

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**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 **October 16, 2008**, at 10:00 a.m.
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, 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 **October 16, 2008**, following the Public Meeting,
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, 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 **October 16, 2008**, following the Public Hearing,
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, 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**

JOHN D. MACLEOD, 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 and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **October 16, 2008**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 11
Sections 1598 and 1599
Use of High Visibility Apparel

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 7
Section 3328
Machinery and Equipment—Definition of “Equipment”

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 11
Sections 1598 and 1599
Use of High Visibility Apparel

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking is the result of the Occupational Safety and Health Standards Board (Board) staff's evaluation of Section 1598 pertaining to traffic control for public streets and highways and Section 1599 pertaining to flaggers. These standards incorporate by reference traffic control requirements contained in the September 26, 2006, California Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways published by the California Department of Transportation (CalTrans) and hereinafter referred to as the "Manual". The Manual contains requirements that address high visibility apparel (HVA) and references the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-1999 standard on HVA which was revised in 2004.

Sections 1598 and 1599 contain general specifications for high visibility apparel color, but do not reference the comprehensive ANSI/ISEA 107 HVA requirements contained in the Manual. Sections 1598 and 1599 are silent with regard to the design, testing, labeling, selection, use, care, and construction of high visibility apparel which is discussed extensively in the ANSI/ISEA 107 standard. The proposal is put forward for a number of reasons: (1) the proposal will update the Title 8 standard to conform with equivalent portions of the current national consensus standard, ANSI/ISEA 107-2004, and thereby enhance safety, (2) the Federal Highway Administration has published a Final Rule, effective November 28, 2008, and this Final Rule references ANSI/ISEA 107-2004, and (3) CalTrans anticipates that the Manual will be amended to reference the ANSI/ISEA 107-2004. In fact, this proposal is consistent with a request received from CalTrans personnel in March of this year asking that the Title 8 provision be amended in essentially the same manner as set forth in this proposal. The proposal would ensure workers on California's public roads and highways are provided with and wear HVA that maximizes their visibility at work and reduces the possibility of being struck by a vehicle.

This proposal also addresses the wearing of white outer garments during snow or fog conditions during hours of darkness.

Board staff has discussed the proposal with a representative from CalTrans, Traffic Operations Unit, who was involved in the development of the Manual and learned that CalTrans intends to update the Manual's reference to the ANSI/ISEA 107 standard to the 2004 edition in 2010 after the FHWA/USDOT revises the federal MUTCD in 2009. Board staff also learned that CalTrans has no objections to or concerns about the proposed amendments in this proposal.

Therefore, the following actions are proposed:

Section 1598. Traffic Control for Public Streets and Highways.

This Section addresses workers “struck-by” hazards posed by vehicular traffic or haulage conditions at worksites and addresses issues such as, but not limited to, utilization of traffic controls methods in accordance with the Manual and the use and design of high visibility apparel.

Amendments are proposed to subsection (c) to reference and incorporate by reference the ANSI/ISEA 107-2004, High Visibility Safety Apparel and Headwear standard thus requiring that all such garments be worn in accordance with this standard. Further amendments are proposed to delete unnecessary language relating to garment colors and rainwear which is redundant and/or inconsistent with the ANSI/ISEA 107-2004 standard.

The proposed amendments will clarify to the employer the standards that apply to high visibility safety attire, including rainwear, consistent with the ANSI/ISEA 107-2004 standard and high visibility safety apparel standards to be referenced in State and Federal transportation regulations.

Amendments are proposed for subsection (d) to require that retroreflective warning garments meet the requirements of the ANSI/ISEA 107-2004, High Visibility Safety Apparel and Headwear standard, which is to be incorporated by reference, and to prohibit the use of white outer garments with retroreflective material during hours of darkness in snow or fog conditions.

The proposed amendments will clarify to the employer the standards that apply to high visibility safety attire including retroreflective warning garments that are worn during hours of darkness, consistent with the ANSI/ISEA 107-2004 standard and standards to be contained in State and Federal transportation regulations. This proposal will ensure that employees are attired in such a way to maximize their visibility.

An amendment is proposed to subsection (d) to delete the requirement that retroreflective clothing or the retroreflective material added to the clothing must have a minimum of one horizontal stripe around the torso. This issue of retroreflective clothing and material contained in subsection (d) is outdated and is addressed in the ANSI/ISEA 107-2004 standard.

This proposal will clarify to the employer that standards/specifications for retroreflectivity are those contained in the ANSI/ISEA 107-2004 standard which maximizes workers’ visibility.

Section 1599. Flaggers.

This Section contains standards pertaining to the use of flaggers at construction job sites and addresses issues such as, but not limited to, use of flaggers when other means of traffic control cannot be used, placement of warning signs in accordance with the Manual, and the use of high visibility warning apparel for daytime and hours of darkness contained in subsections (d) and (e), respectively.

Amendments to subsections (d) and (e) are proposed to incorporate by reference the requirements of the ANSI/ISEA 107-2004 standard for high visibility safety apparel and headwear. Further amendments are proposed to delete unnecessary language relating to garment colors and rainwear in subsection (d) which is redundant and/or inconsistent with the ANSI/ISEA 107-2004 standard.

The proposal will clarify to the employer the standards that apply to high visibility safety apparel, including rainwear, consistent with the ANSI/ISEA 107-2004 standard and standards to be contained in State and Federal transportation regulations.

An amendment is proposed to subsection (e) to delete the requirement that retroreflective clothing or the retroreflective material added to the clothing must have a minimum of one horizontal stripe around the torso. This issue of retroreflective clothing and material contained in subsection (d) is outdated and is addressed in the ANSI/ISEA 107-2004 standard. This proposal will remove outdated language and be consistent with the ANSI/ISEA 107-2004 standard which maximizes workers' visibility.

Furthermore, an amendment is proposed in subsection (e) to prohibit the use of white outer garments during hours of darkness in snow or fog conditions. This proposal will ensure that employees are attired in such a way to maximize their visibility.

DOCUMENT INCORPORATED BY REFERENCE

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.

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. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107-2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107-2004 standard.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial 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. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107-2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107-2004 standard.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107-2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107-2004 standard.

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. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All state, local, and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107-2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107-2004 standard.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 7
Section 3328
Machinery and Equipment—Definition of “Equipment”

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking was initiated as a result of the Decision after Reconsideration (DAR) issued in Occupational Safety and Health Appeals Board (OSHAB) Docket No. 99-RID3-786, regarding an appeal initiated by the Herrick Corporation. In that decision, the OSHAB relied on a dictionary definition of the word “equipment” in deciding that a temporary shoring column constituted “equipment” as that term is used at California Code of Regulations, Title 8, Section 3328. This rulemaking is undertaken so that an appropriate definition of the term “equipment” will be stated in Section 3328. With the addition of such a definition to the safety order, neither regulators nor the regulated public will have to speculate as what dictionary definition should be used in determining the meaning of “equipment,” as that term is used in the standard. More significantly, neither regulators nor the regulated public will have to speculate as to the scope of the standard’s applicability, which is determined in large part by the definition of “equipment.”

Section 3328 contains various requirements regarding the design, use, operation, inspection, installation, modification, repair and maintenance of machinery and equipment. The standard does not define “equipment,” and no such definition applicable to Section 3328 is set forth in Title 8. This proposal adds a new subsection (i) to Section 3328. That subsection proposes a definition of “equipment” that is consistent with the definition relied on in the DAR. The proposal thereby clarifies the meaning of an important term used in Section 3328, and in doing so, the proposal clarifies the applicability of the safety order’s requirements.

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

The Board has made an initial 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.

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.”

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not

in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

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 October 10, 2008. 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 October 16, 2008, 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 Michael 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.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman