

July 13, 2007

OSHA Docket Office
Occupational Safety and Health Administration
U.S. Department of Labor
Room N-2625
200 Constitution Ave., NW
Washington, DC 20210

**RE: Docket No. OSHA-2007-0044
Proposed Rulemaking on Updating OSHA Standards Based on
National Consensus Standards; Personal Protective Equipment**

Dear Sir or Madam:

The AFL-CIO is pleased to offer these comments and suggested changes to the Agency's proposed rulemaking regarding references to specific ANSI consensus standards in its personal protective equipment (PPE) standards.

In this rulemaking, OSHA is proposing to replace the existing references to specific ANSI consensus standards with performance language requiring PPE to be constructed in accordance with good design standards. The proposal includes guidance and criteria for determining what is a good design standard. In addition, the Agency then proposes to add non-mandatory appendices that list consensus standards that it believes constitute good design standards as provided for in the revised rule. Furthermore, OSHA proposes to periodically update, by direct final rulemaking, the list of consensus standards in the non-mandatory appendices if it determines that future PPE consensus standards meet the good design requirements of the proposed rule.

As rationale for justifying its proposal, OSHA notes that the incorporated ANSI standards in its existing PPE rules have all been superseded by more current versions, including some that are more than two decades old. The Agency also complains that it cannot propose and finalize its standards as frequently as the consensus standards development organizations do, claiming that it does not have the resources to engage in "full rulemaking" at that frequency for all of its PPE standards. The Agency believes that incorporating specific versions of ANSI standards is not an effective approach for its PPE design requirements and instead, proposes to replace the current scheme with a performance-oriented framework.

In general, the AFL-CIO strongly favors OSHA specification standards over performance standards when it applies to items of safety equipment, including PPE. An OSHA specification standard offers a number of distinct advantages

over that of performance requirements, including: (a) employers clearly understand what PPE they must purchase for their employees; (b) the PPE selected for use by workers is assured of meeting a uniform minimum level of safety performance and protection; (c) it assists equipment manufacturers in knowing what specifications it must meet when producing PPE so that the items comply with OSHA requirements; and (d) it simplifies OSHA compliance efforts so that compliance officers understand what consensus standards PPE must meet and what workers must wear.

It is readily apparent that the referenced ANSI consensus standards in OSHA's PPE rules are out of date. It is also apparent that the Agency is in need of finding a mechanism to ensure that its PPE standards are regularly updated so that they reference the most current consensus standards. Finding an updating mechanism is particularly important given that the Agency asserts that each successive addition to the consensus standards has "improved the design features of the PPE". We would agree that developing such an approach is an important undertaking in this rulemaking.

However, the AFL-CIO does not find OSHA's proposed solution to this problem to be clear or directly efficient. The agency fails to demonstrate how the creation of a PPE performance standard will in any way clarify or speed up the process to assure that the most recent versions of PPE consensus standards are in effect in the workplace. In our view, creating a set of performance requirements only adds confusion to the goal of making sure that the most recent versions of ANSI and ASTM PPE standards are in place. Employers and employees want to know precisely what PPE they can use in the workplace – not the contours of a set of performance criteria that PPE are expected to meet. It is our position that the proposed performance standard requirements be deleted from the final rule.

To address the issue of providing specific concrete information on the PPE that meets the performance criteria, OSHA proposes then to provide a list, in a "non-mandatory" appendix, those consensus standards that meet the performance requirements. What is the rationale for including the required PPE in a non-mandatory appendix rather than in the rule itself? OSHA offers no rationale. This approach as proposed by OSHA is unnecessarily circuitous, in our view.

The AFL-CIO supports the placing of the list of acceptable ANSI/ASTM consensus PPE standards by reference within the body of the standard itself. By doing so, OSHA makes it clear and unambiguous for workers and employers what the Agency will accept for PPE.

To speed up the process of updating its PPE standards with the latest consensus standards development organizations versions, OSHA indicates that it will do so by using its procedures for issuing direct final rules. The AFL-CIO strongly supports this approach as a means to shorten the timeframe under which updating can occur than would be possible under "full rulemaking". The Agency

has recently, and successfully, used the direct rulemaking approach to modify and update national consensus standards referenced in several of its standards, including fire protection in shipyards and roll-over protective structures, for example. Direct rule updates like these examples can be accomplished in a matter of months – instead of the years it can take to finalize standards under full rulemaking procedures. We believe this mechanism will work well for updating it rules with the latest PPE consensus standards.

But rather than apply its direct rulemaking strategy to a non-mandatory appendix list of acceptable ANSI/ASTM consensus standards for PPE, we believe the Agency ought to adopt this approach for such national consensus standards that are referenced directly in the rule itself. By doing so, OSHA can significantly speed up the process of adopting the most recent consensus standards versions and do so clearly within the rules themselves. Affected employers and employees will then know precisely what ANSI/ASTM standards will place them in compliance with OSHA requirements and insure that workers are provided with appropriate PPE.

The AFL-CIO believes that utilizing the direct final rulemaking approach to updating PPE national consensus standards referenced within the rule itself is a clear efficient means to accomplish OSHA's primary objective in this rulemaking. We strongly urge the Agency to consider our views and adopt our approach.

Respectfully submitted,

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AFL-CIO