

**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 2940.1
of the High Voltage Electrical Safety Orders

Voltage Determination**SUMMARY**

This rulemaking proposal is initiated in response to a Division of Occupational Safety and Health (Division) memorandum, dated July 28, 2003, with attached Form 9, Request for New, or Change in Existing Safety Order. The Division's memorandum states that California's existing High Voltage Electrical Safety Orders (HVESO) do not address the issue of requiring the employer to determine whether there are any concealed energized, high voltage conductors present prior to having employees perform work to prevent inadvertent contact between the conductor and the employee, tool or machine being operated.

The Division's Form 9 describes an accident involving a construction industry employee who was killed (electrocuted) while attempting to demolish a concrete pad with a jackhammer. Unbeknownst to the employee, an energized, 5000-volt electrical conductor (wire) was buried in the ground beneath the pad. Following the accident, the Division determined that California does not have a standard comparable to federal OSHA's standard contained in 29 Code of Federal Regulation (CFR) 1926.416(a)(3), which specifically requires employers to ascertain the presence of exposed or concealed electrical conductors which could pose a threat to the safety of employees working in the area by either direct, or indirect contact via tools, equipment, or machinery used/operated by the employee. This determination is required to be made, and made known to employees, prior to the work being performed.

In making its determination that California's standard was not at least as effective as the federal counterpart, the Division evaluated existing Title 8 standards, such as but not limited to, Sections 2941 through 2944, and trenching and excavation standards contained in Sections 1539 through 1541. The Division found that these standards do not specifically address ascertaining the location of concealed high voltage power lines when employees used powered tools to dig subterraneously (below ground). The Division concluded that California's HVESO is deficient in comparison to 29 CFR 1926.416(a)(3). Consequently, this rulemaking action will ensure that California's HVESO standards are at least as effective as those contained in 29 CFR 1926.416(a)(3), as required by California Labor Code Section 142.3(a)(2).

This proposed rulemaking action also contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest; however, they are clearly indicated in the regulatory text in underline and strikeout format.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 2940.1. Voltage Determination.

Existing Section 2940.1 requires the operating voltage of equipment to be determined before working on or near energized parts. An amendment is proposed to add a new subsection (b), which would require that before work is begun, the employer shall (1) ascertain by inquiry, direct observation or by instruments, whether any part of an energized electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool, or machine into physical or electrical contact with the electric power circuit, (2) post and maintain a warning sign(s) where such a circuit exists, and (3) advise employees of the location of such lines, the hazards involved, and the protective measures to be taken. The proposal is necessary to ensure that employees do not come in contact with energized conductors, whether exposed or concealed, which could result in serious injury or death. The proposal is also necessary to render California's standard at least as effective as counterpart federal standards as mandated by Labor Code Section 142.3(a)(2).

In light of the proposed new subsection, it is also proposed to revise the section title to read, "Voltage Determination and Location." The amendment is necessary to more accurately reflect the revised contents of the section, and clarify that the section now also pertains to voltage location.

DOCUMENTS RELIED UPON

- Memorandum from the Division of Occupational Safety and Health, dated July 28, 2003, with attached Form 9, Request for New, or Change in Existing Safety Order, pertaining to voltage determination.
- 29 Code of Federal Regulation 1926.416(a)(3)
- U.S. Department of Labor, Occupational Safety and Health Administration, Inspection Report and Narrative dated September 7, 1999.

These documents are 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 ECONOMIC 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

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

The Board has made an initial 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. Although the proposal now requires employers to ascertain whether exposed or concealed energized electric power circuits are located such that they pose a threat to the health and safety of employees, the proposal does not mandate any one specific method to be used. Employers are provided a no-cost opportunity to comply through consultation with the applicable utility company, or via existing documentation revealing the location of such energized conductors. Moreover, employers are already required by existing General Industry and Construction Safety Order standards to provide employee hazard instruction and training via the Injury Illness Prevention Program (IIPP). Corresponding federal requirements contained in 29 CFR 1926.416(a)(3) already require employers to (1) ascertain whether exposed or concealed energized electric power circuits are located such that they pose a threat to the health and safety of employees, (2) post and maintain warning signs where such circuits exist, and (3) advise employees of the location of such lines, the hazards involved, and the protective measures to be taken. Therefore, the Board is not aware of any new costs that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact 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.)

The 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, the 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 employers - state, local and private - 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 economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard 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.