

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

General Industry Safety Orders
Sections 3437, 3441 and 3664(b)

Agricultural Personnel Transport Carriers

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **April 16, 2015**, in the **Council Chambers** of the **Walnut Creek City Hall, 1666 N. Main Street, Walnut Creek, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **February 27, 2015**, and closes at 5:00 p.m. on **April 16, 2015**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By fax at (916) 274-5743; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT
OVERVIEW

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 laying 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.

This proposed rulemaking action is not inconsistent or incompatible 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 regulations 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).

Federal OSHA has similar standards in 29 CFR 1928.57(a)(6)(ii) that do not permit riders on farm field equipment (including tractors) other than persons required for instruction or assistance in machine operation. Federal OSHA does not have an exception to their standard to address the use of PTCs as outlined in the State's proposal for Section 3441(a)(2)(B) "Exception." The irrigation of row crops with the use of PTCs is unique to the irrigation methods used and the crops grown in the West Coast and the Southwest Coast of California. The proposal is necessary for California growers that have found this method of irrigating row crops an integral part of their production operations for decades. It is believed that the operation of PTCs at slow, controlled speeds on level fields with the design, training and operating conditions required in the proposal, provide equivalent safety to that of the federal standards.

Anticipated Benefits

Growers indicated that the use of PTCs significantly reduces the amount of fatigue and cumulative stress from the 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 while working in production areas subject to high temperatures that can exceed 100 degrees. Furthermore, utilizing one tractor to transport irrigation workers and the trailers which carry the piping necessary for irrigation activities reduces traffic and the need for multiple vehicles on the farm to perform irrigation operations.

The specific changes are as follows:

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) will have the effect of providing 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, in addition to other requirements of subsection (i)(4), entry and exit openings must be protected and structural elements of the PTC must be constructed of steel. The design criteria and requirements outlined in subsection (i)(4) will have the effect of ensuring the structural integrity and safe operating features for PTCs.

Subsection (i)(5) Operating Conditions.

Subsection (i)(5) includes a number of requirements in order 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. The training provisions have the effect of ensuring that employees are instructed and familiar with the safe operation of PTCs.

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.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies and School Districts: None.

Cost or Savings to State Agencies: None.

Cost to any Local Government or School District which must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impacts on a Representative Private Person Or Business:

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.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals: Including the Ability of California Businesses To Compete:

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. The proposal gives the regulated public the option of following existing standards related to the transportation of workers on a private farm. However, an employer may opt to use PTCs in accordance with the

proposal which would not result in significant or adverse costs. Consequently, there is no significant adverse economic impact associated with the proposal.

Significant Affect on Housing Costs: None.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does 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.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The small-scale grower producing less than \$250,000 in gross revenues has the option to comply with existing standards for the transportation of workers on the farm. Therefore, no adverse economic costs are imposed. Furthermore, for those small growers opting to use PTCs, it is estimated by stakeholders that the typical small-scale grower would own only one or two of these units. Most growers already own these units but they are currently prohibited from using them without a variance. The amendments for this rulemaking would permit the use of PTCs in accordance with proposal.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposal allows for compliance with existing regulations and does not preclude the employer's option to use traditional transportation vehicles such as trucks, vans, utility carts, all-terrain vehicles (ATVs) or other automotive vehicles to transport workers from one location to another location on farm roads or farm fields. However, growers affected by the proposal confirm that the use of traditional vehicles increases vehicular traffic (and the hazards associated with more traffic) on farms and is not as effective as using PTCs with the tractor and pipe trailer as one unit. In the absence of PTC use, some growers prefer that irrigation employees walk from point to point during the irrigation process, including walking back through soft, deep cultivated fields to continue loading or installing piping from one crop row to another. For a farmer/employer that elects to use PTCs in combination with tractors to transport workers, stakeholders (California Farm Bureaus and advisory committee members) indicate that the vast majority of growers already own PTCs that have been used extensively in past years until recent enforcement actions by the Division prohibited their use in 2011 without a variance. Up until 2011, the Division had not prohibited the use of PTCs and did not consider their use as riding on a tractor.

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.

BENEFITS OF THE PROPOSED ACTION

The proposal promotes worker safety in that the use of PTCs in irrigation operations significantly reduces the amount of fatigue and cumulative stress from the 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 while 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.

Growers have the option to provide irrigation employees travel back to pipe storage areas with the use of traditional vehicles such as trucks, vans, utility carts and ATVs. However, growers indicate the additional vehicles create dust, use fuels and create hazards associated with increased traffic on farm roads. For example, ATVs are permitted for employee travel on farms and are widely used in agricultural operations but they also result in a high number of serious accidents. There have been no known records of injuries associated with the use of PTCs for decades.

Furthermore, utilizing one tractor to transport irrigation workers and the trailers which carry the piping necessary for irrigation activities reduces traffic and the need for multiple vehicles on the farm to perform irrigation operations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons and supporting documents. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.