

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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NOTICE OF PROPOSED MODIFICATION TO
CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 7, Section 1549(h)
of the Construction Safety Orders

Piling Materials

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standard in which modifications are being considered as a result of public comments and/or Board staff consideration.

On September 17, 2009, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 1549(h) of the Construction Safety Orders. The Standards Board received oral and written comments on the proposed revisions. The standard has been modified as a result of these comments and Board consideration.

A copy of the full text of the standard as originally proposed, with the modifications clearly indicated, is attached for your information. In addition, a summary of all comments regarding the original proposal and staff responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on November 23, 2009, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. This standard will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Marley Hart, at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: November 2, 2009

Marley Hart, Executive Officer

PROPOSED MODIFICATIONS
(Modifications are indicated in bold,
double underline wording for new language,
and bold, ~~strikeout~~ for deleted language.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 1549 to read as follows:

§1549. Piling Material.

* * *

(e) Material inside buildings under construction shall not be placed within 6 feet of any hoistway or inside floor openings, nor within 10 feet of an exterior wall which does not extend above the top of the material unless the material is positively barricaded, placed, or secured to prevent it from falling.

* * *

(h) Material on balconies or in other **similar** elevated locations on the exteriors of buildings under construction shall be ~~positively barricaded, placed or secured~~ **placed, secured or positively barricaded** in order to prevent the material from falling.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Ken Nishiyama Atha, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated September 11, 2009.

Comment: The proposed standard is at least as effective as the federal standard.

Response: The Board thanks Mr. Atha for his comment.

Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors (CALPASC), by letter dated September 15, 2009.

September 15 Comment No. 1: The words “or in other elevated locations on the exteriors of buildings under construction” as used in the proposal are too broad. The focus of the rulemaking should remain on balconies, but if the proposed present overbroad wording is retained, an advisory committee should be convened. In place of the overbroad wording, two alternatives are suggested: (1) to delete the words “or in other elevated locations” (so that the proposed standard would pertain only to balconies) or (2) to add the word “similar” between the words “other” and “elevated” (based on the context of the addition, the word “similar” would refer back to “balcony”).

Response to Mr. Wick’s September 15 Comment No. 1: The Board agrees with Mr. Wick’s concern and has modified the proposal in accordance with his second suggestion, which provides greater focus for the proposed standard.

September 15 Comment No. 2: It is important that the word “or” remain in the proposal in order to provide contractors with compliance options.

Response to Mr. Wick’s September 15 Comment No. 2: The word “or” remains in the proposal.

Kevin Bland, Council for California Framing Contractors, by letter dated September 15, 2009.

Comment: Mr. Bland repeats the statements made in the September 15 CALPASC letter.

Response: Please see the Responses to Mr. Wick’s September 15 Written Comment Nos. 1 and 2.

Ben Viloría, President, Viloría Constriction Inc., by letter dated September 16, 2009.

Comment: Mr. Viloría states his agreement with the position stated in the September 15 CALPASC letter.

Response: Please see the Responses to Mr. Wick’s September 15 Written Comment Nos. 1 and 2.

Bruce Wick, Director of Risk Management, CALPASC, by e- mail dated September 17, 2009.

September 17 Comment No. 1: Mr. Wick states his agreement with Kevin Bland's Oral Comment No. 2.

Response to Mr. Wick's September 17 Comment No. 1: Please see the Responses to Mr. Bland's Oral Comment No. 2.

September 17 Comment No. 2: Mr. Wick states the Occupational Safety and Health Appeals Board decision that gave rise to this rulemaking should have been the subject of greater explanation in the informative digest so that the facts of the case could be better understood.

Response to Mr. Wick's September 17 Comment No. 2: The decision in question is part of the rulemaking record in this matter as a document relied upon, and it has been available for inspection. The document speaks for itself, and its actual contents provide a more accurate rendition of the facts than would any explanation in the informative digest.

II. Oral Comments

Oral comments received at the September 17, 2009 Public Hearing in San Diego, California.

Bruce Wick, Director of Risk Management, CALPASC.

Comment: Mr. Wick repeated the comments made in his September 15 letter.

Response: Please see the Responses to Mr. Wick's September 15 Written Comment Nos. 1 and 2.

Kevin Bland, Council for California Framing Contractors.

Comment No. 1: Mr. Bland stated his agreement with Mr. Wick's oral comments.

Response: Please see the Responses to Mr. Wick's September Written 15 Comment Nos. 1 and 2.

Comment No. 2: Mr. Bland stated words to the effect that the word "positively" in the phrase "positively barricaded, placed or secured" should modify only the word "barricaded" and that the proposal should be clarified in order to ensure that the use of the term "positively" is limited in that fashion.

Response to Comment No. 2: The Board believes that the term "positively," as used in the proposal, is properly associated with the term "barricaded" and not with the terms "placed" or "secured." This conclusion derives from the Board staff's understanding of industry practice. The Board agrees that the clarification sought by Mr. Bland should be provided, and the wording of the proposal has been modified accordingly.

William Jackson, Occupational Safety and Health Standards Board Member.

Comment: Mr. Jackson expressed the general concern that the proposal's "positively barricaded...[or] placed" wording could have unintended consequences, as for example, changing the manner in which roofing contractors load roofs.

Response: The proposal has been modified to minimize such unintended consequences. Please see the Response to Mr. Bland's Oral Comment No. 2.