

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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



Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Sections 1598 and 1599 of the Construction Safety Orders

**Update of Reference to California Manual on Uniform Traffic Control Devices
for Streets and Highways (CA MUTCD)****SUMMARY**

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking proposal to update Title 8 to the latest version of the California Manual on Traffic Control Devices (CA MUTCD) for Streets and Highways, which is also referred to as the "Manual." The California Department of Transportation (Caltrans) publishes the Manual and adopted the CA MUTCD 2012 edition on January 13, 2012, to provide uniform standards and specifications for all official traffic control devices in California. The 2012 CA MUTCD supersedes the previously adopted January 21, 2010, edition. The revised CA MUTCD includes the Federal Highway Administration's (FHWA) 2009 MUTCD and includes all policies on traffic control devices issued by Caltrans since the January 21, 2010, edition of the Manual. Board staff notes, that the counterpart federal codes do not refer to the current FHWA MUTCD 2009 edition, but rather the 1988 edition, revision 3 version.

This rulemaking action proposes amending Sections 1598(a) and 1599(a) of the Construction Safety Orders to reflect the latest edition of the CA MUTCD which is therein incorporated by reference. The proposed amendment updates the Title 8 reference from the September 26, 2006, CA MUTCD to the January 13, 2012, edition currently utilized by Caltrans. Significant changes to the Manual directly related to this proposal include but are not limited to: specific training and documentation requirements for flaggers in flagging moving traffic, the use of automated flagger assistance devices, updating high-visibility safety apparel to the ANSI/ISEA 107-2004 edition, and adding the California Vehicle Code with the Uniform Vehicle Code as resources for compliance with regulatory devices. The total number of changes/revisions between the 2006 and 2012 editions are too numerous to mention here, but a comparison performed by Caltrans dated March 20, 2012 describes in detail the significant changes between the 2012 and the previous 2010 version released January 21, 2010 (refer to the documents relied upon section of the rulemaking file for specific details).

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from the existing 29 CFR regulations in that the counterpart federal regulations do not refer to the current FHWA’s MUTCD 2009 edition as utilized by Caltrans. This proposal updates an outdated (2006) reference to the CA MUTCD to the current 2012 version, which includes all the changes issued since the previous 2010 MUTCD edition. The proposed amendment provides consistency with current FHWA and Caltrans operating policies for traffic control devices.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).
- This proposal aligns Title 8 with the latest FHWA Caltrans requirements regarding traffic control devices. The amendment ensures that Title 8 is referencing the latest Manual corresponding with the existing FHWA standard to eliminate confusion or discrepancies between the manuals.

Section 1598. Traffic Control for Public Streets and Highways.

Subsection (a)

Existing subsection (a) requires conformance with the CA MUTCD where a hazard exists because of traffic or conditions at work sites that encroach upon public streets or highways. The proposal updates the reference to the Manual from the outdated September 26, 2006, version to the current January 13, 2012, edition. This amendment is necessary to provide consistency with the FHWA’s MUTCD 2009 edition and with Caltrans to ensure that users are accessing the latest information regarding traffic control devices in California.

Section 1599. Flaggers.

Subsection (a)

Existing Section 1599 requires a flagger or flaggers be used at construction sites where barricades and warning signs cannot control moving traffic. The proposal updates the reference to the CA MUTCD from the outdated September 26, 2006, version to the current January 13, 2012, edition for matters regarding the deployment of flaggers. The proposed amendment is necessary to align Title 8 with the current FHWA's MUTCD and the Caltrans manual for flagger control requirements.

DOCUMENTS RELIED UPON

1. California Manual on Uniform Traffic Control Devices for Streets and Highways, California Department of Transportation, adopted September 26, 2006.
2. List of Significant Changes in California MUTCD 2012, Comparison of California MUTCD issued on January 13, 2012 to the previous version released on January 21, 2010).

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.

DOCUMENTS INCORPORATED BY REFERENCE

1. California Manual on Uniform Traffic Control Devices, 2012 Edition, California Department of Transportation, adopted January 13, 2012.

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

Economic Impact Analysis

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 proposal updates the reference to the California MUTCD from the 2006 version to the current 2012 edition. This proposal amends Title 8, Sections 1598 and 1599 of the CSO to reflect the latest information of the CA MUTCD as published by Caltrans. The amendment aligns Title 8 with the FHWA's MUTCD 2009 edition and Caltrans policies on traffic control devices.

The MUTCD is a standard that is routinely updated by the Department of Transportation (DOT) and essentially codifies current industry practice. The 2012 edition was adopted by Caltrans in January of 2012 and reflects changes in the traffic control procedures prompted by similar changes promulgated by the federal DOT in 2009. The changes contained in the 2012 CA MUTCD are essentially procedural in nature and/or provide guidance as in the case of the updated flagger training requirements. Potentially affected parties, local governments, highway and utility contractors, and others, already apply the MUTCD updates despite delays in Title 8 adoption of current editions. The changes that are incorporated at each update of the Manual are primarily operational and administrative and do not lead to significant compliance costs. For instance, to limit financial impact on agencies and for fiscal responsibility reasons, the Manual allows existing inventory of non-compliant traffic control devices to be used until inventories are depleted.

Therefore, the adoption of the proposed amendment to this standard will not have any effect on the creation or elimination of California jobs nor result in the creation or elimination of existing businesses or affect the expansion of existing California businesses.

This regulatory proposal is intended to provide worker safety at places of employment in California.

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. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no adverse economic impact is anticipated because the amendments are policy or procedural in nature. Small businesses are not involved in changes or replacement costs to traffic control devices.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANAYLSIS

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

BENEFITS OF THE REGULATION

The proposal would provide businesses, small or large, updated information regarding hazards due to traffic or haulage conditions that encroach upon public streets or highways. The adoption of this proposal will ensure that the latest guidance for traffic control devices and flagger instructions is available when training employees. This regulatory proposal will render Title 8, CSO consistent with the CA MUTCD and the FHWA MUTCD. Therefore, creating a positive impact to public safety, and welfare 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.