



September 17, 2008

The Honorable Edwin G. Foulke, Jr., Assistant Secretary  
c/o Docket Office (via fax 202-693-1648)  
Occupational Safety and Health Administration  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

**Re: Comments to Proposed Rule on Clarification of Remedy for Violation of Requirements to Provide Personal Protective Equipment and Train Employees OSHA Docket No. OSHA-2008-0031**

Dear Assistant Secretary:

On behalf of the Sheet Metal and Air Conditioning Contractors National Association (SMACNA), we hereby submit the following comments for the Occupational Safety and Health Administration ("OSHA") Proposed Rule on Clarification of Remedy for Violation of Requirements to Provide Personal Protective Equipment and Train Employees - OSHA Docket No. OSHA-2008-0031.

SMACNA is an international trade association representing 4,500 contributing contractor firms, and is dedicated to promoting safety, quality and excellence in the sheet metal and heating, ventilation, and air conditioning (HVAC) industry. SMACNA has national offices in Chantilly, VA, outside of Washington, D.C.

SMACNA's interest in this proposed rulemaking and our concerns with the proposed standard revisions are unique, in that, our member companies and their employees must approach the topic of personal protective equipment (PPE) and training on two fronts. Our members perform work in their own fabrication shops, as well as other industries when working on client manufacturing sites (General Industry), and on construction project sites (Construction).

One particular issue that SMACNA would like to point out is the inclusion of compliance directive language in the proposed standard revisions that seems to be directed to OSHA Compliance Safety and Health Officers (CSHOs). SMACNA questions the addition of adding the term "...each failure...may be considered a separate violation."

OSHA argues that PPE and training should apply to all employees ( a significant issue that requires additional time to research fully), but there is no need to add reminders to CSHOs that they have the availability to cite employers for each separate instance of non-compliance.

OSHA Clarification of Remedy for Violation of Requirements to Provide Personal Protective Equipment and Train Employees Comment Letter  
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This type of compliance language is not appropriate for standards and should remain in compliance directives, the Field Operations Manual (FOM), and the Field Inspection Reference Manual (FIRM). Specifically, CPL 02-00-080 regarding *Handling Cases to Be Proposed for Violation-to-Violation Penalties* should be the guiding force behind this enforcement action. National and area offices must review these cases against these criteria and that should be the extent of deciding “separate violations”, not language in standards.

One specific example of costs that OSHA has not taken into consideration, and one example of additional training that would be needed, is the fact that adding the term “separate violation” to each standard will require that employers provide training on the meaning of that term. This additional training will cost money. Without adequate time to research this issue, we have no idea how much this will impact our members.

### Conclusion

SMACNA requests that OSHA remove the term “...each failure...may be considered a separate violation.” from the proposed changes since this is not appropriate language for standards and should be confined to CSHO instruction documents.

Sincerely,

Michael A. McCullion, CSP, ARM  
Director of Safety and Health  
SMACNA