

### **13-1405. Ordinary care; evidence.**

What is customarily done by those engaged in the supplier's business is evidence of ordinary care. However, what ought to be done is fixed by a standard of ordinary care, whether it is usually complied with or not.

Compliance with [industry [customs] [standards] [codes] [rules\_\_ [or] [governmental [rules] [standards] [codes\_\_ is evidence of ordinary care, but it is not conclusive.

#### **USE NOTES**

In a negligence action, this instruction should be given when the court has admitted evidence of compliance with industry practices or customs or with governmental rules or standards. UJI 13-1408, a comparable instruction applicable to an action in strict liability, should also be given where the plaintiff is proceeding on both theories of liability. This instruction is to be given following UJI 13-1404.

Where the plaintiff is proceeding on a negligence per se theory based on violation of a governmental requirement, UJI 13-1421 should be given. If that is the plaintiff's sole theory, this instruction should not be given because compliance with a custom or practice does not excuse violation of a governmental requirement. Where the plaintiff's claims are based both on violation of a governmental standard and on other grounds, UJIs 13-1405, 13-1408, and 13-1421 may all be given. In such a case the court may conclude that it would be beneficial to give a special instruction limiting the applicability of evidence that the defendant complied with industry practice to the claims not based on violation of the governmental standard.

[As amended, effective January 1, 1997.]