

**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



**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **February 20, 2014**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **February 20, 2014**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **February 20, 2014**, at 10:00 a.m.
in the Auditorium of the State Resources Building
1416 9th Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

DAVE THOMAS, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **February 20, 2014**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Sections 1598 and 1599
 **[Update of Reference to California Manual on Uniform Traffic Control
Devices for Streets and Highways \(CA MUTCD\)](#)**

Descriptions of the proposed changes are as follows:

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Sections 1598 and 1599
 **[Update of Reference to California Manual on Uniform Traffic Control
Devices for Streets and Highways \(CA MUTCD\)](#)**

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

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). 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 will 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 aligns Title 8 with the FHWA's MUTCD and the Caltrans manual for flagger control requirements.

DOCUMENTS INCORPORATED BY REFERENCE

1. California Manual on Uniform Traffic Control Devices, 2012 Edition, dated 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.

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/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

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.

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 ANALYSIS/ASSESSMENT

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 STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than **February 14, 2014**. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on **February 20, 2014**, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

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DAVE THOMAS, Chairman