



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

MEMORANDUM

TO: EMS Agency Officials
FROM: Deron E. Wilkes
Chief of Operations
DATE: October 1, 2008
RE: **Worker Visibility**
23 CFR Part 634

A handwritten signature in blue ink that reads "Deron E. Wilkes".

A new Federal regulation will soon take effect that will impact the way each of us responds to emergencies occurring on many of the state's highways. **Effective, November 24, 2008, 23 CFR Part 634 becomes effective.** This Federal regulation addresses the subject of *Worker Visibility*. The rule requires all workers within the right-of-way of a Federal-aid highway to wear appropriate high-visibility safety apparel. The regulation defines workers as "*people on foot whose duties place them within the right-of-way of a Federal-aid highway,*" including "*responders to incidents within the highway right-of-way.*" Federal-aid highways are defined as all interstates, U.S. Routes, and some WV Routes within West Virginia. The purpose of this Federal regulation is to increase the safety of workers on the highways. Each year more than 100 workers are killed and in excess of 20,000 workers are injured while working in or along the roadway.

Reading the regulation and definitions leads to the question "What is "appropriate" high-visibility safety apparel"? When you review *American National Standards Institute* (ANSI) standard regarding high visibility safety apparel (ANSI 107-2004), it appears the appropriate class of garment is dependent upon several factors. Some of these factors include: 1) Does your primary job duty not allow you to focus solely on traffic? 2) What is the speed of traffic in your work zone (<25mph, 25-50mph, >50mph)? 3) Does your work occur at night or other times of limited visibility? 4) Does your work activities take place in or near to vehicle traffic? and other similar issues.

BUREAU FOR PUBLIC HEALTH
WV Trauma & Emergency Care System
Office of Emergency Medical Services
350 Capitol Street, Room 425
Charleston, West Virginia 25301-3716
www.wvoems.org

Worker Visibility and 23 CFR Part 634

Page Two

October 1, 2008

When you look at the nature of EMS and compare it to the factors outlined above you can see that our work seems to have the potential to fall into the worst of all worlds since patient care distracts us from traffic flow, we work on high-speed roadways, and we are often in the road after dark. Therefore, it appears we are required to wear the highest class of protection available or CLASS 3.

There has been some discussion concerning the ANSI 207-2006 "Public Safety Vest". These vests appear to fall in between Class 1 and Class 2 vests and do not meet the Class 3 standard. They are not mentioned in 23 CFR 634. Even the manufacturers are cautioning these vests do not replace 107-2004 Class 3 apparel and Class 3 apparel should continue to be utilized when deemed appropriate based on the factors discussed above. There has reportedly been consideration at the Federal Highway Administration about adding the "Public Safety Vest" standard as an acceptable substitute for Class 2 apparel to the next version of the regulation. But that will still not solve the issue of EMS's apparent need for Class 3 apparel.

While there has been limited discussion regarding Federal enforcement of this regulation, in other areas where similar state requirements have previously been in place there have been reports of workers compensation claims being denied as well as insurance claims and civil judgments being adjusted based on the status of an employee's high-visibility apparel. The state also stands to lose Federal highway funds if this standard is not followed.

With these facts in mind, the Office of EMS encourages your agency to review its own policies and procedures concerning the use of high-visibility safety apparel and make revisions as necessary to be in compliance with this regulation. The next version of the *WV Office of EMS Ambulance Equipment List*, currently planned for release in early 2009, will include the requirement that each ambulance be equipped with ANSI 107-2004 Class 3 safety apparel for each crew member.

Please feel free to contact me if you have any questions or if I can be of any assistance with this matter.

pc: Jerry Kyle
Joe Richards
WVOEMS staff
WV EMS TSN Program Staff