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FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 2, Section 3210 and Article 35, Section 3900 of the General Industry Safety Orders

Elevated Locations - Guardrail Exception for Portable Amusement Rides

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD

There are no modifications to the information contained in the Initial Statement of Reasons except for the following non-substantive and sufficiently-related modifications that are the result of public comments and/or Board staff evaluation.

Section 3210. Guardrails at Elevated Locations.

This section addresses guardrail requirements for buildings and other elevated locations where the employee is exposed to falls from elevation and also lists nine exceptions. An amendment is proposed to add an Exception No. 10 to address situations where the use of railing protection is impracticable on portable amusement rides and to allow employers to provide and their employees use a personal fall protection system meeting the requirements of Section 1670 of the Construction Safety Orders (CSO). The exception also requires the employer to use suitable anchorage.

In response to Federal OSHA's comment letter to the Board dated October 17, 2012, modifications are proposed to clarify that the personal fall protection system (PFPS) described in Exception No. 10 is to be provided, installed and used in accordance with the requirements of Section 1670 of the CSO. Further modification is proposed to delete the last sentence pertaining to suitable anchorage. The last sentence regarding designating appropriate anchorage points is vague and ambiguous and is, therefore, unnecessary. These modifications are necessary to ensure that the employer will provide safe and secure anchorage capable of safely suspending the intended load(s) and to delete vague, ambiguous, and redundant language.

Summary of and Response to Oral and Written Comments:

I. Written Comments

Mr. David Shiraishi, MPH, Oakland Area Director, United Stated Department of Labor, Occupational Safety and Health Administration (OSHA), Region IX, by letter dated October 17, 2012.

Comment:

Federal OSHA, Region IX advisory opinion dated October 17, 2012 stated that the proposal is not commensurate with the federal standard because it only specified the that the PFPS meet the requirements of Section 1670 of the CSO without specifying that Section 1670 anchorage requirements also be addressed. Region IX also suggested deleting the last sentence regarding designating appropriate anchorage points in proposed Exception 10, as it is vague. Lastly, Federal OSHA suggested adding a fall arrest training requirement.

Response:

The Board concurs with Federal OSHA that a modification to spell out that the PFPS be installed in accordance with Section 1670 be stated. The Board also concurs that the last sentence in proposed Exception No. 10 is vague, ambiguous, and redundant and is, therefore, unnecessary and should be deleted.

The Board does not agree with Federal OSHA's request that language be added to address employee training on the use of fall arrest systems as this is addressed through the requirements for employee training and recordkeeping as set forth in General Industry Safety Orders, Section 3203, Injury Illness Prevention Program (IIPP) which explicitly addresses employee training. Federal OSHA has not counterpart to the State's IIPP standard.

The Board thanks Mr. Shiraishi for his comment and participation in the Board's rulemaking process.

II. Oral Comments

There were no oral comments received at the October 18, 2012 Public Hearing in Burbank, California.

MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-Day Notice of Proposed Modifications mailed on November 5, 2012.

Summary of and Responses to Written Comments:

I. Written Comment

David Shiraishi, MPH, Oakland Area Director, U.S. Dept. of Labor, Occupational Safety and Health Administration (OSHA), by letter dated November 23, 2012.

Comment:

Federal OSHA believes that the proposed occupational safety and health standard appears to be commensurate with the federal standard.

Response:

The Board thanks Mr. Shiraishi and OSHA for their participation in the rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or provision of law.