

**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 7, Article 116, Section 5291(b)
of the General Industry Safety Orders

Firing of Explosive Materials (Blasting Operations)**SUMMARY**

This proposal is based on an Occupational Safety and Health Appeals Board Decision After Reconsideration (DAR) in the Matter of J.F. Shea Construction, Inc., Docket No. 02-R5D3-801, dated November 2, 2007, regarding General Industry Safety Orders, Section 5291(b). Section 5291(b) prohibits firing blasts without a positive warning signal being given to workers and without definite assurance that all surplus explosives are in a safe place and that workers who could be injured by the blast are at a safe distance or under sufficient cover.

According to the DAR, the employer was cited by the Division of Occupational Safety and Health (Division) for alleged serious violation of Section 5291(b), in that seven employees were outside a tunnel and in the vicinity of its entrance when a blast was fired. The workers stated that they had not been warned by the employer of the impending blast, and as a result, they neither evacuated the blast area to a safe location nor found safe cover as required by the standard. The citation was dismissed by the Administrative Law Judge because the required warnings were in fact given by the employer, and Section 5291(b) does not require that they be recognized by affected workers. The failure of workers to receive an audible warning signal and recognize that a blast is about to occur could result in a serious injury or fatality.

This proposal would aid affected blast site employees in recognizing the warning by requiring that the warning signal be given by a device such as an air horn, whistle, siren or other device that produces a signal loud enough to be effective and by prohibiting the blast from being fired until the on-site blaster accounts for surplus explosives, security personnel are in place, and all workers that could be affected by the blast are out of danger. The language pertaining to the warning signal is industry language as contained in Chapter 13 of the 17th Edition of the Blasters Handbook, by the International Society of Explosives Engineers.

This proposed rulemaking action also contains non-substantive reformatting of subsection (b) for clarity. These non-substantive revisions are not all discussed in the Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and

strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 5291. Firing of Explosive Materials (Blasting Operations)

This section contains requirements pertaining to the firing of explosive materials. The requirements include, but are not limited to, use of a licensed blaster, warning signals prior to blasting, precautions against unauthorized blasting area entry, warning signal methods, use of the “All Clear” signal, and the use of warning signs.

Amendments are proposed to subsection (b) to require the warning signal be annunciated by a device that produces a signal loud enough to be heard in all areas of the site where workers could be affected by the blast workers prior to a blast and to prohibit blasts from being fired until the blaster-in-charge verifies that surplus explosives are at a safe location, that security personnel are in place, and that all personnel are either outside the blast area or under sufficient cover. Thus, the proposal would enhance the safety of employees who might be endangered by the blast.

DOCUMENTS RELIED UPON

1. Occupational Safety and Health Appeals Board, Decision After Reconsideration in the Matter of J.F. Shea Construction, Inc., Docket No. 02-R5D3-801, dated November 2, 2007.
2. Tentative Ruling, Division of Occupational Safety and Health v. Occupational Safety and Health Appeals Board, Sacramento County Superior Court Case No. 34-2007-00882187.
3. Blasters’ Handbook, 17th Edition, International Society of Explosives Engineers, Cleveland, Ohio. LLCN: 98-71702, Chapter 13, pages 150-151.

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.

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, 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.)

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 standards.

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.