

of authority to approve regulations in 19 CFR chapter I.

## List of Subjects

### 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

### 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

## Proposed Amendments to the Regulations

For the reasons stated in the preamble, parts 24 and 111 of the Customs and Border Protection Regulations (19 CFR parts 24 and 111) are proposed to be amended as follows:

## PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

\* \* \* \* \*

### § 24.22 [Amended]

2. Amend § 24.22 as follows:

a. In paragraph (b)(1)(i), the figure “\$397” is removed and, in its place, the figure “\$437” is added.

b. In paragraph (b)(2)(i), the figure “\$100” is removed and, in its place, the figure “\$110” is added.

c. In paragraph (c)(1), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

d. In paragraph (d)(1), the figure “\$7.50” is removed and, in its place, the figure “\$8.25” is added.

e. In paragraph (e)(1), the figure “\$25” is removed and, in its place, the figure “\$27.50” is added.

f. In paragraph (e)(2), the figure “\$25” is removed and, in its place, the figure “\$27.50” is added.

g. In paragraph (f), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

h. In paragraph (g)(1)(i), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

i. In paragraph (g)(1)(ii), the figure “\$1.75” is removed and, in its place, the figure “\$1.93” is added.

j. In the table under paragraph (g)(2), in both columns headed “Fee status for arrival from SL”, all the figures reading “\$1.75” are removed and, in their place,

the figure “\$1.93” is added; and, in the column headed “Fee status for arrival from other than SL”, all the figures reading “\$5” are removed and, in their place, the figure “\$5.50” is added.

k. In paragraph (g)(5)(v), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added; and, the figure “\$1.75” is removed and, in its place, the figure “\$1.93” is added.

l. In paragraph (i)(7), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

m. In paragraph (i)(8), the figure “\$1.75” is removed and, in its place, the figure “\$1.93” is added.

## PART 111—CUSTOMS BROKERS

3. The authority citation for part 111 continues to read in part as follows:

**Authority:** 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

\* \* \* \* \*

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

### § 111.19 [Amended]

4. Section 111.19 is amended in paragraph (c) by removing all the figures reading “\$125” and adding in their place the figure “\$138”.

### § 111.96 [Amended]

5. Section 111.96 is amended in paragraph (c) by removing all the figures reading “\$125” and adding in their place the figure “\$138”.

Approved: April 19, 2006.

**Deborah J. Spero,**

*Acting Commissioner, Customs and Border Protection.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 06-3867 Filed 4-21-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 634

[FHWA Docket No. FHWA-2005-23200]

**RIN 2125-AF11**

### Worker Visibility

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

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The FHWA proposes to require the use of high-visibility safety apparel for workers who are working within the Federal-aid highway rights-

of-way. This action would decrease the likelihood of fatalities or injuries to workers on foot who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction vehicles or equipment while working within the rights-of-ways of Federal-aid highways. This proposal is in response to section 1402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1227.

**DATES:** Comments must be received on or before June 23, 2006.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit> or fax comments to (202) 493-2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hari Kalla, Office of Transportation Operations, (202) 366-5915; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366-0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. 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

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. The DMS is available 24 hours each day, 365 days

each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

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

There has been an increase in the amount of maintenance and reconstruction of the Nation's highways that is being accomplished in stages while traffic continues to use a portion of the street or highway for the purposes of travel. This has resulted in an increase in the exposure of workers on foot to high-speed traffic and a corresponding increase in the risk of injury or death for highway workers. Consequently, the number of workers injured and killed in highway work zones by vehicles has increased in recent years.<sup>1</sup> In fact, each year, more than 100 workers are killed and over 20,000 are injured in the highway and street construction industry.<sup>2</sup>

Workers on foot within a work zone are also exposed to moving construction vehicles and equipment. According to the National Institute for Occupational Health, approximately half of the incidents where workers are struck by construction vehicles or equipment involve a vehicle or construction machine that is backing up.

High visibility is one of the most prominent needs for workers who must perform tasks near moving vehicles or equipment. The need to be seen by those who drive or operate vehicles or equipment is recognized as a critical issue for worker safety. Workers must devote their attention to completing their assigned tasks and may not completely focus on the hazardous surroundings where they are working. It is imperative that the approaching motorist or equipment operator be able to see and recognize the worker. The sooner a worker in or near the path of travel is seen, the more time the operator has to avoid an incident.

The FHWA recognized this fact and included language in the 2000 Edition of the Manual on Uniform Traffic Control Devices (MUTCD)<sup>3</sup> to address

<sup>1</sup> DHHS (NIOSH) Publication No. 2001-128; Building Safer Highway Work Zones: Measures to Prevent Worker Injuries from Vehicles and Equipment. It is available at the following URL: <http://www.cdc.gov/niosh/2001128.html>.

<sup>2</sup> Id.

<sup>3</sup> Manual on Uniform Traffic Control Devices (MUTCD) is recognized as the national standard for all traffic control devices installed on any street,

this issue. Item B in the third paragraph of section 6D.02 of the MUTCD states: "Worker Clothing—Workers close to the motor vehicle traveled way should wear bright, highly visible clothing." The word "close" was not defined. At that time, there was not a generally accepted definition or standard for high-visibility garment, so the acceptability of the clothing as well as the determination of when the garments were required was left up to the practitioner.

This text in the 2000 MUTCD led some agencies to adopt policies and specifications requiring workers to wear high-visibility vests or shirts on their highway projects. The American National Standards Institute (ANSI) also released ANSI 107-1999,<sup>4</sup> a standard for high visibility garments.

Therefore, the FHWA recognized the need for a more specific recommendation and included language to that effect in the 2003 Edition of the MUTCD. Item B in the third paragraph of section 6D.03 included the following recommendation: "Worker Safety Apparel—All workers exposed to the risks of moving roadway traffic or construction equipment should wear high-visibility safety apparel meeting the requirements of International Safety Equipment Association (ISEA) American National Standard for High-Visibility Safety Apparel, or equivalent revisions, and labeled as ANSI 107-1999 standard performance for Class 1, 2, or 3 risk exposure."

As a result of the text in the 2003 MUTCD, many agencies have revised their policies to require their employees to wear ANSI Class 2 safety apparel at all times and they are revising their specifications to require contractors' employees to wear compliant safety apparel also. For example, the State of Maryland now requires all employees working on the right-of-way on their highways to wear ANSI Class 2 high visibility garments.<sup>5</sup> The Illinois Department of Transportation also has implemented this requirement for all workers on highway projects through their contract specifications.<sup>6</sup>

highway, or bicycle trail open to public travel. It is available at <http://www.mutcd.fhwa.dot.gov>.

<sup>4</sup> ANSI 107-1999 is the nationally recognized standard for high-visibility garments developed in conjunction with the International Safety Equipment Association. Copies may be obtained at: <http://www.safetyequipment.org/hivisstd.htm>.

<sup>5</sup> Maryland's policy on the use of High visibility garments can be viewed at: <http://www.sha.state.md.us/businesswithsha/bizStdsSpecs/desManualStdPub/publicationsonline/ohd/spi2001/hddfb/020-hvsap.doc>.

<sup>6</sup> Illinois specifications can be viewed at: <http://dot.state.il.us/desenv/pdf/80130.pdf>.

Although the FHWA made the text more specific in the 2003 MUTCD, it was still a recommendation rather than a requirement and some agencies have, therefore, not incorporated the use of high-visibility safety apparel into their policies and contract documents.

## Legislation

Section 1402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59; August 10, 2005) directed the Secretary of Transportation to, within 1 year, issue regulations to decrease the likelihood of worker injury and maintain the free flow of vehicular traffic by requiring workers whose duties place them on or in close proximity to a Federal-aid highway to wear high-visibility apparel.

Therefore, the FHWA is proposing to add a new part to the Code of Federal Regulations (CFR) to implement this statutory requirement. The FHWA is proposing to add a new part to title 23 CFR that would require workers whose duties place them on or in close proximity to a Federal-aid highway to wear high-visibility safety apparel rather than propose to include such a requirement in the MUTCD. The FHWA is also considering whether to propose to include these requirements in the next edition of the MUTCD. Although the MUTCD is incorporated by reference at 23 CFR 655.601(a), it applies to all streets and highways open to the public which is much broader than the requirement in SAFETEA-LU which would apply only to workers whose duties place them on or in close proximity to Federal-aid highways.

## Section-by-Section Discussion of Proposed Rule

The FHWA proposes to add a new part 634 in 23 CFR that would require workers whose duties place them on or in close proximity to Federal-aid highways to use high-visibility safety apparel and would provide guidance on its application. Currently, 23 CFR 635.108—Health and Safety contains requirements for provisions to be included in contracts for projects on Federal-aid highways that mandate the contractor comply with all Federal, State and local laws governing the safety and health of workers. It also requires contractors to provide safety devices and protective equipment for workers. The FHWA considered amending part 635 to include the high-visibility garments requirements; however, this Part is limited to contract procedures for Federal-aid projects, and would be of applicability only during the project phase. As a result, the FHWA decided

to propose adding the requirements in a new part in 23 CFR, which would be applicable during the entire life of all Federal-aid highways. The FHWA's intent in proposing this rule is to improve the visibility of all workers on or in close proximity to Federal-aid highways in all circumstances including, but not limited to, Federal-aid construction projects, maintenance and utility work, and traffic incident management.

This proposed regulation would not preempt or limit the occupational safety and health jurisdiction of the Occupational Safety and Health Administration (OSHA) over the workers that would be covered by the proposed high-visibility garments requirements. The FHWA lacks direct enforcement or civil penalty authority to enforce the proposed requirements. Rather, pursuant to 23 CFR 1.36, compliance with this proposed regulation would be achieved by the withholding of payment to the State of Federal funds on account of Federal-aid highway projects, the withholding of approval of further Federal-aid projects in the State, and such other actions as the Federal Highway Administrator deems appropriate under the circumstances.

#### Section 634.1

This section explains that the FHWA is taking this action to decrease the likelihood of fatalities or injuries to workers on foot who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction vehicles or equipment while working within the rights-of-ways of Federal-aid highways. Section 634.1 also notes that this rulemaking would apply only to workers who are working within the rights-of-ways of Federal-aid highways.

#### Section 634.2

This section provides three definitions that are critical to the proper understanding of the rule.

The definition of "conspicuity" is provided because this word is used in the definition of high-visibility safety apparel. The goal of this rule would be to make the worker more conspicuous in the work area so that drivers and equipment operators will notice the worker during both daytime and nighttime conditions despite all of the other distractions that exist in a typical temporary traffic control zone.

The definition of "high-visibility safety apparel" is provided to relate this new rule to a specific and measurable standard. The American National Standards Institute (ANSI), in conjunction with the International

Safety Equipment Association (ISEA), developed ANSI 107-1999 standard for personal protective equipment conspicuity. ANSI 107-2004<sup>7</sup> has superseded the ANSI 107-1999 standard. The revisions in the ANSI 107-2004 standard include the incorporation of improvements to the fabric of the safety apparel, the inclusion of additional examples of garment designs, and further guidance on the selection of the proper class of garment for the field conditions. The ANSI 107-2004 standard has become recognized by the industry and the FHWA as the national standard and therefore the FHWA proposes to include this standard in 23 CFR part 634.

The definition of "workers" is provided to explain that part 634 would apply to all workers who are working within the rights-of-ways of Federal-aid highways who are exposed to traffic, both highway traffic and moving construction equipment, when they are not in the cab of a motorized vehicle. For the purposes of this part, the FHWA proposes that workers include, but are not limited to, the following: highway construction and maintenance forces, survey crews, utility crews, responders to incidents within the highway right-of-way, law enforcement personnel and any other personnel whose duties put them on or in the right-of-way of a Federal-aid highway.

The FHWA recognizes the multiple roles and responsibilities of law enforcement officers on the public right-of-way of Federal-aid highways. Law enforcement officers have responsibilities of incident response, work zone safety as well as law enforcement. The FHWA is seeking comments during this public comment period to fully assess the impact on safety and security of law enforcement officers should high visibility garments be required for use in all situations.

The text in section 1402 of SAFETEA-LU specifically states that the requirement to wear high-visibility safety apparel applies to all workers who are on or in close proximity to Federal-aid highways. Definition 32 in section 1A.13 of the 2003 MUTCD defines "highway" as a general term for denoting a public way for purposes of travel by vehicular travel, including the entire area within the right-of-way. Therefore, for the purposes of part 634, the FHWA proposes that this requirement be interpreted to apply to

all workers who are within the public right-of-way of a Federal-aid highway.

#### Section 634.3

This section would implement the provisions of section 1402 of SAFETEA-LU. It would require 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 to wear high-visibility safety apparel. The applicability of the requirements for high-visibility garments, under the proposed rule, would include non-traditional highway workers including responders to incidents and law enforcement personnel. Responders to incidents and law enforcement personnel on highways are exposed to the same hazards from traffic as those construction and maintenance workers, traditionally considered as highway workers. Improving the ability of the approaching motorist to identify persons on or in close proximity to the highway should improve the safety of all workers.

In order to minimize the financial impacts of this new part, the FHWA proposes to establish a compliance date for part 634 that will be 2 years from the effective date of the final rule. The FHWA research into the service life of the high-visibility garments that are currently in use indicates that the useful service life of the vests depends greatly on the type of activities in which the workers are engaged while wearing the garments. The useful service life of garments that are worn on a daily basis is approximately 6 months. Garments that are not worn on a daily basis are expected to have a useful service life of up to 3 years. Therefore, the proposed 2-year compliance period should provide agencies and contractors sufficient time in most cases to react to the adoption of these new requirements by purchasing garments that comply with the new standard as they replace garments that have already reached the end of their useful service life.

#### Rulemaking Analysis and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket

<sup>7</sup> ANSI 107-2004 is now the nationally recognized standard for high-visibility garments developed in conjunction with the International Safety Equipment Association. Copies may be obtained at: <http://www.safetyequipment.org>.

relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

#### Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal.

As a result of the text in the 2003 MUTCD, many agencies have revised their policies to require their employees to wear ANSI Class 2 safety apparel at all times when they are working within the Federal-aid highway right-of-way and are revising their specifications to also require contractors' employees to wear compliant safety apparel when working within the right-of-way. In addition, in recognition of its risk management value, many contractors have begun to provide their workers with high-visibility safety apparel and to require its use on their projects, regardless of whether it is required by the contract language.

The FHWA has researched the current practice regarding the use of high-visibility safety apparel in construction and maintenance work zones in 30 States. This research revealed that more than 90 percent (28 out of 30) of these State DOTs have already adopted policies that require highway construction and maintenance workers (including their own employees and contractors' employees) in highway work zones to wear high-visibility safety apparel. Most of these agencies specify the ANSI Class 2 standard and are furnishing them for their own employees. Therefore, a large majority of the State DOTs are already in compliance with the proposed requirements of this regulation.

According to the U.S. Department of Labor, Bureau of Labor Statistics, there are approximately 350,000 workers involved in highway construction activities nationwide at any given time.<sup>8</sup> The FHWA's research indicates that approximately 90 percent of States have already adopted high visibility garment policies in accordance with 2003 MUTCD. Therefore, the estimated

economic impact for contractors will be the purchase of approximately 35,000 garments at \$25.00<sup>9</sup> each for a total of \$875,000. This cost will be borne across many agencies, and the impact to each agency individually would be minimal. In order to further minimize the financial impacts of this new part, the FHWA proposes to establish a compliance date for part 634 that will be 2 years from the effective date of the final rule.

Each year more than 100 workers are killed and over 20,000 are injured in the highway and street construction industry. We believe this proposed rule would help reduce these numbers. Improved visibility of workers within the Federal-aid highway right-of-way would reduce these numbers.

The FHWA research into the service life of the high-visibility garments that are currently in use has shown that the useful service life of the vests depends greatly on the type of activities in which the workers are engaged while wearing the garments. The useful service life of garments that are worn on a daily basis is approximately 6 months. Garments that are not worn on a daily basis are expected to have a useful service life of up to 3 years. Therefore, the proposed 2-year compliance period should provide agencies and contractors sufficient time in most cases to react to the adoption of these new requirements by purchasing garments that comply with the new standard as they replace garments that have already reached the end of their useful service life.

The FHWA believes there would also be a minimal economic impact to the incident responder community, such as law enforcement agencies and fire departments. The proposed 23 CFR part 634 would require these agencies to supply their personnel with high-visibility safety apparel for use on Federal-aid highway rights-of-ways. However, we do not believe we have enough information to determine what percentage of incident responders and law enforcement agencies have actually begun to wear high-visibility garments. Therefore, the FHWA is seeking comments during this public comment period that will allow the magnitude of the economic impact that this proposed new part would have on the incident response and law enforcement communities to be more fully assessed.

Also, States and local agencies may use funding available under section 402 of chapter 4 of Title 23, the State and

Community Highway Safety Grant Program, to purchase high visibility garments for worker safety when this purchase is part of an eligible section 402 highway safety project included in the State's approved highway safety plan.

These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these proposed changes 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 (5 U.S.C. 601–612), the FHWA has evaluated the effects of these proposed changes on small entities. This action proposes to require all workers to wear high-visibility safety apparel when on the right-of-way of the Federal-aid highways. The results of FHWA research indicated that 90 percent of the States have adopted policies that require the use of high-visibility safety apparel in construction and maintenance (including their own employees and contractors' employees) in highway work zones. Most of these agencies specify the ANSI Class 2 standard and are furnishing them for their own employees. The FHWA believes many local agencies have also adopted this policy because the FHWA's research indicates that usually local agencies follow States' policies with respect to MUTCD standards and guidance. Also, the proposed rule would only apply to Federal-aid highway rights-of-way and the FHWA's research shows that the number of miles of Federal-aid highways that are owned by small entities makes up only approximately 25 percent of the total number of miles on the Federal-aid highway system.<sup>10</sup>

Therefore, the FHWA has determined that the proposed revisions would not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

This notice of proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). This proposed action would not result in the

<sup>8</sup> U.S. Department of Labor Bureau of Labor Statistics maintains records on the numbers of workers involved in the highway construction industry. The statistics may be viewed at <http://www.bls.gov>.

<sup>9</sup> The FHWA researched the price of high-visibility garments with manufacturers. This figure represents an average cost that an agency or contractor can expect to pay for a ANSI Class 2 garment.

<sup>10</sup> U.S. Department of Transportation, Federal Highway Administration Highway Statistics. This information is available at <http://www.fhwa.dot.gov/policy/ohim/hs03>.

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more in any 1 year period to comply with these changes as these proposed changes are minor and non-substantive in nature, requiring no additional or new expenditures.

Additionally, the definition of “Federal mandate” in the Unfunded Mandate Reform Act excludes financial assistance of the type in which State, local or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility to the States.

#### **Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States and local governments. The FHWA has also determined that this proposed rulemaking would not preempt any State law or State regulation or affect the States’ ability to discharge traditional State governmental functions and does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The proposed amendments are in keeping with the Secretary of Transportation’s authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

#### **Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. The purpose of this proposed rule is to improve visibility of workers within the Federal-aid highway right-of-way to increase safety of these workers, and would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 13211 (Energy Effects)**

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain collection information requirements for purposes of the PRA.

#### **Executive Order 12988 (Civil Justice Reform)**

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

#### **National Environmental Policy Act**

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 634**

Design standards, Highways and roads, Incorporation by reference, Workers, Traffic regulations.

Issued on: April 17, 2006.

**J. Richard Capka,**  
*Acting Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to add part 634 to title 23, Code of Federal Regulations, as follows:

#### **PART 634—WORKER VISIBILITY**

Sec.

634.1 Purpose.  
634.2 Definitions.  
634.3 Rule.

**Authority:** 23 U.S.C. 101(a), 109(d), 114(a), 315, and 402(a); Sec. 1402 of Public Law 109–59; 23 CFR 1.32; and 49 CFR 1.48(b).

##### **§ 634.1 Purpose.**

The purpose of the regulations in this part is to decrease the likelihood of worker fatalities or injuries caused by motor vehicles and construction vehicles and equipment while working within the right-of-way on Federal-aid highways.

##### **§ 634.2 Definitions.**

*Close proximity*—means within the highway right-of-way on Federal-aid highways.

*Conspicuity* means the characteristics of an object that influence the probability that it will come to the attention of an observer, especially in a complex environment with other competing objects.

*High-visibility safety apparel* means 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 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear," which is published by the International Safety Equipment Association, 1901 N. Moore Street, Arlington, VA 22209 (<http://www.safetyequipment.org>).

**Workers** means people on foot whose duties place them within the right-of-way of a Federal-aid highway, including highway construction and maintenance forces, survey crews, utility crews, responders to incidents within the highway right-of-way, law enforcement personnel and any other personnel whose duties put them on the Federal-aid highway right-of-way.

#### § 634.3 Rule.

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.

[FR Doc. E6-6025 Filed 4-21-06; 8:45 am]

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## POSTAL RATE COMMISSION

### 39 CFR Part 3001

[Docket No. MC2006-4; Order No. 1462]

#### Classification Changes for Express Mail Second Day Service

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of new docket and proposed rulemaking.

**SUMMARY:** This order announces a mail classification docket to consider and clarify domestic mail classification schedule language pertaining to Express Mail Second Day service. The proposed change, if adopted, will help clarify delivery guarantees.

**DATES:** Deadline for filing notices of intervention and comments on Notice of Inquiry and need for a hearing: May 3, 2006; Deadline for filing replies to comments on Notice of Inquiry: May 10, 2006.

**ADDRESSES:** File all documents referred to in this order electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, 202-789-6820.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that pursuant to 39 U.S.C. 3623(b), the Commission is instituting a mail classification case to consider and clarify the language of the Domestic

Mail Classification Schedule (DMCS) pertaining to Express Mail Second Day service. This classification case is in response to the issues brought to light in count 3 of the Complaint on Express Mail filed under 39 U.S.C. 3662 and docketed by the Commission as Docket No. C2005-1,<sup>1</sup> and upon the statements, proffers and admissions offered by Postal Service counsel in the Postal Service's Answer in that proceeding.<sup>2</sup>

#### Background

The Commission's views on the necessity and desirability for DMCS clarification on Express Mail Second Day service are explained in more detail in Order No. 1461. The primary focus of this proceeding is on how best to clearly state in the DMCS the scope of Second Day Express Mail service that the Postal Service intends to provide its customers. As it stands, several DMCS provisions call for second day delivery, when, in certain limited circumstances, the Postal Service has admitted that it does not expect to provide delivery until the third or fourth day. Delivery on the third or fourth day is nonetheless second delivery day delivery—mail that would have been delivered on the second calendar day except that Sunday or holiday delivery is not available at that particular destination. This proceeding is an attempt to promptly remedy that inconsistency and harmonize the "refund" section of the Express Mail DMCS language regarding Second Day service with the "availability" section.<sup>3</sup>

#### Intervention

Those wishing to be heard in this matter are directed to file a notice of intervention on or before May 3, 2006. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (<http://www.prc.gov>), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9(a) and 39 CFR 3001.10(a)]. Notices should indicate whether participation will be on a full or limited basis and may include procedural suggestions. See rules 20 and 20a [39 CFR 3001.20 and CFR 3001.20a]. No decision has been made at this point on whether a hearing will be held in this case.

<sup>1</sup> Douglas F. Carlson Complaint on Express Mail, February 18, 2005 (Complaint).

<sup>2</sup> Answer of United States Postal Service, May 5, 2005 (Answer).

<sup>3</sup> Compare DMCS section 182.4 with section 123.1.

#### Notice of Inquiry

The current "availability" subsection of the Expedited Mail section of the DMCS is as follows:

#### 123 Next Day Service and Second Day Service

**123.1 Availability of Services.** Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for second day delivery.

The Commission recognizes that, "[o]ver time, because of ambiguities or imprecise language, it becomes necessary to amend the DMCS to clarify or correct language that has led to misinterpretations in the application of the DMCS to specific types of mail matter." PRC Op. C85-1, para. 066. In that light, the Commission proposes to clarify the current DMCS language regarding the availability of Second Day service. The Commission proposes changes based upon statements made by the Postal Service in its Answer to the Complaint filed in C2005-1 as to the service it intends to provide its customers.<sup>4</sup> Clarification is especially important since, as the Postal Service noted, the "refund" provision only provides for refunds for Second Day service if an Express Mail package is not delivered on the second delivery day.<sup>5</sup> This anomalous result occurs even if second calendar day delivery is promised to a customer and yet the mailpiece is not delivered until the second delivery day, *see* DMCS section 182.4.

#### Proposed Change

Accordingly, the Commission proposes the following clarifying changes to the current DMCS:

#### 123 Next Day Service and Second Day Service

**123.1 Availability of Services.** Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for delivery on the second delivery day as specified by the Postal Service.

Participants are invited to submit comments on the proposed DMCS changes presented above on or before May 3, 2006. Reply comments may be submitted on or before May 10, 2006.

<sup>4</sup> Specifically, the "Postal Service admits that, when customers send Express Mail on Fridays to destinations for which Next Day Service is not available, or when customers' Express Mail is accepted on Fridays after the cut-off time for Next Day Service, their Express Mail is guaranteed for delivery on Monday (or Tuesday, if Monday is a holiday) unless the destination ZIP Code is one in which Sunday and holiday delivery is available." Answer at 13.

<sup>5</sup> *Id.* at 11-12.