of $2 million or a ratio of at least ten to one.

- Section 344.15 would establish reporting requirements in the event of an accident. Proposed section 344.15(a) would require each owner/operator of a permanent amusement ride...
to report immediately to DOSH’s Anaheim or Sacramento Amusement Ride Section Office by telephone “each known accident where maintenance, operation, or use of the permanent amusement ride results in the death of a patron, or results in a patron injury requiring medical service other than ordinary first aid.” Section 344.15(b) would compel preservation, for purposes of a possible investigation, of the equipment or condition that caused the accident if the death or injury resulted from the failure, malfunction, or operation of a permanent amusement ride. Section 344.15(c) would require any fire or police agency to notify DOSH immediately by telephone whenever the agency is called to an accident scene where a permanent amusement ride is involved and a serious injury or death occurred.

- Proposed section 344.16 would set forth the fee schedule for the permanent amusement ride program. The application fee for a QSI Certificate would be $500. The fee for the biennial renewal of a QSI Certificate would be $125. The fee for a certificate of Compliance of inspection and provision of related notifications would be $250. DOSH would charge a fee of $125 per hour, or fraction thereof, for all work performed in connection with audits, inspections, and investigations.

- Proposed section 344.17 would require DSH to maintain the confidentiality of all documentation received pursuant to these regulations to the extent that such documentation is protected by Labor Code section 6322.

At a public hearing on the proposed regulations on November 20, 2000, Assemblymember Torlakson and several child advocates and parents of children who have been injured or killed at permanent amusement parks urged DOSH to stiffen and broaden the regulations, especially the injury reporting requirement. Child advocates opposed inclusion of the list of reportable injuries because it does not include blood clots, neurological damage, and other injuries that may not be diagnosed until after the patron leaves the park; they argued for omission of the list and a requirement that all injuries suffered on an amusement park ride requiring surgery or medical treatment “other than ordinary first aid” be reported to DSH. Amusement park representatives submitted extensive legal briefs arguing that the meaning of the term “other than ordinary first aid” is unclear and that the regulations’ reporting requirement is inconsistent with Labor Code section 7925, which requires reporting of accidents causing death or “serious injury.”

Following the November 2000 hearing, DSH has modified the language of the proposed regulations three times, each time permitting a 15-day period for public comment on the modifications, after which DSH further revised the proposal based on the comments received. At this writing, the third 15-day comment period will end on May 17, 2001.

**OSB’s Regulations.** On March 30, 2001, OSB published notice of its intent to add sections 3195.1-.15 to Title 8 of the CCR, which would incorporate by reference the various technical standards for amusement park rides promulgated by the American Society for Testing and Materials (ASTM).

Proposed section 3195.1 would specify that these safety orders apply to permanent amusement rides. Proposed section 3195.2 provides the definition of “authorized personnel” and “incident” and references DSH’s section 344.6 for other pertinent definitions. Section 3195.3 concerns general design and maintenance of permanent amusement rides. Section 3195.4 would govern required testing. Maintenance procedures are covered by section 3195.5. Section 3195.6 deals with inspection procedures. Section 3195.7 would regulate the control of operations of rides. Section 3195.8 lists the various types of physical information about the rides that would be required to be posted, displayed, and/or submitted to DSH.

Section 3195.9 would set forth the mechanical requirements for permanent amusement rides. The proposed section covers: emergency brakes, anti-rollback devices, speed-limiting devices, signal systems, passenger compartments, passenger restraining and containing devices, and operating controls. Sections 3195.10 through 3195.13 deal with water parks. Section 3195.14 concerns record keeping and recording of information about accidents and incidents. Section 3195.15 would control the issue of electrical wiring of permanent amusement rides.

At this writing, OSB is scheduled to hold a hearing on these proposed regulations on May 17, 2001.

**Automatic Starting of Woodworking Equipment After Power Failure**

On March 30, 2001, OSB published notice of its intent to amend section 4296, Title 8 of the CCR, regarding woodworking machines and equipment. Consistent with Federal OSHA’s woodworking regulation at 29 C.F.R. Part 1910.213(b)(3), new subsection (q) would require employers to “make provisions” (including the installation of an electrical or mechanical device, or the adoption of administrative procedures) to prevent woodworking machines and equipment from automatically restarting upon restoration of power after a power failure in situations where injury might result. Portable power tools intended to be hand-held during operation would be exempted from the regulation. According to OSB, the devices to prevent automatic restarting are not intended for such tools and would not be practicable for use on them. The operator has hand control of these tools, greatly reducing the danger involved in the circumstances addressed by the rulemaking. At this writing, OSB is scheduled to conduct a public hearing on this proposal at its May 17, 2001 meeting.
Business Regulatory Agencies

Electrical Worker Apparel and Use of a Ground-Based Observer When Performing Rubber-Gloving Operations on Energized Conductors/Equipment

On March 4, 2001, OSB published notice of its intent to amend sections 2320.2(a) of the Low Voltage Electrical Safety Orders (LVESO) and 2941(f) of the High Voltage Electrical Safety Orders (HVESO), Title 8 of the CCR.

Existing section 2940.6(j) of the HVESO requires employers to ensure that no employee who is exposed to the hazards of flames and electric arcs wears apparel that, when exposed to such hazards, will increase the extent of injuries sustained. The existing LVESO, however, only require that an employee wear "suitable personal protective equipment" and do not specifically address the use of fire-retardant apparel. The proposed amendment to section 2320.2 would add language that is essentially the same as both section 2940.6(j) and the equivalent federal regulation found at 29 C.F.R. Part 1910.269(l)(6), and would render the California rule at least as effective as the federal standard with regard to the apparel worn by employees exposed to flames and/or electric arcs.

The second part of this proposed rulemaking action is in response to a petition, dated April 15, 1999, submitted by the International Brotherhood of Electrical Workers (IBEW), Local 1245 (OSB Petition No. 398). The petition proposed an amendment to section 2941(f) to mandate the presence of a trained, ground-based observer whenever employees are performing rubber-gloving operations on primary conductors or equipment energized in excess of 7,500 volts from an aerial lift or digger derrick. The observer—because of his/her training in first aid/CPR, radio procedures, use of aerial lift positioning controls, and rescue procedures, as well as his/her location on the ground with access to the lower controls of the aerial device or digger derrick—would be able to render immediate assistance in the event the elevated employee is injured or otherwise incapacitated.

OSB held a public hearing on this rulemaking action on April 19, 2001 and also accepted written comments. At this writing, OSB has not yet adopted the proposed changes.

Notification to DOSH of Lead-Related Work

On March 4, 2001, OSB published notice of its intent to add new subsection (p) to section 1532.1, Title 8 of the CCR, California’s Lead-in-Construction Standard which generally establishes health and safety standards for construction work where an employee may be occupationally exposed to lead. New subsection (p) would require employers to notify DOSH in advance of commencing construction work covered by section 1532.1, to enable DOSH to review pertinent information about jobs covered by the standard. Under the proposal, employers must notify DOSH of the precise location of the lead-related work, the projected starting and completion dates, the approximate number of workers who may be exposed and the type of structure involved, the amount of lead-containing material to be disturbed, and the type of lead-related work to be performed. Certain jobs likely to expose workers to minimal amounts of lead would be exempt from the notification requirement.

According to OSB, despite the adoption of the Lead-in-Construction Standard in 1993, construction workers have continued to experience occupational exposures resulting in elevated blood-lead levels. Lead registry data from the California Department of Health Services for the period 1997–98 show that 154 out of 386 workers tested had blood-lead levels over 25 micrograms per liter of whole blood. The workers tested were employed by 122 employers; in California, there are almost 70,000 employers with employees exposed or potentially exposed to lead in the construction trades.

This proposal was initiated by DOSH as a result of the consensus recommendation of an advisory committee convened to review the effectiveness of the section 1532.1. According to OSB’s initial statement of reasons justifying the addition of subsection (p), DOSH’s attempts to enforce the California standard in its current form have pointed out the necessity for measures to increase the Division’s ability to identify lead-related jobs while in progress to better facilitate inspection and evaluation for compliance with the standard. DOSH’s general experience has been that most lead jobs begin and end without the Division having any means of finding out about them until they have terminated and the opportunity to conduct an inspection has passed. This is primarily due to the nature of the work, which is typically performed for short durations at locations that continually change. This proposal would increase the Division’s ability to determine the necessity for inspections of these jobs and to conduct them in a timely fashion.

The existing California standard is modeled largely after the federal equivalent, 29 C.F.R. Part 1926.62. Neither the California nor the federal standard currently contains any job or pre-job notification requirement.

OSB conducted a public hearing on the proposal on April 19, 2001. At this writing, OSB staff is in the process of assimilating the comments received in order to modify the proposal accordingly, after which the Board will consider it for adoption.

Securing Loads Prior to Release from Cranes and Other Hoisting Apparatuses

On January 26, 2001, OSB published notice of its intent to amend sections 1710(a) of the Construction Safety Orders and 4999 of the General Industry Safety Orders, Title 8 of the CCR. The proposed changes are a result of DOSH’s recommendation that rulemaking be initiated to ensure that loads
being placed by cranes or other hoisting devices are secured or supported to prevent inadvertent movement of the load prior to the load being released or detached. DOSH based this recommendation on reports of several injuries associated with the releasing of loads from hoisting devices.

Section 1710(a) pertains to lateral and progressive bracing of loads such as trusses and beams during construction. New subsection (a)(4) would require that beams, trusses, and other material being lifted and placed by a crane or other hoisting apparatus shall not be released from the crane or hoisting apparatus until the load has been secured or supported to prevent inadvertent movement. Section 4999 addresses operations such as attaching loads, moving loads, the holding of loads, and safe practices before and during hoisting. New subsection (g) would require loads to be secured or supported before release or detachment to prevent any unintended movement of the loads upon release.

OSB held a public hearing on the amendments on March 15, 2001. No public comments were received at the hearing; however, the Board did receive one written comment. As a result, OSB modified the language of the proposed amendment to section 1710 to require that prior to the release of the load, the person detaching it must verify that it has been secured. At this writing, the Board is accepting written comments on this modification until May 15, 2001.

Logging Operations

On December 29, 2000, OSB published notice of its intent to amend various regulations affecting logging operations. This proposal was initiated in response to renovation letters to OSB from the Associated California Loggers and the California Lumberman’s Accident Prevention Association identifying outdated definitions and regulations in OSB’s Logging and Sawmill Safety Orders. The proposal would amend sections 6249, 6251, 6260, 6262, 6270, 6272, 6281, 6282, 6283, 6290, 6295, 6328, 6329, and Appendix A, “Radio Control Signaling Devices,” Title 8 of the CCR. According to OSB’s hearing notice, the proposed amendments “are largely editorial for the removal of obsolete language and/or logging methods....The proposal will not require private persons or entities to incur additional costs in complying with the proposal.”

OSB held a public hearing on these proposed changes on February 22, 2001. As a result of public comment as well as further evaluation by Board staff, OSB modified the language and—at this writing—is accepting written comments on the modifications through May 29, 2001. Thereafter, the proposal will be scheduled for adoption at a future business meeting of the Board.

Special Access Elevators and Lifts

On December 29, 2000, OSB published notice of its intent to make revisions to numerous provisions of its Elevator Safety Orders applicable to private residence elevators for use by the physically disabled and installed in locations that are under the jurisdiction of DOSH. The proposal would replace the term “private residence elevator” with the term “special access elevator” in sections 3001, 3009, 3093–3093.60, and 3136, Title 8 of the CCR, and in corresponding sections in Title 24 of the CCR. According to OSB, renaming and modifying the definition is necessary to improve clarity and to provide a technically correct term.

This proposal would also delete outdated cross-references to the corresponding American National Standards Institute/American Society for Mechanical Engineers (ANSI/ASME) A.17.1-1981 National Consensus Standard Rules throughout Article 15, Title 8 of the CCR. The current national consensus standard for existing special access elevators is already incorporated by reference into section 3001(b)(5) of the Elevator Safety Orders. The proposal would also permit new or improved special access elevator equipment to be incorporated into existing elevators, and would require such new equipment on special access elevators installed after the effective date of the amendments.

OSB held a public hearing on the proposed changes on February 22, 2001, and adopted them at its April 19, 2001 business meeting. At this writing, OSB staff is preparing the rulemaking file for submission to the Office of Administrative Law (OAL).

Hazards Associated with Reinforcing Steel

On December 1, 2000, OSB published notice of its intent to amend section 1712, Title 8 of the CCR, which addresses the prevention of typical workplace hazards frequently associated with working around exposed projecting reinforcing steel (rebar). The proposal, initiated at the request of DOSH, would have clarified that the section applies to all work sites where employees work on, around, or over exposed rebar or where rebar work is performed at heights more than six feet above the surface below. At a public hearing on January 18, 2001, OSB received a number of comments in opposition to the proposed revisions from members of the construction industry. On April 6, 2001, pursuant to Government Code section 11347, OSB published notice of its intent not to proceed with the proposal based on comments received at the hearing. OSB withdrew the proposal for further consideration by an advisory committee.

Structural and Scaffold Planks

On December 1, 2000, OSB published notice of its intent to amend sections 1504 and 3622, Title 8 of the CCR, which set requirements for structural and scaffold planks. The sections currently require structural and scaffold planks to have a minimum bending stress level of 1,900 pounds per square inch (psi). This minimum level is less protective than the current industry standard of 2,200 psi. According to OSB staff, raising the minimum bending stress level from 1,900 to 2,200 psi will increase the amount of weight a plank can safely hold without bending or breaking, and will help prevent employees from falling and being injured when working on or
around wood planks used in scaffolds and other elevated work locations.

Existing sections 1504 and 3622 also state that planks selected according to the grading rules published by the West Coast Lumber Inspection Bureau in 1970 and the Western Wood Products Association in 1974 are deemed to satisfy the plank quality requirements of those sections. The proposal would update the 1970 and 1974 editions of the two referenced documents to the 2000 and 1998 editions, respectively.

The Board held a public hearing on the proposed changes on January 18, 2001. At this writing, OSB has yet to adopt the proposal.

Specific Definitions for Power Operated Presses

On October 27, 2000, OSB published notice of its intent to amend section 4188(b), Title 8 of the CCR, which provides specific definitions for power operated presses. The proposal was initiated as a result of a March 15, 1999 Appeals Board decision (Docket No. 97-R4D4-2138) regarding a citation for a workplace accident that resulted in the amputation of an employee’s fingers. The administrative law judge determined that the definition of “ram” in section 4188(b) was ambiguous and therefore the applicability of the point of operation guarding requirements could not be proven. According to OSB staff, ambiguous terminology used in defining power operated presses has contributed to confusion and inconsistent application of safety requirements for point of operation guarding.

Section 4188(b) currently defines power operated presses as “mechanically powered machines that shear, punch, form, or assemble metal or other materials by means of tools or dies attached to slides....” The term “slide,” however, is not specifically defined other than by reference to the definition of “ram,” which states that a ram is “sometimes called plunger, slide or mandrel.” OSB proposes to add to section 4188(b) a definition of the term “slide,” to mean a reciprocating part of the machine or press that can also be referred to as a ram, plunger, platen, or mandrel. The definition of “ram” would likewise be revised to refer to the new definition of “slide.” These proposed changes are deemed necessary by OSB staff to ensure uniform and consistent application of point of operation guarding to protect employees from coming in contact with moving parts which could cause severe injury.

The current version of section 4188(b) contains separate definitions for hydraulic power presses and mechanical power presses. The proposal would also modify these definitions to make them consistent with industry usage, to clarify that dies used in power presses may be attached to or actuated by slides, to account for technology changes, and ultimately to facilitate consistent application of point of operation guarding.

The Board conducted a public hearing on the proposed changes on December 14, 2000, where no comments were received. OSB adopted the changes at its April 19, 2001 business meeting. At this writing, OSB staff is preparing the rulemaking file for submission to OAL for final approval.

Trench Shoring Systems

On October 27, 2000, OSB published notice of its intent to amend section 1541.1, Title 8 of the CCR, which sets requirements for protective trench shoring systems. Protective shoring systems prevent the movement of unstable or shifting ground that could result in cave-ins, sloughing at the trench face, and other failures. The regulatory modification requires hydraulic shoring in the form of vertical uprights to be installed so that the upper section of the uprights extend to the top of the trench and the lower section is within two feet of the bottom of the trench.

The Board conducted a public hearing on the proposal on December 14, 2000, at which no comments were received. OSB adopted the amended section at its March 15, 2001 business meeting. OAL approved the regulatory action on April 9, 2001, and it takes effect on May 9, 2001.

Confined Spaces

On September 29, 2000, OSB published notice of its intent to consider amendments to sections 5157, 5158, and 8355, Title 8 of the CCR, which deal with confined space hazards. The amendments specify that when more than one employer has employees working in or around a confined space, the employers must coordinate their operations and share information about the known or anticipated hazards within the confined space. According to the Board, the proposal is necessary to prevent additional serious injuries and/or deaths from occurring when an employer fails to communicate hazard information to another employer from a different industry sector that is covered by a different confined space standard. The proposed revisions specify that all confined space standards address the hazards of oxygen-enriched atmospheres. The proposal also incorporates work practice and multi-employer communication procedures in sections 5157, 5158, and 8355 to ensure that all employers in or around a confined space are aware of all possible confined space hazards.

OSB held a public hearing on the proposed changes on November 16, 2000; no oral comments were received. OSB adopted the proposal at its March 15, 2001 business meeting. OAL approved the amendments on April 25, 2001; they become effective on May 25, 2001.

Double Cleat Ladders

On September 29, 2000, OSB published notice of its intent to amend section 1629, Title 8 of the CCR. The existing regulation mandated the use of a double cleat ladder when it will be the primary access or exit from a construction work area with 25 or more employees or where two-way traffic is expected. The regulation set the maximum length for double cleat ladders at 30 feet and further required such ladders to conform to the requirements for ladders in OSB’s Construction Safety Orders in Article 25, Title 8 of the CCR. However, section 1676 of Article 25 prohibits job-made double cleat ladders from exceeding 24 feet in length. Thus, OSB proposed to remove the inconsistency between sections 1629
and 1676 by reducing the length limit in section 1629 from 30 feet to 24 feet.

The Board conducted a public hearing on the proposed change on November 16, 2000. No comments regarding the proposal were received. OSB adopted the change at its business meeting on February 22, 2001. The revised regulation was approved by OAL on March 26, 2001 and became effective April 25, 2001.

Precast Concrete Construction

In 1998, DOSH submitted a request for OSB to amend section 1714 of OSB's Construction Safety Orders in Title 8 of the CCR, entitled “Hoisting and Erecting of Precast, Prefabricated Panels,” to clarify that the section applies to pre-fabricated concrete panels only, and not to tilt-up concrete panels, to distinguish section 1714 from section 1715, which addresses the hoisting and installation of precast, prefabricated panels (“other than tilt-up”), as originally intended when the regulation was first promulgated. Thus this action would distinguish section 1714 from section 1715, which addresses the erection and placement of tilt-up concrete panels. The proposal also addresses the Division’s concern with respect to the adjustment of in-place panels to be in accordance with the directions of an engineer registered in California.

On September 1, 2000, OSB published notice of its intent to amend sections 1714 and 1715. The revisions proposed by Board staff clearly indicate that section 1714 addresses the hoisting and installation of precast, prefabricated panels (“other than tilt-up”), as originally intended when the regulation was first promulgated. Thus this action would distinguish section 1714 from section 1715, which addresses the erection and placement of tilt-up concrete panels. The proposal also addresses the Division’s concern with respect to the adjustment of in-place tilt-up panels by requiring, in new subsection (d)(4) of section 1715, any field modifications to the lifting plan to be approved by a currently registered civil engineer. This proposal would also incorporate federal language from 29 C.F.R. Part 1926.704 in order to correct areas where the current state standard could be interpreted to be less effective than its federal counterpart.

On October 19, 2000, OSB conducted a public hearing on the issue. As a result of the comments received, OSB published modifications to some of the amendatory language to April 17, 2001. The purpose of the modifications is to add clarity and to conform the regulatory language to current building standards and industry practices. Among other things, OSB further amended the title of section 1714 to “Hoisting and Erecting Precast, Prefabricated Concrete Construction (Other Than Tilt-Up Panels).” At this writing, OSB is accepting public comment concerning the modifications until May 4, 2001, after which the Board will consider the proposal for adoption.

Working From or On Top of an Elevating Work Platform Guardrail

On September 1, 2000, OSB published notice of its intent to amend section 3646, Title 8 of the CCR, which specifies operating instructions for elevating work platforms, including platform travel, assembly, disassembly, repair, precautions for inclement weather, and protection of personnel on the platform and on the ground when the platform is in use. Subsection (e) prohibits the use of ladders or other objects on elevating work platforms to gain greater reach or working height. However, as DOSH pointed out to the Board, the provision was silent about climbing, standing, or sitting on the platform guardrails and about the placement of planks on guardrails to extend working height. Extension of the work height of the platforms beyond the design limits can adversely affect platform stability, endangering the worker and others nearby should the platform topple. Thus, the revision to section 3646(e) expressly prohibits sitting, standing, or climbing on the guardrails, and also forbids standing on planks or other devices placed on top of the guardrails in order to gain greater work height or reach.

OSB held a public hearing on the proposed changes on October 19, 2000, at which it received oral comments supportive of the proposal. OSB adopted the changes at its December 14, 2000 business meeting; OAL approved them on January 23, 2001. Revised section 3646 became effective on February 22, 2001.

Bulk Storage of Loose Material

On August 4, 2000, OSB published notice of its intent to amend section 3482, Title 8 of the CCR, which contains workplace safety standards to prevent accidental employee engulfment or entrapment caused by the bulk storage of loose material. Section 3482(b) provided that “fuel houses, silos, bins, bunkers, hoppers and similar structures shall be so constructed or equipped with tunnels, chains, mechanical diggers, vibrators or other effective means of removing material so that employees are not required to work where there is a possibility of being engulfed or having their bodies entrapped by a cave-in such a manner as to restrict breathing....” OSB proposed to delete the phrase “such a manner as to restrict breathing” in subsection (b) in order to clarify that all entrapments and engulfments pose a hazard, not just those that restrict breathing. In the same subsection, OSB replaced an outdated reference to section 2-1134(a) of Title 24 with the correct reference found in section 441A, Title 24 of the CCR.

OSB also proposed to delete former section 3482(e), which required all concrete storage bins, containers, and silos to be equipped with conical or tapered bottoms and a means of starting the flow of material. According to OSB, that specification is no longer mandated by Title 24 of the CCR, and deletion of the standard is necessary to maintain consistency between existing Title 24 building standards and Title 8 with regard to the construction of bulk storage structures.

OSB held a public hearing on the proposed changes on September 21, 2000. The Board received written comments, but none resulted in adjustments to the original proposal. OSB adopted the proposal at its January 18, 2001 meeting and OAL approved it on February 8, 2001. The revised regulation became effective on March 10, 2001.
Marine Terminals

In 1997, Fed-OSHA promulgated revisions to 29 C.F.R. Parts 1910, 1917, and 1918, which address longshoring and marine terminals. Board staff performed a side-by-side code comparison of the existing state and new federal standards and determined that with the exception of two issues, California's regulations are at least as effective as their federal counterparts. Thus, on August 4, 2000, OSB published notice of its intent to amend sections 3465, 3472, and 3475 of Title 8 of the CCR, to conform these sections to the federal standard. The proposed amendment to section 3475 addresses the design, construction, and maintenance of dockboards in a manner that will prevent vehicles from running off the edge. The amendment to section 3472 requires installation of seat (lap) belts for the operators of high-speed container gantry cranes. The amendment to section 3475 is nonsubstantive.

OSB held a public hearing on the proposed changes on September 21, 2000, and adopted them at its January 18, 2001 business meeting. OAL approved the changes on March 6, 2001 and they became effective on that same day.

Approval of Structural Wood Framing System Erection Plans

On June 30, 2000, OSB published notice of its intent to amend section 1716.1(f)(1), Title 8 of the CCR, to change the approval requirements for the erection of structural wood framing systems. Section 1716.1 contains regulations addressing the construction and placement of structural wood framing systems typically associated with commercial buildings such as warehouses, gymnasiums, or shopping malls.

The intent of the requirement involved in this rulemaking action is to ensure that the various component parts of the structure are properly assembled in a sequence that will prevent catastrophic structural failure and collapse of the structure or portions of it. The former version required the erection procedure to be approved by a civil or structural engineer currently registered in California. However, Petition No. 393, submitted by Robert D. Peterson on behalf of eight employers engaged in the construction of structural wood framing systems, asserted that it is difficult, if not impossible, to obtain the services of a California registered civil or structural engineer to approve erection plans because of third party and insurance liability concerns. Consequently, OSB revised the language of this subsection to require the preparation of a "site-specific written erection procedure" by a "qualified person" (as defined in section 1504, Title 8 of the CCR: "a person designated by the employer who by reason of training, experience or instruction has demonstrated the ability to safely perform all assigned duties and, when required, is properly licensed in accordance with federal, state, or local laws and regulations") and "implemented under the direct supervision of a competent person" (as defined in section 1504, Title 8 of the CCR: "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employes, and who has authorization to take prompt corrective measures to eliminate them").

OSB held a public hearing on this proposed change on August 17, 2000. At its December 14, 2000 business meeting, OSB adopted the changes; OAL approved them on January 29, 2001, and they became effective on February 28, 2001.

Barriers and Insulated Gloves

On June 30, 2000, OSB published notice of its intent to amend section 2320.2, part of its Low Voltage Electrical Safety Orders in Title 8 of the CCR. DOSH requested the amendments after its compliance inspections and accident investigations indicated that there have been a number of serious injuries and several fatalities to electricians and industrial workers. DOSH indicated that some employers had misinterpreted the requirements of section 2320.2(a)(3) and were not requiring their employees to wear insulated gloves or other appropriate protective equipment while working on energized 480/277 volt systems. The Division thus recommended that OSB clarify the LVESO requirements for the use of insulated gloves and suitable barriers to prevent accidental contact with energized conductors.

The former version of section 2320.2(a)(3) required that "suitable" insulated gloves be worn when working with voltages in excess of 300 volts. The amendment deletes the word "suitable" and instead requires the use of "approved" insulated gloves; the term "approved," as defined in section 2305.4, refers to products or materials that have been listed, labeled, or certified as conforming to applicable governmental or other nationally recognized standards. Section 2320.2(a)(3) also now requires that insulated gloves be worn while working with voltages in excess of "250 volts to ground"; the former language required suitable gloves for working with voltages in excess of "300 volts, nominal." New section 2320.2(a)(4) also specifies that suitable barriers or approved insulating material must be provided and used to prevent accidental contact with energized parts.

OSB held a public hearing on the proposal at its August 17, 2000 business meeting. At its December 14, 2000 meeting, OSB adopted the amendments; OAL approved them on January 16, 2001, and they became effective on February 15, 2001.

Scaffolds Used in the Construction Industry

In 1996, Fed-OSHA promulgated its final revisions to its safety standards for scaffolds used in the construction industry. Codified at 29 C.F.R. Part 1926.451, the revisions are intended to protect employees who work on scaffolds from accidents attributable to unsafe conditions. Shortly after the promulgation of these amendments to the federal regulation, OSB staff performed a side-by-side comparison of the federal rule with existing California scaffold regulations and determined that five specific safety issues were not adequately addressed by the state’s standards: scaffold work during inclement weather, use of repaired wire rope as suspension rope, application of finishes to scaffold
platform planking, use of gasoline-powered equipment and hoists in scaffold work, and the use of emergency rescue/escape devices as working platforms. Thus, on June 2, 2000, OSB published notice of its intent to amend sections 1637 and 1658, Title 8 of the CCR, pursuant to Labor Code section 142.3, which requires the Board to adopt regulations that are at least as effective as federal regulations addressing occupational safety and health issues.

Section 1637 contains regulations addressing the use, construction, design, erection, and dismantling of scaffolds. OSB added new subsection (u), which prohibits work on scaffolds during inclement weather unless a qualified person has determined that it is safe to do so and the employees are provided with a personal fall arrest system or windscreens. When windscreens are used, the scaffold must be secured so as to prevent movement. OSB also added new subsection (v), which prohibits wood platforms from being covered with opaque finishes, except for identifying marks placed on the platform edges. The aim is to ensure that any defects in the platforms are not concealed by paint.

Section 1658 contains provisions pertaining to the use of suspended scaffolds in construction operations. OSB added a sentence to subsection (e) which prohibits the use of repaired wire rope as suspension support for scaffolds. OSB also added new subsection (v), which prohibits the placement of gasoline-powered equipment on suspended scaffolds; and new subsection (w), which prohibits the use of emergency escape/rescue devices as working platforms unless they are specifically designed to serve as both.

OSB conducted a public hearing on the proposed changes at its July 20, 2000 meeting and adopted them on February 22, 2001. OAL approved the regulatory action on April 6, 2001 and the amendments became effective on May 6, 2001.

Testing of Firefighters' Service in Elevators

On June 2, 2000, OSB published notice of its intent to amend section 3071, Title 8 of the CCR, and section 7-3071, Title 24 of the CCR. Subsection (j) of both sections mandates that every hydraulic elevator be load tested when installed, and again at intervals not to exceed five years. Subsection (j)(1)(E) requires the elevator firefighters' service to be tested in conjunction with the five-year load test, to demonstrate that the firefighters' service, if provided, functions under fire and other emergency conditions specified in sections 3041(c) and 3071(l), Title 8 of the CCR.

OSB identified three problems with subsection (j). First, there is no relationship between the five-year load test it requires and the firefighters' service test indicated in subsection 3071(j)(1)(E), either in the functional purpose of the tests or the frequency of testing. Second, the placing of subsection 3071(j)(1)(E) within Article 9 ("Hydraulic Elevators") creates an ambiguity that could be interpreted to mean that the firefighters' service test is required only for hydraulic elevators, and not other passenger elevators. Finally, the five-year testing requirement is in conflict with the monthly elevator general maintenance testing requirement in section 3000(h). Thus, OSB deleted subsection 3071(j)(1)(E). However, it did not remove the requirement to monitor the firefighters' service; that testing is still required as part of the general monthly elevator maintenance procedures under section 3000(h), which applies to all passenger elevators.

OSB held a public hearing on the matter on July 20, 2000 and received neither written nor oral comments. The Board adopted the changes on October 19, 2000; OAL approved them on March 29, 2001, and they went into effect on April 28, 2001.

Order Pickers and Stock Pickers

On April 28, 2000, OSB published notice of its intent to amend section 3656, Title 8 of the CCR, which addresses requirements pertaining to the design and operation of order pickers and stock pickers. These devices are types of high-lift industrial trucks that are used to stack and tier materials and are typically found in warehouses. Employees stand on a platform that can be mechanically elevated to working levels up to 25 feet above the ground or floor.

Section 3656(d) requires that a safe work platform be provided with standard guardrails on all open or exposed sides. When the use of guardrails is impractical due to the nature of the work being performed, or when overhead clearance restrictions are present, the former version of section 3656(e) required that employees were to be provided with and use a safety belt or harness with lanyard as a means of fall protection. Due to the repeal of the use of body/safety belts as part of fall arrest systems in the fall protection regulations contained in OSB's General Industry Safety Orders and Construction Safety Orders, Board staff determined that section 3656(e) should be amended to clarify that a body/safety belt is not to be used as part of a fall arrest system when working on order pickers or stock pickers. The revision to the section instead requires workers to utilize a personal fall arrest system, a personal fall restraint system, or a positioning device system as defined in section 3207, Title 8 of the CCR, as an alternative means of protecting employees from falling whenever the use of a standard guardrail is impractical and the employee is exposed to a fall of four feet or more.

On August 17, 2000, OSB adopted the modifications to section 3656. OAL approved the changes on October 2, 2000 and they became effective on November 1, 2000.

Warning Devices for Overhead Cranes

On April 28, 2000, OSB published notice of its intent to amend section 4889, Title 8 of the CCR; the amendments require remote-operated cranes to be equipped with an operational warning device. The warning device is a safety feature used to warn persons who may be near the path of the crane's travel.

Under section 4884, Title 8 of the CCR, cranes must be designed, constructed, and installed in accordance with the appropriate ANSI/ASME national consensus standards. The
ANSI/ASME B30.2 and B30.17 standards require warning devices for both cab- and remote-operated cranes. The former version of section 4889, however, failed to make any reference to warning device requirements for cranes controlled by remote operation. This amendment remedies that oversight by including remote-operated cranes within the scope of overhead traveling or bridge cranes that require warning devices.

The proposal also adds an exception to the warning device requirement for cranes whose movements are controlled by an operator from a pendant station suspended from the crane. The exception—consistent with its Fed-OSHA counterpart regulation found at 29 C.F.R. Part 1910.179(i)—permits the use of such cranes without a warning device because the operator is located in close proximity to the load and therefore is able to more closely monitor and warn persons near the crane’s travel path.

On June 15, 2000, OSB held a hearing on the proposal. The Board adopted the changes on October 19, 2000; OAL approved them on December 5, 2000, and they became effective on January 4, 2001.

Airborne Contaminants

On March 24, 2000, OSB published notice of its intent to amend section 5155, Title 8 of the CCR, which establishes the minimum requirements for controlling employee exposure to specific airborne contaminants. Section 5155 specifies several types of airborne exposure limits, requirements for control of skin and eye contact, workplace environmental monitoring through measurement or calculation, and medical surveillance requirements. These provisions were last comprehensively considered and amended in 1994. [15:1 CRLR 122; 14:4 CRLR 138–39] Since then, according to OSB, the body of information and understanding of the harmful effects of the listed substances have evolved.

In determining which substance levels should be considered for modification, DOSH relied in part on the threshold limit values (TLVs) designated by the American Conference of Governmental Industrial Hygienists (ACGIH). For certain changes to section 5155, DOSH found that ACGIH’s TLVs are the most comprehensive single sources of exposure limits available, substantiated by available documentation, and subject to ongoing annual review by ACGIH.

DOSH also established an advisory committee to consider and make recommendations as to necessary modifications to the lists and levels in section 5155. The Airborne Contaminants Advisory Committee met ten times between March 1997 and June 1998. In many cases the Committee’s recommendations agreed with the rationale and limits set by ACGIH; in other cases, the Committee was not in agreement with the ACGIH limits; and in still other cases, the Committee used an altogether different basis than that used by ACGIH.

In final form, the proposal lowers the allowable exposure limits for 27 substances that had been previously listed in section 5155 and adds 13 substances to the list. OSB added short-term exposure limits for 13 additional substances and ceiling limits for another eight. Other modifications were made concerning manganese and manganese compounds, fiberglass, amorphous silica, diatomaceous earth, and diquat.

OSB held a public hearing on the proposed changes on May 11, 2000 and adopted them during its November 16, 2000 business meeting. OAL approved the regulatory action on January 4, 2001 and the revised version of section 5155 became effective on February 3, 2001.

Erection and Dismantling of a Tower Crane

On March 24, 2000, OSB published notice of its intent to amend section 4966, Title 8 of the CCR. Section 4966(a)(1) previously required that the erection, climbing (up or down), and dismantling of a tower crane “shall be performed as recommended by and under the supervision of a certified agent’s representative experienced in the erection and dismantling of this equipment.” This standard conflicted with section 341.1(b)(2), Title 8 of the CCR, which requires employers to provide a statement that a DOSH-licensed tower crane certifier or surveyor, or a safety representative for the distributor or manufacturer of the crane will be present during these operations. Thus, OSB replaced the language in section 4966(a)(1) with a requirement that the erection, climbing, and dismantling of tower cranes to comply with section 341.1(b), Title 8 of the CCR. According to the Board, this revision will afford employers greater ease and flexibility in complying with the regulation to the extent that the supervision of the listed tower crane procedures is no longer limited to certified agent’s representatives.

OSB conducted a public hearing on this change on May 11, 2000 and adopted the amendment on July 20, 2000. The change was approved by OAL on August 21, 2000 and the revised version of section 4966 became effective on September 20, 2000.

Miter Saw Guarding Requirements

Miter saws are designed and manufactured according to ANSI and Underwriters Laboratories Inc. (UL) national consensus standards contained in ANSI/UL 987, “Stationary and Fixed Electric Tools.” According to this standard, miter saws must have upper and lower blade guards to mitigate the potential for hand and finger injuries. These national consensus standards, however, are merely recommendations; until this rulemaking, no California regulation addressed the unique guarding requirements for miter saws. On February 25, 2000, OSB published notice of its intent to add section 4307.1 to Title 8 of the CCR to require miter saws to have blade guards. OSB held a hearing concerning the proposed new section on April 13, 2000, and adopted it on June 15, 2000. OAL approved section 4307.1 on July 21, 2000, and it became effective on August 20, 2000.

Rope Access

Prior to this rulemaking action, OSB’s General Industry Safety Orders did not contain regulations governing the use
of rope access methods or equipment to reach areas not accessible by more conventional means such as aerial devices, ladders, scaffolds, or elevating work platforms. This rulemaking is the result of the effort of an ad hoc advisory committee convened by OSB staff in November 1999 and consisting of representatives from labor, management, search and rescue operations, the entertainment industry, public works agencies, state and federal agencies, and a leading manufacturer of mountain climbing equipment.

On February 25, 2000, OSB published notice of its intent to amend section 3702 and add section 3702.1 to Title 8 of the CCR. The proposal defines the industrial practice of rope access and prescribes equipment, training, maintenance and other requirements that are performance-based and reflect current industry practices. The proposal also serves to differentiate between rope access and fall protection to reduce employer confusion over their applicable obligations with respect to these two undertakings.


Rubber Gloving of Conductors and Equipment Energized Over 7,500 Volts

On January 28, 2000, OSB published notice of its intent to amend sections 2940.2, 2940.6, and 2941, and Appendix C of Article 36, Title 8 of the CCR. The amendments make OSB’s High Voltage Electrical Safety Orders at least as effective as their counterpart federal regulations with respect to approach distances for direct current applications, grounding equipment, and the location of temporary grounds. Also, the proposal updates the references to the latest ASTM publications for rubber insulating sleeves, leather protectors for rubber insulating gloves, insulating plastic guard equipment, insulating work platforms for electric workers, and in-service care of insulating line hose and covers.


Speed of Circular Saw Blades or Knives

On January 28, 2000, OSB published notice of its intent to amend section 4322, Title 8 of the CCR. The previous version of the section limited the “arbor speed” on circular saw blades or knives to 3,600 revolutions per minute (rpm). Since this requirement was originally drafted, the design technology for circular saws has changed. Circular saw blades are now mounted to a motor arbor (drive shaft) that is powered by a gearbox which increases the rpm for saw blades and provides for easier and cleaner cutting. According to power tool industry representatives, the speed range for circular saws available on the market today is 2,200–11,000 rpm. The most popular saws operate within a range of 4,500–6,000 rpm. Thus, rather than set a specific speed limit, OSB amended section 4322 to prohibit the operation of saws at speeds “in excess of those recommended by the manufacturer.”

On March 13, 2000, OSB conducted a public hearing on the proposed amendment; OSB adopted the proposal on May 11, 2000. OAL approved the amendment on June 7, 2000 and it became effective July 7, 2000.

Respiratory Protection for Lead Aerosols

Section 1532.1, Title 8 of the CCR, is the state’s Lead-In-Construction standard that governs exposure to lead in construction work (see above). Section 1532.1(f) specifies requirements for the use of respirators in construction work involving employee exposure to lead. This subsection specifies maximum use concentrations for various classes of respirators in Table I. Table I formerly mandated that type CE hood or helmet continuous flow abrasive blasting respirators could be used in concentrations not exceeding 25 times the permissible exposure limit (PEL) to lead. This limit is the same as the federal limit found in 29 C.F.R. Part 1926.62. However, Fed-OSHA granted higher limits in two enforcement policy memoranda, both of which permitted this type of respirator to be used in atmospheres containing lead concentrations up to 1,000 times the PEL.

In September 1998, DOSH convened an advisory committee to consider changes to the respirator selection requirements of section 1532.1(f). Upon completion of its study, the committee consensus concerning the CE hood or helmet continuous flow abrasive blasting respirators was that increasing the maximum protection factor to 1,000 times the PEL is justified. The committee found that the limitation in the existing regulation unnecessarily denies employers and employees the use of these respirators in operations for which they are appropriate. The effect of this change permits the use of type CE continuous flow abrasive blasting respirators in higher levels of airborne lead which are often encountered in abrasive blasting operations.

On December 31, 1999, OSB published notice of its intent to amend section 1532.1(f) to be consistent with the recommendation of the committee. According to OSB, the proposal simply changes the California construction lead standard to permit the same concentration limit as is permitted by federal enforcement policy. OSB conducted a public hearing on the matter on February 17, 2000 and adopted the amendment at its April 13, 2000 meeting. OAL approved change on May 24, 2000 and it became effective on June 23, 2000.

Overhead Electrical Hazards in Agricultural Operations

On December 31, 1999, OSB published notice of its intent to amend sections 3441 and 3455, Title 8 of the CCR, regarding hazards to agricultural workers from overhead high-voltage electrical lines. The subject of a public hearing on February 17, 2000, this rulemaking action was initiated to address a petition submitted to OSB by the California Public
Utilities Commission (PUC). At the meeting of an advisory committee convened to consider this issue, PUC representatives provided information from their records showing that between 1994 and 1998, there were 24 reported incidents of agricultural workers who made accidental contact with energized electrical lines. Because several of the incidents resulted in injury to more than one worker, a total of nine fatalities and 19 injuries were reported. Although there was significant disagreement as to the most effective means for Cal-OSHA to prevent such accidents, the Board agreed on regulatory language that includes specific inspection, training, and supervision requirements. The amendments to section 3455 also reinforce the requirement to maintain specified clearance distances when employees use tools, ladders, machinery, or other equipment and materials that could come into contact with high-voltage lines.

On August 17, 2000, OSB adopted the rulemaking proposal. OAL approved it on September 19, 2000, and the amendments became effective on October 18, 2000.

Fall Protection in the Construction Industry

On December 3, 1999, OSB published notice of its intent to amend sections 1670 and 1671.2, Title 8 of the CCR, concerning fall protection in the construction industry. In addition to making numerous editorial changes intended to clarify the regulations and make them simpler to understand, OSB proposed to amend section 1670(a) to state that employees must wear fall protection when the working surface is sloped less than 7:12 or 40 degrees, and the fall distance exceeds 15 feet. Also of note, OSB proposed to amend section 1671.2(b), which concerns the use of safety monitors to recognize fall hazards and warn an elevated employee when it appears that the employee is unaware of a fall hazard or is acting in an unsafe manner. Whereas section 1671.2(b)(1)(C) previously required a safety monitor to be within visual sighting distance of the employee, OSB proposed to add "where practicable" to that requirement. The Board conducted a public hearing on the proposal at its January 20, 2000 meeting and adopted it at its May 11, 2000 meeting.

However, OAL staff counsel Michael McNamer subsequently expressed concerns about some aspects of the rulemaking action in a letter to OSB. Although one of the Board's stated purposes was to increase the clarity of the existing regulatory scheme, regarding certain provisions McNamer wrote that "these amendments make the regulation more, rather than less, difficult to understand, because they disregard the existing structure of the regulation." McNamer was also troubled by a lack of information in the record about falls from roof surfaces sloped 7:12 or less, or from other surfaces sloped 40 degrees or less, or about worker injuries suffered in falls from any distance. On June 20, 2000, OSB withdrew the original proposal pending further consideration.

As readopted by OSB on October 19, 2000, the proposal deletes the language requiring fall protection when the working surface is sloped less than 7:12 or 40 degrees, and the fall distance exceeds 15 feet. OAL approved this version on November 21, 2000 and the amended sections became effective on December 21, 2000.

Update on Other OSB Rulemaking

The following is an update on rulemaking proceedings discussed in Volume 17, No. 1 (Winter 2000) of the California Regulatory Law Reporter:

- **Face Shield and Toe Protection for Structural Firefighters.** At its January 2000 meeting, OSB adopted amendments to sections 3404(b) and 3408(b), Title 8 of the CCR, relating to work safety devices for firefighters. OSB's amendments update outdated references to ANSI standards relating to face shields and toe protection for structural firefighters. [17:1 CRLR 134] OAL approved OSB's amendments on March 6, 2000; they became effective on April 5, 2000.

- **Maintenance of the Outer Covering of Flexible Cords.** At its December 1999 meeting, OSB adopted new section 2500.25, Title 8 of the CCR, as part of the Low Voltage Electrical Safety Orders. New section 2500.25 requires flexible electrical cords to be repaired or replaced if the outer sheath is damaged such that any conductor insulation or conductor is exposed. Repair of the outer sheath is permitted only if the conductors are not damaged and the completed repair retains the insulation, outer sheath properties, and usage characteristics of the cord being repaired. [17:1 CRLR 134] OAL approved the addition of section 2500.25 on January 28, 2000, and the section became effective on February 27, 2000.

- **Emergency Procedures Plan for Powered Platforms and Equipment for Building Maintenance.** In December 1999, OSB held a public hearing on its proposed amendments to sections 3292(d)(1) and 3294(i), Title 8 of the CCR. The purpose of the amendments is to ensure that building owners have developed adequate plans for the safe use of powered platforms and equipment for building maintenance, especially exterior window cleaning. [17:1 CRLR 131–32] OSB adopted the proposed amendments on March 16, 2000. OAL approved them on April 27, 2000, and they became effective on May 27, 2000.

- **Job-Made Ladders.** At its November 1999 meeting, OSB voted to amend section 1676, Title 8 of the CCR, part of its Construction Safety Orders. Section 1676 provides that if a ladder provides the only means of access to or exit from a working area for 25 or more employees, or simultaneous two-way traffic is expected, a double-cleat ladder must be installed. OSB added a clarifying note defining "cleats" for job-made ladders as "crosspieces used by a person in ascending or descending a ladder. Cleats are also known as steps or rungs." OSB also amended the remainder of the section to substitute the word "cleat" for "rung." [17:1 CRLR 134] OAL approved the regulatory change on January 3, 2000, and it went into effect on February 2, 2000.

- **Objection to Hearing Panel, Hearing Officer, or Board Member.** At its November 1999 meeting, OSB held a public hearing on proposed amendments to amend section
417.1, Title 8 of the CCR, which provides that any party to a variance proceeding may request a hearing before OSB itself—as opposed to a hearing before a hearing panel—and may request the disqualification of a Board member or the hearing officer assigned to a particular variance. OSB’s amendments clarify the procedures for making such requests, set time limitations on the submission of these requests, and revise the process for disqualifying a hearing officer. [17:1 CRLR 132–33] OSB adopted the proposed amendments on April 13, 2000. OAL approved them on May 22, 2000, and the amended version of the section became effective on June 21, 2000.

**Personal Fall Protection for Window Cleaning Operations.** At its November 1999 meeting, OSB held a public hearing on its proposed amendments to sections 3281, 3284, 3285, 3286, 3287, 3291, and 3293, Title 8 of the CCR, to make the personal fall protection requirements for window cleaning and building maintenance in Articles 5 and 6 of the General Industry Safety Orders consistent with the requirements contained in Article 24 of OSB’s Construction Safety Orders as well as Fed-OSHA’s fall protection standards, 29 C.F.R. Part 1926 (Subpart M), which were revised effective January 1, 1998 to specify that body belts are no longer acceptable as part of a personal fall arrest system. [17:1 CRLR 132] The Board adopted the proposed changes on February 17, 2000. OAL approved them on March 31, 2000, and they became effective April 30, 2000.

**Use of Plunger Engaging Safety Devices and Monitoring Oil Levels in Hydraulic Elevators.** At its November 1999 meeting, OSB adopted proposed amendments to sections 3065, 3067, and 3106.1 of its Elevator Safety Orders in Title 8 of the CCR, and sections 7-3065, 7-3067, and 7-3106.1, Title 24 of the CCR. These regulatory changes concern the use of the plunger engaging safety device (PESD) and the separate issue of the monitoring of oil levels in hydraulic elevators. The proposal contains standards to regulate the permissive use of PESD, a new technology developed by the elevator industry and already in use in some hydraulic elevators in California. The changes also require the monitoring of oil levels in hydraulic elevators to detect oil loss that could result in an uncontrolled elevator descent due to sudden loss of oil pressure. [17:1 CRLR 137; 16:2 CRLR 115] OAL approved the changes on April 13, 2000. The amended regulations became effective on May 13, 2000.

**Escalators and Moving Walks.** At its November 1999 meeting, OSB adopted amendments to sections 3089 and 3091, Title 8 of the CCR, and sections 7–3089(d) and 7–3091(k), Title 24 of the CCR, to address a potential hazard on escalators and moving walkways. The hazard is a pinch point created by a quarter-inch opening that exists between the moving portion and the stationary skirt guard. Accidental entrapment of body parts, clothing, or shoes (especially those of small children) can occur in the pinch point. OSB’s amendments to section 3089 give escalator owners two options: (1) install a skirt deflection device; or (2) ensure that the clearance between the skirt and the escalator step complies with ASME A17.1-1996, Rule 802.3e, and that the skirt panel complies with ASME A17.1-1996, Rule 802.3f. Escalator owners are given three years to comply. The amendment to section 3091(k), regarding moving walkways, does not mandate the use of skirt deflection devices, but provides specifications if a walkway owner elects to install such a device. Under these amendments, upon modification, both escalators and walkways must be inspected by DOSH for the issuance of a new permit. [17:1 CRLR 135; 16:2 CRLR 112–13] OAL approved these changes on March 13, 2000, and they became effective on April 1, 2000.

**Aerial Devices.** At its October 1999 meeting, OSB amended section 3638, subsection (b), Title 8 of the CCR, which contains the requirement that all aerial devices (defined as any vehicle-mounted, self-propelled device, telescoping, extensible or articulating, or both, that is primarily designed to position personnel) be labeled or marked to indicate conformance to applicable ANSI specifications for design and manufacture. OSB divided section 3638(b) so that subsection (b)(1) addresses aerial devices placed in service prior to December 23, 1999 (the effective date of this regulatory change) and subsection (b)(2) addresses those devices placed in service after that date. Devices falling under the requirements of (b)(2) must meet the revised 1990 and 1992 ANSI standards. [17:1 CRLR 134] OAL approved the proposed changes on November 23, 1999, and they became effective on December 23, 1999.

**Approved Testing Equipment in Hazardous Working Environments.** Following a public hearing in October 1999, OSB approved proposed changes to sections 5157 (permit-required confined spaces), 5158 (other confined space operations), 5416 (flammable vapors), and 8355 (confined and enclosed spaces and other dangerous atmospheres), Title 8 of the CCR, on February 17, 2000. OSB amended each of these sections to specify that when electronic and thermal testing equipment is used in an atmosphere that is potentially flammable or explosive, the equipment must be approved for such use pursuant to section 2540.2 of OSB’s Electrical Safety Orders in Title 8 of the CCR. [17:1 CRLR 133] OAL approved the amendments on March 23, 2000, and they became effective on April 22, 2000.

**Conveyor Crossovers.** At a public hearing in September 1999, OSB considered proposed amendments to sections 3207 and 3999(c), Title 8 of the CCR, concerning conveyor crossovers. In section 3207, the Board proposed to define the term “crossover” as “a means to allow employees to pass over or cross a horizontal belted or live roller conveyor without the employee’s feet coming into contact with moving or movable elements of the conveyor. Such means shall include, but are not limited to, catwalks as specified in section 3273 of these Orders, non-continuous, slip-resistant (e.g., raised diamond-studded) metal ‘stepping stones’ (e.g., ‘walking pads’), or replacing conveyor rollers with continuous parallel metal strip walking surfaces (‘crosswalks’).” OSB further
proposed to amend section 3999(c) to refer to the new definition. Following the hearing, Board members became concerned about section 3207’s definition of the term “crossover” and tabled the matter to permit staff to perform additional research. [17:1 CRLR 133]

At OSB’s January 2000 business meeting, staff reported that the language in proposed section 3207 mirrors industry practice and the language of guidelines in the American Society of Mechanical Engineers publication B20.1. Staff noted additional research indicating that the language of section 3207 is at least as effective as relevant federal standards. Based on staff’s research, OSB adopted the proposed regulatory changes. OAL approved the changes on February 17, 2000, and they became effective on March 18, 2000.

♦ Emergency Medical Services/First Aid. On September 3, 1999, OSB published notice of its intent to amend section 1512(b), Title 8 of the CCR, a provision that requires employers of employees on a construction site to provide a suitable number of persons appropriately trained to render first aid. As originally worded, OSB proposed to amend section 1512(b) to provide an exception to the first aid training requirement for engineering contractors or service employers with only one employee on a job site if that sole employee is not engaged in construction activity, and where certain conditions are met. [17:1 CRLR 133] However, as adopted by the Board on March 16, 2000, the exception is broader; it exempts from the first aid training requirement all “engineer-contractors or service providers on a job site not engaged in construction activity,” regardless of the number of such employees. OAL approved this modification on April 13, 2000 and it became effective on May 13, 2000.

♦ Passenger Elevator Emergency Stop Switch/In-Car Stop Switch. At its August 19, 1999 meeting, OSB adopted proposed amendments to section 3040(b)(5), Title 8 of the CCR, and section 7-3040(b)(5), Title 24 of the CCR. Section 3040(b)(5) requires each passenger elevator to have an emergency stop switch located in or near the operating panel in the elevator. This regulation derived from an era when passenger elevators were not fully enclosed; the switches were needed to immediately stop the elevator car should a passenger’s limb or articles become accidentally entangled between the moving car and the hoistway. Modern passenger elevators are fully enclosed, and passengers are protected by numerous new safety requirements that negate the need for an emergency stop switch operable by the public. OSB’s proposal provides an exception to the emergency stop switch requirement for passenger elevators now in service that are equipped with an in-car stop switch that is either key-operated or located behind a locked panel, and permits replacement of an existing emergency stop switch with an in-car stop switch that is either key-operated or located behind a locked panel. The in-car stop switch is not for passenger use; it is for use by elevator maintenance and inspection personnel. OSB’s amendments conform section 3040(b)(5) to ASME’s elevator consensus standard A17.1–1996. [17:1 CRLR 136; 16:2 CRLR 136] On January 11, 2000, OAL approved these amendments. They became effective on February 10, 2000.

♦ Personal Protective Equipment in the Construction Industry. At its June 1999 meeting, OSB held a public hearing on proposed amendments to sections 1515(a), 1516(d), and 1517(c), Title 8 of the CCR, provisions in OSB’s Construction Safety Orders that mandate standards for personal protective equipment in the construction industry. Each of the sections contained references to outdated ANSI standards. As originally proposed, the amendments would have replaced those references with current references to the existing head, eyes/face, and foot protection requirements contained in sections 3381, 3382(d), and 3385(c), Title 8 of the CCR—part of OSB’s General Industry Safety Orders. At the hearing, however, Board member William Jackson pointed out the potential for confusion in amending regulations so that they serve merely to refer to other regulations. [17:1 CRLR 137; 16:2 CRLR 115–16] Therefore, as adopted by OSB on December 16, 1999, the proposal simply repeals sections 1515, 1516, and 1517 entirely, leaving the provisions of the General Industry Safety Orders intact and controlling. OAL approved the repeals on January 28, 2000, and they became effective on February 27, 2000.

♦ Permit-Required Confined Spaces. At its June 1999 meeting, OSB amended section 5157, Title 8 of the CCR, which contains required practices and procedures that protect employees from the hazards of entry into confined spaces. The amendments conform section 5157 with the applicable federal standard, 29 C.F.R. Part 1910.146, adopted by Fed-OHSA on December 1, 1998. Specifically, the proposal expands employee participation requirements by allowing employees and their authorized representatives to observe monitoring and access exposure documentation. The proposal also expands the training required for rescue providers. [17:1 CRLR 138; 16:2 CRLR 114] OAL approved the amendments to section 5157 on March 23, 2000 and the revised version went into effect on April 22, 2000.

DOSH Rulemaking

In addition to its work on administrative regulations governing permanent amusement rides (see above), DOSH engaged in the following rulemaking proceedings in recent months:

♦ Pressure Vessel Unit Fee Schedule. Existing law prohibits the operation of a tank or boiler in California without a DOSH permit. As part of this permitting process, DOSH’s Pressure Vessel Unit performs regular inspections of every installed tank and fire boiler. The Unit is authorized to collect fees for such inspections, as well as for issuing permits and for performing other services and functions.

On June 19, 2000, DOSH adopted—and OAL approved—emergency amendments to sections 344, 344.1, and 344.2, Title 8 of the CCR. The amendments to sections 344 and 344.1 increase the fee for inspection of the design and construction of a boiler or pressure vessel, or for the evalu-
tion of the plant facilities of a fabricator of boilers or pressure vessels, from $105 to $110 per hour. Under the former version of the section, an $84 charge was added for overnight expenses incurred by an inspector. The amendments set the overnight reimbursement amount at the actual cost of meals and lodging, up to a maximum of $150 in specified Bay Area counties and Central and Western Los Angeles, and up to $124 in any other area of the state. Reimbursable mileage in excess of 50 miles round-trip increased from 30 cents to 31 cents per mile. The air tank, liquefied petroleum gas tank, and boiler inspection fees were increased from $105 to $135 per hour.

The amendments to section 344.2 expand the list of entities authorized to issue permits to operate pressure vessels to include corporations or companies that inspect only boilers and pressure vessels that are to be used solely by those companies and that will not be resold. The fee for permits issued on behalf of DOSH was increased from $5 to $15. The result of this amendment is that the fee for permits issued by the Division itself is now equal to the fee for permits issued by other entities on its behalf.

On July 7, 2000, DOSH published notice of its intent to permanently adopt these amendments. The Division held a public hearing on the amendments on August 21, 2000, and then transmitted a Certificate of Compliance to OAL on August 28, 2000. OAL approved the amendments on October 2, 2000.

**Testing Criteria for Impalement Protection.** On December 19, 1999, DOSH published notice of its intent to add new section 344.90, Title 8 of the CCR, to establish standards for the testing and approval of protective covers for exposed rebar at construction sites.

Section 1712, Title 8 of the CCR, requires employers to use protective covers, caps, and troughs at all worksites where employees work around or over exposed rebar or other similar projections. These protective covers may be either fabricated at the job site or manufactured. New section 344.90 establishes uniform standards for the testing and approval of such manufactured protective covers, including caps and troughs. To be approved, protective covers manufactured for use in California on or after October 1, 2000 must be tested in conformance with the proposed standards to ensure effective protection against impalement.

New section 344.90 requires manufactured protective covers to perform satisfactorily in a series of drop tests. The drop test consists of allowing a 250-pound sand bag to fall onto the protective cover placed over a piece or pieces of sheared rebar. The new regulation also requires as a condition of approval that manufacturers include specified instructions and advisories with their products. To allow for effective administration and enforcement, the regulation requires manufactured protective covers to be marked with specified identifying information.

On January 31, 2000, DOSH held a public hearing on the proposed new regulation. On June 30, 2000, DOSH published notice that it had adopted and OAL had approved (on June 26, 2000) the new section. By its own terms, the section became operative on October 1, 2000.

**AB 1127 Implementation.** AB 1127 (Steinberg) (Chapter 615, Statutes of 1999) made numerous changes to the California Occupational Safety and Health Act, and substantially increased the civil penalties assessable by DOSH for violations of the Act. [17:1 CRLR 139–40] On December 16, 1999, DOSH adopted—and OAL approved—emergency amendments to sections 334 and 336, Title 8 of the CCR, to implement AB 1127 effective January 1, 2000.

The amendments to section 334 clarify the regulatory definition of a "serious violation" of OSB’s occupational safety and health standards. The amendments to section 336 increase the minimum civil penalty for serious violations from $5,000 to $18,000. The maximum penalty for serious violations causing death or serious injury, illness, or exposure was increased from $7,000 to $25,000. The amendments also increase the minimum penalty for failure to abate a violation from $7,000 to $15,000 per day.

On January 7, 2000, DOSH published notice of its intent to permanently adopt its emergency amendments implementing AB 1127. In addition, DOSH proposed to add new section 335.1 to Title 8 of the CCR, which would have established that for purposes of assessing civil penalties in connection with permanent amusement ride violations, DOSH would consider not only the employees’ exposure to unsafe conditions, but also the general public’s exposure. The Division conducted a public hearing on these regulations on February 22, 2000. As a result of the oral and written public comments received during the 45-day comment period leading up to the hearing, DOSH modified the proposal to delete section 335.1, and then released the proposal for an additional 15-day period for members of the public to comment on the modifications. After reviewing comments, the Division finalized its proposed amendments to sections 334 and 336 and forwarded the final civil penalty package to OAL on April 13, 2000 for approval. On May 11, 2000, OAL approved the amendments.

**2000 LEGISLATION**

**AB 1822 (Wayne),** as amended August 23, 2000, makes various revisions to the rulemaking provisions of the Administrative Procedure Act (APA). It is significant to OSB because of the volume of rulemaking the Board undertakes. The bill: (1) provides for the use of electronic communication in the delivery and publication of notices and rulemaking documents, but specifies that such electronic communication is not to be the exclusive means by which the documents are published or distributed; (2) authorizes state agencies to con-
BUSINESS REGULATORY AGENCIES

result with interested persons before initiating regulatory action; (3) revises the provisions governing preliminary determinations made by state agencies with respect to certain notices of proposed actions; (4) requires certain additional reports on findings regarding businesses that are to be included in rulemaking notices; (5) requires the use of plain English in all regulations, and revises the definition of the term “plain English”; (6) requires state agencies to permit oral testimony at public hearings on proposed regulations, subject to reasonable limitations; (7) changes the manner in which a state agency may respond to repetitive or irrelevant comments in its statement of reasons for a regulatory action; (8) modifies the provisions governing the availability and content of the rulemaking file; (9) revises certain rulemaking provisions to apply to a proposed repeal of a regulation as well as a proposed adoption or amendment of a regulation; (10) creates an exception to the APA’s rulemaking requirements for a regulation that establishes criteria or guidelines to be used by the staff of a state agency in performing an audit, investigation, examination, or inspection, in settling a commercial dispute or negotiating a commercial arrangement, or in the defense, prosecution, or settlement of a case, subject to specified conditions; (11) creates an express exception to the rulemaking requirements for a state agency rule that is the only legally tenable interpretation of an existing law; (12) revises the APA’s standards for demonstrating the necessity of a proposed regulation by a state agency; (13) clarifies that the period for review of a proposal to make an emergency regulation permanent is 30 working days, rather than 30 days; (14) provides for judicial review of an order of repeal of a regulation as well as a regulation, and expands the types of evidence that a court may consider as part of the review proceeding; (15) changes the name of the California Regulatory Code Supplement to the California Code of Regulations Supplement; (16) requires a state agency under specified circumstances to deliver to OAL for publication in the California Regulatory Notice Register notice of its decision not to proceed with a proposed action; and (17) makes various other technical and clarifying changes to the APA. AB 1822 was signed by Governor Davis on September 30, 2000 (Chapter 1060, Statutes of 2000).

AB 505 (Wright), as amended August 28, 2000, enacts the Small Business Regulatory Reform Act of 2000. The bill revises various provisions of the APA with respect to the duties of OAL and state agencies, including the various components of Cal-OSHA, in the adoption, amendment, and repeal of regulations. The intent of the bill is to make it easier for the small business community to track agency rulemaking and participate (through comment and testimony) on the impact of agency rulemaking on small business. As is the case with AB 1822 (above), this new law is significant to OSB because of the high volume of regulations promulgated by OSB and their frequent impact on business.

Incorporating many provisions included within AB 1822, AB 505: (1) authorizes state agencies and OAL to extend the time period for public comment in specified circumstances; (2) modifies the information that a state agency is required to submit along with the notice of the proposed regulatory action to include (a) the text of the proposal drafted in “plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style,” (b) a notation listing both the specific authorizing statutes and the provisions of law being implemented, interpreted, or made specific, (c) a statement of the specific purpose of each action and why it is necessary, (d) identification of any studies or reports supporting the regulatory action, (e) a description of reasonable alternatives to the regulation and the agency’s reasons for rejecting those alternatives, and (f) facts, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business; (3) recasts the provisions concerning the various pieces of information required to be included in the notice of proposed regulatory action in order to make the nature and effect of the action more understandable for both small businesses and the general public; (4) revises the method a state agency must utilize to make a determination as to whether a regulatory proposal has the potential for significant, statewide adverse economic impact directly affecting California business enterprises; (5) modifies the procedure for notifying interested persons of the proposed adoption, amendment, or repeal of a regulation; (6) imposes additional requirements on state agencies issuing regulations in order to make the regulatory process more user-friendly and improve communications between the parties in the regulatory process; and (7) requires each state agency to designate at least one person to serve as a small business liaison. Additionally, this bill requires OAL to post the California Regulatory Notice Register on its Web site by January 1, 2002, and moves the Office of Small Business Advocate from the state Trade and Commerce Agency to the Governor’s Office of Planning and Research. Governor Davis signed AB 505 on September 30, 2000 (Chapter 1059, Statutes of 2000).

AB 602 (Florez), as amended August 23, 2000, attempts to improve the safety of farm labor vehicles, defined as “any motor vehicle designed, used, or maintained for the transportation of nine or more farmworkers, in addition to the driver, to or from a place of employment or employment-related activities.” Prior law prohibited pickup trucks or flatbed motortrucks from carrying passengers in the bed area of the vehicle while being driven on a highway. However, this prohibition did not apply if the bed was enclosed by a camper or camper shell that prevented passengers from being ejected. This bill deletes the enclosure exemption language and instead substitutes a requirement that the vehicle be equipped with a “restraint system” that meets or exceeds pertinent federal motor vehicle safety standards in order for passengers to be allowed to ride in the bed area of such trucks. The bill adds another exemption to the general prohibition for a truck owned by a farmer or rancher and used exclusively within the boundaries of the farm or ranch, with only incidental use, as defined, on a highway.
AB 602 requires that, on and after January 1, 2007, a farm labor vehicle that meets a specified statutory definition relating to buses be equipped at each passenger position with a seatbelt assembly, unless exempted from this requirement under certain regulations promulgated by the California Highway Patrol. And on and after March 31, 2002, the bill prohibits any person from being transported in a farm labor vehicle that does not have all passenger seating positions in compliance with specified federal regulations, and further prohibits any person from installing a seat or seating system in a farm labor vehicle unless that seat or seating system is in compliance with specified federal regulations. AB 602 also requires all cutting tools or tools with sharp edges carried in the passenger compartment of a farm labor vehicle to be placed in securely latched containers that are firmly attached to the body of the vehicle to prevent their movement while the vehicle is in motion. Governor Davis signed AB 602 on September 2, 2000 (Chapter 308, Statutes of 2000).

AB 1599 (Torlakson), as amended August 29, 2000, adds section 6359 to the Labor Code, which requires DIR to contract with a coordinator to establish a statewide young worker health and safety resource network. The primary function of the resource network is to assist in increasing the ability of young workers and their communities statewide to identify and address workplace hazards in order to prevent young workers from becoming injured or ill on the job. The resource network will coordinate and augment existing outreach and education efforts and provide technical assistance, educational materials, and other support to schools, job training programs, employers and other organizations working to educate pupils and their communities about workplace health and safety and child labor law. The resource network is to be advised by a statewide advisory group, including representatives from DIR, the Commission on Health and Safety and Workers' Compensation, the University of California, the state Department of Education, the Department of Health Services, and the Employment Development Department, as well as representatives from business and labor, parents, and others experienced in working with youth doing agricultural and nonagricultural work. The bill provides that the advisory group should also represent diverse geographic regions of the state. On September 22, 2000, Governor Davis signed AB 1599 (Chapter 598, Statutes of 2000).

SB 973 (Perata) and AB 983 (Correa), both of which would have provided for the regulation of permanent amusement rides, died in committee in early 2000 due to the passage of AB 850 (Torlakson) (Chapter 585, Statutes of 1999) (see MAJOR PROJECTS).

2001 LEGISLATION

SB 25 (Alarcon), as introduced December 4, 2000, would create a new state Labor Agency consisting of DIR, the Department of Fair Employment and Housing, the Employment Development Department, the Agricultural Labor Relations Board, the Public Employment Relations Board, and the Fair Employment and Housing Commission. The Agency would be under the supervision of the Secretary of the Labor Agency, who would be appointed by the Governor, subject to Senate confirmation. The bill would also decrease the annual salary of the DIR Director from $91,054 to $85,402. [S. GO]

SB 123 (Esclutia), as amended April 16, 2001, would require that gubernatorial appointments to OSB be approved by the Senate. The bill would also mandate that the two labor representatives on the Board be from the field of "organized labor" (instead of "labor"). Existing law permits an OSB member whose term has expired to remain in office until a successor is selected; SB 123 would instead provide that, at the expiration of each member's term, the member would automatically cease to be on the Board. [S. Appr]

SB 986 (Torlakson), as introduced February 23, 2001, would establish a comprehensive statutory scheme to regulate elevator safety. Under SB 986, after June 30, 2002, no "conveyance"—defined to include elevators, escalators, platform and stairway chair lifts, dumbwaiters, material lifts, moving walks, and automated people movers (with specified exceptions)—may be erected, constructed, installed, or altered without a permit from DOSH before work is commenced. The bill would make the existing elevator inspection requirements applicable to all conveyances (including those in private residences), permit DOSH to issue operation permits for conveyances in private residences for up to three years, and prohibit DOSH from charging a fee for inspecting or permitting conveyances in private residences; instead, the bill would require the Division to include the cost of inspecting private residence conveyances in the fees charged for other conveyance inspections. Also effective June 30, 2002, SB 986 would prohibit the erection, construction, alteration, testing, maintenance, repair, or servicing of a conveyance except by a person, firm, or corporation certified by DOSH. The bill would provide for biennial renewal of such certification and would also provide for fees and continuing education requirements. Failure of an elevator inspector to comply with certain reporting requirements would be grounds for revocation of certification.

SB 986 would expand DOSH's existing authority to seek injunctions restraining the operation of elevators without a permit and in a dangerous condition to include all conveyances; exempt DOSH from any requirement for an injunction bond; and make any person who intentionally violates such an injunction subject to prescribed civil penalties. The bill would permit DOSH to assess civil penalties against certain owners, occupants, employers, and contractors who violate the permit requirement with respect to a conveyance in a private residence. DOSH would also be authorized to issue temporary permits to operate a conveyance pending receipt of the applicable fee.

SB 986 would also require OSB to adopt regulations for emergency signal devices for conveyances in addition to el-
evators. DOSH would be directed to prescribe procedures for 30-day renewable certification of qualified elevator mechanics to provide elevator service when an emergency exists due to a disaster or where there are no certified qualified elevator mechanics available. The bill would require DOSH, by June 30, 2002, to propose specified standards for conveyances for adoption by OSB by December 31, 2002. The bill specifies that such standards are not to be applied retroactively. [S. L&IR]

SB 1207 (Romero), as introduced March 19, 2001, would include volunteer firefighters within the definition of “employee” found in the Occupational Safety and Health Act of 1973, when they are covered by workers’ compensation pursuant to specified statutory provisions. [S. Appr]

SB 486 (Speier), as amended March 28, 2001, would impose customer safety requirements upon a “working warehouse,” which would be defined in new Labor Code section 9101 as “a wholesale or retail establishment in which either or both of the following occur: (a) heavy machinery, including, but not limited to forklifts, is used in any area where the public shops while customers are on the premises; and (b) merchandise is stored on shelves higher than ten feet above the sales floor.” SB 486 would require an owner, manager, or operator of a working warehouse to secure merchandise stored on shelves higher than ten feet above the sales floor by installing safety devices such as rails, fencing, netting, or binding materials. The bill would further require working warehouse operators to prevent customers from entering aisles when heavy machinery is being used to remove merchandise from shelves. A working warehouse operator who employs more than 50 employees would be required, within 30 days of December 31, 2002 and within 30 days of December 31, 2003, to submit to DOSH a report of all known customer deaths or injuries requiring hospitalization occurring as a result of falling merchandise. [S. L&IR]

LITIGATION

Pulaski, et al. v. California Occupational Safety and Health Standards Board, the years-long litigation over OSB’s ergonomics standard in section 5110, Title 8 of the CCR, ended on November 24, 1999 when the Third District Court of Appeal slightly modified its October 29, 1999 decision, affirmed its order requiring OSB to delete an exception from the rule for small employers, and denied OSB’s petition for rehearing. The Third District’s decision, which is found at 75 Cal. App. 4th 1315 (1999), as modified by 76 Cal. App. 4th 684A (1999), largely upheld OSB’s regulation by overturning a lower court decision in which a superior court judge essentially rewrote the regulation. However, the Third District did a little rewriting of its own by striking OSB’s exception for employers of less than ten employees as inconsistent with Labor Code section 6357. [17:1 CRLR 142-43] After the Third District denied OSB’s petition for rehearing, the Sacramento County Superior Court issued a modified peremptory writ of mandate on March 15, 2000, ordering OSB to undertake rulemaking to delete that part of section 5110(a)(4) exempting employers with nine or fewer employees. OSB did as it was ordered; on April 28, 2000, OAL approved the repeal of the exemption.

On April 5, 2001 in Carmel Valley Fire Protection District v. State of California, 25 Cal. 4th 287 (2001), the California Supreme Court reversed a decision of the Second District Court of Appeal and held that the legislature did not violate the separation of powers doctrine when, in response to the state’s fiscal crisis during the early 1990s, it passed a bill suspending required local government compliance with state mandates—including DIR executive orders concerning appropriate clothing and equipment for firefighters.

In 1978, DIR adopted executive orders requiring all employers (including local governments) to adhere to OSB’s regulations establishing minimum requirements for personal protective clothing and equipment for firefighters, and to provide firefighter employees with the designated clothing and equipment. In 1979, Proposition 13 added to the state constitution a provision requiring the state to reimburse local governments for costs they incur in complying with specified state-mandated programs. During the state’s fiscal crisis in 1990, the legislature enacted Government Code section 17581, which suspended the obligation of local governments to comply with a statute, executive order, or regulation if: (1) compliance with that law would trigger mandated state reimbursement; and (2) the legislature specifically identifies the statute, executive order, or regulation as being one for which reimbursement would not be provided for that fiscal year.

In 1995, the Carmel Valley Fire Protection District submitted a claim to the Commission on State Mandates (which determines whether a law or regulation constitutes a “state mandate”) for reimbursement of its costs of complying with OSB regulations concerning firefighter clothing and safety equipment. After the Commission denied the claim, the District filed a petition for writ of mandate in superior court. The trial court denied the writ, finding that the clothing and equipment requirements were validly suspended by section 17581 and that, as a result, the costs incurred by the District in providing those items were not state-mandated costs. The Second District Court of Appeal reversed the trial court and held that the operation of section 17581 violates the separation of powers doctrine by usurping the enforcement authority of the executive branch. The appellate court observed that although the legislature may enact, amend, and repeal the laws of this state (including those that create Cal-OSHA and govern occupational health and safety), it is “without the power to exercise supervisory control or to retain for itself some sort of veto power over the manner of execution of the laws.” According to the court, “section 17581 is nothing more than an impermissible attempt to exercise supervisory powers over the manner in which the Department of Industrial Relations executes the laws enacted by the Legislature. Whatever power the Legislature may have to repeal Cal-OSHA in whole or in part, or to enact an inconsistent statute that would accomplish an implied repeal of the executive orders, it does not...
have the power to cherry-pick the programs to be suspended—which is precisely what the Legislature has done by suspending the operation of only those 'executive orders, or portions thereof, [that] have been specifically identified by the Legislature in the Budget Act for that fiscal year' [quoting section 17581]. Accordingly, section 17581 is constitutionally inapplicable in this case...." [17:1 CRLR 143-44]

In reversing the Second District, the California Supreme Court explained that "considering the appropriate function of the Legislature—to define policy and allocate funds—and considering the inability of an administrative agency to which quasi-legislative power has been delegated to adopt rules inconsistent with the agency’s governing statutes, we believe that a legislative enactment that limits the mandate of an administrative agency or withdraws certain of its powers is not necessarily suspect under the doctrine of separation of powers. When the Legislature has not taken over core functions of the executive branch and the Legislature has exercised its authority in accordance with formal procedures set forth in the Constitution, such an enactment normally is consistent with the checks and balances prescribed by our Constitution."

The Supreme Court characterized the effect of section 17581 on DIR and OSB as "incidental, while the statutory and budget measures under review constitute an expression of the Legislature’s essential duty to devise a reasonable budget." The court held that section 17581 does not violate the separation of powers doctrine and thus is constitutionally valid.

On May 18, 2000, in a case of apparent first impression, the Third District Court of Appeal defined the type of evidence needed to prove a "willful" violation of an OSB occupational safety standard in Rick's Electric Inc. v. California Occupational Safety and Health Appeals Board. On May 18, 2000, in a case of apparent first impression, the Third District Court of Appeal defined the type of evidence needed to prove a "willful" violation of an OSB occupational safety standard in Rick's Electric Inc. v. California Occupational Safety and Health Appeals Board. The Appeals Board, on its own motion, reconsidered that finding and reversed it. The Appeals Board found that Rick's had committed a willful violation under both of section 334's definitions by knowingly violating section 2320.2(a) and by knowing of the hazardous condition but failing to attempt to correct it. The trial court thereafter affirmed the Appeals Board's decision and denied Rick's petition for writ of mandamus.

Before the Third District, Rick's argued that under either test, "it is not merely a knowing violation of a safety order which triggers a 'willful' classification of a violation, but the subjective state of mind of the employer; an intent that by allowing (or not prohibiting) certain actions by an employee, that employee will be exposed to a hazardous condition." The Third District disagreed. Analyzing how other courts have defined "willfulness" in the context of a regulatory standard imposing civil penalties, the Third District found that none
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of the cases require a showing of evil purpose or a malicious intent to injure. The court pointed out that “not requiring a showing of actual intent to do harm also furthers the Legislature’s intent to vest the Division with broad enforcement power, including the authority to impose higher penalties.”

With respect to section 334’s first test for willfulness, the Third District found a sufficient showing of intent in that Blackstock’s injury arose from Woodmansee’s specific, voluntary, and intentional direction to do the work that led to the injury. Regarding the element of knowledge, Rick’s conceded that it had actual knowledge of section 2320.2 (because it had been cited two weeks earlier for violating that very section), and also conceded that Blackstock’s work on energized cables without protective equipment and prior training was a violation of that section. According to the court, the fact that Woodmansee in good faith believed the cables were not energized was inconsequential. Section 2320.3, Title 8 of the CCR, requires Rick’s to treat all electrical equipment as energized until tested or proven otherwise, and section 2320.2 requires Rick’s to ensure that the person performing the task has sufficient training and personal protective equipment to work on energized devices. Woodmansee took neither precaution.

With respect to section 334’s second test, the court held that Rick’s committed a willful violation when it was aware of a hazardous condition but failed to make reasonable efforts to remove the condition. The court noted that Rick’s could have rendered the hazard safe by using a simple tester that all of its employees allegedly carry on their persons; or Woodmansee, realizing the cables had not been tested, could have complied with section 2320.3 by treating them as energized and hence not assigning Blackstock to work on them.

In an unusual move, DOSH has filed suit against the Appeals Board to clarify the liability of a dissolved joint venture for civil penalties imposed by DOSH. Division of Occupational Safety and Health v. California Occupational Safety and Health Appeals Board, No. 99CS01719, filed August 20, 1999 in Sacramento County Superior Court, stems from a March 11, 1994 explosion and fire in a subway tunnel construction project for the Los Angeles County Metropolitan Transportation Authority’s (MTA) Metro Rail Redline Project, in which three welders were seriously injured. The incident triggered a five-month DOSH investigation which resulted in numerous citations for safety violations—many of them classified as “serious” or “willful”—over the use, handling, and storage of gas cylinders for welding in the tunnel. The cited employer was SKK, a joint venture consisting of three construction companies (J. F. Shea Company of Walnut, Kiewit Construction Company of Nebraska, and Kenny Construction of Illinois); the joint venture had been formed for the purpose of bidding on the tunnel project. At the time the accident occurred and the citations were issued, SKK was clearly an “employer” with over 300 “natural persons in service,” for purposes of the California Occupational Safety and Health Act of 1973. However, one year after the accident, MTA terminated SKK’s contract and the joint venture dissolved. Shea, Kiewit, and Kenny (“employer”) contested the citations and accompanying civil penalties imposed by DOSH in a November 1998 hearing before an administrative law judge. The ALJ denied all of the employer’s motions, including one in which the employer sought relief from the civil penalties on grounds that it was then out of business and had no place of employment and no employees. The employer appealed the matter to the Appeals Board.

During 1999 briefing in a consolidated matter on the employer’s appeals of a number of citations growing out of the tunnel accident, the employer contended that according to longstanding Appeals Board precedent, assessment of a civil penalty against an employer whose business no longer exists does not serve the prospective civil penalty purpose of educating and inducing the cited party to provide a safer, healthier workplace for employees. On the other hand, DOSH argued that even though SKK no longer had employees, it had not entirely divested itself of its interest in the business, it still held real and personal property, and it remained involved in ongoing litigation as a joint venture—thus, it should not be considered to be non-existent. More importantly, DOSH pointed out, each one of the three joint venture members separately continue to do business in California, to have places of employment and employees, and to be involved with tunneling and other related construction activities. DOSH contended that employers should not be permitted to escape legal liability for workplace safety violations by creating and dissolving project-specific ventures.

According to the Appeals Board’s September 15, 1999 decision, “the evidence is irrefutable; the joint venture of Shea-Kiewit-Kenny no longer is an employer; has no employees; and maintains no place of employment in California.” Relying on 1970s-era Appeals Board precedent, the Board held: “When an employer is out of business, civil penalties are not assessed, as their imposition would no longer serve the purposes of the Act. Penalties which do not encourage an employer to maintain safe and healthful working conditions are punitive, which is contrary to the purposes of the Act….Furthermore, the Board does not fear that this decision will beget a tidal wave of cases where the joint venture dissolves for the sole purpose of avoiding the imposition of civil penalties for Division citations. The facts of this case are unique….The Board is convinced that SKK’s dissolution was related to its contract being abruptly terminated and not engineered to avoid proposed civil penalties….The Board did, however, pay particular attention to the Division’s arguments that allowing a joint venture to be absolved from an obligation to pay civil penalties will make a mockery of Cal-OSHA law and will lead to ‘gamesmanship’ by such employers. The Board is not convinced that the par-
DOSH and Board staff recommended denial of the petition. Petition Nos. 400 and 401 and to deny No. 402. Petition No. 403, submitted by Howard More. The petition requested revisions to section 3177, Title 8 of the CCR, regarding roped sidewalk elevators. The Board Executive Officer John MacLeod, Petitions 406 and 407 will participate in the advisory committee process.

At its November 18, 1999 meeting, OSB voted to grant Petition No. 399, submitted by D. A. Swerrie of Swerrie Inc. The petition requested revisions to section 3123, Title 8 of the CCR, regarding roped sidewalk elevators. The Board agreed with the evaluations of both DOSH and its own staff that an advisory committee should be convened to study the issue and make further recommendations.

At the December 16, 1999 meeting, OSB voted to deny Petition No. 403, submitted by Howard More. The petition requested revisions to section 3177, Title 8 of the CCR, that would exempt Pomalift cables from the wire rope diameter requirements found in that section of OSB’s Passenger Tramway Safety Orders. According to the Petitioner, because the Pomalift is a surface lift (the passenger/skier does not leave the ground) rather than an aerial tramway, it should be exempt from the retirement requirement for wire ropes that have degraded to less than 94% of their original diameter. Both DOSH and Board staff recommended denial of the petition.

At its January 20, 2000 meeting, OSB voted to grant Petition Nos. 400 and 401 and to deny No. 402. Petition No. 400, submitted by Michael D. Wang of the Western States Petroleum Association, requested that the Petroleum Safety Orders, found in sections 6500-6894, Title 8 of the CCR, be updated to reflect recent changes in the national consensus standards of the American Petroleum Institute, ANSI, and ASME. Petition No. 401, submitted by Nicolas Garcia, requested revisions to section 1712, Title 8 of the CCR, with regard to the use of personal protective equipment for workers handling rebar and other similar materials. Petition No. 402, submitted by Jim Turner, requested that the Board amend the Elevator Safety Orders (sections 3000-3139, Title 8 of the CCR) by deleting instances where ASME A17.1-1996 is incorporated by reference. According to the Petitioner, that particular standard is unclear, ambiguous, and difficult to interpret. The Board agreed with the evaluations of its staff and DOSH that the petition should be denied because the Elevator Safety Orders were originally developed with the cooperation of many interested and affected parties through a thorough and extensive rulemaking process. At the same meeting, OSB again denied an amended version of Petition No. 403 filed by Howard More concerning the Pomalift, which was originally denied at OSB’s December 1999 meeting (see above).

At the February 17, 2000 meeting, the Board voted to grant Petition No. 404, submitted by Bo Bradley for the Associated General Contractors of California. The petition requested amendments to section 5006, Title 8 of the CCR, to make the California qualification requirements for crane operators at least as effective as the comparable federal standards by making them stricter and more detailed. Executive Officer MacLeod noted that OSB had already received a second and was expecting a third petition concerning this same issue and that all interested parties would be invited to participate in the advisory committee process.

At its March 16, 2000 meeting, OSB granted three petitions, Nos. 405, 406, and 407. Petition No. 405, submitted by Thomas E. Mitchell, requested revisions to the General Industry Safety Orders in Article 7, Title 8 of the CCR, regarding practices and equipment for winches mounted on motor vehicles. Petition No. 406, submitted by Carl J. White & Associates Inc., requested that the provisions concerning the strength or stiffness of escalator skirt panels be enhanced above the ASME A17.1 standard currently found in Article 13 of the Elevator Safety Orders. Petition No. 407, also submitted by Carl J. White & Associates, requested further Article 13 changes to limit the allowable clearance between escalator steps and side panels to a maximum of one-eighth inch. The Petitioner argued that by minimizing this gap, the likelihood of entrapment would be mitigated. According to Executive Officer John MacLeod, Petitions 406 and 407 will be studied by the same advisory committee.

OSB granted a third Carl J. White & Associates petition (No. 408) at its April 13, 2000 meeting in Sacramento. This petition requested that Article 13 of the Elevator Safety Orders be amended to require the reporting and investigation of elevator and escalator accidents occurring to the riding pub-
lic. DOSH’s evaluation noted that it was unclear whether Cal-Osha had the appropriate statutory authority to mandate such a requirement; nevertheless, DOSH supported the convening of an advisory committee to study the matter.

At the same April meeting, the Board also granted Petition No. 409, submitted by North American Crane Bureau Technical Services Inc., requesting revisions to sections 5006, 5008, and 5009, Title 8 of the CCR, regarding the qualifications and practices of crane operators and floor-operated cranes. Some Board members hesitated, however, because SB 1999 (Karnette and Burton), which would codify in statute standards for the certification of crane operators by DOSH, was pending in the legislature at the time. (The bill was subsequently gutted and amended to pertain to an entirely different subject.)

At its May 11, 2000 meeting, OSB granted Petition No. 411, submitted by John Deunay from JDL Systems Inc. The petition requested amendments to the Elevator Safety Orders regarding the installation of sump pumps and drains in elevator hoistways.

During its June 15, 2000 meeting, OSB granted Petition No. 410, submitted by Dennis O. Jones, Chair of Pile Drivers Local 2375, along with Petition No. 413, submitted by Ron Hurd of the same union organization. Both petitions requested that the existing language in section 1600, Title 8 of the CCR, be repealed and replaced with the federal regulatory provisions for pile driving equipment of 29 C.F.R. Part 1926.603(a)(5). At the same meeting, the Board also granted Petitions 412 and 414, submitted by Gregory R. Cooper and Sherry DeMarais, respectively. These two identical petitions requested amendment of section 1715, Title 8 of the CCR, concerning the adjustment of tilt-up concrete panels after initial placement and bracing.

The Board was unable to attain a quorum necessary to conduct business at its September 21, 2000 meeting in Los Angeles. Thus at its October 19, 2000 meeting, OSB considered a total of five petitions. Petition No. 416, submitted by Bio-Medical Disposal Inc., requested amendment of the bloodborne pathogens standard found in section 5193, Title 8 of the CCR, to permit employers to use a traditional syringe with a needle destruction device instead of the needleless system generally required by the standard. [16:2 CRLR 116; 16:1 CRLR 133–34] Petition No. 417, submitted by the California Association of Trauma Waste Practitioners, requested OSB to coordinate with the Department of Health Services in classifying trauma scenes as biohazards or potential health hazards and requiring the posting of biohazard signs at trauma scenes such as crime and accident sites. The Board denied Petitions 416 and 417. Petition No. 418, submitted by Stearns Inc., requested amendment to section 1602, Title 8 of the CCR, to more specifically identify which U.S. Coast Guard-approved personal flotation devices DOSH finds acceptable. Kenneth Scheidecker of Ironworkers Local 433 submitted Petition No. 419 to request an amendment to section 1527, Title 8 of the CCR, to require hand-washing facilities at construction worksites where portable toilets are utilized. Finally, Petition No. 420, submitted by Mid-State Steel Erectors, Inc., requested modification of section 1710, Title 8 of the CCR, regarding erection of structures to allow the practice of shimming (climbing vertically) structural steel columns by ironworkers during connection work. The Board granted Petitions 418, 419, and 420.

At the November 16, 2000 meeting, OSB granted Petition No. 421, submitted by John “Eric” Pearce. The petition requested the Board to amend sections 3282(p)(1)(B) and 3296, Title 8 of the CCR; the sections deal with load testing of devices used in window cleaning and penalties for building owners concerning window cleaning operations.

At its January 18, 2001 meeting, OSB granted Petition No. 422 filed by Gerry Daley and Gena Stinnett. The petition requested OSB to promulgate a new safety order regarding microwave mast safety for workers engaged in electronic news gathering.

Ed Hernandez, President of the California Optometric Association, submitted Petition No. 423, which the Board denied at its February 22, 2001 meeting. The petition requested OSB to revise section 5110, Title 8 of the CCR, to include optometrists within the category of licensed physicians authorized to diagnose and treat repetitive stress injuries associated with computer vision syndrome.

At its March 15, 2001 meeting, OSB denied Petition No. 425. That petition, submitted by Joan Krinsky, requested adoption of a new safety order about fluorescent lighting.

OSB granted two petitions during its April 19, 2001 meeting. Petition No. 426, submitted by Thomas Nussbaum of Nussbaum & Associates, requested amendments to the Boiler/Fired Pressure Vessel Safety Orders, sections 771(a)(4) and 781(b) of Title 8 of the CCR, regarding steam boilers. Petition 427 was submitted by David W. Smith and requested amendments to GISO sections 3210 and 3212(a)(1) regarding elevated work areas and access to such areas.

**FUTURE MEETINGS**

**2001:** May 17 in Los Angeles; June 21 in Oakland; July 19 in San Diego; August 16 in Sacramento; September 20 in Los Angeles; October 18 in Oakland; November 15 in San Diego; December 13 in Sacramento.

**2002:** January 17 in Los Angeles; February 21 in Sacramento; March 21 in Oakland; April 18 in Sacramento; May 16 in San Diego; June 20 in Sacramento; July 18 in Los Angeles; August 15 in Sacramento; September 19 in Oakland; October 17 in Sacramento; November 21 in San Diego; December 12 in Sacramento.

**2003:** January 16 in Los Angeles; February 20 in Sacramento; March 20 in Oakland; April 17 in Sacramento; May 22 in San Diego; June 19 in Sacramento; July 17 in Los Angeles; August 21 in Sacramento; September 18 in Oakland; October 16 in Sacramento; November 20 in San Diego; December 18 in Sacramento.