

**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 **March 18, 2010**, at 10:00 a.m.  
in the Costa Mesa City Council Chambers,  
77 Fair Drive, Costa Mesa, 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 **March 18, 2010**, following the Public Meeting,  
in the Costa Mesa City Council Chambers,  
77 Fair Drive, Costa Mesa, 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 **March 18, 2010**, following the Public Hearing,  
in the Costa Mesa City Council Chambers,  
77 Fair Drive, Costa Mesa, 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, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **March 18, 2010**.

1. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 10  
Section 1590  
**Use of High Visibility Apparel—Private Roads and Off-Highway Situations**
  
2. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 11  
Section 1599  
**Traffic Control—Number of Flaggers**

Descriptions of the proposed changes are as follows:

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 10  
Section 1590  
**Use of High Visibility Apparel—Private Roads and Off-Highway Situations**

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

Based on recent staff discussions with representatives from the Division of Occupational Safety and Health (Division), it was determined that Section 1590 of the Construction Safety Orders (CSO) contains a reference to Section 1598 which pertains to traffic control for public streets and highways. Sections 1598 and 1599 were recently amended to require employees on foot and exposed to the hazard of vehicular traffic and flaggers to wear high visibility apparel that conforms to the requirements of the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-2004, High Visibility Safety Apparel and Headwear standard.

Section 1590 applies to the operation of haulage and earthmoving equipment on private roadways and off-highway situations where personnel on foot such as grade-checkers, surveyors and others exposed to the hazard of vehicular traffic if not visible to the equipment operator could be struck by moving vehicles. Section 1590 has not been amended since the amendments to Sections 1598 and 1599 were made, and there is outdated terminology (e.g., flagging garments) and an inaccurate reference (e.g., Index No.5-07 of the outdated California Department of Transportation Manual of Traffic Operations) which is misleading and could result in employer confusion. The proposed amendments will address these issues and clarify to the employer that their employees are to wear high visibility apparel consistent with the requirements contained in Sections 1598 and 1599 when they are exposed to the hazards of vehicular traffic.

The following actions are proposed:

#### **Section 1590. Haulage and Earth Moving, General.**

This section consists of five subsections (a-e) which address the scope and application of the safety orders for private roadways and off-highway situations, vehicle travel routes, posting of signs, width of roadways, road maintenance, use of traffic controls, use of flagger garments, dust control, equipment control, exhaust, and the use of heat shields.

Existing subsection (a)(5) requires grade checkers, surveyors and other employees exposed to vehicular traffic to wear flagging garments or equivalent consistent with existing flagger requirements and references CSO Section 1598. A Note is provided which refers the reader to Index 5-07 of the Manual referenced in Section 1598.

Amendments are proposed to clarify that employees on foot exposed to vehicular traffic hazards are required to wear high visibility safety apparel as prescribed in CSO Sections 1598 and 1599 and to delete the outdated Note. The proposed amendments will provide consistent, up to date guidance regarding these high visibility apparel requirements. It is noted that the addition of the qualifier “on foot” makes the wording of this provision consistent with the wording of Section 1598(c). It is also noted that the addition of the qualifier “the hazard of” further clarifies the wording of Section 1590(a)(5) in a manner that is consistent with the intent of Section 1598 so that it is understood that employees

must be on foot *and* exposed to vehicular traffic hazards to trigger the requirement for high visibility safety apparel.

## **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.

### **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.)

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 amendments may affect small businesses. However, no economic impact is anticipated.

### **ASSESSMENT**

The adoption of the proposed amendments 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.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of 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 proposed action.

2. **TITLE 8:**        **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 11  
Section 1599  
**Traffic Control—Number of Flaggers**

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

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.

## **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. The proposal thereby 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).

## **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.

## **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.

### **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.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of 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 proposed action.

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 March 12, 2010. 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 March 18, 2010, 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