

**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 4, Subchapter 4, Article 16, Section 1621
of the Construction Safety Orders

Ladderway Openings**SUMMARY**

This rulemaking action was initiated by the Occupational Safety and Health Standards Board (Board) staff as a result of the Division of Occupational Safety and Health (Division) Form 9 memorandum to the Board dated October 11, 2010, which refers to an Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of Webcor Builders, Inc., Dockets 06-R1D1-3030 through 3032, dated September 30, 2009. In particular, this rulemaking responds to Docket 06-R1D1-3030, where the employer was cited by the Division for not providing a swinging gate or an offset structure to prevent a person from walking directly into a ladderway opening. The employer's appeal of this citation was granted as the Administrative Law Judge rejected the Division's argument that the second floor deck was a platform. This proposal is intended to address the gap in the safety orders reflected in the OSHAB decision. The Decision was upheld in OSHAB's January 11, 2010, Denial of Petition for Reconsideration.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 1621. Railings and Toeboards.**

Existing Section 1621 provides railing and toeboard requirements for elevations 7 ½ feet or more above the ground, floor, or level underneath. An amendment to Section 1621 is proposed to add new subsection (d) requiring either a swinging gate or equivalent protection, or passageway offset where railings are required by Section 1621(a). The proposed amendment is consistent with 1632(c) and federal construction standard, 29 CFR 1926.502(b)(13), pertaining to floor openings or platforms. This amendment is necessary to clearly state the protective measures required at ladderway openings to safeguard employees from a fall from elevation.

DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health, Form 9-065, dated October 11, 2010.
2. Occupational Safety and Health Appeals Board Decision in the Matter of the Appeal of Webcor Builders, Inc., Dockets 06-R1D1-3030 through 3032, dated September 30, 2009.
3. Occupational Safety and Health Appeals Board, Denial of Petition for Reconsideration in the Matter of Webcor Builders, Inc., Dockets 06-R1D1-3030 through 3031, dated January 11, 2010.

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/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The proposal amends Section 1621 to address ladderway guarding for the perimeter of a floor or roof deck consistent with requirements for ladderway openings or platforms with existing Section 1632 and the federal construction standard for guardrail systems. It is impossible to estimate how many additional construction site ladderway openings will need to be retrofitted with a swinging gate or other method to comply with the standard but such costs are reasonably expected to be proportionally insignificant in comparison with the overall construction site costs.

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 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 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.)

This 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, this 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 amendment 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.