

The Terminator Yells "Cut" to Cal/OSHA Regulatory Actions

Gov. Schwarzenegger issued an executive order placing a hold on all new DOSH regulatory actions for up to six months. The governor also wants to review all regulations issued during the Davis administration to assess their impact on business.

The executive order affects all proposals for which public hearings have been held but have not yet been approved. The Standards Board met Nov. 20 and was to adopt two minor safety order revisions regarding the pressure testing of pipes and the use of signals for cranes. Those agenda items were in question after the executive order was issued.

"The Standards Board can take public testimony on new proposals," but the board is determining how to proceed with proposed orders for adoption, explained Keith Umemoto, the board's executive officer.

The executive order states that agencies, boards, departments and commissions are to return "any proposed regulation, including emergency regulations, for final adoption, amendment, or repeal or other processing by the Office of Administrative Law for further review for a period not to exceed 180 days."

It also orders agencies to cease processing all proposed regulatory actions during the review period. That means that a proposal that was industry generated - the residential construction fall protection standard that was part of the Nov. 20 public hearing - cannot go forward until it receives the administration's blessing. Representatives of the framing industry - and Cal/OSHA - personnel stressed the importance of a timely adoption of the proposed revisions. The Standards Board has not yet agreed to the revisions, including a general fall protection trigger height of 15 feet for residential construction and others that will help clarify outdated and confusing fall protection regulations.

The action also suspends or postpones the effective date of any adopted, amended or repealed regulations published in the California Regulatory Notice Register, but not yet effective. That could include a number of revisions recently adopted by the Standards Board, including a requirement to increase the illumination requirements for nighttime roadwork, safe work procedures for tree trimming, and revisions regarding the repair and testing of crane booms, tower crane deceleration devices and the maintenance of industrial trucks.

The executive order allows for "emergency and other situations relating to health and safety" requests but gives no details on what would qualify as an emergency.

The regulatory review of all Davis-era regulations is intended to assess their impact on California businesses and their conformity to the Administrative Procedures Act. The Standards Board alone has issued 120 regulations since Jan. 1, 1999, covering a range of safety issues, from the guarding of meat saw bands to bloodborne pathogens.

One observer, who asked not to be identified, remarked, "Whoever's in charge of this, it's going to be an overwhelming task. I would try to set priorities."

Another provision in the executive order requires agencies to "assess and identify any present issuance, utilization, enforcement or attempt at enforcement of any guideline, criterion, bulletin, manual, instruction, order, or standard of general application which has not been adopted as a regulation in potential violation of California Government Code section 11340.5(a)." This is an attempt to identify

interpretations that are being enforced - so-called "underground" regulations, said an observer.

Gov. Schwarzenegger's attempt to untangle the regulatory mess that California has become should defiantly benefit the Construction industry in the long run but will be sure to add to more confusion and frustration with Cal/OSHA's enforcement of Title 8 regulations in the short run. (from articles published in the Cal-OSHA Reporter 11/21 and 11/28)

For more information on changes in the regulations or the status of residential construction fall protection rules contact Ron Strathman, Quantum Risk Management, at 619 523-4859 or info@qrmonline.com.