

# U.S. Department of Labor

Occupational Safety and Health Administration  
Washington, D.C. 20210



July 3, 1995

Mitchell S. Allen, Esquire  
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230 Peachtree Street, N.W.  
Atlanta, Georgia 30303-1557

Dear Mr. Allen:

This is a response to your letter of September 16, 1994 requesting an interpretation of our Personal Protective Equipment standard, 29 CFR 1910.132-.138. We regret that due to the volume of requests for letters of interpretation or clarification, we were unable to respond to your inquiry sooner. Specifically, you asked if a company with multiple plant locations where similar work functions are performed conducts individual (plant specific) assessments, what is the exposure to the company where, for example, one plant determines that safety shoes are required for a particular job whereas two or three other locations determine that similar personal protective equipment (PPE) is not required for that position.

A hazard assessment is an important element of a PPE program because it produces the information needed to select the appropriate PPE for any hazards present or likely to be present at particular workplaces. We believe that the employer will be capable of determining and evaluating the hazards of a particular workplace, and that where multiple sites are involved, similar analyses will produce similar results. That is, it will be the exception, rather than the rule for management at different sites with similar hazards to choose vastly different PPE. Where such differences occur, they will be addressed on a case-by-case basis by OSHA, and only if the protection provided is inadequate in terms of the standard will OSHA issue citations. Paragraph (d) of the final rule is a performance-oriented provision which simply requires employers to use their awareness of workplace hazards to enable them to select the appropriate PPE for the work being performed. Paragraph (d) clearly indicates that the employer is accountable both for the quality of the hazard assessment and for the adequacy for the PPE selected.

You also asked if an employer has the burden of proving why foot protection has not been required for employees performing the job functions enumerated in section 10 of Appendix B. Appendix B to the standard, which lists occupations for which foot protection should be "routinely" considered, is a non-mandatory appendix provided for guidance. What the employer is required to do is to perform a hazard assessment, and OSHA would expect that an employer will be particularly careful before considering that none of its employees in the listed occupations are exposed to hazards which necessitated the use of PPE. In litigation, of course, it would OSHA's burden to prove that a hazard assessment was not done. OSHA also believes that a standard of objective reasonableness is implicit in the requirement and that accordingly OSHA could cite for an unreasonable assessment. Again, the burden of proof would be on OSHA.

We appreciate your interest in employee safety and health. If we can be of further assistance, please contact Mr. Russelle R. McCollough of my staff, telephone 202-219-8031.

Sincerely,

Raymond E. Donnelly, Director  
Office of General Industry Compliance  
Assistance