

**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 7, Sections 3302 and 3308  
of the General Industry Safety Orders

**Hazardous Liquids****SUMMARY**

This rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of AB & I Foundry, Docket No. 08-R1D4-380 dated March 23, 2009. The Division of Occupational Safety and Health cited the employer under Section 3308 Hot Pipes and Hot Surfaces, for failing to protect the employee from contact with hot surfaces. Existing Section 3308 stipulates that exposed surfaces having an external surface temperature of 140 degrees F or higher shall be covered with a thermal insulating material or otherwise guarded against contact. The OSHAB decision stated that the citation raises the question of whether the standard applies to only solid surfaces or also to liquid surfaces or a combination of solid and liquid surfaces.

Board staff notes that the General Industry Safety Orders (GISO) Section 3480 pertains to liquid hazards employees can fall into, as would be the case when they work above such materials. However, these standards only apply to vats, pans, tanks and similar vessels and would not apply to hazardous liquids contained in such locations as a slag pond.

**SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION****Section 3302. Hazardous Liquids.**

It is proposed that existing Section 3302 be renamed "Hazardous Liquids." The intent of this proposal is to provide a general, performance-based requirement to prevent injuries from employee contact with hazardous liquids for situations other than those addressed by GISO Section 3480. The proposal defines a hazardous liquid as a substance capable of inflicting physical injury. The proposal also gives examples of those injuries. This proposal will clarify to

employers and enforcement personnel that hazardous liquids are capable of inflicting physical injury throughout a range of temperatures and that employees must be protected from accidental contact. The amendment is necessary to provide a standard specifically for liquid substances not covered under Section 3308. Subsection (b) is necessary to address situations where compliance with the performance-based requirement is impracticable, in which case the employer is required to provide personal protective equipment and safeguards in accordance with GISO Article 10.

Section 3308. Hot Pipes and Hot Surfaces.

Existing Section 3308 provides distance and temperature requirements in regard to exposures to hot pipes and hot surfaces having an external surface temperature of 140 degrees F or higher. An informative "Note" regarding liquids proposed for Section 3308 is necessary to refer to the revised Section 3302.

**DOCUMENTS RELIED UPON**

OSHAB Decision in the Matter of AB & I Foundry, Docket No. 08-R1D4-380, dated March 23, 2009.

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.

### Impact on Businesses

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.

### 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**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

### **ASSESSMENT**

The adoption of the proposed amendments to these regulations 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.

### **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 or would be as effective and less burdensome to affected private persons than the proposed action.