

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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NOTICE OF PROPOSED MODIFICATIONS TO  
CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 10, New Section 3380.1  
of the General Industry Safety Orders

**Employer Duty to Pay for Personal Safety Devices and Safeguards**

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standard in which modifications are being considered as a result of public comments and/or Board staff consideration.

On January 20, 2011, the Standards Board held a Public Hearing to consider adding a new section to Title 8, General Industry Safety Orders. The Standards Board received written and oral comments on the proposed revisions. The standard has been modified as a result of these comments and Board consideration.

A copy of the full text of the standard, with the modifications clearly indicated, is attached for your information. In addition, a summary of all written and oral comments regarding the original proposal and staff responses is included.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following document relied upon:

1. U.S. Department of Labor, Occupational Safety and Health Administration, [www.osha.gov](http://www.osha.gov), Regulations (Standards -29-CFR), 29 CFR 1910.132(h)(2)-(6).

A copy of this document is available for review during normal business hours at the Standards Board Office located at the address listed below.

Any written comments on these modifications must be received by 5:00 p.m. on March 4, 2011, at the Occupational Safety and Health Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833 or submitted by fax to (916) 274-5743 or e-mailed to [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). This proposal will be scheduled for adoption at a future Business Meeting of the Occupational Safety and Health Standards Board.

The Standards Board's rulemaking file on the proposed action is open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m. at the Standards Board's Office.

Inquiries concerning the proposed changes may be directed to Marley Hart, Executive Officer at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

Date: February 16, 2011

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Marley Hart, Executive Officer

**PROPOSED MODIFICATIONS**  
**(Modifications are indicated in bold,**  
**underline for new language.)**

**STANDARDS PRESENTATION  
TO  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Attachment No. 1

Page 1 of 1

PROPOSED STATE STANDARD,  
TITLE 8, DIVISION 1, CHAPTER 4

Amend Article 10 to add new Section 3380.1 to read:

§ 3380.1. Employer Duty to Pay for Personal Safety Devices and Safeguards.

Whenever any safety order in Division 1 of Title 8 requires the provision, furnishing, use or wearing of any safety device and/or safeguard, it shall mean that the safety device and/or safeguard shall be provided at no cost to the employee.

**Exceptions:**

- 1. Non-specialty safety toe-protective footwear (including steel-toe shoes or steel toe boots) and non-specialty prescription safety eyewear when the employer permits such items to be worn off the job-site.**
- 2. Metatarsal guards when shoes or boots with built-in metatarsal protection is provided by the employee and used with the employer's permission.**
- 3. Logging Boots (calked boots or lug-soled boots) when required by Section 6254 of the Logging and Sawmill Safety Orders.**
- 4. Everyday clothing such as long-sleeve shirts, long pants, street shoes, normal work boots, ordinary clothing, skin creams, or other items used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.**
- 5. Personal protective equipment and safeguards that are intentionally damaged or lost by the employee.**
- 6. Employee-provided protective equipment pursuant to Section 3380(d) of these Orders. The employer shall not require an employee to provide or pay for his/her own PPE, unless the PPE is excluded by exceptions 1-5.**

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

## **SUMMARY AND RESPONSE TO COMMENTS**

## SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS

### I. Written Comments

Van A. Howell, Area Director , U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated December 23, 2010.

#### Comment:

Mr. Howell stated that the new Section 3380.1 as proposed appears to be commensurate with Federal regulations.

#### Response:

The Board acknowledges Federal OSHA's opinion regarding the proposal.

The California (CA) Association of Sheet Metal and Air Conditioning Contractors' National Association, CA Chapter of the American Fence Association, CA Fence Contractors' Association, CA Chapters of the National Electrical Contractors Association, CA Legislative Conference of the Plumbing, Heating and Piping Industry, Construction Employers Association, Engineering Contractors' Association, Engineering and Utility Contractors Association, Flasher/Barricade Association, Golden State Builders Exchange, Marin Builders' Association, Southern CA Contractors Association, by memorandum dated January 14, 2011.

#### Comment:

Due to the transient nature of the union construction industry, the aforementioned employer/industry associations request the proposal be modified to include exceptions for non-specialty safety-toe footwear and non specialty prescription safety eyewear when the employer permits these items to be worn by the employee off site and exempting the employer from having to pay for lost or intentionally damaged personal protective equipment.

#### Response:

The Board agrees with the rationale expressed by the associations/organizations listed above and has modified the proposal accordingly. The Board thanks those associations for their comments and participation in the Board's rulemaking process.

Mr. Larry Pena, Southern California Edison, by letter received January 20, 2011

#### Comment:

Mr. Pena asked if California would provide clarification/guidance on what articles are covered under the employer duty to provide in a way similar to Federal OSHA's discussion in the preamble to the Final Rule.

Response:

This comment is somewhat outside the scope of comments for the proposal. The question posed by Mr. Pena is one that involves interpretation and clarification of application of the proposal and hence the employer's duty to pay. This is a matter that should be presented to the Division of Occupational Health which will be responsible for interpreting and enforcing the proposed standard. The Division has the discretion to provide such guidance through its Consultation Service or through the issuance of an administrative interpretation at the employer's request.

The Board thanks Mr. Pena for his comment and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the January 20, 2011, Public Hearing in San Diego, California.

Mr. Bruce Wick, representing CALPASC.

Comment:

Mr. Wick stated that the proposal should be modified to include the Federal exemptions. He stated further that employers should not have to pay for equipment for employees who elect to use their own personal protective equipment (PPE) or employees that lose or damage their PPE.

Response:

The Board agrees with Mr. Wick and has modified the proposal to include the Federal exemptions provided in 29 CFR 1910.132(h)(2)-(6). The Board thanks Mr. Wick for his comment and participation in the Board's rulemaking process.

Mr. Chris Walker, representing SMACNA, Mr. Jerry Shupe, Safety Director for Hensel Phelps Construction, Ms. Virginia Siegel, Business Owner, Onsite Health and Safety, Mr. Michael Vlaming, representing Crane Owners Association, NOAD Employers Association and the Modular Installers Association

Comment:

The commenters echoed Mr. Wick's comment.

Response:

See the response to the oral comment submitted by Mr. Bruce Wick. The Board appreciates the participation of the associations in the Board's rulemaking process.

Mr. Dave Thomas, Board Member

Comment:

Mr. Thomas asked why the Federal exemptions were not included as part of the proposal.

Response:

Deliberations between Board Staff and the Division yielded a proposal absent of the Federal exemptions because the need to limit the proposal in accordance with the exemptions was not perceived at that time. The public comment period is intended to elicit stakeholder concerns of the sort that have been brought forward, and the proposal has been modified accordingly.

Mr. Guy Prescott, Board Member

Comment:

Mr. Prescott suggested staff convene an advisory committee to consider the issues presented by the commenters.

Response:

Since changes have been made in response to the commenter's concerns an advisory committee is unnecessary.

ADDITIONAL DOCUMENTS RELIED UPON

1. U.S. Department of Labor, Occupational Safety and Health Administration, [www.osha.gov](http://www.osha.gov), Regulations (Standards -29-CFR), 29 CFR 1910.132(h)(2)-(6).

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board 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 adopted action.