

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 4, Article 20, Section 1635(b)
and New Section 1635(c) of the Construction Safety Orders

Floor Openings (Steel Framed Buildings) – Construction Safety Orders, Section 1635**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING
FROM THE 45-DAY NOTICE**

There are no modifications to the information contained in the Initial Statement of Reasons.

Summary and Response to Oral and Written Comments:**I. Written Comments**

Mr. Richard Zampa, President, District Council of Ironworkers of the State of California and Vicinity, by letter dated October 26, 2005.

Comment:

Mr. Zampa expressed support for the proposal and stated that the District Council of Iron Workers of California and Vicinity represents over 18,000 iron workers. Mr. Zampa stated he has been involved in the rulemaking process for the revision of Section 1635, "Floors, Walls and Structural Steel Framed Buildings" and attended numerous meetings with representatives from Cal/OSHA and steel erection contractors. Mr. Zampa stated that the proposed revisions to Section 1635 will serve to clarify and strengthen requirements for temporary floor covers during the erection of multifloor structures. On behalf of the District Council of Iron Workers and union steel erection contractors, he urged the Board to adopt the proposed revisions to Section 1635.

Response:

The Board thanks Mr. Zampa for his comments and participation in the Board's rulemaking process.

Mr. Michael E. Newington, Executive Director, Western Steel Council, by letter dated October 28, 2005.

On behalf of the Western Steel Council representing steel erection, reinforcing steel, and shop ironworkers throughout California, Mr. Newington expressed support for the adoption of amendments pertaining to Section 1635. The Western Steel Council has met with representatives from Cal/OSHA and the District Council of Ironworkers. Mr. Newington further stated that it is the consensus of labor, management, and Cal/OSHA that the revisions will help eliminate confusion regarding the requirements for temporary floor coverings during the steel erection process, and serve to provide additional protection for workers. On behalf of the Western Steel Council and the District Council of Ironworkers, Mr. Newington urged the Board to adopt the proposed revisions to Section 1635. The Board thanks Mr. Newington for his comments and participation in the Board's rulemaking process.

Response:

The Board thanks Mr. Newington for his comments and participation in the Board's rulemaking process.

Similar Written Comments by Labor Unions (Grouped):

Mr. Emo Coleman, Business Manager/Financial Secretary-Treasurer, Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 229, by letter dated October 31, 2005.

Mr. Dan P. Hellivig, Business Manager, International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local Union 377, by letter dated October 31, 2005.

Mr. John Rafter, Business Manager, Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local Union 118, by letter dated November 1, 2005.

Mr. Jack Estes, Business Manager/Financial Secretary/Treasurer, International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local Union 155, by letter dated November 1, 2005.

Mr. Jim Garner, Financial Secretary-Treasurer, Business Manager, International Association of Bridge, Structural, Ornamental Iron Workers, Riggers, Heavy Machinery Movers, and Sheeters, Local Union No. 433, by letter dated November 1, 2005.

Representatives from various labor unions expressed support for the proposal with rationale similar to the comments mentioned above from Mr. Zampa and Mr. Newington. These representatives urged the Board to adopt the proposed amendments to Section 1635.

Response to Written Comments by Labor Unions (Grouped):

The Board thanks these commentors for their comments and participation in the Board's rulemaking process.

Similar Written Comments by Construction Companies and Other Management Stakeholders (Grouped):

Mr. David C. Geserick, Chief Financial Officer, Lee's Imperial Welding, Inc., by letter dated October 28, 2005.

Mr. Jeffrey M. Eandi, Vice President, Eandi Metal Works, Inc., by letter dated October 31, 2005.

Mr. David McEuen, President, California Erectors, Bay Area, Inc., by letter dated October 31, 2005.

Mr. Thomas J. Davies, Corporate Safety Manager, The Herrick Corporation, by letter dated October 31, 2005.

Mr. Kevin P. Romak, President, Romak Iron Works, by letter dated November 1, 2005.

Mr. Gary B. Eckles, President, Eckles Construction, Inc., by letter dated November 2, 2005.

Mr. Roland Oxborrow, General Superintendent, Schuff Steel Company, by letter dated November 9, 2005.

These commentors stated that they are representatives of the stakeholders that are directly affected by the proposal. Their letters stated that the proposed amendments will provide additional protection to workers and serve to clarify and strengthen requirements for temporary floor covers during erection of multifloor structures.

Response to Written Comments by Construction Companies and Other Management Stakeholders (Grouped):

The Board thanks these commentors for their comments and participation in the Board's rulemaking process.

Ms. Dana Lahargoue, Chair, Safety Forum Steering Committee, Construction Employers' Association (CEA), by letter dated November 11, 2005.

Comment No.1:

Ms. Lahargoue, on behalf of CEA, indicated that the necessity for the proposal is not clearly stated. She asked if the Division of Occupational Safety and Health (Division) can share statistical data that supports the proposed standard and how it will reduce injuries and eliminate

the potential for fatalities since this information is not included in the Informative Digest of the Proposed Action/Policy Statement Overview.

Response:

The Construction Safety Orders (CSO), Section 1632(b), applies to the protection of floor openings where steel erection activities are taking place and requires that floor opening covers be secured in place. In its request for this rulemaking action, the Division states that there are steel erection work phases during which floor opening covers have to be repeatedly removed for welding, bolting, inspection or other intermittent access needs and it is impracticable to keep them bolted or otherwise secured/affixed to the floor as required by Section 1632(b).

Statistics specifically related to the proposal are not available. Despite the unavailability, the proposal is necessary for clarity to address the placement and removal of covers for iron workers when work of this nature is taking place. Additionally, the proposal is necessary to provide specific instruction, training and procedures for the safe removal of covers as there has been at least one fatality when a worker fell into a floor opening while removing the opening cover. The proposal is strongly supported by the workers that do this type of work and the labor unions that represent them. Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 2:

Ms. Lahargoue, on behalf of CEA, indicated that the proposal attempts to specify how a particular task (i.e. deck removal for welding, bolting and inspection) should be done instead of leaving these elements to the erector to perform based on the recognition of hazards and the requirements for protection found in Title 8, California Code of Regulations (CCR), CSO, Sections 1710, 1670, and 1509 and General Industry Safety Orders (GISO), Section 3203.

She noted that Sections 1635(c)(6)(A) and (B) of the proposal identify specific worker training. However, there already exists a requirement for the erection contractor to train employees in, “The procedures to be followed to prevent falls to lower levels and through or into holes and openings in walking/working surfaces and walls” [Section 1710(q)(2)(D)]. Consequently, Ms. Lahargoue, on behalf of CEA, believes the proposed language is repetitious.

Response:

CSO, Section 1670, addresses how to use fall protection equipment and CSO, Section 1509 and its reference to GISO, Section 3203, provides mandatory requirements for the employer’s comprehensive Injury and Illness Prevention Program. These sections do not specifically address work procedures to mitigate fall hazards to iron workers when working near decking floor openings wherein the nature of the work requires that the opening covers must be temporarily removed to complete tasks. The proposal does not pre-empt or supersede existing Section 1710(m)(2) which requires fall protection where the fall distance is greater than 15 feet. It is well known in the steel erection industry that employees involved in decking operations and

related activities during floor completion perform hazardous work because of the potential for serious injuries and fatalities from falls.

Employers, employees, and labor representatives within the steel erection industry, as well as the Division and Board staff, believe that the provisions contained in proposed Section 1635(c) require training and instruction to the specific task in order to mitigate fall hazards during work tasks that require access through floor openings. While existing Section 1710(q)(2)(D) requires general training related to fall prevention, it is not specific enough to address the unique procedures that must be followed to ensure worker safety during the work activity addressed by proposed Section 1635(c). Further, proposed Section 1635(c) not only requires the instruction but also requires that workers adhere to and follow the instructions contained in Section 1635(c)(6). Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 3:

Ms. Lahargoue, on behalf of CEA, indicated that although proposed Section 1635(c)(2) includes a requirement that the floor area be barricaded, there is no definition of barricade in Section 1504. Therefore, the regulated community must interpret the requirements. She asked if the current practice of using caution tape or even red danger tape serve as a sufficient “barricade?”

Response:

While the term “barricade” is not defined in CSO, Section 1504, Definitions, it is used in other Title 8 construction standards without confusion. For example, in Section 1541 regarding excavation, subsection (l)(2), in part, states that, “Adequate barrier physical protection shall be provided at all remotely located excavations. All wells, pits, shafts, etc., shall be barricaded or covered.” In common usage, the dictionary definition for the term “barricade” means to obstruct, block or limit passage. Caution or red danger tape would be a sufficient barricade. Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 4:

Ms. Lahargoue, on behalf of CEA, indicated that the proposed requirement that “all floor opening covers shall bear a sign stating, “OPENING-DO NOT REMOVE”, in 2 inch high, black bold letters on a yellow background” is in conflict with the requirements of Section 1632(a)(3) [sic 1632(b)(3)].

Response:

Existing Section 1632(b)(3), in part, requires that covers be secured in place to prevent accidental removal or displacement and that the cover have a sign with letters not less than one inch high stating, “Opening—Do Not Remove.” In proposed Section 1635(c)(3), a similar sign with lettering 2 inches high in black bold letters on a yellow background would be required. During work under the provisions of proposed Section 1635(c), floor opening covers are not

required to be secured but are required to have not less than 12 inches of bearing on the surrounding structure. Because the covers are not secured, proposed Section 1635(c)(4) would require a more visible warning sign with larger letters to ensure that signs are not removed by mistake or oversight. Because of the hazards involved, the signage requirements for work under the provisions in proposed Section 1635(c) are more stringent than Section 1632(b)(3). See the “Response” to “Comment No. 2.” Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 5:

Ms. Lahargoue, on behalf of CEA, indicated that the requirement that covers sustain 400 pounds or twice the weight of equipment or materials crossing over them was previously adopted in Section 1632(a)(3) [sic 1632(b)(3)]. She noted that it is redundant to include the same requirement for proposed Section 1635(c)(3).

Response:

Some requirements for floor opening cover protection in proposed Section 1635(c) are different from that of Section 1632(b). In order to avoid a clarity issue, it is necessary to include the strength requirements for covers for work performed under the provisions of Section 1635(c). Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 6:

Ms. Lahargoue, on behalf of CEA, indicated that Section 1635(c)(5) of the proposal specifies that “the placement of covers shall be verified by a qualified person prior to each shift and following strong wind conditions.” She asked if a competent person by definition would suffice for this requirement. She noted that a qualified person requires significantly more training, experience, and education and might not be readily available to the erection crew.

Response:

The terms “qualified person” and “competent person” are used in numerous standards throughout the CSO’s and are defined terms in Section 1504 of the GISO. It is not always apparent why one is chosen over the other. However, in this case, a qualified person who has the training, experience and instruction to safely perform all duties should be available for work at heights during multi-story decking activities where the floor or decking is not yet complete and access is necessary through floor openings. The general requirements for scaffolding, Section 1637(u), in part, requires that work on scaffolds is prohibited during storms or high winds unless a qualified person has determined that it is safe for employees to be on the scaffold. The Board staff and Division staff believe that a qualified person is competent to perform the duties required in proposed Section 1635(c)(5). Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 7:

Ms. Lahargoue, on behalf of CEA, indicated the proposal requires what is currently a common and accepted practice of not allowing other trades on decks until they are completed. She asked why is it necessary to include it in the proposed standard.

Response:

During work performed under the provisions of proposed Section 1635(c), floor opening covers may not be secured or fastened to the decking and may be temporary removed to gain access through a floor opening. It is hazardous for unauthorized personnel from other trades to enter areas where such work activity is taking place. Thus, it is important to have more than a common and accepted industry practice to ensure the safety of unauthorized personnel. Therefore, the provisions in proposed Section 1635(c)(1) are necessary to provide a standard that ensures the safety of workers from other trades until the guarding of floor openings meet the provisions of proposed Section 1635(c)(7). Section 1635(c)(7) would require that before other trades are permitted in the work area, the guarding and covers for floor openings shall meet the provisions of Section 1632(b) [e.g. be secured to prevent accidental removal or displacement]. Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 8:

Ms. Lahargoue, on behalf of CEA, indicated that Section 1635(c)(7) of the proposal is redundant of Section 1632(b).

Response:

See the “Response” to “Comment No. 7.”

Comment:

Ms. Lahargoue, on behalf of CEA, stated that CEA opposes the adoption of this proposal because it is repetitious of existing standards, does not establish the necessity for the change, and will not improve the compliance of the regulated community. However, if the Standards Board or the Division chooses to move forward in adopting these sections, CEA respectfully requests that an advisory committee be convened to ensure all interested parties have the opportunity to participate in the rulemaking process.

Response:

See the “Responses” to CEA’s “Comment Nos. 1 through 8.” Also, see the other written and oral comments received by stakeholders during the 45-day comment period. The Board believes that there is strong support for this proposal and that an advisory committee is not necessary.

The Board thanks Ms. Lahargoue and CEA for their comments and participation in the Board’s rulemaking process.

II. Oral Comments

Oral comments received at the November 17, 2005, Public Hearing, in La Canada Flintridge, California.

Mr. Kent Hart, Hathaway Dinwiddie Construction, representing the Construction Employers Association (CEA).

Mr. Hart stated that CEA originally opposed the proposal, but after reconsideration will be forwarding another letter in support. Board Member Gotlieb asked why he had opposition to the proposal. Mr. Hart stated that he was asked to attend the meeting for CEA to oppose the proposal for the record, believing the proposal duplicated existing standards, regarding signage requirements. Mr. Hart stated that after further review, this was not the case. He also stated that the purpose of the standard should be clarified regarding multi-story buildings.

Response:

See “Responses” to Ms. Lahargoue’s letter, on behalf of CEA, dated November 11, 2005. With respect to the comment that the purpose of the standard should be clarified, existing Sections 1635(a) and 1635(b) apply to multi-floor buildings. The proposal addresses special provisions applicable to floor openings where steel erection work is taking place requiring floor openings to be uncovered. The Board believes the application of the proposal to multi-floor structures is sufficiently clear and that modification to the proposal is unnecessary.

The Board thanks Mr. Hart for his comments and participation in the Board’s rulemaking process.

Similar Oral Comments (Grouped):

Mr. Richard Slawson, representing the Los Angeles & Orange County Building & Construction Trades Commission.

Mr. Robbie Hunter, representing the Ironworkers Local 433.

Mr. Jerry Dierksen, representing the Ironworkers Local 433.

Mr. Tom Moxley, representing the Ironworkers Local 433.

Mr. Tom Davies, representing the Herrick Corporation.

The commentators listed previously stated support for the proposed amendments.

Response to Oral Comments (Grouped):

The Board thanks these commentors for their comments and participation in the Board's rulemaking process.

Mr. James Hinson, representing Make-It-Safe Services:

Comment:

Mr. Hinson stated that this proposal clears up a lot of issues. He noted that people would like to apply Section 1632 and at times refer to GISO, Section 3212, which are two different standards. In construction, Section 1632 requires that covers be secured against unintentional or accidental displacement. This proposal eliminates the risk when removing the cover, which has never been addressed. He stated that the proposal provides excellent guidance for the ironworkers and addresses all risks he has ever seen. He believes the proposal should address Section 1632, but otherwise, it is a very good proposal.

Response:

With respect to Mr. Hinson's last comment that the proposal should address Section 1632, the comment lacks clarity as to what specific recommendation is being made. Therefore, the Board is unable to respond with clarity to this comment. The Board thanks Mr. Hinson for his comments and participation in the Board's rulemaking process.

Brian K. Miller, representing Rudolph and Sletten Inc.

Comment:

Mr. Miller stated that general contractors will be looking for the two inch black letters with the yellow background required by proposed Section 1635(c)(4) when steel erection is occurring. He urged the Board to be sure it was included in the proposal.

Response:

The two-inch high lettering on floor opening covers is required when steel erection work under the provisions of proposed Section 1635(c) is being performed. The Board thanks Mr. Miller for his comments and participation in the Board's rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do 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 standards. 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.