

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PROPOSED MODIFICATION TO****CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 4, Article 11, Sections 1598 and 1599
of the Construction Safety Orders**

Update References for Traffic Control

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standards in which modifications are being considered as a result of public comments and/or Board staff consideration.

On March 16, 2006, the Standards Board held a Public Hearing to consider revisions to Title 8, Sections 1598 and 1599, of the Construction Safety Orders. The Standards Board received oral and written comments on the proposed revisions. The standards have been modified as a result of these comments and Board consideration.

A copy of the full text of the standards as originally proposed, and a copy of the pages with the modifications clearly indicated, are attached for your information. In addition, a summary of all comments regarding the original proposal and staff responses is included.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following documents:

State of California Business, Transportation and Housing Agency Department of Transportation, California Manual on Uniform Traffic Control Devices for Streets and Highways (FHWA's MUTCD 2003 Edition, as amended for use in California), September 26, 2006.

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 during normal business hours at the Standards Board Office located at the address listed below.

Any written comments on these modifications and/or documents incorporated by reference must be received by 5:00 p.m. on October 30, 2006, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The standards will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Executive Officer,
Keith Umemoto, at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: October 10, 2006

Keith Umemoto, Executive Officer

STANDARDS AS ORIGINALLY PROPOSED

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Attachment No. 1
Page 1 of 2

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend section 1598 as follows:

§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 U.S. Department of Transportation "Federal Highway Administration Manual of Uniform Traffic Controls Devices, Part 6, December 2000, for Construction and Maintenance Work Zones—1996" as amended by the MUTCD California Supplement, May 20, 2004, which is are herein incorporated by reference and referred to as the "Manual", available from the Federal Highway Administration website at www.mutcd.fhwa.dot.gov or the California Department of Transportation website at www.dot.ca.gov, ~~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. ~~Criteria for position, location and use of traffic control devices described in the "Manual" is not mandatory. It is furnished solely for the purpose of guidance and information.~~

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

~~NOTE: The "Manual" may be obtained at any Division office or from the Department of Transportation.~~

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Attachment No. 1
Page 2 of 2

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend section 1599 as follows:

§1599. Flaggers.

(c) Placement of warning signs shall be according to the U.S. Department of Transportation “Federal Highway Administration Manual of on Uniform Traffic Controls Devices, Part 6, December 2000 for Construction and Maintenance Work Zones—1996”, as amended by the MUTCD California Supplement, May 20, 2004, which are herein incorporated by reference and referred to as the “Manual,” available from the Federal Highway Administration website at www.mutcd.fhwa.dot.gov or the California Department of Transportation’s website at www.dot.ca.gov ~~published by the State Department of Transportation, which is herein incorporated by reference and referred to as the “Manual”.~~

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

PROPOSED MODIFICATIONS

**(Modifications are indicated by bold, underline wording
for new language and bold, double strikeout for deleted language.)**

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SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS

I. Written Comments

Mr. Christopher Lee, Acting Regional Administrator, Region IX, U.S. Department of Labor, Occupational Safety and Health Administration by letter dated March 6, 2006

Comment:

Mr. Lee stated that the proposed standard ensures employee protection consistent with the Federal Standard. Therefore, the standard is at least as effective as the Federal Standard.

Response:

The Board thanks Mr. Lee for his participation and support of the proposed standard.

II. Oral Comments

Oral comments received at the March 16, 2006, Public Hearing in San Diego, California.

Mr. Peter Kuchinsky, Senior Risk Manager, Association of California Water Agencies Joint Powers Authority

Comment:

Mr. Kuchinsky stated that the current Federal standard is the MUTCD 2003, in addition to the California Department of Transportation (CalTrans) supplement. He suggested that in the future the Board staff should include the statement "most current adopted revisions" rather specify a specific year of adoption or publication. Mr. Kuchinsky submitted excerpts from the Manual on Uniform Traffic Control Devices to the Board to be included in the public record.

Mr. Kuchinsky also stated that Section 1598(c) was not addressed. Mr. Kuchinsky stated that the federal MUTCD contains a reference to the American National Standards Institute (ANSI) which includes language pertaining to vests and stripes on vests. Mr. Kuchinsky stated that the Federal standard contains American National Standard Institute (ANSI) language concerning vests, reflective materials, and the number of stripes on the vests. The orange vests mentioned in Section 1598(c) are not permitted under the ANSI standard, particularly for nighttime activities. He also indicated that Section 1599(d) does not incorporate the ANSI standard regarding high visibility safety apparel.

Response:

Standards that are adopted by the Standards Board are required to be reviewed by the Office of Administrative Law (OAL) according to a number of criteria such as: necessity, non-duplication, and most importantly, clarity. OAL has determined that in order to satisfy the clarity criterion, complete identification of national consensus standards (NCS) is necessary. This means that the regulated public must be given the specific edition, year of publication, or version of the NCS in order to ensure compliance with the standard.

With regard to Mr. Kuchinsky's second comment on safety apparel, the Board staff proposes to modify the proposal to incorporate by reference the language of the CalTrans California MUTCD which includes supplementary California (CA) language. The CA MUTCD addresses high visibility safety apparel in Section 6E.02 and states that for day and nighttime activities flaggers shall wear safety apparel that conforms to the requirements of the International Safety Equipment Association, American National Standard for High-Visibility Apparel and labeled as meeting the ANSI 107-1999 standard performance for Class 2 risk exposures. This standard permits the use of the following colors: fluorescent orange-red or fluorescent yellow-green. The retro-reflective material shall be orange, yellow, white, silver, yellow-green or a fluorescent version of these colors. Section 1598(c) and 1599(d) standards only address the colors of safety apparel not their design (stripe configuration, number of stripes, etc.) and are not inconsistent with the colors set forth in the aforementioned ANSI standards. Also, the Board wishes to emphasize that the proposal incorporates by reference the CA MUTCD in its entirety which includes standards for flagger's garments that apply to day and nighttime activities. These standards specifically address colors and torso striping patterns for retro-reflective garments and do not conflict with the existing Section 1598(c) and 1599(d) standards for flagger safety apparel colors. The Board thanks Mr. Kuchinsky for his comment and participation in the Board's rulemaking process.

Dr. Robert Harrison, Former Occupational Safety and Health Standards Board member

Comment:

Dr. Harrison stated that he was concerned about publishing a website address in the proposal [subsection (a)], because websites change from time to time.

Response:

Since the Board staff now proposes to incorporate by reference the CA MUTCD rather than the Federal MUTCD and CA supplement, there is no need to reference a federal website address. The Board believes retaining the current reference to the California Department of Transportation is reasonable. Therefore, Board staff will modify the proposal accordingly.