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Attachment No. 2

## **INITIAL STATEMENT OF REASONS**

### CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4,  
Article 32, Section 1742 of the Construction Safety Orders

### **Definitions of “Manifold” and “Header”**

#### SUMMARY

This staff-initiated rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in Cherne Contracting Corporation, Dockets 07-R6D3-0612 through 0616, dated December 10, 2008. The employer was cited by the Division of Occupational Safety and Health (Division) for failing to have oxygen and acetylene manifold and header hose connections capped when not in use. The Division conducted a complaint-based inspection and alleged that the hose connections to the cylinders on an unattended oxy-acetylene rolling cart were not capped. OSHAB hearing testimony indicated that employer representatives were not able to state when the cylinders were last used. The Division testified that the words “regulator” and “manifold,” when used in connection with gas cylinders, are used interchangeably. However, the employer’s superintendent testified that the words have different meanings whereby regulators are used to control the flow of gases out of cylinders, while manifolds are devices with multiple outlets that allow a gas cylinder, or set of cylinders, to be used for more than one set-up at a time. The Division was unable to state when asked where the “header” hose of each cylinder should have been capped. The Appeals Board sided with the superintendent’s description of “manifold” and stated that there was no evidence that the employer was using a manifold in connection with the oxygen and acetylene cylinders observed by the Division. Further, there was no evidence that any “header” hose connections were uncapped. Therefore, based on the lack of evidence to support the allegation of the citation, the appeal was granted.

This rulemaking action proposes amendments to Section 1742, entitled “Hose and Connections” specifically to subsection (e), to include definitions of the terms “manifold” and “header” as used in this subsection. Board staff notes the National Fire Protection Association (NFPA), Glossary of Terms, defines these commonly used terms. Federal OSHA uses the terms “manifold” and “header” throughout 29 Code of Federal Regulations (CFR) but does not specifically define them. Federal OSHA does, however, define “header pipe,” but only as it pertains to exhaust systems and not in the context used in the welding industry. By clarifying the meaning of the

aforementioned terms as used in Section 1742(e), employers will understand which devices need to be capped to control the hazards of ignition, fire and explosion.

#### SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

##### Section 1742. Hose and Connections.

Existing Section 1742 establishes requirements for fuel gas hose systems and their connections. Existing subsection (e) requires manifold and header hose connections be capped when not in use.

Amendments are proposed to add NFPA definitions to subsection (e) of Section 1742 for the terms “header” and “manifold.” These are national consensus definitions for terms used in Article 32 with specific reference to the use of compressed gas cylinders which will clarify to employers and enforcement personnel the proper connections to be capped. This proposal is necessary to clarify the regulatory language in Section 1742(e) to ensure that safeguards are in place when oxy-acetylene fuel gases are not being used in order to control the risk of fuel gas ignition which could lead to a fire and/or explosion.

#### DOCUMENTS RELIED UPON

1. OSHAB Decision in Cherne Contracting Corporation, Dockets 07-R6D3-0612 through 0616, dated December 10, 2008.
2. National Fire Protection Association (NFPA), Glossary of Terms, Spring 2006 Edition.

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 INCORPORATED BY REFERENCE

None.

#### 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."

### 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 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 amendments 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 employers - state, local and private - will be required to comply with the prescribed standard.

#### EFFECT ON SMALL BUSINESSES

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

#### ASSESSMENT

The adoption of the proposed amendments 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.