

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address: www.dir.ca.gov/oshsb

**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 558)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on March 8, 2016, from Lew Barbe (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, Section 3210(b) to remove Exception 9 regarding the provision of guardrails for work that takes place four or more feet off the ground on mobile vehicles/equipment.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal.

SUMMARY

The Petitioner provides limited detail in the request to delete Exception 9 from Section 3210(b). In his brief email sent February 20, 2016, he states only that "Perimeter guarding is feasible and practical on mobile vehicles i.e. tank trucks, etc." He also mentions that he has "asked Tram [a company that manufactures a fall protection device for use on mobile equipment] to send to the [Board] under separate package [their] material..."

In a separate email, dated March 8, 2016, David Crumbaugh, Executive Vice President, Standfast USA/TRAM Fall Protection, provided sales brochures and information on a fall protection system designed for use on tanker trucks and stationary tanks.

DIVISION'S EVALUATION

In its evaluation, the Division recommends that the petition be granted "to remove [E]xception 9 from subsection (b)" with the intent that doing so will require employers to provide alternative fall protection methods where guardrails are not feasible.

The Division points out that many vehicles have been modified by employers so that drivers do not work at heights of more than four feet. They also state that alternate means are available to protect employees from falling from mobile vehicles and equipment when it is not feasible to provide guardrails.

STAFF'S EVALUATION

The Board staff recommends that further research needs to be done to evaluate accident/fatality data related to employees falling off mobile vehicles and equipment where practicable fall protection measures were available, but were not used. Mandating all employers to provide guardrails or equivalent fall protection to employees on mobile equipment would result in a significant cost impact without a basis for necessity, such as a history of accident or injury data.

The staff report points out that Exception 9 was intentionally added to Section 3210(b) after lengthy advisory committee discussions in 1997. An exception for mobile vehicles and equipment was necessary because the configuration and use of such equipment can make guardrails impracticable in many cases. The minutes of the advisory meetings do not outline a clear intent to require fall protection or guardrails on mobile equipment. They do, however, state that Exception 9 was proposed "to permit the use of sufficient steps and handholds to be used on mobile vehicles/equipment where [guardrails are impracticable]."

OSHA does not have specific standards for enforcing fall protection on mobile equipment, and instead relies upon the General Duty Clause for enforcement. A federal enforcement memorandum regarding the applicability of 29 CFR 1910.132 "Personal Protective Equipment" to require fall protection on mobile equipment states:

[I]t would not be appropriate to use the personal protection equipment standard, 29 CFR 1910.132(d), to cite exposure to fall hazards from the tops of rolling stock, unless employees are working atop stock that is positioned inside of or contiguous to a building or other structure where the installation of fall protection is feasible.

Board staff recognizes that although specific fall protection measures on mobile equipment are not required by federal or California regulations, some options exist for protecting employees working at four or more feet from the ground on such equipment. Each option has benefits and limitations and many apply only to a specific type of vehicle or mobile equipment, including the product identified by the Petitioner.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Lew Barbe, to make recommended changes to Section 3210(b) and remove Exception 9 regarding the provision of guardrails for work that takes place four or more feet off the ground on mobile vehicles/equipment. The Board has also considered the recommendations of the Division and Board staff.

The Petitioner's request is GRANTED to the limited extent the Standards Board staff further investigate accident data related to employees falling off mobile vehicles and equipment where practicable fall protection measures were available, but were not used. If Board staff discovers incidence of injuries or fatalities from such work that are directly attributable to the lack of fall protection measures, staff will convene an advisory committee of stakeholders to discuss amendments to Section 3210(b) or Exception 9.