

**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 7, Subchapter 7, Article 4, Section 3270
of the General Industry Safety Orders

Safe Access to Elevated Locations**SUMMARY**

This rulemaking proposal is the result of a Division of Occupational Safety and Health (Division) Form 9 (F9-053), Request for New or Change to Existing Safety Order, dated November 9, 2006. The Division was concerned that the narrow interpretation given Section 3270 by the Occupational Safety and Health Appeals Board Decision (OSHAB) in its Docket No. 03-R1D1-4717 and 4718, dated August 2, 2006.

The OSHAB Decision indicates that the employer had failed to provide a safe means of access to the roof of a storage structure which required cleaning. The OSHAB administrative law judge (ALJ) determined that the removal of dirt and debris from the roof of the storage shed cannot be characterized as material to be handled as stated in Section 3270, and therefore, this standard has no application to the work activity which resulted in serious employee injury. This interpretation is inconsistent with the intent of this standard, which is to ensure that workers can safely access any elevated location where work is performed or may be performed. The proposal amends the standard in order to overcome the OSHAB's narrow interpretation and be consistent with the intent of the standard.

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. 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.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3270. Access General.

This Section contains standards requiring access to equipment and appliances (except those on roofs or dwellings and their accessory buildings) and access to permanent elevated locations where there is machinery, equipment or material that is frequently repaired, serviced, adjusted or otherwise handled. This access is to be provided by means of access runways or platforms. Various notes and exceptions refine the scope of the section's applicability.

This proposal would amend the section to make it clear that, except for existing exceptions and limitations, this Section applies to all elevated work areas, not just those where a limited number of specified work activities take place. To this end, the first sentence of subsection (a) is replaced by language that states access is to be provided every permanent elevated work location by means of ladders or permanent stairways or ramps. A Note following subsection (a) is proposed to clarify where Title 8 ramp, stairway and ladder standards which are relevant to Section 3270 are found.

Subsection (b) is proposed to be revised to provide that every permanent elevated work location, as well as elevated locations where machinery, equipment are accessed by employees, are to be provided with safe platforms or a maintenance runway

A new subsection (c) is proposed which relocates the existing language contained in subsection (a) and has no other effect other than to relocate an existing requirement to a location in Section 3270 that is more logical in relation to the requirements that precede it.

DOCUMENTS RELIED UPON

1. Memorandum dated November 9, 2006 from the Division of Occupational Safety and Health (DOSH) to the Standards Board, DOSH Form 9 F9-053, Amendment of Title 8, General Industry Safety Orders, Section 3270(b).
2. OSHAB Decision in the Matter of the Appeal of Simon Building Janitorial Services. Dockets Numbers 03-R1D1-4717 and 4718, dated August 2, 2006.

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 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 standard 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard 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 standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard 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 standards 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 will not affect small businesses as defined in Government Code Section 11342.610.

ASSESSMENT

The adoption of the proposed amendments to this standard 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.