

1 **3rd Discussion Draft of a Proposed Final State**
2 **Rule to Ban Unnecessary Hand Weeding**
3 **(Title 8, Chapter 3.5, Subchapter 1, Article 3)**

4
5 Notes: the non-italicized, non-underlined text below reflects the provisions contained in
6 the Employee Subcommittee Members' 8/1/03 proposed draft Final Rule,¹ as submitted
7 to the Employer Subcommittee Members on that date.

8
9 Agreed upon changes to that proposal are *italicized* and single line underscored.

10
11 Key terms or provisions, which both sides agreed needed further discussion before
12 agreement could be reached, are set off in [brackets]. Terms or provisions which the
13 Employee Subcommittee Members also think need definitions are in [brackets] and are
14 double line underscored.

15
16 New provisions, proposed by Employee Subcommittee Members to respond to issues
17 raised by Employer Subcommittee Members, are *italicized* and double line underscored.
18
19

20 Section 3456. Hand-Held Tools

21
22 (a) Hand-held tools shall be kept in good condition and be safely stored.
23

24
25 (b) The use of a short-handled hoe or any other short-handled tool is prohibited in
26 agricultural operations, as defined in Section 3437, ~~of Title 8 of the California Code of~~
27 ~~Regulations,~~ for weeding, thinning, or hot-capping when the tool is used in a stooped,
28 kneeling, or squatting position. Employees engaged in weeding, thinning, or hot-capping
29 shall use a long-handled hand tool, as defined in Section 3437, ~~of Title 8 of the California~~
30 ~~Code of Regulations,~~ ~~provided by the employer as otherwise required by California law or~~
31 ~~regulations.~~ Long-handled tools shall not be required except when one or more of the
32 following conditions applies:
33

34 (1) The work is performed in a manner that does not require an employee to stoop, kneel,
35 or squat.
36

37 (2) (A) Employees are weeding or thinning [crops] that are grown under continuous plastic
38 mulch or woven cloth sheets.
39

40 (B) The exception provided in subparagraph (A) does not apply to spaces between [crop]
41 beds or in any other circumstance where continuous plastic mulch or woven cloth sheets
42 are not present, and does not apply when the use of an appropriate long-handled hand tool
43 to weed under or near the continuous plastic mulch or woven cloth sheets is possible
44 without causing [significant damage] to the mulch or sheets.

¹ The 8/1/03 Employee Hand Weeding Subcommittee Members' Proposed Final Rule included provisions drawn from the OSH Standards Board Staff's first and second discussion drafts of a proposed rule, as well as the provisions contained in SB 534 (as introduced 7/2/03), which is co-sponsored by the CRLA Foundation, the United Farm Workers Union, the California Labor Federation, the Teamsters Union, and the United Food and Commercial Workers Union.

1 (3) (A) The employer can demonstrate that [proper] use of an [appropriate] long-handled
2 hand tool and any [reasonably available] [mechanical] or [cultural] non-pesticide, non-
3 hand weeding, *thinning or hot-capping* alternative can [reasonably be expected] to
4 [significantly damage] the particular [crop] planted in *the area in* that field at the [crop]'s
5 current state of development *for which an exception is claimed [, or can be reasonably be*
6 *expected to [significantly damage] [irrigation systems] [equipment] [material used in the*
7 *production of the commodity.] [For purposes of this subparagraph, a “reasonably*
8 *available” mechanical or cultural non-pesticide, non-hand weeding, thinning or hot-*
9 *capping alternative is one which the employer knew or should have known was available*
10 *and was not [cost prohibitive] to implement.]*

11
12 (B) To meet the burden of proof required for the exception provided in subparagraph (A),
13 an employer must be able to demonstrate all of the following:
14

15 (i) There was a [serious] effort to attempt to [properly use] each [reasonably available]
16 [appropriate] long-handled hand tool and each [reasonably available] [non-pesticide, non-
17 hand weeding, *thinning or hot-capping* alternative] to weed, ~~*or thin or hot-cap in the area*~~
18 *of* the field for which an exception is claimed.
19

20 (ii) The attempt to use these tools and alternatives caused [significant damage] to the
21 particular [crop] planted in *the area of the ~~that~~* field at the [crop]'s current state of
22 development. ~~*(iii) , and The attempt was conducted in an the area of the field which was*~~
23 ~~*representative of weed conditions observed throughout the entire field at the time for*~~
24 ~~*which*~~ the exception is claimed.
25

26 *(iii) An employer may establish that [significant damage] was caused by a serious effort*
27 *made pursuant to (i) and (ii) above by conducting a test in an area [representative] of*
28 *weeding, thinning or hot-capping conditions in the entire field or in the area or areas of*
29 *the field for which an exception is claimed. This test must be of [sufficient size] to allow for*
30 *an [objective] demonstration of the [significant damage] that can [reasonably be*
31 *expected] to occur if a similar effort to use required tools or alternatives was made in the*
32 *entire field or in all of the areas of the field for which an exception is claimed.*
33

34 ~~*(iv) (C) Where weed conditions in the field permit it Except as provided in (A) and (B)*~~
35 ~~*above,*~~ [appropriate] long-handled hand tools or [available] non-hand weeding, *thinning or*
36 ~~*hot-capping*~~ alternatives ~~*are*~~ *shall be* used at all times.
37

38 (4) The [crop] being produced is for planting seed whether for research, development,
39 production or multiplication and hand weeding or thinning is required in order to eliminate
40 off-type plants, meet purity and germination standards required by law or for other plant
41 selection purposes required to produce a particular seed [crop] when such seed [crops] are
42 produced by a seed labeler registered pursuant to Section 52351 of the Food and
43 Agricultural Code or produced under contract by a third party for a registered seed labeler.
44 *[The seed industry representative commits to provide clarification of third party contracts,*
45 *as well as language to preclude an employer under a seed contract from claiming an*
46 *exception for non-seed crops grown in the same agricultural operation.]*

1 (5) The [crop] is being produced in [smaller than five gallon size] containers where
2 [proper] use of an [appropriate] long-handled tool ~~is not possible without~~ caus~~ing~~es
3 [significant damage] to the particular [crop] at its current state of development.
4

5 (c) A long-handled hand tool used to weed, thin, or hot-cap shall not be used as a short-
6 handled hand tool in a stooped, kneeling, or squatting position.
7

8
9 (d) When conditions described in paragraph (2),(3),(4) or (5) of subdivision (b) prevent the
10 use of a long-handled hand tool, the employer shall do all of the following:
11

12 (1) The employer shall prohibit employees from using a short-handled hand tool, as
13 defined in Section 3437 ~~of Title 8 of the California Code of Regulations~~, if the use of the
14 tool requires an employee to stoop, kneel, or squat.
15

16 (2) The employer shall [reduce] or [eliminate] the degree of hand weeding, thinning, or
17 hot-capping required, by implementing [reasonably available] [administrative] or
18 [engineering] [controls], or both. Nothing in this subsection shall require the use of
19 genetically engineered [crops] or use of [administrative] or [engineering] [controls] which
20 are [cost prohibitive].
21

22 (3) The employer shall provide personal protective equipment, including gloves and, if
23 work is performed in a kneeling position, knee pads, and shall ~~provide one additional rest~~
24 ~~break during each four hour period of work, which shall be counted as hours worked for~~
25 ~~which there shall be no deduction from wages.~~ authorize and permit all employees to take
26 rest periods, which insofar as practicable shall be in the middle of each two hour work
27 period. The authorized rest period time shall be based on the total hours worked daily at
28 the rate of ten (10) minutes net rest time per two (2) hours or major fraction thereof.
29 However, a rest period need not be authorized for employees whose total daily work time
30 is less than one and one-half (1 1/2) hours. Authorized rest period time shall be counted,
31 as hours worked for which there shall be no deduction from wages.
32

33
34 (e) [(1)] Nothing in this section is intended to prohibit [brief], [isolated] hand weeding,
35 thinning, or hot-capping that is [incidental] to the use of a long-handled hand tool,
36 provided that the employee immediately returns to an erect, upright position and continues
37 use of a long-handled hand tool after picking an occasional weed.
38

39 [(2) Nothing in this section is intended to prohibit [brief], [isolated] hand weeding,
40 thinning, or hot-capping that is [incidental] to a non-hand weeding operation.]
41

42
43 (f) Employers shall provide any hand tool that may be used under this section, in
44 accordance with applicable Industrial Welfare Commission orders.
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