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 Occupational Safety and Health Standards Board
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**PROPOSED PETITION DECISION OF THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 (PETITION FILE NO. 578)**

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on August 5, 2019, from Mr. Richard Manuel (Petitioner), Safety Director, Lancaster Burns Construction, Inc. The Petitioner requests that the Board amend Title 8, Construction Safety Orders, Section 1710(l), to clarify to employers when the use of barrier planking is required as a means for preventing workers from falling through floor openings during multi story high rise steel erection through use of an exception to subsection (l).

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and render a decision no later than six months following receipt.

Further, as required by Labor Code Section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation. The Division has 60 days after receipt to submit an evaluation regarding the proposal.

SUMMARY

The Petitioner requests an amendment to Section 1710(l) “Temporary Flooring – Skeleton Steel Construction in Multistory Buildings” to add an exception providing temporary flooring will not be required under certain conditions where, he asserts, installing such flooring would create a greater hazard. The proposed exception is shown below in underline and strikeout format:

§1710. Structural Steel Erection.

* * * * *

(l) Temporary Flooring - Skeleton Steel Construction in Multistory Buildings.

* * * * *

(7) Where skeleton steel is being erected, a tightly planked and substantial floor shall be maintained within two stories or 30 feet, whichever is less, below and directly under that portion of each tier of beams on which any work is being performed.

EXCEPTION to subsection 1710(l)(7). Temporary flooring is not required when the area below steel erection is barricaded to prevent access and connecting operations are being performed from equipment at ground level utilizing mobile elevating work platforms and aerial lifts.

NOTE: Where a planked floor is not practical, subsection (l)(2) of this section applies.

The petitioner makes the following claims to support their proposal to add an exception to subsection 1710(l)(7):

- Subsection 1710(l)(7) is ambiguous as to when temporary flooring is required. Division staff provided contradicting interpretations of the requirements of 1710(l)(7) to the petitioner.
- Subsections 1710(m)(1)(A) and 1710(m)(1)(b), which contain requirements for connecting beams and other structural steel members, do not require temporary flooring.
- Installing temporary flooring can be more hazardous than not installing temporary flooring because:
 - Temporary flooring does not eliminate fall hazards.
 - Temporary flooring forces steel connectors to climb columns and walk on beams.
- Equal or greater safety to the temporary floor requirements can be met by:
 - Barricading the area underneath steel erection work to prevent falling object hazards.
 - Making structural steel connections with workers in aerial lifts and not on the structural steel.

Related Standards at Issue:

Federal Standards

29 CFR 1926.754(b)(3) reads:

A fully planked or decked floor or nets shall be maintained within two stories or 30 feet (9.1 m), whichever is less, directly under any erection work being performed. In a “Question and Answer” document¹ developed by federal OSHA to assist employers in complying with the paragraph, federal OSHA states the following:

Question 23: Section 1926.754 (b)(3) requires a "fully planked or decked floor or nets" in multi-story structures within two stories or 30 feet, whichever is less. Section 1926.760 requires workers above 15 feet to be protected from falls, with two exceptions: section 1926.760(b)(3) and (c) allows workers engaged in certain steel erection activities (initial connecting; decking in a Controlled Decking Zone) below 30 feet to work without using fall protection. Can an employer's requirement that all workers be protected by fall arrest systems, including those engaged in connecting and decking, take the place of compliance with the 1926.754(b)(3) floor/net requirement? (Underlining added).

¹ <https://www.osha.gov/enforcement/directives/cpl-02-01-048>. Accessed 10/11/19.

Answer: While OSHA encourages employers to exceed the fall protection requirements of the standard and have all workers use fall protection, section 1926.754(b)(3) provides additional safeguards. Therefore, such an employer would be required to comply with 1926.754(b)(3). However, compliance staff retain their normal discretion to determine, on a case by case basis, that violations are de minimis where there is no direct or immediate relationship to safety or health, and the employer's use of personal fall protection systems at all times may be a factor in such a determination. See OSHA's Field Operations Manual, CPL 02-00-148 (Nov. 9, 2009), section VIII.

California Standards

California Title 8 regulatory requirements differ slightly from the federal counterpart requirements by applying to the area below and directly under the tier of beams “on which any work is being performed” as stated below:

Section 1710(l)(7): Where skeleton steel is being erected, a tightly planked and substantial floor shall be maintained within two stories or 30 feet, whichever is less, below and directly under that portion of each tier of beams on which any work is being performed.

Article 4 “Structural Steel Framed Buildings” of the California Labor Code (LC) includes provisions for the erection of steel buildings more than two stories in height. The following sections are most relevant to the current petition:

LC Section 7250:

As used in this article “building” means any multifloor structural steel framed building more than two stories high in the course of construction.

LC Section 7251:

As defined above, these provisions shall apply to buildings erected in tiers or stories and shall not apply to steel framed buildings having large open spans or areas such as, mill buildings, gymnasiums, auditoriums, hangars, arenas, or stadiums.

LC Section 7253:

There shall be a tight and substantial temporary floor within two floors below and directly under that portion of each tier of beams on which erection, riveting, bolting, welding or painting is being done. For operations of short duration of exposure to falling, safety belts shall be required as set forth in Section 7265.

LC Section 7266:

No person shall proceed with any work assigned to or undertaken by him, or require or permit any other person to proceed with work assigned to or undertaken by either, unless the planking or nets required by this article are in place. Violation of this section is a misdemeanor.

Consensus Standards

The American National Standards Institute (ANSI) and the American Society of Safety Professionals (ASSP) address the hazards of steel erection in ANSI/ASSP A10.13 (R2017) Safety Requirements for Steel Erection. Specific requirements for the installation of temporary floors are included in section 10 of the 2011 edition of this standard. The applicable portions of the standard below are similar to Title 8 Section 1710(l)(7) and 29 CFR 1926.754(b)(3):

ANSI/ASSP A10.13-2011 (R2017) Safety Requirements for Steel Erection

* * * * *

10. METAL DECK AND TEMPORARY FLOORING

* * * * *

10.2 The following additional requirements shall apply for multi-story structures:

* * * * *

10.2.3 A fully planked or decked floor or nets shall be maintained within two floors or 30 feet (9.1m), whichever is less, directly under any erection work being performed.

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DIVISION EVALUATION

In its report concerning the Petition, dated December 18, 2019, the Division concludes that the Petitioner’s proposal contradicts both California Labor Code and federal OSHA regulations, and is unnecessarily duplicative of existing language.

The Division states California Labor Code Section 7253, requires temporary floors within two floors below steel erection work. The only exception is for work of short duration. Since steel erection from aerial lifts takes multiple days, the work to be covered by the proposed exception to subsection 1710(l)(7) from the petitioner will almost never be short duration work. As a result, the proposed exception to allow unlimited steel erection work from aerial lifts without temporary flooring below would directly conflict with California Labor Code Section 7253.

The Division points out, regulations in conflict with statute are not allowed by Government Code section 11349.1, which requires rules to be consistent with statutes. As the petitioner's proposal is in direct conflict with Section 7253 of the California Labor Code, it would be outside of Board's discretion to consider.

The Division contends the proposed change by the petitioner also is less effective than federal OSHA regulations. Pursuant to CFR 1926.754(b)(3), a fully planked or decked floor or nets shall be maintained within two stories or 30 feet, whichever is less, directly under any erection work being performed. This subsection addresses fall hazards for employees conducting steel erection work. The proposed exception to 1710(l) is in direct conflict to this requirement, as it would allow employees to conduct steel erection work at any height without the presence of a floor or net.

The Division believes there is no need for subsection 1710(m) to duplicate the requirements of subsection 1710(l)(7) in order to clarify the meaning of subsection 1710(l)(7) since the requirements of subsection 1710(l)(7) are clear as a standalone requirement. Additionally, duplication of requirements in regulations is not allowed pursuant to Government Code Section 11349.1:

The proposed exception from the petitioner makes subsection 1710(l)(7) less protective as it :

1. Eliminates engineered fall protection,
2. Reduces overhead protection, and
3. Reduces stability on certain structures.

Based on the information gathered during the evaluation, the Division recommends the Board deny this petition.

BOARD STAFF EVALUATION

The Board staff evaluation dated December 27, 2019, states that Board staff examined the relevant federal, state, and national consensus standards. Moreover, Board staff participated in and onsite visit to further explore Petitioners proposal.

Board staff summarizes the Petitioner's request as two-fold: first, he wants clarification to the regulation as to when temporary flooring is required, and second, he is requesting an exception be added to the requirements for temporary flooring to allow employers to perform the work using aerial lifts. Although the first two floors can typically be erected before the requirement for temporary flooring applies, the exception would be necessary because the temporary flooring obstructs the use of a scissor lift when connecting beyond the second floor.

On September 5, 2019, Board staff and three Division representatives visited a construction site in San Bruno, CA, to observe a skeleton steel erection project. The job was staffed by ironworkers who, when asked, stated they oppose the Petitioner's alternative process for steel

erection using aerial lifts without the presence of temporary flooring within 30 feet of the level being erected.

Among the concerns discussed between the Division, workers onsite, and Board staff were the following:

1. Difficulties in performing steel connections from aerial lifts with limited ability to reach the upper levels of the structure,
2. Overhead hazards of falling tools and materials to employees working below the connecting work without temporary flooring,
3. Difficulties in rescuing a stranded worker without temporary flooring to serve as a base for the rescue effort, and
4. The lack of structural stability afforded the building by laterally bracing it with temporary flooring.

The concerns were discussed with the Petitioner on October 8, 2019. Board staff also reviewed accident construction fatalities on the OSHA.gov website from 2009 to the present.

After a thorough review, it is the position of Board staff that the Petitioner's description of his experience with the Division in seeking approval to use aerial lifts in his steel erection process and the federal OSHA "Q&A" discussion (see Federal Standards above) may imply that at least some of the regulated public is unaware of the major reasons for providing temporary flooring within 30 feet or two stories below steel erection work. The major reasons for the flooring, as described in Concerns 2-4 above, as well as in the Division report, are not expressly stated in the state or federal requirements. An employer seeking a potentially safer way of performing a task (i.e. a reduction in employee exposure to falls from walking on steel) or a variance from existing requirements may run into conflict with the unstated reasons for the requirements of the temporary flooring.

DISCUSSION

Labor Code 142.3 requires the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues. Federal interpretations and compliance directives, though potentially helpful in compliance with a regulation, do not remove the Board's requirement to be at least as effective as the corresponding federal standard.

Even if California were to contend that allowing steel erection work to be performed from aerial lifts is at least as safe as the federal regulations under certain limited conditions, the Board would lack the authority to provide a regulatory exception to the above cited Labor Code requirements.

The Board encourages dialog discussing innovative technologies and practices when they can be demonstrated to improve the current level of safety provided by Title 8. However, in the case of Petition 578, the Board is limited by the provisions stated in Labor Code Sections 7253 and 142.3, requiring the Board to adopt regulations that are commensurate with comparable federal regulations, as stated previously.

CONCLUSION AND ORDER

Having considered Petition 578 and evaluations of it by the Division and Board staff, the Board hereby DENIES the Petition.