

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 25, Section 3657
of the General Industry Safety Orders

Elevating Employees with Industrial Trucks**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.

Summary and Response to Oral and Written Comments:I. Written Comments

There were no written comments received.

II. Oral Comments

Oral comments received at the April 15, 2004, Public Hearing in San Diego, California.

Mr. Marvin Gainer, representing Pierce Construction.

Comment:

Mr. Gainer believes that the proposal fails to address the problem of how an employee, working from a platform elevated by an industrial truck, can get around obstructions that block an employee's reach. Mr. Gainer stated that the only solution to this problem has been found in standards applicable to ladders, whereby the top three rungs can be accessed so long as a safety harness is used. Mr. Gainer stated that there are situations when scaffolds or ladders cannot be used, and standing on the guardrails of an industrial truck should be permitted so long as safety harnesses are used.

Response:

The practice of standing on guardrails to gain elevation is currently prohibited in General Industry Safety Orders (GISO) Sections 3646 and 3648 when employees work from aerial devices and elevating work platforms. Guardrails required by GISO Sections 3657(a)(3) and

3210 are designed to act as a barrier and provide positive fall protection. They are not designed or intended to be used as a working platform or working surface for employees to stand on, or means to gain elevation. Standing on platform guardrails is contrary to manufacturer recommendations and good safety practice. Furthermore, guardrails are not designed as a step or a platform from which to work, because they do not provide the needed stability for a worker to perform safely. For instance, any sudden movement of the truck and/or platform could cause the worker to lose his/her balance and fall. The concern is not limited to falling off the platform, but also falling backward onto the platform, where an employee could strike parts of the guardrail and platform resulting in serious, traumatic injury. Wearing a personal fall protection system will not prevent these types of injuries, which is why the practice of standing on guardrails is prohibited.

Current Title 8 standards require suitable anchorage whenever personal fall arrest or restraint systems are used. There is no assurance that in each case where an employee is elevated by an industrial truck that suitable anchorage, as defined in Article 24 of the Construction Safety Orders (CSO), will be available. Consequently, the use of a body harness, body belt with attached lanyard, will not be feasible. There are a wide variety of telescopic and articulating aerial devices and elevating platforms (scissor lifts) available in California that can safely provide access in practically any given circumstance. There are a number of manually operated extension devices, some telescopic and articulating, which can allow the employee to perform tasks requiring both dexterity and strength while standing on the platform.

Mr. Gainer made reference to Title 8 standards, which permit the practice of working from ladders while tied off. This standard is contained in CSO Section 1675(k) and permits employees to work from the top three rungs of a ladder, provided secure handholds exist or the employee is protected by a personal fall arrest system. However, standing on a guardrail is not the same as standing on the steps of a ladder to gain elevation, because ladder rungs and ladders are designed to safely support a standing worker. In reality, standing on platform guardrails is analogous to standing on the top cap of a ladder to the extent that both represent unsafe work locations where the risk of injury is significant.

For the aforementioned reasons, the Board believes modification of Section 3657 is unnecessary.

Dialog between Mr. Marvin Gainer, Pierce Construction; Mr. Steve Rank, Chairman, Occupational Safety and Health Standards Board (Board); Mr. Art Murray, Board Member; and Ms. Liz Arioto, Board Member.

Mr. Murray asked Mr. Gainer if his employees were currently violating existing Title 8 standards, since his employees cannot work without standing on the guardrails. Mr. Gainer replied that this may be Mr. Murray's deduction, but if all the safety issues are addressed, it is the best he, as an employer, could do. Mr. Murray clarified his question, stating that the use of a personal fall protection system may be problematic at times, because it is not known whether suitable (secure) anchorage will be possible in each case. Mr. Murray also asked Mr. Gainer if he had consulted with the Division on this matter. Mr. Gainer indicated that he had spoken with the Division many times. Although he has never received a citation, he fears enforcement action. Mr. Gainer stated that he has no options and that it is an enormous problem.

Ms. Arioto stated that there are many new types of equipment that can be used to provide access to awkward spaces. She emphasized the importance of pre-evaluating the job so that they begin work with the appropriate equipment. Ms. Arioto suggested that Mr. Gainer consult with the Division of Occupational Safety and Health's Consultation service. Mr. Gainer responded, stating that some of the equipment is unstable and he has checked many options. He stated that he prefers the proposal be amended to allow the tie-off method to be considered as an alternative. Ms. Arioto suggested Mr. Gainer submit a petition to the Board for possible resolution through the advisory committee process.

Chairman Rank indicated that aerial equipment is used extensively in the construction industry and that workers typically use personal fall protection when on the platform. However this does not allow them to stand on the guardrails, per a manufacturer's recommendations and for liability reasons. Chairman Rank added that the Board would take a look at this issue and suggested that Mr. Gainer contact the Board to explore his options.

Response:

The Board concurs with the various comments and suggestions made by Board Members.

See also the Board's response to Mr. Gainer's oral comment. For the aforementioned reasons, the Board believes modification of the proposal is unnecessary.

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

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This standard does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board 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 adopted action.