

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 536)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on July 8, 2013, from Wesley Selvidge, Partner, Buttonwillow Land and Cattle Company. On July 11, 2013, the Board received a very similar petition from Darren Filkins, WM. Bolthouse Farms, Inc. Bolthouse Farms was added to the petition from Buttonwillow Land and Cattle Company as joint petitioners (Petitioners). The Petitioners request the Board to set standards for the entire farming community related to the use of agricultural tractors and Personnel Transport Platforms (PTPs) that are used to transport workers in field crop operations involving the installation and removing of irrigation piping.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

**SUMMARY**

The Petitioners state that PTPs have been widely used for more than 25 years to transport irrigation workers in the field without a single recorded accident. The Petitioners noted that despite this record, the Division has recently indicated that the use of these PTPs violates Title 8 regulations and those employers using them would be cited under the General Industry Safety Orders (GISO) Section 3441. Section 3441(a)(2)(B) prohibits riders on agricultural equipment other than persons required for instruction or assistance in machine operation.

The Petition does not specify how the PTPs will be designed and used, nor does it describe safe operating conditions and procedures for such equipment. However, in phone conversations with the Petitioner's representatives, staff was advised that the use of PTPs is intended to be limited to irrigation operations in relatively level row crop growing fields and the in-farm private roads between the row crop fields and/or pipe storage areas.

Some employers also use PTPs to transport employees on private in-farm roads related to irrigation operations. Typically, employees will ride in the transport platforms that have a pipe

trailer attached behind the PTP. Employees travel in the PTPs from a corporation yard/storage area to the row crop fields and/or travel between separate row crop fields.

The Petitioners state that the inability to use these PTPs requires employees to walk long distances in soft dirt, often in very hot weather. The Petitioners indicate that this needlessly exposes employees to a greater risk of heat illness, tripping and falling, and lower body strains and sprains. The Petitioners assert that even one walk across a hot field is an arduous task and to ride in a transport platform these long distances affords a break from the heat and physical exertion of this work. Many such trips are required of employees during hundred degree weather creating an extreme hazard for employees that work very hard for long hours. The Petitioners further stated that prohibiting the use of PTPs would require an extra vehicle in the field or require workers to continuously move their personal vehicles to the field areas where they need to be.

The Petitioners stated that utilizing one tractor to transport materials and personnel to the field, as well as to perform the installation and removal of irrigation pipe eliminates the need for multiple vehicles on farm roads. This practice represents a significant reduction in dust, fuel usage and multiple safety issues associated with increased traffic on farm roads.

In March, 2012, the Division convened a stakeholder's meeting to discuss the use of PTPs and to consider factors necessary that would address the safe and efficient means of transporting employees. The meeting was attended by employers, industry representatives, labor advocates, Standards Board staff and several agricultural safety experts. The Division informed employers that the use of tractor mounted PTPs was not permitted in Title 8 safety standards and the use of such transport equipment would be subject to enforcement action. Employers seeking to use this equipment were encouraged to submit an application for a temporary experimental variance to the Division.

Grimmway Farms applied for both a permanent variance from the Board and for a temporary experimental variance from the Division. On May 4, 2012, the Division issued Grimmway Farms a one-year temporary variance from Section 3441(a)(2)(B). The Division granted an extension of the temporary variance, and it is still in effect until November, 2013. The temporary experimental variance provides the employer the opportunity to demonstrate that its use of the PTPs is a safe and effective practice. With respect to the application for a permanent variance from the Board, the parties met on May 20, 2013. Subsequent to this meeting, the parties agreed to allow more time (until at least September 1, 2013) before proceeding with a formal hearing. The additional time would allow an expert in agricultural operations and equipment to further evaluate and make recommendations related to the use of PTPs. The expert's evaluation related to the Grimmway Farms PTP operations was received by the Board on September 26, 2013. This evaluation concludes with the following statement:

“Overall this study leads to the conclusion that workers using the PTP, when operated in compliance with the variance, are not at increased risk of injury or death due to the potential

for tractor rollover or the unit being struck by another vehicle while being operated on farm roads.”

Until a workable alternative is provided, such as a standard to permit the use of PTPs, the Petitioners believe the Division’s interpretation and enforcement of the present safety orders is unreasonable and an unnecessary burden upon both employers and employees within the agricultural industry.

One other employer has recently applied to the Division for a temporary experimental variance to use personnel carriers.

### DIVISION’S EVALUATION

With respect to employer operations not specifically limited to irrigation activities in the past 10 years, the Division has conducted 56 inspections as a result of which citations were issued for violations of Section 3441(a)(2)(B). Twenty-three of the 56 inspections (41 percent) were accident investigations where employees riding on agricultural equipment were killed (2 cases), seriously injured (20 cases), or sustained an injury not classified as serious (1 case). Twelve serious citations and 11 non-serious citations of Title 8 Section 3142(a)(2)(B) [sic 3441(a)(2)(B)] were issued for the 23 accident investigations.

Nearly all the accidents occurred when employees fell from agricultural equipment and suffered injury from the impact of the fall or were run over by equipment after the fall. One of the serious injuries occurred while an employee was riding on a personnel carrier mounted to the side of an agricultural tractor when the employee fell out of the personnel carrier and was then run over by the moving equipment. In another case, an agricultural tractor carrying an employee on the fender rolled over, causing serious injuries to the passenger. A personnel carrier would not have prevented this injury, unless the carrier had been equipped with ROPS and a seat belt.

Based on the Division's experience in the Enforcement and Consultation units, consultations with agricultural experts, and the experience gained through the one temporary variance issued regarding Section 3441(a)(2)(B), the Division believes that the following issues must be addressed by any possible regulation permitting personnel carriers mounted on, or trailed by, agricultural equipment.

- Engineering Design and Construction.
- Administrative Controls.
- Usage.
- Operating Rules and Conditions.
- Inspection and Maintenance.
- Training.

Employees may be safer if transported in a passenger vehicle rather than riding in a personnel carrier attached to a tractor. The Society for Automotive Engineers (SAE) and other groups

have already established design standards that address issues such as vehicle stability, rollover protection and collision protection. A new regulation may not be necessary where a simple and practical alternative to their use already exists, particularly for use on private and public roads. The prohibition against riders on agricultural equipment is found in national as well as state regulations, and has been protecting farm workers for 40 years. In assessing the need for this new regulation, the Division believes that the different potential uses in fields, private roads, and public roads should be considered and separately evaluated.

The Division believes that there may be reasons for the Board to consider the benefits and disadvantages of amending Section 3441 to allow for the use of personnel carriers mounted onto agricultural tractors. However, creating such a regulation would require the Board to establish minimum requirements for the design, construction, use, and maintenance of personnel carriers. This is particularly difficult in the absence of federal or consensus standards. The Division believes that these issues are best addressed through an advisory committee process. The Division stated that the advisory committee process would also aid in addressing any issues of federal equivalence.

#### STAFF'S EVALUATION

There is a broad range of personnel carriers in use to transport farm workers. In discussing the design and manufacture of PTPs with growers, Board staff is aware a number of these units were fabricated by individual employers; in some cases they were purchased from other growers, or they were built by a third party specialist in fabrication of these units. The designs of PTP units have subtle to noticeable differences from grower to grower. Board staff believes that some PTP designs may have hazards associated with their design or intended use that need to be fully explored before standards are considered that would encompass all types of transport units in use.

The use of agricultural tractors and PTPs subject to the petition would also include those that are attached to the tractors and used to transport workers in field crop operations involving the installation and removing of irrigation piping at various California farms.

There are a number of hazards associated with the use of agricultural tractors and towed implements or equipment. Section 3441(a)(2)(b) prohibits riding on tractors or agricultural equipment (other than by persons required for instruction or assistance) in order to prevent riders from being exposed to the hazards of certain tractor operations. Tractor overturns/rollovers are a leading cause of serious and fatal accidents in agricultural operations according to studies by agricultural experts, universities and organizations such as the National Institute of Occupational Safety and Health.

As long as the tractor is operated in a manner whereby the tractor's center of gravity is within the base of stability, the tractor is not subject to rollover. Roll-Over Protective Structures (ROPS) and seatbelts protect the operator of tractors from being crushed or injured but do not afford protection for riders who fall or are thrown from such equipment.

The Division indicates that no PTPs have been encountered that are equipped with ROPS. The feasibility of installing ROPS on these units is questionable, in that tractor manufacturers are not making PTPs or ROPS for them, and there are no consensus standards setting forth criteria for ROPS associated with the use of PTPs.

Falls from tractors and implements or equipment attached to tractors are common causes of serious or fatal accidents. Prevention of falls from agricultural moving equipment is an additional reason why Section 3441(a)(2)(b) prohibits riders on tractors or agricultural equipment. There are many reasons why riders on tractors or other equipment being towed by a tractor can be thrown or fall.

However, the typical conditions for the safe use of PTPs include operations on flat, even terrain, and keeping a safe distance from recognized conditions that contribute to overturns, such as, ditches, embankments, culverts, steep slopes, bodies of water, etc. Avoiding these and similar hazards and traveling at slow speeds mitigates the potential for rollovers.

The typical PTP is enclosed, except for the entrance/exit openings, and those with seatbelts traveling at very slow speeds substantially reduce the possibility that a rider would fall or be thrown from the unit. This assumption is based on factors that the tractor and PTPs are being operated in a manner as described in the preceding paragraph that explains typical conditions.

Given that multiple agricultural employers are using PTPs and the wide range of designs, it is not known if all employers have the ability to comply with the reporting, inspection, design criteria, policies, procedures and conditions that the Division has established for the temporary variance given to Grimmway. Further, it is unknown if those conditions are suited to all irrigation operations involving the use of PTPs.

Board staff believes that stakeholders, including employers, labor, the Division, safety experts, and other interested parties involved in the use of PTPs, should consider and evaluate a number of topics such as, but not limited to, the following:

- The necessity for establishing standards in Title 8 to permit the use of PTPs used in combination with tractors.
- Review of federal OSHA standards.
- History of accidents or injuries.
- Potential alternatives to the use of PTPs.
- The potential design and construction of PTPs and the type of tractors used in combination with PTPs.
- The number and different types of existing PTP units and how these units are being used.
- Description of who would be permitted to ride in PTPs.
- The extent to which farm labor contractors are involved in these operations.
- The conditions necessary for safe use and/or identification of the hazards of PTPs operated in field crops rows versus private farm roads.
- The inspection and maintenance of equipment used in irrigation operations that involve PTPs.

- Training and record keeping.

Tractor-mounted PTPs have a long history of use among employers that produce row crops, such as carrots, lettuce, beets, radishes, celery, onions, barley, potatoes, etc. Growers state they have used these units safely for over 25 years. Board staff believes there is merit to considering the Petitioner's request for standards addressing the use of PTPs. The advantages and potential hazards associated with their use in both row crop furrowed fields and for travel on private in-farm roads should be considered by an advisory committee.

#### CONCLUSION AND ORDER

The Board has considered the Petition and the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the petition is hereby GRANTED to the extent the Board staff shall convene a representative advisory committee. The Petitioners should be invited to participate in this advisory committee.