

**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 3381 of the General Industry Safety Orders**Federal OSHA Direct Final Rule – Head Protection****SUMMARY**

On June 22, 2012, federal OSHA issued a direct final rule related to standards for head protection. On July 23, 2012, federal OSHA issued a notice of correction (editorial only) related to the explanation for its proposed final rule related to head protection in its construction standards. The federal final rule primarily includes amended provisions for head protection in sections of its general industry standards (29 CFR 1910.135), shipyard employment standards (29 CFR 1915.155), marine terminal standards (29 CFR 1917.93), longshoring standards (29 CFR 1918.103) and construction standards (29 CFR 1926.100).

Federal OSHA's final rule will allow use of helmets/head protection that complies with any of the three most current editions of the American National Standards Institute (ANSI) Z89.1 consensus standards for Industrial Head Protection, editions 2009, 2003, and 1997. These three editions are incorporated by reference in 29 CFR 1910.6 of the federal standards. References in its standards listing ANSI Z89.1 editions prior to 1997 are removed in the federal final rule. Federal OSHA commented that the useful life of protective helmets is limited and in general opined that industries and employers would not be impacted by the removal of references to outdated standards. Manufacturers of protective helmets design their products in accordance with the latest ANSI standards, and it is believed that it is the usual and customary practice of employers to provide head protection that complies with one of the three aforementioned ANSI standards.

California OSHA provisions in Title 8 do not have industry specific standards (vertical standards) for head protection in those industries affected by the federal final rule. The General Industry Safety Orders (GISO) Section 3202(a), in summary, states that GISO standards apply to all places of employment as defined in the California Labor Code, except that industry specific (vertical standards) take precedence wherever they are inconsistent with GISO standards.

Therefore, the GISO Section 3381 “Head Protection” provides the head protection standards for those industries affected by the federal final rule. The State is adopting similar language to that of the federal final rule. The State’s proposal requires that head protection meets the criteria in any one of the ANSI Z89.1-2009, 2003, and 1997 consensus standards for Industrial Head Protection. These standards are incorporated by reference in proposed Section 3381(b). The existing standards and several components of this proposal also include specific criteria related to helmet impact types and the use of the appropriate helmet class designation for exposure to electrical hazards.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to improve and provide worker safety at places of employment in California involved in operations that expose employees to the hazards of head injuries from flying or falling objects and/or electric shock and burns.

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.
- Is initiated as a result of the federal OSHA direct final rule issued June 22, 2012, related to head protection. California standards for head protection related to those industries included in the federal final rule are provided in GISO Section 3381. With this proposal, California standards will be commensurate with provisions issued in the federal final rule. The State’s standard differs from the federal final rule formatting of its standards in that federal OSHA chooses to repeat the same or similar requirements in each of its industry specific standards.
- 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. The amendments proposed in Title 8, Section 3381 are necessary to provide equivalency with federal OSHA’s updated standards that will require head protection that complies with one of the three most recent editions of the consensus standards for employee head protection. The proposal will enhance employee protection from falling or flying objects and electrical hazards.

GISO Section 3381. Head Protection.

Existing Section 3381 provides the requirements for head protection where there is a risk of receiving head injuries from flying or falling objects and/or electric shock and burns. These provisions provide the requirements for various protective classes of head protection (helmets) based on their ability to provide impact protection and/or electrical shock and burn hazard protection.

The existing standard incorporates by reference a number of ANSI standards for protective headwear starting with the 1969 edition to the 1997 edition of ANSI Z89.1 standards related to head protection. Existing Section 3381(b)(1) provides the requirements for helmets placed in service after October 30, 2004, and Section 3381(b) addresses helmets placed in service on or before October 30, 2004.

Subsections (b)

Existing subsection (b) provides that when head protection is required that protective helmets be selected and used in accordance with their resistance to impact and electrical hazards. Existing subsection (b)(1) requires protective helmets placed in service after October 30, 2004, to comply with the ANSI Z89.1-1997 standard for Industrial Head Protection which is incorporated by reference.

Language proposed for deletion in subsections (b) and (b)(1) removes the provision that permits protective helmets placed in service after October 30, 2004, to comply only the provisions in the ANSI Z89.1-1997 Industrial Head Protection standard. In lieu of the deleted language, proposed new subsections (b)(1) through (b)(3) include amendments necessary for consistency with the federal OSHA final rule that requires head protection to meet the criteria in one of the ANSI Z89.1-2009, 2003, and 1997 consensus standards for Industrial Head Protection, which are incorporated by reference.

Amendments proposed in new subsections (b)(1) through (b)(3) are necessary to allow the option to use helmets that comply with any one of the three most recent editions of the head protection ANSI standards. It should be noted that proposed subsection (b)(1), reflects that the International Safety Equipment Association (ISEA) is now affiliated with the title of this consensus standard for the first time in the 2009 edition.

Existing Section 3381(b)(2) permits the use of protective helmets placed in service on or before October 30, 2004, that comply with ANSI Z89.1-1969 through 1986 standards, or that comply with the 1997 ANSI standard. This subsection is proposed for deletion because proposed subsection (b)(3) already permits compliance with the ANSI Z89.1-1997 standard, and the new federal standard removed references in its new head protection standards that permit compliance with ANSI Z89.1 editions prior to 1997. In addition, existing subsections (b)(2)(A) through

(b)(2)(C) are deleted because they reference classes of helmets (e.g. A, B, C, D, or G) that pertain to the outdated ANSI standards in effect prior to 1997. These amendments are necessary to provide consistency with federal OSHA standards and to provide head protection consistent with later editions of the ANSI head protection standards. Federal OSHA commented that it believes it is the usual practice of employers to provide head protection that complies with one of the three most recent editions of the ANSI-Z89.1 standards. It is not expected that employers would be affected by the removal of outdated standards, some of which go back as far as 1969.

Subsection (c)

A new subsection (c)(1) is proposed that requires the employer to ensure the appropriate impact type of helmet is selected and used. An informational note to this subsection is provided for clarity so that the employer will know that protective helmets are described by the impact type (either Type 1 or II) and electrical class. The proposed subsection is necessary to ensure that the employer provides the appropriate head protection for the potential hazards.

Existing language in subsection (b)(1) that pertains to helmet classifications for electrical hazards is retained as new proposed subsection (c)(2). This subsection addresses the use of appropriate classifications for helmets related to electrical hazards as designated in the ANSI Z89.1-1997, 2003, and 2009 standards. An amendment is made in the first sentence of proposed subsection (c)(2) that adds the word “electrical” to clarify that the subsection addresses classes of helmets related to electrical hazards.

Amendments are also proposed for subsections (c)(2)(A) – (C) to add the “Z89.1” reference to the ANSI standard. Further, the word “approved” is deleted, and the word “designated” is used in its place. ANSI does not “approve” helmets. ANSI provides the design and testing requirements for various classes of helmets which are used by manufacturers so that their products conform to the ANSI standard. These additional amendments are necessary to provide clarity to the provisions of subsection (c)(2). Deleted provisions in the text that follows subsection (c)(2) [from existing Section 3381, subsections (b)(2)(A) through (b)(2)(C)] are explained in the rationale under the heading “Subsection (b).”

A new proposed subsection (c)(3) requires employees exposed to high-voltage electric shock and burns to be provided head protection that meets the specifications contained in Section 9.7 “Electrical Insulation” of any of the consensus standards identified in subsection (b) of Section 3381. ANSI Z89.1, Section 9.7 provides the electrical insulation requirements for all three editions of the ANSI Z89.1 standards listed in subsection (b). In updating its construction standards, in 29 CFR 1910.100, federal OSHA has included this same provision to emphasize that employers must provide appropriate protection for employees exposed to high-voltage shock and burns. Title 8, Construction Safety Orders requirements for head protection are provided in Section 3381. The amendment is necessary to provide equivalent standards to those in the federal finale rule.

Subsection (d)

Existing subsection (c), proposed as subsection (d), provides the requirements for markings that must be included on protective helmets. The existing standard requires that helmets must have the “original” marking required in the ANSI standards. An amendment replaces the word “original” with “permanent”, which is consistent with the terminology used in the ANSI standards. An additional amendment adds that helmet markings must also include the “impact type.” The amendment is necessary to provide consistency with similar provisions in the ANSI standards.

DOCUMENTS INCORPORATED BY REFERENCE

1. American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) Z89.1–2009, American National Standard for Industrial Head Protection.
2. ANSI Z89.1–2003, American National Standard for Industrial Head Protection.
3. ANSI Z89.1–1997, American National Standard for Industrial Head Protection.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. 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 RELIED UPON

1. Federal Register, Vol. 77, No. 121, Pages 37587 – 37630, June 22, 2012, Department of Labor, OSHA, 29 CFR Parts 1910, 1915, 1917, 1918, and 1926 “Updating OSHA Standards Based on National Consensus Standards; Head Protection.”
2. Federal Register, Vol. 77, No. 141, Pages 43018 and 42988 – 42989, July 23, 2012, Department of Labor, OSHA, 29 CFR Part 1926 “Updating OSHA Construction Standards Based on National Consensus Standards; Head Protection; Correction of Notice of Proposed Rulemaking.”
3. ANSI Z89.1–1986, Protective Headwear for Industrial Workers-Requirements.
4. ANSI Z89.1–1981, Requirements for Protective Headwear for Industrial Workers.
5. ANSI Z89.2–1971, Safety Requirements for Industrial Protective Helmets for Electrical Workers, Class B.
6. ANSI Z89.1–1969, Safety Requirements for Industrial Head Protection.

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.

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. Consistent with the federal OSHA final rule, the California proposal requires that protective helmets meet the criteria in any one of the three latest editions of the ANSI consensus standards for head protection.

Federal OSHA determined that no protective helmets currently are available or in use that manufacturers tested in accordance with the ANSI 1969 and 1971 consensus standards. Further, federal OSHA believes that it is the customary and usual practice of employers in general industry and other industries such as, maritime and construction to provide head protection that complies with the 1997, 2003, or 2009 editions of ANSI Z89.1 and the proposal will not add a compliance burden for employers.

Therefore, the adoption of the proposed amendments to these standards 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 standard 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 amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard 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.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard 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 standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

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 economic impact is anticipated. The proposal is consistent with federal standards and it is expected that the proposed amendments are consistent with employer practices and policies for providing head protection.

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.