

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

In the Matter of:

February 20, 2020)
OSH Standards Board)
Meeting Minutes)
_____)

STATE OF CALIFORNIA

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Rancho Cordova City Hall
Council Chambers
2729 Prospect Park Drive
Rancho Cordova, CA 95670

THURSDAY, FEBRUARY 20, 2020

10:00 A.M.

Reported by:
Kevin Gogarty

APPEARANCES

BOARD MEMBERS

Dave Thomas, Chair

Barbara Burgel, Occupational Health Representative

Dave Harrison, Labor Representative

Nola Kennedy, Public Member

Chris Laszcz-Davis, Management Representative

Laura Stock, Occupational Safety Representative

BOARD STAFF

Christina Shupe, Executive Officer

Michael Manieri, Principal Safety Engineer

Peter Healy, Legal Counsel

Lara Paskins, Staff Services Manager

David Kernazitskas, Senior Safety Engineer

Sarah Money, Executive Assistant

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH STAFF

Eric Berg, Deputy Chief of Health

OFFICE OF THE CALIFORNIA ATTORNEY GENERAL

Jonathan Eisenberg, Deputy Attorney General

PUBLIC COMMENT

Bryan Little, California Farm Bureau Federation

Michael Miiller, California Association of Winegrape
Growers

PUBLIC COMMENT (CONTINUED)

Anne Katten, California Rural Legal Assistance
Foundation

Juanita Ontiveros, California Rural Legal Assistance
Foundation

Nicholas Chavez, United Farm Workers

Stephen Knight, Worksafe

Michelle LeBlanc, Free Speech Coalition

PUBLIC HEARING COMMENT

Paul Dimeo, Aquarium of the Pacific

George Peterson, Monterey Bay Aquarium

Andrew Solomon, California Science Center Foundation

1 Present today from the Division of
2 Occupational Safety and Health is Eric Berg,
3 Deputy Chief of Health; and from the Office of
4 California Attorney General, Jonathan Eisenberg,
5 Deputy Attorney General.

6 If you've not already done so, we invite
7 you to sign the attendance roster which is
8 located on the table at the entrance to the room,
9 and will become part of the official record of
10 today's proceedings. When you sign the
11 attendance roster, please be sure to write
12 legibly so that we have your correct contact name
13 and information for the record. Copies of
14 today's agenda and other materials related to
15 today's proceedings are also available on the
16 table next to the attendance roster.

17 As reflected on the agenda, today's
18 meeting consists of three parts. First we will
19 hold a public meeting to receive public comments
20 or proposals on occupational safety and health
21 matters. Anyone who would like to address any
22 occupational safety and health issues, including
23 any of the items on our business meeting agenda,
24 should come up to the microphone during the
25 public meeting when I invite public comment.

1 After the public meeting, we will conduct
2 the second part of our meeting which is the
3 public hearing. At the public hearing we will
4 consider the proposed changes to the specific
5 occupational safety and health standards that
6 were noticed for review at today's meeting.

7 Finally, after the public hearing is
8 concluded, we will hold the business meeting to
9 act on those items listed on the business meeting
10 agenda. The Board does not accept public comment
11 during its business meeting unless a member of
12 the Board specifically requests public input.

13 We will now proceed to the public
14 meeting. Anyone who wishes to address the Board
15 regarding matters pertaining to occupational
16 safety and health is invited to comment, except,
17 however, the Board does not entertain comments
18 regarding variance decisions. The Board's
19 variance hearings are administrative hearings
20 where procedural due process rights are carefully
21 preserved. Therefore, we will not grant requests
22 to address the Board on variance matters.

23 So at this time is there anyone who would
24 like to comment on any matters concerning
25 occupational safety and health, including those

1 in the business meeting, please come up to the
2 microphone and state your name and affiliation
3 for the record.

4 Good morning.

5 MR. LITTLE: Good morning. Can you hear
6 me okay?

7 CHAIR THOMAS: Yeah.

8 MR. LITTLE: Good. Okay. Bryan Little,
9 California Farm Bureau Federation. A couple
10 things that I wanted to just comment on quickly
11 before you guys get started with your business
12 for the day.

13 First of all, one of the items on your
14 business meeting agenda is the agricultural night
15 work regulation, which I believe you plan on
16 acting on later today. I just wanted to mention
17 again, I think I've said this before in comments
18 before you at past meetings, that the December 3rd
19 revision of the regulation, the third revised
20 version, makes what we feel like are important
21 clarifications with respect to the fact that the
22 combination of area light, personal light and
23 task light together is sufficient to determine
24 compliance, and to be able to measure that and
25 figure out whether or not you've complied, as

1 opposed to a general requirement that all light
2 to light a task adequately has to be provided
3 from aerial lighting. We feel like that was a
4 considerable problem that needed to be overcome,
5 and we're happy to see that you addressed that
6 issue in the December 3rd revision.

7 It would be helpful to have some
8 clarification that illumination levels measured
9 to determine compliance should include area
10 lighting, and that illumination levels for
11 purposes other than tasks should be measured --
12 the task lighting should be measured at 30 inches
13 from the working or walking surface.

14 Just a seemingly minor issue, but just
15 some clarification as to exactly how and for what
16 purpose illumination is measured. Because you
17 have two different illumination standards, one
18 for tasks that involve the use of sharp tools,
19 one for tasks that don't involve the use of sharp
20 tools. So just some clarification on that point
21 might be helpful.

22 I'd also like to mention that we still
23 are concerned that the cost analysis that's been
24 done on this regulation up to this point is, I
25 think -- I don't want to sound like -- and I'm

1 trying not to be excessively critical. But the
2 cost analysis, I think, is a little bit off the
3 mark, maybe considerably off the mark. The
4 assumption that 16 -- I think it was 1,684
5 agricultural operations in California perform
6 night work for four months out of the year is
7 just far outside the realm of reality.

8 Since the beginning of the year I've
9 spoken to a large farm bureau group, a small farm
10 bureau group, and a non-farm bureau group of
11 agricultural employers. Altogether it was around
12 300 people.

13 At each event I did a, sort of an
14 informal, admittedly unscientific poll, of the
15 people present to ask them if they do night work.
16 Of about 300 people at those three events, half
17 of them raised their hands and said, "yes, we do
18 night work." They didn't say that in so many
19 words, but they responded by raising their hand
20 to the effect that they do perform night work.

21 So that would have been about 150
22 agricultural employers who perform night work at
23 three events that I just happened to be, at
24 random chance, happened to be speaking at myself
25 personally, which would mean that the 150 people

1 that showed up are 90-percent of the people that
2 your cost analysis indicates would be impacted by
3 the regulation. That seems like a coincidence
4 that cannot possibly be coincidental.

5 I think that indicates that you have
6 significantly underestimated the number of
7 agricultural operations that are going to be
8 impacted by the night work rule, and I would urge
9 you to consider revisiting that and make sure
10 that you've got a clear understanding of exactly
11 what the impact is going to be, and that you make
12 sure that you report that accurately and, perhaps
13 undertake a standard regulatory impact analysis
14 if that cost analysis seems to indicate that the
15 impact is as large as I believe that it probably
16 will be.

17 On wildfire smoke, it appears that the
18 2.0 version -- thanks again to some of my
19 colleagues for coming up with the 1.0, 2.0, 3.0
20 nomenclature so we can keep track of all the
21 different versions of the wildfire smoke
22 regulation that are being considered at any given
23 time.

24 I'd just like to point out, also, that
25 the 2.0 version is going to become a final

1 emergency regulation without any SRIA analysis.
2 Now I know that that's the process for emergency
3 regulations, but I think it's going to be very
4 important going forward when we do move to a 3.0,
5 that we're very careful about our cost analysis
6 and make sure that we have that clear and we know
7 exactly what the cost is, and subject it to the
8 SRIA analysis, if necessary.

9 And I think it's going to be very
10 difficult to make an argument that that final
11 regulation, whatever form it takes, is not or
12 should not be subject to SRIA analysis. I'd also
13 like to point out 2.0 still requires employers to
14 implement when they reasonably expect exposure to
15 wildfire smoke.

16 One of the things I do is I try to help
17 agricultural employers be in compliance with
18 regulations, and this is -- those words
19 "reasonably expect" to me, are a little bit like
20 practicable. It's hard to define that word. And
21 I had people ask me, what does reasonably expect
22 mean? Does that mean if there's a fire three
23 counties and there might be smoke at my worksite,
24 that I need to implement the regulation? And I
25 have to tell them, honestly, I don't know. Don't

1 know what "reasonably expect" means.

2 In order to clarify "reasonably expect",
3 it might be helpful to have the regulations
4 specify some nexus between an authoritative
5 finding of a governmental agency whose business
6 it is to assess the quality of air in a
7 particular area.

8 Now, of course, that all entails all the
9 problems that go along with using air quality
10 index almost like a permissible exposure limit
11 when air quality index was never intended to be
12 that. And it's not as precise a measure of
13 exposure as a PEL might be.

14 And, believe me, I am not advocating that
15 we try to go down the road to a PEL on PM 2.5.
16 I've been around OSHA stuff long enough to
17 remember what a mess PEL's have been over the
18 years. But some recognition of the fact that it
19 would be very helpful to employers to have some
20 official nexus to some official pronouncement by
21 an agency whose business it is to understand and
22 assess air quality. It could be very helpful to
23 employers in helping them understand when they
24 need to engage in implementation of the wildfire
25 smoke reg when version 2.0 becomes final.

1 Lastly, and I will stop now. Appendix B
2 is a bit of a mess with respect to the rest of
3 the regulation. To the extent that the
4 regulation doesn't require implementation of fit
5 testing and medical evaluation, Appendix B should
6 not mention fit testing and medical evaluation at
7 all. It's intended to be an educational
8 document. So the agency has complete freedom to
9 decide what goes in it and what doesn't go in it,
10 and because the regulation doesn't require
11 medical evaluation and fit testing, it shouldn't
12 even be mentioned in Appendix B.

13 That's one of the things that when I talk
14 to people about the wildfire smoke regulation, I
15 have to try to explain to them why we have to
16 train people about medical evaluation and fit
17 testing when the regulation doesn't require
18 either one of those things.

19 And, usually, I can't give them a very
20 good explanation, other than to say -- a little
21 like I did with my kids when they were little,
22 you know, because mommy and daddy say so. Well,
23 because I say so doesn't really help people
24 understand what the purpose of it is.

25 So, my suggestion would be that you have

1 another look at Appendix B, and make sure that
2 what's in Appendix B actually tracks with what's
3 in the regulation itself, just to avoid confusion
4 and having to educate people about why what's in
5 the appendix is not what's in the regulation.

6 So that's all for this morning, and I
7 thank you for your time and attention.

8 CHAIR THOMAS: Thank you.

9 MR. MIILLER: Good morning. My name is
10 Michael Miiller. I'm with the California
11 Association of Winegrape Growers. Chair and
12 Members, thank you for your time this morning.

13 I do want to comment specifically on the
14 outdoor ag lighting regulation, and with the
15 Chair's indulgence, I have a handout that might
16 explain some of what I'm going to talk about.

17 Can I show it to the staff members?

18 CHAIR THOMAS: Sure. Give it to Ms.
19 Money over there and she'll pass it out to us.

20 MR. MIILLER: And I want to associate
21 myself with Mr. Little's comments relative to the
22 need for a fiscal analysis, and that's what I'm
23 going to be talking about, is the detailed
24 discussion of why we need a fiscal analysis of
25 this regulation.

1 The current analysis that Board staff has
2 done says that it applies 1,640 employers -- let
3 me back up. I want to talk about the number of
4 employers it applies to, what crops are harvested
5 and when they're harvested, and talk about ag
6 work in general that happens at night because
7 it's more than just harvest.

8 Relative to the number of employers, the
9 Board's analysis says that it applies to 1,640
10 employers. This is based on assuming that 16,402
11 establishments may be affected by the regulation,
12 and that 10-percent of those do work at night.
13 The Board staff also says that 25-percent of
14 establishments would have some cost of
15 compliance.

16 We think that that is understated. First
17 you have to consider that agricultural work
18 occurs in every county in California statewide.
19 Then look at the data from USDA. The USDA
20 reports that in California there's 69,400
21 agricultural establishments, not 16,402, but
22 69,400. It is likely that 90-percent of those
23 operations are employers in some way, okay.

24 There are -- in the winegrape industry
25 alone, there are 5,900 winegrape growers. We did

1 an analysis using methodology from Department of
2 Finance, the same methodology that they use to
3 determine the budget projections and budget year
4 one and out two and out three, leaves that
5 methodology to calculate what the industry's
6 doing of 5,900 growers in California.

7 And I guarantee you that 90-plus-percent
8 of those growers are harvesting at night. It is
9 the industry standard because of the temperature
10 of the grape when they're picked. The wineries
11 want a cooler grape when it comes in because it
12 has less cooling cost. So, of those 5,900, 90-
13 plus-percent are doing ag work and harvesting at
14 night. So it's already well above the 1,640.

15 Then, using a very conservative estimate,
16 let's say you took the winegrape growers plus 25-
17 percent of the rest of the, of ag employers in
18 California, you're looking at 22,000 employers
19 that are affected by this regulation. So then
20 look at what are the crops that are harvested at
21 night, because it's not just wine grapes.

22 So according to UC Davis, you have corn,
23 onions, garlic, tomatoes are harvested at night.
24 When you look at when those are harvested, that
25 harvest season basically goes from April through

1 December in California. The current analysis by
2 Board staff says that's only three months of the
3 year that this applies. It's not. It is eight
4 or nine months of the year where you're going to
5 have ag harvest work at night, not just three,
6 alright?

7 Then, you have to also consider that the
8 work of ag work today is far beyond just
9 harvesting. UC Davis has done a report saying
10 that harvest equipment -- or harvest equipment
11 transportation, set up, maintenance, field prep
12 or repair is irrigation work, pesticide
13 application, all occur at night in agriculture.
14 So, in essence, you have a year round application
15 of this regulation, not just three months.

16 So when we look at all of that combined,
17 the Board's analysis says it's \$7.8 million in
18 the first year, and \$4.9 million annually
19 thereafter. When we look at our numbers, 22,000
20 employers, eight months a year harvest, year-
21 round other ag work, we figure it's closer to
22 \$279 million in the first year, and \$175 million
23 annually thereafter. That is well above the
24 threshold of \$50 million required in a SRIA.

25 And we think that's important, so I went

1 back and looked at SB 617 in 2011 that created
2 the requirement to do a SRIA. And I -- and in
3 your handout, you see, I pulled it up from the
4 analysis of that bill. The discussion of that
5 bill is about regulations just like this.

6 The idea is that when you do a regulation
7 like this that has such a broad application, you
8 want to know what the costs are before you make
9 the decision, not after. And that was the
10 purpose of doing this SRIA, of creating that
11 requirement.

12 And we asked that in a regulation like
13 this, that has such a broad application,
14 statewide, year round, and is well over the \$50
15 million threshold, that a detailed fiscal
16 analysis under the SRIA process, is what is
17 required and is necessary, and I think would help
18 inform a decision on this regulation.

19 And thank you very much for your time.

20 CHAIR THOMAS: Thank you.

21 MS. KATTEN: Good morning. I'm Anne
22 Katten from California Rural Legal Assistance
23 Foundation, and I want to thank the Board and --
24 Board and Division staff for all their work
25 developing the proposed regulation for outdoor

1 agricultural operations during hours of darkness.
2 And I urge the Board Members to vote to adopt
3 this regulation today, so that workers who work
4 at night in the fields can see and be seen.

5 Adequate work lighting at night is
6 critical for preventing injuries, from
7 collisions, slips, falls, cuts, bites, as well as
8 reducing eye strain, fatigue and workplace
9 violence risks.

10 This regulatory process has been going on
11 a very long time, which has subject the
12 agricultural workers in the field to inadequate
13 lighting for a very long time. And, you know, I
14 attended all of the meetings for development of
15 this regulation, and as best I can from my
16 perspective tried to provide input on the, you
17 know, the numbers of workers involved.

18 I must say that earlier in the process,
19 as is detailed in the analysis of the regulation,
20 the agricultural employers were not forthcoming
21 with estimates of numbers of workers or
22 employers. So, it's very, frankly, distressing
23 to me to have it come up at the 11th hour for more
24 delay, and we can't afford more delay.

25 We are disappointed in some of the

1 changes that were made recently, particularly the
2 change that eliminates the hierarchy that would
3 have preferred area lighting over task lighting,
4 however, we recognize that was made to
5 accommodate the employers' requests.

6 And, also, as the regulation stands, will
7 still greatly improve safety for workers at night
8 in the fields, and we urge you to support this
9 regulation.

10 Thank you.

11 CHAIR THOMAS: Thank you.

12 MS. ONTIVEROS: Buenos dias.

13 CHAIR THOMAS: Good morning.

14 MS. ONTIVEROS: My name's Juanita
15 Ontiveros, and I'm the Director of Community
16 Advocacy and Special Projects for California
17 Rural Legal Assistance Foundation.

18 A farmworker that wanted very much to be
19 here and testify and give he and his co-workers'
20 recommendations to you all, could not make it.
21 He suffered a heart stroke, and he's in therapy,
22 but he still wanted to be heard. So he contacted
23 me and asked me to read his testimony. Okay.

24 His name is Jorge Martinez. He and his
25 co-workers saw from the very beginning the danger

1 and risks of lack of lighting for their night
2 shifts. And they were able, although they were
3 very surprised, that their employer listened to
4 them. And so because of that, and because of
5 their suggestions to him and following their
6 suggestions, that they want to -- and he wants
7 you to hear those recommendations. And so here's
8 his testimony:

9 "My name is Jorge Martinez and I have
10 more than 30 years working in the fields and I
11 want to share my experiences working at night in
12 the -- every year in the months of September
13 through October on the tomato machines.

14 First thing my employer rents a generator
15 to illuminate an area where workers' cars are
16 parked and to illuminate also where the bathrooms
17 are. The first rule that is given to us by
18 direct order of the employer to those of us that
19 operate the machines is to never move the machine
20 when people are going to get off or on the
21 harvester.

22 The second most danger is when the
23 machine stops to let the workers off the
24 harvester. They are provided with masks and
25 glasses for the dust for the protection of their

1 eyes and mouth, and never wear baggy or loose
2 clothing, that has made us at work to not have
3 any incidents with any worker or tractor operator
4 or myself driving the machine for that reason.

5 I invite people to not underestimate at
6 any time the security measures that have given
7 much satisfaction to those of us that are in
8 charge of taking care of our colleagues and
9 ourselves in this dangerous work that needs much
10 more attention and care especially working at
11 night. And if the employer refuses to light up,
12 don't risk working in the dark, putting at risk
13 your safety, and let them know immediately that
14 you cannot work in these circumstances or
15 conditions.

16 Since there are nights when they can feel
17 more tired and that can confuse and hurt
18 themselves and hurt their coworkers, and as I
19 say, safety comes first. It is very important
20 for us farm workers that you listen to us and
21 pass better laws for the protection of workers
22 who work at night. We need more lighting. Let
23 there be more light at night. Jorge Martinez."

24 He's from the Clarksburg rural area near
25 Ryer Island.

1 Thank you.

2 CHAIR THOMAS: Thank you.

3 MR. CHAVEZ: Chairman Thomas, Members of
4 OSHA Standards Board, I'm Nicholas Chavez, here
5 representing United Farm Workers.

6 We urge the Board to adopt the
7 regulations today. Farm workers who work during
8 the night harvest doing wine grapes, lettuce,
9 corn, onions, garlic, canned tomatoes, other
10 crops, transplant vegetable plants and irrigate
11 the fields need protections. Providing basic
12 lighting when you ask a farm worker to work in
13 the dark is both common sense and common decency.

14 Whether or not a farm worker is carrying
15 a sharp object or what job they're performing is
16 irrelevant to the basic premise that when it's
17 dark outside, farm workers need to be able to see
18 to be able to perform any type of work. If not,
19 they have a higher risk of injury.

20 We are disappointed that the recent
21 revisions to the regulations made at the request
22 of employer groups have weakened the proposals to
23 regulate the protections. This regulation does
24 take a step forward towards improving the safety,
25 and the UFW encourages you to vote today to adopt

1 the regulations.

2 Thank you.

3 CHAIR THOMAS: Thank you.

4 MR. KNIGHT: Good morning, Members of the
5 Board. Steven Knight, Executive Director of
6 Worksafe, and here to support and associate
7 Worksafe with the position of the United Farm
8 Workers and California Rural Legal Aid Foundation
9 in support of the adoption of the Outdoor
10 Agricultural Operations During Hours of Darkness.

11 Thank you.

12 CHAIR THOMAS: Thank you.

13 MS. LEBLANC: Good morning. I am
14 Michelle LeBlanc, the Executive Director of the
15 Free Speech Coalition, the trade association for
16 the adult industry.

17 I appeared before you in December to
18 introduce myself and request that you add me to
19 advisory committee you'll be convening in
20 response to Petition number 576, regarding
21 workplace safety in the adult industry.

22 I wanted to also let you know that I sent
23 a letter last month advancing a list of names of
24 industry stakeholders who will help ensure that
25 we have adequate cross-sectional representation

1 on the advisory committee. That list includes
2 members of the industry who have experience both
3 in front of and behind the camera, as well as
4 industry leaders who already are ensuring that we
5 have safe workplaces in this industry.

6 I just wanted to say hello again, request
7 that you include me on the advisory committee,
8 and let you know that I look forward to remaining
9 involved in this process.

10 Thank you.

11 CHAIR THOMAS: Thank you.

12 Is there anyone else that wishes to make
13 comments at this time?

14 If not, we thank you for your testimony.
15 The Board greatly appreciates it. The public
16 meeting is adjourned and the record is closed.

17 We will now proceed with the public
18 hearing. During the public hearing we will
19 consider the proposed changes to the occupational
20 safety and health standards that were noticed for
21 review today.

22 The Occupational Safety and Health
23 Standards Board adopts standards that in our
24 judgment will provide such freedom from danger as
25 the nature of the employment reasonably permits,

1 and that are enforceable, reasonable,
2 understandable, and contribute directly to the
3 safety and health of California employees.

4 The Board is interested in your testimony
5 on the matters before us. Your recommendations
6 are appreciated and will be considered before a
7 final decision is made.

8 If you have written comments, you may
9 read them into the record, but it's not necessary
10 to do so as long as your comments are submitted
11 to Ms. Sarah Money, Executive Assistant, who will
12 ensure that they are included in the record.

13 Ms. Money will also forward copies of
14 your comments to each Board Member, and I assure
15 you that your comments will be given every
16 consideration. Please include your name and
17 address on any written materials you submit.

18 I would also like to remind the audience
19 that the public hearing is a forum for receiving
20 comments on proposed regulations, not to hold
21 public debates. While rebuttal comments may be
22 appropriate to clarify a point, it is not
23 appropriate to engage in arguments regarding each
24 other's credibility.

25 If you would like to comment orally

1 today, please come to, forward to the podium.
2 When I ask for public testimony, please state
3 your name and affiliation, if any, and identify
4 what portion of the regulation you intend to
5 address each time you speak.

6 If you have a business card, please
7 submit it to Ms. Money so that we have your
8 correct name and contact information for the
9 record.

10 After all testimony has been received and
11 the record is closed, staff will prepare a
12 recommendation for the Board to consider at a
13 future business meeting.

14 We will now turn to the first proposal
15 scheduled for today's public hearing, General
16 Industry Safety Orders Section 5189, Process
17 Safety Management of Acutely Hazardous Materials,
18 Appendix A, List of Acutely Hazardous Chemicals
19 -- sorry, Toxics and Reactives. This is a
20 Horcher.

21 Mr. Manieri, will you please brief the
22 Board?

23 MR. MANIERI: Yes. Chair Thomas and
24 Board Members, as you know, the United States
25 Department of Labor Occupational Safety and

1 Health Administration issued technical amendments
2 for minor corrections to the Process Safety
3 Management standard, the one that deals with
4 highly hazardous chemicals, on April 15th, 2019.

5 The Board here in this case is -- and
6 staff, is relying on the explanation of the
7 provisions of the federal reg in the Federal
8 Register as justification for the Board's
9 proposed rulemaking action.

10 The Board proposes to adopt regulations
11 here in the form of a Horcher package adoption --
12 hearing, rather, which are the same as federal
13 regulations except for editorial and format
14 differences.

15 Without going into a whole lot of detail
16 on the changes, Appendix A of California's PSM
17 standard contains a list of acutely hazardous
18 chemicals, toxics and reactives. It's a
19 mandatory list.

20 There were typographical errors that we
21 noted, errors in the chemical abstract's service
22 CAS number for a number of chemicals, one of them
23 methyl vinyl ketone. In that particular case,
24 the published version of the standard incorrectly
25 lists the CAS number incorrectly. The correct

1 CAS number was noted. There is a difference.
2 The error first appears in the proposed rule of
3 the standard and is repeated in the final rule
4 from 1991. However, the Federal Register noted
5 that the incorrect chemical abstract number is
6 not a valid number and does not -- and does not
7 represent a different chemical.

8 So upon review of all these technical
9 amendments and corrections, two additional
10 typographical errors in California's Appendix A
11 were discovered. The chemical abstract number
12 for osmium tetroxide is incorrect, and the
13 listing for the chemical carbonyl fluoride
14 cellulose nitrate is actually a combination of
15 two chemicals that were conflagrated together.
16 California proposes to correct these errors and
17 make its Appendix A therefore commensurate and
18 correct with the Federal counterpart.

19 At this point, as I mentioned earlier,
20 this is a Horcher process. A so-called, "Horcher
21 process" permits the Board to develop verbatim
22 Title 8 amendments. It exempts the Board from
23 one or more elements of the Administrative
24 Procedures Act. And while it is a streamlined
25 process, the Board by longstanding policy has

1 always provided the public a hearing to provide
2 comments on the proposed text.

3 There have been to my knowledge no
4 written comments submitted by the public for this
5 proposal. Staff believes the proposal is ready
6 for the public's comment and the Board's
7 consideration.

8 CHAIR THOMAS: Thank you, Mr. Manieri.

9 At this time we will receive public
10 testimony, if there is any.

11 There being no testimony, we'll proceed
12 to the next item for public hearing. General
13 Industry Safety Orders Section 6051, 6056 and
14 6057, Commercial Diving Operations.

15 Mr. Manieri, will you please brief the
16 Board?

17 MR. MANIERI: Yes, Chairman Thomas and
18 Members of the Board, as you will recall, the
19 Association of Diving Contractors International
20 contacted Federal OSHA claiming that in several
21 specific instances, California's diving
22 regulations, they believed, were not as
23 protective as the corresponding federal
24 regulations.

25 This is a little bit of history here.

1 Federal OSHA contacted Board staff to discuss
2 amendments to the regulation and resolve
3 concerns. In 2017, several of California's
4 regulations were amended via Labor Code Section
5 142.3(a)(3), which permits the Board an expedited
6 rulemaking process, as I mentioned in the
7 previous rulemaking briefing, by exempting the
8 Board from certain provisions of the Government
9 Code when adopting standards that are
10 substantially similar, or the same, verbatim, of
11 federal standards, known as the Horcher process.

12 For the remaining instances where the
13 amendments could not be made via that expedited
14 process, the Board is now proposing to make the
15 changes in accordance with the requirements of
16 the Administrative Procedures Act. We sometimes
17 refer to this as non-Horcher rulemaking as a
18 regular rulemaking.

19 This proposal was developed with the
20 assistance of an advisory committee which took
21 place September 13th, 2018, and contains new
22 definitions, one of which introduces a new class
23 of diving, film and theatrical diving for natural
24 history, visuals, corporate videos, et cetera,
25 which are not part of construction demolition or

1 maintenance.

2 It also defines the technical diving and
3 zoo aquarium exhibit diving, provides an
4 exception for line-tended scuba diving that
5 applies to technical divers performing film and
6 T.V. diving operations.

7 It revises diving procedures in terms of
8 line tending and the optional use of an
9 accompanying diver in lieu of line tending. It
10 restricts what is known as hookah diving,
11 tankless diving, to only technical diving
12 operations to a maximum depth of 30 feet of
13 seawater, FSW, from the current 190 FSW.

14 It specifies safety equipment, and
15 equipment ensembles for scuba and hookah diving,
16 and revises the regulatory text to delete the
17 term, "must" for the word "shall," consistent
18 with our existing Title 8 format.

19 There have been a number of comments to
20 date all in support of the proposal, and Board
21 staff and Federal OSHA representatives are now in
22 discussion over whether parts of the proposal are
23 in fact commensurate with the comparable federal
24 standards, for which it's my understanding that
25 there will be a meeting that will take place in

1 the next few weeks to discuss these issues.

2 We believe that these issues are entirely
3 resolvable, probably during the -- most likely
4 during the post-public hearing 15-day notice
5 period process, which would allow time, necessary
6 time for any necessary consultation by staff with
7 stakeholders, who I think should be consulted as
8 we wind through that particular period, that
9 process.

10 So, at this point in time, the Board
11 staff believes this proposal is ready for the
12 public's comment and the Board's consideration.

13 CHAIR THOMAS: Thank you, Mr. Manieri.

14 At this time we'll accept any public
15 testimony.

16 MR. DIMEO: Morning.

17 CHAIR THOMAS: Good morning.

18 MR. DIMEO: My name's Paul Dimeo. I am
19 currently the Diving Safety Officer at the
20 Aquarium of the Pacific down in Long Beach.

21 I have some photos, if you don't mind,
22 I'll pass around if that's okay. To give you an
23 idea of what diving is like at our facility.

24 Okay. So, I'm not here just representing
25 the Aquarium of the Pacific, but also I'm

1 representing more than 16 California zoo and
2 aquarium dive programs throughout the state.

3 To begin, I'd like to thank the Board for
4 allowing this process of developing this
5 amendment for technical diving to occur. Back in
6 August of 2017 I stood before you and I requested
7 that the Horcher vote be delayed to allow
8 technical diving stakeholders the opportunity to
9 work with you to maintain the existing California
10 diving regulations, that one of your largest
11 stakeholders, the zoo and the aquarium industry,
12 safely operate within. The culmination of that
13 work for the past two-plus years is the amendment
14 that's before you today.

15 As a stakeholder in this proposed
16 amendment to the federal commercial diving
17 regulations the state has now adopted, I ask you
18 to take into consideration the California
19 occupational diving industry as a whole, not just
20 diving that falls under commercial diving, but
21 technical diving in specialized environments as
22 well.

23 There are many more technical diving
24 operations that happen in California every day
25 than commercial diving operations. The Federal

1 Regulations were written back in the 1970's.
2 They were written in particularly for diver
3 safety in the booming offshore oil fields in the
4 Gulf of Mexico. They were written for ship work.
5 They were written for underwater welding
6 operations and maintenance to municipal water
7 facilities.

8 And as the use of diving over the years
9 in specialized environments, such as zoos and
10 aquariums has grew -- has grown, the federal
11 regulations failed to keep up with making changes
12 to optimize diver's safety for those employees
13 working in those environments.

14 But California did it differently. The
15 regulations that were written in Article 152 not
16 only accommodated diver safety in our
17 construction and maintenance environments, but
18 also in the specialized environments like zoos
19 and aquariums, and also the film and T.V.
20 production sites. Nowhere else in the country
21 were there diving regulations that worked for all
22 diving environments like Article 152 did prior to
23 2017.

24 The amendment you're voting on today, or
25 the amendment you are going to vote on, will

1 protect the divers working in zoo and aquarium
2 environments like the original Article 152 did
3 for years. With this amendment we can continue
4 to maintain our exceptional safety practices.

5 The federal government may argue that
6 this amendment is not as safe as their
7 regulations, but there is absolutely no data that
8 they can provide that's going to show the
9 exemptions in this amendment are any less safe or
10 effective in the environments we dive in every
11 day. We do have data though that does show that
12 they are.

13 As one example of this exemplary safety
14 record, I submit to you today the diving
15 operations at my facility, the Aquarium of the
16 Pacific. The Aquarium of the Pacific actually has
17 over 200 people that dive as part of their job.
18 And just in the year 2019, we conducted over
19 17,000 scuba and hookah dives that totaled more
20 than 7,000 hours underwater just in 2019. We had
21 zero dive-related or pressure-related injuries,
22 incidents or lost-time accidents. We had zero.

23 The zoo and aquarium industry as a whole
24 in California are made up of dive programs large
25 and small that have similar astounding safety

1 records. And I say to you with all my
2 professional diving knowledge, and even with all
3 of my heart, we're fighting for this amendment
4 because we care about the people we put
5 underwater every day. We know after years of
6 training and doing safety drills, that the
7 exemption in -- the exemptions in this amendment
8 provide us the means of making diving as safe as
9 possible in our specialized environment.

10 I'm not going to take up any more of your
11 time. I'm not going to go into specifics about
12 the amendment unless you ask me. I submitted a
13 written argument last week with a very
14 comprehensive and detailed breakdown of why you
15 should vote yes for this amendment.

16 But I will say that approving this
17 amendment for technical diving, you will allow
18 those California industries outside the clearly
19 defined scope of commercial diving to continue to
20 operate as they have been with their exemplary
21 safety records, without undue financial hardship
22 or creating the unsafe conditions where none
23 previously existed.

24 In closing, my remarks here today
25 represent the zoo and aquarium industry in

1 California, which I believe has shown and
2 maintains a safe diving track record following
3 the exemptions proposed in this amendment. We
4 have been following them for years and years and
5 they work and they are safe.

6 Thank you very much.

7 CHAIR THOMAS: Thank you.

8 MR. PETERSON: Good morning. My name is
9 George Peterson and I brought a few pictures as
10 well, different from Paul's. May I pass those
11 around as well?

12 CHAIR THOMAS: You may.

13 MR. PETERSON: So, as I mentioned, I'm
14 George Peterson, and I'm the Director of Dive
15 Programs and the Chairman of the Diving Control
16 Board at the Monterey Bay Aquarium. And I've
17 been in the zoo and aquarium industry for 17
18 years.

19 I'm a past president of the Association
20 of Dive Program Administrators, which is a group
21 of over 100 zoos and aquariums spread out
22 throughout the United States, 16 of which are
23 located in the State of California. And I've
24 also served as a two-time elected director of the
25 American Academy of Underwater Sciences.

1 Now, like Paul, I also submitted
2 detailed, written comments and photos supporting
3 the proposed amendments to Article 152, and I
4 greatly appreciate the fact that I've been able
5 to represent my institution and industry as a
6 member of the technical diving operations
7 advisory committee.

8 And I'd also like to thank the Board for
9 setting -- for that opportunity, and especially
10 for setting up a very open and transparent
11 Horcher process. We greatly appreciate that.

12 Now the zoo and aquarium industry in the
13 State of California has a significant impact on
14 the economy of our state. Now according to the
15 California Association of Zoos and Aquariums, its
16 23 accredited members, 16 of which engage in
17 occupational diving, and most of which are non-
18 profits, contribute over \$1.8 billion annually to
19 the economy, and we represent thousands of people
20 who dive under Cal OSHA specific technical dive
21 standards every day as a part of their job, and
22 they have done so for decades.

23 Keeping our divers safe in our unique and
24 very specialized environments, and keeping those
25 environments pristine is paramount to zoos and

1 aquariums' collective efforts to inspire
2 conservation of the oceans.

3 We have decades of data to support this
4 assertion, and Article 152 and the proposed
5 amendments also support that assertion. So by
6 approving the proposed amendments as outlined, I
7 believe you will allow the zoo and aquarium dive
8 industry to continue to operate in an extremely
9 safe and efficient manner, without any undue
10 financial impact and, most importantly, without
11 any loss or slippage in safety measures.

12 So I thank you for your time, and if you
13 have any questions, I welcome them.

14 CHAIR THOMAS: Thank you.

15 MR. PETERSON: Thank you.

16 MR. SOLOMON: Morning.

17 CHAIR THOMAS: Good morning.

18 MR. SOLOMON: No pictures for me. My
19 name is Andrew Solomon and I'm currently the
20 Diving Safety Officer and Boating Safety Officer
21 for the California Science Center in Los Angeles.
22 I also served as an advisory committee member to
23 the Standards Board for the proposed amendments
24 to technical diving operations.

25 As a department of the state of

1 California, under the Natural Resources Agency,
2 the California Science Center is administered by
3 a board of directors appointed by the government.
4 The not-for-profit California Science Center
5 Foundation provides support for exhibits and
6 education programs at our facility.

7 As an employee of our foundation I am
8 responsible for a team of 65 divers that conduct
9 over 5,000 dives annually in our specialized
10 exhibit environments. The dives we engage in
11 adhere to the standards of Article 152, and has
12 done so safely over the last decade.

13 I do not want to take too much of your
14 time, as I also have already submitted written
15 comments which outlines the details of my
16 position. However, I do want to use this
17 opportunity to reiterate my support for these
18 significant regulations.

19 As a stakeholder in these proposed
20 changes, I ask you to take into consideration the
21 California occupational diving industry as a
22 whole by approving the proposed regulations as
23 outlined in these rulemaking documents.

24 This will allow institutions such as the
25 California Science Center to continue to operate

1 under existing conditions without overwhelming
2 financial implications or creating conditions
3 that are arguably less safe.

4 I want to thank all of you for your time
5 and consideration, and for allowing our voices,
6 our community's voice to be heard in this
7 process. Thank you.

8 CHAIR THOMAS: Thank you.

9 Is there any other persons who wish to
10 testify at this time? If not, this public
11 hearing is closed. Written comments will be
12 received until 5:00 p.m. today.

13 We will now proceed with our business
14 meeting. The purpose of the business meeting is
15 to allow the Board to vote on matters before it
16 and to receive briefings from staff regarding the
17 issues listed on the business meeting agenda.

18 The Board does not accept public comment
19 during its business meeting unless a member of
20 the Board specifically requests public input.

21 The first proposed safety order,
22 Construction Safety Order, Subchapter 4, Article
23 5 (sic), Cranes and Derricks in Construction,
24 Section 1618.1 and 1618.4, Cranes and Derricks in
25 Construction, Operation Qualification. This is a

1 Horcher.

2 Mr. Manieri, will you please brief the
3 Board?

4 MR. MANIERI: Chairman Thomas, and Board
5 Members, this particular rulemaking is an
6 intention to adopt the proposed rulemaking action
7 pursuant to the Labor Code 142.3, which mandates
8 that the Board adopt regulations that are at
9 least as effective as federal regulations
10 addressing occupational safety and health issues.

11 Now you will remember that the United
12 States Department of Labor Occupational Safety
13 and Health Administration promulgated regulations
14 sometimes ago -- some time ago addressing
15 qualifications for operators of cranes and
16 derricks in construction back on November 9th,
17 2018.

18 And, again, we're relying on the
19 explanation of the provisions of the federal
20 regulation that was contained in the Federal
21 Register back on November 9th, 2018 as the
22 justification for the Board's proposed rulemaking
23 action.

24 We're proposing to adopt regulations
25 which are the same as the federal regulation

1 except for editorial and format differences.

2 During the public hearing for this
3 proposal, which took place back on June 20th of
4 last year, staff outlined to the Board and public
5 a number of proposed amendments which included,
6 but they're not limited to, the retitling of
7 subsections consistent with federal titles and
8 federal changes, some editorial revisions to
9 cross references, incorporation of federal
10 language into operator training requirements,
11 addressing the monitoring of operators in
12 training using federal language, and bringing
13 into Title 8 new federal requirements for the
14 evaluation of the operators.

15 The proposal was modified in response to
16 public comments and resulted in Board staff's
17 reexamination of the proposed text. There was a
18 Board Member comment and one from the National
19 Commission of the Certification of Crane
20 Operators, NCCCO, regarding cross-referencing
21 that was addressed as noted on pages 19 and 20 of
22 the Final Statement of Reasons. Those comments
23 and the four changes to the original proposal are
24 explained in the Board's memorandum from Board
25 staff to the Standards Board, which is dated

1 February 7th, 2020.

2 Now, it's important to note that they
3 were deemed of a non-substantive nature and,
4 hence, could be proposed as modifications under
5 the terms of the Horcher, rulemaking
6 substantially similar to federal language.

7 The changes pertain to further
8 conformance of the proposed text with federal
9 language, such as the introduction of language
10 that permits the written development, validation
11 and administration of operator certification
12 exams in accordance with generally accepted
13 industry best practices, in lieu of the original
14 proposed language that refers to the standards
15 for educational and psychological testing, the
16 Joint Committee of the American Educational and
17 Research Association, 1999, and the addition of a
18 reference to the federal standard 29 C.F.R.
19 Subpart CC, making the modification therefore
20 verbatim of the federal standard.

21 With these essentially clarifying
22 modifications in response to comment, Board staff
23 now recommends that the proposal be adopted.

24 CHAIR THOMAS: Thank you, Mr. Manieri.

25 Are there any questions for Mr. Manieri?

1 Hearing none, do I --

2 MS. BURGEL: Actually, David, I have a
3 question.

4 CHAIR THOMAS: I'm sorry.

5 MS. BURGEL: As we discussed earlier,
6 Mike, there were two Board comments, and one -- I
7 made a comment at the June meeting about that one
8 section around the physical examination by a
9 physician. I still can't find it in the federal
10 standard. I don't know if you were successful in
11 finding it in the federal standard.

12 MR. MANIERI: No, I wasn't. That's why I
13 was looking at my phone --

14 MS. BURGEL: Right.

15 MR. MANIERI: -- but I could not. But I
16 don't have -- we don't have the author, of
17 course, here. Conrad Tolson, you know, developed
18 this. This is all in concert with the crane and
19 derrick standard that --

20 MS. BURGEL: Right.

21 MR. MANIERI: -- this will become a part
22 of later.

23 But I suspect that the -- since the
24 language is shown in underlined format in the
25 proposal, that that was taken from the federal

1 standard, which refers to a physician conducting
2 the exam.

3 I personally have no objection to
4 expanding that to include other licensed,
5 qualified medical expertise, such as a nurse
6 practitioner or even a physician's assistant.

7 That change, I'm not sure mechanically
8 how we would make that kind of a change at this
9 stage in the process, but if we couldn't do it
10 now before we move forward, we could certainly do
11 that remedially at some point.

12 We would have to have a discussion, of
13 course, with region 9 federal OSHA, to make sure
14 that's good there. And I wouldn't anticipate
15 that there would be an objection from federal
16 OSHA to make that kind of change.

17 MS. BURGEL: All right. I just pulled up
18 the Federal Standard, again, 1926, you know,
19 .1427. I don't see any language about a medical
20 requirement for operator competency, which is
21 surprising to me. So I fear I'm -- we're looking
22 in the wrong section.

23 And so I would like to work with you
24 after. I know that we're voting on it today.
25 I'm planning to abstain from voting, because I

1 don't have -- there was not a response for my
2 comment from June meeting. And so, I just want
3 to follow-up after the meeting, to just close the
4 loop and figure out how we can be progressive.

5 Again, in the text it says -- in this
6 proposed text it says, the Department of
7 Transportation, as you know, DOT does allow nurse
8 practitioners and physician's assistants once
9 they're certified, and physicians to do these
10 physical examinations.

11 MR. MANIERI: Uh-huh.

12 MS. BURGEL: And so, I would like the
13 language to be consistent with the DOT.

14 MR. MANIERI: Uh-huh.

15 MS. BURGEL: Thank you.

16 CHAIR THOMAS: Question?

17 MS. STOCK: Can I just a question about
18 that? So if we were to vote and pass this today,
19 you said that there would be a mechanism to
20 remediate this and add this. I just want to --
21 given what you're saying, I want, you know, some
22 reassurance that we're not closing off the
23 opportunity to make that adjustment by voting
24 this through.

25 MR. MANIERI: Uh-huh.

1 MS. STOCK: So, can you just expand on
2 that a little bit? Like what in fact would
3 happen if we passed this, what would be the way
4 that we could consider that additional change
5 that Barbara's suggesting, just so we understand
6 the implication?

7 MS. BURGEL: And I realize this is a
8 Horcher. I realize that. So we're limited in --
9 but I would see this as an editorial change
10 personally. So -- and we can do that under the
11 Horcher is my understanding.

12 MR. MANIERI: Editorial and format
13 changes certainly. Whether we can do it at this
14 particular moment, I'm not 100-percent --

15 MS. BURGEL: Sure. I understand.

16 MR. MANIERI: -- sure on that. But the
17 change, there is a way to make that change. We
18 adopt this proposal the way it is, if we go under
19 the assumption, which I think is correct, that
20 Conrad Tolson adopted language in here that's
21 verbatim of the federal standard. So we meet our
22 obligation to region -- to federal OSHA, and then
23 go back -- and we've done this before with
24 numerous rulemaking packages. Go back in and
25 make this kind of a change later on remedially,

1 or as a follow-up rulemaking later on.

2 Beyond that, I'm not sure whether or not
3 there's any other mechanism. Perhaps, you know,
4 Christina might want to weigh in or -- but it
5 certainly can be made and I support it.

6 MS. BURGEL: Sure. Thank you.

7 MR. MANIERI: Uh-huh.

8 MS. BURGEL: Yeah, I would like to
9 follow-up with Conrad perhaps, after the meeting.

10 MS. SHUPE: Unfortunately, Conrad is no
11 longer with the Commission. He retired.

12 MS. BURGEL: Okay.

13 MS. SHUPE: He stayed on as long as he
14 was able to, and, unfortunately, is now out of
15 state. And so Mike is the lead on this at this
16 point.

17 I -- we do have a follow-up cranes and
18 derricks rulemaking though, that is in -- slated
19 to go in to works right after this.

20 MS. BURGEL: Okay.

21 MS. SHUPE: So as soon as the Horcher is
22 adopted, we already have a cranes and derricks
23 regulatory package that is well advanced, and
24 it's something that we could definitely
25 incorporate in there.

1 MR. MANIERI: Uh-huh.

2 MS. BURGEL: Thank you.

3 MR. MANIERI: That's a quick and
4 effective way to do that. Yes.

5 CHAIR THOMAS: Any other questions?

6 MS. BURGEL: No. Thank you.

7 CHAIR THOMAS: Hearing none, a motion to
8 adopt the revisions as proposed.

9 MR. HARRISON: So moved.

10 MS. LASZCZ-DAVID: Second.

11 CHAIR THOMAS: I have a motion and
12 second.

13 Is there anything on the question? Any
14 other questions? Hearing none, Ms. Money, will
15 you please call the role?

16 MS. MONEY: Ms. Burgel.

17 MS. BURGEL: I'm abstaining.

18 MS. MONEY: Mr. Harrison.

19 MR. HARRISON: Aye.

20 MS. MONEY: Ms. Kennedy.

21 MS. KENNEDY: Aye.

22 MS. MONEY: Ms. Laszcz-Davis.

23 MS. LASZCZ-DAVIS: Aye.

24 MS. MONEY: Ms. Stock.

25 MS. STOOCK: Aye.

1 MS. MONEY: Chairman Thomas.

2 CHAIR THOMAS: Aye. And the motion
3 passes.

4 Next order, Title 8 General Industry
5 Safety Orders, Section 3441 and 3449, Outdoor
6 Agricultural Operations During Hours of Darkness.

7 Mr. Manieri, will you please brief the
8 Board?

9 MR. MANIERI: Yes. Chairman Thomas and
10 Member of the Board. This is going to be a
11 little bit longer of a briefing, but I think it's
12 justified in terms of the scope and magnitude of
13 this proposal.

14 Outdoor Agricultural Operations in Hours
15 of Darkness. Back on December 2nd, 2013, the
16 Division of Occupational Safety and Health
17 submitted a request to amend Section 3441,
18 Operation of Agricultural Equipment. They
19 requested amendments pertaining to elimination
20 near agricultural equipment and personal
21 protective equipment to increase the visibility
22 of agricultural workers.

23 On the 13th of February 2014, a letter
24 was submitted by Ms. Anne Katten and Mark Schacht
25 of the California Rural Assistance Foundation

1 regarding agricultural field operations to
2 supplement requirements for work area lighting
3 near agricultural equipment operations.

4 As a result, the Occupational Safety and
5 Health Standards Board convened advisory
6 committees to discuss hazards associated with
7 outdoor agricultural work during hours of
8 darkness.

9 The research effort in preparation for
10 the development of this rulemaking proposal
11 included field visits by staff to observe actual
12 nighttime operations in winegrape harvesting and
13 nighttime poultry processing.

14 Board staff also conducted a significant
15 amount of public outreach via surveys, which
16 included cost surveys and discussions with
17 various agricultural stakeholders and employee
18 representatives.

19 Cost analysis was initiated per the
20 existing rulemaking protocol by Board staff, and
21 given the complexities of this analysis, was
22 completed with the assistance of the Department
23 of Industrial Relations staff in consultation
24 with the Board staff.

25 A great deal of cross-examination by the

1 respective parties involved in cost analysis of
2 this rulemaking proposal was conducted by the
3 Department Finance and reviewed by the Labor and
4 Workforce Development Agency of these
5 calculations and conclusions prior to enabling
6 the Board to notice a proposal for public
7 hearing.

8 This rulemaking is intended to address
9 hazards relating to performing outdoor
10 agricultural work during hours of darkness,
11 sunset to sunrise when illumination or visibility
12 is limited. The decreased natural lighting
13 during hours of darkness affects the employee's
14 ability to perceive and move about their
15 environment and conduct agricultural operations
16 safety.

17 In addition, employees are less visible
18 to others. Adequate lighting will enable
19 employees to avoid visible and recognizable
20 hazards, some of which you heard earlier in
21 testimony. The increased visibility of employees
22 will help operators of mobile agricultural
23 equipment keep a safe distance away from
24 employees.

25 A few highlights of this proposal include

1 establishing safe illumination levels for
2 specific tasks, operations in areas as expression
3 of -- as an expression of foot candles and lux.
4 It provides employers with the option of
5 providing hands-free, portable, personal
6 lighting, area lighting or both, to ensure
7 adequate visibility to best suit the nature of
8 their operations. It provides employer guidance
9 on how best to set up the lighting, minimizing
10 glare, and the types and quality of lighting
11 sources.

12 In addition to tractors and self-
13 propelled agricultural equipment, it requires all
14 trucks used between sunset and sunrise, and
15 expansion of the illumination time, to be
16 equipped with front and rear headlights, and it
17 addresses the manner in which personal employee
18 visibility on site is to be ensured through the
19 use of ANSI 107 rated Class 2 high visibility
20 garments, vests, hats, et cetera.

21 Finally, the use of start-of-shift safety
22 meetings with affected employees informing them
23 to discuss the purpose of housekeeping issues,
24 break areas, location of onsite hazards, high-
25 traffic areas. This proposed requirement should

1 integrate nicely with the employer's existing
2 injury and illness prevention program.

3 At this time staff believes this
4 proposal, having undergone two 15-day notices,
5 resulting in modifications in response to
6 stakeholders' concerns, also which you heard
7 earlier in testimony, and a somewhat protracted
8 but entirely necessary development phase
9 involving the combined efforts of Board staff,
10 stakeholders, the Division, internal scrutiny and
11 assistance by DIR staff, the Department of
12 Finance, is herewith presented for your
13 consideration, with a recommendation by the Board
14 staff to adopt the proposal as modified.

15 CHAIR THOMAS: Thank you, Mr. Manieri.

16 Are there any questions for Mr. Manieri?

17 MS. LASZCZ-DAVIS: I have a question.

18 CHAIR THOMAS: Go ahead.

19 MS. LASZCZ-DAVIS: You know, given the
20 representation earlier, I mean, we certainly have
21 I think some disagreement as to cost impact,
22 fiscal impact. Should we move forward on this,
23 how does that play into all this?

24 I don't think there's disagreement on
25 directionally what needs to be done, but the

1 fiscal impact of what needs to be done or what
2 should be done is the disagreement point. So how
3 do we deal with that?

4 MR. MANIERI: Well, I regret, I don't
5 have a real scientific detailed answer to give in
6 response to that question, other than the fact
7 that, as I stated earlier, a great deal of effort
8 within the -- given the realm and boundary of
9 staff's expertise to, you know, ascertain the
10 costs was certainly made. And we enlisted the
11 support of the Department of Industrial Relations
12 to help us make these assertions on the cost.

13 No cost impact analysis that I've ever
14 been familiar with has ever been 100-percent
15 accurate. This is an industry that's very mobile
16 and changeable. There are new elements of it
17 coming on-line all the time, some going out. The
18 number of crops that are being harvested, the
19 times that they're being harvested, are all
20 subject to issues that are controlled by
21 employers, and some out of their control.

22 We made what we believe to be the best
23 estimation of what these costs can be. And at
24 this point in time, there really isn't any
25 recourse given the timeframe and the one-year

1 adoption cycle phase for this rulemaking, for us
2 to go into further detail or research analysis to
3 fine-tune it.

4 And so at this point in time, the Board
5 staff would have to stand on the conclusions made
6 in the cost impact analysis and -- as it's
7 presented here in the rulemaking documents, and
8 Stage 2 and the final statement of reasons.

9 MS. LASZCZ-DAVIS: Thank you.

10 MR. MANIERI: Uh-huh.

11 CHAIR THOMAS: Any other question? Yes.

12 MS. STOCK: Yes. So, you know, I think
13 in all the years I've been on the Board, this
14 difference of opinion in costs has come up with
15 almost every regulation. So that seems to be
16 part of the process.

17 In this instance it seems like there's
18 been, you know, six years or more of effort put
19 into this regulation. This is the final
20 opportunity we have to pass it. And I feel
21 encouraged by how you describe the extensive
22 effort that was made by many, many different
23 parties to assess the cost.

24 And so in that sense, I feel comfortable
25 with what you have said. I also feel like it's

1 essential that we pass it, given the impact of
2 working in the dark, and the necessity to provide
3 this protection, and the length of time it's
4 taken us to get here, and the fact that this is
5 our final opportunity.

6 There's other things in the regulation
7 that I have some concerns about. I share some of
8 the concerns about some of the changes that
9 eliminated the hierarchy of controls. So I feel
10 like, you know, there's always room for
11 modification and improvement as we learn more
12 over time. But I would strongly recommend that
13 we pass this proposal today.

14 CHAIR THOMAS: Thank you, Ms. Stock.
15 Any other questions? Yes.

16 MR. HARRISON: Yes. I'd just like to
17 make a couple comments. You know, this has been
18 a long time in the making. Looking back through
19 the record, the first advisory committee was in
20 May of '14. There's been multiple comment
21 periods. And I know that this Board -- it's
22 unfortunate, reading through some of the
23 comments.

24 This Board prides itself on following the
25 Administrative Procedures Act and the Bagley-

1 Keene Act, and staying within those rules. And
2 it's unfortunate that we were challenged on that
3 at some point. But I want to commend Board
4 staff, specifically, Maryrose Chan who's really
5 worked hard on this, but the entire Board staff.
6 This is, a hot subject is ag in California, not
7 just feeds California and our country, but the
8 world. And so, I'm going to -- I support the
9 proposal that's in front of us today as well.
10 And, again, I want to thank staff for their hard
11 work.

12 Thank you.

13 CHAIR THOMAS: Any other questions?
14 Comments? I just have one comment. I think
15 staff has done a really good job of coming up
16 with a package that I think we can all agree to,
17 because the point of this is so that people
18 working at night can see and don't get injured.

19 And whatever the cost is now, two or
20 three or five years from now, it's going to be
21 different because everything is going to night
22 anyway, and there's going to be more and more
23 nighttime agricultural work. That's just the way
24 that this industry is going.

25 But I do believe that -- and I support

1 this, and I do believe we should pass it, because
2 what it's really about is the safety of workers.
3 And I know that you can put a cost on anything
4 you want, but the cost of a person's life is
5 worth this, to pass this proposal. Because
6 anybody knows, you go outside and you can't see
7 what you're doing, it's really easy to get hurt,
8 to get injured, even a fatal injury if you can't
9 see what you're doing.

10 And this will do a great deal to remedy
11 that situation. I understand the concerns of the
12 groups that are -- that were in the advisory
13 committee, but I recommend that we support this.

14 Are there any other questions or
15 comments? Hearing none, I'll entertain a motion
16 to adopt.

17 MS. STOCK: So moved. So moved.

18 MS. LASZCZ-DAVIS: Second.

19 CHAIR THOMAS: I have a motion and
20 second. Is there anything on the question?

21 Hearing none, Ms. Money, will you please
22 call the roll?

23 MS. MONEY: Ms. Burgel.

24 MS. BURGEL: A -- aye.

25 MS. MONEY: Mr. Harrison.

1 MR. HARRISON: Aye.

2 MS. MONEY: Ms. Kennedy.

3 MS. KENNEDY: Aye.

4 MS. MONEY: Ms. Laszcz-Davis.

5 MS. LASZCZ-DAVIS: Aye.

6 MS. MONEY: Ms. Stock.

7 MS. STOCK: Aye.

8 MS. MONEY: Chairman Thomas.

9 CHAIR THOMAS: Aye. And the motion
10 passes. Thank you very much.

11 Proposed variance decisions for adoption.
12 Mr. Healy, will you please brief the Board?

13 MR. HEALY: Yes. Good morning, Chair
14 Thomas and Members. On your consent calendar
15 this morning are variance matter, proposed
16 decision items A through Y. And as to consent
17 calendar items A through Y, I'm aware of no
18 unresolved procedural issues, and believe items A
19 through Y are ready for your consideration on the
20 question of adoption.

21 CHAIR THOMAS: Thank you, Mr. Healy.
22 Are there any questions for Mr. Healy?
23 Hearing none, a motion would be in order.

24 MR. HARRISON: So moved.

25 MS. STOCK: Second.

1 CHAIR THOMAS: I have a motion and second
2 that we adopt variance decisions A through Y.

3 Ms. Money, will you please call the roll?

4 MS. MONEY: Ms. Burgel.

5 MS. BURGEL: Aye.

6 MS. MONEY: Mr. Harrison.

7 MR. HARRISON: Aye.

8 MS. MONEY: Ms. Kennedy.

9 MS. KENNEDY: Aye.

10 MS. MONEY: Ms. Laszcz-Davis.

11 MS. LASZCZ-DAVIS: Aye.

12 MS. MONEY: Ms. Stock.

13 MS. STOCK: Aye.

14 MS. MONEY: Chairman Thomas.

15 CHAIR THOMAS: Aye. The motion passes.

16 Legislative update. Mr. Healy, will you
17 please brief the Board.

18 MR. HEALY: Thank you again, Chair Thomas
19 and Members. In contrast to the relatively high
20 number of bills introduced at the first half of
21 the two-year session last year, we're tracking
22 but few at this point in this year's activity.
23 So they're more of interest than directly,
24 potentially giving the Board direction.

25 AB 2092, which was introduced February

1 5th, earlier this month, would require an
2 emergency ambulance provider to provide each
3 emergency ambulance employee who drives or rides
4 in the ambulance with protective gear and safety
5 equipment to wear during the employee's work
6 shift, and to make the protective gear and safety
7 equipment readily available for employees to use
8 when responding to an emergency call.

9 The bill would also require the emergency
10 ambulance employer to provide training to the
11 ambulance employee on the proper fitting and use
12 of the protective gear and safety equipment.

13 This bill would not apply to the
14 government -- governmental employers because of
15 the complication and burden of the mandate paying
16 for it from the State, if they -- if it did. And
17 -- but interestingly, as much as that certainly
18 seems like it's within the Standards Board's
19 wheelhouse, safety and health equipment for
20 employees in the workplace, the bill would not
21 apply -- or the bill would codify these
22 provisions within the Health and Safety Code,
23 rather than the Labor Code, and would make no
24 reference to the Standards Board Division of
25 Occupational Safety and Health or Department of

1 Industrial Relations.

2 So, it's an oddity. I thought it was
3 certainly something for the Board to be aware of,
4 that -- and it's of somewhat -- it's of interest
5 from the perspective that this Board has -- well,
6 the Labor Code assigns this Board exclusive
7 authority to regulate, at least regulate.
8 Certainly they can do what they want in the
9 legislature. At their level they're above
10 regulation.

11 But at least for regulation that would
12 potentially result from anything, the Board has
13 exclusive authority to -- it is the only agency
14 in the State authorized to regulate in the area
15 of occupational safety and health.

16 So that being the case, it's -- and so
17 when the legislature normally would like the
18 Board to regulate in some particular area, lead,
19 whatever it may be, there are various provisions
20 that have -- where the legislature sometimes
21 says, Board, we would -- we want you to take a
22 look at this particular area. The Board has
23 already, has the authority in that area. It's
24 just trying to direct the Board in its priority
25 of resources. But its authority is exclusive and

1 complete in regulatory authority of occupational
2 safety and health.

3 And so when the -- again, sorry. When
4 the legislature gives direction in that area, it
5 does so in a labor -- in the Labor Code, where
6 all the other, where the Division's authority is
7 and direction, and where anything they, that's
8 going on with the Standards Board, they're all
9 in, they're in the Labor Code.

10 So here we have something that seems by
11 all indications very much occupational safety and
12 health, yet here it's going into the health and
13 safety, Health and Safety Code. So it's just an
14 interesting development to certainly make you
15 aware of.

16 And on that note of things that are a
17 little outside of the lines of -- that we
18 normally see, there's another bill that came,
19 popped up on the radar, and that is, AB 2162.
20 And that was introduced February 11th of this
21 month.

22 And this bill would require school
23 districts funding new construction and
24 modernization, to ensure that school facilities,
25 as far as air quality related to these projects,

1 meet the minimum requirements of regulations
2 enacted by the Occupational Safety and Health
3 Standards Board.

4 So here's another thing that's just kind
5 of an interesting hybrid, where they're -- the
6 bill would call for school boards to be, for what
7 would seem to be their -- and area -- something
8 they're not necessarily defining as a workplace
9 environment, but just a school environment.

10 That crosses over between the environment
11 in the school for other than a workplace, perhaps
12 the environment of the children, that the school,
13 school board should look to your -- the level of
14 protection that you say needs to be provided in
15 the workplace for employees more generally, in
16 maintaining the air quality in the school
17 environment. So, that's AB 2162. I thought that
18 might be of interest to you.

19 And that is the legislative update.

20 CHAIR THOMAS: Thank you, Mr. Healy.

21 Executive Officer's Report. Ms. Shupe,
22 will you please brief the Board?

23 MS. SHUPE: Thank you, Chair Thomas.

24 Board staff held an advisory committee
25 meeting on February 12th and 13th to consider

1 proposed amendments to Section 3277, Walking
2 Working Surfaces, to make them at least as
3 effective as federal regulations.

4 And on March 12th the Board staff will
5 hold an advisory committee meeting in Palm
6 Desert, California, to address proposed
7 amendments to Section 3657, and a New Section
8 3458.2, for date palm operations.

9 Looking forward to next month in March,
10 the Board will hold a public hearing on a
11 regulatory proposal for technical amendments to
12 Section 1630(a), Elevators for Hoisting Workers.

13 Also, staff will provide an update on the
14 wildfire smoke exposure regulation progress,
15 versions 1, 2 and 3.

16 And the Board will vote on a second 90-
17 day extension of the version 1 emergency
18 regulation for protection from wildfire smoke
19 exposure regulation that was originally adopted
20 by the Board at its July 2019 meeting.

21 Are there any questions from the Board?

22 MS. BURGEL: Didn't we just do that at
23 the January meeting?

24 MS. SHUPE: Yes. So it's a 90-day
25 adoption.

1 MS. BURGEL: Okay.

2 MS. SHUPE: We have to do it again.

3 MS. BURGEL: It's still version 1
4 language?

5 MS. SHUPE: It is still version 1. Yes.

6 MS. BURGEL: Okay. Thank you.

7 CHAIR THOMAS: Any other questions the
8 Board has of Ms. Shupe? All right.

9 Pursuant to Government Code Section
10 11126(e)(1) and 11126(a)(1), the Board shall now
11 enter into a closed session to confer with
12 counsel regarding pending litigation matters
13 listed on today's agenda and consideration of
14 personnel matters.

15 After the closed session is concluded, I
16 will reconvene the meeting and we will report on
17 any closed session action.

18 At this time we will recess. And then
19 when we are done with our closed session, we'll
20 be back in order. I don't know how long it's
21 going to take.

22 Yes?

23 MS. BURGEL: Can I ask a question as far
24 as a future agenda item? Excuse me. Can I ask a
25 question regarding a future --

1 CHAIR THOMAS: Sure.

2 MS. BURGEL: -- agenda item? I just
3 wondered when the advisory committee will be
4 scheduled for the adult film industry? Do we
5 have a date for that advisory committee?

6 MR. BERG: No, there's no date.

7 MS. BURGEL: Okay.

8 MR. BERG: (Indiscernible.) Sorry.

9 MS. BURGEL: But there will be an
10 advisory committee?

11 MR. BERG: There will be -- we'll release
12 the draft first and get comments on that, and
13 then you revise the draft, and then do the
14 advisory meeting.

15 MS. BURGEL: Great. Wonderful.

16 And then, number two, the status around
17 the indoor heat language.

18 MR. BERG: Yeah, the SRIA?

19 MS. BURGEL: SRIA.

20 MR. BERG: The SRIA, the draft SRIA was
21 sent to Department of Finance --

22 MS. BURGEL: Okay.

23 MR. BERG: -- just recently.

24 MS. BURGEL: It's still there?

25 MR. BERG: It's with Department of

1 Finance, so we're waiting for that.

2 MS. BURGEL: Okay.

3 MS. STOCK: While we're on that kind of
4 subject, can I ask about the workplace violence
5 in general industry? What's the status of that?

6 MR. BERG: Yeah. We're still meeting
7 internally to decide on a new draft to post.
8 Once it's done it will be posted and we'll get more
9 comments.

10 MS. STOCK: Any timeframe that you'd be
11 willing to --

12 MR. BERG: I don't have a -- it's kind of
13 in the air. We don't know.

14 MS. STOCK: Is it a question of like
15 three months or a year? I mean, sometime
16 within --

17 MR. BERG: It should be within this
18 calendar year.

19 MS. STOCK: With this -- within this
20 calendar year is the goal. Okay. That's good.

21 MS. BURGEL: I also have another
22 question, Dave.

23 As far as, Christina, you mentioned the
24 meeting for the Elevators for Hoisting Workers.
25 Is that expedited language that -- about the 36

1 feet?

2 MS. SHUPE: It is. This is in, in
3 response to the DAR that was adopted by the
4 Appeals Board. And it will be that technical
5 change that moved the requirement from Section
6 (d) up to Section (a).

7 MS. BURGEL: Okay. Thank you.

8 CHAIR THOMAS: Any other questions? All
9 right. So we are in recess to go into closed
10 session, and we will reconvene after that. Thank
11 you.

12 (Closed session began at 11:24 a.m.)

13 (Closed session ended at 2:10 p.m.)

14 CHAIR THOMAS: Alright, we're back in
15 session. The Board took no action during Closed
16 Session. Anything else?

17 MS. SHUPE: No.

18 CHAIR THOMAS: The next Standards Board
19 regular meeting and hearing is scheduled for
20 March 19, 2020 in Pasadena. There being no
21 further business to attend to, this business
22 meeting is adjourned.

23 (The Board Meeting concluded at 2:12 p.m.)

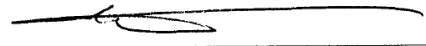
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IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, 2020.




PETER PETTY
CER**D-493
Notary Public

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