

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

Construction Safety Orders
Section 1637(n) Access

(Published on **December 30, 2016**)

**Use of Hook-On and Attachable Ladders
with Scaffolds and Rest Platforms
(HORCHER)**

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **February 16, 2017** in the **Council Chambers** of the **Walnut Creek City Hall, 1666 N. Main Street, Walnut Creek, CA**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **December 30, 2016** and closes at 5:00 p.m. on **February 16, 2017**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT **OVERVIEW**

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

In a memo dated January 27, 2016 from Juliann Sum, Division of Occupational Safety and Health (DOSH), to Marley Hart, Standards Board, the Division requested (DOSH F9-85) to add a new paragraph under Section 1637(n)(2)(A) to require rest platforms when hook-on and attachable ladders are used on supported scaffolds that are more than 35 feet high. Board staff also believes it is necessary to restrict the height of the bottom rung of the ladders from the scaffold supporting level to prevent employee slips and falls while transitioning from the support level to the ladder and vice versa. Such restriction is not currently present in the state standard.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations as 29 Code of Federal Regulations, Part 1926, Section 451, the safety standards for scaffolds in the construction industry, on November 29, 1996. This standard addresses requirements for hook-on and attachable ladders in paragraph 451(e)(2), and includes the requirements for the height of the bottom rung of the ladder from the supporting level, and rest platforms for the ladder. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 61, No. 170, pages 46026 - 46131, August 30, 1996, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

Federal Standard

1926.451(e)(2)

Paragraph 1926.451(e) of the federal standard for construction scaffolds sets the requirements for safe access to scaffolds, and paragraphs (2)(i)-(vi) of 1926.451(e) set particular requirements for hook-on and attachable ladders that are used on supported scaffolds. The requirements for the ladder rung height and rest platforms are provided in paragraphs (e)(2)(ii) and (e)(2)(iii) respectively.

1926.451(e)(2)(ii)

1926.451(e)(2)(ii) states that hook-on and attachable ladders shall be positioned so that their bottom rung is not more than 24 inches above the scaffold supporting level. Restricting the height of the bottom rung prevents employee slips and falls while transitioning from the scaffolding supporting level to the ladder and vice versa.

1926.451(e)(2)(iii)

1926.451(e)(2)(iii) states that when hook-on and attachable ladders are used on a supported scaffold more than 35 feet high, they shall have rest platforms at 35-foot maximum vertical intervals. The rest platforms provide the employees safe places to rest and regain their strength and stability when ascending or descending long sections of scaffold ladders.

State Standard

Section 1637(n)(2)(A)

This State standard is specific to manufactured hook-on and attachable ladders when they are used on supported scaffolds. Currently, the State standard does not include requirements for the rung height from the scaffold supporting level, and rest platforms for the ladders, comparable to the federal standards contained in 1926.451(e)(2)(ii) and 1926.451(e)(2)(iii).

Consensus Standard

ANSI/ASSE A10.8-2001

This standard provides the general requirements for all scaffolds. Section 4.20 of this standard states that the distance from the supporting surface to the first step of a ladder or frame designed to be climbed shall not exceed 24 inches, and thus requires the height of the first rung of the hook-on or attachable ladder not to be over 24 inches from the scaffold supporting surface. Section 4.22 of this standard requires employers to provide rest platforms at vertical intervals not exceeding 35 feet, or a personal fall arrest system, when the attachable ladders or the horizontal scaffold frame surfaces are used to access the scaffold.

Proposed Additions to Section 1637(n)(2)(A)

Board staff proposes to add 1637(n)(2)(A)(4) and 1637(n)(2)(A)(5):

1637(n)(2)(A)(4)

This proposed subsection restricts the height of the bottom rung from the scaffold supporting level to a maximum of 24 inches. Board staff believes the height of the bottom rung in the hook-on and manufactured scaffolds should be restricted, as in the frame type rolling scaffold towers, which typically have the first rung of the ladder at about 22-23 inches above the ground when compensated for the castors supporting the scaffold. This amendment is necessary to prevent employee slips and falls while transitioning from the scaffold supporting level to the ladder and vice versa and to be at least as effective as Federal OSHA Standards.

1637(n)(2)(A)(5)

This proposed subsection requires hook-on and attachable ladders, when used in supported scaffolds that are more than 35 feet high, to have rest platforms at a maximum of 35 feet vertical intervals. This requirement is necessary to prevent employee fatigue when ascending and descending long stretches of such ladders by providing rest stations at reasonable intervals. Long climbs without rest stops pose the safety hazard of fatigue-induced accidents, slips, trips, and falls which might occur if the employees were required to scale long stretches without taking adequate rest. This amendment is necessary to make the California regulation at least as effective as the federal regulation by requiring rest platforms on hook-on and attachable ladders used on supported scaffolds over 35 feet in height.

The proposed regulations are substantially the same as those in the final rule promulgated by Federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standards. However, the Board still is

providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing will be to:

1. Identify any clear and compelling reasons for California to deviate from the federal standards;
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking.

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

DOCUMENTS RELIED UPON

- 1 Federal Register, Volume 61, No. 170, pages 46026 - 46131, August 30, 1996.
This document is available online at the federal OSHA website: <https://www.gpo.gov/fdsys/pkg/FR-1996-08-30/pdf/96-21289.pdf>
- 2 Memorandum dated January 27, 2016 from the Division of Occupational Safety and Health (DOSH) to the Standards Board, DOSH Form 9 F9-85, Amendment of Title 8, Construction Safety Orders, Section 1637(n).
- 3 ANSI/ASSE A10.8-2001, American National Standard for Construction and Demolition Operations, Safety Requirements for Scaffolding.

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.

COST ESTIMATES OF PROPOSED ACTION

The Economic Assessment and Regulatory Flexibility Analysis section of the Federal Register containing the Final Rule for scaffolds in construction (Volume 61, No. 170, August 30, 1996) states that the estimated annual cost associated with the Final Rule was about \$12.62 million nationally. Based on the federal Bureau of Economic Analysis data, in 2015, the share of California's gross domestic product (GDP) from the construction industry was 6.63% (California: \$87,497 Million, National: \$1,319,600 Million) of the national GDP for the construction industry. This share translates to an estimated cost of less than \$1 Million from the federal Final Rule to California.

Federal OSHA concluded the estimated compliance costs of the Final Rule as being minimal, and did not expect the cost to produce significant adverse impact on the firms in the construction industry. Board staff also believes the cost of the proposed amendment not to be significant for reasons including:

- Manufactured hook-on and attachable scaffold ladders represent a small portion of the total number of scaffolds used in California. Hook-on ladders are rarely used.
- Attachable ladders can be attached at any height; the first rung can easily be set at less than 24 inches, and thus makes the ladders already compliant.
- Rest platforms are required only when the hook-on and attachable scaffold ladders are over 35 feet high, and such scaffold ladders comprise a small subset of the total number of the hook-on and attachable scaffold ladders used in construction industry.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

Per the Economic Assessment and Regulatory Flexibility Analysis section of the Federal Register, federal OSHA had assessed the small business impact of the federal construction scaffold standard, and certified that the federal Final Rule would not have a significant impact on a substantial number of small entities. For the same reasons mentioned under “COST ESTIMATES OF PROPOSED ACTION”, Board staff believes that the proposed amendments will not have any significant cost impact on small businesses utilizing the subject scaffold ladders.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all relevant information available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

AVAILABILITY OF THE MEMORANDUM TO THE STANDARDS BOARD MEMBERS

Upon its completion, copies of the Memorandum may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulation in an underline/strikeout format and the Notice of Proposed Action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.