

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

Section 3411 of the General Industry Safety Orders (GISO)

Private Fire Brigades—Foot Protection

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **February 19, 2015**, in the **Auditorium** of the **Harris State Building, 1515 Clay Street, Oakland, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **January 2, 2015**, and closes at 5:00 p.m. on **February 19, 2015**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By fax at (916) 274-5743; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT
OVERVIEW

Labor Code Section 142.2 allows interested persons to propose standards for adoption by the Board. One such proposal, identified as 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 National Fire Protection Association (NFPA) 1977-2011 (which means the 2011 edition of NFPA 1977) rather than the standard currently referenced—a military specification that the petitioner 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 3402) 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).

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.

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 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. 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.

This proposed rulemaking action 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: (1) the requirement of the federal government and the Labor Code to the effect that the state’s regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

ANTICIPATED BENEFITS

The anticipated benefit of the proposal is to promote 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.

The specific changes are as follows:

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, Chapter 7 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, state-of-the-art 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).

The proposal clarifies that all protective footwear is to meet the foot protection requirements of Section 3385 of the GISO for Class 75 footwear and addresses water resistance and testing for sole penetration according to the test protocols and testing parameters specified by Chapter 7 of the NFPA 1971-2013 standard. 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.

DOCUMENTS INCORPORATED BY REFERENCE

Chapter 7 of the 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.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies and School Districts: None.

Cost or Savings to State Agencies: None.

Cost to any Local Government or School District which must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impacts on a Representative Private Person or Business: 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.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals Including the Ability of California Businesses to Compete: The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. 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, there is no adverse economic impact.

Significant Affect on Housing Costs: None.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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.

BENEFITS OF THE REGULATION

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons and supporting documents. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.