

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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SECOND NOTICE OF PROPOSED MODIFICATIONS TO  
CALIFORNIA CODE OF REGULATIONS

TITLE 8, Section 1520 of the Construction Safety Orders and  
Section 3384 of the General Industry Safety Orders

**Hand Protection**

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 regulation in which further modifications are being considered.

On October 17, 2013, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 1520 of the Construction Safety Orders and Section 3384 of the General Industry Safety Orders. The Standards Board received written and oral comments on the proposed revisions. The regulation was modified as a result of these comments, and on November 19, 2013, a 15-Day Notice was issued.

In response to comments on the proposed modifications, further modifications are now proposed.

A copy of the regulations with the further modifications clearly indicated is attached for your information. In addition, a summary of all comments regarding this proposal and responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on January 27, 2014, 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](mailto: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

Date: January 10, 2014

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Marley Hart, Executive Officer

## **Proposed Further Modifications To Second 15-Day Notice**

(Further modifications for new language are shown in *italicize*  
**bold**, and double underscored and deleted language are shown in  
*italicize*, **bold**, and strike-out)

## **Proposed Modifications To First 15-Day Notice**

(Modifications for new language are shown in  
**bold** and underscored and deleted language  
are shown in **bold** and double strike-out)

STANDARDS PRESENTATION  
TO  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Attachment No. 1

Page 1 of 2

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

Amend Section 1520 to read:

§ 1520. Hand Protection. **[Repealed]**

~~Hand protection shall be required for employees whose work involves unusual and excessive exposure to cuts, burns, harmful physical or chemical agents or radioactive materials which are encountered and capable of causing injury or impairments. Employers shall select, provide and require employees to use appropriate hand protection when employees' hands are exposed to hazards such as those from skin absorption of harmful substances, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.~~

~~**EXCEPTION:** Hand protection shall not be required where there is a danger of the hand protection becoming caught in moving machinery or materials.~~

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

**STANDARDS PRESENTATION  
TO  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Attachment No. 1

Page 2 of 2

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

Amend Section 3384 to read:

§3384. Hand Protection.

(a) ~~Hand protection shall be required for employees whose work involves unusual and excessive exposure of hands to cuts, burns, harmful physical or chemical agents or radioactive materials which are encountered and capable of causing injury or impairments. Employers shall select, provide and require employees to use appropriate hand protection when employee's hands are exposed to hazards such as those from skin absorption of harmful substances, severe cuts or lacerations, severe abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.~~

**EXCEPTION: Hand protection for cuts, lacerations, and abrasions shall not be required when the employer's personal protective equipment hazard assessment, required by Section 3380(f) of this Article, determines that the risk of such injury to the employee's hands is infrequent and superficial.**

(b) Hand protection, such as gloves, shall not be worn where there is a danger of the hand protection becoming entangled in moving machinery or materials.

EXCEPTION: Machinery or equipment provided with a momentary contact device as defined in Section 3941.

NOTE: 1. As used in subsection (b) the term entangled refers to hand protection (gloves) being caught and pulled into the danger zone of machinery/equipment. Use of hand protection around smooth surfaced rotating equipment does not constitute an entanglement hazard if it is unlikely that the hand protection will be drawn into the danger zone.

NOTE: 2. Wrist watches, rings, or other jewelry should not be worn while working with or around machinery with moving parts in which such objects may be caught, or around electrically energized equipment.

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

## **SUMMARY AND RESPONSES TO COMMENTS**

## **SUMMARY AND RESPONSES TO COMMENTS RESULTING FROM THE FIRST 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

### I. Written Comments

Ms. Juliann Sum, Acting Chief, Division of Occupational Safety and Health (Division), by letter dated December 4, 2013.

#### Comment:

The Division stated concerns about the proposed modifications and does not recommend they be adopted unless further modified. The Divisions stated that the term “severe” should be deleted from the language as it does nothing to improve the clarity of the proposal, since there is no definition proposed for the term ‘severe’. The Division stated that the various definitions of the word ‘severe’ may cause employers to determine that hand protection need not be required for a variety of operations in which glove use is common and necessary to prevent injuries. The Division emphasized that Title 8 has provided effective hand protection to employees without having California employers determine the severity of an injury to establish a threshold of protection.

The Division also stated that the Section 3380(f) requirement for personal protective equipment (PPE) assessment will ensure the proper level and degree of protection if any, is provided. The Division stated that if the Board believes further clarification of this point is needed in the absence of the term “severe”, an exception should be added and follow this subsection to state that “hand protection for cuts, lacerations and abrasions is not required when the employer’s PPE assessment as required by Section 3380(f) determines that the risk of such injury to the employee’s hands is infrequent and superficial.”

The Division concluded by also recommending the term “employees” be replaced by the term “employee’s”, to ensure the employer understands that the duty to provide PPE is applicable to one or more employees.

#### Response:

The Board agrees with the suggested modifications, and the proposal will be further modified accordingly.

The Board thanks Ms. Sum for her comments and participation in the Board’s rulemaking process.

Mr. David Y. Shiraishi, MPH, Area Director, Region IX, OSHA U. S. Department of Labor, by letter dated December 5, 2013.

#### Comment:

Federal OSHA stated that it believes the modified proposal to be commensurate with the comparable Federal standard.

Response:

The Board acknowledges Region's IX's comment and thanks Mr. Shiraishi for his participation in the Board's rulemaking process.

Mr. Jeremy Smith, Deputy Legislative Director, State Building and Construction Trades Council, by letter dated December 6, 2013.

Comment:

Mr. Smith stated that while the terms "unusual and excessive" need to be stricken from the proposal, the addition of the term "severe" to the proposal will weaken the existing standard, and he believes such inclusion is not justified. Mr. Smith noted that Section 3380(f), which requires PPE hazard assessment by the employer, will ensure that hand protection is provided when necessary and will not encumber the employer unreasonably to provide hand protection.

Mr. Smith also stated that repealing the Construction Safety Order could cause problems with citations, if the Division does not have a distinct hand protection standard for the Construction industry.

Response:

The Board agrees with Mr. Smith with regard to the need to delete the term "severe" from the proposal. (See the response to Ms Sum's December 4, 2013, comment letter).

The Board does not agree to keep the Construction Safety Order hand protection standard, since the PPE requirements of Article 10 of the General Industry Safety Orders apply to workers in the construction industry and any other industry for which a specific vertical standard is not provided. The Board believes there is no need to continue to maintain duplication within Title 8 which does nothing to improve the overall level of worker safety.

The Board thanks Mr. Smith for his comments and participation in the Board's rulemaking process.

Ms. Dorothy Wigmore, WORKSAFE, by letter dated, December 6, 2013.

Comment:

Ms. Wigmore's nine page comment letter essentially echoed the concerns raised by the Division and Jeremy Smith, stating that the term "severe" should be deleted from the proposal and that the hand protection language in the construction safety orders should not be repealed. Besides the accident experience which supports a finding that hand injuries by workers are of significant numbers and frequency in certain industries such as the grocery industry, which opposed the proposal as originally submitted to the Board and public for comment. The cost to industry is significant according to the accident documentation submitted compiled by Ms. Wigmore. Ms. Wigmore also noted claims by businesses who commented on the original proposal, that without the addition of the term "severe", the proposal would legally obligate the employer to provide hand protection when there is the slightest risk of even the most minor injury; according to Ms. Wigmore, those claims are unsubstantiated. She stated that the basic accident data that is public

record, compiled from long standing studies, consistently counters the employer's arguments the need for hand protection only for "severe" cuts, lacerations and abrasions.

Ms. Wigmore recommended that the term "severe" be stricken from the proposal and that the construction industry not be left out of the hand protection requirement. Ms. Wigmore stated that specific training requirements be added for supervisors and employees with special attention given to workers other than white males and for the Board to review its process for requiring evidence from those making comments and from its own staff who are responding to those comments.

Response:

In response to those portions of Ms. Wigmore's comments that are relevant and within the scope of the 15-day notice, the Board agrees with Ms. Wigmore with regard to the need to delete the term "severe" from the modified proposal. (See the Board's response to Ms. Sum's written comments above). In regards to keeping the Construction hand protection standard, see the response to Mr. Smith's written comments above.

With regard to the matter of training raised by Ms. Wigmore, the Board does not accept this comment given the Injury and Illness Prevention Program (IIPP) requirements of Section 3203 and Construction Safety Orders, Section 1509 IIPP program requirements, both of which address employee training and instruction without regard to race, color, ethnicity, sexual orientation and creed.

The Board believes, Ms. Wigmore's comment concerning the process of requiring evidence from public commenters and the Board's response to such comments is outside the scope of this rulemaking.

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

Mr. Bill Taylor, CSP, PASMA-South Chapter, Legislative and Regulatory Representative. by letter dated December 6, 2013.

Comment:

Mr. Taylor states he supports the inclusion of the term "severe" in the proposal and states he supports the change.

Response:

The Board appreciates Mr. Taylor's participation in the rulemaking process and acknowledges his support for the proposal as modified; however upon reconsideration, the Board has determined that an exception statement as described in Ms. Sum's December 4, 2013, comment letter should be added, which will hone and restrict the employers duty to comply through compliance with the Section 3380(f) Hazard Assessment requirement. The employer would not be required to provide hand protection for every employee and for every case, but only those employees and in such cases where the assessment deems it necessary.

The Board thanks Mr. Taylor for his comments and participation in the Board's rulemaking process.

Ms. Jacqueline Nowell, Director Occupational Safety and Health Office, United Food and Commercial Workers International Union, by letter dated December 6, 2013.

Comment:

Ms. Nowell stated that, based on the Bureau of Labor Standards accident data for meat packing and poultry plants, there is clear evidence that the use of the term "severe", when used as it is in the Federal OSHA hand protection standard does not protect workers from cuts, lacerations and abrasions. She stated that California should not follow this approach as contained in the proposed modification. She also stated that it is questionable whether use of the term "severe" violates the California Labor Code in Section 6401 requiring all employers to furnish a safe and healthful place of employment and provide and use all means of safeguarding that is adequate to render such places of employment safe.

Ms. Nowell concluded by urging the Board to delete the term "severe" where used in the proposed modifications.

Response:

The Board agrees with Ms. Nowell and proposes to modify the proposal further by deleting the term "severe".

The Board thanks Ms. Nowell for her comment and participation in the Board's rulemaking process.

Ms. Anne Katten, MPH, and Mr. Michael Meuter, Attorney, California Rural Legal Assistance Foundation , by letter dated December 6, 2013.

Comment:

Ms. Katten and Mr. Meuter's comments echoed those of Ms. Wigmore, Ms. Nowell, the Division and Mr. Smith with regard to the use of the term "severe" in the modified proposal (refer to those comments for specific details). They asked that the Board modify the proposal to delete the term "severe" because only requiring hand protection to prevent severe cuts and abrasions would not adequately protect California workers nor comply with California labor laws.

Response:

The Board agrees with Ms. Katten and Mr. Meuter and proposes to modify the language further to delete the term "severe".

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