

DEPARTMENT OF INDUSTRIAL RELATIONS

Occupational Safety and Health Standards Board

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SECOND NOTICE OF PROPOSED FURTHER MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS

TITLE 8: Sections 3441 and 3449
of the General Industry Safety Orders

Outdoor Agricultural Operations During Hours of Darkness

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named regulation in which further modifications are being considered.

On April 18, 2019, the Standards Board held a Public Hearing to consider revisions to Title 8, Sections 3441 and 3449, of the General Industry Safety Orders. The Standards Board received oral and written comments on the proposed revisions. The standards were modified as a result of these comments and Board consideration, and on October 3, 2019, a 15-Day Notice was issued.

This second 15-Day Notice is a result of further comments from stakeholders and added Board consideration.

A copy of the text of the standards as originally proposed, with the modifications clearly indicated, is attached for your information. In addition, a summary of all written comments and Board staff responses is included.

Pursuant to Government Code Section 11347.1, notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following document relied upon:

ADDITIONAL DOCUMENTS RELIED UPON

- Monterey County, Code of Ordinances, Chapter 21.24.070 – “Site Development Standards.”
https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TI_T21ZO_CH21.24REAGINZODIAIDI_21.24.070SIDEST
- Monterey County, Code of Ordinances, Chapter 21.63.020 – “Design Guidelines for Exterior Lighting.”
https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TI_T21ZO_CH21.63DEGU .
- American National Standard, Illuminating Engineering Society, ANSI/IES RP-16-17, Nomenclature and Definitions for Illuminating Engineering -
<https://www.ies.org/definitions/work-plane/>

These documents are available for review during normal business hours at the Standards Board Office located at the address listed below.

Any written comments on these modifications or document relied upon must be received by 5:00 p.m. on December 20, 2019, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833 or submitted by fax to (916) 274-5743 or e-mailed to oshsb@dir.ca.gov. This proposal will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Christina Shupe, at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: December 3, 2019

Christina Shupe, Executive Officer

PROPOSED MODIFICATIONS

**(Deleted regulatory language is shown in bold double strike-out
and new regulatory language is shown in bold double underline.)**

STANDARDS PRESENTATION
TO

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend §3449 to read:

§3449. Ladders (Repealed)- Outdoor Agricultural Operations During Hours of Darkness (Between Sunset and Sunrise).

(a) Illumination. Outdoor agricultural operations taking place between sunset and sunrise shall be illuminated at levels no less than the levels stated ~~on~~ in Table 1. Illumination levels for **task lighting** shall be measured at the task/working surface, in the plane in which the task/work surface is present. **Illumination levels for ~~Area lighting~~ shall be measured at approximately 30 inches above the floor, or other horizontal, vertical or sloped surface on or through which the employee walks, works or gains access to a work area.**

Note: The illumination levels required in Table 1 may be provided by one or more light source (e.g. lamp mounted on equipment, vehicles, or personal hands free portable lighting) or a combination of methods.

(1) The employer shall provide and maintain hands-free portable personal lighting or area lighting or both to employees.

Table 1 – Illumination Levels

<u>Foot-candles</u>	<u>Lux</u>	<u>Operations, Areas or Tasks</u>
<u>0.09-0.19</u>	<u>1-2</u>	<u>Poultry harvesting or catching operations</u>
<u>3</u>	<u>32.29</u>	<u>Meeting area and meal/rest area.</u>
<u>5</u>	<u>53.82</u>	<u>General safety General movement throughout the space during outdoor agricultural operations. Outdoor agricultural operations except where otherwise specified in this table. <u>Pathways leading to and around restrooms and drinking water.</u> <u>Inside restroom facilities.</u> <u>Storage areas accessed by employees.</u> <u>Areas within 25 feet of agricultural equipment where workers are present.</u></u>
<u>10</u>	<u>107.64</u>	<u>Intermittently exposed or exposed point of operation equipment, covered under Group 8. Points of Operation and Other Hazardous Parts of Machinery.</u> <u>Operationally visible moving parts of machinery covered under Group 6. Power Transmission, Prime Movers, and Machine Parts of the General Industry Safety Orders.</u>

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

		Task lighting for Active agricultural operations i.e., harvesting and irrigation work. <u>Task lighting for agricultural operations that involve the use of tools that can potentially cause cuts, lacerations, or punctures.</u>
<u>20</u>	<u>215.30</u>	<u>Task lighting for Maintenance work on equipment.</u>

~~(1) When needed to comply with subsection (a), the employer shall provide and maintain hands free portable personal lighting in addition to area lighting in order to achieve illumination levels listed in Table 1.~~

NOTES to Subsection (a):

NOTE 1: Area lighting should be set up in a manner that minimizes glare to the workers (selection of lamps, shielding, proper adjustment of the beam angle, glare avoidance screens).

NOTE 2: See Non-mandatory appendix for additional information regarding selecting light sources.

EXCEPTION to Subsection (a): In order to prevent glare while vehicles are traveling on farm roads, additional lighting installed to meet Table 1 does not need to be activated.

(b) Safety meetings. Supervisory employees shall conduct a safety meeting at the beginning of each shift to inform employees of the location of the restrooms, drinking water, designated break areas, nearby bodies of water, and high traffic areas.

NOTE to Subsection (b): Safety meetings are part of the implementation of Section 3203(a)(3).

(c) The employer shall provide and require workers to wear Class 2 high visibility garments meeting the requirements of Section 3380(e) and conforming to specifications of American National Standard for High-Visibility Safety Apparel and Accessories, (ANSI/ISEA) 107-2015, which is hereby incorporated by reference, for work activities between sunset and sunrise.

NOTE to Subsection (c): See Sections 3380, Personal Protective Devices and 3383(b), Body Protection.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

**SUMMARY OF AND RESPONSES TO
WRITTEN COMMENTS**

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS

I. Written Comments:

Commenters:

1. Ramsey Aswad, by e-mail dated October 8, 2019
2. Ken Barr, by e-mail dated October 9, 2019
3. Warren Bogle, by e-mail dated October 9, 2019
4. Gay Callan, by e-mail dated October 10, 2019
5. Natalie Collins, by e-mail dated October 9, 2019
6. Cindy DeVries, by e-mail dated October 10, 2019
7. Erik Dodd, by e-mail dated October 10, 2019
8. Bruce Fry, by e-mail dated October 10, 2019
9. Brad Goehring, by e-mail dated October 11, 2019
10. Clay Green, by e-mail dated October 12, 2019
11. Bill Jackson, by e-mail dated October 15, 2019
12. Stanton Lange, by e-mail dated October 12, 2019
13. Kyle Lerner, by e-mail dated October 10, 2019
14. Christopher Lynch, by e-mail dated October 15, 2019
15. Joel Maring, by e-mail dated October 10, 2019
16. Steve Martin, by e-mail dated October 11, 2019
17. Nicholas Miller, by e-mail dated October 11, 2019
18. Kenneth Nerlove, by e-mail dated October 11, 2019
19. Colby Pereira, by e-mail dated October 11, 2019
20. Joe Plummer, by e-mail dated October 9, 2019
21. Joseph Ramazzotti, by e-mail dated October 18, 2019
22. Taylor Serres, by e-mail dated October 10, 2019
23. Aaron Shinn, by e-mail dated October 13, 2019
24. Thomas Slater, by e-mail dated October 9, 2019
25. Jason Smith, by e-mail dated October 11, 2019
26. Brian Talley, by e-mail dated October 9, 2019
27. Joe Valente, by e-mail dated October 9, 2019
28. Colleen West, by e-mail dated October 16, 2019
29. Jonathan Wetmore, by e-mail dated October 9, 2019

Comment #1:

The regulation must clearly state that it applies when workers are present and at the time and in the plane in which the task is actively being performed.

Response #1:

The Division of Occupational Safety and Health (Division) has jurisdiction over almost every workplace in California and is the agency responsible for enforcing Title 8 safety and health regulations.

When enforcing regulations, the Division has to demonstrate exposure in the form of actual exposure, exposure by operational necessity, or exposure to the zone of danger while performing

work related duties, personal comfort activities while on the job or normal access and egress to their assigned workplaces. See <https://www.dir.ca.gov/DOSHPol/P&pc-1B1.pdf>

Comment #2:

The regulation must clearly state that to comply with the regulation meant that the employer shall provide and maintain hands-free portable lighting or area lighting, or both.

Response #2:

In response to comments, the proposal was amended by adding a Note stating that the employer may use one or more light sources to provide area or task lighting that meet the illumination requirements specified in Table 1. Section 3449(a)(1) was added stating that the employer shall provide and maintain hands-free personal lighting or area lighting or both.

Comment #3:

The commenters stated that the required lighting exceeds what is needed in order to perform the job safely. Providing such lighting would be very costly and have unintended consequence of creating air pollution and light pollution to the detriment of nocturnal species in the community.

Response #3:

Please see response to commenter no. 3 of the responses to comments to the 45 day Notice. Board staff disagrees with the statement regarding light pollution. The illumination levels are necessary for employee safety.

Regarding the issue of air pollution, please see response to commenter no. 6 of the responses to comments to the 45 day Notice. The statement regarding nocturnal species is vague.

Comment #4:

The requirements for area lighting contradicted the requirements for task lighting. The provision that area lighting shall be measured 30 inches from the floor was confusing, because “floor” is undefined.

Response #4:

Area lighting and task lighting are complimentary and do not negate or contradict each other. For example, a dental office will have the typical overhead lighting and the dentist has a separate light fixture that can be adjusted to focus the light on the task at hand.

In an outdoor agriculture setting, area lighting is the overall lighting of the space where the employee moves (i.e. walks, bends, reaches). Task lighting is designed to provide sufficient lighting for the finer visual tasks that need to be performed. Personal portable lighting sources can supplement and provide area and/or task lighting.

In response to comments, the Board will amend the proposal by further clarifying where the area lighting measurements should be taken. The proposed amendment clarifies further where to take like measurements. Area lighting shall be measured at approximately 30 inches above the floor, or other horizontal, sloped, or vertical surface on or through which the employee walks, works or gains access to a work area. Absent this measurement, illumination levels would need to be measured at the very bottom of any surface an employee stands on. The proposed clarification is consistent with

federal OSHA language in describing walking working surfaces. The proposed clarification is consistent with federal OSHA language in describing walking working surfaces.

Comment #5:

The commenters do not agree with the revised economic cost assessment, which decreased the number of months for night time work. Commenters are of the opinion that the reduction in number of months was wrong, therefore the costs were underestimated.

Response #5:

In response to the commenters' judgement that the proposal has inaccurately reduced the number of months of night time work is likely to occur from six to three, OSHSB points to the comments in the May 6, 2014 Advisory Committee meeting and comment letters written by the California Rural Legal Assistance Foundation and VINO Farms which state that the typical harvest season runs two to three months (from August to October). The reduction of the number of months lead to the decreased economic costs.

The Board thanks the commenters for their comments and participation in Board's rulemaking process.

Commenter:

30. Carmine Indindoli, by e-mail dated October 8, 2019

Comment:

Mr. Indindoli recommended that state agencies purchase all the soon to be obsolete lighting equipment currently used by agricultural businesses and send them to China or India.

Response:

The comment is unrelated and outside the scope of the 15 day Notice of Modifications, therefore the comment will not be considered.

The Board thanks Mr. Indindoli for his comment and participation in the Board's rulemaking process

Commenters:

31. Kurt Ammann, General Manager of Melville Winery and Chad Melville , by e-mail dated October 16, 2019

32. Steve Arrowood, by e-mail dated October 14, 2019

33. Becky Barieau, Co-Owner of Foxen Vineyard, by e-mail dated October 15, 2019

34. Armand de Maigret, Estate Manager of the Hilt Estate and Jonata, by e-mail dated October 18, 2019

35. Steven G. Dutton, President of Dutton Ranch Corp, by e-mail dated October 18, 2019

36. Steven Easterby, Monterey Pacific, by e-mail dated October 16, 2019

37. Nick Francioni, by e-mail dated October 17, 2019

38. Tom Francioni, Francioni Farms, by e-mail dated October 16, 2019

39. Callie Gleason, Partner of Gleason Family Vineyards, by e-mail dated October 16 ,2019

40. Max Gleason, General Manager of Gleason Family Vineyards, by e-mail dated October 15, 2019

41. Henry Gonzales, Agricultural Commissioner, County of Monterey, by e-mail dated October 16, 2019
42. Michael Manna, Owner of Manna Ranch (and other concerned growers: Joe Cataldo; Gary Cusumano; John Lakso; Matt Manna), by e-mail dated October 14, 2019
43. Colin Miller, by e-mail dated October 15, 2019
44. Keith Roberts, Director of Vineyard Operations for Wente Family Estates, by e-mail dated October 16, 2019
45. Alex Russan, Metrick Wines, by e-mail dated October 15, 2019
46. Harvey Saarloos, Owner of Los Olivos, by e-mail dated October 15, 2019
47. Keith Saarloos, Saarloos and Sons, by e-mail dated October 15, 2019
48. Larry Saarloos, Saarloos and Sons, by e-mail dated October 15, 2019
49. Dan Schuler-Jones, Winemaker for Vincent Vineyards, by e-mail dated October 15, 2019
50. John Shinn, Managing Member of Shinn & Son Vineyard Management and Owner of J&J Shinn Ranch, by e-mail dated October 14, 2019
51. Riley Slack, Business Operations Assistant of Foxen Vineyard and Winery, by email dated October 15, 2019
52. Jason Smith, President of Valley Farm Management, by e-mail dated October 17, 2019
53. Tim Snider, President of Fess Parker Winery & Vineyard, by e-mail dated October 15, 2019
54. Andrew Solt, Rancho Boa Vista Vineyards & Olives, by e-mail dated October 15, 2019
55. Kim Stemler, Executive Director of Monterey County & Growers Association, by e-mail dated October 16, 2019
56. John Terlato, Terlato Wine Group, by e-mail dated October 15, 2019
57. Tyler Thomas, Star Lane and Dierberg Vineyards, by e-mail dated October 15, 2019
58. Niki Wente, Viticulture Manager of Wente Family Estates, by e-mail dated October 17, 2019
59. Drake Whitcraft, Owner of Whitcraft Winery, by e-mail dated October 14, 2019
60. Peter and Rebecca Work, Ampelos Vineyard and Cellars, by e-mail dated October 18, 2019
61. Rebecca Work, by e-mail dated October 15, 2019

Commenters expressed the following concerns:

Comment #1:

The proposal would require excessive night time lighting in vineyards due to the requirement to measure illumination levels using a light meter 30 inches above the floor.

Response #1:

Regarding proposed illumination levels, please see response to commenter no. 3 of the responses to comments to the 45 day Notice.

The requirement to measure 30 inches from the floor unless otherwise specified is industry practice when measuring area lighting. The proposal was amended to state that area lighting shall be measured at approximately 30 inches above the floor or other horizontal, sloped, or vertical surface on or through which the employee walks, works or gains access to a work area.

Comment #2:

The regulation lacks clarity and regulators may enforce the regulation by requiring the vineyards to be lit up like a football field.

Response #2:

When there is a football game, the field is lit because players are expected to safely and precisely execute plays and utilize the entire field as they play the sport. The current NFL lighting standards are for 250 ft-c on the field, college football requires 150 ft-c, and high school football requires 50 ft-c. The highest illumination level that is required in this proposal is 20 ft-c for task lighting for maintenance work on equipment, so that the mechanic can see what they are doing.

This proposal provides no expectation that lighting be provided in areas or fields not being worked on or accessed. There is the expectation that when an employee leaves the group for personal comfort or work related errands, that they are provided adequate personal lighting that provides 5 ft-c measured 30 inches from the surface the employee walks upon in order to safely light up their path.

Comment #3:

Added lighting doesn't protect worker, but rather puts them at risk due to glare.

Comment #4:

Added lighting would create problems with air emissions, noise, cause excessive lighting, and affect nocturnal species.

Responses #3 and #4:

The issue with the glare, noise, light pollution and emissions were responded to in the responses to 45 day comment period, see response to commenters no. 6 and 16. The comment regarding nocturnal species is vague.

Lighting is required in areas where employees are present and in locations where they are reasonably expected to move to. Employees move through the field and go to different rows as they work. The proposed lighting requirements will allow the employee to safely move through the space as they walk, bend or reach. It is proposed that area lighting will be measured approximately 30 inches from the vertical, horizontal or sloped surface where the employee walks, works or gains access. Task lighting of a higher intensity than area lighting is required for more detailed visual tasks. It is proposed that task lighting as specified in Table 1 will be measured at the plane of work.

Comment #5:

The regulation would end night harvest.

Response #5:

The Board disagrees that the proposal would end night harvest. There are many employers already successfully providing the required illumination levels.

Comment #6:

The regulation must clearly state that it applies when workers are present and at the plane of work.

Response #6:

Please see responses no. 1 and no. 4 to commenters 1-29. The proposal already states that task lighting shall be measured in the plane of work.

Comment #7:

The regulations should state that compliance can be achieved by use of personal lighting, area lighting, or both.

Response #7:

The proposal was amended to state that different sources of lighting can be used to meet the illumination levels specified in Table 1. This includes personal lighting, area lighting or both.

The Board thanks the commenters for their comments and participation in the Board's rulemaking process.

Commenter:

62. Wesley Hagen, Miller Family Wine Company, by e-mail dated October 15, 2019

Comment:

Tractor lighting can be 30 inches high easy, but we like the workers to have personal headlights so when the tractor drops off fruits, the workers can still safely see the fruit, the clippers and their fingers. Without personal lighting, we will be forced to rent extra tractors or light up the vineyard like a football field.

Response:

To ensure adequate area lighting, area lighting is to be measured approximately 30 inches from the surface the employee walks, works or gains access. Performance standards allow employers to provide lighting in a manner that suits their operations or working environment. The employer can use personal lighting, area lighting or both, provided that the illumination level meets Table 1. Personal lighting and tractor lighting as stated above are sources of lighting that will help you achieve the illumination level of 5ft-c for area lighting for outdoor agricultural operations. When the employee steps away from the group, the personal lighting functions as area lighting to light the pathway to get to his/her destination. For specific tasks using clippers, the illumination level is required to be 10 ft-c measured at the plane of work. If you are using headlamps to provide task lighting, then the head lamps must be of a quality that will provide an illumination level of 10 ft-c measured at the plane of work.

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

Commenter:

63. Mark Pisoni, Farmer and Farm Labor Contractor for El Campo Farms, by e-mail dated October 15, 2019

Comment #1:

Mr. Pisoni is requesting the following changes:

- Illumination for the restroom should be amended to 3 ft-c, which would be the same as the proposed lighting requirement for meal/rest area. He stated that the meal and rest areas are close to the restroom area and it would be easier to comply if the lighting requirement was the same.

- Amend the proposal so that it clearly states that illumination is required when employees are present. In his operations, he uses motion sensor lights on portable toilets. One of them stays dim throughout the night so workers can spot the bathrooms from a distance. Another is activated when workers get within 16 feet of the restroom.

Response #1:

Meal and rest areas require a lower illumination because it based on the assumption that rest and meal areas would be a relatively low activity area. Employees would be resting, therefore a higher intensity lighting is not required.

Regarding the comment to amend the proposal to clearly state that illumination is required when employees are present, please see response no. 1 to commenters 1 to 29.

Comment #2:

Returning to the proposed Table 1, Mr. Pisoni noticed that active agricultural operations (i.e. harvesting and irrigation work) is now crossed out. This used to be in 10 ft-c row. He asked if that means that now all outdoor agricultural operations are 5 ft-c.

Response #2:

The illumination requirement for 5 ft-c was amended to state “Outdoor agricultural operations except otherwise specified in this table”. The 10 ft-c requirement was further clarified to state that task lighting is required for agricultural operations that involve the use of tools that can potentially cause cuts, lacerations or punctures.

Comment #3:

We would appreciate clarifying language, which states that to comply with the subsection, we can provide and maintain hands free portable personal lighting, or area lighting, or both.

Response #3:

The proposal was amended. Please see the revised proposal.

The Board thanks Mr. Pisoni for his comments and participation in the Board’s rulemaking process.

Commenter:

64. Karen Steinwach, Winemaker of Buttonwood Farm Winery & Vineyard, by e-mail dated October 15, 2019

Comment:

The rule is unnecessary and does not protect workers. The LED lights on our tractors illuminate vine rows, the area behind the tractor, the trailer with the picking bins and the area in front of the tractor. Each worker also has a personal head lamp, and follow one person per vine. This work practice provides enough illumination

Response:

The Board thanks you for being a model employer by providing adequate lighting to your employees. It appears to the Board that improved illumination is needed and achievable by

virtue of your actions. The Board commends your efforts and you need only to confirm that these efforts are commensurate with the proposal.

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

Commenter:

65. Jack Galante, President, by e-mail dated October 16, 2019

Comment #1:

I am concerned because the recently proposed changes would require nighttime area lighting in vineyard that would be measured by regulation using light meters approximately 30 inches from the floor. In our remote region in upper Carmel Valley, this would present a devastating and unmanageable economic impact to our small farming operations.

Response #1:

Yes, area lighting is proposed to be measured 30 inches above the floor, or other horizontal, vertical or sloped surface on or through which the employee walks, works or gain access to a work area and task lighting is to be measured in the plane of work.

Comment #2:

Regulators could require vineyards to be lit up like a football field.

Response#2:

Regarding the comment about lighting the agricultural field like a football field, please see response no. 2 to commenters 31 to 61.

Comment #3:

The proposal is vaguely written and could require vineyards to be lit up like a football field. Monterey County ordinance (Chapter 21.24 Regulations for Agricultural Zoning Districts) prohibit this kind of lighting and would create a significant impact to our surrounding neighbors.

Response #3:

Board staff did not find the specific ordinance prohibiting the employer to provide lighting of a certain illumination level to allow the employee to safely work during hours of darkness. Board staff did note that temporary exterior lighting for harvesting operations is permitted. 21.24.070(F)1, which denotes lighting requirement for the referenced Monterey County Ordinance provides an exemption for 21.63.020.D.

21.24.070- Site development standards

F. Lighting Requirements

1. For any new development that included exterior lighting, all exterior lighting shall be consistent with the Design Guidelines for Exterior Lighting adopted by the Board of Supervisors pursuant to Section 21.63.020, unless exempt under Section 21.63.020.D

21.63.020 –Design Guidelines for Exterior Lighting

D. The following lighting are exempt from Subsection C above:

4. Temporary lighting for activities of a limited duration such as emergency activities, construction, and agricultural harvesting.

Comment #4:

The regulation should state that lighting requirements should apply only when the worker is present and at the plane of work.

Response #4:

Please see response no. 1 to commenters 1 to 29.

Comment #5:

The regulation should also state that personal lighting, area lighting, or both can be used to comply.

Response #5:

The proposal was amended and a Note was added to clarify the various sources of lighting that can be used to reach the required illumination levels in Table 1. Section 3449(a)(1) was added stating that the employer shall provide and maintain hands-free personal lighting or area lighting or both.

The Board thanks Mr. Galante for his comments and participation in the Board’s rulemaking process.

Commenter:

66. Blair Pence, Pence Investment Group, by e-mail dated October 16, 2019

Comment:

The regulation should provide lighting requirements to apply only when the worker is present and at the plane of work that is being done. The regulation should also clearly state that the compliance can be achieved by the use of personal lighting, area lighting or both.

Response:

Please see response no. 1 to commenters 1-29. Section 3449(a)(1) was added stating that the employer shall provide and maintain hands-free personal lighting or area lighting or both.

The Board thanks Mr. Pence for his comments and participation in the Board’s rulemaking process.

Commenters:

67. Matt Broad, Legislative Advocate, California Teamsters Public Affairs Council, by e-mail dated October 16, 2019

68. Anne Katten, Pesticide and Work Safety Project Director, CRLAF & Amber Baur, Executive Director of United Food and Commercial Workers Union, Western States Council, by e-mail on October 18, 2019

The commenters expressed concerns with changes in the proposed text and the Board's response to commenters.

Comment #1:

Recommend that area lighting be measured approximately 30 inches from the ground, at the bottom of a furrow in a furrowed field.

Response #1:

The proposal was amended to state that:

Area lighting measurements shall be taken 30 inches from the floor, or other horizontal, vertical, or sloped surface on or through the employee walks, works, or gains access to a work area. A Note to Subsection (a) was amended to clarify that various sources of lighting may be used to achieve the illumination level in Table 1.

Comment #2:

Oppose replacing "general safety" with "general movement through the space". For example, a worker needs lighting when inside a restroom or accessing storage space though they are not in motion.

Comment #3:

Oppose the addition of "task lighting for" in front of active agricultural operations and maintenance work on equipment.

Response #2 and #3:

Subsection (a)(1) was added to require employers to provide and maintain personal portable hands free lighting, or area lighting, or both.

Table 1 was amended to require:

- 5ft-c for outdoor agricultural operations except otherwise specified in the table. This made the requirement to provide 5 ft-c in areas within 25 feet of agricultural equipment where workers are present unnecessary and redundant.
- 10 ft-c task lighting for task that involve the use of tools that could potentially cause cuts, punctures or lacerations. Task lighting is meant to complement area lighting when necessary for specific tasks that require finer visual detail.

The proposed illumination level requirements apply regardless of whether the employee is in motion or not.

Comment #4:

Recommended revising 3449 (a)(1) to read:

When the employer demonstrates that it is infeasible to meet the illumination levels required by subsection (a) with area lighting, the employer shall provide and maintain hands free portable lighting in addition to area lighting in order to achieve illumination levels listed in Table 1.

Response #4:

A Note to Subsection (a) was amended to clarify that various sources of lighting may be used to achieve the illumination level in Table 1.

Comment #5:

Amend the proposal to provide minimum quality and lighting requirements for hands free portable lighting.

Response #5:

Table 1 serves as the minimum quality of light requirement. Light sources by itself or in combination with other light sources can be used in order to meet the illumination requirements of Table 1.

Comment #6:

Concern with Board staff's opinion that it is feasible to provide 5ft-c for hand harvesting of grapes.

Response #6:

The proposed changes in the Table 1 clarifies Board staff's opinion regarding hand harvesting.

Comment #7:

Disagrees that there was no finding of necessity to light parking areas or have a system for accounting for the location of workers.

Response #7:

The Board convened two advisory committee meetings: May 6, 2014 and March 27, 2015. The meeting concluded with no finding of necessity or proposed text to provide lighting to parking areas and have a system for accounting for the location of workers. Instead, the meeting concluded with the requirement to conduct a safety meeting at the beginning of each shift to inform employees of the location of restrooms, drinking water, designated break areas, nearby bodies of water, and high traffic areas.

The Board thanks the commenters for their comments and participation in the Board's rulemaking process.

Commenter:

69. Eric Berg, Deputy Chief, Research and Standards Unit, Division of Occupational Safety and Health, by e-mail memo dated October 16, 2019

Comment #1:

For improved clarity, the Division recommends changing "general movement throughout the space" (which is overly vague) to "outdoor agricultural operations except where otherwise specified in the table."

Response #1:

The proposal modified Table 1 to replace "general movement throughout the space" with "outdoor agricultural operations except where otherwise specified in the table."

Comment #2:

Also, the addition of “task light for” is not necessary, because personal lighting is already allowed to supplement area lighting.

Response #2:

The Board disagrees and believes that it is necessary to clarify that the lighting requirement at 10 ft-c and 20 ft-c is for task lighting. For example, if equipment breaks down in the field, the area where the equipment is located where agricultural operation is taking place is required to be illuminated at 5 ft-c, but the specific portion of the equipment the mechanic is working on is required to be illuminated at 20 ft-c. Thus, if you are only providing 5ft-c, then that specific portion of the equipment that the mechanic is working on would need additional lighting. The light source may come from portable lighting or any type of light source the employer can apply or develop, provided that it provides 20 ft-c at the plane of work.

The Board thanks Mr. Berg for his comments and participation in the Board’s rulemaking process.

Commenter:

70. Roger Isom, on behalf of African American Farmers of California, American Pistachio Growers, California Citrus Mutual, California Cotton Ginners and Growers Association, Milk Producers Council, Nisei Farmers League and Western Agricultural Processors Association, by e-mail date October 16, 2019

Comment:

Supplemental lighting would be needed in order to comply with 5 ft-c of lighting within 25 feet of the agricultural equipment when workers are present.

The proposed change requiring 5 ft-c throughout the space lacks clarity.

Response:

Yes, supplemental lighting may be necessary in order to meet the illumination levels in Table 1. The 5 ft-c requirement in Table 1 was amended for clarity. “General movement throughout the space during agricultural operations” is proposed to be deleted and replaced with “Outdoor agricultural operation except otherwise specified in this table”. This made the requirement to provide 5 ft-c in areas within 25 feet of agricultural equipment where workers are present unnecessary and redundant, therefore is proposed to be deleted.

The Board thanks the organizations for their comments and participation in the Board’s rulemaking process.

Commenter:

71. Steve Dutton, President of SAVE, by e-mail dated October 17, 2019

Comment #1:

There is no compelling data to suggest that nighttime harvest as being conducted by growers today is leading to safety issues. Therefore, we ask that the regulation not be advanced unless there is clear evidence that worker safety risks are higher at night than during the day.

Response #1:

This rulemaking is intended to address hazards related to performing outdoor agricultural work during hours of darkness (sunset to sunrise), when illumination or visibility is limited. The decreased natural lighting during hours of darkness affects the employees' ability to perceive and move about their environment. In addition, employees are less visible to others. Adequate lighting will enable employees to avoid visible and recognizable hazards. The increased visibility of employees will help operators of mobile agriculture equipment keep a safe distance away from employees.

Comment #2:

The regulation does not recognize the worker safety advantages of harvesting at night when temperatures are much cooler than for daytime harvesting.

Comment #3:

The regulation does not recognize the benefit to the condition of fruit arriving at wineries at lower temperature therefore requiring less refrigeration and lower power demand.

Response #2 and #3:

We acknowledge that working during hours of darkness provides benefits to agricultural industries. It saves the employer the energy cost for cooling down the crop to hold optimum temperature. It allows the employer to harvest at a time that assures them the best quality of crops possible, i.e., minimized bruising, optimum sugar and/or moisture content. In addition, working during hours of darkness usually equates to cooler temperatures, greatly diminishing the risk for heat illness. Cooler temperature increases employee comfort, which improves the productivity of workers. The proposal helps to provide a safe environment for employees when working during hours of darkness by addressing the hazards presented by limited ambient lighting.

The Board estimates benefits would be about \$36.7 million per year due to prevented accidents. The estimated benefits are based on 2,080 injury cases multiplied by \$17,622, the average workers' compensation medical and indemnity cost of agricultural injury claims in 2013 and 2014.

This estimate is conservative because there are unquantifiable additional costs imposed by the health consequences arising from these injuries for workers, employers, and society. Therefore, the benefits may be much greater than estimated due to the additional implications of related injuries.

Comment #4:

The regulation requires the use of light meters to measure light illumination levels 30 inches from the ground. The proposal is crafted so vaguely that regulators could require vineyard to be lit up like a football field. This will create problems such as air emissions, noise, excessive lighting, and affect nocturnal species.

Response #4:

Please see responses to commenters 31 to 61.

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

Commenter:

72. Gary Francioni, Gary Francioni Inc., by e-mail dated October 18, 2019

Comment:

Mr. Francioni had the same concerns as Mr. Pisoni, commenter no. 63.

Response:

Please see responses to commenter 63.

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

Commenter:

73. Mike Testa on behalf of Coastal Vineyards Care Associates, by e-mail dated October 18, 2019

Comment #1:

The recent modification to the regulation to provide area lighting that shall be measured at approximately 30 inches from the floor makes it clear that tower lights must be provided.

Comment #2:

This level of lighting far exceeds what is needed to safely perform the job.

Comment #3:

The lighting requirements would also create lighting pollution, noise, and air pollution.

Response #1, #2, and #3.

Please see responses to commenters 31 to 61.

Comment #4:

Outside of harvest, there are other tasks, which are done throughout the year at night. The most significant is spraying. If we had to spray during the day time, it would increase the risk to our neighbors and employees.

Response #4:

Limited lighting during hours of darkness is a recognized hazard. In order to perform night time tasks throughout the year safely, adequate lighting must be provided. Pesticide application is regulated by the California Department of Pesticide Regulation. Title 3, Section 6740 requires that artificial lighting is provided in order to allow the employees to read the label and work in a safe manner.

The Board thanks the Coastal Vineyards Care Associates for their comments and participation in the Board's rulemaking process.

Commenters:

Coalition Letter (signed by individuals listed below), by e-mail dated October 18, 2019

74. Michael Miiller, Director of Government Relations for California Association of Winegrape Growers
75. Bryan Little, Director of Employment Policy for California Farm Bureau Federation
76. Tim Schmelzer, Vice President of California State Relations for Wine Institute
77. Pete Downs, President of Family Winemakers of California
78. Rob Neenan, President of California League of Food Producers
79. Matthew Allen, Director of California Government Affairs for Western Growers Association
80. Tricia Geringer, President of Government Affairs for Agricultural Council of California
81. Rob Moutrie, Policy Advocate for the California Chamber of Commerce
82. Chris Zanobini, Executive Director of Olive Oil Commission of California
83. Guadalupe (Lupe) Sandoval, Executive Director of California Farm Labor Contractor Association
84. Kim Stemler, Executive Director of Monterey County Vintners & Growers Association
85. Amy Blagg, Executive Director of Lodi District Grape Growers Association

The coalition letter was separated into three different headings:

1. Concern with the rulemaking file:

Comment #1:

Provide detail of how Board members consider the results of the modification.

Response #1:

Contrary to the letter's characterization, the Board has carefully complied with the Bagley Keene Open Meeting Act (Open Meeting Act), and the Administrative Procedure Act (APA), with respect to this pending Title 8, General Industry Safety Order (Nighttime Ag Illumination) proposal

In addition, Board staff has invested considerable effort in both employer and labor stakeholder outreach and engagement. This public engagement has included formal advisory committee meetings, site visits, and many forms of outreach and inquiry to potential public stakeholders. Indeed, numerous among those lending their name to the comment letter, were invited, and some did participate to the degree they chose, in the advisory, outreach, and impact survey processes undertaken by the Board.

Comment #2:

Board members should not consider this matter until Board staff makes the file available to the public for inspection and copying.

Response #2:

In full compliance with the Open Meeting Act, the Board had not considered this rulemaking proposal outside the APA prescribed public comment and hearing process. Criticism of some proposal verbiage being written in the past tense, allegedly suggesting the Board had already considered and decided the matter prior to adoption, is a mischaracterization of how such

documentation of proposals, being prepared for consideration of adoption, are quite commonly written. It is a convention of such rulemaking proposals to couch some of the verbiage in prospective terms of what the agency will have done, if the proposal ends up being adopted. Such language appears within documents expressly identified, and repeatedly referred to as a *proposal*, within the context of their being scheduled for future consideration of adoption by the Board.

Comment #3:

All the documents relied upon by Board staff should be posted on the internet or remove all material from the rulemaking file that cannot be posted on the internet.

Response #3:

Regarding rights of fully and prompt access to “Documents Relied Upon” material within the rulemaking file—that is exactly what the visitors the letter mentions received upon visiting the Board office on October 10, 2019. It is true that instead of being made a copy of the entire consensus standard publications contained therein using State equipment and supplies, they were allowed to read through and study each as long as they liked, and given a copy of the title, edition, and table of content pages to facilitate accurate sourcing of a full volume copy from the publisher or other authorized source. This was in keeping with sound agency practice balancing rights of public access with copyright restrictions asserted by the industry associations issuing such consensus standards. Also, it may bear noting, the visitors did not request to copy any particular excerpts of interest, or note other impediments.

Comment #4:

Revised 399 was not available for public inspection.

Response #4:

The Board also has made full and timely public disclosure of economic impact information, including analysis, calculations and data sources, as called for under the APA. (It is the same information compiled by way of “Form 399” for standardized interagency review.) As is the Board’s practice, prominent public disclosure of such economic impact information occurred in this instance by direct incorporation into the California Regulatory Notice Register, Proposed Action on Regulations, formally published, and also distributed to subscribing stakeholders, at the onset of the formal rulemaking process. When the economic impact analysis underwent modification, as it did here, in response to (45 day) public comments, the substance of those modifications had already been publicly posted and made directly available to all before the beginning of the proposal modification (15 day) comment period. Thus, no impingement of public participation rights under the APA occurred, when within a week of being requested (and prior to close of the first 15 day comment period) Board staff was able to provide a finalized Amended Form 399 incorporating modifications to the economic impact analysis already disclosed in substance by way of the formal public notice of rulemaking proposal moderation. It would be incorrect to assume such a form would have been returned to the office of the Board and added to the rulemaking file on the same date of it having been signed at the office of another agency located apart from the Board.

2. Concerns with the regulatory process:

Comment #5:

The requirements lack clarity.

Response #5:

The rulemaking process has not concluded. The modifications will add clarity to the proposed requirements.

Comment #6:

Authority and need for the standard was not demonstrated.

Response #6:

Labor Code 142.3(a)(1) states that the Board, by an affirmative vote of at least four members, may adopt, amend or repeal occupational safety and health standards and orders. The Board shall be the only agency in the state authorized to adopt occupational safety and health standards. In addition, the initial statement of reasons details the necessity for the rule.

Comment #7:

Total cost of the proposed regulation was underestimated and cost concerns were not addressed.

Response #7:

In response to the commenters' judgement that the proposal has inaccurately reduced the number of months night time work is likely to occur from six to three, OSHSB points to the comments in the May 6, 2014 Advisory Committee meeting and comment letters written by the California Rural Legal Assistance Foundation and Vino Farms which state that that the typical harvest season runs two to three months. The reduction of the number of months lead to the decreased economic costs.

Comment #8:

The proposed rule is not in harmony with rules from other government agencies.

Response #8:

The Standards Board is the only body in the State authorized to adopt regulations that protect workers' occupational safety and health. That said, we always strive for "reasonable and enforceable" regulations. While the concern has been raised, no actual regulation has been identified that would conflict with the proposal.

The proposal is striving to be consistent with the requirement to provide minimum lighting levels for safety in workplaces. Section 3317 specifies lighting requirements for general industry, but the Section does not adequately address lighting for outdoor agricultural operations. Section 1523 addresses illumination requirements for the construction industry. In both Sections, the required illumination levels were in a table format detailing a ft-c illumination level requirement for a specific area or operation.

Comment #9:

Reasonable alternatives were not addressed.

Response #9:

It is evident that alternative language is being considered with the proposed modifications after the 45 comment period and further proposed modifications after the 15 day period. Furthermore, the original proposal was developed through an advisory committee process that engaged with stakeholders including growers and labor interests.

Comment #10:

Policy concerns raised in public comments were not addressed:

- a. Measuring above the floor vs measuring at the task/working surface
- b. Amount of area lighting required exceeds the light needed to perform the work safely
- c. The regulation could bring an end to night time agricultural operations
- d. Board staff has not allowed the public to copy the American National Standards Institute (ANSI) reports, which are part of the rulemaking.

Response #10:

- a. Lighting is required in areas where employees are present and in locations where they are reasonably expected to move to. Employees move through the field and go to different rows as they work. The proposed lighting requirements will allow the employee to safely move through the space as they walk, bend or reach. It is proposed that area lighting be measured 30 inches above the floor, or other horizontal, vertical or sloped surface on or through which the employee walks, works or gain access to a work area. Task lighting of a higher intensity than area lighting is required for more detailed visual tasks. It is proposed that task lighting as specified in Table 1 will be measured at the plane of work.
- b. Regarding proposed illumination levels, please see response to commenter no. 3 of the responses to comments to the 45 day Notice.
- c. The Board disagrees that the proposal would end night harvest. There are many employers already successfully providing the required illumination levels.
- d. Rulemaking bodies rely on national consensus standards such as ANSI, American Society of Mechanical Engineers (ASME), National Fire Protection Association (NFPA) etc. for rulemakings because consensus standards drafted by these organizations represent the best industry practice as written by the experts and leaders of their respective fields. Please see response no. 3 to this letter.

3. Summary:

Comment #11:

Make it clear that Table 1 applies when and where employees are present and that light shall be measured at task/working surface at the time and in the plane in which the task is actively being performed.

Response #11:

See changes to the proposed text.

The measurement criteria for area lighting was clarified. Area lighting shall be measured at approximately 30 inches above the floor, or other horizontal, vertical or sloped surface on or through which the employee walks, works or gains access to a work area.

The requirement to measure 30 inches from the floor unless otherwise specified is industry practice when measuring area lighting. Absent this measurement, illumination levels would need to be measured at the very bottom of any surface an employee stands on.

Comment #12:

Move paragraph (1) to the top of Table 1 and clarify that compliance can be achieved via hands free portable lighting or area lighting or both.

Response #12:

See changes to the proposed text.

A Note was added to clarify that the illumination levels required in Table 1 may be provided by one or more light source (e.g. lamp mounted on equipment, vehicles, or personal hands free portable lighting) or a combination of methods.

Comment #13:

Resolve overlap and confusion in Table 1:

- a. Active agricultural operations i.e. harvesting and irrigation work.
- b. Areas within 25 feet of agricultural equipment where workers are present
- c. Requiring 10 ft-c for work that involves machinery, 20 ft-c for maintenance of machinery and 5 ft-c for hand harvesting.

Response #13:

See changes to the proposed text:

- a. "General movement throughout the space during outdoor agricultural operations" was replaced with "Outdoor agricultural operation except otherwise specified in this table".
- b. "Areas within 25 feet of agricultural equipment where workers are present" was deleted.
- c. "Task lighting for active agricultural operations i.e. harvesting and irrigation work" was replaced with "Task lighting for agricultural operations that involve the use of tools that can potentially cause cuts, lacerations, or punctures".

The Board thanks the Coalition organizations for their comments and participation in the Board's rulemaking process.

Commenter:

86. Jeff Carlton, President of Sonoma County Farm Bureau, by e-mail on October 18, 2019

Comment #1:

The proposal needs to be based on facts and have substantial evidentiary support.

Response #1:

Please see response to comment no. 3 of the responses to the 45 day comment period.

Comment #2:

The proposal needs to clearly state that its light-level requirements apply when employees are present and at the time and in the plane in which the task is actively being performed.

Comment #3:

The proposal needs to clearly state that to comply with light-level requirements, employers shall provide and maintain hands free portable personal lighting or area lighting or both.

Comment #4:

The cost estimations associated with the compliance is grossly underestimated.

Response #2, #3 and #4:

Please see response to commenters no. 1 to 29.

Comment #5:

Potential overlap of more localized lighting and air quality regulations.

Response to #5:

The comment regarding the overlap of more localized lighting and air quality regulations is vague and did not cite specific municipal codes that the employer will violate by providing prescribed illumination levels.

Comment #6:

The regulations would be detrimental to night harvesting.

Response to #6:

In addition to safety, added lighting can benefit growers if the lighting is of sufficient intensity, uniformity and color balance to assist the employees in selecting the crop to pick. Employees that can adequately see their work environment will feel more secure in their movements and are more likely work faster.

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

II. Oral Comments

There were no oral comments received at the October 17, 2019 Public Meeting in San Diego, California.