

**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 10, Section 1590
of the Construction Safety Orders

Use of High Visibility Apparel-Private Roads and Off-Highway Situations**SUMMARY**

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 Section 1590 has not been amended since the amendments to Sections 1598 and 1599 were made, and there is outdated terminology (e.g., flagging garments) and an inaccurate reference (e.g., Index No.5-07 of the outdated California Department of Transportation Manual of Traffic Operations) which is misleading and could result in employer confusion.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.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 1590. Haulage and Earth Moving, General.**

This section consists of five subsections 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 are necessary to provide consistent, up-to-date guidance regarding these high visibility apparel requirements. It is noted that the addition of the qualifier “on foot” is necessary to make 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” is necessary to clarify 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.

DOCUMENTS RELIED UPON

None.

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 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.

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.