

State of California
Department of Industrial Relations
M e m o r a n d u m

To : ALL STANDARDS BOARD MEMBERS

Date : May 6, 2011

From : **Occupational Safety and Health Standards Board**
Conrad E. Tolson, Senior Engineer - Standards

Subject : **General Industry Safety Orders – Cranes & Derricks - Horcher**

At the January 20, 2011, Public Hearing, the Occupational Safety and Health Standards Board considered revisions to California Code of Regulations, Title 8, Division 1, Chapter 4; Subchapter 7, General Industry Safety Orders, Group 13, Cranes and Other Hoisting Equipment. These standards are substantially the same as federal standards.

Labor Code Section 142.3(a)(3) exempts the Board from providing a comment period when adopting a standard substantially the same as a federal standard. However, as indicated in the Notice and Informative Digest, the Board still provided a comment period for the purpose of identifying any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking and to solicit comments on the proposed effective date.

As a result of public comments and/or Board staff evaluation, the following changes have been made to the original proposal:

Relocation of Federal Final Rule for Cranes and Derricks in Construction.

The original proposal placed the federal final rule for Cranes and Derricks in Construction into General Industry Safety Orders (GISO) Group 13 since that is where all of California's existing crane standards are located. Numerous comments were received from stakeholders noting that the federal standards are limited in application to the construction industry. Furthermore, general industry stakeholders had not been represented in the federal negotiated rulemaking process. As such, the proposed placement of federal construction standards into the California GISO would be an expansion of scope beyond that permitted by the expedited Horcher rulemaking process. The Board has accepted these comments, and the federal crane standards are now proposed to be placed into the California Construction Safety Orders (CSO). This amended proposal will generally use the federal verbiage, except for formatting differences or where existing state general industry standards for cranes and derricks are more protective as they relate to construction activities. The purpose and necessity of this relocation is to conform the rulemaking to Horcher rulemaking requirements prescribed in Labor Code Section 142.3(a)(3) and the Administrative Procedures Act and to ensure that California's crane and derrick standards, as they pertain to construction, are at least as effective as the commensurate federal standards.

Section 1610.9, Equipment over Three Tons Rated Capacity.

This section, which has no direct federal counterpart, requires that all cranes and derricks exceeding three tons rated capacity shall not be used until they have been certified. This provision has been copied from GISO Section 5021. The purpose and necessity for this amendment is to maintain safety for cranes and derricks in construction equivalent to existing state standards for general industry as permitted by the Horcher rulemaking process.

Section 1613.1, Inspections – Modified Equipment.

This section is the state counterpart of 1926.1412(a). When it was in the GISO, the existing provisions of section 5022(a)(3) required proof load testing after major modifications or repairs are made to a crane. The counterpart federal standard lacks clarity in the requirement for a proof load test; thus as part of the relocation of the standard to the CSO, the wording of Section 5022(a)(3) will be appended to the federal verbiage as subsection 1613.1(c). The purpose and necessity for this amendment is to provide clarity.

Section 1613.4, Inspections – Each Shift.

This section, the state counterpart of federal 1926.1412(d), was originally proposed as amendments to existing GISO Section 5031. As part of the relocation of crane safety orders from GISO to CSO, this section is being substantially amended; i.e., it is no longer proposed as amendatory verbiage to an existing standard, but instead will incorporate federal verbiage substantially verbatim. As a result of a comment received, the title of the section, originally proposed as “Inspections – Daily” is being changed to be effectively the same as the federal provisions which pertain to inspections required for each shift. The purpose and necessity for these changes is to clarify inspection requirements and to conform the proposal to Horcher rulemaking requirements.

Section 1613.6, Inspections – Annual/Comprehensive.

This section, the state counterpart of federal 1926.1412(f), was originally proposed as new GISO Section 5031.2. As part of the relocation of crane standards to the CSO, federal annual/comprehensive inspection requirements are being relocated to section 1613.6; however, since the content of this section, in some cases, parallels existing state requirements found primarily in GISO Sections 5031 and 5022, the wording of those existing standards, where more protective, are being appended to the federal verbiage to provide safety equivalent to the existing state GISO for cranes and derricks. The purpose and necessity for these changes is to conform the proposal to Horcher rulemaking requirements.

Also a public commenter noted, inconsistent terminology for inspecting entities for similar type inspections (i.e. “licensed certifying agency” versus “certifying agency”). By definition, a certifying agency is licensed. These inconsistencies have been corrected. The purpose and necessity for these changes is to clarify requirements and provide consistency.

Section 1616.1(x), Stop Signals.

This section, the state counterpart of federal 1926.1417(y), was originally proposed as a modification of existing GISO Section 5008. A commenter noted that the amendment of federal verbiage into an existing state standard produced a result that was less protective than either the federal standard or existing state standard. The state counterpart of this section will now be Section 1616.1(x), and the federal verbiage will be adopted verbatim. The purpose and necessity of this change will be to clarify who may give stop and emergency stop signals to crane operators.

Section 1616.6(d)(2), Boom-attached personnel platforms.

This section, the state counterpart of federal 1926.1431(d)(2), was originally proposed as an amendment to the scope of GISO Section 5004(a); however that proposal had unintended consequences as identified by a labor representative. As part of the relocation of crane standards to the CSO, the state counterpart for boom-attached personnel platforms will be verbatim 1926.1431(d)(2), except for formatting differences. The purpose and necessity for these changes is to clarify requirements for boom-attached personnel platforms.

Section 1617.1(i), Stop Signals.

This provision is essentially the same as for section 1616.1(x) except that the federal counterpart is 1926.1419(j). Both sections were originally proposed as amendments to GISO 5008 with the same unintended results. This section will now contain the federal verbiage verbatim. The purpose and necessity of this change will be to clarify who may give stop and emergency stop signals to crane operators.

Section 1618.1, Operator Qualification and Certification, Exception for articulating/knuckle-boom cranes.

This exception, based on federal 1926.1400(c)(17) has been added in response to comments received regarding the previous omission of the federal exclusion for articulating/knuckle-boom cranes used for delivery of site materials. The Board has reviewed this issue and now proposes to include a limited exception which will be consistent with current state standards. The limited exception is based on wording taken from GISO Section 5006.1 Exception 1. It will permit the federal exception for articulating knuckle-boom cranes consistent with current state standards which are more protective than federal standards. This exception will only apply to articulating knuckle-boom cranes with a maximum rated capacity of less than 15,000 pounds, or a maximum boom length less than 25 feet when used for the delivery of construction materials to the jobsite. The purpose and necessity of this modification is to permit the limited use of articulating/knuckle-boom cranes for the delivery of site construction materials consistent with current state standards.

Summary and Response to Oral and Written Comments:

I. Written Comments

Advisory Opinion from U.S. Department of Labor, Occupational Safety and Health Administration, Oakland Area Office, Van Howell, CSP, Area Director, by letter dated December 23, 2010.

Comment:

Mr. Howell advised that the OSHA Area Office had completed its review of the proposal to adopt the Federal Final Rule for 29 CFR 1926, Cranes and Derricks in Construction into California General Industry Safety Orders, Group 13, Cranes and Other Hoisting Equipment, and that the proposed standard appeared to be commensurate with the federal standards.

Response: The Board acknowledges Region IX approval of the proposal as being commensurate with federal standards.

Susen Doubrava, Safety/Risk Administrator, Helix Water District, by email dated December 29, 2010.

Comment No. 1:

Regarding Section 5006.1, Operator Qualifications and Certification, Ms. Doubrava suggested that the section be re-titled “Crane Operator Qualifications and Certification” since the rest of the paragraph refers to cranes and makes no reference to hoisting equipment.

Response:

The rulemaking is being relocated to the Construction Safety Orders (CSO) and this section, the state counterpart to 29 CFR 1926.1427, is being renumbered to Section 1618.1. The federal standard applies to many types of hoisting equipment, not just to cranes (see 29 CFR 1926.1400, Scope). Thus, the scope of the operator qualification and certification must be equivalent to federal standards and cannot be limited just to cranes as requested by the commenter.

Comment No. 2:

Reference Section 5031, the commenter suggests that the title, “Inspections-Daily” be changed to just “Inspections” since the crane does not need to be inspected unless it is being used daily.

Response:

The counterpart federal standard for Section 5031 is 29 CFR 1926.1412(d). This subject will be covered in the new CSO 1613.4, Inspections-Each Shift, which will clarify inspections required at the beginning of each shift the equipment is used.

Comment No. 3:

Reference Sections 5031.2(a) and (b), the commenter noted what appeared to be inconsistencies in the terminology for the permissible certifying entity for similar inspections.

Response:

This counterpart federal standard for Section 5031.2 is 29 CFR 1926.1412(f). This subject will be covered in the new CSO 1613.6, Inspections – Annual/Comprehensive. The Board accepts this comment and proposes to use “certificating agency” since this term is defined in Section 1610.3 as requiring a license.

The Board thanks Ms. Doubrava for her participation in the rulemaking process.

Gerald Fulghum, CSP, CHST, by letter dated January 10, 2011.

Comment No. 1:

The commenter suggested that the effective date of the new standards should be at least 6 months following adoption.

Response:

California is mandated to adopt Federal standards within 6 months of the federal promulgation date [Labor Code §142.3(a)(2)]. This proposed rulemaking is merely a state-plan adoption of a federal standard that is the result of a negotiated rulemaking process which has been going on for a number of years and which became effective in federal OSHA states on November 8, 2010. The fact that this rulemaking was coming has been widely known among stakeholders for quite some time. Furthermore, the standard includes phase-ins for some of the more controversial provisions. Therefore, the Board is not persuaded of the need for delaying the effective date.

Comment No. 2:

Reference Section 4999(f)(2), Handling Loads, the proposed verbiage would replace existing state verbiage “Inadvertent contact with obstructions shall be prevented” with “The boom or other parts of the equipment shall not contact any obstruction.” The commenter opines that the existing state verbiage, which is similar to various nationally recognized standards, is more effective than the federal verbiage. The commenter therefore recommended that existing state verbiage be retained.

Response:

As noted by the commenter, the counterpart federal standard for Section 4999(f)(2) is 29 CFR 1926.1417(p). This subject will be covered in the new CSO Section 1616.1(o). This matter is outside the scope of the Horcher adoption; however, note will be taken of this concern and the subject will be revisited as part of an anticipated follow-up rulemaking which will go through normal notice and public comment periods.

Comment No. 3:

Reference Sections 5001(b) and 5008(b) regarding emergency stop signals, the commenter is of the opinion that the proposed verbiage that would require the operator to obey an emergency stop signal (but not a stop signal) from anyone, is less protective than the federal

counterpart standards in 1926.1417(y) and 1926.1419(j) which require the operator to obey a stop or emergency stop signal irrespective of who gives it.

Response:

The state counterparts for the referenced federal standards will now be found in sections 1616.1(x) and 1617.1(i). Both new subsections will incorporate the federal verbiage as recommended by the commenter.

The Board thanks Mr. Fulghum for his participation in the rulemaking process.

Greg McClelland, Director of Safety, District Council of Iron Workers/California Ironworker Employers Council (DCIW/CIEC) Safety Institute, by email and letter dated January 12, 2011.

Comment No. 1:

Mr. McClelland requested additional phase-in time for the proposed standard to allow their manufacturers, fabricators and labor representatives time to properly notify and negotiate with their respective bargaining parties as well as to make necessary adjustments to their training curriculum.

Response:

See response to Mr. Fulghum's comment No. 1 above.

Comment No. 2:

The commenter opined that Section 5008(b), which requires the operator to obey an emergency stop signal from any person, is in direct contradiction to Section 5001(b) which states that only qualified persons shall be permitted to give signals. He therefore proposed the following exception to both sections: "The operator shall obey an emergency stop order from any qualified individual involved in the hoisting operation or responsible for the direction of the hoisting operation."

Response:

The commenter's concerns are on the same subject as those raised by Mr. Fulghum (his comment No. 3), although they cannot be addressed in the same way. The relevant federal sections are 29 CFR 1926.1417(y) and 1926.1419(j) which require the operator to obey a stop or emergency stop signal "irrespective of who gives it." Since the rulemaking proposal is being relocated to the CSO, the new state subsections will be Sections 1616.1(x) and 1617.1(i). Both new subsections will incorporate the federal verbiage. The Board cannot add the exception recommended by Mr. McClelland, since it is outside the limits of this "Horcher" rulemaking. However, the Board takes note of Mr. McClelland's concerns and proposes to revisit them in a follow-up rulemaking.

Comment No. 3:

Reference subsection 5008.1(k) which requires that "the competent person shall adjust the equipment and/or operations to address the effect of wind, ice, and snow on equipment stability and rated capacity," the commenter is of the opinion that "must" or "shall" is too obligatory and needs further clarification so as not to require unnecessary "adjustments" to be

made during a lift. He stated that weather conditions may not warrant any adjustment. He recommended the following clarification: “A certified agent or qualified person shall adjust the equipment and/or operations, to address the effects of adverse weather conditions on equipment stability and rated capacity per manufacturer’s recommendations.” The commenter opines that the manufacturer is most qualified to determine when adjustments are necessary.

Response:

Subsection 5008.1(k) is the state counterpart of 29 CFR 1926.1417(n). The new CSO subsection will be Section 1616.1(m) which will, like the former proposal, take the federal verbiage. The Board is of the opinion that following the manufacturer’s instructions is implicit in the verbiage as proposed, and since this is based on federal verbiage that is the result of negotiated rulemaking, further clarification is unnecessary.

Comment No. 4:

Reference subsection 5001.2(b) which provides that “each voice signal shall contain the following three elements, given in the following order: function (such as hoist, boom, etc.), direction; distance and/or speed; function, stop command.” The commenter states that to require that signals be given in the prescribed order does not take into account the highly dynamic nature of steel erection, placement of reinforcing steel, shake out operations, yarding of materials, demolition work, or the myriad of hoisting operations ironworkers conduct daily. The commenter suggests the following verbiage: “Each voice signal shall contain the signals necessary to safely direct the hoisting operation being conducted.”

Response:

Subsection 5001.2(b) [now CSO subsection 1617.3(b)], is the state counterpart for 29 CFR 1926.1421 (b). Due to the limitations of the Horcher process, the Board cannot accept this comment as part of this rulemaking; however, we propose to revisit it as part of the proposed follow-up rulemaking.

Comment No. 5:

The commenter suggested an additional subsection 5001.2(d) to address the loss of power or communication during a lift or hoisting operation. Their suggestion was to add the following: “(d) During hoisting operations, an audible emergency signal must be received by the operator, whenever the communication signal or power is lost or interrupted.” His rationale is that, during the hoist operation, the operator is to be notified by an audible tone or signal, that there is a break in the communication between the signal person and the operator otherwise the operator may continue to perform the last signal received, unaware that communications has been broken. This could cause an unsafe condition.

Response:

This comment is outside the limits of the Horcher adoption process; however, Board staff will add it to a list of items to be considered as part of a proposed follow-up rulemaking.

The Board thanks Mr. McClelland and DCIW/CIEC for their participation in the rulemaking process.

Derry Pence, Chief Executive Officer, Port of San Diego Ship Repair Association, by letter dated January 14, 2011.

Comment:

Mr. Pence stated that since their member companies' work is on in-service waterborne vessels, some of their operations are under Cal/OSHA and some are within federal OSHA jurisdiction. He noted that federal OSHA did not include maritime and general industries in their rulemaking and thus he surmises that federal OSHA did not find a need for expanded rulemaking in their industry. He therefore objected to the application of the state standard beyond the construction industry and requested that any such expansion, if proposed, should be done as a full rulemaking outside the Horcher process.

Response:

The Board accepts this comment, and the revised proposal has been relocated to Article 15 of the Construction Safety Orders.

The Board thanks Mr. Pence and the Port of San Diego Ship Repair Association for their participation in the rulemaking process.

Lisa Sipes, Environmental Health and Safety Manager, Pacific Ship Repair and Fabrication, Inc., by letter dated January 13, 2011.

Comment:

Her firm is concerned that the proposed rulemaking would require them to obtain third-party certification for their crane operators, which would be economically burdensome on this small business. Furthermore, because of the nature of their work, the size of their workforce varies dramatically based on work in their yard. Furthermore, based on their safety record, her company feels that third-party certification of crane operators is unnecessary for their industry.

Response:

The Board accepts this comment to the extent that it has directed staff to relocate the proposed rulemaking to the Construction Safety Orders.

The Board thanks Ms. Sipes and Pacific Ship Repair and Fabrication, Inc. for their participation in the rulemaking process.

Brian Silbernagel, Corporate Safety Director, Morrow Equipment Co., LLC, by letter dated January 16, 2011.

Comments:

Mr. Silbernagel offered suggested changes and additions to the federal verbiage to clarify and enhance safety regarding (1) repairs to operational aids, (2) tower crane foundations and support, and (3) fall protection for non-assembly/disassembly work.

Response:

The suggested changes and additions are outside the limits of this Horcher adoption; however, Board staff will add them to a list of items to be considered as part of a proposed follow-up rulemaking.

The Board thanks Mr. Silbernagel and Morrow Equipment Company for their participation in the rulemaking process.

Robert Massey, Manager, Safety & Industrial Hygiene, NASSCO, by email dated January 14, 2011.

Comment:

Mr. Massey noted that the federal standard applies to cranes in the construction industry and that the state has not provided objective data to warrant applying these sweeping changes beyond the construction industry. Furthermore, the Horcher rulemaking process is an accelerated process which does not permit consideration of potential negative impacts by applying the federal construction standards to general industry.

Response:

The Board accepts this comment and proposes to relocate the accelerated “Horcher” adoption of the federal standards to the Construction Safety Orders.

The Board thanks Mr. Massey and NASSCO for their participation in the rulemaking process.

Elizabeth Treanor, Director, Phylmar Regulatory Roundtable (PRR) – OSH Forum, by letter dated January 19, 2011.

PRR is a group of 35 companies potentially affected by the proposed standards. Although participating companies contributed guidance and recommendations, the following opinions expressed by PRR may differ from those of their member companies.

Comment No. 1:

PRR offered a number of comments, but central to all was the issue that their constituents felt the state proposal to issue the federal crane standards in Title 8 General Industry Safety Orders was an expansion of scope not permitted by the Horcher rulemaking process. The Board is therefore considering all these comments as one.

Response:

The Board accepts this comment and proposes to relocate the proposed adoption of the federal final rule for cranes and derricks to Title 8 Construction Safety Orders, Article 15.

Comment No. 2:

Reference Section 4884(c)(12) exclusion for gin poles when used for the erection of communication towers, the commenter requested the Board to extend the exclusion for gin pole trucks to all uses rather than only when used for the erection of communication towers; i.e. they would like to modify the exclusion to include gin poles when used for the erection of communication towers and use of single winch, single line gin poles in general industry.

Response:

The proposed exception is verbatim of 29 CFR 1926.1400(c)(12), and thus the proposed modification is outside the limits of a Horcher adoption and cannot be accepted into this rulemaking.

The Board thanks Ms. Treanor and PRR for their participation in the rulemaking process.

Michael Vlaming, Executive Director, Crane Owners Association, Inc., by electronic mail dated January 19, 2011.

Comment:

Mr. Vlaming's organization is concerned that there are numerous instances of ambiguous terms and phrases in the proposed standard. They therefore request creation of an advisory committee comprised of industry representatives to develop interpretations and guidelines to enable effective, consistent and practical implementation and enforcement.

Response:

As noted in previous responses, the proposed rulemaking is being relocated to the Construction Safety Orders. The placement of the federal crane standard in the CSO is likely to address many of the instances of ambiguity. The Board also anticipates a follow-up rulemaking which may further clarify requirements. The request for creation of interpretations and guidelines should be directed to the Division of Occupational Safety and Health.

The Board thanks Mr. Vlaming and the Crane Owners Association for their participation in the rulemaking process.

The California Chamber of Commerce, on behalf of a Coalition, by letter dated January 20, 2011, and submitted at the Public Hearing by Marti Fisher, Policy Advocate.

The Coalition consists of:

The California Chamber of Commerce
California Professional Association of Specialty Contractors
Associated General Contractors of California
SafeCon Consulting Group, Inc.
California Construction and Industrial Materials Association
Associated Roofing Contractors of the Bay Area Counties, Inc.

Comment No. 1:

The over-arching concern of the Coalition was that the federal Final Rule for Cranes and Derricks in Construction was proposed to be placed in California Title 8 General Industry Safety Orders and thus that the proposed standard exceeded federal standards in several instances. These concerns will be dealt with as one comment.

Response:

The Board will respond to the concerns that the proposal to place the crane standards in the General Industry Safety Orders over-reaches the limits of a Horcher rulemaking by relocating the proposed standard to Construction Safety Orders, Article 15.

Comment No. 2:

The federal standard exempts the use of articulating knuckle boom cranes when used for the delivery of site materials and not engaged in actual construction activity. This exemption is not found in the proposed state standard.

Response:

The original proposal did not include the federal exception [29 CFR 1926.1400(c)(17)] because it does not provide safety equivalent to current state standards for articulating knuckle-boom cranes. However, based on input received, the Board has reviewed this issue and now proposes to include a limited exception which will be consistent with current state standards. The limited exception for articulating knuckle-boom cranes will be located in Section 1618.1, and is based on wording taken from GISO Section 5006.1 Exception 1. It will permit the federal exception for articulating knuckle-boom cranes consistent with current state standards which are more protective than federal standards. This exception will only apply to articulating knuckle-boom cranes with a maximum rated capacity of less than 15,000 pounds, or a maximum boom length less than 25 feet that are used to deliver construction materials to the jobsite. This exception will provide a level of safety equivalent to that prescribed in the GISO.

Comment No. 3:

The commenter is concerned that application of the federal construction standard definitions for “controlling entity” and “fall zone” [29 CFR 1926.1401] to cranes in general industry would be an expansion in scope.

Response:

The Board accepts this comment. The crane standards will be relocated to CSO Article 15, and the federal definitions are proposed to be adopted verbatim into Section 1610.3.

Comment No. 4:

The commenter expressed a concern that the federal requirement for certification of signalpersons in construction has been extended to all persons (general industry).

Response:

The Board accepts this comment. The crane standards will be relocated to CSO Article 15, and requirements for signalperson certification [29 CFR 1926.1428] will now be found in Section 1618.2. Please note third-party certification is not a requirement. Employer certification of signal persons is permitted by Section 1618.2, Option 2.

Comment No. 5:

The federal standard provides that fall protection anchorages that are a substantial part of the equipment may be used; however, the state proposal only infers that engineering analysis may be a prerequisite to its use. The Coalition requests clarification consistent with the federal requirements for fall protection anchorages.

Response:

The Coalition did not list the state or federal section number(s) at issue in this comment; thus it is not possible to determine whether the proposed relocation of crane and derrick standards to CSO Article 15 will address this concern. However, the proposed relocation does model federal verbiage except in some aspects where existing state standards are more protective. The commenter's attention is directed to proposed subsection 1610.7(g) for fall protection anchorage criteria.

Comment No. 6:

The Coalition noted that the federal standard makes an overwhelming number of references to consensus standards, including ANSI and various British standards. This continues to be a concern to the regulated community in that many of these standards are not readily accessible. The Coalition urged the Board to limit or eliminate the references to consensus standards as much as possible.

Response:

The Board notes this comment; however, it is obligated to adopt the federal verbiage and references as part of the Horcher rulemaking process. The Board takes note of this comment and will consider revisiting this concern as part of a follow-up rulemaking.

The Board thanks Ms. Fisher and the Coalition for their participation in the rulemaking process.

Christopher Walker, Senior Policy Advisor, Nossaman LLP, on behalf of California Association of Sheet Metal and Air Conditioning Contractors National Association (CAL SMACNA), by letter dated January 19, 2011.

Mr. Walker noted that on some jobsite applications CAL SMACNA contractors may require the use of a crane in either material deliveries and/or actual construction. For material delivery to a jobsite, contractors may own or use a truck with a small articulating knuckle-boom crane. In larger construction settings, CAL SMACNA contractors may rent or lease larger cranes for use in the actual construction of their portion of the project.

Comment No. 1:

The federal standard excludes smaller articulating/knuckle-boom cranes when used for delivery of materials. California's proposed standard does not include this same exception. CAL SMACNA requests that the federal exclusion be included in the state standard.

Response:

The Board accepts this comment to the extent noted in the response to Cal Chamber/Coalition comment #2.

Comment No. 2:

CAL SMACNA requests clarification of the term "controlling entity." They want to ensure that they, as subcontractors, are not interpreted to be a "controlling entity" on the jobsite when it comes to ground preparation responsibilities prior to crane placement on the jobsite.

Response:

Clarification of this term cannot be done within the context of a Horcher rulemaking. The subject of multi-employer worksites is also dealt with in CCR Title 8, Section 336.10.

Comment No. 3:

CAL SMACNA would like to ensure that the proposed revisions to the California standard for qualified rigger will allow for tailoring the training and qualification to the size of the job.

Response:

Rigger training and qualification [29 CFR 1926.1428] will now be in CSO 1618.2. Training requirements are further described in CSO 1509 and GISO 3203. The Board is therefore of the opinion that no further clarification of the standard is necessary; however, those employers wishing further guidance may review their training and certification programs with the Division. Please note also that third-party certification is not a requirement of Section 1618.2. Employer certification of signal persons is permitted by Section 1618.2, Option 2.

Comment No. 4:

CAL SMACNA would like assurances that their Joint Apprenticeship Councils (JAC) for Sheet Metal Workers will be able to train and certify signal persons.

Response:

Note the last two sentences of the response to Comment No. 3 above. CAL SMACNA may want to review their JAC program(s) with the Division to ascertain whether they will qualify under Options 1 or 2 of CSO section 1618.2, and if not, what changes may be necessary to do so.

The Board thanks Mr. Walker and CAL SMACNA for their participation in the rulemaking process.

Kirk Marckwald, Principal, California Environmental Associates, on behalf of the California Railroad Industry, by letter dated January 20, 2011.

The Board has directed staff to place the proposed rulemaking in the Construction Safety Orders, and to the extent that this limits application of the standard to intermodal facilities, the commenter's clients view this as a positive development. However, because they are uncertain of the degree of that limitation, they sent the following comments. They attached comments previously transmitted from the Association of American Railroads (AAR) to federal OSHA because of similar concerns with the federal rulemaking upon which the proposed California standards are based.

Summary of Comments:

The railroads are quite concerned that the federal requirements applicable to cranes used in the construction industry could, if adopted into California General Industry Safety Orders, be construed to apply to railroad operations. They note that railroads are under the jurisdiction of the Federal Railroad Administration (FRA). Specific items of concern are:

- Signal requirements and signal person certification.
- Crane operator qualification and certification.
- Power line safety.
- Assembly and disassembly of cranes.
- Overhead loads.
- Suspended personnel platforms.
- Crane operation.
- Fall protection.
- Safety devices and operational aids.
- Crane inspection and maintenance.
- Wire rope selection, installation, inspection and replacement.

The commenter opines that the proposed requirements are unsuitable for the railroad industry and there is no safety justification for imposition of new crane safety requirements for railroads. Furthermore, they stated that all these issues are already addressed by standard railroad operating practices which were designed with the specific requirements of rail operations in mind. They concluded that Cal/OSHA should exempt the use of cranes for railroad work along the right-of-way from application of the new standard.

Response:

As noted previously, the Board proposes to move the state's adoption of the crane and derrick standards from general industry to the Construction Safety Orders to be consistent with the federal standards. It is anticipated that this will address many, but not all, of the commenter's concerns.

To the extent that railroads are included in the federal construction standard for cranes and derricks, they will also be included in this state adoption of the federal standard. The Board is unable to ascertain that federal OSHA has responded to AAR's inquiry on the federal standard. The industry's concerns about the application of the federal standard to the railroad

industry will need to be addressed by federal OSHA before the state can revisit this issue as the state is obligated to provide a level of safety at least commensurate with federal standards.

The Board thanks Mr. Marckwald and the California Railroad Industry for their participation in the rulemaking process.

Larry Pena, Manager of Corporate Safety Policy and Regulations, Southern California Edison Company (SCE), by email dated January 21, 2011.

This letter was submitted after the conclusion of the Public Hearing, but within the 24 hour extension granted by the Board for receiving written comments. The following comments are in addition to oral comments provided by Mr. Pena at the Public Hearing on January 20, 2011. A summary and response to his oral comments will be provided in the section for Oral Comments.

Comment:

Mr. Pena noted that electric line trucks are used throughout the electric utility industry in all facets of construction and maintenance, including those found in overhead-underground applications and inside substations. He stated that electric line trucks are highly specialized, designed and built in such a manner to allow the operator to work on, or in close proximity to energized high voltage conductors and equipment, including:

- Installing and removing various equipment on poles and in vaults.
 - Installing and removing structures on towers, poles and equipment enclosures.
- As such he opined that these activities are strictly covered by the High Voltage Electrical Safety Orders.

Mr. Pena noted that federal exclusions for digger derricks in proposed Section 4884(c)(4) [since relocated to CSO section 1610.1(c)(4)] limit the exclusion to “digger derricks when used for auguring holes for poles carrying electric and telecommunication lines, placing and removing the poles, and for handling associated materials to be installed on or removed from the poles.” Mr. Pena opines that this implies that all other use of digger derricks (electric line trucks) which are not associated with poles would be subject to operator qualification and certification. SCE is of the opinion, that excluding digger derricks (electric line trucks) from other activities previously mentioned would effectively negate the exception currently provided for GISO §5006.1, Exception 2. Requiring crane operator certification for other activities digger derricks (electric line trucks) normally perform would create a financial burden on the employer which would ultimately be passed on to rate payers. Mr. Pena noted that SCE has a rigorous training program for operators of digger derricks, and he is of the opinion that this training enables their operators to safely operate digger derricks under electric utility conditions - specific to each discipline (transmission, distribution, substation). He added that no employee is assigned tasks for which he/she is not trained. He also stated that he is confident that other electric utilities have an equally rigorous crane operator training program.

Mr. Pena therefore requested that the exception for crane operator certification be expanded to include all electric utility operations currently listed in Section 5006.1, Exception 2.

Response:

The federal exclusion for digger derricks is limited to digger derricks when used for auguring holes for poles carrying electric and telecommunication lines, placing and removing the poles, and for handling associated materials to be installed on or removed from the poles. The commenter would like to see this exclusion extended in a manner consistent with GISO 5006.1; however, the federal exclusion is more restrictive. The Board understands that the electric utility industry may be taking this matter up with federal officials. In the meantime, the Board is obligated to promulgate standards at least as effective as the counterpart federal standards. This comment is therefore outside the scope of this Horcher rulemaking and cannot be accepted at this time.

The Board thanks Mr. Pena and SCE for their participation in the rulemaking process.

Louis Renner, Manager, Safety Engineering and Health Services, Pacific Gas & Electric Company, by email dated January 21, 2011.

Note: These comments were received within the 24 hour extension granted by the Board for receiving written comments.

Comment No. 1:

Mr. Renner's concerns about operator certification requirements for operators of digger derricks (electric line trucks) were essentially the same as those of Mr. Pena (SCE). He added that it is possible in a single job for these trucks to be used for work on poles as well as underground work. This means that without ever moving the truck, a lineman can use the truck to set an overhead transformer (allowed by the proposed standard) and then to set an underground transformer into a vault (not currently allowed by the proposed standard). Both transformers could be the same voltage and weight. As currently worded, the operator would not need to be certified to set the equipment on the pole, but would need to be certified to set the underground transformer. He noted that an exception in the current standards permit both these tasks to be done without operator certification.

Response:

See response to Mr. Pena's comment on the same subject above.

Comment No. 2:

Mr. Renner indicated that the aspect of a ground line attached to the boom had been discussed, and he was of the opinion that this was not feasible for line trucks with insulated booms.

Response:

The commenter did not indicate where this requirement is located in the proposed standard; therefore the Board is unable to address it at this time. Should the commenter wish to pursue this matter, the Board may be able to address it as part of a follow-up rulemaking.

The Board thanks Mr. Renner and PG&E for their participation in the rulemaking process.

Marc MacDonald, Vice President, Pacific Maritime Association, and Jeffrey Tannenbaum, Attorney, Nixon Peabody LLP, by document dated January 20, 2011.

See summaries of, and responses to, Mr. MacDonald's oral comments.

II. Oral Comments

Oral comments received at the January 20, 2011, Public Hearing in San Diego, California.

Elizabeth Treanor, Director, representing Phylmar Regulatory Roundtable (PRR) – OSH Forum.

Ms. Treanor read PRR's written comments into the record. The Board's response to Ms. Treanor and PRR's comments are located in Section I, Written Comments.

The Board thanks Ms. Treanor and PRR for their participation in the rulemaking process.

Marti Fisher, Policy Advocate, California Chamber of Commerce, representing of a Coalition of organizations.

Ms. Fisher spoke on behalf of a coalition of employers and summarized the coalition's written comments into the record. The Board's response to Ms. Fisher and the Coalition's comments are located in Section I, Written Comments.

The Board thanks Ms. Fisher and the Coalition for their participation in the rulemaking process.

Larry Pena, Manager of Corporate Safety Policy and Regulations, representing Southern California Edison Company (SCE).

Mr. Pena summarized SCE's concerns and comments. The Board's response to these comments and concerns are located in Section I, Written Comments.

The Board thanks Mr. Pena and SCE for their participation in the rulemaking process.

Marc MacDonald, Vice President Accident Prevention, representing Pacific Maritime Association (PMA).

Mr. MacDonald summarized PMA's comments which were presented to the Board at the hearing. The summary and response to those comments is as follows:

Comment No. 1:

It is improper to use the Horcher process to adopt the new crane and derrick standards for construction into the General Industry Safety Orders. The APA must be followed and a full rulemaking process is required to adopt federal construction standards into the General Industry Safety Orders.

Response:

The Board accepts this comment and has directed staff to relocate the proposal to the Construction Safety Orders.

Comment No. 2:

The PMA requests that the Board expressly exempt marine terminal operations from the proposed general industry standards. California already has standards specifically governing marine terminal operations in General Industry Safety Orders, Article 14, which are at least as effective as federal standards governing this work.

Response:

This request has become moot by virtue of relocating the proposed standard to the Construction Safety Orders.

Comment No. 3:

The PMA stated that, due to the Horcher process, they had insufficient time to evaluate the full impact of the proposed rulemaking on their operations. However, they gave a partial list of subjects which are subject to collective bargaining agreements, already included more specifically in GISO Article 14 or, would unjustifiably interfere with cargo movement, putting California maritime operations at a competitive disadvantage with other operations on the west coast, Mexico, Canada, and even gulf and east coast ports.

Response:

The issues raised here have become moot by virtue of relocating the proposed standard to the Construction Safety Orders.

The Board thanks Mr. MacDonald and the PMA for their participation in the rulemaking process.

Shane Gusman, Attorney, representing International Longshore and Warehouse Union (ILWU).

Mr. Gusman stated that the ILWU agrees with the PMA that the proposed standards should not apply to maritime operations. The Board accepts this comment and thus the proposal will be relocated to the Construction Safety Orders.

The Board thanks Mr. Gusman and the ILWU for their participation in the rulemaking process.

Kevin Bland, Attorney, representing California Professional Association of Specialty Contractors (CalPASC), California Framing Contractors Association (CFCA), and the Residential Contractors Association (RCA).

Comment No. 1:

There is a great deal of concern with placing the proposed rulemaking into the General Industry Safety Orders.

Response:

The proposed rulemaking will be relocated to the Construction Safety Orders.

Comment No. 2:

He also stated that the California standards should permit the use of articulating (knuckle-boom) cranes for site material deliveries as they are permitted in the federal standard.

Response:

The Board accepts this comment to the extent noted in the response to Cal Chamber/Coalition written comment #2.

Comment No. 3:

Mr. Bland expressed concern that, under the proposal, some forklift attachments can cause the forklift to be considered a crane and thus potentially require the forklift operator to be certified.

Response:

Although the commenter did not reference a section number, the Board believes this comment pertains to the state counterpart for 29 CFR 1926.1400(c)(8). The state counterpart is now CSO Section 1610.1(c)(8). The Board notes that an exception to Section 1618.1 (Operator Qualification and Certification) excludes operators of equipment with a maximum manufacturer-rated hoisting/ lifting capacity of 2000 pounds or less from qualification and certification requirements. This may limit the reach of the standard to forklifts with attachments for hoisting with a winch or hook; however, the state cannot permit any procedure that is less protective than federal standards. If the commenter continues to have concerns about this provision, he may request this matter be added to a list of items to be considered as part of a proposed follow-up rulemaking.

The Board thanks Mr. Bland and his constituent organizations for their participation in the rulemaking process.

Ralph Armstrong, Sr. Business Representative/Safety Lead, representing International Brotherhood of Electrical Workers (IBEW) Local 1245.

Comment:

Mr. Armstrong stated that including boom-mounted personnel platforms in the scope and general requirements provisions of Section 5004 would create a hardship for electrical workers.

Response:

The requirements for boom-attached personnel platforms [1926.1431(d)(2)], was previously appended to Section 5004. The subject has been relocated to Section 1616.6(d)(2) and now contains federal language verbatim. The Board believes that this may address the commenter's concerns; however, any further adjustment of this requirement would be outside the scope of this Horcher rulemaking.

The Board thanks Mr. Armstrong and IBEW Local 1245 for their participation in the rulemaking process.

Christopher Walker, Senior Policy Advisor, Nossaman LLP, representing the California Association of Sheet Metal and Air Conditioning Contractors National Association (CAL SMACNA).

Mr. Walker reiterated CAL SMACNA written comments received January 19, 2011. Please refer to Section I, Written Comments, for a summary and response.

The Board thanks Mr. Walker and CAL SMACNA for their participation in the rulemaking process.

Greg McClelland, Director of Safety, representing District Council of Iron Workers/California Ironworker Employers Council (DCIW/CIEC) Safety Institute.

Mr. McClelland summarized his written comments received by email and letter dated January 12, 2011. Please refer to Section I, Written Comments, for a summary and response.

The Board thanks Mr. McClelland and DCIW/CIEC for their participation in the rulemaking process.

Robert Massey, Manager Safety & Industrial Hygiene, representing NASSCO, by email dated January 14, 2011.

Mr. Massey summarized NASSCO's comments received by email January 14, 2011. Please refer to Section I, Written Comments, for a summary and response.

The Board thanks Mr. Massey and NASSCO for their participation in the rulemaking process.

Michael Vlaming, Executive Director, representing the Crane Owners Association, Inc.

Mr. Vlaming summarized his written comments sent by email on January 19, 2011. Please refer to Section I, Written Comments, for a summary and response.

The Board thanks Mr. Vlaming and the Crane Owners Association for their participation in the rulemaking process.

Steve Johnson, Director, Safety and Compliance, representing the Associated Roofing Contractors of the Bay Area Counties.

Mr. Johnson and the Associated Roofing Contractors of the Bay Area Counties support the Coalition's comments. Please refer to Section I, Written Comments, for a summary and response to the Coalition's comments (presented by Marti Fisher).

The Board thanks Mr. Johnson and the Associated Roofing Contractors of the Bay Area Counties for their participation in the rulemaking process.

Scott Wilson, representing BP West Coast Products.

Comment No. 1:

With reference to Section 5003.1, Signal Person qualifications, Mr. Wilson noted that they often use contractors to do work in their plants. He inquired about use of contractor-qualified riggers and signal persons (Option 2) and whether they would be permitted to work on the premises of his company's plants.

Response:

This is a request for interpretation which should be directed to the Division.

Comment No. 2:

Is there a detailed definition of the difference between "general industry" and "construction?"

Response:

The scope of the Construction Safety Orders is described in Section 1502. The scope of the General Industry Safety Orders is described in Section 3202. "Places of employment" and "employment" are defined in Labor Code Section 6303.

The Board thanks Mr. Wilson and BP West Coast Products for their participation in the rulemaking process.

Jeff Gurican, representing the Central California Chapter of the Associated Builders & Contractors (ABC).

Comment No. 1:

Mr. Gurican stated that he completely endorsed and supported the comments of the Phylmar Regulatory Roundtable, the California Chamber of Commerce, and others who had commented regarding moving the proposal from GISO to the CSO.

Response:

The proposed standards will be relocated to the CSO as requested.

Comment No. 2:

He would like to see the exception for gin-poles in Section 4884(c)(12) to be expanded.

Response:

Please see response to written comment #2 from Treanor/Phylmar Regulatory Roundtable.

The Board thanks Mr. Gurican and the Central California Chapter of the ABC for their participation in the rulemaking process.

Lee Steinberg, representing the Mobile Crane Operators Group.

Comment No. 1:

Mr. Steinberg stated that while the Federal standards permit employer and/or manufacturer procedures for assembly and disassembly of cranes, the proposal will not permit employer procedures. He opined that when crane manufacturers create procedures for crane assembly and disassembly, it is a generic best case which may have no resemblance to a job site. Often as a function of job site requirements, the manufacturer's procedures don't work, so alternate procedures are commonly used.

Response:

The corresponding federal standard for the issue raised by Mr. Steinberg is 1926.1403(b). As noted previously, the proposed rulemaking is being relocated to the CSO. As part of the relocation of the federal crane standards to the CSO, the federal subsection has now been incorporated as CSO Section 1611.1(b). Note that this section includes a cross-reference to Section 1611.4 for additional requirements. The Board believes that this relocation and reformatting will address Mr. Steinberg's concern.

Comment No. 2:

Reference Section 5031.1(b)(16) regarding warning labels and decals, Mr. Steinberg noted that the proposal adds a requirement for a durable load chart "covering the complete range of the certified agent's capacity ratings at all operating radii for all permissible boom lengths and jib lengths with alternate ratings for operational equipment affecting such ratings..." He opined that this is impractical for most new crane which all use electronically calculated load charts. It would be impractical to require a physical chart to be visible to the operator.

Response:

The Board accepts this comment. The additional state verbiage has been deleted as part of the relocation to the CSO [See section 1613.6(b)(16)].

Comment No. 3:

Mr. Steinberg agreed with others who requested an advisory committee to review the proposal.

Response:

The proposed rulemaking has been relocated to the CSO based on a large number of comments from stakeholders. The Horcher process is based on using federal provisions

verbatim (except for formatting), and such a process is not consistent with the use of an advisory committee.

The Board thanks Mr. Steinberg and the Central California Chapter of the ABC for their participation in the rulemaking process.

Terry Finnegan, a private citizen.

Comment:

Mr. Finnegan stated that federal standards for cranes in construction do not apply across the board to cranes in general industry. Permanently mounted cranes used in the maritime industry, for instance, do not present the same hazards as mobile cranes used in other industries; in addition, the inspection requirements in Section 5031 are skewed to mobile cranes as opposed to permanently mounted cranes.

Response:

The Board accepts this comment to the extent that the standard will be relocated to the CSO.

The Board thanks Mr. Finnegan for his participation in the rulemaking process.

Tom Reu, General Manager, representing Trench Shoring Company.

Comment No. 1:

Mr. Reu stated that although stakeholders had no input in the federal standards, he hopes that they will have some input about the California standards. Rules of the kind proposed here mean only one thing to small business—cost, cost, and more cost. He asked that Board staff explore how the proposed standards will affect work in the field. He specifically mentioned concerns about cost and affect of the inspection requirements.

Response:

The issue of cost and the affect on work in the field was extensively studied by federal OSHA and was discussed in the preamble to the federal standard. The Board is obligated to adopt standards at least as effective as federal standards in spite of cost considerations.

Comment No. 2:

Mr. Reu requested an exemption for articulating cranes.

Response:

See response to Mr. Bland's comment #2 regarding the exemption to permit the use of articulating cranes for delivery of material.

Comment No. 3:

Mr. Reu requested that an advisory committee be convened to consider this proposed rulemaking.

Response:

See response to Mr. Steinberg's comment #3 above.

The Board thanks Mr. Reu and Trench Shoring Company for their participation in the rulemaking process.

Board discussion.

At the conclusion of public comments, the Board discussed the option of moving the rulemaking proposal to the Construction Safety Orders and upon determining that to be the best course of action, they gave Board staff that direction.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the Staff Development Memorandum.