

OCCUPATIONAL SAFETY
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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7,
Article 2, Section 3209 of the General Industry Safety Orders

Standard Guardrails

SUMMARY

This rulemaking proposal is the result of an evaluation by the United States Department of Labor, Occupational Safety and Health Administration (Fed OSHA) of General Industry Safety Order (GISO) Section 3209(c)(3), Standard Guardrails. In a letter sent to the Occupational Safety and Health Standards Board (Board), dated August 12, 2010, Fed OSHA contends that Section 3209(c)(3) does not contain sufficient requirements for strength and protection to make it at least as effective as (ALAEA) federal standard 29 CFR Section 1910.23(e)(3)(iii) in that Section 3209(c)(3) allows metal guardrails to be constructed of 1/4-inch thick structural metal whereas Fed OSHA requires 3/8-inch metal. California Labor Code Section 142.3(a)(2) requires the Board to adopt standards that are at least as effective as those promulgated by Fed OSHA.

Board staff confirmed that the federal standard is more stringent than the California requirements. Comparative metallurgical yield strength properties in the 13th Edition of the American Institute of Steel Construction (AISC), Manual of Steel Construction, Table 5-2, indicates that flexural and torsion strength of 1/4-inch steel material are approximately 45% less than that of 3/8-inch material. However, despite this, there is no California accident data to suggest that the use of 1/4-inch thick structural metal guardrails has contributed to guardrail failures.

The Board staff proposes to make the proposal applicable to metal guardrails installed after the effective date of the proposal, essentially grandfathering existing 1/4-inch railing systems. Board staff believes this is reasonable given the potential for substantial adverse cost impact due to the vast number of 1/4-inch thick metal guardrails in California workplaces, which would have to be redesigned, rebuilt and reinstalled if the proposal were made effective without the grandfathering provision.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3209. Standard Guardrails.

Section 3209(c) requires metal guardrails to be at least 2-inch by 2-inch by 1/4-inch angles or other metal shapes of equivalent bending strength; and the midrail, where permitted, to be of iron or steel

of at least 2-inch by 2-inch by 1/4-inch angles or other metal shapes of equivalent strength. This standard also requires the posts to be angle iron of at least 2-inch by 2-inch by 1/4-inch stock, the spacing not to exceed 8 feet.

Amendments are proposed to allow existing metal guardrail systems installed on or before the effective date of the proposal to be constructed of at least 2-inch by 2-inch by 1/4-inch stock and require that 3/8-inch stock be used for metal guardrails installed after the effective date of the proposal.

These proposed amendments are necessary to render GISO Section 3209 consistent with federal standard 29 CFR 1910.23(e)(3)(iii) and will provide added safety in light of the fact that 3/8 inch stock is stronger than 1/4-inch stock and eliminate the discrepancy between existing Section 3209 and the federal standard. Adverse cost impact to employers who have already installed railing systems would not be incurred because the proposal would only affect railing systems installed after the effective date of the proposal.

The reference to Title 24 is to be deleted. Assembly Bill 3000 (Stats. 2002. c. 1124), repealed Labor Code Section 142.6 and Health and Safety Code Section 18943(b), thus exempting the Board from the building standard requirements contained in these Codes.

DOCUMENTS RELIED UPON

1. Federal Occupational Safety and Health Administration letter to the Occupational Safety and Health Standards Board, dated August 12, 2010.
2. Standards Board letter, dated September 3, 2010, in response to the federal OSHA letter of August 12, 2010.
3. Table 5-2, from the American Institute of Steel Construction, Manual of Steel Construction, 13th Edition.
4. U.S. Department of Labor, Occupational Safety and Health Administration, 29 CFR Section 1910.23(e)(3)(iii).

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. The proposal is worded to minimize/eliminate adverse cost impact to employers who have already installed metal guardrail systems constructed of 1/4-inch stock because the proposal requires railing systems to be constructed of 3/8 inch metal stock after the effective date of the proposal.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact 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 regulation 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 regulation 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 regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation 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 regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

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 this regulation 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.