

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

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 ApparelSUMMARY

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.

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 are necessary to 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 are necessary to 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 is necessary to 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 is necessary to remove outdated provisions and 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 is necessary to 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 is necessary to 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 is necessary to ensure that employees are attired in such a way to maximize their visibility.

DOCUMENTS RELIED UPON

1. Petition request letter and attached Federal Highway Administration, US DOT Final Rule, Part 634, Worker Visibility, from Mr. Timothy M. Strahan, North Region, Construction Safety Coordinator, California Department of Transportation, dated March 28, 2008, and subsequent letter of withdrawal from Mr. Timothy M. Strahan to the Board, dated April 18, 2008.
2. ANSI/ISEA 107-1999, American National Standard for High Visibility Safety Apparel.

3. Federal Register, Wednesday, January 2, 2008, Part III, Department of Transportation, Federal Highway Administration, 23 CFR Parts 634 and 635, National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways; Revision; Proposed Rule, pages 268 – 334.
4. Federal Register, Friday, November 24, 2006, Rules and Regulations, 23 CFR Part 634, Worker Visibility, pages 67792 - 67800.
5. California MUTCD/ CalTrans Standards, September 26, 2006, Section 6D.03, Worker Safety Considerations, and Section 6E.02, High-Visibility Safety Apparel Standard.
6. 3M Scotchlite Reflective Material, ANSI/ISEA 107-2004 Made Easy: A Quick Reference to High-Visibility Safety Apparel.
7. E-mail transmission from Mr. Johnny Bhullar, CalTrans, dated April 16, 2008, to the Board regarding the FHWA Final Rule - High Visibility Safety Apparel is effective November 24, 2008 but not included in [CA] MUTCD yet.
8. California Department of Transportation, Safety Manual, July 1996, Chapter 12, Personal Protective Equipment (PPE), Personal Safety Devices and Safeguards, Chapter 12.20, Warning Garments: Vests, Jackets, Shirts, and Coveralls.

These documents 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.

DOCUMENTS 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.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

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 a 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 employers - state, local and private - 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.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.