

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
[www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)

**FINAL STATEMENT OF REASONS**

## CALIFORNIA CODE OF REGULATIONS

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

Piling Materials**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM  
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive and sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

Section 1549(h)

Comments received suggested the words “or in other elevated locations on the exteriors of buildings under construction” as used in the proposal are too broad. Board staff agrees with the concern and proposes to modify subsection (h) further by adding the word “similar” between the words “other” and “elevated”.

Other comments indicated that the word “positively” in the phrase “positively barricaded, placed or secured” should modify only the word “barricaded” to ensure that the use of the term “positively” was limited in that fashion. The Board agrees that clarification should be provided, and the wording of the proposal has been modified accordingly.

The proposed modifications are necessary to improve clarity and provide greater focus in the application of this proposal.

Summary and Response to Oral and Written 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 Vioria, President, Vioria Constriction Inc., by letter dated September 16, 2009.

Comment: Mr. Vioria 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.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM  
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-Day Notice of Proposed Modifications mailed on November 2, 2009.

Summary and Response to Written Comment:

Ken Nishiyama Atha, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated November 6, 2009.

Comment: The modified standard remains at least as effective as the federal standard.

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

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board 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 adopted action.