



# ENGINEERING & UTILITY CONTRACTORS ASSOCIATION

DATE: January 14, 2011

TO: Members, Occupational Safety & Health Standards Board  
John D. Macleod, Chairman, Occupational Safety & Health Standards Board  
Len Welsh, Chief, Division of Occupational Safety & Health Standards  
John Duncan, Director, Department of Industrial Relations

From: California Association of Sheet Metal and Air Conditioning Contractors' National Association  
California Chapter of the American Fence Association  
California Fence Contractors' Association  
California Chapters of the National Electrical Contractors Association  
California Legislative Conference of the Plumbing, Heating and Piping Industry  
Construction Employers Association  
Engineering Contractors' Association  
Engineering & Utility Contractors Association  
Flasher/Barricade Association  
Golden State Builders Exchange  
Marin Builders' Association

RE: **COMMENTS REGARDING PROPOSED REVISIONS TO TITLE 8,  
GENERAL INDUSTRY SAFETY ORDERS, SECTION 3380 – PERSONAL PROTECTIVE DEVICES (HORCHER)**

In response to the recently proposed regulations, the above listed organizations (the coalition) wish to associate themselves with the following comments to the proposed revisions to *California Code of Regulations, Title 8, General Industry Safety Orders, Personal Protective Devices, section 3380.*

The construction contractor community in California supports the intent of the proposed regulations to be as effective as federal OSHA standards. In addition, we support the requirements that employers provide and pay for

all specialty personal protective equipment (PPE) needed by the worker to do his or her job safely and in compliance with federal OSHA standards.

We are concerned, however, that if left unchanged the proposed regulations will go beyond the federal standard and substantially broaden the employer's responsibility in California to provide and pay for non-specialty PPE, such as standard work boots, prescription safety eyewear, etc. California's construction employers are already struggling to survive in the current economic downturn and should not be further disadvantaged by more restrictive and burdensome regulations than the rest of the country.

We respectfully request that the current draft of the regulation be revised to include the federal exemptions related to PPE. These are as follows:

1. EXEMPTION #1

Federal regulation CFR 29, part 1910.132 states in (h)(2)

*"The employer is not required to pay for non-specialty safety-toe footwear (including steel-toe boots) and non-specialty prescription safety eyewear, provided the employer permits such items to be worn off the jobsite."*

2. EXEMPTION #2

Furthermore, CFR 29, 1910.132 (h) (5) states:

*"The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE."*

Due to the transient nature of the union construction industry, a union construction employer could have union employees working on their project for as short of a time as a few days. Those same employees could then go to work on a different employer's project who is signatory to the same union the next week. Under the proposed regulations as currently written, new non-specialty safety toe footwear and non-specialty prescription safety eyewear would have to be provided to the employee at each new job. It is unreasonable, inefficient and expensive to require construction contractors to cover such costs especially in such challenging economic times.

**Conclusion**

We appreciate the opportunity to comment on these regulations. We know you share our goal to provide a safe work environment and protect our employees in the most efficient and cost effective manner for the employer as possible. In the spirit of that goal, we urge the Board to revise the regulations to include the federal exemptions for California employers relating to non-specialty PPE that can be worn off the jobsite.

If you should have any questions, or need additional information, please do not hesitate to contact either Eddie Bernacchi at (916) 444-3770 or Chris Walker at (916) 442-8888, or any of the coalition members.