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FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 8615(g)
of the Telecommunication Safety Orders

Fall Protection in Telecommunications

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive, non-substantive and sufficiently related modifications that are the result of public comments and Board staff evaluation. The proposed modifications and the reasons for the modifications are below:

- Addition of the term “Construction Safety Orders” before the term “Article 24” in Section 8651(g)(3).

This addition will make the language in subsection (g)(3) consistent with the language in the new subsection (g)(4). Providing consistent regulatory language across requirements helps to improve clarity and communication, and avoids any ambiguities with respect to the meaning and intent of the standard.

- Deletion of the word “except” and the requirement for linemen’s body belts and work positioning system following the word “except” in Section 8615(g)(3).

The requirement for linemen’s body belts and work positioning system when mentioned together with the requirement for general fall protection system in subsection (g)(3) is confusing; and therefore, removed from this subsection. Therefore, the word “except” is deleted as it is no longer relevant.

- Addition of new Section 8615(g)(4).

New subsection (g)(4) is added to contain the requirements concerning linemen's fall protection which is relocated from subsection (g)(3). Providing a separate subsection enhances the clarity of the standard.

- Revisions of the terms concerning linemen's fall protection to make them consistent with the terms used in Section 2940.6(c) of the Electrical Safety Orders (ESO).

The terms "lineman's body belts used for climbing poles, towers or similar structures, and work positioning" in the proposal are not consistent with the terms "linemen's body belts, safety straps, lanyards, and fall restriction systems used for climbing or changing location on poles, towers or similar structures" as provided in Section 2940.6(c) of the ESO. This inconsistent terminology across standards compromises clarity and the reader's understanding of the regulatory text. Therefore, the proposal is modified to use the terms provided in the ESO.

- Addition of the reference to "Article 36" after the term "Electrical Safety Orders" in new Section 8615(g)(4).

The proposed modification will make the language in subsection (g)(4) consistent with the language in subsection (g)(3). Providing consistent regulatory language across requirements improves clarity and communication.

- Renumbering of Section 8615(g)(4) to subsection (g)(5).

Renumbering is required as a new subsection (g)(4) is added in the modified proposal.

In addition to the proposed modifications as previously stated, the following modifications to the cost impacts are also made:

Modifications to Cost Impacts on a Representative Private Person or Business:

- The Board's estimate of new equipment cost in the Disclosures Regarding the Proposed Action section of the Informative Digest was \$2,849,000, which was based on the price of Bashlin Pole Lariat. Since this product is discontinued, the Board revises the equipment cost based on the cost of Jelco Pole Choker (\$570), a similar product that is currently available. The Board believes Jelco Pole Choker provides the necessary fall protection to wood-pole climbers as Federal OSHA considers the Jelco Pole Choker, like the Bashlin Pole Lariat, an example of suitable wood pole fall-restricting device for climbing poles. Therefore, the total cost for the equipment is revised to \$4,389,000 (7,700 X \$570).

- As a result of the modified revision to the equipment cost, the total cost of compliance with the modified proposal is estimated to be \$4,881,800 (\$4,389,000 for equipment + \$492,800 for training).

Modification to Small Business Determination:

- The Board's estimate of the average cost of compliance for a small business was \$1,625 in the Disclosures Regarding the Proposed Action section of the Informative Digest. As a result of the modified revision to the equipment cost, the Board estimates the revised average cost of compliance for a small business to be \$2,374.

SUMMARY OF AND RESPONSES TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Amber Rose, Area Director, Occupational Safety and Health Administration, by letter dated January 7, 2019.

Comment:

Ms. Rose comments the proposed standards appear to be commensurate with the federal standard.

Response:

The Board thanks Ms. Rose for her comment and participation in the Board's rulemaking process.

Jay Weir, Senior Manager-Environment, Health & Safety, AT&T Services, Inc., by letter dated January 16, 2019.

Mr. Weir comments that AT&T supports the Board's efforts to protect employee safety; however, they have some concerns. The concerns are listed below as Comments 1 through 5. Board staff's responses follow the comments.

Comment 1:

Mr. Weir writes the proposal does not include a timeline for compliance. He requests one year from the effective date for implementation of the required changes in Section 8615(g) by noting federal OSHA provided one year for the Electrical Industry to comply with similar fall protection requirements. This will allow the regulated community to address the equipment demand and related training to impacted employees.

Response 1:

Telecommunication workers need fall protection during point-to-point travel for protection against potential falls. Therefore, the proposed requirements need to be effective as soon as possible given the urgency to protect employees from serious injury or death. Board staff notes the proposal will follow the remaining steps in the rulemaking process, and will be considered for adoption by the Board at a future business meeting. If the proposal is adopted by the Board, it will be submitted to the Office of Administrative Law (OAL) for review and approval, and then sent to the Secretary of State for filing. Depending on the date the proposal is received by the Secretary of State, the effective date will be between one and four months from receipt. This multi-step process could take anywhere from two to six months following adoption by the Board. Consequently, Board staff believes the rulemaking process provides sufficient time for AT&T and others in the regulated community to comply with the proposal without the Board extending the effective date.

Comment 2:

Mr. Weir believes the cost of the regulatory change is underestimated and requests correction to reflect a more accurate total cost. Mr. Weir mentions the Board's estimate of the training cost does not take into account the time and cost of having employees off the job. He provides AT&T's estimates of training costs to be \$960 per employee, and the equipment costs to be \$700 per employee, resulting in a total cost of \$9,960,000 for its 6,000 employees that will need new equipment and training.

Response 2:

Board staff estimated the training cost as \$64 per person based on the average cost used by federal OSHA for similar training needs and adjusted for California's Consumer Price Index (CPI) and wage differential. Board staff believes the federal data developed for the climbers in the electrical industry adequately represents the average cost of training a telecommunication pole climber in California when adjusted for the CPI and wage differential.

Board staff estimated the equipment cost based on the price of Bashlin Pole Lariat provided at J. Harlen Co.'s website on January 11, 2018. As of February 1, 2019, this product was discontinued per Bashlin's website. Taking this into consideration, Board staff has revised the equipment cost based on the price of a Jelco Pole Choker, a product similar to the Bashlin Pole Lariat that is currently available. Board staff estimates the cost of each Jelco Pole Choker to be \$570, and the revised total cost for the equipment to be \$4,389,000 (7,700 X \$570) which is higher than the previous estimate of \$2,849,000.

Board staff considers its estimates valid as the training cost is based on federal data adjusted for California and the equipment cost is based on the current price of a Jelco Pole Choker which, like the Bashlin Pole Lariat, federal OSHA considers an example of a suitable wood pole fall-restricting device for climbing poles.

Comment 3:

Mr. Weir states Section 8615(g)(1) as proposed uses the words “work positioning equipment” and proposes to change it to “work positioning system” for consistency.

Response 3:

Subsection (g)(1) as proposed already uses the words “work positioning system” in place of “work positioning equipment.” Therefore, no modification to this portion of the proposal is necessary.

Comment 4:

Mr. Weir states the use of the word “except” in Section 8615(g)(3) is confusing, and recommends deleting “except” and placing the language following “except” into new Section 8615(g)(4).

Response 4:

Board staff agrees with Mr. Weir, and proposes to remove the word “except” from subsection (g)(3), add “Construction Safety Orders” in subsection (g)(3) for clarity and consistency, and move the language concerning linemen’s fall protection from subsection (g)(3) to a new subsection (g)(4). In addition, Board staff proposes to modify the language in new subsection (g)(4) to make it consistent with the existing language concerning linemen’s fall protection in Section 2320.8(b) of the High-Voltage Electrical Safety Orders, and add “Article 36” at the end of new subsection (g)(4) for clarity and consistency.

Comment 5:

Mr. Weir believes Section 8615(g)(4) of the proposal repeats a requirement already stated in Section 1670 of Article 24 and may result in questions or confusion, and proposes its deletion.

Response 5:

The proposed language in subsection (g)(4) is not the same as the requirement concerning body belts in Section 1670. Section 1670 provides an exception while using body belts as part of a personal fall arrest system, whereas the proposal’s subsection (g)(4) does not provide any exception. Therefore, Board staff proposes to keep the language as is, however within a renumbered subsection (g)(5).

The Board thanks Mr. Weir for his comments and participation in the Board’s rulemaking process.

II. Oral Comments

Oral comments received at the January 17, 2019, Public Hearing in Rancho Cordova, California.

Jay A. Weir, Senior Manager Environment Health & Safety, AT&T Environment, Health and Safety Corporate Compliance.

Comment:

Mr. Weir stated AT&T supports the proposed changes, although they have some concerns. Mr. Weir voiced concerns similar to those he mentioned in his letter dated January 16, 2019. His oral comments are listed below as Comments 1 through 5. Board staff's responses follow the comments.

Comment 1:

Mr. Weir stated the proposal does not give AT&T enough time for compliance. This comment is similar to his written comment. Please see Mr. Weir's written comment, Comment 1, for the summary of the comment.

Response 1:

Please see Response 1 to Mr. Weir's written comment.

Comment 2:

Mr. Weir commented on the inaccuracy of the proposal's equipment and training costs. This comment is similar to his written comment. Please see Mr. Weir's written comment, Comment 2, for the summary of the comment.

Response 2:

Please see Response 2 to Mr. Weir's written comment.

Comment 3:

Mr. Weir proposed to change the word "equipment" to "system" within subsection (g)(1) for consistency. Please see his written comment, Comment 3, for the summary of the comment.

Response 3:

Please see Response 3 to Mr. Weir's written comment.

Comment 4:

Mr. Weir stated the word “except” in subsection (g)(3) created confusion and recommended deleting it, and moving the requirement concerning linemen’s fall protection out of subsection (g)(3). This comment is similar to his written comment. Please see Mr. Weir’s written comment, Comment 4, for the summary of the comment.

Response 4:

Please see Response 4 to Mr. Weir’s written comment.

Comment 5:

Mr. Weir commented subsection (g)(4) of the proposal was redundant and should be deleted. Please see Mr. Weir’s written comment, Comment 5, for the summary of the comment.

Response 5:

Please see Response 5 to Mr. Weir’s written comment.

The Board thanks Mr. Weir for his comments and participation in the Board’s rulemaking process.

Jerome Candelaria, California Cable and Telecommunications Association.

Comment:

Mr. Candelaria commented the cable industry in California is aware of the proposed changes and has already started transitioning to using the fall protection climbing systems. He mentioned California Cable and Telecommunications Association could be contacted for questions concerning training and equipment.

Response:

The Board thanks Mr. Candelaria for his comments and participation in the Board’s rulemaking process.

**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

As a result of written comments to the proposed modifications contained in the 15-Day Notice of Proposed Modifications mailed on April 3, 2019, the following non-substantive modifications

have been made to the Disclosures Regarding the Proposed Action section of the Informative Digest published in the California Regulatory Notice Register dated November 30, 2018:

Modifications to Cost Impacts on a Representative Private Person or Business:

- The Board's estimate of training cost in the proposal was \$492,800. AT&T, which employs the majority of telecommunication pole climbers in California, has repeatedly estimated the training cost to be \$960 per employee. Since the Board's estimate of the training cost to be \$64 per employee, which was based on federal data from 2009, is much lower than AT&T's estimate Board staff did further research on the training cost. Based on information from employer (AT&T) and labor representative (Communication Workers of America), Board staff concludes an 8-hour training would be appropriate for the climbers, and not the one-hour training initially used in the estimate. For an 8-hour training, the Board estimates the cost to be \$512 (8 X \$64) per employee.

The revised training cost of \$512 is between the cost estimate provided by a major employer (\$960), and the cost estimate based on CWA provided information (\$450) and the Board believes it adequately covers the cost of training for one employee. Therefore, the total training cost is revised from \$492,800 to \$3,942,400 (7,700 X \$512).

- The total equipment cost was revised to \$4,389,000 after the 45-Day Public Comment Period. No further revision is made due to the 15-Day Notice.
- As a result of the revision to the training cost, the total cost of compliance with the modified proposal is estimated to be \$8,331,400 (\$4,389,000 for equipment + \$3,942,400 for training).

Modification to Small Business Determination:

The Board's estimate of the average cost of compliance for a small business was \$1,625 in the Disclosures Regarding the Proposed Action section of the Informative Digest. As a result of the revisions to the equipment cost after the 45-Day Public Comment Period and the training cost after the 15-Day Notice, the Board modifies its estimate of the average cost of compliance for a small business to \$4,051.

SUMMARY OF AND RESPONSES TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Jay A. Weir, Senior Manager-Environment Health & Safety, AT&T Services, Inc., by letter dated April 22, 2019.

Comment 1:

Mr. Weir commented that the Board's opinion that telecommunication workers need fall protection during point-to-point travel for protection against potential falls, and therefore; the proposed requirements need to be effective as soon as possible given the urgency to protect employees from serious injury or death, is misleading at best. He mentioned AT&T employees are qualified and properly trained in pole climbing using point-to-point travel.

Mr. Weir further commented that AT&T continues to have concern for not having a timeline for compliance and mentions a defined date for compliance is needed to plan for and ensure compliance. He stated the climbing fall protection equipment is specialized and will need to be manufactured as AT&T's supplier does not carry a large on-hand inventory, and this will result in a delay in getting the equipment. Therefore, he requested the Board to provide a one-year timeframe for compliance.

Response 1:

Mr. Weir had the same concern and request for delayed implementation timeframe expressed in his previous written comment, by letter dated January 16, 2019, and oral comment at the January 17, 2019 public hearing. Please see the Board's Response 1 to Mr, Weir's written Comment 1 under the SUMMARY OF AND RESPONSES TO WRITTEN AND ORAL COMMENTS as the result of the 45-Day Public Comment Period, above. The Board further adds to its response that this rulemaking and the proposed changes are needed in order to make the state standard commensurate with the federal standard, which is required by California Labor Code Section 142.3(a)(2). Therefore, the Board's position that the proposed requirements need to be effective as soon as possible given the urgency to protect employees from serious injury or death, is accurate; and therefore, is not misleading. See the Initial Statement of Reasons published at the Board's website <https://www.dir.ca.gov/OSHSB/documents/Fall-Protection-in-Telecommunications-ISOR.pdf> for the necessity of the proposed amendments.

Regarding the one-year implementation timeframe requested by Mr. Weir, the Board notes that compliance timelines are not normally found in most Title 8 standards except in circumstances where some type of phase-in period is specified by statute or federal standards. What Federal OSHA may have allowed for the electrical industry does not apply to the telecommunication fall protection standards. Federal OSHA provided the one-year phase-in for the electrical industry; however, did not provide any phase-in for the telecommunication fall protection standard.

The Board adds that it expects this rulemaking to take additional time. After the adoption of the proposal at a future Board business meeting, the proposal is submitted to OAL. OAL has thirty working days to review the rulemaking file and issue its decision. After OAL approves the regulatory proposal, OAL submits the regulation to the Secretary of State for filing, and the regulation becomes effective on a quarterly (3 months) basis. Therefore, the Board believes, as stated in a previous Board response during the 45-Day Public Comment Period, the timing of the rulemaking process provides AT&T with adequate time to plan and prepare to comply with the proposal. The Board notes that the rulemaking process timeframe could very well be longer.

The Board communicated with Communication Workers of America (CWA) on the prospect of delayed implementation. CWA does not support the one-year phase-in timeframe.

Regarding the availability of the climbing fall protection equipment in addition to using their own supplier, AT&T may utilize other suppliers and/or use alternative methods when the use of fall protection equipment is infeasible as provisioned in the proposal.

The Board believes a delay in the effective date of this rulemaking as suggested by Mr. Weir exposes telecommunication workers to the risk of serious fall injury and adds further delay in California being commensurate with the federal requirement. The Board also believes these potential outcomes are not consistent with the intent of the rulemaking proposal. Therefore, the Board rejects Mr. Weir's request for a one-year timeframe for the implementation of the proposal, and does not propose any delayed timeframe.

Comment 2:

Mr. Weir commented the revised estimate of the equipment cost (\$570 per employee) is more in line with the original AT&T estimate, although this estimate still falls short. He further commented the estimated training cost is severely underestimated, and provided AT&T's estimate of training cost to be \$960 per employee.

Response 2:

The Board believes the revised estimate of the equipment cost (\$570 per employee) is still valid.

Regarding the training cost, the Board's initial estimate of \$64/employee was based on the one-hour training for the employees. Since this estimate was much lower than AT&T's estimate (\$960/employee), Board staff did further research on the training cost. Based on Mr Weir's comments and Board staff's communication with a labor representative of the CWA, the Board

concludes an eight-hour training would be appropriate for the climbers, and not the one-hour training initially used in the estimate, and revised the estimated cost to \$512 (8 X \$64) per employee. (This revised training cost is between the estimate provided by AT&T and the estimate based on CWA's provided information.) Therefore, the Board believes it adequately covers the cost of training for one employee and revises the total cost of training from \$492,800 to \$3,942,400.

The Board thanks Mr. Weir for his comments and participation in the Board's rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This standard does impose a mandate on local agencies or school districts whenever they have employees performing point-to-point travel on telecommunication poles, towers, and similar structures.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be: (1) more effective in carrying out the purpose for which the action is proposed, or (2) would be as effective as and less burdensome to affected private persons than the adopted action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.