

OCCUPATIONAL SAFETY
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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4,
Article 4, Section 1533(b) and Article 6, Section 1541(g)(3) of the Construction Safety Orders
and Subchapter 20, Article 1, Section 8403(a)(4) of the Tunnel Safety Orders.

Ventilation Inside Shafts, Culverts and Pipelines

SUMMARY

Tunnel Safety Orders (TSO) Section 8403(a)(4) states that the TSO apply to all shafts that exceed 20 feet in depth. This standard refers to the Construction Safety Orders for shafts 20 feet or less in depth and excavations unrelated to the TSO. TSO Section 8470 addresses internal combustion engines used underground and specifies ventilation requirements. The intent of this standard is to ensure that workers are provided with air that is safe and healthful to breathe. In its Memorandum to the Standards Board and Form 9-60 dated December 30, 2010, the Division of Occupational Safety and Health (Division) notes that the existing Construction Safety Orders (CSO) requirements for internal combustion engines are contained in Section 1533 but only apply to work inside buildings or enclosed structures. The CSO are silent with regard to ventilation for shafts 20 feet or less in depth and construction-related excavations. The Division requests the Board to amend CSO Sections 1533 and 1541 to address this issue. An amendment to Section 8403(a)(4) of the TSO is proposed to refer to Section 1533(b) of the CSO for tunnels and excavations unrelated to the TSO.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1533. Internal Combustion Engines.

Subsection (b)

Section 1533 describes methods of controlling dangerous gasses or fumes from internal combustion engine-driven equipment when operated inside buildings or enclosed structures. A new subsection (b) is proposed that applies to employees working in shafts, culverts and pipelines and requires an exhaust ventilation system to be provided to prevent employee exposures to internal combustion engine emissions through the use of exhaust ventilation or forced air ventilation or both. The amendment is necessary to ensure that when internal combustion engine-driven equipment is operated inside shafts, culverts or pipelines, ventilation

is provided at specific minimum airflow rates of fresh air to maintain concentrations below acceptable limits. These provisions are consistent with TSO Section 8470(c). An informative Note is proposed to tell the employer that the TSO applies to shafts greater than 20 feet in depth and excavations unrelated to the CSO.

Section 1541. General Requirements.

Subsection (g)(3)

Existing Section 1541 addresses general requirements regarding excavations. A new subsection (g)(3) is proposed requiring that ventilation as specified in Section 1530 and the proposed Section 1533(b) be provided when internal combustion engine-driven equipment is operated inside a shaft regulated under Section 1542. This amendment is necessary to ensure that ventilation is provided so that internal combustion engines used in enclosed spaces do not cause harmful exposures. An informative Note is proposed to tell the employer that the TSO applies to shafts greater than 20 feet in depth and excavations unrelated to the CSO.

Section 8403. Scope and Application.

Subsection (a)(4)

Section 8403 of the TSO establishes minimum safety standards for underground operations involving excavations, construction, alteration, repairing, renovating or demolishing. An amendment to existing subsection (a)(4) is proposed to add a reference to Section 1533 of the CSO for shafts 20 feet or less in depth and excavations unrelated to the TSO. This amendment is necessary to clarify to the employer that tunnels and excavations not covered by the TSO are addressed by Section 1533 as well as Article 6 of the CSO.

DOCUMENT RELIED UPON

1. Division of Occupational Safety and Health (Division) Memorandum to the Board and Form 9-60, dated December 30, 2010.

This document is 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.

DOCUMENTS INCORPORATED BY REFERENCE

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. The requirement is worded such that it would only become an issue for employers that elect to operate such equipment below ground and also allows options in meeting the ventilation criteria.

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 regulations do 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, these regulations do 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 regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do 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 regulations do 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 these regulations 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.