

## OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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### MINUTES OF THE ADVISORY COMMITTEE FOR GENERAL INDUSTRY SAFETY ORDERS, SECTION 3657 AND NEW SECTION 3458.2, DATE PALM OPERATIONS March 12, 2020 Palm Desert, CA

#### 1. Call to Order.

The meeting was called to order by the Chair, David Kernazitskas, Senior Safety Engineer, Occupational Safety and Health Standards Board (OSHSB), at 9:15 am on Thursday, March 12, 2020, in Palm Desert, CA. The Chair was assisted by Bernie Osburn, Associate Governmental Program Analyst, OSHSB.

#### 2. Opening remarks.

The Chair welcomed the attendees and started the introductions of the committee. He then reviewed the Standards Board policy regarding the use of advisory committees, explaining that the Board has found advisory committees to be an effective way to develop a proposal because of the expertise of the attendees. He also provided general information about the rulemaking process.

The Chair noted that 20 of the more than 60 attendees present today worked with the type of platforms being discussed. He thanked everybody for attending to the meeting to participate in the rulemaking process. He explained that the majority of the discussion would involve the subject matter experts (SMEs) seated at the front of the room, but that other interested parties could participate in the discussion by referring comments to one of the SMEs to make on their behalf.

#### 3. Discussion of the proposed rulemaking.

##### *Background*

The Chair explained that the advisory committee was convened as a result of Petition 565 (James Dufour), which requested the Board develop requirements allowing the harvesting of dates with the use of work platforms mounted on lift trucks. The Chair explained that 15 permanent variances have been granted in California, the first of which were applied for in 2008. Petition 565 was granted by the Board on September 14, 2017.

The Chair showed some pictures and videos of a date palm operation taken at a recent visit he made to a date farm in the Coachella Valley. The employees were removing thorns from the date palm while elevated by an extended-boom rough terrain forklift. He explained that other processes performed from the work platforms include thinning, pollinating, tie-downs, and harvesting. Depending on the type of date being harvested, it can be necessary for employees to ascend the trees upwards of ten times

a year to perform necessary operations. The Chair also shared a graph of average temperatures in the Coachella Valley to show the extreme heats that can be present while performing date palm operations.

*Discussion on Necessity*

The Chair asked the committee to provide reasons why the proposed amendments needed to be made in light of the fact that several growers have successfully obtained variances to perform the process. Committee members responded that the variance process is too long. They also explained that the variety of date palm operations made it necessary to develop a general standard as a goal for employers to meet, thus increasing the safety of the process for all employers. The committee said that there were a couple hundred date growers in the Coachella Valley.

**Anthony Bianco** (Anthony Vineyards, Inc.) said that the economic viability of date growers in the Coachella and Bard Valleys depends on conditions granted in those variances (i.e. the use of the work platforms in date palm operations). He also pointed out that the platforms allow water and first aid supplies to be up in the tree with the workers.

**Albert Keck** (Hadley Date Gardens) said the date palm operations are very labor intensive and that someone “off the street” would not be able to perform the work. He said that the skills necessary to work effectively in the industry take years to develop and it is increasingly difficult to find such skilled individuals. He said that the work platforms enable more people to work because the required expertise is less. He said that the business is important to the area because workers can work year round in the industry unlike other agricultural fields.

**Dennis Johnson** (Oasis Ranch Management, Inc.) said that there are several small growers in the industry. As their trees get taller, they will either use ladders or work platforms for their work, but they may not have the funds to apply for a variance. He said that a regulation allowing the use of the platforms will help ensure the safety of their employees.

*Operator leaving the operator’s position*

The Chair read the proposed exception to subsection 3657(e), allowing the lift truck operator to leave the operator position and operate up to three lift trucks as long as the operator remains within 150 feet of the work trucks. The Chair explained that he received comments from stakeholders before the meeting that they had concerns with the exception as written in the proposal and granted in the 15 permanent variances. He also pointed out that federal OSHA requires that if the operator leaves the operator position, the forks must be lowered and the operator must remain within 25 feet of the lift truck. He also stated that the latest editions of the corresponding lift truck consensus standards do not support the practice as proposed.

The Chair asked the committee to provide their thoughts on the operator leaving the operating position while employees were elevated on the work platform.

**Yancy Yap** (Division of Occupational Safety and Health) replied that employees on the work platform do not have the ability to lower themselves in the event of an emergency. He said that if there was an employee in distress, an operator must be available to lower the basket.

**Anne Katten** (California Rural Legal Assistance Foundation) said that platforms are safer than ladders when used safely. She said that it was critical for the operator to stay in the operator position or at least within 25 feet in case there was an emergency. She said that if the operator is a distance away, the operator will not be able to respond quickly enough. She also mentioned that employees may need to use the restroom and should not be required to wait excessively. She said that she supported an operator leaving the operator position because the operator of the forklift who is not seated may be able to see the workers in the basket better than one seated in the operator position. She added that she had serious concerns about an operator being responsible for operating more than one lift truck.

The Chair asked what kinds of precautions growers take to prevent emergencies on the work platform while employees are raised. He said that a beehive or heat illness could be examples of emergencies.

**Mr. Johnson** said that requirements for heat illness are covered by other regulations so the foremen are already trained to respond to such situations.

**Mr. Keck** said that an operator could move from one tree to the next in just a few seconds. He said that trees in the same row were closer than trees in adjacent rows. He said that three machines could be working in a space about the size of the meeting room we were in.

**Ralph Shirley** (Test, Inc.) said that at 150 feet an employee could walk to an adjacent row in 15 seconds. He said that in an emergency, the distance could be travelled much more quickly.

**Mr. Yap** asked what a grower would do if two trees located 25 feet apart both had emergencies at the same time.

**Mr. Keck** responded that the operator should not leave the operating position at a tree until the work platform is safely positioned in the tree. He said that the operator would be aware of immediate hazards, like a beehive, before leaving the platform. He said that the operator would ensure that workers are safe and settled before leaving the seat to move another truck.

**Mr. Shirley** pointed out that the variances were granted requiring two certified operators to be available to operate the trucks.

**Mr. Jensen** said that there were a lot of “what-ifs” in the discussion. He said that the lift truck operator could develop a heat illness. He said that we needed to be reasonable in preparing to handle various situations which could arise. **Mr. Keck** said that we all want to protect our workers and their ability to perform the work. He said that we not only needed to protect the workers in the basket, but also to protect the operator. He said that we needed to include the operator’s well-being in the discussion.

The Chair asked if allowing the operator to be 25 feet from lift trucks was enough space for the growers.

**Mr. Keck** responded that the regulation needed to allow growers the freedom to get the work done. He said that 150 feet was only 4 seconds away in a run.

The Chair reminded the committee that federal OSHA only allows the lift truck operator to leave the operator position and remain within 25 feet of the truck when the forks are lowered. He opined that developing employee safeguards for workers on the elevated platform would be easier with the operator limited to a distance of 25 feet from the truck rather than 150 feet.

**Mr. Keck** pointed out that federal OSHA did not consider the date palm industry when they developed their lift truck requirements. He said that there are millions of date palm trees in the valley and each are ascended multiple times each year using platforms without incident. He said those statistics should be used to show the safety of the process.

**Mr. Shirley** said that the 150 feet was determined by how long it would take to travel back to a work platform in an emergency. **Mr. Bianco** asked if limiting the operator to two platforms would be acceptable. **Mr. Shirley** asked if there was any justification to go from three to two. He said he did not see any. He said that there is a statistical probability that the situations we are discussing could occur, but they have not yet in the millions of instances that have safely occurred over the past several decades.

**Mr. Yap** said that Cal/OSHA is concerned with allowing the standard to be applied industry-wide. He said that the data may exist showing that no incidents have occurred, but the data likely does not reflect all possible scenarios. He asked if there was data showing that an operator 150 feet away could hear workers on a platform on a windy day.

**Mr. Shirley** said that the orchards are very quiet and he believes that the operator could hear the sounds of workers in a distant basket. He opined that the existing requirements were to prevent an operator from wandering away and not being available in an emergency. He said that the present situation required the operator to be available and ready to respond, even if the operator is up to 150 feet away.

The Chair said that when he visited an orchard, it was very quiet, but that with six workers in a basket, the noise levels could be higher, making it difficult for someone several rows away to hear.

**Maria Martinez-Diaz** (California Rural Legal Assistance, Inc. (CRLA)) said that CRLA has received reports from workers that they have to wait a long time for someone to lower the lift so that they can use the restroom. She said that the operator should be close enough to respond to employee needs when they occur. She said she was concerned about the operator operating more than one truck because employees on multiple platforms may need to use the restroom at the same time.

**Mr. Yap** said that he was ok with the operator leaving the operator position on the lift truck, but only if the operator operates one machine. He said that the operator has a better view of the elevated employees and can better assist them in an emergency. He said it is safer for the operator to not be in the operator position. **Ms. Katten** agreed that if the operator is in charge of only one machine, then leaving the operator position and remaining within 25 feet would be acceptable.

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The Chair summarized that the committee appeared to be in agreement that having one operator per machine and allowing the operator to leave the operator position and remain within 25 feet was acceptable, though some participants said they would prefer the option to operate two machines.

The Chair explained that proposed Exception 2 in (j)(7) was intended to remove date palm operations from the general standard for elevating employees with lift trucks. He also said that he was deleting the redundant language in (k)(5)(C), regarding personnel on the platform while traveling, because the requirements are already covered by (j)(7).

*Proposed New Section 3458.2*

The Chair read the proposed title and scope of the proposed new regulation Section 3458.2. The committee suggested consistently using the terms “work platform” and “date palm operations” to describe the equipment and processes being discussed.

The Chair read the proposed text for 3458.2(b), which requires employers to comply with the general requirements for elevating employees with lift trucks Section 3657.

**Mr. Yap** said that he was concerned that the proposed text could be interpreted to mean that employers must comply with Section 3657, except for the two listed subsections and the requirements following subsection 3458.2(b). The Chair explained that the proposed text was intended to require employers to comply with Section 3657, except for the two listed subsections, and to also require employers to comply with the items listed in subsection 3458.2(b). The committee suggested adding the words “comply with” to the text following the excepted subsections to clarify that the requirements listed below 3458.2(b) would apply in addition to the requirements listed in Section 3657, except for the two listed subsections.

**[April 2020 Chair’s Comment Post AC:** Upon further review, the Chair proposes to remove the mention of the two excepted subsections. The proposed text in Section 3657 contains exceptions which will exempt employers engaged in date palm operations, removing the need to exempt them a second time in newly proposed subsection 3458.2(b). Because of Mr. Yap’s concern for possible confusion over the proposed language and the Chair’s concern that redundantly exempting employers from said requirements can lead to further confusion during compliance, the Chair proposes the following text to replace the language developed during the advisory committee:

Proposed language resulting from the meeting on March 12, 2020:

**(b) Employers shall comply with Section 3657, except for subsections ~~3657(e)~~ and 3657(j)(7), and comply with the following requirements:**

Language after the Chair’s review in April 2020:

**(b) Employers shall comply with Section 3657 and the following requirements:**

Members of the advisory committee were given an opportunity to comment on the Chair's above amendment. Any concerns raised were addressed and resolved by the Chair. [The highlighted text will be incorporated into the proposed regulation after the committee has an opportunity to comment.]

The Chair read the requirement in proposed subsection 3458.2(b)(1), requiring the platform to be inspected, maintained, and operated in accordance with manufacturer recommendations, where such recommendations are available.

**Ms. Katten** expressed concerns that the work platforms are not being inspected and maintained properly. She said that CRLA has received complaints about platforms that are wobbly as they are lifted into the air. **David Mansheim** (Bard Date Company) said that the platforms are required to be inspected and maintained as part of the variance conditions and that the proposed language in subsection (b)(9) required inspections and repairs to be made when deficiencies are found. **Mr. Bianco** stated that the platforms do not have moving parts that need maintenance.

#### Overhead guards

The Chair discussed a recommendation received before the meeting that the work platforms be equipped with overhead guards (proposed subsection (b)(2)). He asked what the purpose of the overhead guard would be. He said that references to an overhead guard in Title 8, federal regulations, and the ANSI standards refer to protecting employees from an overhead hazard.

**Mr. Shirley** said that ANSI B56.1 Section 4.17.2(e) recommends overhead protection where needed. **Mr. Bianco** said that the guards would preclude the use of the lifts by pushing the palm fronds out of the way and beyond the reach of the employees.

The Chair shared the federal language from 29 CFR 1910.178(m)(9), which requires overhead guards as protection from falling objects. He asked if there was a concern for falling objects in the date palm operations. Hearing none, he proposed striking the proposed text for subsection (b)(2) requiring overhead guards to be installed. **Mr. Yap** said that he supported striking the requirement for overhead guards on the work platforms because there was no hazard of falling objects. **Ms. Katten** agreed.

#### Securely attached

The Chair read the requirement in proposed subsection (b)(3), requiring the platform to be securely attached to the lift truck to prevent tipping. **Mr. Yap** said that the requirement was redundant to the requirements of 3657(b)(2) and (j)(1). The Chair asked if anyone had a concern with deleting the proposed subsection (b)(3). No concerns were expressed.

#### Standing on railings of the platform

**Mr. Bianco** said that workers in the basket need to step up on the railings of the platform to reach certain branches. He said that the current regulation requires the employees to remain on the floor of the platform. He suggested adding language to the proposal to allow the practice.

**Mr. Yap** asked why a lift with a higher reach couldn't be used. **Mr. Bianco** responded that the work platform pushes the fronds out of the way so going higher with the lift will push the dates further out of reach. **Mr. Mansheim** said that by going higher with the lift, the basket pushes against the tree and fronds, increasing the load on the lift truck. The Chair said that he would follow up with the committee members after the meeting to discuss the topic further.

*Lift capacity evaluation*

The Chair read proposed subsection (b)(4), regarding the lifting capacity evaluation and who can perform one.

**Mr. Shirley** said that performing the lift evaluation for the lift truck / platform combination was complex and not intuitively obvious. He said the Bard Valley growers invested a lot of time and money in figuring out how to properly perform the evaluation. He said that he believes he thoroughly evaluated the process, but has concerns that the next person who develops a procedure to evaluate the lift capacity of the trucks may overlook essential elements of his analysis. He was concerned about the potential consequences of not being more specific about what is required in performing the analysis.

**Mr. Yap** said that he was unclear as to what was required of the lifting capacity evaluation.

**Mr. Mansheim** said that he has calculations based upon the lift truck and platform combination and trains his employees on the safe use of the combination. He agreed that more details could be provided to specify what is required by a properly completed lifting capacity evaluation.

**Ms. Katten** said that she would like to see more information on what is required by a lifting capacity evaluation.

**Mr. Yap** said that he had concerns with the meaning of the terms "lifting capacity evaluation," "qualified person," and "good engineering practice." He said he was unsure that their meaning would be clear to the date palm community.

**Mr. Mansheim** recommended putting together a small committee to discuss the requirements for producing the evaluation. The Chair said that he would follow-up with the committee members after the meeting to discuss the topic further.

The Chair read proposed (b)(5), requiring work platforms to be used only with lift trucks for which a lifting capacity evaluation has been performed. Nobody expressed concerns beyond those already expressed about the requirements of the evaluation.

The Chair read the proposed text for (b)(6), which requires the results of the lifting capacity evaluation, including the maximum number of employees allowed on the platform, to be available to the operator. **Mr. Yap** suggested the word "employees" be changed to "occupants." The committee agreed.

**Mr. Keck** and others asked what would happen if a new lift truck was used in combination with a basket. The Chair explained that the proposed text requires a new lifting evaluation to be performed for the new lift truck and work platform combination.

**Ed Castro**, an interested party, said that he had concerns with the requirement as it relates to renting a forklift because rental companies don't always provide the same lift trucks. **Mr. Mansheim** said that his company has a spreadsheet that can be used to quickly produce the evaluation based on the lift capacity of a truck. **Mr. Shirley** said that each evaluation requires a qualified person to take into account 6-7 pieces of information specific to the lift truck.

**Mr. Yap** asked if a new load chart would be posted in the machine each time a different work platform was used. **Mr. Mansheim** responded that a new chart is printed so that it can be available to the operator. **Mr. Yap** said that the load chart must be readily available to the operator for immediate reference. **Mr. Mansheim** explained that the operator is trained on the specific limitations of the truck / platform combination.

**Mr. Mansheim** explained that by using the worst-case scenario for the lift truck / platform combination, the operator could perform any task short of the worst-case.

**Mr. Yap** said he was concerned that the information was not in view of the operator to reference during the work of raising and lowering the platforms.

**Mr. Mansheim** explained that the lifting capacity evaluation provided limits on the number of employees in the basket and the height of the lift.

**Jose Hernandez**, a forklift operator and interested party, said that operators are provided with two pieces of paper: one is the forklift inspection and the other is the specification sheet. The operator must know the maximum number of employees for the lift and then the sheet contains information on how close the lift truck needs to be to the tree.

**Mr. Mansheim** said that knowing how close to be to the tree was the key to remaining within the limits of the lift truck / work platform combination. **Mr. Shirley** said that the nearness to the tree affected the angle of elevation of the work platform, which controls whether or not the platform can be safely lifted at the intended load.

**Mr. Shirley** said it was difficult to explain, but he made the calculations as simple as possible for use by the growers. He explained that the calculations are dependent on the number of employees being lifted and the distance to the tree.

**Ms. Katten** asked if the evaluation accounted for all of the employees moving to the far end of the platform, such as could occur in an emergency. **Mr. Shirley** confirmed that he took those situations into account. **Ms. Katten** said that it would be necessary to know the assumptions used in the calculations, such as employee weight, etc.



*Posting of maximum occupancy*

The Chair read proposed subsection (b)(7), regarding the posting of the maximum occupant capacity for each platform. Nobody mentioned concerns with the proposed text.

*Capacity reduction for elevating personnel*

The Chair read proposed subsection (b)(8), which requires the combined weight of the work platform, load, and personnel to be less than one-half of the capacity of the lift truck / work platform combination in use. He explained that the amendment was suggested by stakeholders before the meeting was convened.

**Mr. Shirley** said that the one-half capacity reduction was not based on scientific evidence during ANSI deliberations on the recommendations. He said that whether a one-half or one-third reduction was used, it was an extra safety factor that was added for employees being raised on the platform, but was not based on any principle of engineering. He explained that the date industry needed the entire forklift capacity in order to be able to use the work platforms. He said that the lift trucks are made to lift the weight safely, whether the weight is freight or personnel.

The Chair pointed out that Section 3657(k)(2) already contains the one-third capacity recommendation contained in the ANSI B56.6-2016 standard, where a load chart for elevating personnel is unavailable.

The Chair suggested deleting subsection (b)(8) since the requirement already exists in Section 3657(k)(2). **Mr. Yap** agreed.

*Inspection and maintenance*

The Chair read the proposed text for subsection (b)(9), regarding inspection and maintenance of the platform and lift truck.

**Ms. Katten** asked if the rented lift trucks have required maintenance schedules. **Mr. Mansheim** said that the operators inspect the lift trucks each day before use and that the rental companies perform manufacturer-recommended maintenance according to the recommended schedules. The committee explained that if a forklift is rented when a maintenance item is due, the rental company will contact the renter to arrange for the service to be completed. Ms. Katten said this would suffice as long as it actually occurs.

*Horizontal and centered*

The Chair read the proposed text for subsection (b)(10), requiring that the platform be horizontal and centered before employees are raised or lowered on the work platform and before the platform is moved to another tree. The Chair explained that existing regulations require the mast be vertical while employees are raised or lowered and that the platform be level during personnel lifting operations.

**Mr. Yap** said that (j)(3) requires the mast to be vertical, but doesn't mention "centered". 3657(k)(5)(A) requires that the platform be level, but doesn't mention "horizontal" or "centered". The

Chair asked if it was necessary to make adjustments to the proposal. **Mr. Shirley** said that requirements such as “level” or “horizontal” have tolerances and are not precise. **Mr. Yap** suggested replacing the word “horizontal” with “level” to require that the platform be reasonably level before employees are raised or lowered or relocated while on the platform. The committee agreed that the change would be acceptable.

*Tools and equipment on the platform*

The Chair read the proposed text for subsection (b)(11), prohibiting tools or other equipment from being on the platform.

**Ms. Katten** said that she was concerned that the text would prohibit the presence of a first aid kit or a water cooler. **Mr. Yap** opined that the intent of the proposed text was to prevent heavy equipment like air compressors or generators from being on the platform because they could affect the stability of the platform. He said that a water cooler or first aid kit would not be considered equipment.

**Mr. Keck** said that any equipment on the platform should be included in the load calculations for the platform. He said that **Mr. Shirley** accounts for this in his analysis.

The Chair proposed amending the language to require that the tools or equipment on the platform be part of the lift capacity evaluation. The committee agreed that doing so would resolve the concerns of unaccounted for loads on the platform.

*Minimum working space*

The Chair moved on to discuss subsection (b)(12), regarding minimum working space for employees on the work platform. He explained that he received concerns about crowding of employees while sharp tools were being used, as well as concerns that a crowded platform would increase the risk of heat illness.

**Ms. Katten** said that because a lot of the work is done at a piece rate, the workers should have enough room to work efficiently without jostling one another. She said she would like three feet of space between employees.

**Mr. Keck** said that there are practical limitations on the number of employees that can be on the platform. He explained that employees can’t work efficiently if they are too crowded.

**Mr. Shirley** said that other agricultural operations use sharp tools and work from moving platforms, yet have no minimum space requirements for the employees. He asked why it was necessary to regulate the date palm industry when he is not aware of similar regulations for other industries.

**Mr. Keck** said that some workers prefer to stand closer together so they can speak with one another while they work. **Ms. Katten** said she did not want to prevent employees from choosing to work close together. She preferred a requirement to limit the number of employees allowed on a work platform, depending on the area of the platform. **Mr. Yap** agreed.

**Mr. Mansheim** said that he would like to work with Mr. Shirley outside of the committee to see what would be a reasonable number of employees to have on each platform. The Chair said he would follow up with **Mr. Mansheim** after he had a chance to consider the matter.

#### Training requirements

The Chair read proposed subsection (b)(13), regarding training requirements for using the work platforms. Nobody expressed any concerns with the proposed text.

The time allotted for the committee discussion elapsed so the Chair concluded the meeting. He said that he would follow-up with the attendees regarding issues of concern raised during the meeting. He also explained that he would address the remainder of the proposal in follow-up discussions with the committee members.

#### 8. Economic Impact.

The Chair explained to the committee that an important and required part of the rulemaking process is the identification of the cost impact of the proposed rulemaking, and he asked the committee members for their assistance. The committee agreed that using the platforms would add an option to the list of available options and not mandate their use. Any cost impacts would be optionally incurred by an employer who saw the investment as a benefit to the operation.

#### 9. Conclusion.

The Chair reviewed the rulemaking process with the committee. He noted that the advisory committee had determined a necessity for changes and had reached consensus on some of the proposed changes. He explained that he would reach out to the committee to review the remainder of the proposal, as well as some of the specific issues raised during the discussion that needed further resolution.

He stated that committee members will receive a copy of the meeting minutes, along with a copy of the final consensus proposal within 2-3 months. They will have an opportunity to comment on them before he moves forward with preparation of a formal rulemaking proposal. The Chair noted that even when if a consensus on the proposal is achieved, there will be additional opportunities for public comment. A formal rulemaking proposal will be noticed and he estimated that could be several months away. The notice will be emailed to the committee members, so he urged them to be sure they signed the attendance roster if they want to receive a copy. The notice will also be on the OSHSB website for viewing.

There will be a 45-day public comment period, concluding with a public hearing. Anyone may attend the public hearing and provide oral comments. Comments may also be submitted by mail or email during the comment period. Changes may result from public comment and/or during the review process. If any substantive changes are made, there will be one or more additional 15-day periods for public review and comment. After that it will go to the Board for adoption at a Business Meeting. After adoption by the Board, the proposal will go to the Office of Administrative Law (OAL) which will have 30 working days to review it for compliance with the Administrative Procedures Act. Finally the proposal will be filed with the Secretary of State and, unless otherwise specified, will become effective (enforceable) the first

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day of a subsequent quarter.

The Chair estimated that the rulemaking process will take up to a year from when the formal notice is published for public comment.

The Chair thanked the committee members for their attendance and participation and adjourned the meeting at 3:15 p.m.