OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb

Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8, Division 1, Chapter 4, Subchapter 4, Article 3, Section 1520 of the Construction Safety Orders and Subchapter 7, Article10, Section 3384 of the General Industry Safety Orders

Hand Protection

SUMMARY

This rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision After Reconsideration (DAR) filed February 15, 2007, Docket Number 00-R1D3-2844, in the Matter of the Appeal of United Airlines dba, United Airlines SFO SYC. The employer was cited by the Division of Occupation Safety and Health (Division) for failing to require the use of hand protection for the baggage handlers and other related workers.

In the aforementioned OSHAB DAR, it was determined that the terms “unusual” and “excessive” are not defined in Title 8 or the California Occupational Safety and Health Act, and the OSHAB had not determined the meaning of these terms in any prior proceeding. The OSHAB assigned the usual, ordinary and common sense meaning to both terms and concluded that it could not agree with the Administrative Law Judge (ALJ) that the exposure described in the testimony was unusual and excessive. The ALJ’s Decision was reversed.

The OSHAB DAR was reviewed by the Superior Court, which remanded the matter to the OSHAB for issuance of a new DAR applying the standard determined to be appropriate by the court. That standard is whether the exposure of affected employees is too great in amount or degree to be reasonable under the circumstances. The OSHAB issued a new DAR applying the new standard on April 30, 2009.

Even after the Superior Court’s input, the terms “unusual and excessive” remain vague and ambiguous. Comparable Federal Occupational Safety and Health Standards give examples and do not use ambiguous open-ended qualifiers to establish the employer’s duty to provide hand protection. The lack of clarity created by the terms “unusual” and “excessive” used in Construction Safety Orders (CSO), Section 1520 and General Industry Safety Orders (GISO), Section 3384, could result in the employer failing to provide hand protection to control an employee exposure thus resulting in serious injury.

Board staff proposes to amend the CSO and GISO hand protection standards by eliminating the terms "unusual" and "excessive" and replacing the existing language with language taken from 29 CFR 1910.138(a), the federal hand protection standard for general industry. Board staff has examined the language of other hand protection standards in Title 8, and they either already refer the reader to Section 3384, or they do not contain the terms "unusual" or "excessive". Therefore further proposed amendments of these sections are unnecessary.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed 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.

- Eliminates vague and ambiguous language; "unusual and excessive" not contained in the counterpart federal standard. The proposal aligns the state standard with federal hand protection standards for general and construction industries at 29CFR 1910.138(a) and 29CFR 1926.28(a).

- Is not inconsistent 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 regulation 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).

- The proposal eliminates confusion over what is "unusual and excessive" exposure to the hands, thus obligating the employer to provide hand protection in situations where discretion on the part of the employer and the Division in enforcing the standard could vary arbitrarily exposing the employee to the risk of a hand injury.

Section 1520. Hand Protection.

This section requires hand protection for employees whose work involves unusual or excessive exposure to various types of hand injuries. An "Exception" is used to exclude hand protection that could cause injuries by becoming caught in moving machinery or materials.

Amendments are proposed to reword Section 1520 that will eliminate the words "unusual" and "excessive" and state that the employer shall provide and require employees to wear hand protection when their hands are exposed to such hazards as skin absorption of harmful substances, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.

The proposed amendments are necessary to clarify to the employer when hand protection is to be worn. The employee is protected against hand injury through deletion of vague and ambiguous language that might create confusion as to the necessity for hand protection.

Section 3384. Hand Protection.

This section requires the employer to provide hand protection for employees whose hands may receive injury as a result of unusual and excessive exposure to such hazards as cuts, abrasions, punctures and skin absorption of harmful substances. Section 3384 also addresses entanglement issues around moving machinery and provides an "Exception" for machinery/equipment equipped with momentary contact devices and includes two "Notes" explaining use of the term entanglement and situations when jewelry, watches and rings should not be worn.

Amendments are proposed to reword subsection (a) in a manner that would eliminate the words "unusual" and "excessive" and thus simply require that the employer shall provide and require employees to wear hand protection when their hands are exposed to such hazards as skin absorption of harmful substances, cuts, or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.

The proposal is necessary to clarify to the employer when hand protection is to be worn. The employee is protected against hand injury through deletion of vague and ambiguous language that might create confusion as to the necessity for hand protection.

DOCUMENTS RELIED UPON

1. OSHAB DAR, Docket No. 00-R1D3-2844, In the Matter of United Airlines dba: United Airlines SFO SYC, dated February 15, 2007.

2. OSHAB DAR, Docket No. 00-R1D3-2844, in the Matter of United Airlines dba: United Airlines SFO SYC, dated April 30, 2009.

3. U.S. Department of Labor, Occupational Safety and Health Administration, 29 CFR 1910.138(a), Hand Protection.

4. OSHAB Decision, Docket Nos 11-R3D2-1929 through 1931, in the Matter of the Appeal of Big Lots #4038, dated January 7, 2013.

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. The proposal clarifies to the employer when hand protection is to be worn. The employee is protected against hand injury through deletion of vague and ambiguous language that might create confusion as to the necessity for hand protection. The effect of the proposal will not reduce or add to the employer's obligation to provide hand protection, but will ensure employees are protected against hand injury when they need to be.

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 standards do 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.

EFFECT ON SMALL BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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.

BENEFITS OF THE REGULATION

The proposal will render California general and construction industry hand protection standards, clearer and easier to understand by both employers and the Division who have the responsibility to enforce the standard. It will also render Sections 3384 and 1520 consistent with federal standards without compromising the current comprehensiveness of the California standard in terms of the types of exposures that the employer must protect the employee's hands against.

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.