STATE OF CALIFORNIA - DEPARTMENT OF INDUSTRIAL RELATIONS

Edmund G. Brown Jr., *Governor*

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NOTICE OF PROPOSED MODIFICATIONS TO

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

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 March 21, 2013, the Standards Board held a Public Hearing to consider revisions to Title 8, Division 1, Section 3385, of the 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. Impact and Compression Testing Report, by Professional Services Industries, to Ellwood Safety Appliance Company, dated September 9, 2009.

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 May 27, 2013, 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. 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

Marley Hart

Date: May 7, 2013

Marley Hart, Executive Officer

PROPOSED MODIFICATIONS
(Modifications are indicated in bold, underline wording for new language and bold, strikeout for deleted language.)

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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

Amend Section 3385 as follows:

§3385. Foot Protection.

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(c) Protective Footwear.
(1) Protective footwear for employees purchased after January 26, 2007 shall meet the requirements and specifications in American Society for Testing and Materials (ASTM) F 2412-05, Standard Test Methods for Foot Protection and ASTM F 2413-05, Standard Specification for Performance Requirements for Foot Protection which are hereby incorporated by reference.
(2) Protective footwear purchased on or before January 26, 2007 shall meet the requirements as specified in ~~of either~~ the American National Standard for Personal Protection-Protective Footwear, American National Standards Institute (ANSI) Z41-1999~~,~~ or as specified in both the American Society for Testing and Materials (ASTM) F2412-05, Standard Test Methods for Foot Protection and ASTM F 2413-05, Standard Specification for Performance Requirements for Foot Protection which are hereby incorporated by reference.
(3) Protective footwear shall be maintained in accordance with manufacturer's instructions.
(4) Damaged, defective or deformed protective footwear to the extent that it is not safe for its intended use shall not be used.
(d) Strap-On Foot Protectors.
(1) **Strap-on foot protectors shall be permitted** ~~**When the use of conventional protective footwear is demonstrated by the employer to be impractical or infeasible**~~ **to address a temporary or short duration (i.e non-repetitive) foot hazard exposure for an employee(s) who does not normally work in areas where conventional foot protection is required or for employees who are unable to wear conventional foot protection due to prolonged bending, squatting or kneeling created by a specific task or employees who are unable to wear conventional foot protection due to a medical condition affecting one or both feet** ~~**for a specific application,**~~**.**
(2) ~~**the use of**~~ ~~S~~strap-on foot protectors (i.e., foot guards **for toe and metatarsal protection** and toe protectors **for toe protection only**), ~~**that are at least as effective as protective footwear that is constructed in accordance with the consensus standards referred to in subsection (c)(1) or (c)(2), shall be permitted in accordance with the requirements of this subsection.**~~ **shall pass tests for Class 75 impact and compression resistance specified in Sections 5 and 6 of the ASTM F2412-05 standard.**

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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

(~~2~~3) Testing: Strap-on foot protectors shall be tested by an independent, **third-party** laboratory to ensure that, when worn in accordance with manufacturer's recommendations **and this subsection**, the strap-on foot protectors are at least as protective as class 75 protective footwear for impact and compression resistance per **subsection (d)(2), ~~the consensus standards referred to in subsection (c)(1) and (c)(2).~~**
(~~3~~4) Labeling: Strap-on foot protectors shall be labeled or stamped to indicate **~~the~~ compliance with the impact and compression** standard**~~(s)~~ specified in subsection (d)(2) ~~used in the testing of the strap-on foot protectors per subsection (d)(2).~~** In lieu of labeling, the employer **~~shall~~ may** maintain written certification **in the form of test data/results** from the manufacturer**'s third-party laboratory** which documents **that** the **strap-on foot protection has met the impact and compression** standard**~~(s)~~ ~~used in the testing of the strap-on foot protectors~~** per subsection (d)(2).
(~~4~~5) Use and Maintenance: Strap-on foot protectors shall be used and maintained in accordance with manufacturer's recommendations.
(~~5~~6) Inspection: Before using strap-on foot protectors, they shall be visually inspected for damage and/or defects**, including all positioning devices, fasteners, straps, clasps, buckles, springs and cables**. Strap-on foot protectors found to be damaged, defective or deformed to the extent that they are not safe for their intended use shall not be used.
(~~6~~7) Selection: Strap-on foot protection shall be selected **and fitted according to gender in accordance with the requirements of Section 3380(f) ~~to fit~~ and shall fit securely** over the employee's footwear **from the heel to the toe** in a manner that provides effective protection and that does not create a hazard due to slipping, tripping or other condition and that does not interfere with other protective equipment.
(8) Strap-on foot protection shall be worn over closed toe, work shoes or work boots that consist of a sole, heel and upper that fully surrounds and encloses the foot.
(9) Strap-on foot protectors shall not be worn on uneven or rough surfaces/terrain which could contribute to a slip, trip or fall.
(~~7~~10) Training: Employees who use strap-on foot protectors shall be trained in the proper fit, selection, inspection and use of the foot protectors **in accordance with the employer's Section 3203 Injury and Illness Prevention Program, and subsection (d) of this Section ~~consistent with~~ and the** manufacturer's recommendations.

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

SUMMARY OF AND RESPONSE TO COMMENTS

SUMMARY OF AND RESPONSE TO AND WRITTEN AND ORAL COMMENTS

I. Written Comments

Mr. Terry Thedell PhD, CIH, CSP, Health and Safety Advisor, San Diego Gas and Electric (SDG&E), by letter dated March 1, 2013.

Comment:

Mr. Thedell stated that SDG&E maintains their belief in the safe and effective use of strap-on foot protectors. He also indicated that the use of these devices has been successful since the Standards Board granted their variance request in 2010. He stated that conventional safety toe footwear with built-in metatarsal protection is bulky and uncomfortable for their employees and that SDG&E employees wear strap-on foot protection during activities involving the use of jackhammers, rock drills, clay spades, tampers and other similar equipment used during the installation, maintenance and repair of underground utilities.

Mr. Thedell noted that strap-on foot protectors deflect impact energy to the surrounding walking surface rather than to the foot itself and that fit is no issue since they are available in a variety of sizes for men and women.

Mr. Thedell concluded by expressing his support for the proposal.

Response:

The Board acknowledges Mr. Thedell for his support of the proposal and appreciates his participation in the Board's rulemaking process.

Mr. Corey P. Gray, Secretary Treasurer, Ellwood Safety Appliances, by e-mail transmission dated March 12, 2013.

Comment:

Mr. Gray wrote about the need to allow strap-on foot protectors and about the attributes of his company's products.

Response:

The Board acknowledges Mr. Gray's support for the proposal and appreciates his participation in the Board's rulemaking process.

Ms. Anne Katten, MPH, California Rural Legal Assistance Foundation (CRLAF), by letter dated March 19, 2013.

Comment:

Ms. Katten stated that, while the CRLAF is aware of variances granted by the Board allowing the use of strap-on foot protection, she does not believe that merits expanded broader use through the promulgation of Title 8 standards. Ms. Katten stated a number of concerns:

1. There is no way to test strap-on foot protectors to determine how effective they will be in protecting the feet of employees from crushing or penetrating blows, electric shock, given all the different types of shoes they may be worn with.
2. They are not approved under ANSI or ASTM standards.
3. Strap-on protectors are more difficult to fit and maintain than conventional safety-toe foot-wear.
4. Small employers may have particular difficulty when it comes to fitting and maintenance of strap-on foot protectors.
5. She is not convinced that one strap-on protector can fit all sizes.
6. There is no need for the proposal given the wide variety of conventional safety-toe footwear on the market.
7. If strap-on foot protectors fail to provide adequate protection, there will be great cost in terms of painful, disabling injuries.

Response:

1. Staff's research on this subject has determined that strap-on safety footwear, whether they be toe protectors or foot-guards which cover more than the toes and provide metatarsal protection, have been subjected to the ANSI and ASTM compression and impact resistance test protocols for many years and are labeled as such. Specifically, the leading manufacturer of these devices, Ellwood Safety, has provided staff with results of tests conducted by Professional Services Inc., an independent, third-party laboratory clearly demonstrating that the Model 700 series strap-on toe guard and the Model 200 series foot guard have been successfully tested to meet the 75 pound impact test per Chapter 5 and 6 of the ASTM F2412-05 test protocols.

   These devices are made of conductive materials (steel, aircraft aluminum) and are therefore not designed for use in environments where energized conductors are found as per existing Title 8 Electrical Safety Orders.

2. It is true that strap-on foot guards are not approved under ANSI and ASTM standards, because they are a different class of protection. The ANSI and ASTM standards were developed to address protective footwear. Strap on foot protection is just that, foot protection, not footwear, which is essentially defined by the aforementioned standards as providing toe protection integral and within the design of the shoe or boot as opposed to being an external device. However, this fact does not preclude the toe and foot protection coverings from being effectively tested to the same standard as those that are built in to the shoe. Ironically, the ASTM impact and compression test protocols require the test to be conducted on the safety toe portion of the shoe or boot that has been isolated from the shoe or boot by being sliced or dissected from the rest of the footwear.

3. The modified proposal respects the need for uniformity in the type of foot protection which is worn under the strap-on device and addresses requirements that strap-on safety devices are to be worn over a closed toe work shoe or work boot consisting of a heel, sole and upper that surrounds the foot.

4. Strap-on devices are not more difficult to maintain than conventional safety toe footwear. The protective portions of the devices are made of steel or aircraft aluminum and able to stand up to a great deal of wear and tear as are the straps, buckles, positioning devices

and fasteners which are all substantially designed. The modified proposal addresses the use, care and maintenance of all parts of the strap-on device. There is nothing factual known to Board staff to suggest that a small employer would have any particular difficulty in complying with the modified proposal.

5. The modified proposal also requires the employer to comply with the assessment requirements of Section 3380(f) of Title 8 to ensure that the right type and size of strap-on device is selected by gender and by size. These devices are in fact offered in varying sizes for men and women, not one size fits all.

6. The Board notes that the modified proposal only addresses three distinct situations where the use of strap-on foot protectors may be used, therein demonstrating the need for this proposal:

    1. Short or temporary duration exposures for employees who do not typically work in areas where foot protection is a requirement;
    2. Exposures where employees are unable to wear conventional safety toe footwear for tasks that involve prolonged bending, squatting or kneeling; and
    3. Exposures where employees cannot wear conventional safety toe footwear due to medical condition of the foot that affects one or both feet.

7. The same danger of injury exists if built-in foot protectors fail to provide adequate protection, and the proposal requires that the strap-ons meet testing requirements that apply to built-ins.

The Board believes the proposal as modified more than adequately addresses Ms. Katten's concerns over the use of strap-on foot protection and the Board thanks her for her comments and participation in the Board's rulemaking process.

Ms. Dorothy Wigmore MS, Occupational Health Specialist, WORKSAFE, by letter dated March 19, 2013.

Comment:

Ms. Wigmore stated that WORKSAFE opposes the proposal for these six reasons:

1. It is bad policy;
2. There is no necessity;
3. There is no evidence that strap-on protectors protect all workers or are as effective as conventional safety-toe footwear (no tests that are effective in assessing the effectiveness of these devices to protect workers);
4. Strap-on devices are not recognized by standard setting organizations;
5. The Initial Statement of Reasons (ISOR) is misleading;
6. The proposal is poorly worded and will be difficult to enforce.

Ms. Wigmore concluded by stating that, if the proposal is adopted there needs to be a provision that includes this aspect of the employer's Personal Protective Equipment (PPE) program in the Injury and Illness Prevention Program (IIPP).

Response:

In the order in which they appear above, the Board provides the following responses:

1. There is no policy issue regarding the proposal, because it promotes flexible and effective approaches in securing employee foot protection.

2. See Item 6 of the Board's response to Ms. Katten's written comment.

3. See Item 1 of the Board's response to Ms. Katten's written comment.

4. See Items 1 and 2 of the Board's response to Ms. Katten's written comment.

5. This comment is outside the scope of the modifications and therefore merits no response.

6. The proposal has been modified in a number of places with respect to scope and application, use of specific ASTM F2412-05, 75 pound test protocols for both compression and impact resistance (the ASTM F2412-05 specifies a 50 pound compression resistance test, but the proposal requires a 75 pound force test for both impact and compression), third-party testing, labels or actual test data documenting that the protector has met the required impact and compression tests, enhanced before-each-use inspection requirements addressing all critical components of the protector, enhanced assessment, selection and fitting according to gender requirements in accordance with Section 3380(f) PPE assessment standards, specifying that strap-on devices be worn with appropriate footwear, standards clarifying how strap-on protectors are to be worn, the required quality of the walking/working surfaces where strap-on protectors are used, and enhanced training standards that specifically cross reference Section 3380(f) (which pertains to the employer's duty to assess the need for PPE and make a proper selection) to Title 8 IIPP standards in concert with the manufacturer's recommendations.

Ms. Wigmore's concern about the implementation of Section 3203 IIPP programs and worker vulnerability are issues of enforcement not standards. The Board recognizes the long-standing responsibility of the employer to have a compliant IIPP, regardless of the nature of employer operations.

The Board believes the modified proposal is sufficiently comprehensive to afford employees who qualify to wear strap-on foot protection, a level of safety at least equivalent to the level of safety afforded employees who wear conventional safety toe footwear. Also, these modifications will be enforceable, reasonable and clear in terms of what the employer's duty to comply is.

The Board thanks Ms. Wigmore for her comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the March 21, 2013, Public Hearing in Sacramento, California.

Terry Thedell, representing San Diego Gas and Electric.

Comment:

Mr. Thedell stated his full support for the proposal and indicated that strap-on devices are a more flexible option for employees who are faced with kneeling and bending down. The use of strap-on devices has not changed the company policy on furnishing conventional safety-toe footwear.

Response:

The Board acknowledges Mr. Thedell's support for the proposal.

Patrick Bell, representing the Division of Occupational Safety and Health (Division)

Comment:

Mr. Bell stated he opposed the proposal. He also said that the Informative Digest states that strap-on foot protection is intended to be used as an alternative to metatarsal protection, not toe cap protection. Furthermore, Mr. Bell stated that this change is not reflected in the proposal. Therefore, both the proposal and Section 3385 need to comport with each other. He also expressed concern that, while strap-on devices are not the same as ANSI or ASTM approved foot protective footwear, some employers may offer strap-on devices to evade having to furnish employees with conventional safety toe footwear.

Response:

The Informative Digest contains no statement that strap-on foot protection is to be used as an alternative to metatarsal protection and not toe protection. Consequently, Board staff does not find a discrepancy between the Informative Digest and the proposed regulatory text. Strap-on toe protectors provide protection to the toes, and strap-on foot guards which cover more of the foot are designed and tested to provide toe and metatarsal protection. Likewise, there is conventional safety-toe footwear that is designed to provide only toe protection, and there are models that provide toe and metatarsal protection.

The ANSI and ASTM standards referred to by Mr. Bell are protective footwear standards. Strap-on foot protectors are not consensus-standard-defined "footwear", which describes a shoe or boot with a sole, heel, and an upper that encloses the foot. They are a form of foot protection or a foot protective device as discussed in Section 3385(a). As proposed for modification, the proposal restricts the use of strap on foot protection to three specific circumstances:

1. Short or temporary duration exposures for employees who do not typically work in areas where foot protection is a requirement;
2. Exposures where employees are unable to wear conventional safety toe footwear for tasks that involve prolonged bending, squatting or kneeling; and
3. Exposures where employees cannot wear conventional safety toe footwear due to medical condition of the foot that affects one or both feet.

Therefore, it is highly unlikely that employers will abandon established protective footwear policies of providing safety shoes and boots to employees who require them in favor of strap-on

devices. In fact, the Board believes that by having another means of protection, employees in the situations called out in the modified proposal which are troublesome for some wearers of conventional foot safety-toe footwear, will have the effect of ensuring that all employees will be provided with an appropriate level of foot protection as required in Section 3385 (a).

Ms. Patty Quinlan, Board Member

Comment:

Ms. Quinlan asked Mr. Bell whether the proposal would allow the use of safety shoes without a metatarsal guard, to which Mr. Bell responded affirmatively.

Response:

The Board notes that, the use of safety shoes or conventional safety foot wear without the metatarsal guard feature is not prohibited by Title 8. Section 3380(f) requires employers to perform PPE assessments to determine, based on the nature of the exposure, what is the appropriate level of protection as called out in Section 3385(a) in the case of foot protection. The nature and severity of potential foot injury in a given workplace is what drives the need for toe protection or a combination of toe and metatarsal protection. The proposal as modified has no bearing on whether conventional safety toe footwear is provided with metatarsal protection or not, that is a decision the employer will make based on the requirements of Sections 3380(f) and 3385(a). Even in the case of the three restricted uses of strap-on devices as set forth by the proposed modifications, the employer is still held accountable to assess the foot hazard and select either a strap-on toe guard or a strap-on foot guard depending on whether there are metatarsal hazards the employee needed to be protected against.

Ms. Barbara Smisko, Board Member

Ms. Smisko requested clarification as to the precise nature of the Division's concern with the proposal; is it related to the lack of national consensus standard approval or is it rooted in whether the employer will opt out of having to provide appropriate foot protection and only provide strap on devices when conventional safety toe footwear should be worn? Mr. Bell attempted to clarify that his concerns stem from both issues and further clarified that strap-on devices are not approved by the ANSI/ASTM and that it would be impossible for employers to know which strap-on protectors meet the performance parameters specified by the ANSI/ASTM for compression and impact. He reiterated his concern that the proposal could pressure employers to take the least expensive alternative.

Response:

The Board believes that, based on test data/results, which are contained in the rulemaking file, it is clear that strap-on toe protectors and foot guards can provide equal or greater safety when used as directed in the modified proposal. This has been borne out by the successful outcome and successful track record since the Board granted variances, August 3, 2012 (OSHSB File Nos. 09-V-124 and 125). The Board disagrees with Mr. Bell with regard to the possibility that employers would somehow be pressured by the proposal into converting their safety toe footwear programs into exclusive strap-on programs. This will be impossible given the requirements in Section

3380(f), 3385(a) and the fact that the proposed modifications would only allow employers to utilize these devices under three narrow circumstances.

Ms. Anne Katten, California Rural Legal Assistance Foundation

Comment:

Ms. Katten opposed the proposal, stating concerns about, fit, type of shoes worn underneath the protectors, maintenance issues, the lack of approval under a consensus standard, and difficulty small employers might have in conducting training. She also indicated that, despite the granting of variances by the Board, she does not agree with broadening their use via the rulemaking process.

Response:

See the responses to Ms. Katten's written comment letter to the Board dated, March 19, 2013.

California's existing Section 3203, Illness and Injury Prevention Program requires all employers to implement a continuing and effective injury and illness prevention program which includes documented initial, periodic and refresher training. This is a standard that small employers are required to comply with now. It is not clear to the Board whether Ms. Katten is alluding to the possibility that Section 3203 is not complied with on a scale that merits concern or whether enforcement of this standard by the Division is inadequate or both. The Board notes that the proposal, as modified, addresses practically all of Ms. Katten's concerns and has narrowed the application of Section 3385(d) to three distinct permissible instances of use and does not believe this constitutes an unreasonable or unsafe broadening of the use of strap-on foot protectors that could result in proliferation that places employees at risk.

The Board thanks Ms. Katten for her comments and participation in the Board's rulemaking process.

Ms. Dorothy Wigmore, Worksafe

Comment:

Ms. Wigmore stated she opposes the proposal on the basis that it is inappropriate to convert permanent variances into standards. In addition, she reiterated her comments from her March 19, 2013, letter to the Board which consisted of the following concerns:

- Strap-on foot protectors are not approved under any National Consensus Standard.
- The Initial Statement of Reasons is misleading regarding: (1) the employer's duty to pay for PPE; (2) use of Strap-on protectors is the least burdensome in terms of cost; and (3) the feedback from Advisory Committee members did not indicate general agreement.

Response:

See the Board's responses to Ms. Wigmore's written comment letter dated March 19, 2013.

The Board thanks Ms. Wigmore for her comments and participation in the Board's rulemaking process.

Mr. David Harrison, Board Member

Comment:

Mr. Harrison asked how many permanent variances have been applied for pertaining to this issue and stated that he does not support the proposal as currently written. He also stated that he does not believe in the virtual advisory committee process to the extent that it appears to have not been successful in this case. It appears from his perspective that many of the issues described by some commenters could have been worked out through the conventional advisory committee process. He also stated that he does not believe that conventional safety toe footwear is cumbersome and uncomfortable and indicated that strap-on foot protectors can create a trip hazard. He stated that the proposal should differentiate between toe-guards and metatarsal guards and the proposal should be tightened up to clearly indicate the employer's duty to pay for strap-on devices.

Response:

As stated in the Informative Digest, there have been two permanent variances granted by the Board, OSHSB Variance File Nos. 09-V-124 and 125 to San Diego Gas and Electric and the Southern California Gas Company. In each case, the outcome in terms of the effectiveness of strap-on foot protectors to provide safety equal or greater than provided by conventional foot protection has been demonstrated. The proposal is based in large part upon the conditions that were crafted by the Division and Board staff to ensure equivalent safety. Neither Board staff nor the Division was able to ascertain anything of concern with regard to the ability of these devices to protect employees when used as directed by the conditions. In fact, at the variance hearing, on page 5 of the Board's August 3, 2010 Decision, the Division representative stated words to the effect that the deflection protection provided by strap-on foot protectors might well be superior to the deflection protection provided by built-in protectors. The Board notes that at the variance hearing it was established, that for certain tasks involving prolonged bending, stooping and crouching, the use of strap-on devices provided greater comfort than that provided by conventional built-in safety protection.

The Board notes that the rulemaking file contains a record of the virtual advisory committee outreach list of stakeholders which is both extensive and representative and inclusive of numerous labor contacts including Worksafe. The record also shows that an outreach effort was made to this list of stakeholders via e-mail on March 23, 2011 and that responses were received from both labor and management that resulted in revisions to the proposal that was noticed for Public Hearing.

With regard to the comment about delineating toe protectors from those protectors that provide metatarsal protection, Title 8, Section 3380(f) requires the employer to perform an assessment of the type of PPE that is to be selected to address a given hazard. Toe protectors are designed to provide protection to the toes. Foot guards extend further up from the top of the foot and are designed to provide metatarsal protection when needed. There is no difference in the process the employer must go through to select the right type of built-in safety toe protection as not all safety shoes provide metatarsal protection. As with conventional foot protection, the employer is held

responsible by Section 3380(f) to assess the hazard and make the right PPE selection based on information from the assessment and the PPE manufacturer. This applies the same way for strap-on devices. However, for the sake of clarity, the proposal has been modified to distinguish toe protectors as being devices to protect the toe and foot guards as being devices to protect the toe and metatarsal area of the foot.

As for the employer's duty to pay for PPE, California employers are already required to furnish and pay for all PPE that is required to safeguard employees. If a strap-on device was determined to be necessary in accordance with the PPE selection safety order, in order to provide employee protection, the employer has the duty to furnish and pay for it. Consequently, the Board believes further modification of the proposal to state the employer's duty to pay for strap-on foot protection is not necessary.

Mr. Bill Jackson, Board Member

Comment:

Mr. Jackson stated that the proposal provides the employer with a means of providing immediate protection against foot hazards, even if the exposure is brief, as in the case of an employee who is working temporarily in a workplace where foot protection is required. Mr. Jackson also stated that, from a very real-world, practical sense, the proposal is beneficial in that, in situations where it may be difficult for employers to furnish conventional safety toe footwear, the employer will have an immediate means of protecting the employee. Mr. Jackson said that it should be clear that the use of strap-on devices not be a full time alternative to conventional safety toe footwear, but something that be used alternatively in certain situations.

Response:

The Board agrees that strap-on foot protection should not be proposed as a fulltime alternative to conventional foot protection and notes that the proposal has been modified to allow their use under three circumstances: temporary or short duration exposures; exposures where an employee cannot wear conventional safety toe foot protection due to tasks that require prolonged bending, squatting and kneeling; and exposures involving employees who, for medical reasons (e.g. foot pathology, deformity), cannot wear conventional safety toe foot protection.

Ms. Laura Stock, Board Member

Comment:

Ms. Stock stated that the issue Mr. Jackson raised in his comment (regarding using strap-on devices under certain conditions of use) is not reflected in the proposal. She stated her concern over the effectiveness of these devices to adequately safeguard employees. She agreed that issues related to short term use of strap-on devices needs to be addressed in the proposal and that the public should have an opportunity to comment on such issues.

Response:

See The Board's response to Mr. Jackson's oral comment.

As far as effectiveness is concerned, as stated in previous responses to Ms. Katten and Ms. Wigmore's oral and written comments, the Board is satisfied that strap-on toe protectors and foot guards which as indicated by manufacturers who provided third party test data, have passed ASTM compression and impact testing, will be effective in providing satisfactory employee protection when used in concert with the proposals other requirements and conditions.

All members of the public who provided comments to the Board for this proposal will be provided an opportunity to comment on the modified proposal and staff will review and consider those comments before preparing the proposal for presentation to the Board at a future Board business meeting.