

OF DUFOUR OF

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April 28, 2017

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VIA HAND DELIVERY:

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Ms. Marley Hart, Executive Officer
California Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Subject: Proposal of the California Date Commission to Amend Various Safety Orders to Allow Employers of Date Palm Tendering Employees to Use Engineered Platforms Mounted on Industrial Lift Trucks

Dear Ms. Hart:

This petition for rulemaking to amend several Safety Orders preventing the use of engineered platforms mounted on lift vehicles to improve safety and working conditions for date palm tending employees is being submitted on behalf of the California Date Commission and a coalition of growers and labor contractors. There are 92 grower-members of the Commission, and many other growers and contract employers whose employees will benefit from the additional safety afforded by use of engineered platforms.

As the Standards Board reviews this petition, it will note its essential elements are virtually identical to three sets of previously granted variances to 15 individual employers in 2009, 2014, and 2015* to afford the use of engineered platforms subject to conditions set forth in the variance orders. These conditions, recommended by Standards Board staff and the Division of Occupational Safety and Health were included by the Board in the variance orders. Petitioner proposes to incorporate these provisions into Group 3, Article 13 Safety Orders governing agricultural operations, and as minor amendments to Group 4, Article 25 regarding industrial trucks, as described in the petition attached hereto.

**PROPOSAL OF THE CALIFORNIA DATE COMMISSION
TO AMEND VARIOUS SAFETY ORDERS TO ALLOW EMPLOYERS
OF DATE PALM TENDING EMPLOYEES TO USE ENGINEERED
PLATFORMS MOUNTED ON INDUSTRIAL LIFT VEHICLES**

Introduction and History of Date Palm Tending Platforms

Historical Methods Used to Access Date Trees in California

Employees and contract laborers have traditionally accessed date palm fronds, crowns and fruit using ladders, safety belts and safety saddles and harnesses with lanyards. This access is necessary to prune limbs, pollinate, tie, clean and harvest the fruit. All varieties of date palms require numerous climbs up and down tall ladders as the trees grow in height. Each season, date tree technicians perform repetitive tasks of selective fruit thinning, hand pollination, de-thorning, tie-down, bagging and hand harvesting of fruit as it ripens. Due to the fact date palm orchards are in warmer parts of the State, heat stress on workers and employer compliance with the Heat Illness Prevention Standard [8 CCR § 3385] has added emphasis on devising methods for tending date palms with improved safety and reduced stress.

Previous Actions by the Standards Board Addressing Date Palm Operations

In 2003, the Cal/OSHA Standards Board promulgated a standard that addressed fall protection applicable to date palm tree operations [§ 3458, Fall Protection for Date Palm Operations]. This standard recognized the unique nature of date palm tree operations, including the use of specialized equipment to prevent falls and improve working conditions while tending palm fronds. In 2007, the Board promulgated § 3458.1, Ladders Attached to Date Palms, which standardized ladder use for climbing palm trees. However, these existing standards have not met what can be considered current best safety practices for what is a strenuous occupation conducted in high ambient temperature conditions much of the time.

Improved Practices Developed by Date Growers

Over the past two decades, date producers have developed specialized elevating work platforms to provide safer work environments for their technicians than afforded by ladder use. The generally taller Medjool date palms, in particular, require a safer system than ladders. This development offers the promise of improved efficiency in labor-intensive, specialized crop tending, thereby reducing the potential of serious heat stress, as well as reducing the fall hazard. The basic premise of this platform system includes:

- a. Platforms designed to be mounted on lift trucks—Growers use two types of lift trucks for elevating workers on platforms: straight-mast forklifts, also known as “vertical lifts”; and extending-mast forklifts, also known as “reach lifts”.
- b. Growers designed platforms that generally surround three sides of the tree to permit access to the tree on all sides.
- c. Some growers use vertical forklifts with platforms extending 10 to 25-feet into the air to extend the height possible with the forklifts as designed.

5. Whenever employees are elevated on one or more work platforms, the lift truck operator and at least one other employee within the 150-foot allowable operating radius (defined in Condition No. 2), shall have the capability of electronic communication to summon response personnel in the event of an emergency. The employee responsible for emergency communication shall be a qualified person to operate the forklifts.

Conditions Necessary to Support Variance from § 3657(j)(7):

1. Employees on the work platform shall wear approved fall restraint equipment in accordance with Section 3458, and be tied off to an approved anchorage point whenever platforms are elevated at any height and during movement or relocation of the platform.
2. For vertical-mast lift trucks traveling with employees on the work platform, the platform shall be lowered to no higher than 20-25 inches above the ground.
3. For vertical-mast lift trucks traveling with employees on the work platform, the bottom portion of the platform shall be provided with a 20-inch length of colored chain to provide a height reference for the operator.
4. For rough-terrain high-reach lift trucks (with an extendable boom) traveling with employees on the work platform, the platform shall be positioned no higher than a height that permits the operator an unobstructed view.
5. Travel through orchards, on farm roads or any other road with persons on work platforms is prohibited. Movement of the lift truck with persons on the work platform shall be restricted to tree-to-tree travel within an orchard, on level ground free of obstructions and hazardous depressions, **only**. Tree-to-tree travel means travel between adjacent trees only. Any other travel with employees in the work platform is prohibited.
6. Prior to movement of a lift truck with employees on the work platform, the operator shall conduct a visual survey of the path of travel to ensure that there are no obstructions or depressions that would endanger the stability of the lift truck during movement.
7. Prior to elevating, lowering the platform, or moving a lift truck with employees on the work platform, the operator shall alert persons in the platform.
8. Prior to elevating, lowering the platform, or moving a lift truck with employees on the work platform, the operator shall ensure the platform is horizontal and centered.
9. When moving the lift truck with employees on the work platform, the speed shall be no more than 2 miles per hour.
10. All employees shall move to the mast end of the work platform prior to movement or repositioning.

employers. In addition, adoption of a specific Safety Order eliminates unnecessary applications for variance by establishing uniform mandatory requirements for the design and use of mobile platform use in date palm operations.

Proposed Regulatory Language

As indicated above, this petition requests the Standards Board essentially adopt as amendments to Group 4, Articles 13 and 25, the same exemptions and applicable conditions included in previously-issued variances.

Attachment 2 presents conceptual Safety Order language achieving this objective, which is being submitted for consideration by the Board. As it indicates, exemptions would be added to Article 25. Industrial Trucks, Tractors, Haulage Vehicles, and Earthmoving Equipment; §§ 3657(e) and (j)(7), which would refer to the applicable conditions contained in a new Article 13. Agricultural Operations, § 3458.2. These conditions would assure that in relieving employers whose lift truck operators need to leave the operating controls, and to move the platform while occupied, the new provisions would assure these activities are safely performed.

It should also be noted that by authorizing through specific Safety Orders the design and construction of the platforms, the proposed regulation authorizes and standardizes conditions for their use, will encourage more employers to implement safer equipment and work practices, as discussed in this petition.

Attachment 3 is representative of the design standard for the platform; attachment to the lift truck and other features assuring safety of employee occupants, which is consistent with the proposed provisions at § 3458.2(a)(1) through (6), and good engineering practice.

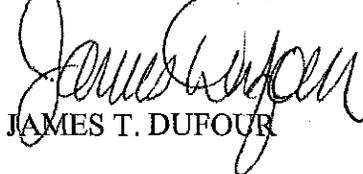
The design and use of this equipment in the manner specified in the conditions included in the 15 variance orders previously issued by the Board has resulted in safe operation—in some cases for over eight years—without a reported injury to any employee using the equipment.

The Board is urged to consider and approve the petition.

Dated: April 27, 2017

Respectfully submitted,

For California Date Commission



JAMES T. DUFOUR

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

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JAN 21 2015

In the Matter of an Application for a
Permanent Variance by:

Chuchian Inc. dba SunDate.

OSHSB FILE No: 14-V-230

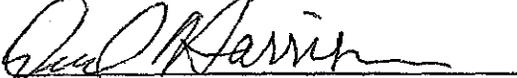
Dufour Law Office

DECISION

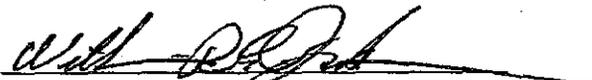
The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED
DECISION by Autumn Gonzalez, Hearing Officer.



DAVID THOMAS, Chairman



DAVID HARRISON, Member



WILLIAM JACKSON, Member

HANK MCDERMOTT, Member



PATRICIA QUINLAN, Member



BARBARA SMISKO, Member



LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: January 15, 2015

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING MAY
BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the
Applicant's employees to read, and/or a copy thereof
must be provided to the employees' Authorized
Representatives.

Proposed Variance Decision
Chuchian, Inc. dba Sundate, 14-V-230
December 11, 2014 Hearing

Based on the record of this proceeding, the Board makes the following findings of fact:

1. The Applicant engages in commercial date production. Chuchian Inc., dba SunDate is a producer of dates located in the Coachella area of Riverside County. The applicant has been engaged in date production for 30 years using the equipment and procedures described in Section 3458, Fall Protection for Date Palm Operations.

1. The following facts are derived from Board and Division staff evaluations filed in this matter:

- a. The applicant recognizes that improvements in safety are afforded by the use of elevating work platforms, and is seeking to have this enhancement approved through the variance process. The applicant proposes to use an elevated work platform attached to a vertical mast forklift or rough terrain forklift to position employees to work in the crown of the date palm. The employees will be secured within the platform by standard guard rails and fall restraint lanyards. This practice will minimize employee exposure to falls, heat related stress from overexertion, and reduce accidents from contact with moving equipment.
- b. No on-site field visit was conducted. The process is similar to the operation performed in Files #08-V-212 through 223. The principle exception for this applicant is that the tree height is lower and therefore an extension to the platform is unnecessary.
- c. Section 3657(e) is intended to provide immediate response by the operator to any emergency involving personnel in the elevated platform. However, the operator's vision is obstructed by the work platform when elevated to the crown of the date palm. The operator is also restricted in ability to easily communicate with the personnel on the platform, or to respond to health or safety emergencies. Due to design, when the platform is positioned for work in a date palm, it is effectively secured; the operator has no function on the lift truck outside of lowering it and moving it to the next tree. He or she may leave the lift truck once it has been secured. The applicant proposes to implement a work process that allows the operator to secure and dismount the lift truck. They will position themselves a short distance away so as to have a better view of the personnel on the platform, thereby improving their ability to respond to health or safety emergencies, while still close enough to operate the forklift when needed. The applicant proposes to limit the operator's responsibility to no more than three forklifts/platforms within a 150 foot radius, thereby maintaining contact with any crew under his or her supervision.
- d. Section 3657(j)(7) is intended to reduce the risk to employees of falling from the platform while it is in motion. While this Section specifically prohibits riding on the platform while moving, it does allow for "minor movement for final positioning of the

Proposed Variance Decision
Chuchian, Inc. dba Sundate, 14-V-230
December 11, 2014 Hearing

4. The Board and Division staff support granting the variance application, subject to appropriate conditions.

E. Reasons for Decision

The procedural matters, legal authority and findings of fact stated above lead to the following conclusions that the Applicant has complied with the statutory and regulatory requirements that must be met before a request for a permanent variance may be granted and that a preponderance of the evidence establishes that the Applicant's proposal, combined with the conditions set forth in the Decision and Order, will provide employment and a place of employment that are as safe and healthful as those that would prevail if the Applicant complied with the safety order at issue.

F. Decision and Order

The application that is the subject of this proceeding is GRANTED to the extent that, as of the date the Board adopts this Proposed Decision, the applicant shall have a permanent variance from California Code of Regulations, Title 8, Section 3657(e) and and CCR Title 8, 3657(j)(7), subject to the following conditions:

3657(e):

1. The lift truck operator shall set the brakes and turn off the engine before exiting the lift truck. Upon exiting, the lift truck wheels shall be blocked.
2. The lift truck operator shall be no more than 150 feet from any lift truck under his or her supervision while employees are on an elevated platform.
3. The operator shall remain attentive and maintain visual and audible contact with employees on the elevated platform(s).
4. A lift truck operator shall operate and attend no more than three lift trucks with personnel in elevated platforms, provided the operator is simultaneously and continuously within the 150-foot allowable operating area (defined in Condition No. 2) of all lift trucks that the operator is operating.
5. Whenever employees are elevated on one or more work platforms, the lift truck operator and at least one other employee within the 150-foot allowable operating radius (defined in Condition No. 2), shall have the capability of electronic communication to summon response personnel in the event of an emergency. The employee responsible for emergency communication shall be a qualified person to operate the forklifts.

3657(j)(7):

6. Employees on the work platform shall wear approved fall restraint equipment in accordance with Section 3458, and be tied off to an approved anchorage point

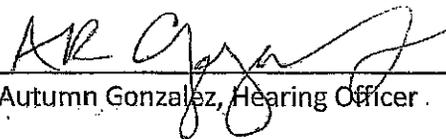
Proposed Variance Decision
Chuchian, Inc. dba Sundate, 14-V-230
December 11, 2014 Hearing

Both 3657(e) and 3657(j)(7):

21. In addition to the training required by Title 8 GISO Article 25, the Applicant shall train all persons who are permitted on the work platforms, all persons who may operate forklifts subject to this variance, supervisors and managers involved in operations covered by this variance, and all persons responsible for maintaining equipment subject to this variance. Records of training shall be maintained in accordance with Section 3203. The training shall include at a minimum:
 - a. The conditions of this variance
 - b. All work rules and usage rules associated with the work platforms
 - c. Proper daily inspection of the work platforms and associated forklifts
 - d. Procedures to be followed if an unsafe condition is detected
22. In addition to inspections required by Title 8 GISO, Article 25, the forklifts, work platforms, and the means used to secure the work platforms to the forklift shall be visually inspected at least daily prior to use. An additional inspection shall be conducted prior to use after any repair to the platform or forklift. The Applicant shall develop and use an inspection form acceptable to the Division specific to the work platform and forklifts covered by this variance. If a defect is found during the inspection, the work platform or forklift shall be removed from service until repaired and re-inspected. Inspection records shall be maintained in accordance with Section 3203.
23. No tools or other equipment shall be allowed in the work platforms except those necessary for date palm maintenance, production and harvesting operations.
24. The Applicant shall provide to employees and their authorized representative(s) a printed copy of this variance.

I hereby certify that the above Proposed Decision is the decision of the Hearing Panel, and the Hearing Panel recommends its adoption by the Occupational Safety and Health Standards Board as the Board's decision in this proceeding.

DATED: January 2, 2015


Autumn Gonzalez, Hearing Officer

**CONCEPTUAL PROPOSED LANGUAGE TO AMEND
CURRENT GISOs TO ALLOW USE OF MOBILE ELEVATED PLATFORMS
MOUNTED ON LIFT TRUCKS TO TEND DATE PALMS**

Subchapter 7. General Industry Safety Orders

Group 4. General Mobile Equipment and Auxiliaries

Article 25. Industrial Trucks, Tractors, Haulage Vehicles, and Earthmoving Equipment

§ 3657. Elevating Employees with Lift Trucks.

(a) through (d) [No Proposed Change]

(e) There shall be an operator in the control position on the truck while employees are on the elevated platform.

Add to (e): Exception: Use of mobile equipment-mounted platforms in date palm tending is subject to Article 13, Section 3458.2(a).

(f) through (j)(6) [No Proposed Change]

(j)(7) Never travel with personnel on the work platform other than to make minor movements for final positioning of the platform.

Exception: Minor movement of a variable reach (boom type) rough-terrain lift truck is permitted for construction operations when positioning the platform along a straight line where the path of movement is free from excavations, holes, obstructions and debris.

Add to (j)(7): Exception 2: Use of mobile equipment-mounted platforms in date palm tending is subject to Article 13, Section 3458.2(b).

Subchapter 7. General Industry Safety Orders

Group 3. General Plant Equipment and Special Operations

Article 13. Agricultural Operations

Add a new provision--§ 3458.2, as follows:

§ 3458.2 Mandatory Conditions for Use of Mobile Equipment-Mounted Platforms in Date Palm Tending

Use of mobile equipment-mounted platforms used in date palm maintenance shall comply with the following subsections to the extent applicable to Employer's operations.

(a) Use of employee-occupied mobile work platforms mounted on lift trucks shall comply with the following requirements:

(b) An operator shall be in the control position on the truck while employees are on the platform, unless the following conditions are in effect:

- (1) The lift truck operator shall set the brakes and turn off the engine before exiting the lift truck. Upon exiting, the lift truck wheels shall be blocked.
- (2) The lift truck operator shall be no more than 150-feet from any lift truck under his or her supervision while employees are on the elevated platform.
- (3) The operator shall remain attentive, and maintain visual and audible contact with employees on the elevated platform(s).
- (4) A lift truck operator shall operate and attend no more than three (3) lift trucks with personnel in elevated platforms, provided the operator is simultaneously and continuously within the 150-foot allowable operating area [defined in Subsection (a)(2)] of all lift trucks the operator is operating.
- (5) Whenever employees are elevated on one or more work platforms, the lift truck operator and at least one other employee within the 150-foot allowable operating radius [defined in (a)(2)] shall have the capability of electronic communication to summon response personnel in the event of an emergency. The employee responsible for emergency communication shall be a person qualified to operate the forklifts.

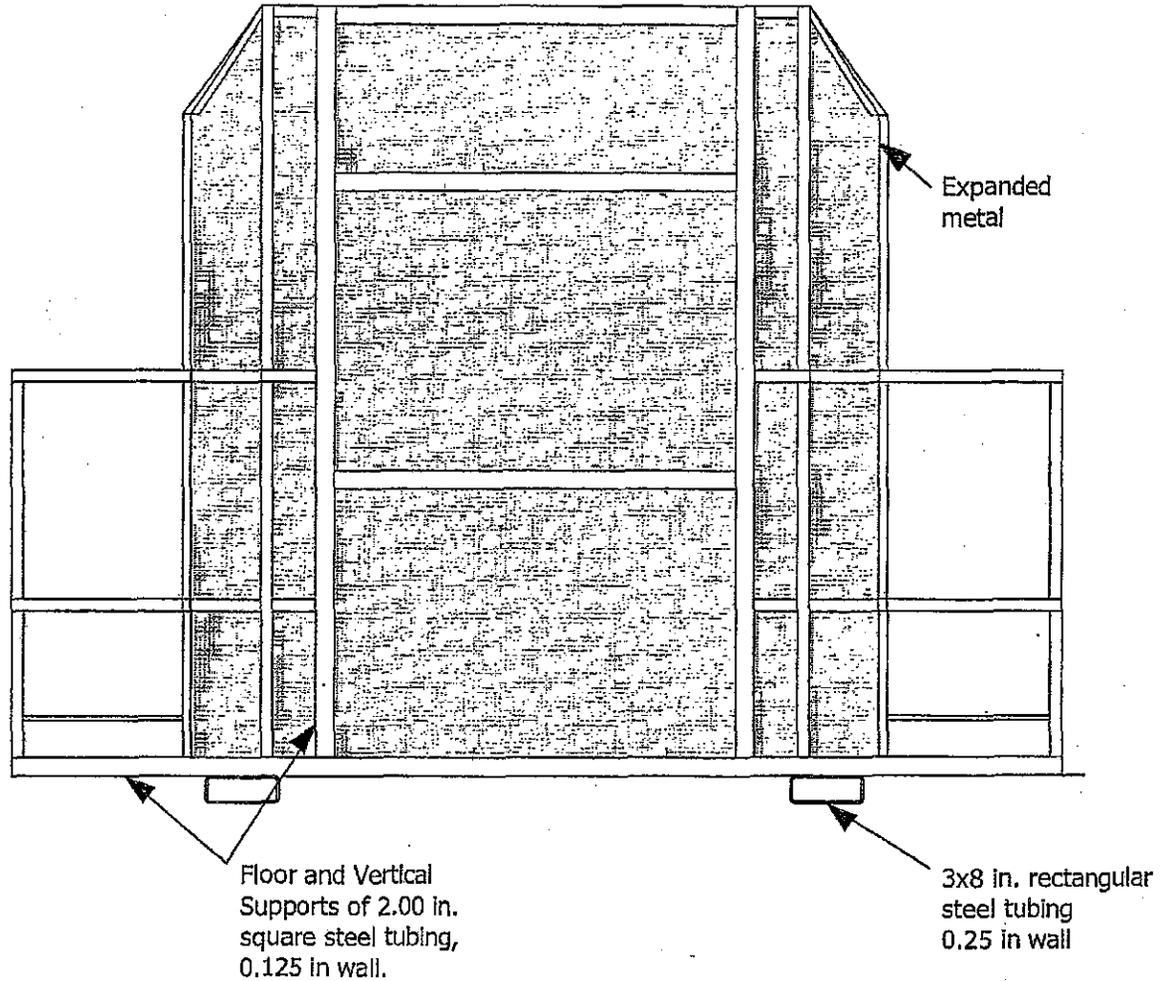
(c) Traveling with personnel on the work platform is prohibited unless in compliance with the following conditions:

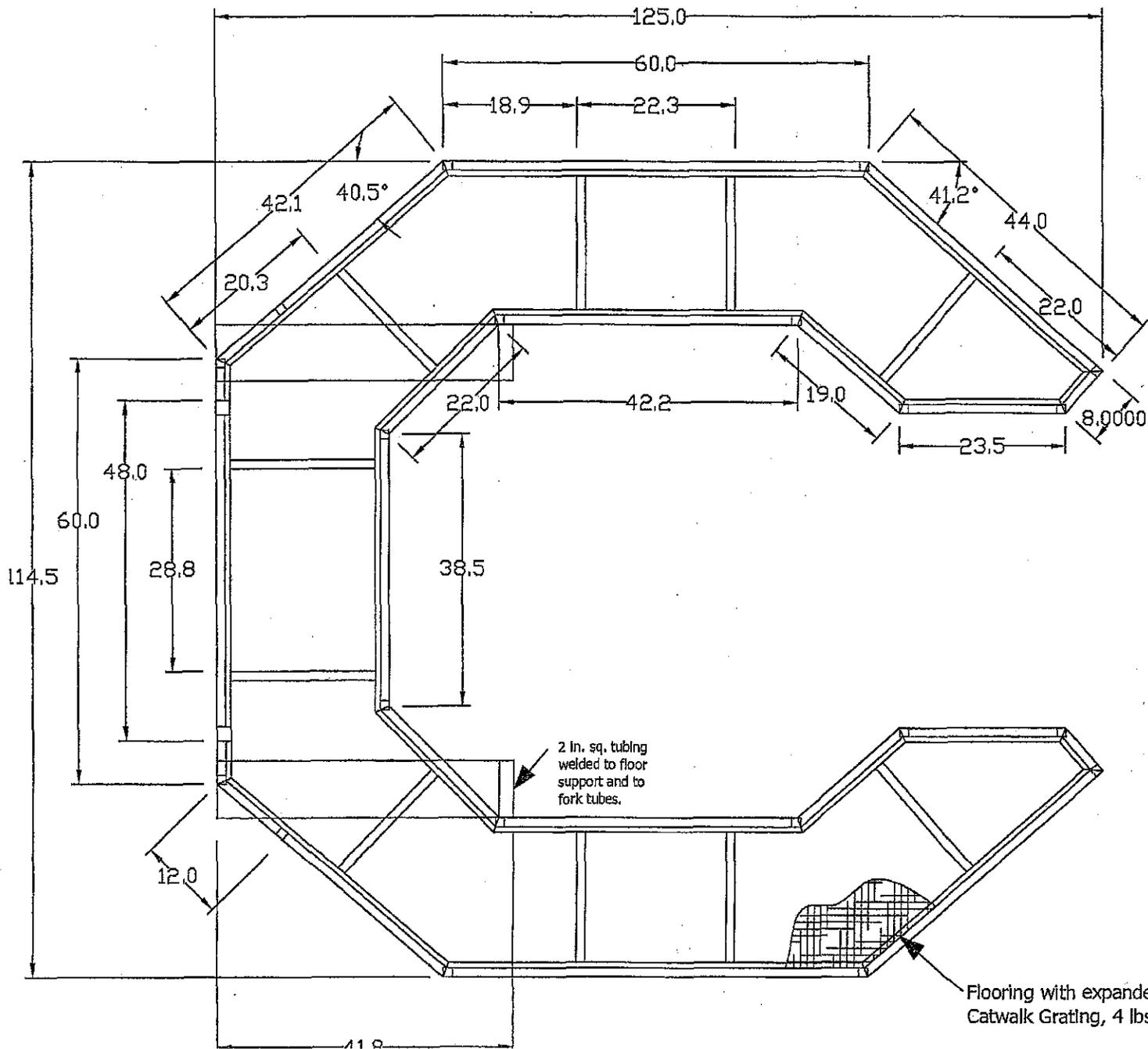
- (1) Employees on the work platform shall wear approved fall restraint equipment in accordance with Section 3458, and be tied-off to an approved anchorage point whenever platforms are elevated at any height and during movement or relocation of the platform.
- (2) For vertical-mast lift trucks traveling with employees on the work platform, the platform shall be lowered to no higher than 20 – 25 inches above the ground.
- (3) For vertical-mast lift trucks traveling with employees on the work platform, the bottom portion of the platform shall be provided with a 20-inch length of colored chain to provide a height reference for the operator.
- (4) For rough terrain, high-reach lift trucks (with an extendable boom) traveling with employees on the work platform, the platform shall be positioned no higher than a height that permits the operator an unobstructed view.
- (5) Travel through orchards, on farm roads, or any other road with persons on work platforms is prohibited. Movement of the lift truck with persons on the work platform shall be restricted to tree-to-tree travel within an orchard, on level ground free of obstructions and hazardous depressions **only**. Tree-to-tree travel means travel between adjacent trees only. Any other travel with employees on the work platform is prohibited.

ATTACHMENT 3



Drawn by Ralph Shirley P.E.
15 Jan 2014
Model "A" basket
Preliminary Drawing
Approved:





TEST, INC
 FOREMAN & CONSULTANTS

Drawn by Ralph Shirley F
 15 Jan 2014
 Model "A" basket
 Preliminary Drawing
 Approved: