OCCUPATIONAL SAFETY
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INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Sections 3437, 3441 and 3664(b)
of the General Industry Safety Orders

Agricultural Personnel Transport Carriers

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

On July 8, 2013, the Occupational Safety and Health Standards Board (Board) received a petition, from Wesley Selvidge, Partner, of Buttonwillow Land and Cattle Company requesting that the Board set standards for the entire farming community related to the use of agricultural tractors and Personnel Transport Carriers (PTCs). On July 11, 2013, the Board received a very similar petition request from Darren Filkins, of WM. Bolthouse Farms, Inc. Bolthouse Farms was added as a joint petitioner to Petition 536.

According to the Petitioners, prior to 2011, PTCs had been widely used for more than 25 years. These PTCs travelled through private farm roads and into the fields without a recorded incident. They are used to transport pipe-laying crews to the interior of agricultural fields for lying crops in order to access the main line as they install or remove lateral pipes. The use of PTCs was disallowed in 2011 when the Division of Occupational Safety and Health determined that the continued use of PTCs would be a violation of Title 8, Section 3441(a)(2)(B), as their use is considered to be riding on a tractor, which is expressly prohibited.

The purpose of this rulemaking is to provide alternate language that will allow the use of PTCs in level field row crop and irrigation operations, without compromising employee safety. This proposal will have the effect of reducing or averting heat stress induced illnesses and accidents. The use of PTCs alleviate the strenuous work of laying irrigation pipe by greatly reducing the amount of walking through soft or muddy soil during daylight hours under the sun.

To use a PTC, it must be attached to the rear of the tractor via three point linkage, then a pipe trailer which is used to load and unload irrigation pipes is attached by a single point hitch at the rear end of the PTC. The General Industry Safety Orders (GISO) Section 3441(a)(2)(B) does not permit riders on agricultural equipment (which includes tractors) other than persons required for instruction or assistance in machine operation. At first observation, the operation of a PTC appears similar to a personnel trailer used to move people around on a farm that is towed with a

single point hitch by a tractor and the trailer would have its own wheels. However, PTC passengers are not physically on or near the body of a tractor, but ride in a carrier that is attached to the rear end of the tractor by the tractor's three-point linkage which is controlled by a hydraulic power lift that can carry the PTC. A PTC does not have its own set of wheels and its operation has been interpreted by the Division as riding on the tractor.

The Board's Decision for Petition 536 directed staff to convene an advisory committee to consider the Petitioner's recommendations. The advisory committee was convened on May 21-22, 2014. The majority of the proposed text came from the conditions of a permanent variance (Grimmway Farms) regarding the use of the PTC. The proposed text was then modified through the careful consideration of the advisory committee. Although growers strongly supported the use of PTCs in farm production fields and for use on private farm roads to transport workers, there were concerns expressed by the Division and Labor such that a consensus to proceed with a rulemaking at this time permitting the use of PTCs on farm roads was premature pending further evaluation of PTC travel on farm roads. Therefore, the purpose for this rulemaking action is to provide safe operating standards for PTCs that may be used during irrigation operations in relatively level, low-lying row crop fields only.

General Industry Safety Orders
Article 13. Agricultural Operations.

Section 3437. Definitions.

Section 3437 provides definitions that are relevant to the provisions in Article 13 for agricultural operations. Several definitions are added for the purpose of providing clarity to the proposed standards in Section 3441(i) related to the use of PTCs.

Section 3441. Operation of Agricultural Equipment.

Section 3441 provides operational instructions and safe work practices for the operation and servicing of agricultural equipment. Existing subsection 3441(a)(2)(B) states that no riders are permitted on agricultural equipment other than persons required for the instruction or assistance in machine operation. An exception to this subsection is proposed in order to permit the use of PTCs in very limited circumstances (irrigation operations in low-lying row crop fields only) with specific conditions and limitations for use as outlined in proposed Section 3441(i).

Subsection (i) Tractor-Mounted Personnel Transport Carriers (PTCs).

Proposed subsections (i) provides requirements such as, but not limited to, PTC design and construction criteria, PTC operating conditions and specific limitations for use, inspections of equipment and employee training. Proposed subsections (i)(1) – (3) are necessary in order to provide the scope and general limitations for the use of PTCs. For example, employees may ride in PTCs only in the furrowed area of fields while performing irrigation activities and the slope of the fields where employees ride on a PTC must be relatively level not to exceed a 5% grade.

Subsection (i)(4) PTC Design and Construction.

Subsection (i)(4) requires that PTCs be approved for their intended use as provided in GISO Section 3206. Existing units built prior to the effective date of the proposal will require that a qualified person inspect and approve the PTC units for structural integrity and design prior to the units being placed into service. PTCs would be required to have approved seat belts and suitable steps and handholds for a three-point contact.

Furthermore, entry and exit openings must be protected and structural elements of the PTC must be constructed of steel. Additional design criteria and requirements are outlined in subsection (i)(4) in order to ensure the structural integrity and safe operating features for PTCs.

Subsection (i)(5) Operating Conditions.

Subsection (i)(5) includes a number of requirements that are necessary to address the safe operating conditions for the use of PTCs. For example, PTCs are limited to travel at slow speeds in accordance with field conditions not to exceed five miles per hour. Operating conditions prohibit the use of PTCs in hazardous locations or situations such as those outlined in subsections (i)(5)(G) and (H). Seat belts must be provided and used when the tractor is in motion.

Subsection (i)(6) Inspections.

Subsection (i)(6) provides that PTCs must be inspected daily in areas that may be subject to wear. A qualified person must ensure the PTC is in proper condition for use.

Subsection (i)(7) Training.

Training as outlined in proposed subsection (i)(7) is required for all employees involved in irrigation operations using PTCs including tractor operators at or prior to the employee's initial work assignment.

General Industry Safety Orders
Article 25. Industrial Trucks, Tractors, Haulage Vehicles, and Earthmoving Equipment.

Section 3664 Operating Rules.

Existing Section 3664 provides that every employee who operates an agricultural or industrial tractor shall be instructed in the operating rules of this section and in any other practices dictated by the work environment. In subsection (b), operating instruction number 6 prohibits riding on tractors. Section 3441(a)(2)(B) states that no riders are permitted on agricultural equipment in general, which includes tractors. An exception is provided for Section 3441(a)(2)(B) which permits the operation of PTCs in accordance with Section 3441(i). Therefore, it is necessary for consistency with proposed Section 3441(a)(2)(B) to propose a similar exception for Section 3664(b), instruction No. 6.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED ON BY THE BOARD

1. Occupational Safety and Health Standards Board Petition No. 536, Petition letter dated July 2, 2013 from Mr. Wesley Selvidge, Partner, Buttonwillow Land and Cattle Company.

2. Occupational Safety and Health Standards Board Petition No. 536, Joint - Petitioner letter dated July 3, 2013 from Mr. Darren Filkins, Vice President of Agricultural Operations, WM. Bolthouse Farms, Inc.

3. Standard's Board staff evaluation of Petition File No. 536 dated October 15, 2013.

4. The Division's evaluation of Petition File No. 536 dated August 30, 2013.

5. The Board's Decision dated November 21, 2013 regarding Petition No. 536.

6. Letter from the Division of Occupational Safety and Health, dated May 4, 2012 granting a Temporary Variance to Grimmway Farms, effective May 3, 2013.

7. The Board's Decision, dated February 20, 2014 in the matter of an application for a permanent variance requested by Grimmway Enterprises, Inc.

8. Photo numbers. 1 and 2 showing a Personnel Transport Platform.

9. Society of Automotive Engineers (SAE) J386 JUN85 and JUN93 standard, Operator Restraint System for Off-Road Work Machines.

10. Advisory committee minutes from May 21-22, 2014, members roster and attendance sheets.

Copies of 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.

PETITION

Joint Petitioners:
1) Mr. Wesley Selvidge, Partner, Buttonwillow Land and Cattle Company and;
2) Mr. Darren Filkins, Vice President of Agricultural Operations, WM. Bolthouse Farms, Inc., OSHSB Petition File No. 536

The Occupational Safety and Health Standards Board received petition letters in July of 2013 to amend Section 3441 of the General Industry Safety Orders, contained in Title 8 of the California Code of Regulations regarding the use of tractor mounted, personnel transport carriers for irrigation workers. On November 21, 2013 the Occupational Safety and Health Standards Board granted the petition to the extent that and advisory committee be convened to consider the Petitioner's recommendations. A copy of the petition, the Board staff and Division evaluations and the Board's petition decision are included as Documents Relied Upon.

ADVISORY COMMITTEE

This proposal was developed with the assistance of an advisory committee. (A list of advisory committee members, attendance sheets, and minutes are included as Documents Relied Upon.)

FIRE PREVENTION STATEMENT

This proposal does not include fire prevention or protection standards. Therefore, approval of the State Fire Marshal pursuant to Government Code Section 11359 or Health and Safety Code Section 18930(a)(9) is not required.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

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 does not mandate the use of PTCs but rather provides an option for the use of PTCs to transport workers involved in the irrigation of low-lying row crops. Until 2011, the Division had not addressed the use of PTCs and/or did not consider the use of PTCs as riding on a tractor. Consequently, the practice of using PTCs in row crop irrigation operations has been common in the past and many growers currently own PTCs.

It is estimated that the typical grower owns approximately four to eight PTC units. In the event that new units are added, a one-time cost may be incurred to ensure that the PTC model being used by a specific grower is compliant with the approval requirements of the proposal regarding the structural integrity and design of the PTC units. Therefore, it is not expected that there will be an adverse economic impact upon growers/employers that opt to use PTC in their irrigation operations.

Based on the above, this rulemaking action will not impact the following:

- creation or elimination of jobs within the State of California,
- creation of new businesses or the elimination of existing businesses within the State of California,
- expansion of businesses currently doing business within the State of California.

The benefits of the proposal are that the use of PTCs in irrigation operations significantly reduces the amount of fatigue and cumulative stress from difficult and physically demanding walking required of irrigation workers through soft, cultivated fields during a typical work day. Riding in the PTC provides a brief rest period for field workers and also provides relief from potential heat stress working in production areas subject to high temperatures that can exceed 100 degrees. In some cases, the increased walking would be required because workers would be walking through cultivated fields from the end of a row crop field back to the storage area for

irrigation pipes instead of riding in the PTC. In the absence of PTCs being permitted, some growers prefer irrigation workers walk from point to point rather than increase the number of vehicles and traffic on the farms.

Furthermore, utilizing one tractor to transport irrigation workers and the trailers which carry the piping necessary for irrigation activities reduces traffic, dust and fuel use and the need for multiple vehicles on the farm and eliminates the hazards associated with increased vehicular farm traffic to perform irrigation operations.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. Growers can choose to transport workers from the end of row crop fields to pipe storage areas with traditional vehicles. However, the proposal gives the regulated public an option to use PTCs to transport irrigation workers in PTCs when they are in compliance with proposed Section 3441(i). As previously mentioned, most growers electing to use PTCs already have an inventory of these units. Placing them back in service would require an inspection of the units by a qualified person. Furthermore, the number of small-scale farms that might use PTCs is estimated by the agricultural industry at less than 5% of the total number of growers that would use them. Consequently, there is no economic impact anticipated upon small growers/employers as a result of the proposal.

REASONABLE ALTERNATIVES TO THE PROPOSAL AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

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.