

**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, Section 3329
of the General Industry Safety Orders**

Working on (Dismantling) Pressurized Pipe**SUMMARY**

The proposed rulemaking is in response to an Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of Irwin Industries, Docket Nos. 08-R6D4-1454 through 1456 (initially dated September 25, 2008, erratum dated July 7, 2011), where an Administrative Law Judge found that Section 3329(d) did not require an employer to control hazardous energy during a project where a liquid-conveying pipe line was being modified. In the matter covered by the OSHAB decision, the employee installed an inflatable plug in the pipe line to isolate himself from the pipe line's energy (pressure created by superheated water and oil residues) while he worked. Pressure behind the plug dislodged the plug and expelled it out of the pipe, striking the employee and seriously injuring him. The current regulation only requires the employer to control the potential energy inside while opening or dismantling the pipe line. The employee was severely injured during the modification project, but because the injury did not occur while the pipe line was being opened or dismantled, Section 3329(d) did not apply. The proposed rulemaking is necessary to require an employer to provide for employee safety throughout the entire process of pipe line maintenance, repair or modification, and not only when the pipe line is initially opened or dismantled.

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 standards, in that there are no federal regulations, which address this hazard. The entirety of the rulemaking action exceeds the protections of federal regulations because there is no federal equivalent for comparison.
- 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: (1) 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, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).
- Is the least burdensome effective alternative. The proposed change is administrative in nature and requires only slight modifications, if any, to an employer's existing programs. Many companies already comply with the requirements of the proposed change by preventing uncontrolled releases from pipelines while employees are working on the lines. The proposed change clarifies the requirement that employers provide for employee safety, not only when opening or dismantling a pipe line, but throughout the entire repair, maintenance, or modification project.

Section 3329. Pipe Lines.

Section 3329 provides safety requirements for working on and around pipe lines. The regulation protects employees from the contents of the pipe lines by requiring supports to prevent vibration, proper construction and maintenance to prevent rupture, and protection of employees when exposed to leaking or off-gassing pipes. Subsection (d) requires an employer to take steps to prevent a sudden release of pressure or spraying of liquid when pipe lines are opened or dismantled.

A new subsection (e) will be added, which reads: "At all times during the repair, modification, or maintenance work, energy within the system shall be controlled to prevent an uncontrolled release that could cause injury."

The proposal is necessary to ensure that the employer uses the same equipment and procedures to safely open or dismantle a pipe line throughout the entire work process to prevent uncontrolled pressurization and struck by accidents, which can result in serious employee injury.

DOCUMENTS RELIED UPON

- OSHAB Decision, Docket Nos. 08-R6D4-1454 through 1456 (initially dated September 25, 2008, erratum dated July 7, 2011).

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 proposed change is administrative in nature and requires only slight modifications, if any, to an employer's existing programs. Many companies already comply with the requirements of the proposed change by preventing uncontrolled releases from pipe lines while employees are working.

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 standard does 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 standard does 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.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees. Moreover, the proposed standard does 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.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated. The proposal would provide businesses, small or large, clear direction in requiring that employers use the same equipment and procedures to safely open or dismantle a pipe line throughout the entire work process to prevent uncontrolled pressurization and struck by accidents, which can result in serious employee injury. This regulatory proposal will promote worker safety and protect employees from the hazards associated with modifying liquid-conveying pipelines.

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.