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COMPLIANCE BULLETIN

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NEW HIGH VISIBILITY SAFETY VEST REQUIREMENTS FOR DRIVERS

BACKGROUND: The compliance deadline for the Federal Highway Administration's (FHWA) new rule requiring workers within the right-of-way of any federal aid highway to wear high visibility safety vests was November 24, 2008. Congress required the FHWA to adopt the new rule pursuant to Section 1402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) enacted in 2005. The purpose of the rule is to decrease the likelihood of fatalities or injuries to workers on foot who are exposed to traffic while working within the rights-of-way of federal-aid highways. Up until now, it was unclear whether the rule applied to only emergency responders and highway crews on federal aid highways or also included drivers of cargo tank vehicles who parked on certain roads while delivering product. The FHWA confirmed last week that the rule applies to **all** workers on foot who are in the right-of-way of a federal-aid highway while performing their duties including drivers of cargo tank vehicles delivering product.

COMPLIANCE DATE: Any worker standing within the right-of-way of any federal-aid highway must wear high visibility safety vest effective November 24, 2008.

APPLICABILITY: While the rule was primarily written to protect emergency responders, maintenance employees and highway construction workers, it also applies to any worker on foot within the right-of-way of a federal-aid highway. This includes petroleum cargo tank truck drivers who park on federal aid highways in order to unload product, such as heating oil, for delivery.

TYPE OF VESTS REQUIRED: The rule requires high-visibility safety vests that meet the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 ("American National Standard for High-Visibility Safety Apparel and Headwear").

REQUIRED WEARING - Vests must be worn both during the **day and night** whenever a driver is on foot in the right-of-way of a federal-aid highway.

PURCHASING VESTS - Compliant ANSI Class 2 reflective vests cost about eight dollars each. Vests are available from many online commercial and public safety equipment vendors.

FEDERAL AID HIGHWAY - A federal aid highway is any road that receives federal funds for construction, repair or maintenance. A federal-aid highway is typically a major thoroughfare such as a limited access interstate highway, but may also include secondary roads. FHWA is advising that a list of federal-aid roads is available from individual state Departments of Transportation.

THE BOTTOM LINE - The vest requirement does not apply to any driver who is not standing in the right-of-way of a federal-aid highway. The most likely scenario is that the rule will apply to heating oil delivery drivers and maintenance trucks that park vehicles in the road while delivering product or to drivers delivering product to road maintenance and construction sites. Even in these cases, the road must be a federal-aid highway in order for the vest requirement to apply.

Got Questions? Contact Mark S. Morgan, Esq. at mmorganPMAA@cox.net or (202) 364-6767.