

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 634**

[FHWA Docket No. FHWA-2008-0157] RIN 2125-AF28

**Worker Visibility**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA adopts as final an Interim Final Rule that amends its regulations to address safety concerns raised by the firefighting community regarding high-visibility safety apparel.

The purpose of adopting the Interim Final Rule as final is to reflect the exemption of firefighters from the requirement to use high-visibility safety apparel, as defined in this rule, when they are exposed to hazardous conditions where the use of such apparel may increase the risk of injury to firefighter personnel.

**DATES:** *Effective Date:* June 15, 2009.

The interim rule became effective November 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mr. Hari Kalla, Office of Transportation Operations, (202) 366-5915. For legal information: Mr. Raymond Cuprill, Office of Chief Counsel, (202) 366-0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

This document, the Interim Final Rule, and all comments received may be viewed online through <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

**Background**

The FHWA published an Interim Final Rule on 23 CFR Part 634 on November 21, 2008, at 73 FR 70593. Interested persons were invited to submit comments to FHWA Docket No. FHWA-2008-0157. The Interim Final Rule revised existing regulations to address safety concerns raised by the firefighting community in order to provide an exemption for firefighters actively engaged in emergency operations where they are directly exposed to flame, fire, heat and/or hazardous materials. This rule has been in effect since November 24, 2008.

**Summary of Comments**

The FHWA received three comments to the docket from private individuals. The first commenter expressed his opinion that a statement contained in the background information of the Interim Rule created confusion and the false impression that a firefighter does not need to comply with the regulation if he is wearing an NFPA 1971 standard compliant garment. He recommended that this language be clarified to ensure the rule is interpreted correctly by all firefighters. The FHWA disagrees with this comment. The background information was included to justify the issuance of the Interim Final Rule due to safety concerns expressed by the firefighting community. However, the language in the Interim Final Rule is accurate and does not require modification.

The second commenter supported the concept of the Interim Final Rule, but also expressed concern about the confusion that has resulted from the existence of several standards for high visibility garments and how they are being referenced in this rulemaking as well as a separate rulemaking in Docket No. FHWA-2007-28977. This rulemaking proposes to revise the 2003 edition of the Manual on Uniform Traffic Control Devices. This comment does not require any response to this docket, but rather it will be considered in the analysis of comments to Docket No. FHWA-2007-28977.

The third commenter expressed the opinion that the Interim Final Rule should not have provided any exemptions for firefighters under any circumstances. In his opinion, the requirements contained in 23 CFR 634 should, in the interest of safety, apply to all firefighters all the time. Prior to the issuance of this Interim Final Rule, the FHWA was made aware of several competing safety issues that could develop under certain conditions with the high visibility garments that are currently available, such as having the background material either catch fire or melt when exposed directly to fire. The FHWA, therefore, did issue the exemption for firefighters and other emergency workers when they are working under the conditions specifically listed in the Interim Final Rule. This exemption should provide a balance of increasing the visibility of the workers under most conditions, but not create a condition that could endanger them with other hazards.

### **Conclusion**

For the reasons stated above, the FHWA adopts as final the Interim Final Rule published on November 21, 2008, at 73 FR 70593.

### **Rulemaking Analyses and Notices**

#### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order 12866 and is not significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. The final rule would not adversely affect, in a material way, any sector of the economy. In addition, the final rule would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) the FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small