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23 CFR 634: Use of High-Visibility Apparel When Working on Federal-Aid Highways

Summary: There are several outstanding issues concerning the new requirement for emergency responders to wear high-visibility clothing on federal-aid highways. Please read this summary for some additional information and links to download original documents.

Description:

Federal Government Begins Mandating High-Visibility Vests for Emergency Responders

On November 24, 2008, a new federal regulation ([23 CFR 634](#)) goes into effect mandating that anyone working in the right-of-way of a federal-aid highway must be wearing high-visibility clothing that meets the requirements of [ANSI / ISEA 107](#); 2004 edition class 2 or 3. This requirement will apply to all emergency responders.

The Code of Federal Regulations Title 23 (Highways) Part 634 was originally published in the [Federal Register Vol 71, No 226, pp 67792 - 67800](#). The Rule itself (634.3) simply states that:

"All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel."

Definitions (634.2) within Part 634 cover what is meant by "Workers" and "high-visibility safety apparel". Emergency responders are included in this definition anytime they are working "within the right-of-way of a Federal-aid highway" with some exceptions for law enforcement officers working on an incident involving criminal activity (see below).

"High-Visibility Safety Apparel" is defined to mean "personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage, and that meets the Performance Class 2 or 3 requirements of the [ANSI/ISEA 107-2004](#)".

[ANSI 207, Public Safety Vests](#)

After 23 CFR 634 was finalized, a new standard for Public Safety Vests was published as [ANSI / ISEA 207](#); 2006 edition. Because [ANSI 207](#) was not published until after 23 CFR 634 was finalized, the federal regulation could only reference [ANSI 107](#).

[ANSI 107](#) requires that class 2 garments (vests) have at least 775 square inches of high-visibility, fluorescent background material and at least 201 square inches of reflective material. While the [ANSI 207](#) requirement for reflective material is the same (201 in²), it requires only 450 square inches of background material. Therefore, [ANSI 207](#) vests do not meet the requirements of [ANSI 107](#) and therefore do not currently meet the requirements of 23 CFR 634.

The DOT Federal Highway Administration's Associate Administrator for Operations has written a letter to the Emergency Responder Safety Institute that is being circulated in discussions about this issue. ([Click here to download a copy of the letter.](#)) The letter acknowledges that they have reviewed [ANSI 207](#) and "found this standard compatible with the [ANSI/ISEA \[107\]](#) Class II requirements for night-time visibility." Those affected by 23 CFR 634 should understand that the high-visibility clothing must be worn day and night, so this statement by the FHWA does not officially validate the use of [ANSI 207](#) vests in place of [ANSI 107](#) where legally mandated.

Proposed Changes to the Rule

The DOT/FHWA has proposed a number of changes that will affect 23 CFR 634. Of the most immediate concern is

that they propose allowing ANSI 207 vests for emergency responders. This change cannot go into effect in time for the November 24 deadline and is not likely to go into effect until the 2nd or 3rd quarter of 2009. In a much more comprehensive change, the current proposals would incorporate 23 CFR 634 into the MUTCD (Manual on Uniform Traffic Control Devices). This would make high-visibility garments (under the proposal, either 107 or 207 certified) mandatory for anyone working on "all roads open to public travel in accordance with 23 CFR Part 655, not just Federal-aid highways."

The proposed changes concerning 23 CFR 634 can be read by downloading a pdf document of the [proposed changes for the MUTCD](#). The items already mentioned are:

- 362 (page 317) – incorporation into the MUTCD and extending high-visibility clothing mandate to all roads
- 375 & 376 (page 318) – allowing ANSI 207 vests for first responders and law enforcement personnel.

The proposed changes are open for public review and comment until July 31, 2008. If you would like to comment on proposed changes to the MUTCD you are encouraged to do so at www.regulations.gov. You can also mail your comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue, SE., Washington, DC 20590, or fax them to (202) 493-2251. Be sure to include the docket number no matter which method you chose for submitting comments.

The docket number for the MUTCD Notice of proposed Amendments (NPA) is FHWA-2007-28977.

Exceptions for Emergency Responders

Due to "comments from State and local police, national police organizations, and State DOTs" the original publication in the federal register includes exceptions for law enforcement officers working in potentially adversarial or confrontational roles. This includes traffic stops and searches. Officers are still required under 23 CFR 634 to wear high-visibility clothing during other times, such as "directing traffic, investigating crashes, and handling lane closures, obstructed roadways, and disasters within the right-of-way of a Federal-aid highway." (The language for this exception can be found in the 2nd column of page 67797 of the publication in the Federal Register Vol. 71, No 226 which can be downloaded using the link below)

Currently no such exception exists for firefighters. Some fire service personnel have expressed concern about the idea of adding a layer of potentially flammable material between their turnout gear and SCBA while battling car fires or during an extrication. Because those views were not expressed during the comment period of 23 CFR 634 no exceptions or interpretations for fire service operations were published along with the rule. Further, all fire department personnel should be aware that turnout gear alone does not meet the visibility requirement. No turnout gear currently manufactured meets the color requirement for the fluorescent background material of these high-visibility garments. Even if turnout gear could be dyed to meet the color standard when manufactured, it would no longer be compliant after the first exposure to fire, smoke, and soot. Fire departments should consider fire resistance of materials (and their limitations) as part of their criteria for selecting vests and writing department protocols and procedures.

NFPA 1901

Complicating the issue further, the National Fire Protection Association is set to release the 2009 edition of NFPA 1901: [Standard for Automotive Fire Apparatus](#). This edition (as written) will apply to all fire apparatus "contracted for on or after January 1, 2009" and will require "one traffic safety vest for each seating position, each vest to comply with ANSI/ISEA 207, Standard for High-Visibility Public Safety Vests, and have a five-point breakaway feature that includes two at the shoulders, two at the sides and one at the front." This requirement is included for each type of fire apparatus, for example see sections 5.8.3 (18), 6.7.3 (15), 7.7.3.1 (14), etc.

Although some vests can be purchased that are certified to meet the requirements of both ANSI 107 and 207, vests compliant only with ANSI 207 may not meet a strict legal interpretation of the 23 CFR 634 requirements scheduled to take effect in November. This is a potentially confusing liability issue that deserves close attention by all departments as the deadline approaches.

Summary

Part of the RKB mission is to try to keep our users informed of equipment-related issues, and we hope that this mission critical hint has accomplished that. The timing of 23 CFR 634 and ANSI / ISEA 207 was unfortunate, but the complications are being addressed by the MUTCD proposed changes. The difficulty and confusion will be in the short

term, between the effective date of 23 CFR 634 on November 24th and the time the proposed changes are implemented. Every source contacted by the [RKB](#) staff has made it clear that the eventual intent is for either the [ANSI 107](#) or [207](#) vests to be used. However, no one has been able to say with certainty what will happen if there is a serious injury or fatality to a responder wearing a 207-compliant vest while the unchanged 23 CFR 634 is in effect. That may be decided in court. Departments should consider getting an opinion from their counsel to assist in deciding their compliance strategy.

We hope that every department will plan now for this new requirement under 23 CFR 634, and also plan ahead with funding and training for the later changes that will likely extend the safety-vest requirements to all public roads.

Additional Information

- [23 CFR 634 can be downloaded here as a pdf](#)
- [Click here to read the original publication in the Federal Register](#)
- [Proposed rule revisions for incorporating 23 CFR 634 into the MUTCD](#)
- [Download the DOT letter concerning 23 CFR 634 and ANSI / ISEA 207 by clicking here](#)
- [Click here to download a draft copy of NFPA 1901; 2009 edition from the NFPA website](#)

Knowledge Links

Related AEL/SEL Item(s)

▶ [\[01ZA-06-VEST\] Vest or Outer Garment, High-visibility](#)

Related Publication(s)

▶ [High-Visibility vests for emergency responders - CVVFA, ERSI videos](#)

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