

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

**INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 7, Section 1549(h)  
of the Construction Safety Orders

**SUMMARY**

This rulemaking is prompted by the July 16, 2008, decision rendered by the Occupational Safety and Health Appeals Board (OSHAB) in its Docket Nos. 06-R4D3-4451 and 4452 regarding Larrabure Framing, Inc. That decision concerned an incident where an employee was seriously injured when approximately 2112 pounds of sheetrock fell from the fourth floor balcony of a building that was being framed. The Division of Occupational Safety and Health cited the employer for violating California Code of Regulations, Title 8, Section 1549(e), but the Administrative Law Judge dismissed the citation, stating that Section 1549(e), by its express terms, applies only to material inside buildings under construction. This rulemaking would add a subsection (h) to Section 1549. This new subsection (h) would concern material that might pose a falling hazard, where the material is in an elevated location, such as a balcony, on the exterior of a building under construction.

**SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION****Section 1549. Piling Material.**

This provision of the Construction Safety Orders states several requirements regarding the manner in which material at worksites is to be piled in order to limit injuries that might occur if the material were to fall. Subsection (e) states precautions that are to be taken if such material is inside a building under construction. This proposal would add a new subsection (h) that would provide that material in an elevated location on the exterior of a building under construction shall be positively barricaded, placed or secured in order to prevent the material from falling—the same precautions that must be taken with respect to material that is subject to subsection (e). By requiring that material in potentially dangerous locations on the exterior of buildings under construction be safeguarded in the same manner as material inside such buildings, the proposal is intended to protect employees from the sort of serious injury that was suffered by the employee whose injury led to the citation in the OSHAB matter.

### DOCUMENT RELIED UPON

The decision rendered by the Occupational Safety and Health Appeals Board in Larrabure Framing, Inc. (July 16, 2008), OSHAB Docket Nos. 06-R4D3-4451 and 4452.

This document is 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.

### DOCUMENTS INCORPORATED BY REFERENCE

None.

### REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

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

### SPECIFIC TECHNOLOGY OR EQUIPMENT

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

### COST ESTIMATES OF PROPOSED ACTION

#### Costs or Savings to State Agencies

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

#### Impact on Housing Costs

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

#### Impact on Businesses

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

#### Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### Costs or Savings in Federal Funding to the State

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

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

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

### Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

## DETERMINATION OF MANDATE

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

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

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 state, local and private employers will be required to comply with the prescribed standard.

## EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

## ASSESSMENT

The adoption of the proposed amendment 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.