

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL 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****MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE
45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons.

SUMMARY OF AND RESPONSES TO WRITTEN AND ORAL COMMENTS:**I. Written Comments**

David Shiraishi, Area Director, Region IX, OSHA, U.S. Department of Labor, by letter dated May 5, 2015.

Comment:

Mr. Shiraishi commented that Federal OSHA has reviewed the proposal and found it to be commensurate with federal standards.

Response:

The Board thanks Mr. Shiraishi for his comments and participation in the Board's rulemaking process.

Daniel Andrews, Owner of Dan Andrews Farms, LLC , by letter dated March 26, 2015.

Comment:

Mr. Andrews expressed support for the proposal.

Response:

The Board thanks Mr. Andrews for his comments and participation in the Board's rulemaking process.

Norman C. Groot, Executive Director of Farm Bureau Monterey, by letter dated April 8, 2015.

Comment:

Mr. Groot expressed support for the proposal.

Response:

The Board thanks Mr. Groot for his comments and participation in the Board's rulemaking process.

C. Bryan Little, Director of Employment of the California Farm Bureau Federation, by letter dated April 15, 2015.

Comment:

Mr. Little expressed support for the proposal.

Response:

The Board thanks Mr. Little for his comments and participation in the Board's rulemaking process.

Mike Meuter, Migrant Unit Director of California Rural Legal Assistance, Inc., and Anne Katten, Pesticide and Work Safety, California Rural Legal Assistance Foundation, by letter dated April 15, 2015.

Comment:

Mr. Meuter and Ms. Katten wrote a letter in support of the proposal, which allows the use of personnel transport carriers in farm fields and prohibits their use on private farm roads.

Response:

The Board thanks Mr. Meuter and Ms. Katten for their comments. The Board acknowledges their support and appreciates their participation in the Board's rulemaking process.

Jason Resnick, Vice President and General Counsel of Western Growers Association, by letter dated April 15, 2015.

Comment:

Mr. Resnick wrote a letter in support of the proposal. However, he disagreed with the decision to limit the use of personnel transport carriers (PTCs) to only farm production fields. He stated that the

rationale for excluding the use of PTCs to transport workers on private road was purportedly that “there were concerns expressed by the Division and Labor such that a consensus to proceed with a rulemaking at this time permitting the use on farm road was premature pending further evaluation of PTC travel on farm roads.” Mr. Resnick further stated that the basis for permitting farm workers to use PTCs on level farm fields as stipulated in the proposal includes stress reduction from heat and physical exertion also applies to use of PTCs to transport employees on farm roads to the fields and hoped that the proposal would also allow this practice. Mr. Resnick expressed the opinion that by preventing use of PTCs on farm roads, workers would have to use alternate means of transportation such as trucks, vans, utility carts and ATV’s which expose them to the same hazards as use of PTCs in the field prevent. ATV’s for example have their own associated risks.

Response:

The proposed provisions that allow the use of PTCs only in relatively level farm production fields (no more than 5% grade) at speeds no greater than 5 mph were created to manage the risk of rollovers and collisions. The Board wishes to clarify that the proposal does not mandate the use of alternative forms of transportation on farm roads. The advisory committee consensus was to limit PTC use to the fields. The safety of other vehicles that are legal on private farm roads are beyond the scope of this rulemaking.

The Board thanks Mr. Resnick for his comments and participation in the Board’s rulemaking process.

II. Oral Comments

Oral comments received at the April 16, 2015, Public Hearing in Walnut Creek, California.

Norman C. Groot, Executive Director of Farm Bureau, Monterey, CA.

Comment:

Mr. Groot stated that allowing employees to ride on personnel transport carriers in the fields is advantageous. He said that it will give them a brief rest break while they are being transported, which will also help to prevent heat illness. He also stated that personnel transport carriers will help to move equipment and personnel through the fields without having to use additional vehicles, thereby reducing their carbon footprint.

Response:

The Board thanks Mr. Groot for his comments.

Jason Resnick, Vice President and General Counsel of Western Growers Association.

Comment:

Mr. Resnick stated that the proposal takes into account the structural integrity requirements, safety mechanisms, and training requirements necessary to keep employees safe while riding on

personnel transport carriers. He said that the safety record regarding PTCs is very good, and there have been no incidents on them in 25 years. However, he said that his organization feels this proposal does not go far enough because it does not allow PTCs to be used on private farm roads. He stated that this is a mistake that is counterproductive and could jeopardize employee safety. He said that having additional vehicles on farm roads to transport employees creates a greater potential for collisions, and other forms of transportation that are used on private farm roads, such as ATV's and riding in the back of pickup trucks, are less safe and protective than PTCs. He asked the Board to amend the proposal to allow PTCs to be used on private farm roads, in addition to the fields, or to begin an additional rulemaking proposal that addresses this issue. Joel Sherman, Grimmway Farms, echoed Mr. Resnick's comments.

Response:

See the Board's response to Mr. Resnick's written comments to the Board dated April 15, 2015.

Michael Meuter, California Rural Legal Assistance Inc.

Comments:

Mr. Meuter stated that CRLA supports the proposal because it only allows personnel transport carriers to be used on level, furrowed fields. His organization agrees with the Board staff's decision noted in the Grimmway variance that equivalent safety for use of PTCs on farm roads has not been achieved and that prohibiting their use in places other than level, furrowed fields protects employees from rollover accidents and collisions. He also stated that his organization supports all of the conditions noted in subsection (i) because they are necessary to protect workers.

Response:

The Board thanks Mr. Meuter for his comments.

David Harrison, Board Member.

Comment:

Mr. Harrison stated that the Division has prohibited the use personnel transport carriers, unless a variance has been granted. He said that he would like to receive information from the Division and Board staff regarding the number of injuries that have occurred due to increased traffic and collisions on farm roads, since PTCs were prohibited in 2011. Were there accidents/citations that occurred because PTCs were not being used? Were there increased accidents from trucks on farm roads or in the fields?

Response

The information that David Harrison seeks is unascertainable by Board staff. Non-serious injuries resulting from the use of PTCs are not required to be reported to the Division. The

Division has not received a report of a serious injury that can be directly attributed to the use or non use of the PTCs since 2011.

The Division was notified of three accidents between 2010-2013 regarding to agricultural workers performing field irrigation operations (2 fatalities, both from some form of heat induced illness the third employee survived, heat exhaustion, 2010, 2011 and 2013)

- One employee was installing irrigation pipe, he drove a tractor, carried pipe and set up the irrigation system, one was inspecting an irrigation system and the third employee was simply found dead next to his parked quad (ATV) in the field.
- All three employees were laboring in high heat conditions in the central valley, Livingston, Visalia and Atwater, CA.
- In the two fatality cases the employees were dead on the site/scene, despite medical intervention, they could not be saved.
- In all three cases EMS was called and responded.

Ms. Laura Stock, Board Member

Comment:

Ms. Stock stated she was on the hearing panel for the Grimmway variance, and she is pleased to see that this proposal fits well with the conditions noted in the variance. She said that one important item from the variance conditions that is not included in this proposal is the requirement that the field be laser leveled. She asked the Board staff to explain why that item is not included in the proposal. She said that there are a lot of conditions in this proposal, and because of that, the level of enforcement is critical to ensure that all of the conditions are being met. She stated that large farms such as Grimmway may have the resources to ensure that all of the conditions are being met, but other farms may not. She also stated that she is pleased to see that this proposal does not allow personnel transport carriers to be used on farm roads. She said that the variance hearing panel had extensive discussion about this and determined that equivalent safety has not been established. She said that farm roads have more unpredictable conditions that create a significant risk, and personnel transport carriers do not have rollover protection, so it is not safe to allow them to be used on farm roads.

Response:

The criteria for establishing level ground were discussed during the advisory committee. Grade is rise over run, so a 5% grade means that 5 feet rise over a 100 feet of run. The committee felt that a 5% slope limit achieves the objective of keeping the operation of the PTC on relatively flat or level ground. Proposed (i)(3) of Section 3441 establishes a slope criteria, not a method of arriving at the slope requirement. Laser levels and laser operated survey transits are one of the most common methods in determining grade. The Board is aware that creating a truly laser level surface on a structure or roadway can be achieved, however the earth has undulations, imperfections, holes, embedded objects, berms, mounds and other features that render a laser level surface difficult if not impossible to achieve. The PTC advisory committee reasoned that it is not necessary for a farm field to be "laser level" or perfectly level, to avert the hazard of rollover given the other provisions of the proposal; a field at 5% less grade throughout is sufficient to be effective at rollover risk reduction.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be (1) more effective in carrying out the purpose for which the action is proposed; or (2) would be as effective as and less burdensome to affected private persons than the adopted action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.