

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb

**FINAL STATEMENT OF REASONS****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**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following sufficiently related modifications that are the result of public comments and Board staff evaluation.

Staff has restored existing Section 1597 language in the first paragraph beginning with the words "*which are utilized on jobsites exclusively and are, therefore, excluded from the provisions of applicable traffic and vehicular codes*" which was inadvertently left out of the text of the proposal that was noticed for Public Hearing. There were no amendments to this language.

Section 1597. Jobsite Vehicles./Section 1504. Definitions.

Section 1597 consists of an opening "scope and application" statement followed by eleven subsections that address specific safety requirements.

The proposal was originally amended to add language in the scope and application statement to clarify that Section 1597 does not apply to jobsite vehicles covered by Article 10 of the Construction Safety Orders (CSO) which pertains to earthmoving and haulage vehicles.

Modifications are proposed to withdraw the proposed amendment and add a definition for Jobsite Vehicles in CSO Section 1504, Definitions, to clarify the scope and application of Section 1597 to apply to vehicles operated on construction jobsites and regulated by CSO Articles 10 and 11. By referencing the new definition of "Jobsite Vehicle" in the CSO definitions section, the proposal clarifies to the employer that haulage and earthmoving vehicles subject to the provisions of Article 10 are also subject to the provisions of Section 1597.

Summary and Response to Oral and Written 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.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on December 11, 2007.

Summary and Response to Written Comments:

Mr. Bradley Closson, CRAFT Forensic Services, by e-mail dated December 14, 2007

Mr. Closson stated that based on his conversations with Board staff, it is his understanding that the proposal is not intended to apply to vehicles such as powered industrial trucks which are regulated by vertical standards contained in the GISO. Mr. Closson was concerned that GISO, Article 25 high and low lift (B56) industrial trucks would be subject to the equipment requirements of Section 1597 of the CSO when used on a construction jobsite. Mr. Closson indicated that since the proposal does not specifically exclude Article 25 vehicles, they may be subject to enforcement action by the Division of Occupational Safety and Health for failing to meet Section 1597 equipment brake requirements.

Mr. Closson suggested that either the proposal or the rulemaking record (e.g., Final Statement of Reasons) provide clarification that GISO, Article 25 industrial trucks (B56 equipment) are excluded from the proposal.

Response:

Article 25 of the GISO applies to industrial trucks, tractors, haulage vehicles and earthmoving equipment. Haulage and earthmoving equipment was regulated in Article 25, however those standards were relocated to the CSO many years ago. Article 25 defines industrial tractor as a vehicle with multiple uses which include construction. However, Article 25 contains numerous vertical equipment requirements which include requirements that industrial trucks, including rough terrain forklift trucks and tractors, comply with vehicle-specific national consensus standards that address vehicle design, use, care and maintenance. B56 equipment is commonly used in general industry and the American Society of Mechanical Engineers (ASME) has developed standards that address how such vehicles are to be designed, built and equipped. GISO, Article 25 specifically addresses brakes and warning devices for industrial trucks and tractors in Section 3661. The Board notes that the proposed modification in Section 1597 to add a definition for “jobsite vehicle” pertains to vehicles regulated by Article 10, haulage and earthmoving equipment of the CSO and other vehicles used exclusively on the jobsite that are not subject to the motor vehicle code. The proposed definition of “jobsite vehicle” is not intended to include equipment regulated by Article 25 of the GISO.

The Board does not believe further modification to the proposal is necessary as a result of Mr. Closson’s comment. The Board thanks Mr. Closson for his comment and participation in the Board’s rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board 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 adopted action.