

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 3

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 29, Section 1712
of the Construction Safety Orders (CSO).

Hazards Associated with Reinforcing Steel and Other Similar ProjectionsSUMMARY

This rulemaking action is being initiated based on requests from several sources and recommendations from an advisory committee to address various issues contained in Section 1712, Hazards Associated with the Use of Reinforcing Steel and Other Similar Projections. These issues include: fall protection requirements with respect to point-to-point travel on vertical reinforcing steel (rebar), the use of body protection when carrying and placing (punking) rebar, adding a reference to requirements pertaining to the specifications, testing criteria and approval of manufactured protective covers, and the lack of clarity with regard to the use of caps as a means of impalement protection.

On May 19, 1997, federal OSHA issued a Standard Interpretation letter regarding fall protection for employees climbing or moving on pre-assembled reinforcing steel assemblies. The letter stated that, "pending future rulemaking, employees could climb or move on both built-in-place and preassembled rebar units without fall protection until they reached their work location or until they reached a fall distance of 24 feet. Over 24 feet, continuous fall protection would be required."

Based on this Standard Interpretation letter, the Occupational Safety and Health Standards Board (Board) received a Cal/OSHA Form 9, Request for New, or Change in Existing, Safety Order, with attachments from the Division of Occupational Safety and Health (Division), dated October 12, 1998, requesting an amendment to the CSO Section 1712(e) "exception" regarding the fall protection requirements for point-to-point travel on vertical reinforcing steel. The proposed amendment would limit point-to-point travel on vertical reinforcing steel without the use of fall protection to 24 feet above a surface providing that there are no impalement hazards. The proposal will render California's regulation consistent with the fed OSHA interpretation letter.

In a memorandum with attachments, dated June 6, 2000, the Division also requested that Board staff amend Section 1712(d)(5), which requires that manufactured covers and caps be approved as provided for in Section 1505 and be legibly marked with the manufacturer's name or logo. Section 1505,

“Approvals,” defines the term “approved” as used in the CSO. Based on the Division’s recommendation, staff proposes to revise the existing text to make it specific to manufactured protective covers made prior to October 1, 2000 and add the requirement that protective covers manufactured on or after October 1, 2000 shall meet the requirements of Section 344.90. Newly promulgated Section 344.90, entitled “Impalement Protection, Specifications and Testing Criteria (See Construction Safety Orders, Title 8, CCR §1712)”, addresses the specifications, testing criteria and approval requirements for newly manufactured protective covers.

In addition, upon further review of Section 1712, Board staff is recommending deleting the definition and all references to “caps” in Section 1712 since existing language implies that caps can be used for impalement protection during at grade work. This language conflicts with the current impalement test criteria for protective covers contained in existing Sections 1712(d)(2) and 344.90. In a Federal OSHA Standard Interpretation letter dated May 9, 1997, fed OSHA clarifies that rebar caps are not to be used as a means of impalement protection. Fed OSHA based their interpretation clarification of 29CFR 1926.701 on studies conducted by the California Division of Occupational Safety and Health (Division).

Lastly, Board staff recommends revising the title of Section 1712 to read, “Reinforcing Steel and Other Similar Projections” to more accurately reflect the contents of Section 1712.

This proposed rulemaking action contains some nonsubstantive and editorial revisions and reformatting of subsections. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1712. Hazards Associated with the Use of Reinforcing Steel and Other Similar Projections.

Section 1712 contains requirements that address impalement protection requirements, fall protection requirements, protective device approval, work practices and associated definitions. An amendment is proposed to revise the title of Section 1712 to read, “Reinforcing Steel and Other Similar Projections. The proposed revision is necessary to more accurately reflect the content of Section 1712.

Section 1712(b) defines caps as “manufactured devices that completely cover the exposed ends of reinforcing steel and have flat or mushroomed surface at least twice the diameter of the reinforcing steel they are designed to cover.” Section 1712(c)(1) requires employees working “at grade” and who are exposed to protruding reinforcing steel or other similar projections to be protected against the hazard of impalement by guarding the exposed ends with protective covers, troughs or caps. Section 1712(c)(3) prohibits the use of caps as impalement protection for employees working above grade or any surface. Section 1712(d)(1) prohibits job-built caps. Section 1712(d)(4) requires that caps are made of rigid molded plastic or similar material and be the proper size for the reinforcing steel being covered. And, Section 1712(d)(5) requires caps to be approved pursuant to Section 1505 and to be legibly marked with the manufacturer’s name or logo. An amendment is proposed to delete

the definition and all references to caps in Section 1712. The proposed amendment is necessary to eliminate the confusion caused by Section 1712(c)(1), which allows caps to be used for impalement protection during “at grade” work, and the definition for “caps” in subsection (b), both of which are inconsistent with the impalement protection requirements contained in existing Section 344.90. The proposed amendment will provide clarity within the regulation and ensure consistency with the fed OSHA directive that caps are not to be used as a means of impalement protection.

Existing Section 1712(d)(3) requires that job-built wood protective covers and troughs be constructed of at least “Standard Grade” Douglas Fir, as graded by the Western Lumber Grading Rules 91, handbook, effective September 1, 1991, published by the Western Wood Products Association, which is incorporated by reference into the regulation. It is proposed to update this document to the latest version (1998) and incorporate an additional document by reference, the Standard No. 17 Grading Rules for West Coast Lumber Inspection Bureau, effective September 1, 1991 and revised January 1, 2000, which can be used to meet this requirement. The proposed amendment is necessary to ensure that job-built wood protective covers and troughs are constructed to meet current wood grading requirements consistent with existing industry practice.

Existing Section 1712(d)(5) requires manufactured covers and caps be approved as provided for in Section 1505 and be legibly marked with the manufacturer’s name or logo. Referenced Section 1505 contains the definition and criteria for approval. It is proposed to revise the existing text to make it specific to manufactured protective covers made prior to October 1, 2000 and add the requirement that protective covers manufactured on or after October 1, 2000 shall meet the requirements of Section 344.90. The proposed amendment is necessary to ensure consistency amongst existing requirements and will update and clarify subsection (d)(5) by referencing the newly promulgated Section 344.90, which outlines the specifications, testing criteria and approval requirements for manufactured protective covers made after October 1, 2000 and includes the reference to Section 1505.

Existing Section 1712(e) requires that fall protection, or other method affording equivalent protection from the hazard of falls from elevated surfaces, be worn by employees working on vertical rebar 6 feet above an adjacent surface except for point-to-point horizontal or vertical travel on reinforcing steel. The exception to this fall protection requirement lacks a height limitation in which fall protection must be used. Because fed OSHA interprets their fall protection standard in 29 CFR 1926.501 as requiring continuous fall protection at heights over 24 feet above a surface, an amendment is proposed to revise the exception to 1712(e) to permit point-to-point horizontal or vertical travel on reinforcing steel up to 24 feet above the surface below providing there are no impalement hazards. The proposed amendment is necessary to ensure that fall protection is worn by rebar workers when moving point-to-point on reinforcing steel at heights exceeding 24 feet, and that point-to-point travel without fall protection is only permitted when no impalement hazard exists. The proposed revision will ensure that the state’s requirement is at least as effective as fed OSHA’s interpretation of their own standard.

DOCUMENTS RELIED UPON

1. United States Department of Labor, Occupational Safety and Health Administration (Fed OSHA) Standards Interpretation letter dated May 19, 1997 pertaining to fall protection for

employees climbing or moving on preassembled reinforcing steel assemblies, 29 CFR 1926.501(b)(5).

2. Fed OSHA Standards Interpretation letter dated May 29, 1997 pertaining to the prohibition of rebar caps as a means of impalement protection, 29 CFR 1926.701.
3. Memorandum dated October 12, 1998 from John Howard, Chief of the Division of Occupational Safety and Health, with Cal/OSHA Form 9, Request for New, or Change in Existing, Safety Order and attachments requesting an amendment to CSO Section 1712(e) regarding the fall protection requirements for point-to-point travel on vertical reinforcing steel.
4. Memorandum dated June 6, 2002 from John Howard, Chief of the Division of Occupational Safety and Health, requesting that Section 1712(d)(5) be amended to reference newly promulgated Section 344.90, which addresses the specifications, testing criteria and approval requirements for newly manufactured protective covers.

These documents are available for review during normal business hours at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

- Western Lumber Grading Rules 98, handbook, effective March 1, 1998, published by the Western Wood Products Association.
- Standard No. 17 Grading Rules for West Coast Lumber, handbook, effective September 1, 1991 and revised January 1, 2000, published by the West Coast Lumber Inspection Bureau.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESSES

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

SPECIFIC TECHNOLOGY OR EQUIPMENT

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

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

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

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. See also “Impact on Businesses” above.

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

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

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

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

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

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.