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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 13, New Section 3458.1
of the General Industry Safety Orders

Date Palm Operations-Use of Special Purpose Ladders

SUMMARY

The Occupational Safety and Health Standards Board (Board) received a Form 9, Request for New or Change to Existing Safety Order from the Division of Occupational Safety and Health (Division) to amend General Industry Safety Orders, (GISO) by adding new Section 3458.1 addressing ladder use during date palm cultivation and harvesting. The existing Section 3458 addresses fall protection for date palm workers but is silent on the use of ladders for access to and egress from date palm trees.

Depending on the date species, California date palms can grow to be as high as 80 feet. Under current industry practice, metal ladders typically are permanently attached to the upper section of the palm tree trunk near the crown. These ladders are accessed from the ground by portable ladders or elevating equipment. Date palm workers, known as palmeros, ascend and descend the date palm ladder to access the crown of the tree many times during each growing season to cultivate and harvest dates.

Sections 3276-3280 address generic requirements for the use of ladders, and standards for portable wood, metal, reinforced plastic and fixed ladders. Title 8 does not include standards for ladders specifically used to perform date palm harvesting and cultivation operations. These ladders have been determined to be a type of special purpose fixed ladder, as indicated in the recent California Occupational Safety and Health Appeals Board (OSHAB) Decision in the matter of Hadley Date Gardens, Inc., 03-R6D2-2359. The OSHAB determined that ladders used in date palm operations are a special purpose ladder as defined in GISO Section 3278(b) as follows:

Special-Purpose Ladder. A special-purpose ladder is a portable ladder which represents either a modification or a combination of design or construction features in one of the general-purpose types of ladders previously defined, in order to adapt the ladder to special or specific uses.

This matter came about as a result of an accident involving a date palm tree to which two ladders were used in tandem. The palmero fell from the top part of the ladder that was only secured to

the date palm tree by a single piece of wire. The ladder separated from the date palm resulting in the palmero falling 35-38 feet to the ground and sustaining serious physical injury. The Division investigated the accident and issued a citation to the employer for alleged violation of Section 3279(d) which addresses standards for portable metal ladders.

The citation was appealed by the employer and the appeal was granted based on the conclusion that the ladder used by the injured palmero was not a portable metal ladder but a “special-purpose” ladder and was not covered by Section 3279(a), thereby negating the citation for 3279(d).

The Division and Board staff believes that without enforceable standards to address issues pertaining to the safe use of date palm tree ladders, further accidents could occur. According to the OSHAB decision, the employer representative stated that palmeros for Hadley make a total of 70,000 climbs per year to harvest and cultivate their trees.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

New Section 3458.1 Ladders Attached to Date Palms

A new subsection (a) is proposed that would address requirements for the use of ladders that are permanently attached to date palm trees for date palm workers to ascend and descend from the tree during date palm cultivation and harvesting operations.

A new subsection (a)(1) is proposed that would require date palm tree ladders to be attached to the date palm with 12 gauge galvanized wire fasteners securely connected to the ladder section in three places. The wire fasteners would be capable of supporting a minimum, concentrated live load of at least 250 pounds. This proposed amendment is necessary to ensure that the ladder will remain securely attached and not fail catastrophically under load and thereby prevent falls, which could injure or kill the employee.

A new subsection (a)(2) is proposed to require that a corrosion resistant steel safety chain be attached to the ladder rails below the top rung and around the crown of tree, which is necessary to ensure that there is a backup anchorage to keep the ladder securely affixed to the tree trunk.

A new subsection (a)(3) is proposed to require that when ladders are used in tandem, the upper and lower ladder rails are connected by a steel safety chain. This proposal is necessary to ensure that the upper and lower ladders will remain securely in place.

A new subsection (a)(4) is proposed to prohibit more than two ladder sections from being permanently attached to the date palm tree. This requirement is necessary to limit the number of ladder sections that can be attached safely to the tree.

A new subsection (a)(5) is proposed to state that only one worker may be on a ladder section at a time. The proposed language is necessary to ensure that the ladder will not be overstressed and fail, which could result in serious employee injury or fatality.

A new subsection (a)(6) is proposed to require that all safety chains have a safety factor of at least 10, which is necessary to ensure that the safety chain the employer uses will be sufficient to support the loads it bears.

A new subsection (a)(7) is proposed to require that all ladder rungs be spaced not more than 12 inches apart and be at least 12 inches in length. The proposal is necessary to ensure that employees will be provided with a secure foothold that will prevent missteps that could result in a serious fall injury or fatality.

A new subsection (a)(8) is proposed that would require the centerline distance from the ladder rung to the nearest permanent object be spaced to provide a secure foothold on the ladder rung, which also is necessary to prevent a misstep that could lead to a serious fall injury or fatality - in this case, the sort of misstep that might occur if a worker is unable to pass enough of his/her foot through the ladder rung.

A new subsection (a)(9) is proposed to limit the length of a ladder section to 15 feet. This proposal is necessary to limit ladders to a length that reasonably may be expected to effectively be secured using the galvanized wire and safety chain. In addition, limiting ladder length reduces the employee's ladder exposure. .

A new subsection (b) is proposed to reference the generic safe ladder use standards contained in GISO, Section 3276, thereby reminding the employer that employees utilizing date palm tree ladders are to follow the basic safety precautions contained in Section 3276, which include correct body position, carrying loads, and other precautions relevant to protecting the employee from a fall.

A new subsection (c) is proposed that would prohibit the use of ladders made of wood and reinforced plastic from being permanently attached to date palm trees. The proposal is consistent with date industry practice and is necessary since metal ladders are significantly more durable in the harsh desert climate and less prone to failure.

DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health (Division) to the Occupational Safety and Health Standards Board dated October 26, 2006, Ladders Attached To Date Palms
2. Occupational Safety and Health Appeals Board (OSHAB) Decision, Docket 03-R6D2-2359 in the Matter of the Appeal of Handley Date Gardens, Inc., dated June 16, 2006.
3. Letter dated March 18, 1983, from Robert W. Stranberg, Division to Mr. David E. Smith, Smith and Hall, Attorneys at Law regarding the Date Industry Committee.
4. March 9, 1983, Memorandum from the Date Production Industry Committee to All Date Garden Owners and Operators, regarding: *Cal/OSHA Requirements for Date Tree Workers*.

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. The State of California does not cultivate or harvest dates from date palm trees.

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. The proposal is based on date palm industry language originating from guidelines pertaining to the use of ladders on date palm trees as described in a Memorandum from the Date Production Industry Committee to All Date Garden Owners and Operators, regarding: "*Cal/OSHA Requirements for Date Tree Worker's*, dated March 9, 1983. The proposal is not expected to create adverse economic impact upon the California date industry.

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.)

The 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, the 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.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

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 standard 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.