

Memorandum

To : ALL STANDARDS BOARD MEMBERS

Date : October 30, 2008

From : **Occupational Safety and Health Standards Board**
Conrad E. Tolson, Senior Engineer - Standards

Subject : **High-Voltage Electrical Safety Orders**

The following information is provided in regard to the proposed revisions to the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 5, Electrical Safety Orders, Group 2, High-Voltage Electrical Safety Orders.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

On February 14, 2007, the U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) promulgated standards revising the general industry electrical installation standards found in Subpart S of 29 Code of Federal Regulations (CFR) Part 1910. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 72, No. 30, pages 7136-7221, February 14, 2007, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards which are the same as the federal standards except for minor editorial and format differences, or where existing state standards provide a higher level of safety. Furthermore, obsolete cross-references to California Code of Regulations, Title 24 are also proposed for deletion under provisions of the California Code of Regulations, Title 1, Section 100. Prior to September 30, 2002, the Standards Board was mandated by Health and Safety Code Section 18943(b) to submit Title 8 building standards to the California Building Standards Commission for their approval and adoption into Title 24, the California Building Code.

Assembly Bill 3000 (Stats. 2002, c. 1124), which was signed by the Governor and filed with the Secretary of State on September 30, 2002, formally exempted the Standards Board from the building standard requirements contained in the Health and Safety Code as well as those contained in Labor Code Sections 142.3 and 142.6. Consequently, all previous references to Title 24 have been deleted.

In the final rule, Federal OSHA has revised its existing general industry electrical installation standards contained in Sections 1910.302-1910.308 along with relevant definitions found in Section 1910.399. Federal OSHA's existing electrical standards are based on the 1979 edition of NFPA 70E, Standard for Electrical Safety Requirements for Employee Workplaces. The final

federal rule is based primarily on Part I of the 2000 edition of NFPA 70E which, in turn, is based on the 1999 National Electrical Code (NEC). Thus the proposal will reflect more current practice and technology as well as respond to requests from stakeholders that Subpart S reflect the most recent editions of NFPA 70E which the industry is already voluntarily complying with in its present form. Federal OSHA is of the opinion that the revised standard will facilitate compliance by stakeholders, including small businesses, while also improving safety for employees.

Subjects addressed by the proposal include, but are not limited to, the following:

- Definitions of terms used in the HVESO
- Approval of installations and equipment
- Examination, installation and use of equipment
- Marking and identification
- Overcurrent protection
- Grounding
- Wiring methods
- Temporary wiring
- Enclosures for electrical installations
- Interrupting and isolating devices
- Transformers
- Control of motors and generators
- Workspace and guarding
- Communications systems
- Induction and dielectric heating equipment
- Integrated electrical systems

The proposed standards are substantially the same as the final rule promulgated by federal OSHA. Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as federal standards. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to:

- (1) Identify any issues unique to California related to this proposal which should be addressed in a subsequent rulemaking; and
- (2) Solicit comments on the proposed effective date.

The responses to comments will be available in the rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standards may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

DOCUMENTS RELIED UPON

Federal Register, Vol. 72, No. 30, pp. 7136-7221 (February 14, 2007)

This document is available online at the federal OSHA website, www.osha.gov and is also 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

29 CFR 1910.7, Definition and requirements for a nationally recognized testing laboratory.

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.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

COST ESTIMATES OF PROPOSED ACTION

OSHA's estimation of compliance costs found in Federal Register, Vol. 72, No. 30, February 14, 2007, Preamble Section VI, Final Economic and Regulatory Screening Analysis, subsection D, Estimation of Compliance Costs, notes that there is already within the industry widespread use of the 1999 (or later) edition of the National Electrical Code (NEC) upon which the federal promulgation was based. Since this rulemaking proposal merely incorporates the federal standards where necessary to make California's High-Voltage Electrical Safety Orders at least as effective, Board staff therefore relies on OSHA's estimate of compliance costs in making a determination that this rulemaking of High-Voltage Electrical Safety Orders will have no appreciable cost impact on the regulated public.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards 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

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

ASSESSMENT

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.