

NIJ Standard-0101.06
Ballistic Resistance of Body Armor

SUPPLEMENTARY INFORMATION

This provides clarifying information with regard to NIJ’s reasoning in connection with a statement in the “Foreword” to NIJ Standard-0101.06 that has been the subject of an erroneous interpretation published in a recent federal court decision. NIJ Standard 0101.06 replaced the former NIJ standard in force, the [*NIJ 2005 Interim Requirements for Bullet-Resistant Body Armor*](#). NIJ’s new standard states that, upon the publication of NIJ Standard-0101.06, no armor will be “considered as NIJ compliant unless the body armor is submitted and tested through the [NIJ Voluntary Compliance Testing Program (CTP)] and found in compliance with [NIJ Standard-0101.06]” (emphasis omitted).

The United States Court of Appeals for the Ninth Circuit, in its recently published decision in [*Pinnacle Armor, Inc. v. United States*](#), construed NIJ’s new standard to provide that compliance with NIJ’s predecessor standard, the [*NIJ 2005 Interim Requirements for Bullet-Resistant Body Armor*](#), constitutes “[presumptive compliance] under the current standards.” [*Slip op.*](#) at 6986. The court based this conclusion on language in NIJ Standard-0101.06, which reads—

Publication of this revision of the standard does not invalidate or render unsuitable any body armor models previously determined by NIJ to be compliant to either the NIJ 2005 Interim Requirements or the NIJ Standard–0101.04 Rev. A Requirements. While it may not [*sic*] necessary to remove these existing armors from service, agencies are advised to always require their procurements to meet or exceed the most recent and up-to-date version of this standard.

Based on this passage, the court concluded that NIJ Standard-0101.06 “clearly states that if the armor was compliant under the 2005 Interim requirements, it is still compliant under [NIJ Standard-0101.06] and does not need to be retested.” [*Slip op.*](#) at 6987.

NIJ respectfully disagrees with the Ninth Circuit’s interpretation and is publishing this amendment to clarify that a body armor model is compliant with NIJ standards only if it satisfies NIJ Standard 0101.06, even if the model was compliant with previous NIJ standards. The passage cited by the Ninth Circuit was intended to convey that an agency may choose to keep in service (and a manufacturer may certainly continue to sell) armor models tested and found compliant under predecessor standards. A model of such armor is not compliant with the current NIJ standard, however, unless and until it has been tested against the requirements set forth in NIJ Standard-0101.06, in accordance with the CTP. NIJ reiterates, in other words, that no armor will be “considered as NIJ compliant unless the body armor is submitted and tested through the [CTP] and found in compliance with [NIJ Standard-0101.06]” (emphasis omitted). As has been

the case with prior iterations in NIJ's series of body armor standards), NIJ Standard-0101.06 supersedes previously published standards.¹ Thus, an armor model is compliant with *NIJ Standard-0101.06* for purposes of the CTP, and can be included on the NIJ Compliant Products List only if the armor model is submitted for testing via the CTP to the requirements specified in *NIJ Standard-0101.06*, and passes those tests to NIJ's satisfaction.

To dispel any confusion, the above-quoted statement is also amended to read as follows—

Although agencies are advised always to require their procurements to meet or exceed the most recent and up-to-date version of this standard, this does not necessarily mean that an agency should remove armors that they currently have in use from service.

The foregoing amendments do not create a new rule; rather, they re-articulate NIJ's original intention.

See the attached document, "Compliance Testing Program (CTP) Administrative Clarification," (CTP 2011:01), which will also be posted at http://www.justnet.org/Documents/BA-CTP-clarification_201101.pdf (pdf, 1 page).

¹ The title page of NIJ Standard-0101.06, at page iii, lists the predecessor standards superseded upon its publication. Also, in its "Purpose and Scope" section, at page 1, NIJ Standard-0101.06 again lists all superseded predecessor standards.

Date: June 21, 2011

Subject: Revision to Foreword of NIJ Standard-0101.06

Purpose:

This administrative clarification to [National Institute of Justice \(NIJ\) Standard-0101.06, "Ballistic Resistance of Body Armor,"](#) (hereinafter, "NIJ Standard-0101.06") provides additional clarification with regard to NIJ's original intention concerning a statement in the "Foreword" to the *NIJ Standard-0101.06*.

The statement in question, on page v. of *NIJ Standard-0101.06*, reads—

Publication of this revision of the standard does not invalidate or render unsuitable any body armor models previously determined by NIJ to be compliant to either the NIJ 2005 Interim Requirements or the NIJ Standard-0101.04 Rev. A Requirements. While it may not [sic] necessary to remove these existing armors from service, agencies are advised to always require their procurements to meet or exceed the most recent and up-to-date version of this standard.

NIJ's intent with this particular statement is to make clear to criminal justice agencies that the release of a new standard should not be interpreted as a recommendation to remove body armor from service which had been previously found compliant by the NIJ CTP with a previous version of the standard.

NIJ's position in this regard is, simply, that an agency's *older* armor may be considerably preferable to *no* armor at all until newer armor determined by the NIJ CTP to be compliant with the current standard can be obtained. The statement that older armors may not necessarily be considered to be "unsuitable" for continued use in service until replaced should not be read to suggest – in any way – that an armor model's compliance with a predecessor standard somehow equates to compliance under the most current, superseding standard (*i.e., NIJ Standard-0101.06*).

Clarification:

The above-quoted statement, by way of this administrative clarification, is replaced to read as follows—

Although agencies are advised always to require their procurements to meet or exceed the most recent and up-to-date version of this standard, this does not necessarily mean that an agency should remove armors that they currently have in use from service.

Once again, this clarification should not be understood to create a new rule; it clarifies NIJ's original intention.
