

DEPARTMENT OF TRANSPORTATION

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March 28, 2008

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APR 01 2008

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

California OSHA Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Subject: Petition to Amend the Construction Safety Orders
Section 1599 Flaggers
Section 1598 Traffic Control for Public Streets and Highways.

Dear Standards Board:

With this letter I am petitioning the Standards Board to modify the Construction Safety Orders Section 1599 Flaggers, to bring into compliance with Title 23 Code of Federal Regulations Part 634 – Worker Visibility, which becomes effective November 24, 2008.

The same reference would also be applicable to the Section 1598 Traffic Control for Public Streets and Highways.

Title 23 Code of Federal Regulations Part 634 – Worker Safety used the ANSI/ISEA 107-2004 publication entitled “American National Standard for High-Visibility Safety Apparel and Headwear” as the standard for worker visibility. Part 634 is effective on November 24, 2008. (See Attachments) The official reference to Part 634 is the following:

DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
23 CFR Part 634-Worker Visibility

23 CFR Part 634
[FHWA Docket No. FHWA–2005–23200]

RIN 2125–AF11
Worker Visibility

AGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Final rule.

This action would align our current CAL/OSHA regulations with Federal regulations and guidance. These changes will help ensure a higher degree of work zone safety and provide clear guidance in what garments are appropriate to provide a safe working environment.

California OSHA Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
03/28/2008
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I have attached suggested changes to the sections mentioned above in order to expedite these proposed changes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy M. Strahan', with a long horizontal flourish extending to the right.

TIMOTHY M. STRAHAN
NORTH REGION
CONSTRUCTION SAFETY COORDINATOR

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

PART 634—WORKER VISIBILITY

Sec.

634.1 Purpose.

634.2 Definitions.

634.3 Rule.

634.4 Compliance date.

AUTHORITY: 23 U.S.C. 101(a), 109(d), 114(a), 315, and 402(a); Sec. 1402 of Pub. L. 109-59; 23 CFR 1.32; and 49 CFR 1-48(b).

SOURCE: 71 FR 67800, Nov. 24, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 67800, Nov. 24, 2006, part 634 was added, effective Nov. 24, 2008.

§ 634.1 Purpose.

The purpose of the regulations in this part is to decrease the likelihood of worker fatalities or injuries caused by motor vehicles and construction vehicles and equipment while working within the right-of-way on Federal-aid highways.

§ 634.2 Definitions.

Close proximity means within the highway right-of-way on Federal-aid highways.

High-visibility safety apparel means personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage, and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear." This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 and is on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. It is available for inspection and copying at the Federal Highway Administration, 400 Seventh

Street, SW., Room 4232, Washington, DC, 20590, as provided in 49 CFR Part 7. This publication is available for purchase from the International Safety Equipment Association (ISEA) at 1901 N. Moore Street, Suite 808, Arlington, VA 22209, <http://www.safetyequipment.org>.

Workers means people on foot whose duties place them within the right-of-way of a Federal-aid highway, such as highway construction and maintenance forces, survey crews, utility crews, responders to incidents within the highway right-of-way, and law enforcement personnel when directing traffic, investigating crashes, and handling lane closures, obstructed roadways, and disasters within the right-of-way of a Federal-aid highway.

§ 634.3 Rule.

All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

§ 634.4 Compliance date.

States and other agencies shall comply with the provisions of this Part no later than November 24, 2008.

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

Sec.

635.101 Purpose.

635.102 Definitions.

635.103 Applicability.

635.104 Method of construction.

635.105 Supervising agency.

635.106 Use of publicly owned equipment.

635.107 Participation by disadvantaged business enterprises.

635.108 Health and safety.

635.109 Standardized changed condition clauses.

635.110 Licensing and qualification of contractors.

635.111 Tied bids.

635.112 Advertising for bids and proposals.

635.113 Bid opening and bid tabulations.

635.114 Award of contract and concurrence in award.

635.115 Agreement estimate.

635.116 Subcontracting and contractor responsibilities.

Subchapter 4. Construction Safety Orders

Article 11. Vehicles, Traffic Control, Flaggers, Barricades, and Warning Signs

§1599. Flaggers.

- (a) Flaggers shall be utilized at locations on a construction site where barricades and warning signs cannot control the moving traffic.
- (b) When flaggers are required, they shall be placed in relation to the equipment or operation so as to give effective warning.
- (c) Placement of warning signs shall be according to the California Manual on Uniform Traffic Control Devices for Streets and Highways, September 26, 2006, published by the State Department of Transportation, which is herein incorporated by reference and referred to as the "Manual."
- (d) Flaggers shall wear orange, strong yellow-green, or fluorescent versions of these colored warning garments such as vests, jackets, or shirts **and shall meet the requirements of the current ANSI/ISEA publication for High-Visibility Safety Apparel and headwear.** Rainwear, when worn, shall meet the same requirements. ~~be orange, strong yellow-green, or yellow.~~
- (e) During the hours of darkness, flaggers' stations shall be illuminated such that the flagger will be clearly visible to approaching traffic and flaggers shall be outfitted with reflectorized garments, **that meet the requirements of the requirements of the current ANSI/ISEA publication for High-Visibility Safety Apparel and headwear.** The retroreflective material shall be visible at a minimum distance of 1,000 feet. The retroreflective clothing, or the retroreflective material added to the clothing, shall have a minimum of one horizontal stripe around the torso. White outer garments with retroreflective material that meets the above requirements may be worn during hours of darkness in lieu of colored vests, jackets and/or shirts.
- (f) Flaggers shall be trained in the proper fundamentals of flagging moving traffic before being assigned as flaggers. Signaling directions used by flaggers shall conform to the "Manual". The training and instructions shall be based on the "Manual" and work site conditions and also include the following:
- (1) flagger equipment which must be used,
 - (2) layout of the work zone and flagging station,
 - (3) methods to signal traffic to stop, proceed or slow down,
 - (4) methods of one-way traffic control,
 - (5) trainee demonstration of proper flagging methodology and operations,
 - (6) emergency vehicles traveling through the work zone,
 - (7) handling emergency situations,
 - (8) methods of dealing with hostile drivers,
 - (9) flagging procedures when a single flagger is used (when applicable),
- Documentation of the training shall be maintained as required by Section 3203, Injury Illness and Prevention Program of the General Industry Safety Orders.

(g) Flaggers shall be trained by persons with the qualifications and experience necessary to effectively instruct the employee in the proper fundamentals of flagging moving traffic.

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.
HISTORY

1. Amendment filed 11-12-75; effective thirtieth day thereafter (Register 75, No. 46).
2. Amendment filed 9-6-83; effective thirtieth day thereafter (Register 83, No. 37).
3. Amendment of subsections (c)-(f) filed 11-30-92; operative 12-30-92 (Register 92, No. 49).
4. Amendment of subsections (c), (d) and (e) filed 2-19-97; operative 3-21-97 (Register 97, No. 8).
5. Amendment of subsection (f) and new subsections (f)(1)-(g) filed 8-26-99; operative 9-25-99 (Register 99, No. 35).
6. Amendment of subsection (c) filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).

Subchapter 4. Construction Safety Orders

Article 11. Vehicles, Traffic Control, Flaggers, Barricades, and Warning Signs

§1598. Traffic Control for Public Streets and Highways.

(a) Where a hazard exists to employees because of traffic or haulage conditions at work sites that encroach upon public streets or highways, a system of traffic controls in conformance with the "California Manual on Uniform Traffic Control Devices for Streets and Highways, September 26, 2006," which is herein incorporated by reference and referred to as the "Manual", published by the State Department of Transportation, shall be required so as to abate the hazard.

Note: Additional means of traffic control, such as continuous patrol, detours, barricades, or other techniques for the safety of employees may be employed.

(b) Specifications for the size and design of signs, lights, and devices used for traffic control shall be as described in the "Manual", pursuant to the provisions of California Vehicle Code Section 21400, which is incorporated by this reference.

(c) Employees (on foot) exposed to the hazard of vehicular traffic shall wear orange, strong yellow-green, or fluorescent versions of these colored warning garments such as vests, jackets, or shirts, **as recommended in the current ANSI/ISEA publication for High-Visibility Safety Apparel and headwear.**

During rainy weather, employees exposed to the hazard of vehicular traffic may wear orange, strong yellow-green, or yellow rainwear, **as recommended in the current ANSI/ISEA publication for High-Visibility Safety Apparel and headwear.**

(d) During hours of darkness, warning garments shall be retroreflective **and meet the current standard in ANSI/ISEA publication for High-Visibility Safety Apparel and headwear.** The retroreflective material shall be visible at a minimum of 1,000 feet. The retroreflective clothing, or the retroreflective material added to the clothing, shall have a minimum of one horizontal stripe around the torso. White outer garments with retroreflective material that meets the above requirements may be worn during hours of darkness in lieu of colored vests, jackets and/or shirts.

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.
HISTORY

1. Amendment of subsection (e) filed 5-21-75; effective thirtieth day thereafter (Register 75, No. 21).
2. Repealer and new section filed 11-12-75; effective thirtieth day thereafter (Register 75, No. 46).
3. Amendment filed 9-6-83; effective thirtieth day thereafter (Register 83, No. 37).
4. Amendment of section including new subsection (d) filed 11-30-92; operative 12-30-92 (Register 92, No. 49).
5. Amendment of subsections (a), (c) and (d) filed 2-19-97; operative 3-21-97 (Register 97, No. 8).
6. Amendment of subsections (a) and (b) filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).