

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

Raleigh, North Carolina

Field Information System

Standards Notice 73A

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

A. Discussion.

The NCDOL OSH Division 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. The OSH Division does not enforce 23 CFR 634. However, the OSH Division does feel that exceptions for high visibility apparel for law enforcement officers, fire fighters and other emergency responders make sense and will address these exceptions in this notice.

The OSH Division 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.

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

Additionally, the OSH Division has received inquiries about the use of high visibility apparel designed and labeled under an older version of the ANSI/ISEA 107 standard when a newer version of the ANSI/ISEA 107 standard changed the labeling requirement.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 apparel which still meets 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, sleeveless apparel, 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 Class 2 apparel.

B. Interpretation.

While the OSH Division has not adopted ANSI/ISEA 107, the division will use this standard or any other appropriate consensus standard as references when determining what high visibility apparel is appropriate.

For high visibility apparel labeled under older versions of the ANSI/ISEA 107 standard, the OSH Division will not require employers to replace apparel simply because the label which was correct at the time of manufacture is no longer appropriate as long as the employer is using the apparel 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, the OSH Division will not require high visibility apparel for enforcement activities such as arrests or traffic stops. The OSH Division will require high visibility apparel for directing traffic, investigating traffic accidents, or other like activities.

The OSH Division will not require high visibility apparel 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, the OSH Division will cite 29 CFR 1926.201, *Signaling*, paragraph (a), *Flaggers*, when appropriate high visibility apparel is 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 apparel is not provided, the OSH Division will cite 13 NCAC 7F.0202.

Per CPL 02-01-050, for general industry, the OSH Division will use NCGS 95-129(1) as the primary citation and will cite 29 CFR 1910.132(a), *Personal Protective Equipment*, “in the alternative” when appropriate high visibility apparel is not provided.

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

C. **Effective Date.**

Standards Notice 73 is cancelled. This SN is effective on the date of signature. It will remain in effect until revised or canceled by the director

Signed on Original
Susan Haritos
Health Standards Officer

Signed on Original
Allen McNeely
Director

5/27/2011
Date of Signature