

**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 7, Article 2, Section 3210 and
Article 35, Section 3900 of the General Industry Safety Orders

Elevated Locations - Guardrail Exception for Portable Amusement Rides**SUMMARY**

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking proposal to amend Section 3210(b) of the General Industry Safety Orders (GISO) by adding a new exception (No. 10). Section 3210(b) requires the installation of guardrails, some with toeboards, at elevated work locations of specified heights (other than buildings). This rulemaking proposes the use of personal fall protection equipment where design or other work processes make installation of guardrails impracticable on portable amusement rides. The need to amend this section was originally brought to the attention of Board staff by the Division of Occupational Safety and Health (Division). The Division notes that the language of Exception No. 9 to Section 3210(b) is not applicable to portable amusement rides, and in fact, was intended to address vehicles/mobile equipment, which would include motor vehicles, trucks, tankers, rail cars and mobile construction equipment, not amusement rides. The issue of clarity as to the application of Exception No. 9 to portable amusement rides is corroborated by the Division's field enforcement experience.

Board staff notes that there are no comparable federal OSHA regulations addressing portable amusement rides. This proposal is intended to provide specificity and clarity in Title 8 by requiring that fall protection systems be provided and used by employees where guardrails are impracticable on portable amusement rides for the operations described in the proposal.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal regulations, in that the federal regulations do not have specific provisions dealing with portable amusement rides. This proposal will add a new exception specifically for portable amusement rides to provide personal fall protection equipment where the design or work processes make it impracticable to install railing protection.
- Is 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 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. In this case, the proposal relies on relevant provisions of the Construction Safety Orders (CSO).
- Is the least burdensome effective alternative. The proposal is consistent with existing alternative methods for personal fall protection to ensure employee safety at unprotected sides of elevated work locations. This proposal requires the availability and employee use of personal fall protection equipment.

Section 3210. Guardrails at Elevated Locations.

Existing Section 3210 states guardrail requirements for buildings and other elevated locations where employees are exposed to falls from unprotected work locations.

Subsection (b).

Existing subsection (b) sets forth fall protection requirements for elevated work locations 4 feet or more in height that are not buildings or building structures. The proposed Exception No. 10 to Section 3210(b), specific to portable amusement rides, provides that, when the use of guardrail systems are rendered impracticable, employees shall be provided and shall use personal fall protection equipment in accordance with Section 1670 of the CSO. Without proposed Exception No. 10, confusion will continue as to whether alternatives to guardrails may or may not be utilized by portable amusement ride employers to protect their workers from falls from elevation. The proposal is necessary to clarify to the employer when personal protection systems may be used as an alternative to guardrails to ensure that the employee is protected from a fall when working at elevation on portable amusement rides.

Section 3900. Purpose.

Existing Section 3900 establishes minimum standards for the design and other work processes regarding portable amusement rides for the protection of persons using such rides. An informative

Note referring to Section 3210(b), Exception No. 10, is proposed. This Note guides employers and others to the relevant fall protection provision in Section 3210(d). This proposal is necessary to clarify to employers that where railings are impracticable, employees shall be provided and use personal fall protection equipment.

DOCUMENTS RELIED UPON

1. E-mail transmission, dated October 13, 2011, from Joel Foss, Division.
2. E-mail exchange, dated October 14, 2011, between Joel Foss and Mike Manieri, Board.

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.

Economic Impact Analysis

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. The proposal obviates the need to attempt to install expensive and problematic railing systems on equipment not designed for such installation which is more costly than using personal fall protection systems.

Therefore, the adoption of the proposed amendments to these standards 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.

This regulatory proposal is intended to provide worker safety at places of employment in California.

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 regulations do 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do 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.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do 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.)

These proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposal would provide businesses, small or large, clear direction to provide personal fall protection where railing protection is impracticable. This proposal will promote worker safety by requiring that employees be provided and wear personal fall protection equipment as specified by existing Title 8 standards.

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.