

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING  
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
AND NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **February 21, 2013**, at 10:00 a.m.  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **February 21, 2013**, at 10:00 a.m.  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

**BUSINESS MEETING:** On **February 21, 2013**, at 10:00 a.m.  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

**DISABILITY ACCOMMODATION NOTICE:** Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD**

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JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS  
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, High Voltage Electrical Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **February 21, 2013**.

1. TITLE 8:     **HIGH VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5, Article 36, Section 2940.8  
[\*\*The Securing of Poles During Removal Operations\*\*](#)
  
2. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Group 16, Article 109  
Section 5199(g)(3)(B), Exception 2  
[\*\*Aerosol Transmissible Diseases Respirator Exception\*\*](#)

Descriptions of the proposed changes are as follows:

1. TITLE 8:      **HIGH VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5, Article 36, Section 2940.8  
**[The Securing of Poles During Removal Operations](#)**

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

This rulemaking action is initiated by the Occupational Safety and Health Standards Board (Board) staff. The proposal results from discussions with stakeholders, including utility representatives, and in part, from a review of the Occupational Safety and Health Appeals Board Decision dated August 18, 2010, Docket Nos. 08-R2D1-4887 through 4889 in the appeal of SMUD for citations issued by the Division of Occupational Safety and Health (Division). The Appeals Board Decision indicates that the citations are related to the removal of a damaged power line pole that was hit by a vehicle, leaving the butt of the pole missing and the rest of the pole suspended in air and supported only by the power lines. In the removal of this pole, employees did not secure the suspended pole with a winch line/load line of an electric line truck prior to removing the conductors that supported the pole. The pole slipped through the truck pole guides (grabbers), fell to the ground and hit an employee who sustained a serious injury.

The Division issued citations related to the General Industry Safety Orders, Article 13 for Cranes and Other Hoisting Equipment. One of the citations concerned Section 4999 “Handling Loads,” which requires that a load be properly attached by means of slings or other effective and suitable means. Another citation was issued under Section 5002 “Overhead Loads,” which in part requires hoisting operations to be conducted in a job controlled manner that will avoid exposure of employees to the hazards of overhead loads. The Appeals Board decision indicated that neither of these crane orders applied, since the damaged pole being removed was not being hoisted or being passed directly over workers at the time of the accident. The proposal is necessary to ensure that poles being removed are secured not only during the actual hoisting of the pole but also in preparing and securing of the pole for the lift.

Utility representatives indicate that poles are frequently damaged or compromised from accidents related to motor vehicles hitting them. It is important that such poles or pole sections are secured not only during the actual lifting/hoisting process but also in preparing these poles for removal. An amendment is proposed for the High Voltage Electrical Safety Orders (HVESO), Section 2940.8 which is related to the handling of poles. The proposal would require that damaged or unstable poles or sections of poles encountered during removal operations be securely supported. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal regulations in that federal OSHA does not have provisions proposed in Section 2940.8(f) that are related to the securing of poles or pole sections during the process of pole removal operations.

- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as the requirements of federal law and the Labor Code.
- Is the least burdensome effective alternative. It is a performance based proposal that was developed with the assistance of stakeholders including several major utilities, the Division and labor representatives from the International Brotherhood of Electrical Workers. The proposal will enhance the safety of employees involved in the removal of utility poles.

### **Section 2940.8. Material Handling.**

#### **New Subsection (f)**

Existing Section 2940.8 includes provisions related to the unloading of poles, pole hauling, storage, the use of tag lines, and attaching/hoisting the load.

A new subsection (f) would require damaged or unstable poles, or sections of poles to be guyed, braced or otherwise securely supported during pole removal operations. The proposal would have the effect of providing a performance based requirement that protects employees from hazards during pole removal operations. Employers complying with the proposal's requirements could, for instance, use an electric line truck with the load line attached to secure the pole or pole section.

### **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/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete**

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. The proposal adds a provision to ensure that utility poles and/or pole sections are securely supported during pole removal operations. The proposal is administrative and procedural in nature and is not inconsistent with industry practice. The proposal does not encumber the employer to incur added costs by having to purchase or otherwise acquire special equipment or tools.

#### **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 standard 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard 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.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard 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.)

This proposed standard does 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 AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposal is consistent with utility company safe work practices and procedures.

Therefore, the proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

## ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

2. TITLE 8:      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Group 16, Article 109  
Section 5199(g)(3)(B), Exception 2  
**[Aerosol Transmissible Diseases Respirator Exception](#)**

### INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Pursuant to California Labor Code Section 142.3, the Occupational Safety and Health Standards Board (Board) may adopt, amend, or repeal occupational safety and health standards or orders. Section 142.3 permits the Board to prescribe, where appropriate, suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and provide for monitoring or measuring employee exposure for their protection. Petition No. 524 asks the Board to amend Section 5199, the Aerosol Transmissible Disease Standard, subsection (g)(3)(B) regarding the use of respiratory protection during high hazard procedure work defined by the standard. Exception 2 to the subsection permits the use of National Institute of Occupational Safety and Health (NIOSH) approved P100 filtering facepiece respirators. The Division of Occupational Safety and Health convened an advisory committee and after reviewing relevant information recommended that the Board revise the subsection.

The purpose of the proposed change is to allow employers to also use NIOSH approved N100 and R100 respirators. R100 respirators are made of filter material that is more resistant to oil particulates, a specific contaminant of concern in emergency response, than the N100, but less resistant over time than P100 filters. N100 filters are not tested against oil particulates, therefore, in addition, if the employer chooses to use an N100 respirator, the employer must also:

- 1) Assure that selection is made with the employees being fully informed and trained about using the appropriate respirators provided for conditions that would degrade the filtration performance of the N type respirator; and
- 2) Provide training to the employees to make an assessment of the conditions where the patient is to receive high hazard procedures to assure that the performance of the respirator being used will not be compromised.

The intended effect of this proposal is to allow employers who provide emergency medical services more flexibility in finding appropriate respirators for the exposure conditions in which they would be used. The use of N100 respirators might result in cost savings without compromising safety, so long as all elements of the proposed exception are followed. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal regulations, in that federal OSHA does not have specific counterpart standard for aerosol transmissible diseases but does have a general respiratory protection standard for those employees who are required to wear a respirator. Further, the federal respirator standard does not specifically address the level of respiratory protection in this proposal.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts.
- Is the least burdensome effective alternative. The proposed expansion of the exception was developed by the Division with the assistance of an advisory committee of affected employer, employee and technical experts. The proposal will provide additional respirator alternatives while still adequately protecting employees. No alternative proposal has been suggested.

## **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/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete**

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. The proposal allows the use of alternative respiratory protection when appropriate. This provides an option for employers and does not add regulatory requirements and thus, will not have an economic impact.

### **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 since the proposal provides an alternative to the existing requirement.

### **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 standard 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard 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.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard 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.)

This proposed standard does 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 AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The proposal does not add regulatory requirements. However, the additional definitions provided will improve understanding of the requirements and simplify compliance for businesses of all sizes.

Therefore, the proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

## ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than **February 15, 2013**. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on **February 21, 2013**, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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JOHN D. MACLEOD, Chairman