

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

## **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

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 more prominent than the last name "Thurman".

Sean Thurman  
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