

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 5, Article 36, Section 2943
of the Electrical Safety Orders

Confined Space Requirements for Manholes, Vaults, or Similar Structures**SUMMARY**

The Division of Occupational Safety and Health (Division) requested a modification to Section 2943 to ensure that employers comply with the applicable confined space requirements when employees are working in manholes, vaults, or similar structures. The Division stated that some employers interpret the current reference to the confined space requirements to only include an obligation for atmospheric testing and not any other confined space program requirements specified in Article 108 of the General Industry Safety Orders (GISO). In response to the Division memorandum, Board staff developed the attached proposal to remove the mention of atmospheric testing and replace it with a more specific and less confusing reference to the confined space requirements in Article 108.

Title 8, Section 2943 cites the safety requirements for working on or in proximity to high-voltage electricity. Subsection 2943(b)(1) prohibits employees from entering or remaining inside a manhole, vault, or other similar structure unless the atmosphere has been tested and determined to be safe and remain safe in accordance with the confined space requirements of the GISO.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

The proposal will replace the reference to atmospheric testing with a broader reference to the specific part of the GISO that relates to confined space operations. Article 108 requires an employer to develop and implement a comprehensive confined space program that includes but is not limited to atmospheric testing whenever a space, such as a manhole or vault, could potentially have a hazardous atmosphere or other confined space hazard. This internal reference to Article 108 is similar to existing Title 8 language contained in several similar sections, such as Section 2540.10, Section 6529, and Section 8616, that all require an employer to follow the requirements of Article 108 when a confined space condition exists.

Section 2943

Current subsection (b)(1) states that employees shall not enter or remain in a space until atmospheric testing determines the space is safe in accordance with the confined space requirements of the GISO of the California Administrative Code. The proposed revisions removes the outdated reference to the California Administrative Code and replaces the reference to atmospheric testing and remaining safe with a more specific reference to Article 108. Stating that the space must remain safe in accordance with the applicable confined space provisions is unclear and could be interpreted to mean something other than fully complying with Article 108. When the potential for a confined space hazard exists, Article 108 requires employers to do more than just test the atmosphere. At a minimum, employers covered by Article 108 shall develop a written confined space program, train employees, conduct atmospheric testing, control potential hazards, provide ventilation, and standby persons. The proposal is necessary to clarify that an employer must protect employees exposed to confined spaces hazards by fully complying with all the confined space requirements of Article 108 not just the atmospheric testing requirement.

DOCUMENTS RELIED UPON

1. January 5, 2000 memorandum from the Division of Occupational Safety and Health regarding Electrical Safety Orders, Section 2943(b).

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 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

The proposed revisions are primarily intended to clarify an employer's current obligations to comply with the confined space requirements of Article 108. Therefore, no significant 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 the proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that the 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 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(s) 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 BUSINESS

The Board has determined that the proposal may affect small businesses.

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.