

**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 4, Section 1533
of the Construction Safety Orders

Internal Combustion Engine-Driven Equipment (Technical Amendments)**SUMMARY****SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

Section 1533 addresses the operation of internal combustion engine driven equipment inside buildings and in shafts, culverts, pipelines or other excavations that are 20 feet or less in depth and the employer's duty to provide ventilation to prevent the buildup of airborne contaminants to levels that could be unsafe and/or unhealthful due to the operation of this equipment. This Section specifies types of ventilation systems that are to be used and flow rates to ensure adequate dilution of contaminants to safe and healthful levels. There is also a cross-reference to the confined space safety orders and Section 5155 of the General Industry Safety Orders (GISO), which pertains to the table of airborne contaminants.

Section 1533 requires employers to provide mechanical ventilation at flow rates specified in the safety order. The employer's duty to comply and provide mechanical ventilation applies whether the employees are working in buildings or in enclosed structures or in shafts, culverts, pipelines and other excavations 20 feet or less in depth. Concern from stakeholders has arisen over the effect of the term "or other excavations" as used in subsections (a) and (b). In the absence of a definition for what are the "other excavations" referred to in subsections (a) and (b), Board staff believes that the phrase "other excavations" imposes a duty to comply beyond the intent of the standard. The intent being to restrict the employer's duty to comply with the mechanical ventilation provisions to those shafts, culverts, pipelines and excavations that either present or could foreseeably present an employee airborne contamination overexposure.

In addition, based on discussions with the Division of Occupational Safety and Health and construction industry stakeholders, staff proposes technical amendments that refine the application of the mechanical ventilation methods set forth in Section 1533 to shafts 20 feet or less in depth, pipes and culverts where the potential for hazardous accumulation of airborne contaminants exists or could be anticipated to exist. A new subsection (c) is proposed which

cross references existing, extensive air quality standards for work in excavations that are more than 4 feet in depth. Excavations 4 feet or less in depth are covered by Title 8, Article 108 confined space standards and airborne contaminant standards contained in Section 5155.

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 standards, in that presently, California’s safety orders on this subject are more prescriptive in terms of defining what constitutes adequate ventilation in shafts, pipelines, culverts and other excavations and are addressed in separate subchapters in Title 8. Shafts greater than 20 feet are addressed by the Tunnel Safety Orders and those 20 feet or less are addressed by the Construction Safety Orders, (CSO). California’s safety orders on the subject of internal combustion engines and mechanical ventilation contained in the CSO have no federal construction industry standards (29 CFR 1926) equivalent.
- 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 (1) 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 and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).
- Is the least burdensome effective alternative. This rulemaking proposal was developed with the assistance of representatives from Associated General Contractors of California (AGC-CA) and an AGC-CA member contractor and the Division of Occupational Safety and Health, Research and Standards Unit.

Section 1533. Internal Combustion Engines.

This section consists of three subsections which address scope and application of the safety orders in terms of when employees operate internal combustion engine-driven equipment when working inside buildings and structures and shafts, culverts, pipelines and other excavations 20 feet or less in depth in terms of the employer’s duty to provide mechanical ventilation at flow rates specified in the regulatory text. Section 1533 also contains cross references to GISO, Section 5155 pertaining to airborne contaminants and the confined space safety orders.

Subsection (a)

Amendments are proposed in subsection (a) to delete the words “or other excavations” in the first sentence and to place the word “and” before the word “pipelines” to clarify that the standard is not open-ended in terms of scope and applies only to those specific work locations called forth in subsection (a). The proposed amendment is necessary to clarify the application of the safety order to the employer.

Subsection (b)

Amendments are proposed in subsection (b) consisting of rearrangement of the wording in the first sentence related to the operation of internal combustion engine-driven equipment, and the addition of wording that clarifies that the employer’s duty to provide mechanical ventilation is triggered when a hazardous atmosphere exists or could be reasonably expected to exist in shafts 20 feet or less in depth and culverts and pipelines. Additionally, the word “engine’s” would be changed to “engine”.

The proposed amendments are necessary to clarify to the employer, that when employees work in shafts that are 20 feet or less in depth, culverts, and pipelines, they are to provide mechanical ventilation only when it is necessary, either due to the existence or foreseeable risk of excessive employee air contaminant exposure.

Subsection (c)

A new subsection (c) is proposed to cross reference the excavation operation employee protection requirements contained in Section 1541(g). The proposed amendment is necessary to clarify to the employer that Title 8 excavation standards also address hazardous atmospheres in excavations and that those standards also apply whenever any employee enters an excavation that is greater than 4 feet in depth, consistent with the requirement for airborne air contaminant monitoring in excavations 4 or more feet in depth, contained in Section 1541(g).

DOCUMENTS RELIED UPON

1. E-mail transmission from Patrick Bell dated August 13, 2012, re: Proposed Clarification for 1533 Mechanical Ventilation with attached strikeout/underline draft Section 1533 amendments.
2. E-mail transmission from Kate Smiley, AGC, CA dated January 14, 2013, re: CSO Section 1533, proposed revised proposal with construction site photographs.
3. E-mail transmission from Patrick Bell, dated January 15, 2013, re: proposed amendments to Section 1533.

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.

Economic Impact Analysis

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 is an amendment of existing CSO Section 1533 that makes the regulatory text less ambiguous (i.e., an ambiguous term is deleted, and an applicable CSO provision is cross referenced).

Therefore, the adoption of the proposed amendments to these standards 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.

This regulatory proposal is intended to provide worker safety at places of employment in California.

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 amendments 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.)

This 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, this 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.)

This proposed regulation 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 merely a clarification of the existing standard consistent with its intent and does not encumber the employer with any new or additional regulatory obligations. This regulatory proposal will provide worker safety at places of employment in 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 would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.