

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PROPOSED MODIFICATION TO
CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 2, Section 1504,
and Article 11, Section 1597 of the Construction Safety Orders

Jobsite Vehicles-Scope and Application

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standard in which modifications are being considered as a result of public comments and/or Standards Board staff consideration.

On November 15, 2007, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 1597 of the Construction Safety Orders. The Standards Board received oral and written comments on the proposed revisions. The standard has been modified as a result of these comments and Standards Board consideration.

A copy of the full text of the standards as originally proposed, and a copy of the pages with the modifications clearly indicated, are attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and staff responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on December 31, 2007, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The standards will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Marley Hart, at (916) 274-5721.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Date: December 11, 2007

Marley Hart, Executive Officer

STANDARDS AS ORIGINALLY PROPOSED

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 1597 to read:

§1597. Jobsite Vehicles.

Vehicles excluding those regulated by Article 10 of these Orders (i.e. haulage vehicles, scrapers, loaders, crawlers or wheeled tractors, bulldozers, graders and similar equipment), shall be equipped and operated in the following manner:

(a) Vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

PROPOSED MODIFICATIONS
(Modifications are indicated in bold,
double underline wording for new language,
and bold, double strikeout for deleted language.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 1504 to add the following definition in alphabetical order:

§ 1504. Definitions.

Jobsite vehicle. A vehicle which is operated on a jobsite exclusively and is excluded from the provisions of applicable traffic and vehicular codes, and haulage and earthmoving vehicles regulated by the provisions of Article 10 of these Orders.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 1597 to read:

§1597. Jobsite Vehicles.

Jobsite vehicles **as defined in Section 1504 of these Orders,** which are utilized on jobsites exclusively and are, therefore, excluded from the provisions of applicable traffic and vehicular codes ~~excluding those regulated by Article 10 of these Orders (i.e. haulage vehicles, scrapers, loaders, crawlers or wheeled tractors, bulldozers, graders and similar equipment),~~ shall be equipped and operated in the following manner:

(a) Vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Mr. Bradley Closson, CRAFT Forensic Services, by e-mail transmission to the Standards Board dated October 1, 2007.

Comment:

Mr. Closson stated the proposal does not exclude industrial vehicles operated on jobsites which are addressed in Article 25 [of the General Industry Safety Orders (GISO)]. Mr. Closson stated Article 25 vehicles are not equipped with an emergency brake.

Response:

The Board proposes to modify the proposal by adding a definition of “Jobsite vehicle,” thereby clarifying the vehicles which are and are not subject to the requirements of Article 11.

The Board thanks Mr. Closson for his comment and participation in the Board’s rulemaking process.

Mr. Gerald R. Fulghum, CSP, by letter dated November 9, 2007.

Comment:

Mr. Fulghum stated that there may be unintended consequences that might have the effect of reducing the level of safety that result from the separation of the jobsite vehicle requirements in Articles 10 and 11. Mr. Fulghum identified Section 1597 subsection requirements pertaining to braking systems and brake lights, windshields, transporting tools and materials, transporting employees, use of seatbelts, and providing plates or covers of sufficient strength to support the weight of jobsite vehicles that travel over conduits, trenches and the like. Mr. Fulghum also described issues that would be collaterally impacted by the proposal which included general requirements for haulage vehicles that would be lost for jobsite vehicles, and indicated a number of other requirements in Article 10 that have applicability to Article 11 vehicles that would be lost. Mr. Fulghum concluded by stating that if it was the intention of the Board to apply the requirements of Article 10 to Article 11 jobsite vehicles then he does not see a problem. However, according to his understanding of the proposal, Article 10 vehicles would no longer be subject to the requirements of Article 11, which he opposes.

Response:

The Board agrees with Mr. Fulghum and proposes to modify the proposal to clarify that Article 10 vehicles are subject to the requirements of Article 11 in a new Section 1504 definition for jobsite vehicles and include a cross reference to Section 1504 in Section 1597. The Board believes the proposed modifications will eliminate any employer confusion over the applicability of Article 10, Section 1597 requirements to Article 11 vehicles.

The Board thanks Mr. Fulghum for his comments and participation in the Board's rulemaking process.

Ms. Teresa A. Harrison, Acting Regional Administrator, Region IX, by letter dated November 8, 2007.

Comment:

Ms. Harrison stated that the proposal does not provide protection that is at least as effective as the comparable federal standard in 29 CFR 1926.601, Motor Vehicles because it removes all haulage vehicles from the requirements addressed by the aforementioned federal standard that concerns: brakes, lighting, windshields, cab shields/canopies, seat belts, dump truck latches and supports, fenders, and pre-shift haulage vehicle checks.

Response:

The Board proposes to modify the proposal to clarify that haulage and earthmoving vehicles are not only subject to the provisions of Article 10 (which actually address more issues than the comparable federal standard), but also the requirements of Article 11, Section 1597. It is the Board's opinion that the modification will render the state standards at least as effective as the comparable federal standard.

The Board thanks Ms. Harrison for her comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the November 15, 2007, Public Hearing in Glendale, California.

Mr. Dan Ford, Safety Consultant.

Comment:

Mr. Ford read comments that were substantially similar to those expressed in Mr. Gerald R. Fulghum's comment letter to the Standards Board (see Mr. Gerald R. Fulghum's November 9, 2007, letter to the Board for specific details).

Response:

See the Standards Board's response to Mr. Gerald R. Fulghum's comment.

The Board thanks Mr. Ford for his comments and participation in the Board's rulemaking process.

Dr. Jonathan Frisch, Occupational Safety and Health Standards Board (Board) member, Mr. Bill Jackson, Board member, Mr. John MacLeod, Board Chairman.

Comments:

The aforementioned Board members posed questions to Board staff relating to: use of an advisory committee to develop the proposal, creation of a definition for jobsite vehicle as a possible remedy, whether the proposal adequately addressed the concern over employer confusion described by the Division in their Form 9 request and effectiveness of a 15-day Notice to reach resolution.

Response:

The Board recognizes that the issues raised by the public and Federal OSHA Region IX can be resolved through a specific definition for the term “jobsite vehicle” and a cross reference to that definition in Section 1597. The proposed definition would make it clear to the employer that jobsite vehicles consist of vehicles used exclusively on jobsites and haulage and earthmoving vehicles, thereby subjecting these vehicles to the requirements of Article 11. The proposed amendments would make it clear to the employer that haulage and earthmoving vehicles are subject not only to the requirements of Article 10, but to the requirements of Article 11 as well.

Mr. Jack Kastorff, Board member.

Comment:

Mr. Kastorff asked whether a standard transmission pick-up truck would be excluded from the proposal.

Response:

Neither the original proposal nor the proposed modified proposal excludes standard transmission pick-up trucks.

Dr. Jonathan Frisch, Board member.

Comment:

Dr. Frisch asked whether a vehicle licensed for operation on roads would be included in the proposal.

Response:

The proposal applies to vehicles that are used exclusively on jobsites where such vehicle would be exempt from the State of California Motor Vehicle Code requirements.