

**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, as follows:

Subchapter 4, Construction Safety Orders, Article 3, Section 1512

Subchapter 5, Electrical Safety Orders, as follows:

Group 1, Article 3, Section 2320.10 (Low-Voltage Electrical Safety Orders)

Group 2, Article 36, Section 2940.10 (High-Voltage Electrical Safety Orders)

First Aid for Electrical Workers – Application & Scope**SUMMARY**

The Occupational Safety and Health Standards Board (Board) adopted the subject sections of the Construction and Electrical Safety Orders pursuant to Labor Code Section 142.3, which mandates that the Board adopt standards at least as effective as federal standards addressing occupational safety and health issues.

Federal 29 CFR 1910.269(b) prescribes medical and first-aid requirements for electrical workers in electric power generation, transmission and distribution. The original rulemaking was initiated when it was discovered that there was currently no equivalent safety standard for electrical workers in the California Electrical Safety Orders (ESO). The original rulemaking placed the federal requirements into the ESO. Although the ESO is a horizontal standard, applicable to both construction and general industry unless otherwise noted, informative notes were placed in Construction Safety Orders (CSO) Section 1512 and General Industry Safety Orders (GISO) Section 3400 to alert users to additional requirements for electrical workers in the ESO.

The rationale for the original adoption into both construction and general industry standards was stated that although the GISO and CSO contain generic safety standards, they did not adequately address the specific needs of electrical workers who are exposed to the hazards of burns and electrical shock, injuries which are very different and usually much more severe than the hazards that other workers are exposed to. Because of the potential severity of these injuries and the remote locations where electrical workers are often sent to work, immediate medical aid is necessary to stabilize the injured worker until emergency medical technicians or higher level care can be provided.

The proposed standards were adopted using an accelerated (Horcher) rulemaking process which limited public comment to those issues unique to California and to the proposed effective date, and thus the public did not have the opportunity to comment on whether it was appropriate or necessary for the proposal to extend the federal standards to the construction industry.

Subsequent to the Horcher adoption, a stakeholder brought to the Board's attention that the scope of the federal standard, 29 CFR 1910.269, subparagraph (a), excluded construction. Thus the stakeholder opined that, because the state rulemaking applied to both construction and general industry, the original proposal over-reached the limits established for the Horcher process. This matter of unintended over-reach did not come to the attention of the Board until after the original proposal was adopted and became effective October 27, 2011.

This rulemaking is therefore proposed to limit the extent of the medical services and first aid requirements for electrical workers to those limits set by the federal standards; i.e. to employees engaged in electric power generation, transmission and distribution work. This rulemaking is being noticed as a conventional rulemaking to afford the public opportunity to comment on this proposed action before proceeding further.

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 mirrors the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Has been amended to be substantially equivalent to corresponding federal standards.
- 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.
- Is the least burdensome effective alternative because proposed amendments will limit the extent of these additional medical services and first aid requirements to electrical workers engaged in electric power generation, transmission and distribution work; i.e., the same limits set by the federal standards.

Section 1512. Emergency Medical Services.

This section contains requirements for providing first aid and medical services on a construction project. The original proposal added a second informative note that medical services and first aid provisions for electrical workers were also to comply with the provisions of ESO Sections 2320.10 and 2940.10 as applicable. It is proposed to strike that informative note as the federal counterpart standards do not apply to construction work. The purpose and necessity for this change is to return requirements for first aid and medical services for construction work to what applied prior to October 27, 2011, due to limitations of the Horcher rulemaking process.

Section 2320.10. Medical Services and First Aid.

This was a new section, adopted as part of the October 27, 2011, rulemaking. It is proposed to amend the title to read: “Medical Services and First Aid – Additional Requirements for Power Generation, Transmission and Distribution.” The purpose and necessity for this amendment will be to clarify the scope of application of this section.

New subsections (a) and (b) are proposed to clarify the scope of application of these standards for medical services and first aid. The purpose and necessity for these amendments will be to limit the scope of requirements for medical services and first aid in the Low-Voltage Electrical Safety Orders to the same extent as in the model federal standard [29 CFR 1910.269(a)].

Section 2940.10. Medical Services and First Aid.

This was a new section, adopted as part of the October 27, 2011, rulemaking. It is proposed to amend the title to read: “Medical Services and First Aid – Additional Requirements for Power Generation, Transmission and Distribution.” The purpose and necessity will be to clarify the scope of application of this section.

New subsections (a) and (b) are proposed to clarify the scope of application of these standards for medical services and first aid. The purpose and necessity for these amendments will be to limit the scope of requirements for medical services and first aid in the High-Voltage Electrical Safety Orders to the same extent as in the model federal standard [29 CFR 1910.269(a)].

DOCUMENTS RELIED UPON

29 CFR 1910.269 Electric Power Generation, Transmission and Distribution, subparagraphs (a) Application, and (b) Medical Services and First Aid.

This document is 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

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.

No significant adverse economic impacts are anticipated because changes are principally modifications of recently adopted standards to be consistent with the limitations of the Horcher rulemaking process and with existing federal standards.

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 standards 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 standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards 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 standards 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 because this proposal will limit the extent of the medical services and first aid requirements for electrical workers to those limits set by the federal 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.