

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 3314 of the General Industry Safety Orders

Lockout Tagout (LOTO) - Group Lockout**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.

SUMMARY OF AND RESPONSES TO WRITTEN AND ORAL COMMENTS**I. Written Comments:**

Mr. David Shiraishi, Area Director, Region IX, OSHA, U.S. Department of Labor, by letter dated May 14, 2014.

Comment:

Mr. Shiraishi commented that Federal OSHA has reviewed the proposal and found it to be commensurate with federal standards.

Response:

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

John McCullough, C.S.P., Assistant Vice-President, Wells Fargo Insurance Services USA, Inc., by letter dated May 1, 2014.

Comment:

Mr. McCullough provided two suggestions for this rulemaking proposal. First, he suggested using the exact wording of the Federal OSHA standard. Mr. McCullough also noted that the

proposal contains language that does not seem to change anything. He is also concerned that the removal of “and” at the end of proposed GISO, Section 3314(h)(2)(B) does seem to make a change to the federal standard.

Secondly, Mr. McCullough suggested changing to the federal standard’s Control of Hazardous Energy standard in its entirety. He opines that the federal standard flows much better, and there is a federal compliance directive that goes into much more detail and explanation. Mr. McCullough explains that since the goal is to avoid major injuries/fatalities, having a policy that is more understandable would seem to be welcomed. Cal-OSHA Consultation materials do not equal the federal directive, and the State’s Sample General Lockout Procedure does not include the mandatory periodic inspection requirement.

Response:

Board staff notes that the proposed amendments to GISO, Section 3314 duplicate the federal language as it pertains specifically to group lockout tagout (LOTO). The proposal includes the corresponding change to Section 3314(h)(2) to reflect California’s existing standard. The intent of this amendment is to provide group LOTO standards that were lacking in Title 8. This proposal renders Title 8 consistent and at least as effective as (ALAEA) the Federal OSHA regulation with regard to group LOTO. Mr. McCullough is correct to mention that the word “and” is removed from Section 3314(h)(2)(B); however, the omission of the word “and” does not materially alter the meaning of the regulation, which remains commensurate with the corresponding federal regulation, as indicated by the May 14, 2014 letter from Mr. Shiraishi.

In response to Mr. McCullough’s second suggestion to change the federal standard’s Control of Hazardous Energy standard in its entirety, that suggestion is beyond the scope of this proposal. The focus of this proposal is to provide language ALAEA the federal regulation as it pertains to group LOTO. California LOTO standards provide specific and elaborate requirements that apply to a broad spectrum of California industries not covered under general federal LOTO regulations. The Cal-OSHA Consultation Sample General Lockout Procedures document is provided for information only in order to assist employers in establishing a LOTO policy, but it is not regulatory. Employers use and follow Title 8 standards, and Section 3314 requires the periodic inspection on an annual basis as specified by the federal standard.

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

II. Oral Comments:

Oral comments received at the May 15, 2014 Public Hearing in Walnut Creek, California.

Ms. Dorothy Wigmore, Occupational Health Specialist for Worksafe.

Comment:

Ms. Wigmore stated that she is curious about the data showing the effectiveness of the federal standard, and she questions if this proposal is good enough. She also asked the Board staff to make it clear as to what the responsibilities are for the employer and the employee.

Response:

It is unclear as to what specific data Ms. Wigmore referred to in her comment, or whether it is within the scope of this proposal, Board staff submits that, according to the Preamble to the Final Rule for CFR 1910.147, OSHA expects that this standard will prevent approximately 122 fatalities, 28,400 lost workday injuries and 31,900 non-lost workday injuries a year. The inclusion of federal language in this proposal renders Title 8 consistent and at least as effective as the federal regulation on group lockout tagout procedures. The proposed amendments contain definitive criteria for employers to establish an effective program for locking out or tagging out energy isolating devices and require training for authorized and affected employees. The procedures clearly and specifically outline employer and employee responsibilities in the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy. The necessity of this proposal is based on the requirement that state standards are to be ALAEA federal standards; data showing the effectiveness of the federal standard does not bear on the determination that the state standard is ALAEA the federal standard.

The Board thanks Ms. Wigmore for her comments and participation in the Board's rulemaking process.

Kevin Bland, Esq., Ogletree, Deakins, Nash, Smoak & Stewart.

Comment:

Kevin Bland stated that he has no opposition to this proposal, but urged the Board to be cautious in adopting this proposal. He said that this proposal is good as long as the group lockout remains optional instead of required.

Response:

The proposed group LOTO standard provides employers the option to use a hazardous energy control procedure that ensures employees have the protection provided by a personal LOTO device. The intent is to prevent the inadvertent start-up or unexpected energization of equipment or machinery by a single individual through the provision of an authorized employee to oversee the group lockout tagout program established by the employer.

The Board thanks Mr. Bland 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

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulations. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the adopted action, or 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/no alternatives were proposed by the public that would have the same desired regulatory effect.