



VIA ELECTRONIC SUBMISSION

August 23, 2010

The Honorable David Michaels, PhD, MPH
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems); Docket ID OSHA-2007-0072; RIN 1218-AB80

Dear Assistant Secretary Michaels:

Associated Builders and Contractors, Inc. (ABC) submits the following comments to the Occupational Safety and Health Administration (OSHA), in response to the above-referenced notice of proposed rulemaking (NPRM), published in the *Federal Register* on May 24, 2010 at 75 Fed. Reg. 28862.

About Associated Builders and Contractors, Inc.

ABC is a national construction industry trade association representing more than 25,000 merit shop contractors, subcontractors, materials suppliers and construction-related firms within a network of 77 chapters throughout the United States and Guam. ABC member contractors employ more than 2.5 million construction workers, whose training and experience span all of the twenty-plus skilled trades that comprise the construction industry. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. This philosophy is based on the principles of full and open competition unfettered by the government, nondiscrimination due to labor affiliation, and the award of construction contracts to the lowest responsible bidder through open and competitive bidding. This process assures that taxpayers and consumers will receive the most for their construction dollar.

In addition, ABC members aim to have “zero accident” worksites because they understand that exceptional jobsite safety and health practices are inherently good for business. Many ABC companies have implemented safety programs that exceed OSHA requirements, and are among the best programs in the industry. In addition, ABC has built worthwhile relationships with OSHA’s national, regional and area offices, which have increased the industry-wide understanding of workplace safety, and have contributed to a decrease in the number of fatalities and injuries in the construction industry since 1994.

ABC's Comments in Response to OSHA's Proposed Rule

The stated purpose of OSHA's NPRM is to revise general industry standards governing walking-working surface and personal protective equipment. According to OSHA, the NPRM "reorganizes" the existing regulation, "increases consistency between construction, maritime, and general industry standards, and eliminates duplication." 75 Fed. Reg. at 28862. Overall, ABC agrees with OSHA's stated goal of simplifying, streamlining and clarifying regulatory requirements, whenever possible. We believe this approach is the key to improving safety in the workplace. However, ABC is concerned with certain aspects of the NPRM, which are addressed below.

First, ABC is concerned about the regulatory text in the proposed section 1910.22(a)(3), which states, "employers must ensure that all surfaces are designed, constructed, and maintained free of recognized hazards that can result in injury or death to employees." 75 Fed. Reg. at 29132. At an August 10, 2010, business roundtable hosted by the U.S. Small Business Administration's Office of Advocacy (Advocacy), OSHA noted that the proposed section replaced more specific language in the existing standard, explicitly referring to hazards such as "protruding nails," etc.

As currently proposed, section 1910.22(a)(3) reads like an undefined "general duty" clause, which raises concerns that employers could be cited multiple times for the same violation. At this time, the proposed section appears to be useful only as a citation tool, rather than a compliance directive. It should also be noted that the preamble to the NPRM is silent on this provision. ABC requests that OSHA provide clarification regarding the agency's intent behind the proposed section, and revise the text to avoid duplication of Section 5(a)(1) of the Occupational Safety and Health Act (known informally as OSHA's "General Duty Clause").

Second, despite OSHA's efforts to increase consistency between general industry and construction standards, the NPRM could have been crafted in a manner that would have better achieved that end. In some cases, provisions have been revised from the existing general industry standard, but rather than bring these areas in line with construction standards, OSHA opted to create entirely new language. ABC is concerned that insufficient synchronization (and indeed further divergence) of the standards will add to more—not less—on-site confusion, compromising safety while creating additional opportunities for good-faith employers to receive citations.

Under the standards as currently written, contractors and workers involved in construction, renovation, maintenance and repair are already routinely confused about which set of standards should apply to certain tasks under certain circumstances. If OSHA finalizes the proposal as written, many in our industry will be required to learn an entirely new set of requirements, different from both previous standards. It is difficult to understand how this added confusion will lead to improved safety. ABC requests that OSHA reexamine the proposed regulatory text, and improve synchronization between general industry and construction standards as much as possible.

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It is for the reasons outlined above that ABC supports the recommendations proposed by Advocacy in regard to our shared concerns, and incorporates them into our comments by reference (See Docket ID OSHA-2007-0072-0124.1). While ABC generally supports OSHA's efforts to improve existing standards, we urge the agency to consider revisions to the NPRM in accordance with stakeholder recommendations.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean Thurman". The signature is fluid and cursive, with the first name "Sean" being larger and more prominent than the last name "Thurman".

Sean Thurman
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