

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb

**INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS****TITLE 8: Section 3411 of the General Industry Safety Orders****Private Fire Brigades—Foot Protection****SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

The purpose of this proposal is to update the private fire brigade/structural firefighting foot protection standard so that employers will be able to utilize more readily-available materials in determining their compliance with the standard. The standard currently requires compliance with military standards that are hard to find. The proposal would allow, as an alternative, compliance with the 2013 version of the applicable national consensus standard, National Fire Protection Association (NFPA) 1971. By utilizing a state-of-the-art standard that is easily obtainable for guidance, employee safety is enhanced.

California Code of Regulations, Title 8, Section 3411 contains standards regarding private fire brigades. Subsection (d) provides that personal protective clothing and equipment shall be commensurate with the provisions of Title 8, Division 1, Chapter 4, Subchapter 7, Article 10.1 that pertain to the type of firefighting involved. Two of those provisions pertaining to structural firefighters' foot protection are Sections 3408(c) and (d)(2). Both reference a hard-to-find military specification. This proposal would give employers of private fire brigades the option of complying with provisions of the current national consensus standard regarding structural firefighting, NFPA 1971-2013, to the extent that those provisions concern turnout boots (the subject of Section 3408(c)) and sole penetration (the subject of Section 3408(d)(2)). By referencing the current national consensus standard, the proposal enhances employee safety by enabling employers to be more easily apprised of the level of safety that is to be maintained. This portion of the proposal is embodied in the new Sections 3411(d)(1) and (2).

In addition to the national consensus standard update, further additions are proposed to Section 3411(d) to ensure that the State standards are at least as effective as the equivalent federal standard. The proposal clarifies that all protective footwear is to meet the foot protection requirements of Section 3385 of the General Industry Safety Orders for Class 75 footwear and addresses water resistance and testing for sole penetration according to the test protocols and testing parameters specified by the NFPA 1971-2013 standard, specifically Chapters 7.10.4 and 7.10.6 respectively. The effect of these amendments will be to ensure that protective footwear worn by private brigade structural firefighters will be safe for its intended use. In addition, this part of the rulemaking makes it clear that the California standard is at least as effective as the federal standard, as is required by Labor Code Section 142.2(a)(2). This portion of the proposal is embodied in the new Sections 3411(d)(3) through (6).

The prefatory portion of Section 3411(d) has been augmented to introduce the new subsections.

REFERENCE TO COMPARABLE FEDERAL REGULATION

The federal private fire brigade foot protection regulation, 29 CFR 1910.156(e)(2), contains specific standards that the protective footwear is to meet; it does not reference outside standards, such as those of the NFPA. California achieves an equivalent level of safety by referencing the military and NFPA provisions embodied in the present proposal. This proposal, nonetheless, adds provisions from the federal standard to Title 8, thereby diminishing the differences between the two.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED ON BY THE BOARD

1. Occupational Safety and Health Standards Board Petition No. 535
2. The Division of Occupational Safety and Health evaluation of Petition No. 535
3. The Occupational Safety and Health Standards Board decision regarding Petition No. 535

Copies of 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

NFPA 1971-2013 (the 2013 edition of the national consensus standard known as NFPA 1971)

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document 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.

PETITION

Petitioner: Larry Crabtree File No.: 535

Petition No. 535 pertained to firefighter footwear. The petitioner requested that California Code of Regulations, Title 8, Section 3408(c) be amended to reference a national consensus standard known as NFPA 1977-2011 (which means the 2011 edition of NFPA 1977) rather than the standard currently referenced—a military specification that the petitioner says he was unable to find. On October 17, 2013, the Board granted the petition, noting that the standard to be amended need not be Section 3408(c) and that the amendment should not create a State mandate.

State mandate concerns existed because Section 3408(c) is a structural firefighting standard that applies to local governmental entities. This conclusion is derived from California Code of Regulations, Title 8, Sections 3401(a) (which provides in part that Section 3408 applies to

structural firefighting as defined in Section 3401) and 3402 (where the definition of “Fire Fighting, Structural” says in part that such firefighting is an activity conducted by public fire departments). In order to avoid the State mandate issue in accordance with the Board’s petition decision, the present proposal seeks to update the foot protection standards that apply, instead, to private fire brigades—organized groups of private industry fire personnel (the definition of “Private Fire Brigade” is found in Section 3402).

As to which national consensus standard should serve as the source of the updates, NFPA 1977-2011 is not the appropriate standard since it concerns wildland firefighting, not structural firefighting. The standard regarding structural firefighting is NFPA 1971-2013. Also, in addition to Section 3408(c), another related provision—Section 3408(d)(2) also concerns structural firefighters’ foot protection, and that provision, is also proposed for updating to the extent it applies to structural firefighting by private fire brigades.

The private fire brigade standard is Section 3411. Section 3411(d) provides the nexus between Sections 3411 and 3408: Section 3411(d) says in essence that personal protective clothing and equipment shall be provided to private fire brigades in accordance with the provisions of the Article 10.1 (the article that includes Sections 3408 and 3411) that pertain to the type of firefighting involved, and Section 3408 is the structural firefighting foot protection provision.

Copies of the petition, the Division’s evaluation and the Board’s petition decision are included as Documents Relied Upon.

ADVISORY COMMITTEE

The proposal was developed without the assistance of an advisory committee.

FIRE PREVENTION STATEMENT

This proposal includes fire prevention or protection standards.

SPECIFIC TECHNOLOGY OR EQUIPMENT

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

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses. The proposal gives the regulated public the option of following the same standard that currently applies or an updated standard; since the option of maintaining the status quo exists, no discernable economic impact is anticipated, and nothing in the proposal, therefore, is expected to create or eliminate jobs connected directly or indirectly with private fire brigades. Furthermore, if the regulated public were to opt to comply with the updated standard, there would be no adverse economic impact because Board staff has ascertained that private fire brigades have already been complying with the NFPA standard for nearly three decades. The

cost of a pair of current day rubber turn out boots approved under the NFPA in comparison with those approved in the past under the military specification when adjusted for inflation is, by staff's reckoning, approximately \$50. Given that the service life of a pair of rubber turnout boots is 5-8 years, staff can state with confidence that there are probably few if any private brigades in California using rubber turnout boots or turnout boots of any fabrication that are built and designed to the currently referenced military specification. Again, as stated earlier, under the proposal and in the probable rare event that a member of the regulated public had a useable pair of military specification boots, they will still be allowed under this proposal.

BENEFITS OF THE PROPOSED ACTION

The proposal promotes worker safety by giving employers of private fire brigades the option of utilizing the potentially enhanced protections provided by the current national consensus standard that pertains to footwear worn when engaging in structural firefighting.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated. The proposal gives the regulated public the option of following the same standard that currently applies or an updated standard; since the option of maintaining the status quo exists, no economic impact is anticipated. Furthermore, if the regulated public were to opt to comply with the updated standard, there would be no adverse economic impact because Board staff has ascertained that private fire brigades have already been complying with the NFPA standard for nearly three decades. The cost of a pair of current day rubber turn out boots approved under the NFPA in comparison with those approved in the past under the military specification when adjusted for inflation is, by staff's reckoning, approximately \$50. Given that the service life of a pair of rubber turnout boots is 5-8 years, staff can state with confidence that there are probably few if any private brigades in California using rubber turnout boots or turnout boots of any fabrication that are built and designed to the currently referenced military specification. Again, as stated earlier, under the proposal and in the probable rare event that a member of the regulated public had a useable pair of military specification boots, they will still be allowed under this proposal.

REASONABLE ALTERNATIVES TO THE PROPOSAL AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

No reasonable alternatives to the proposal were identified or brought to the Board's attention.