

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 10, Section 3385 of
the General Industry Safety Orders

Strap-On Foot Protectors**SUMMARY**

Amendments in 2006 and 2009 that updated national consensus standards references in Section 3385 for foot protection resulted in the unintended consequence of prohibiting the use of strap-on foot protectors as protective footwear. The referenced American National Standards Institute (ANSI) Z41-1999, American National Standard for Personal Protection-Protective Footwear, the American Society for Testing and Materials (ASTM) F2412-05, Standard Test Methods for Foot Protection, and ASTM F2413-05, Standard Specification for Performance Requirements for Foot Protection contain identical performance and test methods for protective footwear that exclude strap-on foot protection devices by mandating that toe caps be an integral and permanent part of the foot wear. Additionally, ANSI Z41-1999, Section 1.4.1 states that strap-on foot protection devices are not considered acceptable foot protection. These 2006 and 2009 changes to Section 3385(c) resulted in variances and led to this proposal, as the above ANSI and ASTM standards excluded the strap-on foot protectors, even though the foot protectors are designed to meet the performance testing mandated under the above ANSI and ASTM standards.

The proposed amendments provide employers and employees with the option to use strap-on foot protectors as an effective means to protect employees exposed to possible foot injuries from falling objects, crushing or penetrating actions as an alternative to conventional safety toe footwear. These provisions were derived in part from conditions imposed in the Board's variance decision regarding OSHSB File Nos. 09-V-124 and 09-V-125.

Federal OSHA's comparable standards contained in 29 CFR 1910.136(b)(2) allow employers to utilize protective footwear that is proven equally effective by the employer and includes strap-on protectors; an alternative practice that is not permitted in California. Additionally, 29 CFR 190.132(h)(3) states that if employers provide metatarsal guards (strap-on foot protectors) and allow employees, at their request, to use shoes or boots with built-in metatarsal protection, the employers are not required to reimburse the employee for the shoes or boots.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Harmonizes California’s standard with the existing federal regulations, in that the federal regulations contained in 29CFR 1910.136(b) allows employers to utilize protective footwear that is proven equally effective by the employer. The proposal therefore, includes the use of strap-on foot protectors provided the protectors are proven equally effective, an alternative that is not found in current Title 8 regulations. This proposal would permit the use of strap-on foot protectors.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts.
- Is the least burdensome effective alternative. Before 2006 strap-on foot protectors were also permitted in California. However, in 2006 and 2009, changes to Section 3385(c) added references to ANSI and ASTM standards that excluded strap-on foot protection devices and thereby inadvertently eliminated the option for employers to provide strap-on foot protectors as foot protectors. This proposal provides employers the flexibility to use strap-on foot protectors as allowed under the comparable federal standard.

§3385. Foot Protection.

Section 3385 contains protective footwear standards to control worker exposure to foot injuries from electrical hazards, hot, corrosive, poisonous substances, falling objects, excessive moisture, crushing or penetrating actions.

This proposal amends Section 3385 by adding a title to existing subsection (c) to read “Protective Footwear” and adding subsections (c)(3) and (c)(4). The proposed subsection (c)(3) contains proposed protective footwear standards which require maintenance in accordance with the manufacturer’s recommendations, and proposed subsection (c)(4) prohibits the use of damaged, defective or deformed protective footwear. These proposed amendments are necessary to ensure

that workers are not injured from improperly maintained or defective protective footwear. Additionally, subsection (c)(2) is amended for clarity and consistency with proposed subsection (d)(2).

The proposed subsection (d), titled “Strap-On Foot Protectors,” contains proposed foot protector standards which address the following:

- Performance testing that meets impact, compression and clearance standards in the referenced ANSI and ASTM standards;
- Labeling and marking requirements;
- Effective use and maintenance requirements in accordance with the manufacturer’s recommendations;
- Prohibiting the use of damaged, defective or deformed foot protectors;
- Selection requirements to ensure proper fit of foot protectors.
- Employee training requirements for proper fit, selection, inspection and use for those who use the strap-on foot protectors.

The proposed subsection (d) is necessary to ensure that, when used, the strap-on foot protectors are effective in protecting the worker’s feet from injury. Among other things, subsection (d) ensures that the strap-on protectors selected provide equivalent safety to ANSI and ASTM compliant class 75 protective footwear by mandating the strap-on foot protectors meet the same performance testing requirements, that the strap-on foot protectors are properly maintained, that employees do not use damaged, defective or deformed foot protectors, and that the selected foot protectors properly fit the wearer and employees using the strap-on foot protectors are properly trained. It is noted, that, while footwear with built-in protection is cumbersome and causes discomfort or fatigue in certain work situations, the use of lighter, less restrictive strap-on foot protectors might enhance safety.

Board staff discussed the issues related to the use of strap-on foot protectors as proposed with a representative number of stakeholders, including representatives of labor, management and manufacturers, during this rulemaking effort and earlier variance applications efforts. Feedback received from stakeholders regarding the use of strap-on foot protectors indicates general support for their use.

DOCUMENTS RELIED UPON

1. Occupational Safety and Health Standards Board (OSHSB) variance decision in OSHSB File Nos. 09-V-124 and 09-V-125.
2. OSHSB variance decision in OSHSB File No. 10-V-069.
3. American Society for Testing of Materials (ASTM), Designation F 2412-05, Standard Test Methods for Foot Protection.
4. ASTM, Designation F 2413-05, Standard Specification for Performance Requirements for Foot Protection.

5. American National Standard Institute (ANSI), Z41-1999, American National Standard for Personal Protection-Protective Footwear.
6. U.S. Department of Labor, Occupational Safety and Health Administration, 29 CFR 1910.132, General requirements and 29 CFR 1910.136, Foot Protection.
<http://www.osha.gov>.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Economic Impact Analysis

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal removes inflexibility from the standard by permitting the use of alternative foot protection devices. The employer may choose to continue use of currently mandated foot protection and not supply strap-on foot protectors. For employers who provided the strap-on foot protectors before 2006, they will again be able to utilize these devices.

Therefore, the adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

This regulatory proposal is intended to provide worker safety at places of employment in California.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational

Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

This proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT

The Board has determined that the proposed amendments may affect small businesses. However, no adverse economic impact is anticipated. This proposal will create consistency with foot protection practices permitted under federal OSHA standards and under States' standards that use the federal standards that allow the use of strap-on foot protection devices. This consistency will support and encourage intrastate and interstate commerce while providing effective foot protection at places of employment in California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.