

**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 5306
of the General Industry Safety Orders

Electric Blasting in Proximity to Radio, Television or Radar Transmitters**SUMMARY**

This rulemaking is initiated by Board staff to update an outdated reference contained in a Note to Section 5306(a) which refers to the State of California, Department of Transportation, Manual of Traffic Controls for Construction and Maintenance Work Zones, published in 1996. The Note exists to inform employers where the electric blasting warning sign requirements for public roads and highways are located. Based on staff's discussions with representatives from the California Department of Transportation, Division of Traffic Operations and the Division of Occupational Safety and Health, it has been ascertained that the warning sign requirements of Section 5306(a) are intended to apply to privately owned and maintained roads or commercial establishments where electric blasting operations are conducted.

This proposal deletes the Note and amends Section 5306 to address electric blasting signage requirements for roads and highways that are subject to the requirements of the current California Manual on Uniform Traffic Control Devices for Streets and Highways (CA-MUTCD), Part 6, Temporary Traffic Control, published September 26, 2006, and those that are not (i.e., roads on private property). The CA-MUTCD addresses electric blasting signage requirements in Sections 6F.38 through 6F.41, which are proposed to be incorporated by reference. The CA-MUTCD is a public document available via the California Department of Transportation (CALTRANS) website or from any CALTRANS district office.

There is an editorial amendment proposed for clarity in Section 5306 title. The proposal also rearranges information currently contained in subsection (a), into subsection (b) as subsections (b)(1), (b)(2) and (b)(3) and places the requirements for signage for roads subject to the CA-MUTCD in subsection (a). The 1000 foot posting requirement currently contained in subsection (b) is relocated to new subsection (b)(1).

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 5306. Electric Blasting in Proximity with Radio Transmitters.

This section contains standards addressing the design and posting of signs intended to warn persons of electric blasting activity and the need to turn off radios and cell phones at least 1000 feet in advance of any electric blasting zone. This section also contains standards prohibiting electric blasting operations in proximity to any operating mobile or fixed radio, television or radar transmitter.

Subsection (a) is proposed for amendment to remove existing regulatory text and the Note, replacing them with a new requirement that pertains to roads subject to the CA-MUTCD blasting warning signs posting requirements contained in Sections 6F.38 through 6F.41 at Part 6, Temporary Traffic Control, which are incorporated by reference. The employer may download a copy of the requirements from the CALTRANS website or obtain a hard copy from any CALTRANS district office. Public roads have been subject to the CA-MUTCD warning sign requirements since 2006.

A new subsection (b) is proposed for roads not subject to the CA-MUTCD. It contains the requirements for warning signs contained in existing subsection (a) (in addition to be relocated to subsection (b), those requirements are broken down into three subsections (1) through (3), addressing location of the signs, type of signs, and the design and color of signs).

The proposal is necessary to provide needed clarification as to the signage requirements applicable to the roads subject to CA-MUTCD and the signage requirements for roads not subject to CA-MUTCD.

DOCUMENTS RELIED UPON

None.

DOCUMENT INCORPORATED BY REFERENCE

1. The California Manual on Uniform Traffic Control Devices for Streets and Highways, Part 6, Temporary Traffic Control, September 26, 2006, published by the California Department of Transportation (CA-MUTCD), Sections 6F.38 through 6F.41.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. A copy of 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.

**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 amendment 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(s) require(s) 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 amendment 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.