

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 7, Section 3308
of the General Industry Safety Orders

Hot Surfaces and Hot Pipes**SUMMARY**

Section 3308 addresses hot pipes and hot surfaces and stipulates how and when hot pipes and surfaces are to be insulated or guarded against inadvertent contact. As noted in the Division of Occupational Safety and Health (Division) Form 9 Request for New, or Change In Existing, Safety Order dated August 12, 2009, the language of Section 3308 is unclear both to the employer seeking guidance about when to install insulation or guard surfaces and to the Division attempting to enforce the standard. Ambiguity arises because of the standard's use of the unquantified standard "external surface temperature sufficient to burn human tissue on momentary contact."

To bring clarity to Section 3308, Board staff, in agreement with the Division, proposes to amend Section 3308 to specify 140 degrees F as the temperature capable of causing momentary contact burns to the skin. The value is taken from the American Society of Testing Materials (ASTM) C 1055-03 (Reapproved in 2009) standard. In 2009, the ASTM subcommittee C16.30 on Thermal Measurements established a guide for what constitutes safe surface conditions and has standardized tools by which proposed or existing systems can be examined for potential burn hazard. The ASTM consulted 16 separate sources of scientific literature specific to thermal safety, human physiology and burns, and various thermal injury studies. A bibliography of human burn evaluation studies and surface hazard measurements is listed in the ASTM C 1005-03 References section.

Worker injury resulting from contact with heated surfaces can be prevented by proper design of insulation or other protective measures such as guarding. The proposed inclusion of a scientifically based threshold/trigger temperature for burn injury will ensure that employers know when to implement engineering controls and assure that their employees are effectively safeguarded.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3308. Hot Pipes and Hot Surfaces.

This section requires employers to insulate or guard hot pipes and hot surfaces that are capable of burning human tissue on momentary contact that are located within 7 feet vertically from the floor or working level or within 15 inches measured horizontally from stairways, ramps or fixed ladders. The section also provides an exception for operations where the nature of the work or size of the parts makes guarding or insulating impracticable.

An amendment is proposed to delete the phrase "...sufficient to burn human tissue on momentary contact..." and replace this phrase with "...of 140 degrees F (60 degrees C) or higher..." The proposed amendment is necessary to clarify to the employer the surface temperature at which insulation and guarding is necessary to prevent contact burns and avert serious employee injury.

There is also a non-substantive change to reference Labor Code Section 142.3 in accordance with normal Title 8 formatting and Administrative Procedure Act requirements.

DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health dated August 12, 2009 to the Occupational Safety and Health Standards Board, DOSH Form 9-062, Amendment of General Industry Safety Orders, Section 3308.
2. ASTM Designation C 1055-03 (Reapproved 2009), Standard Guide for Heated System Surface Conditions that Produce Contact Burn Injuries.

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.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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 regulation 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 proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation 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 regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation 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 regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

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

ASSESSMENT

The adoption of the proposed amendment to this regulation 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.