

**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(c)(2)
of the General Industry Safety Orders**

Foot Protection**SUMMARY**

In a rulemaking that was the subject of an October 19, 2006 public hearing, the Occupational Safety and Health Standards Board (Board) considered amendments to Section 3385. The regulatory text considered at that public hearing and adopted by the Board added a reference in Section 3385(c)(2) to the "American National Standard for Men's Safety-Toe Footwear, Z41.1-1999." However, both the Informative Digest of Proposed Action/Policy Statement Overview and the Initial Statement of Reasons prepared for that rulemaking indicate that the national consensus standard intended for incorporation by reference was American National Standard Institute (ANSI) Z41-1999, American National Standard for Personal Protection-Protective Footwear.

In its decision rendered in PG&E (November 6, 2008), Occupational Safety and Health Appeals Board Docket No. 07-R1D3-1669, the Appeals Board noted the aforesaid discrepancy between the text of Section 3385(c)(2) as it presently reads and the manner it apparently was intended to read in accordance with the above-discussed Informative Digest of Proposed Action/Policy Statement Overview. The present proposal replaces the reference to American National Standard for Men's Safety-Toe Footwear, Z41.1-1999 with a reference to American National Standard Institute (ANSI) Z41-1999, American National Standard for Personal Protection-Protective Footwear.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 3385. Foot Protection.**

Existing Section 3385 consists of subsections that contain requirements for foot protection. Subsection (c)(2) provides that protective footwear purchased on or before January 26, 2007, must meet the requirements of either of two national consensus standards, one of which is the American National Standard for Men's Safety-Toe Footwear, Z41.1-1999. Review of the rulemaking documents makes it apparent that instead of referencing that Z41.1-1999 standard, subsection (c)(2) was supposed to reference American National Standard Institute (ANSI) Z41-

1999, American National Standard for Personal Protection-Protective Footwear. The present proposal adds to subsection (c)(2) a reference to that Z41-1999 standard in place of the erroneous reference to the Z41.1-1999 standard. This proposed amendment is necessary in order to ensure that the provisions of subsection (c)(2) are clear and are consistent with the objective of the 2006/2007 rulemaking.

DOCUMENTS RELIED UPON

1. Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of PG&E, Docket No. 07-R1D3-1669, dated November 6, 2008.
2. The regulatory text adopted by the Board at that November 16, 2006, business meeting regarding the proposed amendment of California Code of Regulations, Title 8, Section 3385 (the 2006/2007 Rulemaking).
3. The portion of the California Regulatory Notice Register, dated September 1, 2006, pertaining to rulemaking by the Board.
4. The Initial Statement of Reasons prepared with respect to the 2006/2007 Rulemaking.
5. The Final Statement of Reasons prepared with respect to the 2006/2007 Rulemaking.

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.

DOCUMENT INCORPORATED BY REFERENCE

American National Standard Institute (ANSI) Z41-1999, American National Standard for Personal Protection-Protective Footwear.

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

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.

Impact on Businesses

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.

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."

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.)

The 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

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this regulation 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.

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.