

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**ATTACHMENT NO. 3****INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 4, Article 24, Section 1671.2 of the Construction Safety Orders

Use of Safety Monitors in Controlled Access Zones**SUMMARY**

In August of 1994 the United States Department of Labor, Occupational Safety and Health Administration (Fed-OSHA) promulgated Subpart M of 29 CFR Part 1926, Safety Standards for Fall Protection in the Construction Industry. The federal Final Rule became effective on February 6, 1995. On June 19, 1997, the Standards Board adopted the amendments to California's existing construction industry fall protection regulations as contained for the most part in Article 24. Within Article 24 is Section 1671.2 that contains regulations pertaining to controlled access zones and safety monitoring systems.

It was brought to the attention of staff by a Standards Board member that as currently worded, Section 1671.2(b)(1)(C) states, "Where practicable, the safety monitor shall be within visual sighting distance of the employee..." The Board member indicated that this is not at least as effective as the comparable federal regulation contained in 29 CFR 1926.502(h)(1)(iii) because the federal standard does not contain the phrase "where practicable." The federal regulation requires the safety monitor to always be in visual sighting distance with the employee(s) being monitored and not at the discretion of the employer on the basis of whether to do so is practical or not. Consequently, staff is directed to amend Section 1671.2(b)(1)(C) to delete the phrase "Where practicable."

This proposed rulemaking action also contains some nonsubstantive, editorial, (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. In addition to these nonsubstantive revisions, the following actions are proposed:

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1671.2. Controlled Access Zones and Safety Monitoring Systems.

This section contains two subsections that contain regulations pertaining to the establishment and use of controlled access zones (CAZ), and the use of safety monitoring systems, including responsibilities and qualifications of the safety monitor.

Subsection (b)(1)(C) states that where practicable, the safety monitor shall be within visual sighting distance of and in communication with the employee(s) being monitored.

A revision is proposed to delete the phrase “where practicable” in paragraph (C) and to editorially revise the sentence for clarity. The proposed revision is necessary to ensure that the safety monitor maintains a direct line of sight to the employee(s) working from elevated locations at all times through direct observation in order to prevent a serious injury to an employee from accidentally falling from an elevated location to the level below as result of being unaware of the fall hazard(s) or acting in an unsafe manner.

The proposed action differs slightly from the comparable federal regulation to the extent that California’s comparable regulation does not require the monitor to be on the same working/walking level as the employee being monitored. California’s regulation recognizes that there may be situations where the monitor’s ability to observe the employee may be compromised by having to always be on the same working/walking level. For example, the monitor’s ability to observe the employee and the fall hazard may actually be improved by having the monitor directly sight the employee from a level above the level the employee is working from. Also, existing Section 1671.2(b)(1)(B) requires the monitor to warn the employee when it appears the employee is unaware of a fall hazard or is acting in an unsafe manner. To comply with this “performance” requirement the monitor will have to be positioned relative to the employee in such a way as to be able to effectively observe the employee’s actions. Consequently, California maintains that its language while different from the language contained in 29 CFR 1926.502(h)(1)(iii) is at least as effective as the federal regulation.

DOCUMENTS RELIED UPON

Regulations (Standards-29 CFR), Fall protection systems criteria and practices. - 1926.502. Pages 1 through 21 (see page 16 of 21 for 1926.502(h), Safety monitoring systems).

This document is 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. The proposal is essentially a technical, clarifying revision to California's existing requirements governing the use of safety monitoring systems, specifically the role of the safety monitor and the responsibility to always be in direct visual sighting of employee(s) working from elevated locations rather than only when it is practical to do so (at the employer's discretion). Board staff has identified the proposal as one that will require a slight administrative procedures change for employers to comply with which should not result in any additional costs to the employer.

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 an initial 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 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 amendment(s) 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 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 may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations 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.