

**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, Articles 2, 12, and 13,
Sections 1504, 1600, 1602, 1603 and 1603.1
of the Construction Safety Orders

Work Over or Near WaterSUMMARY

During a recent update of pile driving standards, Board staff noted that 29 CFR 1926.603, Pile Driving Equipment, subsection (b) requires that barges or floats supporting pile driving operations meet the applicable requirements of 29 CFR 1926.605, Marine Operations and Equipment. Further investigation revealed that California standards for work over or near water (marine operations), including pile driving, were not as effective as federal standards found in 29 CFR 1926.605 and that California has jurisdiction over certain maritime operations covered by 29 CFR 1926.605.

The Board therefore proposes to adopt standards which are at least as effective as federal standards. The Board notes that California standards for work over water are contained primarily in Construction Safety Orders (CSO) Article 13. As noted above, federal standards for pile driving contain a cross-reference to 29 CFR 1926.605 for marine operations; thus it is necessary to amend Article 12 to include a cross-reference to CSO Article 13 for work over or near water. Article 2, Definitions, is also proposed to be amended to include a definition relevant to these modifications.

This proposed rulemaking action contains nonsubstantive, editorial and grammatical revisions. Although not all nonsubstantive revisions are discussed below, 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**Article 2, Section 1504. Definitions.**

New subsections 1603(h) and (i) contain provisions for Jacob's ladders. Since this type of ladder is not currently defined in the CSO, a definition for Jacob's ladders is proposed to be added to

definitions applicable to all Construction Safety Orders. The purpose and necessity for this amendment is to clarify requirements of the CSO for work over or near water. Please, note that, for better organization of Section 1504, existing definitions of the various types of ladders have been reordered alphabetically.

Article 12, Section 1600. Pile Driving.

29 CFR 1926.603(b) prescribes that barges or floats supporting pile driving operations shall meet applicable requirements of 29 CFR 1926.605 (Marine Operations and Equipment). During the recent update of California pile driving standards, it was discovered that Title 8, CSO Article 12, Pile Driving, the state counterpart of 29 CFR 1926.603, did not contain this requirement; however, the omission was determined to be outside the scope of that noticed rulemaking. It is therefore proposed to modify subsection 1600(k) to require that barges or floats supporting pile driving operations meet requirements of CSO Article 13 which contains, or is being amended to contain, provisions at least as effective as those contained in 29 CFR 1926.605. The purpose and necessity for this modification is to ensure that California standards for pile driving operations over or near water be conducted in a manner at least as effective as federal standards.

Article 13, Section 1602. Work Over or Near Water, Subsection (a), Safety Devices.

CSO Article 13 does not currently require that there be ladder access from the top of the apron to the surface of the water. This ladder is required for lifesaving purposes by 29 CFR 1926.605(d)(2). It is therefore proposed to add new subsection 1602(a)(4) to include this provision. The purpose and necessity for this amendment is to ensure that California standards for work over or near water will be at least as effective as federal standards.

Section 1602. Work Over or Near Water, new Subsection (b), First Aid.

Although General Industry Safety Orders (GISO) Section 3400, Medical Services and First Aid, is applicable to all work in general industry, federal 29 CFR 1926.605(d)(1) contains a specific requirement that maritime operations include procedures for rendering first aid and medical assistance. It is therefore proposed to include a cross-reference to Section 3400 in Section 1602 as subsection (b). The purpose and necessity for this amendment is to ensure that California standards for work over or near water are at least as effective as the federal provisions.

Section 1603. Walkways (renamed “Access to or from Wharves, Floats, Barges and/or Boats”).

Section 1603 currently contains provisions for walkways on dredge discharge pipe lines. It also contains requirements for catwalks and platforms. Federal standard 29 CFR 1926.605(b) contains a broader listing of requirements for vehicular and personnel access to or from wharves, floats, barges and/or boats, including vehicle access ramps, gangways, and Jacob’s ladders. It is proposed to rename Section 1603 as “Access to or from Wharves, Floats, Barges and/or Boats,” and to add new subsections to address all subjects addressed by 29 CFR 1926.605(b). The purpose and necessity for these amendments is to ensure that California standards are at least as effective as the federal provisions.

New Section 1603.1. Working Surfaces of Barges.

29 CFR 1926.605(c) contains requirements that are specific for working surfaces of barges. The lack of California counterpart standards was discovered during a recent update of pile driving

standards; however, these provisions were deemed to be outside the announced scope of that rulemaking. It is therefore proposed to adopt these federal standards which include requirements for safe passage over or around deck loads and for fall protection when working on deck loads. The purpose and necessity for this adoption is to assure that California standards for work surfaces on barges are at least as effective as federal standards.

DOCUMENTS RELIED UPON

1. 29 CFR 1926.603 Pile Driving Equipment.
2. 29 CFR 1926.605 Marine Operations and Equipment.
3. Division of Occupational Safety and Health Policy and Procedures Manual, P&P C-11, Jurisdiction and Interagency Cooperation, Issued 11/1/89, Revised 8/1/94, 1/1/00, 9/1/00, 7/6/04.

Documents 1 and 2 are available online at the federal OSHA website: <http://www.osha.gov/>

All documents are also available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

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

SPECIFIC TECHNOLOGY OR EQUIPMENT

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

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

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

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 standards do 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

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

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do 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.)

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

EFFECT ON SMALL BUSINESSES

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

ASSESSMENT

The adoption of the proposed amendments to these standards 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.