

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Website address www.dir.ca.gov/oshsb**NOTICE OF PROPOSED MODIFICATIONS TO****CALIFORNIA CODE OF REGULATIONS****TITLE 8, Division 1, Chapter 4, Subchapter 4, Article 11,
Sections 1598 and 1599 of the Construction Safety Orders****Use of High Visibility Apparel**

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 regulations in which further modifications are being considered as a result of public comments and/or Board staff evaluation.

On October 16, 2008, the Occupational Safety and Health Standards Board held a Public Hearing to consider revisions to Title 8, Division 1, Construction Safety Orders, Sections 1598 and 1599. The Standards Board received oral and written comments on the proposed modifications. The regulations have been modified as a result of these comments.

A copy of the full text of the regulations with the modifications clearly indicated is attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and 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 relied upon:

ADDITIONAL DOCUMENTS RELIED UPON

1. American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-2004, High Visibility Safety Apparel and Headwear, Sections 1 – 12, and Appendices A, B, and C.
2. Department of Transportation; Traffic Operations Policy Directive; No. 08-07, Date Issued November 21, 2008; Effective November 24, 2008; Pages 1 – 8.

These documents are available for review during normal business hours at the Standards Board's Office located at the address listed below.

Any written comments on these modifications must be received by 5:00 p.m. on **March 25, 2009** at the Occupational Safety and Health Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The regulations will be scheduled for adoption at a future Business Meeting of the Occupational Safety and Health Standards Board.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed action is open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California.

Inquires concerning the proposed modifications may be directed to the Executive Officer, Marley Hart at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Marley Hart, Executive Officer

Date: March 5, 2009

Modifications to the Original Proposal

(Regulatory language to be deleted is shown in bold and strike-out and new language is shown in bold and underscore.)

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 1598 to read:

§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 **in accordance with labeled as meeting** the requirements of the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-2004, High Visibility Safety Apparel and Headwear, Sections 1—12 and Appendices B and C, which are hereby incorporated by reference. During rainy weather, employees exposed to the hazard of vehicular traffic may wear orange, strong yellow green, or yellow rainwear.

(d) During hours of darkness, warning garments shall be retroreflective **in accordance with and labeled as meeting** the requirements of the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-2004, High Visibility Safety Apparel and Headwear, Sections 4—9.4.8 and Appendices A—C, which are hereby incorporated by reference. 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 but not during snow or fog conditions, in lieu of colored vests, jackets and/or shirts.

(e) The employer shall select the proper type (class) of high visibility safety apparel and headwear for a given occupational activity by consulting the apparel manufacturer, or ANSI/ISEA 107-2004, Appendix B or other appropriate source of such information.

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

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

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 1599 to read:

§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 **in accordance with labeled as meeting the requirements of the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-2004, High Visibility Safety Apparel and Headwear, Sections 1—12 and Appendices B and C, which are hereby incorporated by reference.** ~~Rainwear, when worn, shall 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 **in accordance with and labeled as meeting the requirements of the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-2004, High Visibility Safety Apparel and Headwear, Sections 4—9.4.8 and Appendices A—C, which are hereby incorporated by reference.** 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 but not during snow or fog conditions, in lieu of colored vests, jackets and/or shirts.

(f) The employer shall select the proper type (class) of high visibility safety apparel and headwear for a given occupational activity by consulting the apparel manufacturer, or ANSI/ISEA 107-2004, Appendix B or other appropriate source of such information.

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

Summary and Responses to Oral and Written Comments

SUMMARY AND RESPONSES TO ORAL AND WRITTEN COMMENTS

I. Written Comments

Mr. Ken Nishiyama Atha, Regional Administrator, Region IX, U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated September 19, 2008.

Comment:

Mr. Nishiyama Atha stated that Federal OSHA Region IX has determined that this proposal is at least as effective as the federal standard.

Response:

The Board acknowledges Mr. Nishiyama Atha's comment establishing the proposal as being at least as effective as the federal standards.

The Board thanks Mr. Nishiyama Atha for his comment and participation in the Board's rulemaking process.

Mr. Kevin White, Health and Safety Director, California Professional Firefighters (CPF), by letter dated October 15, 2008.

Comment:

Mr. White suggests the addition of language to the proposal so that the proposal addresses personal protective equipment (PPE) worn by firefighters.

Response:

This proposal was noticed by the Board as proposed amendments to Sections 1598 and 1599 of the CSO. Sections 1598 and 1599 do not apply to firefighters or to law enforcement or to emergency medical service (EMS) personnel; Sections 1598 and 1599 apply to highway construction workers and flaggers engaged in highway and other construction operations, in keeping with Section 1502, which specifies the applicability of the CSO and makes it clear that the CSO apply to construction activities and not firefighting, law enforcement or EMS.

Since the scope and application of the CSO do not include firefighting operations, it should be clear to Cal Fire that the standards contained in the CSO, unless the standards are specifically cross-referenced in the GISO, do not apply to fire fighting, law enforcement or EMS operations. The Board staff has not ascertained any GISO cross-references that would make such operations subject to the CSO provisions impacted by this proposal.

Consequently, no modification to this proposal as suggested by Mr. White is necessary.

The Board thanks Mr. White for his comment and participation in the Board's rulemaking process.

Mr. Bill Taylor, CSP, Safety Manager, City of Anaheim, by letter dated October 15, 2008.

Comments No. 1 and No. 2:

Mr. Taylor submitted two comments, numbered No. 1 and No. 2. In comment No. 1, Mr. Taylor states that he is concerned that the proposal does not adequately address safety hazards posed by fire, police or EMS personnel who are or may be required to work in streets and highways. In the case of law enforcement, the HVA vest requirements spelled out in the ANSI/ISEA 107-2004 standard could interfere with the officer's ability to reach for his weapon or allow a potential perpetrator to grab the vest. The public safety vest requirements in ANSI/ISEA 207-2006 allow for tear away vests that will not get caught on a police officer's gun belt and also improve visibility of police officers and other first responders. Therefore, Mr. Taylor stated he would like to see the ANSI/ISEA 207-2006 standard which is appropriate for law enforcement personnel be included in this proposal.

In comment No. 2, Mr. Taylor cites an April 2008 University of Michigan study entitled, "The Conspicuity of First-Responder Safety Garments" as supporting evidence to recommend that firefighters be permitted to comply with HVA that meets the requirements of the National Fire Protection Association (NFPA) 1971 standard and law enforcement should be allowed to use HVA that meets the requirements of the ANSI/ISEA 207-2006 standard. In fact, Mr. Taylor stated that all three standards should be recognized as equivalent to each other; ANSI/ISEA 107-2004, ANSI/ISEA 207-2006, and the NFPA 1971.

Responses to Comments No. 1 and No. 2:

See the Board's response to Mr. Kevin White's letter to the Board, dated October 15, 2008.

Therefore, the Board believes no modification to this proposal is necessary.

The Board thanks Mr. Taylor for his comments and participation in the Board's rulemaking process.

Mr. John C. Vocke, Attorney, Pacific Gas and Electric Company (PG& E), by letter dated October 16, 2008.

Comment No. 1:

Mr. Vocke, on behalf of PG&E, objects to the incorporation by reference of the ANSI/ISEA 107-2004 Guideline on Selection Use and Care of High-Visibility Safety Apparel into the CSO.

Mr. Vocke expressed concern that the regulated public has no recourse but to have to pay \$60 to obtain the referenced ANSI/ISEA standard contained in the proposed language to learn the terms of the standard because of the way the proposal is worded. This adds cost to the proposal on top of what costs the employer must incur to comply with the updated apparel requirements.

Response to Comment No. 1:

In response to Mr. Vocke's concern over the regulated public having to purchase a copy of the standard, the Board is sympathetic to the extent that Board staff is proposing modifications to the proposal that Board staff believes will mitigate this concern. Since HVA manufacturers have been designing and producing HVA in compliance with the ANSI/ISEA 107-2004 for a number of years, and the standard requires marking and labeling by the manufacturer be provided that specifies the class of the garment and that the apparel is compliant with the ANSI/ISEA 107-2004, the proposal is modified to delete the incorporation by reference and simply require the HVA to be labeled as meeting the requirements of the ANSI/ISEA 107-2004, which is the way it is produced by the manufacturer. It nonetheless remains important that employers not merely select a labeled garment, but that they select the appropriate garment for the job. Therefore, a new subsection (e) has been added to Section 1598 and a new subsection (f) has been added to Section 1599 to address the selection of the proper type of HVA in accordance with the guidance from the HVA manufacturer or Appendix B of ANSI/ISEA 107-2004 (which is not copyrighted), or from other reputable source of such information.

Comment No. 2:

Mr. Vocke stated that the ANSI/ISEA guideline contains permissive language which could cause problems between the employer and the Division of Occupational Safety and Health in the form of contested citations as well as potential additional variance applications. Mr. Vocke also notes that the ANSI/ISEA standard also contains non-mandatory appendices which are being proposed for incorporation by reference as enforceable regulations. Therefore, Mr. Vocke suggested remanding this issue to an advisory committee for consideration.

Response to Comment No. 2:

Please see the Board's response to Mr. Vocke's Comment No. 1. Even though ANSI/ISEA 107-2004 is no longer incorporated by reference, the ANSI/ISEA standard provides guidance in the form of Appendices to aid the employer/end user in performing one of the most critical functions for the ultimate safety of the employee, selection of the appropriate class of HVA in relation to the occupational scenario or use scenario, and Appendix B is still listed as an employer resource in Section 1598(e) and Section 1599(f).

The Board believes that the modifications discussed address Mr. Vocke's concerns and therefore, believes an advisory committee is not necessary.

The Board thanks Mr. Vocke for his comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral Comments Received at the October 16, 2008 Public Hearing in Oakland, California.

Mr. Dave Teter, Battalion Chief and Safety Officer, representing Cal Fire.

Comment:

Mr. Teter stated that employers involved in firefighting are required to comply with the provisions of the General Industry Safety Orders (GISO), not the Construction Safety Orders (CSO). Mr. Teter indicated that compliance with federal regulations under 23 CFR 634 requires firefighters involved in operations on federally regulated highways to wear high visibility apparel (HVA) which poses a problem for firefighters as such clothing lacks the fire retardant characteristics critical to effectively safeguard the firefighter. Mr. Teter indicated that the federal Department of Transportation granted law enforcement an exemption from wearing HVA under certain conditions. Mr. Teter also indicated that firefighters refer to standards by the National Fire Protection Association (NFPA) to determine what type of apparel firefighters will wear. The NFPA provides for apparel that is rated for the exposure. This comes into play in situations where firefighters are responding to incidents along public highways where they may be exposed to flame and heat. Cal Fire interprets this proposal as a requirement that firefighters responding to incidents along public highways must wear HVA that is inappropriate for protecting employees against the effects of heat and flame. Cal Fire is concerned about unfunded mandates to purchase and maintain HVA as result of this proposal.

Response:

The regulations found at 23 CFR 634 are not OSHA regulations and have no bearing on this proposal. Also, please see the Board's response to Mr. Kevin White's letter to the Board dated October 15, 2008.

Therefore, the Board believes no modification to this proposal is necessary.

The Board thanks Mr. Teter for his comments and participation in the Board's rulemaking process.

Dr. Jonathan Frisch, OSHSB Member and Mr. Mark Dolim, Personal Protective Equipment (PPE) Specialist, Belkin Curtis and Sons.

Comment:

Dr. Frisch expressed concern that HVA might be used by employees in other industries, such as electrical work, and that if there are no fire resistant standards for HVA, such apparel might be worn by employees who may be exposed to a fire and a situation may be created where it is not possible for the employer to comply.

Mr. Dolim responded by stating that there is fire resistant acrylic material that can be used in an HVA vest but it is hardly what one would consider suitable for firefighters. He also stated that electrical workers wear jumpsuits that protect them from being burned. He also stated that whichever vest they use will “shrink wrap” around their clothing when exposed to high temperatures, so there will be conflicting issues.

Response:

This proposal pertains to construction operations regulated by the CSO and does not address PPE for electrical workers which are addressed in Title 8, Electrical Safety Orders (ESO). The ESO address PPE for low-and high-voltage applications and require that equipment be approved as defined in those orders for their intended use. The Board states that this subject is outside the scope of this proposal which pertains to the proposed amendments to CSO, Sections 1599 and 1598.

Therefore, the Board believes no modification to this proposal is necessary.

The Board thanks Mr. Dolim for his comments and participation in the Board’s rulemaking process.

Mr. Nathan Trauernicht, California Fire Chiefs Association.

Comment:

Mr. Trauernicht confirmed that there are HVA vests that are designed to be fire resistant and that they would meet the needs of firefighters. He suggested modifying the proposal to exempt fire service personnel during active firefighting efforts and/or those incidents creating a highly flammable atmosphere on a federal right of way and to allow the use of NFPA compliant PPE during such situations. Mr. Trauernicht believes this exemption provides for enhanced firefighter visibility when operating outside of the exemption while reducing the risk to firefighters while they are actively suppressing fires.

Response:

See the Board's response to Mr. Kevin White's letter to the Board, dated October 15, 2008.

Therefore, the Board believes no modification to this proposal is necessary.

The Board thanks Mr. Trauernicht for his comment and participation in the Board's rulemaking process.

Mr. Rick Griggs, Cal Fire.

Comment:

Mr. Griggs stated that federal standards in 23 CFR 634.2 and 634.3 define people on foot whose duties place them within a right of way of a federal aid highway and this definition includes responders to incidents and law enforcement personnel; therein, lies the concern that California will apply Sections 1598 and 1599 to such personnel, including fire fighters. Mr. Griggs noted that most fire departments already have a traffic incident management policy that addresses hazard mitigations.

Response:

This federal definition is not a Title 8 definition. Title 8 defines the applicability of a given safety order via the scope and application of the particular safety order, and the Board has determined that CSO, Sections 1598 and 1599 do not share the federal definition and do not apply to the employers involved in firefighting, law enforcement or EMS services. Therefore, no modification of this proposal is necessary.

The Board thanks Mr. Griggs for his comment and participation in the Board's rulemaking process.

Mr. Kevin White, Health and Safety Director for California Professional Firefighters and Mr. John MacLeod, OSHSB Chairman.

Comment:

Mr. White commented on language in the proposal that states "where a hazard exists to employees because of traffic or haulage conditions of worksites encroaching upon public highways", specifically, the meaning of the word "employees" which unless defined as referring only to construction employees would create concern that Sections 1598 and 1599 would apply to firefighters. He suggested a new subsection (e) that states "firefighters engaged in emergency operations where they are directly exposed to flame, fire, and/or hazardous materials shall wear appropriate personal protective equipment as specified in the standards of the National Fire

Protection Association and when they are engaged in all other operations, safety apparel as described in this section shall be worn by fire and emergency medical services personnel.” Therefore, Mr. White contends that by putting the exemption in this standard, it removes any doubt about the intent of the proposal.

Chairman Macleod responded by asking Mr. White whether any fire personnel had ever been subjected to enforcement action by the Division over failing to comply with construction industry standards. Mr. White responded that he was not aware of any such incidents.

Response:

The term “employees” as used in the context of the language of Sections 1598 and 1599 of the CSO refers to construction industry employees and the Board contends this is well understood and sufficiently clear. Therefore, the Board believes no modification of this proposal as suggested by Mr. White is necessary.

In response to Chairman MacLeod’s question, the Board stands by its earlier statement that CSO, Sections 1598 and 1599 do not apply to firefighters.

The Board thanks Mr. White for his comment and participation in the Board’s rulemaking process.

Captain Antonio Duran, Safety Officer, Los Angeles County Fire Department; Chairman John MacLeod, OSHSB; Dr. Jonathan Frisch, OSHSB Member; Mr. Jack Kastorff, OSHSB Member; and Mr. Larry McCune, Division of Occupational Safety and Health.

Comment:

Captain Duran stated that his employer had been cited by the Division for violation of fall protection standards specified in the CSO as a result of an accident that occurred during firefighting operations which during a training exercise, an employee suffered a fall in which he was injured. He expressed agreement with Mr. White’s proposed exemption.

Chairman MacLeod asked whether the GISO includes fall protection standards for firefighters and Captain Duran responded that the GISO does address fall protection for firefighters. Captain Duran commented that the CSO fall protection standards are inappropriate for firefighting. Chairman MacLeod asked whether this citation was appealed and Captain Duran responded that it was and it was dismissed.

Mr. Kastorff asked whether it was the Division’s position that firefighting is covered under the CSO. Dr. Frisch expressed concern about portions of the CSO that might apply to employees outside of construction as it appears the Division may have held firefighters to the CSO

standards. He also wondered whether this HVA proposal could be problematic for employees involved in firefighting.

Mr. McCune responded that there are some overlaps between the CSO and the GISO. The comment regarding fall protection in the GISO refers to certain sections of the CSO. Mr. McCune noted that as far as protective clothing for firefighters, these standards are covered under Article 10 of the GISO; protection of utility workers performing high-voltage electrical work is covered under the High-Voltage Electrical Safety Orders. If electrical workers are performing construction work on the highway, such as setting poles or building lines, the CSO for worker protection would apply.

Response:

The Board states that firefighters are subject to the fall protection standards contained in the GISO which address the use of various fall protection methods and internally reference the reader to the fall protection standards of the CSO. The Board notes the citation that was issued to firefighters under the CSO, as mentioned previously, was dismissed by the Occupational Safety and Health Appeals Board. Therefore, the Board maintains that, absent a specific cross-reference to the CSO or some other provision of the law making a CSO standard applicable to an employer covered by the GISO, the CSO standard does not apply to the GISO-covered employer. The Board continues to assert that the CSO, HVA proposal does not apply to firefighting operations. Therefore, the Board believes no modification of this proposal is necessary.

The Board thanks Captain Duran for his comment and participation in the Board's rulemaking process.

Mr. Bill Turner, Safety Manager, City of Anaheim.

Comment:

Mr. Turner stated that it appears to him that this proposal could be applied to firefighters because the federal DOT standard, mentioned earlier, mentions first responders. Therefore, Mr. Turner asked that firefighters and police be excluded from the proposal.

Response:

See the Board's response to Captain Antonio Duran, Safety Officer, Los Angeles County Fire Department's comment.

Therefore, the Board believes no modification of this proposal is necessary.

The Board thanks Mr. Turner for his comment and participation in the Board's rulemaking process.

Mr. Bill Jackson, OSHSB Member:

Comment:

Mr. Jackson noted that although the Board has adopted standards which incorporate ANSI standards by reference in the past, only specific portions of a referenced consensus standard that applies to the regulation are incorporated by reference.

Response:

The Board responds that Mr. Jackson is correct.

Mr. Willie Washington, OSHSB Member and Larry McCune, Division.

Comment:

Mr. Washington asked the Division which safety orders would apply to flaggers who are performing other duties such as monitoring or directing traffic during an event.

Mr. McCune responded that such situations are not covered by any Title 8 safety order. He stated he would support an exemption statement to be included in Sections 1598 and 1599 to exclude firefighters.

Response:

The Board recognizes that Sections 1598 and 1599 do not apply to any other employer or to employees conducting any operations other than traffic control for construction operations. Therefore, an exception statement is unnecessary, as it is clear to whom the proposal applies. As previously stated, Sections 1598 and 1599 are contained in the CSO and apply to construction industry traffic control and do not apply to fire fighters, emergency medical services, or law enforcement.

Dr. Jonathan Frisch, OSHSB Member and Mr. Bill Jackson, OSHSB Member.

Comment:

Dr. Frisch asked Board staff whether the Manual of Uniform Traffic Control Devices (MUTCD) contains a reference to the proposed HVA standards, or does the MUTCD actually spells them out?

Board staff indicated that the MUTCD contains a reference to the ANSI/ISEA standard just as this proposal does.

Dr. Frisch indicated that he had not read the ANSI/ISEA standard referenced in this proposal and stated he would, therefore, want to see it before voting on the standard at adoption.

Mr. Jackson expressed concern about adopting the referenced ANSI/ISEA standard since this standard addresses issues not covered by the present standard such as headwear, and creates new requirements for HVA during darkness and HVA color schemes. He also indicated that the standard incorporated by reference is lengthy and provides little guidance to the employer as to what HVA is to be worn. Mr. Jackson also stated that for an employer to be able to determine what the HVA selection criteria are, one would have to buy the standard since it is copyrighted and creates legal issues when copies are made and distributed free of charge. He further noted that normally proposals contain specific portions of national consensus standards that are germane to the Title 8 standard.

Response:

The Board staff, in recognition of these concerns expressed by the Board, has modified this proposal as stated earlier to require that HVA labeled as meeting the referenced ANSI/ISEA standard be used and has modified the proposal in both Sections 1598 and 1599 to specifically require the employer to determine and select the proper type of HVA in accordance with either Appendix B of the ANSI/ISEA 107-2004 standard, consulting the HVA manufacturer, or referring to other reputable source of HVA selection information. This proposal will reduce the level of the risk of vehicular contact which has resulted in construction traffic control worker fatalities by ensuring that employees wear HVA that will be effective in providing the necessary visibility according to the traffic control conditions they face.

Mr. Jack Kastorff, OSHSB Member.

Comment:

Mr. Kastorff noted this proposal would eliminate the existing HVA color requirements. It is his understanding that a majority of construction workers wear orange tee-shirts and he asked if the proposal would prohibit orange tee-shirts from being worn.

Response:

The ANSI/ISEA standard describes examples of a portion of the many types of garments that can be worn as compliant with the standard and it does not specifically prohibit the wearing of orange tee shirts. In fact, fluorescent orange is not prohibited. The standard only requires that such garments be reflectorized when worn during night-time activities in accordance with the updated ANSI/ISEA retro-reflectivity standards. The ANSI/ISEA standard referenced in the

proposal addresses the types of HVA, colors, durability, material resistance, patterns or configurations of reflective stripes and contrast.

Mr. Steven Rank, OSHSB Member.

Comment:

Mr. Rank stated that in his opinion it is more important for first responders to provide effective first response and not have to worry about donning HVA prior to rendering aid to victims.

Response:

The Board recognizes that the proposal does not apply to emergency medical personnel but to construction industry workers involved in traffic control around construction jobsites where the hazards of vehicular traffic are present.

Chairman John MacLeod, OSHSB.

Comment:

Chairman MacLeod stated that most of the firefighter's concerns relate to the federal U.S. Department of Transportation (DOT) standard, and not the proposed amendments to Title 8. Chairman MacLeod wondered if the proposal would in anyway conflict with the federal standard.

Response:

The amendments to the federal U.S. DOT standard referenced by stakeholders during the public hearing have not been adopted by federal OSHA. Federal OSHA may eventually amend its current traffic control standards and adopt the amended U.S. Department of Transportation MUTCD; however, there is no indication when this will occur. It is not possible to say with certainty whether there will be any conflict with future federal OSHA standards; therefore, Board staff will evaluate the federal final rule after it is promulgated and make a determination.

This proposal is consistent with an update to the California MUTCD which reference the same ANSI/ISEA standard referenced in this proposal. The updated California MCTCD was adopted by the California Department of Transportation in November 2008. Unlike the Federal DOT standard, the California MUTCD update does not apply to firefighters, law enforcement or EMS personnel. Should there be any discrepancy between state and federal standards over the issue of firefighters, law enforcement or EMS personnel and HVA, it is expected that Board staff will compare the standards and propose necessary amendments for presentation to the Board at a future public hearing to ensure that Title 8 standards are at least as effective as the federal standard per California Labor Code, Section 142.3(a)(2).

