

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 11, Section 1599
of the Construction Safety Orders

Traffic Control – Number of Flaggers**SUMMARY**

This rulemaking is prompted by the September 27, 2007, decision of the Occupational Safety and Health Appeals Board in its Dockets No. 06-R1D5-767 and 768 regarding the Davey Tree Surgery Company. That decision noted, among other things, possible ambiguity as to whether Section 1599(a) requires multiple flaggers in every instance. If Section 1599(a) were read to do so, it would be in conflict with the California Manual on Uniform Traffic Control Devices for Streets and Highways, September 26, 2006, published by the State Department of Transportation (the Manual), which permits the use of one flagger under specified circumstances. This proposal would eliminate that possible ambiguity and conflict by re-wording Section 1599(a) to make it clear that one flagger may be permitted as appropriate and to make the Manual the basis for determinations regarding the number and deployment of flaggers.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 1599. Flaggers.**

This provision of the Construction Safety Orders states requirements for the use of flaggers. Subsection (a) concerns the number of flaggers required. In order to remove possible ambiguity as to whether multiple flaggers are always required and in order to remove possible conflict with the Manual, subsection (a) is proposed to be revised to include the concept of a single flagger and to state that the number and deployment of flaggers is to be determined in accordance with the Manual. Thus, the proposal is necessary, in that it provides clarification to the regulated public.

The words “a flagger or” are added to subsection (b) so that the wording of this subsection is consistent with the wording of revised subsection (a).

Modifications without regulatory effect are made to subsections (c) and (g). Superfluous quotation marks are deleted from subsections (c) and (g).

DOCUMENT RELIED UPON

The September 27, 2007, decision of the Occupational Safety and Health Appeals Board in its Docket s No. 06-R1D5-767 and 768 regarding the Davey Tree Surgery Company.

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.

DOCUMENTS INCORPORATED BY REFERENCE

California Manual on Uniform Traffic Control Devices for Streets and Highways, September 26, 2006, published by California Department of Transportation.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. – 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 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.

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 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 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 state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

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.