

**North Carolina Department of Labor
Division of Occupational Safety and Health**

Raleigh, North Carolina

Field Information System

Standards Notice 73

Subject: Requirements for High-visibility Apparel and enforcement of the Federal Highway Administration (FHWA) regulation, 23 CFR 634.

A. Discussion.

OSHNC has received inquiries with regards to enforcement of the new Federal Highway Administration (FHWA) regulation, 23 CFR 634, which was effective on November 24, 2008. This standard requires 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” which meets the Class 2 or Class 3 requirements of ANSI/ISEA 107- 2004.

Enforcement authority for this regulation rests with the U. S. Department of Transportation. OSHNC does not enforce 23 CFR 634. However, OSHNC does feel that exceptions for high visibility garments for law enforcement officers, fire fighters and other emergency responders make sense and will address these exceptions in this notice.

OSHNC has adopted by reference Part VI of the Manual on Universal Traffic Control Devices (1988 edition, Revision 3, or Millennium edition) as a part of 29 CFR 1926 Subpart G, *Signs, Signals and Barricades*. In relation to this standards notice, this only applies to construction activities where flaggers are signaling traffic.

OSHNC has not adopted any version of ANSI/ISEA 107 on high visibility garments; however, we recommend that employers use the most current version when determining what high visibility garments are appropriate for their employees.

Additionally, OSHNC has received inquires about the use of high visibility garments designed and labeled under an older version of the ANSI/ISEA 107 standard when a newer version of the ANSI/ISEA 107 standard changed the labeling requirement. Employers are concerned about replacing garments which still meet the visibility requirements for the class their employees need, but retain a different class label from the older version of the standard. As an example: In ANSI/ISEA 107 – 1999, a sleeveless garment, such as a vest, could be labeled Class 3. In the 2004 version of the standard, this vest by itself can only be used as a Class 3 garment if paired with pants or shorts. Additionally, it can only be labeled as a Class 2 garment.

B. Interpretation.

While OSHNC has not adopted ANSI/ISEA 107, OSHNC will use this standard or any other appropriate consensus standard as references when determining what high visibility garments are appropriate.

For high visibility garments labeled under older versions of the ANSI/ISEA 107 standard, OSHNC will not require employers to replace garments simply because the label which

was correct at the time of manufacture is no longer appropriate as long as the employer is using the garment for the proper class that their employee needs (either when Class 2 would be necessary or when properly paired with pants or shorts for Class 3).

For law enforcement officers, OSHNC will not require high visibility garments for enforcement activities such as arrests or traffic stops. OSHNC will require high visibility garments for directing traffic, investigating traffic accidents, or other like activities.

OSHNC will not require high visibility garments for firefighters or other emergency responders engaged in emergency operations that directly expose them to flame, fire, heat, and/or hazardous materials. In these circumstances they must wear retro-reflective turn-out gear that is specified and regulated by other organizations, such as the National Fire Protection Association. Firefighters or other emergency responders engaged in any other types of operations must wear high-visibility safety apparel.

C. **Action.**

For construction flaggers, OSHNC will cite 29 CFR 1926.201, *Signaling*, paragraph (a), *Flaggers*, when appropriate high visibility garments are not provided in accordance with Part VI of the Manual on Universal Traffic Control Devices, (1998 edition, Revision 3, or the Millennium edition). For other construction activities where high visibility garments are not provided, OSHNC will cite 29 CFR 1926.28(a), *Personal Protective Equipment*.

In general industry OSHNC will cite 29 CFR 1910.132(a), *Personal Protective Equipment*, when appropriate high visibility garments are not provided.

Additionally, when dealing with garments labeled under older versions of the ANSI/ISEA standard, OSHNC will base citations on how the garment is used, not only on the way the garment is labeled.

C. **Effective Date.**

This SN is effective on the date of signature. It will remain in effect until revised or canceled by the Director

Signed on Original

Ed Lewis
Safety Standards Officer

Signed on Original

Allen McNeely
Director

11/25/2008

Date of Signature