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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

Title 8, Section 1514 of the Construction Safety Orders and
Section 3380 of the General Industry Safety Orders

Personal Protective Devices and Safeguards**MODIFICATIONS AND RESPONSES TO COMMENTS
RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information in the Initial Statement of Reasons except for the following sufficiently-related modifications that are the result of public comments and/or Board staff evaluation.

Section 1514. Personal Protective Devices.

Existing Construction Safety Orders (CSO), Section 1514 includes provisions that require employees to use personal protective equipment (PPE) that is approved. PPE is required to be used in accordance with the manufacturer's instructions. Protective equipment is also required to be of a design, fit and durability as to provide adequate protection against the hazards for which they are designed.

Subsection (b).

Existing subsection (b) states in part, that PPE shall be approved and distinctly marked so as to facilitate identification. Comments were received to the effect that General Industry Safety Orders (GISO) proposed Section 3380(a)(2) requires that PPE be approved "for its intended use" and Section 3380(b) requires PPE to be distinctly marked to facilitate "identification of the manufacturer." As a result of these comments, Section 1514(b) is proposed to be modified to include the aforementioned wording. The necessity for these modifications is to provide clarity by the addition of non-substantive revisions where it is reasonable to assume and expect the added wordings are intended to be similar in both Sections.

Summary of and Responses to Oral and Written Comments:

I. Written Comments

Mr. Michael Donlon, PE, CSP, Chief Safety Officer, Department of Water Resources, by e-mail dated March 7, 2014.

Comment No. 1:

Mr. Donlon stated that it would seem logical to have the “approval” language in the GISO, Section 3380 and the CSO, Section 1514 be the same. The “approval” language in the proposal could cause confusion to employers subject to both the GISO and CSO.

In GISO, Section 3380(a)(2) states that PPE has to be approved “for its intended use” and Section 3380(b) states that PPE shall be marked to facilitate identification “of the manufacturer.” However, the phrases in quotes are not contained in similar language provided in the CSO, Section 1514.

Response:

Board staff agrees that these recommended revisions to include the two phrases in quotes as specified in this comment would provide consistency and clarity to these provisions and the language in proposed CSO, Section 1514(b) has been modified, accordingly.

Comment No. 2:

In GISO, Section 3380(a)(2) and (b), the approval and marking, respectively, are two distinct requirements while in CSO, these two requirements are in a single section [Section 1514(b)] tied together by an “and.” In Section 3380(b), it is clear that the exception only applies to the marking, but in Section 1514(b), as proposed, the exception would apply to both the approval and marking requirements. Therefore, Mr. Donlon recommended revisions with respect to the application of the exception in Section 1514(b) for consistency with Section 3380(b).

Response:

The Board agrees that there are differences in the existing language of these GISO and CSO sections with respect to the provisions for approval and markings and the application of the exception to these provisions. The recommended revision to the CSO, Section 1514(b) in the comment would make the exception only applicable to the marking of protective equipment. In the existing language, the exception applies to both the approval and the marking. The comment is focused on existing language and requirements that have not been problematic. Furthermore, the construction industry would not be aware that this modification would be made. The change would eliminate the construction employer’s ability to make job built safety devices or safeguards such as protective shields, barriers and similar safeguarding for the protection of workers without going through the approval process outlined in Section 1505. This would be a

substantive revision beyond the scope and intent of this rulemaking. Therefore, the Board does not believe that modification to the proposal from this comment is necessary.

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

Ms. Dorothy Wigmore, Occupational Health Specialist, Worksafe, by letter dated April 16, 2014.

Comment No. 1:

Ms. Wigmore stated that Worksafe is pleased to submit comments about the proposed changes to the language about personal protective equipment (PPE), devices and safeguards for the construction and general industry safety orders. Worksafe supports having consistent and updated approaches to the requirements about these supplementary protections against work-related hazards. Therefore, Worksafe supports the apparent general intentions of the proposal but raises a few questions about the content and process.

Response:

The Board thanks Ms. Wigmore and Worksafe for their support of the general intent of this rulemaking.

Comment No. 2:

Ms. Wigmore stated that the Board staff seems to be missing the opportunity to have consistent approaches to PPE and protective devices and safeguards in all workplaces. The two sections (CSO, Section 1514 and GISO, Section 3380) affected by the proposed changes replicate each other in sub-sections (d) and (e) of both sections, but otherwise, workers and employers covered by these orders face different requirements.

Furthermore, while the sections have the same title, the phrasing is mostly about PPE. If devices and safeguards really are covered, then the subsections need to use the same phrase as the title (not just "personal protective equipment"). It is recommended that the Board staff review the order and phrases of each of the subsections (a) to (c) and make changes so both sections are consistent and clearly state employers' responsibilities.

Response:

The definitions of Section 1504 of the CSO defines "Personal Protective Equipment" for various parts of the body to mean "the safeguarding obtained by means of safety devices and safeguards of the proper type for the exposure, and of such design, strength, and quality as to eliminate, preclude, or mitigate the hazard." Therefore, it is not necessary to repeat the terms "safety devices" and "safeguards" in various subsections.

Proposed GISO, Section 3380(a)(1) provides language similar to that of the definition mentioned above in CSO, Section 1504. Additionally, proposed Sections 1514(d) and 3380(d) are clear that the employer is responsible to provide required safety devices and safeguards. It is not necessary to modify the proposal in other subsections to repeat that the employer is responsible for safeguards and safety devices to protect employees. Consequently, the Board does not believe that modification to the proposal is necessary as a result of this comment.

Comment No. 3:

Ms. Wigmore stated that Section 3380(c) requires the employer to “assure that the employee is instructed” and uses “protective equipment” according to the manufacturer’s instructions. The CSO version only requires PPE to be used according to the instructions. If the employees must use the manufacturer’s instructions, training must cover that, and the employer’s responsibility to provide those manufacturers’ instructions must be clearly stated.

Therefore, both sections should state something to the effect that the employer must ensure that:

- (1) employees are instructed about the use of PPE, personal protective devices and safeguards (not just protective equipment), and
- (2) they use them according to those instructions.

Response:

CSO, Section 1514(a) requires employees to use the protective equipment and GISO, Section 3380(c) requires that the employee is instructed and uses the protective equipment. This is existing language, has never lacked clarity, and is outside the scope of this rulemaking. However, for explanation, in Section 1514, it is inherent that to meet the requirements of the provision and use PPE in accordance with the manufacturer’s instructions, that the employer or its representative would have to provide instructions to the employee on how to follow the manufacturer’s instructions/recommendations.

Therefore, the Board does not believe that modification to the proposal is required as a result of this comment.

Comment No. 4:

Ms. Wigmore commented that there are differences in the approval requirements. In general, it is good that the Board staff is trying to be consistent with a federal regulation. It also should have consistent language for all workers and employers, whatever the job involved, and the same highest standards for all.

The first difference is that CSO, Section 1514 refers to markings to make identification easier, while the GISO provision refers to identifying the manufacturer. This is confusing. What “identification” is being “facilitated”? For practical purposes, it should be both the manufacturer’s name and the purpose of the protective equipment, devices or safeguards.

Similarly, construction workers need the same clear statement about approval for intended use as those covered by the GISO section do.

Response:

The comment, in part, notes that Section 3380(b) requires that PPE be distinctly marked so as to facilitate identification of the manufacturer. However, the existing language in Section 1514 requires that PPE be distinctly marked so as to facilitate identification. It is reasonable to expect that the intent of the marking provision in both sections is intended to facilitate identification of the manufacturer. A similar comment to Ms. Wigmore's comment is included in Mr. Donlon's comment No. 1. See the response to Mr. Donlon's comment No. 1 and the modified language proposed for Section 1514(b).

The Board does not believe that it is necessary or practicable to state the purpose for the PPE as proposed subsections (d), in both sections, require the protection and it is each employer's responsibility under the provisions of GISO, Section 3380(f) to perform a hazard assessment for the use of PPE that is unique to their exposures and operations.

Ms. Wigmore stated that construction workers should have the same statement (Section 1514) as that provided in GISO, Section 3380 regarding that PPE is approved for "its intended use." The Board agrees. See the response to Mr. Donlon's comment No. 1.

Comment No. 5:

Ms. Wigmore stated that another difference is that GISO, Section 3380 refers directly to the relevant definition of "approved", while the CSO section does not. The ISOR refers to both sections, which are worded identically. Why not be clear about the specific section or sections? If there are clarifications or other requirements for approval beyond Section 1505 or Section 3206, name them. The Board staff also should clarify that no other requirements about approval of PPE, and protective devices and safeguards, are given in another section than GISO, Section 3206.

Response:

The proposal is clear that when the term "approved" is used it means as provided in CSO, Section 1505 and GISO, Section 3206. Proposed Section 1514(b) references that the meaning of approved is provided in Section 1505 and Section 3380(b)(2) states that the meaning of this term is provided in Section 3206. The Board does not believe it is necessary to further state in the regulatory text that there are no other definitions of "approved" in the safety orders of the CSO and GISO.

Comment No. 6:

Ms. Wigmore stated that the process behind these changes appears to need improvements. The inconsistencies referred to above may reflect the limited number and focus of stakeholders

invited to review the two sections. The e-mail sent August 20, 2013 went to 15 representatives (four construction unions, the State Building and Construction Trades Council, and 10 employers). It did not include the California Labor Federation, the California Rural Legal Assistance Foundation (CRLAF), or Worksafe, all of whom have been key players in previous proposals about PPE regulations. All three agencies also provide a wider perspective of jobs requiring protective gear, beyond construction activities. Therefore, we recommend that the Board staff consult directly with all three organizations before proceeding with any final revisions to the proposal. California Labor Federation and CRLAF representatives might add to our comments, and, if it were a collective conversation, Worksafe may have other suggestions too.

Response:

All three of the agencies mentioned above, and in some cases more than one representative from an agency, are mailed a copy of the Board's Public Hearing Notices. The opportunity to comment during the 45-day comment period is provided. The 45-day period comments are welcome and often result in further evaluation of proposals. The Board seeks to reach out to a number of employers and organizations to receive feedback on proposals even for rulemaking actions that do not undergo the benefit of an advisory committee process. The Board uses phones, conference calls, e-mails and in some cases, in-person meetings to reach stakeholders. Unfortunately, is it not possible to contact all employers and organizations that would be considered stakeholders but that is why the 45-day comment period is a beneficial part of the State of California and the Board's rulemaking process.

Comment No. 7:

Ms. Wigmore commented that it is not clear how the feedback for the proposed changes was generated, beyond the e-mail (on-line messages? individual phone calls? a meeting?). Nor is it clear who actually participated and what changes they suggested. Extensive experience shows that in-person meetings and/or group conversations bring more experiences to the table, generating better results and more complete understandings of issues. For effective, fair and transparent feedback about proposed changes, we recommend that Board staff use this kind of approach.

The comment included suggested steps and procedures for improving the Board's rulemaking process. These recommendations included, but were not limited to the following:

- Posting public notices about proposed changes with notices of meetings or conference calls.
- Ensure those who consistently attend Public Hearings and/or make rulemaking comments are notified of proposals and receive notices.

- Send those who participated, and those who did not participate in the process, the proposed changes by the use of methods such as website links or e-mail.
- Use group conversations (e.g., in-person meetings and conference calls) about proposals during which minutes are taken.
- Post minutes that provide a public record of who participated and what the recommendations were including what agreement or consensus, if any, was reached. Also, include information as to the “next steps” in the rulemaking process.

Response:

The recommendations in this comment are relevant in large part for rulemakings that require the use of an advisory committee. To a large degree, the Board staff uses the majority of these recommendations when arranging and preparing to conduct an advisory committee whose members will assist staff in the development of a proposal. Further, the Board uses most of these suggested methods, where practicable, except drafting meeting minutes when undergoing a rulemaking action that does not require the use of an advisory committee. This particular rulemaking did not require the use of an advisory committee. Additionally, see the response to comment No. 6.

Therefore, the Board does not believe that further modification to the proposal is necessary as a result of comments Nos. 6 and 7.

The Board thanks Ms. Wigmore for her comments and participation in the Board’s rulemaking process.

Mr. David Y. Shiraishi, MPH, Area Director – Oakland Area Office of the U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated May 14, 2014.

Comment:

Mr. Shiraishi stated that their review of the proposal had been completed and that the proposed standard appears to be commensurate with the federal standards.

Response:

The Board thanks Mr. Shiraishi for his review and comments related to this proposal.

II. Oral Comments

Oral comments received at the April 17, 2014 Public Hearing in Sacramento, California.

Mr. Bill Jackson, Board Member.

Comment:

Mr. Jackson recommended that the Board staff review all of the places in each of the safety orders where personal protective equipment is mentioned and make them more uniform unless there is a reason that the standard for personal protective equipment in one of the safety orders must be different from the others. He said that doing this will create less confusion for the public.

Response:

There are numerous vertical industry standards within the CSO and GISO as well as other Title 8 Safety Orders that are much more prescriptive than those in the generalized PPE standards of the CSO, Section 1514 and the GISO, Section 3380. Certain industries, by the nature of their operations, present hazards to employees that require more specific guidance(s) that may be different in that they extend beyond the generalized PPE provisions of Sections 1514 and 3380. Examples include, but are not limited to, activities such as working on or near energized electrical systems in the Low and High Voltage Safety Orders. Operations that involve the removal of asbestos or other hazardous materials or exposure to harmful particulates require special precautions, procedures and care with respect to the use of PPE. To review all of the requirements in all of the Title 8 safety orders that mention the use of PPE would include sections outside the scope of this rulemaking.

Further, by reviewing all Title 8 standards to consider potential uniformity with the general provisions of Sections 1514 and 3380, it is a concern that prescriptive and detailed PPE procedures for certain hazardous industries could be weakened or lessened. Therefore, the Board does not believe that modification to the proposal as a result of this comment is necessary.

MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING
FROM THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-Day Notice of Proposed Modifications mailed on July 25, 2014.

Summary of and Responses to Written Comments:

Ms. Dorothy Wigmore, Occupational Health Specialist, Worksafe, by letter dated August 11, 2014.

Comment No. 1:

Ms. Wigmore stated that Worksafe is pleased to submit further comments about the proposed changes to the CSO and GISO regarding personal protective equipment (PPE), safety devices

and safeguards. Worksafe is pleased that the Board staff agreed with some of the recommendations from its comments in their April 11, 2014 letter in response to the notice of proposed changes for this rulemaking. Ms. Wigmore stated that they are concerned about remaining inconsistencies between the two sections of the proposal (CSO and GISO), as well as other recommendations. The first concern is that proposed CSO, Section 1514(b) covers PPE “required by these orders,” while GISO, Section 3380(a)(2) makes no mention of “required” or “orders.”

Response:

Proposed GISO, Section 3380(a)(1) provides, in part, that protection of the body (e.g. head, eyes, hands, feet, etc.) “per the orders in this article” must be of the proper type to eliminate, preclude or mitigate hazards. It is unnecessary to further reference the words, “required” or another phrase that refers to these “orders.” Further, subsection (d) states that the employer shall assure that protective equipment is provided. Therefore, the Board does not believe that modification to the proposal is required as a result of this comment.

Comment No. 2:

GISO, Section 3380(c) requires the employer to “assure that the employee is instructed” and uses “protective equipment” according to the manufacturer’s instructions, while the CSO version in Section 1514(c) only requires PPE to be used according to the manufacturer’s instructions. Both should state that the employer must ensure that; 1) employees are instructed about the use of PPE, and, 2) PPE is used according to those instructions.

It is unclear how being consistent and clear is “outside the scope of this rulemaking”, as the Board staff’s response says. They responded to comments about other parts of these proposals by making changes for consistency and clarity. Why not these? Furthermore, it may seem “inherent” that employers must provide instructions to employees about how to use PPE effectively, but lack of consistency between similar regulations and lack of clarity about responsibility can lead to legal wrangles that should be avoided.

Response:

See the response to Ms. Wigmore’s written comment No. 3 in her letter dated April 16, 2014. The recommendations in the comment would require amendments to either CSO, Section 1514(a) or (c), or GISO, Section 3380(c) which were not originally noticed for amendments and, thus, could be considered outside the scope of the rulemaking. The concern is that CSO, Section 1514(a) may lack clarity and not result in the employee receiving employer instruction for the use of PPE. However, Section 1514(c) requires that PPE be used in accordance with the manufacturer’s instructions. It is incumbent upon the employer to provide the instruction for the appropriate use of PPE. Section 3380(f)(4) is applicable to both the CSO and the GISO and clearly requires the employer to provide training regarding the use of PPE. Therefore, the Board does not believe that modification to the proposal is required as a result of this comment.

Comment No. 3:

The remainder of the letter encourages continued communication with various agencies and organizations in the Board's rulemaking activities.

Response:

The comment is not related to the language of the proposal and therefore, the Board does not believe that modification to the proposal is required as a result of this comment. However, see the response to Ms. Wigmore's written comment No. 6 in her letter dated April 16, 2014.

The Board thanks Ms. Wigmore for her comments and participation in the Board's rulemaking process.

Mr. David Y. Shiraishi, MPH, Area Director – Oakland Area Office of the U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated August 18, 2014.

Mr. Shiraishi stated that they had completed their review of the notice of proposed modifications to Title 8, CSO, Sections 1514 and GISO, Section 3380. Mr. Shiraishi stated that the proposed safety and health standards appear to be commensurate with the federal standards.

Response:

The Board thanks Mr. Shiraishi for his review and comments related to this proposal.

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 standards. No alternative considered by the Board 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 adopted action.