

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS****TITLE 8: New Section 3345  
of the General Industry Safety Orders  
Hotel Housekeeping Musculoskeletal Injury Prevention****MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM  
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons (ISOR).

**Summary and Response to Written and Oral Comments:****I. Written Comments Received During the 45-Day Public Comment Period:**

1. **Lynn Mohrfeld, California Hotel and Lodging Association (CHLA), and Justin Epner, Gibson, Dunn & Crutcher LLP on behalf of CHLA, by letters dated May 16, 2017**

Comment #CHLA1: On May 17, 2012, the Board rejected this union-driven attempt to initiate a hotel housekeeping rule. The Board determined that the proposed rule's backers "did not establish the necessity of the proposed rulemaking," that hotel housekeeping injuries "are already addressed by . . . sections 3203 and 5110," and that "[a] bad precedent would be set by carving out . . . hotel housekeeping." The Board must do again what it did once before, almost exactly five years ago: reject this proposed rule.

Response: Although on May 17, 2012, the Occupational Safety and Health Standards Board (Board) did reject recommendations of the Division of Occupational Safety and Health (Division or Cal/OSHA) and its own staff to send the matter to a Division-convened advisory committee, the Board later reconsidered the recommendations and on June 21, 2012, granted Petition 526 to the extent that the Division was requested to convene a representative advisory committee to determine whether a rulemaking action should be initiated and what control measures may be necessary to address musculoskeletal injury hazards to hotel housekeeping employees.

The following quotes: "did not establish the necessity of the proposed rulemaking," that hotel housekeeping injures "are already addressed by . . . sections 3203 and 5110," and that "[a] bad precedent would be set by carving out . . . hotel housekeeping" are not contained in any declaration, decision, document or oral statement adopted by the Board and it does not represent any adopted Board determination from May 12, 2012, or other date. The language comes from an un-adopted draft that the Board considered, but rejected.

Comment #CHLA2: A rule that addresses only hotel housekeepers is irreconcilable with the existing regulations and would invite regulatory balkanization through a patchwork of job- and workplace-specific regulations. Existing regulations – Title 8 sections 5110 and 3203 – protect all workers in California’s workplaces by mandating, respectively, (1) procedures to abate individual workplaces’ known injury concerns related to the musculoskeletal activities such as those conducted by housekeepers and (2) forward-looking inquiry into potential hazards. Section 3345 blurs the line between the abatement of actual injuries mandated by section 5110 and the proactive preventative hazard analyses mandated by section 3203.

Response: There are many existing regulations that address specific hazards in specific industries, similar to this proposal. The Board believes the proposal is not irreconcilable with other Title 8 regulations nor with Title 8 as a whole. Examples of existing regulations specific to a hazard in one industry include, but are not limited to the following sections: 3342 “Workplace Violence in Health Care;” 5120 “Health Care Worker Back and Musculoskeletal Injury Prevention;” 5189.1 “Process Safety Management for Petroleum Refineries;” 3456 “Hand-Held Tools” (in agricultural operations); 3426 “Hand Tools” (in tree trimming operations); 3289 “Tools” (window cleaning); 1699 “Hand Tools” (in construction), 6263 “Hand Tools” (in logging operations); 6607 “Handling Heavy Tools at Drilling Wells;” 6646 “Miscellaneous Tools and Equipment” (petroleum drilling and production); 8384 “Tools and Equipment” (shipyards); and 8609 “Other Tools and Personal Protective Equipment” (telecommunications).

Section 5110 “Repetitive Motion Injuries” can be applied to the work conducted by housekeeping employees. However, section 5110 is based on responding to injuries that have already occurred rather than providing methods of injury prevention and addresses only repetitive motion injuries and not other musculoskeletal injuries such as strains or sprains that are a result of acute trauma, or caused by falls, slips or trips.

Section 3203 “Injury and Illness Prevention Program” (IIPP) is intended to prevent injuries and illnesses in all industries, including the accommodation industry. However, it does not specifically address the prevention of musculoskeletal injuries, nor does it require employee involvement in updating the employer’s IIPP and in evaluating and correcting hazards.

Hotel housekeepers in California face a high number of injuries and illnesses caused by acute injury, repetitive or cumulative trauma. The issue brief entitled “Workplace Injuries in Hotel Housekeeping in California” contains Workers’ Compensation Information System (WCIS) data from 2010 to 2014 (please see document number four in the documents relied upon) that show a steady increase in the number of worker injury claims, from 4,990 in 2010 to 6,116 in 2014, when focused specifically on housekeepers within the accommodation industry. The existing regulations have not been effective in reducing these injuries.

Furthermore, the injury data shows that the industry has not been able to identify and voluntarily implement effective strategies to reduce the incidence of injuries. When a specific industry has a significantly higher rate of injuries or illnesses, it is not unusual for a health and safety regulation to be promulgated to protect against specific hazards or protect a specific category of workers. Such

standards are intended to address the hazards that are posed by the unique working conditions in a given industry. Therefore, the Board believes the rulemaking proposal is necessary and has developed a flexible performance-based regulation through the advisory process.

Proposed section 3345 would address hotel housekeepers' high injury rates similar to how existing section 5120 addresses the hospital care workers' previously high rate of back and musculoskeletal injuries. Both section 5120 and proposed section 3345 are consistent with each other and section 3203.

Comment #CHLA3: Clarifying proposed section 3345 with linguistic fixes would not solve its intrinsic flaw: a special rule for hotel housekeepers and not for all hotel workers and not for all who perform housekeeping tasks and would result in particular rules for all manner of jobs in all manner or workplaces. Enacting this proposed rule would invite similar rules for others who perform housekeeping tasks, e.g., in hospitals, nursing homes, rehabilitation centers, and assisted-living facilities and would invite similar rules for all workplaces and all jobs that involve any form of manual labor, which would undermine the existing regulatory framework.

Response: The proposed rulemaking is based on the high rate of injuries suffered by hotel housekeepers and existing regulations have not been sufficient to reduce these injury rates. Through the advisory process, a proposed regulation that is performance based and reasonable has been drafted. Please also see the response to Comment #CHLA2.

Comment #CHLA4: The Occupational Safety and Health Standards Board "must determine that no reasonable alternative would be as effective and less burdensome to affected private persons than the proposed action" (Government Code section 11346.5(a)(13)). The Board cannot meet this mandate. Sections 5110 and 3203 are sufficient to protect hotel housekeepers from known injury risks and to identify and abate potential injury risks.

Response: The Board does not believe that the existing regulations, sections 3203 and 5110, are sufficient or a reasonable alternative to the proposal to reduce the high rate of acute, repetitive and cumulative injuries suffered by housekeepers. Please see the responses to Comments #CHLA2 and CHLA5 regarding sections 3203 and 5110.

Comment #CHLA5: Sections 5110 and 3203 impose methods that are plainly superior to those proposed by section 3345. Section 5110(a)(3) mandates that California employers, including hotels, address injuries "that a licensed physician objectively identified and diagnosed." By contrast, the proposed new rule (section 3345(c)(5)(C)) mandates "[i]nput [from] the injured housekeeper, the housekeeper's union representative, and the housekeeper's supervisor as to [the causes of] the injury." The proposed rule would harm housekeepers' wellbeing by replacing expert medical analysis with subjective, anecdotal, and union-driven "input."

Response: The Board believes that the proposal will be more specific and comprehensive than sections 5110 and 3203 and thus better able to reduce musculoskeletal injuries in housekeepers in the accommodation industry.

Section 5110 has not been effective in preventing housekeeper musculoskeletal injuries. Under section 5110, an employer is not required to take any measures to protect employees until after the occurrence of two or more repetitive motion injuries (RMIs) resulting from an identical work activity are objectively diagnosed by a licensed physician. The physician has no role in evaluating or correcting hazards in section 5110. The “diagnosis by a licensed physician” portion of section 5110 is only used to determine when the regulation applies. Section 5110 also does not apply to non-repetitive musculoskeletal injuries. However, proposed section 3345 is preventative as its provisions apply prior to the occurrence of both repetitive and non-repetitive musculoskeletal injuries. Section 5110 shifts the burden to employees to trigger the applicability of the regulation by reporting their injuries (section 5110(a)(4)), whereas section 3345 has the pro-active requirement that employers develop a musculoskeletal injury prevention program (MIPP).

Section 3203 is nonspecific and does not provide for methods or procedures to reduce the high rate of housekeeper musculoskeletal injuries in the accommodation industry. Whereas section 3345 provides performance-based requirements to employers specifically to reduce such housekeeper injuries.

The proposal requires employers to have a procedure to investigate housekeepers’ musculoskeletal injuries. Proposed section 3345(c)(5)(C) requires such procedures to include input from the injured housekeeper, the housekeeper’s union representative, and the housekeeper’s supervisor as to whether any control measure, procedure, or tool would have prevented the injury (not diagnose it). Worker involvement is critical to effectively prevent musculoskeletal injuries to housekeepers, as they are knowledgeable on the details of the work tasks and work practices. The observations and experiences of the housekeepers are necessary to help identify all potential solutions or corrective measures. Please also see responses to Comments #CHLA2, CHLA3 and CHLA4.

Comment #CHLA6: If promulgated, section 3345 would undermine sections 3203 and 5110 through needless repetition and overlap; direct contradiction of the existing rule, presupposing a relationship between certain actions and injuries, and undermining collective bargaining.

Response: Proposed section 3345 does not prevent, undermine, stop or interfere with an employer or union from entering into a collective bargaining agreement. Please see the responses to Comments #CHLA2 through CHLA5 with regards to sections 3203 and 5110.

Comment #CHLA7: The proposed rule is redundant with existing sections 3203, 5110 and 3273.

Response: The Board does not believe that section 3345 is redundant with existing sections 3203, 5110, and 3273. In the Division’s enforcement experience, these existing regulations are not sufficient to address the acute, repetitive, and cumulative injuries suffered by housekeepers. Please see the responses to Comments #CHLA2 and CHLA3 on the need for proposed section 3345.

Regarding sections 3203 and 5110, please see responses to Comments #CHLA2 through CHLA5. Regarding section 3273, please see the response to Comment #CHLA10.

Comment #CHLA8: Everything that section 3345 hopes to accomplish is already mandated by section 3203. Whereas section 3203 mandates “investigat[ion of] occupational injury,” the proposed rule would mandate “investigat[ion of] musculoskeletal injuries,” which is merely a subset of what is already prescribed. The first seven subsections of existing section 3203 are nearly identical to proposed section 3345: they both mandate (i) identification of responsible authorities; (ii) systems to ensure compliance; (iii) communication systems; (iv) hazard identification procedures; (v) injury investigation procedures; (vi) methods for correcting identified hazards; (vii) recordkeeping; and (viii) periodic employee training.

Response: Although the proposal is consistent with section 3203 as both contain similar subsection titles, the proposal contains specific procedures to reduce musculoskeletal injuries in housekeeping operations in the accommodation industry, which are not addressed by section 3203. Please also see responses to Comments #CHLA2 and CHLA5.

Comment #CHLA9: Section 5110 and the proposed rule both seek to prevent “musculoskeletal injuries.” Both define that term the same way. See sections 5120(b) and 3345(b). Section 5110 mandates evaluation of “work activities . . . which have caused” musculoskeletal injuries. Similarly, section 3345 would mandate an assessment of ten particular types of work activities or working conditions “with respect to potential causes of musculoskeletal injuries to housekeepers.” Therefore, the proposed rule’s overlap with Section 5110—and hence its redundancy—is apparent. Indeed, at least one citation was issued in 2012 against a CH&LA member under section 5110 for precisely the same conduct covered under the proposed hotel housekeeping rule.

Response: Please see responses to Comments #CHLA2 through CHLA5. The Board agrees that the definition of musculoskeletal injury in existing section 5120 “Health Care Worker Back and Musculoskeletal Injury Prevention” is consistent with the definition of musculoskeletal injury in proposed section 3345, but does not believe that such consistency creates redundancy or overlap with section 5110 “Repetitive Motion Injuries.”

Comment #CHLA10: Section 3273 already complements section 5110 by mandating certain procedures to prevent “slips, trips and falls,” and “falling and striking objects” - the very same things that the proposed rule purports to guard against. Section 3273 already mandates that employers keep work surfaces “free of dangerous projections or obstructions, maintained in good repair, and reasonably free of oil, grease, or water.” Moreover, the rule even contemplates workplaces where damp surfaces are common as part of the job: “Where the type of operation necessitates working on slippery floors, such surfaces shall be protected against slipping by using mats, grates, cleats, or other methods which provide equivalent protection.” Subsection 3273(e) also ensures that workplaces feature sufficient “[p]rotection from falling objects.” Accordingly, the proposed regulation’s attempts to prevent “slips, trips and falls” and “falling and striking objects” are redundant. A prevention program for wet floors would be extraneous; all that is required is adequate enforcement of the existing regulations.

Response: Section 3273 requires certain general conditions be maintained and certain equipment be provided to prevent slips and falls, but does not require the development of procedures, processes, or the use of safe work practices. Thus, the Board finds no redundancy.

Proposed section 3345 will not be limited to only providing appropriate equipment when needed, but will ensure that processes, practices, procedures, or other corrective measures be considered, to effectively reduce housekeeper musculoskeletal injuries. Please also see response to Comment #CHLA7 on the Division's enforcement experience and concerns about redundancy with section 5110.

Comment #CHLA11: The proposed rule contradicts and conflicts with existing Title 8 regulations sections 3203 and 5110. The proposed section 3345 aims to add a new "part [to] the Injury and Illness Prevention Program (IIPP) required by section 3203," namely a "musculoskeletal injury prevention program (MIPP) that addresses hazards specific to housekeeping." The proposal overlaps and contradicts the existing rule.

Response: The Board has found no conflicts or contradictions between the proposal and existing sections 3203 or 5110. The Board believes the proposal is consistent with section 3203, but does not overlap the existing regulation. Please see responses to Comments #CHLA2 through CHLA5.

Comment #CHLA12: Sections 3203 and 5110 feature flexible performance standards, but the proposed rule forces "required tools" upon housekeepers. Both section 3203 and the proposed rule impose systems to ensure compliance, but the proposed rule would mandate that hotel housekeepers use specific "tools or equipment deemed appropriate for each housekeeping task." Housekeepers who do not use the "required tools" must be "investigate[d]," and are subject to "disciplinary actions."

Response: The proposal does not mandate that employers require a specific tool, group of tools, or certain equipment for a task. Under the proposal, the employer may provide multiple methods, procedures, and/or tools for accomplishing tasks safely as determined by the employer's evaluation. The proposal is a performance based regulation and does not contain prescriptive requirements for tools or methods. The proposal does not state that housekeepers who do not use required tools must be investigated. Please also see the response to Comment #CHLA14 regarding disciplinary action.

Comment #CHLA13: This mandatory one-size-fits-all approach contradicts the existing rules, which allow for a range of "safe and healthy work practices," and multiple "measures" that satisfy an injury-minimization plan. The existing rules permit any work practice as long as it is safe. By contrast, the proposed rule requires employees to "follow the employer's safe workplace housecleaning practices." Specifically, the proposed rule mandates that employers implement "appropriate equipment or other corrective measures" (such as "effective tools [and] work practices"). Housekeepers who do not adhere to the specific processes and mandates are subject to discipline. Section 3203 presumes that a practice is safe unless it is shown to cause injury. But the proposed rule presumes that a practice is unsafe unless it is specifically permitted by the employer. The two are in direct conflict.

Response: The employer is not required by the proposal to establish specific prescriptive work practices for employees. Please also see the response to Comment #CHLA12. The proposal allows employers to establish any variety of work practices that are safe for employees, which is consistent with section 3203. Please also see the responses to Comments #CHLA2 through CHLA5 and CHLA14.

Comment #CHLA14: The contradiction between section 3203 and the proposal is dangerous for at least three reasons. First, when housekeepers face punishment for deviating from the one-size-fits-all practices imposed by their employer, they are less likely to report injury. Second, the proposed rule presumes that a uniformly safe practice exists in the first place; forcing healthy housekeepers to alter their routines after years of performing certain tasks in certain ways is more likely to cause complaints, discomfort, and reports of injury. Finally, a legal mandate to investigate and discipline housekeepers who deviate from their employer's scripted cleaning methods is certain to cause labor strife. Instituting mechanisms that put employees and employers at odds with each other is not conducive to the collaborative problem solving for which Section 3345 strives. Accordingly, guidance- rather than regulatory mandates- is more likely to accomplish those goals.

Response: The Board does not believe that section 3345 contradicts Section 3203 or causes a labor strife. Please see the responses to Comments #CHLA2 through CHLA5. The proposal does not require "one-size fits-all practices." The proposal does not restrict employers from using various methods or procedures for performing tasks safely, does not assume there is a single, uniform scripted safe work practice, and does not force alteration of existing safe practices used by housekeepers. The proposal also does not require the employer to establish highly prescriptive work practices. Please also see responses to Comments #CHLA12 and CHLA13.

The Board believes that the proposal will not deter housekeepers from reporting injuries as a result of this performance based regulation. On the contrary, section 3345(c)(3) of the proposal requires employers to include in their MIPP, "A system for communicating with housekeepers... including provisions designed to encourage housekeepers to inform the employer of hazards at the worksite, and injuries or symptoms that may be related to such hazards without fear of reprisal;"

Proposed section 3345 will require employers to conduct a worksite evaluation to assess housekeeping tasks with respect to potential causes of musculoskeletal injuries. Employers (with employee input), given their knowledge and familiarity with their particular facility, job operations and cleaning procedures, are the best resource to identify a variety of safe workplace housecleaning practices and select appropriate housekeeping tools or equipment (when needed) for housekeeping tasks. Additionally, section 3345 fosters employer and employee collaboration. Housekeepers and employers will work together to identify and evaluate hazards along with appropriate corrective measures.

To mitigate the risk factors and minimize the injuries associated with tasks specifically related to hotel housekeeping jobs, the employer must have a system for ensuring that supervisors and housekeepers comply with the MIPP. Proposed section 3345(c)(2) provides flexibility, and notes

that substantial compliance with this provision includes recognition of employees who follow the employer's safe workplace housekeeping practices and use the appropriate tools and equipment, training and retraining programs, disciplinary actions or other means that ensures employee compliance. These requirements are consistent with existing section 3203.

With regards to the recommendation to use guidelines, rather than a regulatory mandate, the injury data shows that the industry has not been able to identify and voluntarily implement effective strategies to reduce musculoskeletal injuries. Please see the response to Comment #CHLA2. Additionally, given its voluntary nature, guidelines create an unfair disadvantage to employers that are willing to commit the necessary time and resources to prevent musculoskeletal injuries and who must compete against employers that disregard or ignore voluntary guidelines. Thus, the Board believes it is necessary to go forward with this rulemaking.

Comment #CHLA15: The proposed regulation conflicts with section 3203 and the existence of a special rule for a particular type of work is irreconcilable with existing regulations. The purpose of section 3203 is to identify hazards. However, the proposed rule purports to have concluded that injuries are a foregone conclusion – an inexorable result of hotel housekeeping work (not hotel work, and not housekeeping work, but hotel housekeeping work). An injury prevention rule that applies to one job in one workplace necessarily presumes that that job in that setting is uniquely dangerous. By listing routine housekeeping motions and actions alongside “slips, trips, and falls,” and “striking objects,” presumes, without justification, that common tasks performed by all of us, from mothers and fathers to mail carriers, like “lifting” and “pushing and pulling” cause injury.

Response: The Board does not believe that the proposal conflicts with section 3203 and the Board does not believe that a rule for a particular type of work is irreconcilable with existing regulations. Please see the responses to Comments #CHLA2 through CHLA5.

Regarding the comment that “...the proposed rule purports to have concluded that injuries are a foregone conclusion...” the WCIS data demonstrates that housekeepers in the accommodation industry are experiencing a large number of injuries and the goal of the proposal is to reduce the existing injury rate using performance based requirements. Please see the response to Comment #CHLA2.

The Board recognizes that housekeeper injuries are sometimes the result of common motions and actions, but notes that there are additional variables that may affect housekeeping employees more than some other occupations such as, but not limited to, the following: prolonged or awkward static postures; excessive exertion; extreme reaches and repetitive reaches above shoulder height; lifting or forceful whole body or hand exertions; excessive work-rate; and inadequate recovery time between tasks.

Comment #CHLA16: There is no basis for singling out a particular type of employer or a particular job description. Even if there were, there are appropriate ways to address individual jobs, such as the job-specific ergonomic advice published by Federal OSHA. The presumption that housekeeping tasks are necessarily dangerous when performed in hotels is a problem.

Response: With regarding to establishing a regulation that applies only to housekeeping work in the accommodation industry, please see the responses to Comments #CHLA2 and CHLA3. With response to using guidelines or advice in lieu of a regulation, please see the response to Comment #CHLA14.

Comment #CHLA17: It defies common sense that tasks are dangerous in hotels but not in other workplaces. The study of housekeeping tasks, “Evaluation of Musculoskeletal Disorder Risk in Hotel Housekeeping Jobs,” by Dr. Steven Wiker disproves that housekeeping tasks are inherently dangerous. Dr. Wiker’s study concluded that exposures were sufficiently low that the job was compliant with NIOSH guidelines for prevention of occupational musculoskeletal injuries and disorders. The Board staff wrote they did not see mention of the “CHLA NIOSH lifting equation study” that countered all of the testimony and that it was important to “mention the NIOSH study that the industry had conducted which did not show excess risk for [musculoskeletal injury] in housekeeping work, using the NIOSH lifting equation.”

Response: Please see the responses to Comments #CHLA2 and CHLA3 regarding the scope of the proposal.

The unpublished study of Dr. Wiker, which ignored injury data, was neither conducted with, nor approved by NIOSH. Several stakeholders (including health professionals) in the advisory process disputed Dr. Wiker’s findings (see pages 8, 9, 11, 12, 14, 27, 28 of the March 19, 2013, advisory meeting minutes – document six from the documents relied upon in the ISOR).

The Wiker study consisted of a controlled, laboratory-type simulation that took place in a hotel suite in Washington State. Additionally, the simulation did not involve actual housekeeping work, and did not accurately depict the complex and full range of motions involved in hotel housekeeping work. The selected hotel room and conditions, equipment used, and the speed and duration of tasks did not accurately represent hotel housekeeping work in California.

There are numerous factors that will impact musculoskeletal risk for housekeeping workers including but not limited to work rate, total working hours, frequency and duration of tasks, frequency and duration of rest breaks, degree of filth (especially in bathtubs, showers and toilets), clearance around furniture, availability of appropriate equipment used for cleaning, the condition of the equipment used for cleaning, type and condition of flooring, weight of mattresses and furniture lifted or moved, and additional non-housekeeping work tasks. These important factors were either not considered or not well addressed in the Wiker study. The NIOSH lifting equation referenced in the Wiker study is not pertinent to musculoskeletal injuries resulting from a wide array of non-lifting work tasks in hotel housekeeping. Ultimately, the Wiker study results are not consistent with the actual high number of musculoskeletal injuries to hotel housekeepers.

This proposal addresses the wide range of musculoskeletal injuries suffered by housekeepers and is not solely focused on the injuries caused by lifting. The Board staff’s concerns regarding omission of the CHLA study were resolved prior to the commencement of formal rulemaking. Ultimately, the

Board did not rely on the Wiker study because it is not peer reviewed, not published and contains the deficiencies discussed in the previous paragraph. Other peer reviewed, published studies have shown hotel housekeeping workers have high injury rates (please see document one in the documents relied upon in the ISOR).

Comment #CHLA18: The proposed rule clashes with the very premise of the existing regulation, which is to “find and fix” risk factors. The proposal presumes that the risk factors have already been “found.” The proposed rule purports to be “based on section 3203,” but this fundamental difference conflicts with the heart of section 3203’s focus on objective inquiry.

Response: The Board does not believe that the proposal clashes or conflicts with section 3203. Please see the responses to Comments #CHLA2 through CHLA5.

Proposed section 3345 does not presume the existence of hazards, rather it requires that the employer assess each housekeeping task with respect to potential causes of musculoskeletal injuries to housekeepers. Such potential risks were identified by the Board in the documents relied upon and explained in the ISOR.

Comment #CHLA19: Section 3345 is arbitrary in its application because privately owned “lodging establishments” with “sleeping room accommodations” would be bound by the rule, but government-owned or -operated establishments such as prisons and jails would not be bound by it, nor would any type of inpatient medical facility, whether privately or publicly owned. Neither the proposed rule nor the documents that explain it offer any reason why the same housekeeping tasks are dangerous in hotels but not in other workplaces. By contrast, California’s Violence Prevention in Health Care rule, section 3342, applies to both private and state health facilities and addresses a problem that is unique to the health care industry.

Response: The Board does not believe that the proposal is arbitrary, as the high number of injuries among housekeepers in the accommodation industry necessitates going forward with this rulemaking. Please also see the response to Comment #CHLA2.

The proposal is also not arbitrary in its application because it covers all lodging establishments (defined as establishments that contain sleeping room accommodations that are rented or otherwise provided to the public, such as hotels, motels, resorts, and bed and breakfast inns) in the accommodation industry without regards to the type of ownership of the lodging establishment.

Comment #CHLA20: In addition to presuming to have “found” risk factors inherent in hotel housekeeping activities, the proposed rule’s “fix” is inherently and fatally flawed. Section 5110 mandates expert medical opinions, whereas the proposed rule mandates the subjective input of laypersons. Section 5110 imposes minimal evidentiary standards: if just two employees report work-related repetitive motion injuries (RMIs) at any point in a 12-month window, the injury minimization program becomes mandatory. Instead of “a licensed physician [who] objectively identified and diagnosed” an injury, the new “[p]rocedures to investigate musculoskeletal injuries”

must include “[i]nput of the injured housekeeper, the housekeeper’s union representative, and the housekeeper’s supervisor” about what caused the injury.

Response: Please see responses to Comments #CHLA2 through CHLA5.

Comment #CHLA21: The proposed rule’s methods to abate the injury risk are also flawed. Whereas section 5110(c) contains a safe-harbor provision to prevent employers from incurring “additional unreasonable costs,” the new section 3345 would eviscerate that and expose employers to uncapped liability. Separately, just as the proposed rule disposes of expert opinions in diagnosing injuries, it disposes of expert opinions in abating them, as well. Whereas section 5110(b)(2) mandates “engineering controls,” the proposed section 3345 requires “involving housekeepers and their union representatives” in determining what “corrective measures” to implement. The proposed rule even contradicts guidance from federal OSHA. OSHA suggests “[a]n ergonomic job hazard analysis . . . [that] focuses on the relationship between the worker, the task, the tools, and the work environment.” By contrast, the proposed rule mandates “a worksite evaluation” that “involve[es] housekeepers and their union representative in designing and conducting” it. Housekeepers and union representatives are not qualified to assess or implement “engineering controls” or the complex relationships between the human body, its movements, and its environment. As the Wiker study concluded, “[a]ny changes made to housekeeping tasks, tools, or paradigms . . . should be evaluated using standard industrial engineering and ergonomics methods to determine their worthiness before implementation.” Union representatives are not capable of doing so. As the Board staff summarized, the proposed rule “ask[s] most-likely uneducated employees (employee, union rep, and supervisor) to give advice on whether or not an additional measure would have prevented the injury.”

Response: The proposal requires “procedures for identifying and evaluating housekeeping hazards through a worksite evaluation” (Section 3345(c)(4)) to identify injury risks to housekeeping employees. This is consistent with federal OSHA guidance and existing section 3203. There is no contradiction between conducting a worksite evaluation with employee and employee representative input, and the federal OSHA recommendation to “focus on the relationship between the worker, the task, the tools and the work environment.”

Involving employees and their representatives in the worksite evaluation does not serve to dispose of expert opinion or federal OSHA guidelines as there is no prohibition or restriction on using expert opinion or following the guidelines. Employers are free to use expert opinion and follow federal OSHA guidelines if they wish, although, the use of expert opinion and federal OSHA guidelines are not required. The Board notes that given the direct and actual knowledge of their jobs, tasks and workplace, employee input is valuable and effective for problem solving and as such a critical prevention element.

With regard to costs, proposed section 3345 will not require state-of-the-art technology, unreasonable costs, or infeasible control measures. The proposal does not mandate specific hazard-analysis, technologies, tools or equipment, or that a health, safety, or medical professional be hired

to conduct the worksite evaluation. Please also see the responses to Comments #CHLA12 through CHLA14.

Regarding section 5110, please see the responses to Comments #CHLA2 through CHLA5. Regarding the Wiker study, please see the response to Comment #CHLA17.

Comment #CHLA22: Collective bargaining would be undermined by the proposed rule. Just as the proposed rule presumes that routine motions are necessarily injurious, section 3345(c)(4)(E) presumes that there is a particular “work-rate” that is “excessive” for all housekeepers, notwithstanding differences in physical fitness. “Excessive work-rate” is a matter to be decided through collective bargaining. The union is attempting to accomplish through regulatory mechanisms—quotas on the number of rooms that a housekeeper may clean—what it has been unable to accomplish in collective bargaining. However, dressing up a simple matter of collective bargaining as a health and safety regulation proved unavailing: the Board, as it was constituted at that time, was not deceived by this ploy and concluded “quotas or restrictions limiting the amount of work an employee can be assigned . . . are addressed in collective bargaining agreements.”

Response: Proposed section 3345 is performance oriented and requires that the employer conduct a worksite evaluation to identify and assess potential sources of injury. Excessive work rate is one of several known risk factors that poses a risk of injury to housekeepers. As such, it is one of the elements that the employer needs to consider in their worksite evaluation, to assist in the identification of unsafe conditions, work practices, process, or operations. Proposed section 3345 does not prevent or stop an employer or union from entering a collective bargaining agreement, nor does it establish a limit on the amount of work an employee can be assigned.

Comment #CHLA23: Expert medical analysis would be replaced with subjective speculation under the new regulatory regime. Cal/OSHA guidance indicates that IIPPs should involve health professionals at all steps of the process. Yet the proposed rule reflects a preference for individualized information-gathering, assessment, and treatment. One of the three mandatory investigative procedures would be soliciting “[i]nput of the injured housekeeper . . . as to whether any other control measure, procedure, or tool would have prevented the injury.” In other words, the subjective opinions of a single housekeeper could trump the objective views of physicians and ergonomists. In sum, the dissonance between the programmatic requirements of section 3203 and the prescriptive requirements of the MIPP could not be clearer.

Response: The Cal/OSHA guidance document referred by the commenter was based on principles and techniques developed by occupational safety and health professionals. However, the Cal/OSHA guidance document does not indicate that employers should involve health professionals when developing or implementing an IIPP. Equally, section 3203 contains no preference for expert medical input.

The opinion of housekeepers and their representatives does not take priority over the objective views of physicians and ergonomists in proposed section 3345. Please see responses to Comments #CHLA5 and CHLA21.

The proposed section is a non-prescriptive performance based standard consistent with section 3203. Please see responses to Comments #CHLA2 and CHLA5.

Comment CHLA24: Section 3203's preference for expert medical input is somewhat attenuated. One must comb through Cal/OSHA guidance materials to find it. Section 5110's mandate for expert medical input, however, is explicit. A "[p]rogram designed to minimize [repetitive motion injuries (RMI)]" is mandatory only when "a licensed physician objectively identified and diagnosed" injuries, and even then only if there is work-related causation (that is, when the injuries "were predominantly caused (i.e. 50% or more) by" work), among other criteria. For this same reason, as it is with the existing section 3203, the proposed rule is both redundant of and contradictory to the existing section 5110. By presuming the existence of a hazard, the proposed rule would eliminate the determinative medical professional role that section 5110 mandates.

Response: There is no preference for expert medical input in section 3203 or in related guidance materials. Please see response to Comment #CHLA23. With regards to section 5110 and the diagnosis of RMIs by a licensed physician, please see response to Comment #CHLA5.

The Board does not believe that proposed section 3345 is redundant or contradictory to existing sections 3203 or 5110. Please see the responses to Comments #CHLA 2 through CHLA5. Proposed section 3345 is preventive and requires that an employer take action before a musculoskeletal injury occurs and needs to seek the opinion of a physician or other medical professional. Proposed section 3345 does not presume the existence of a hazard, rather it requires that the employer assess each housekeeping task with respect to potential causes of musculoskeletal injuries to housekeepers. Please also see the response to Comment #CHLA18.

Comment #CHLA25: The proposed rule is at odds with common sense. Section 3345 does not comport with everyday layperson common sense in at least two crucial ways. The proposed rule seeks to "control the risk" of injuries that are primarily repetitive motion injuries, for example from "repetitive reaches above shoulder height." Ignoring the inherently progressive nature of these injuries, the proposed rule would mandate three types of investigative assessments of the causes of a housekeeper's injury. The first mandatory procedure is investigating the "tasks being performed at the time of the injury." By definition, there is no "time of the injury" in repetitive motion injuries.

Response: Proposed section 3345 is not primarily for, nor specific to repetitive motion injuries. The proposal protects employees equally against acute, cumulative trauma, and repetitive motion injuries.

The proposal also does not require employers to identify the specific time when an injury occurred. The proposal requires employers to identify tasks being performed when an employee recognizes an injury. For all injuries, including those that result from repetitive motions or cumulative trauma, employers are required to have procedures to investigate such injuries under proposed section 3345. This requirement is consistent with section 3203 that requires an investigation of all occupational injuries and illnesses, including repetitive motion injuries and cumulative trauma injuries, and

sections 14300 through 14300.48 that require employers to record certain injuries and illnesses including repetitive motion injuries and cumulative trauma injuries.

Also, please note that repetitive and cumulative musculoskeletal injuries do have a “time of injury,” even though the injury does not occur at one specific instance, but rather the injury occurs over a period of time that an employee could describe to his or her employer, if such description is helpful to understanding of the cause of the injury or prevention of future injuries. Many occupational injuries, illnesses and diseases occur due to prolonged exposures, but employers are required to investigate such cases and take measures to prevent reoccurrence.

Comment #CHLA26: Repetitive motion injuries (or “cumulative trauma,” section 3345(b)) are at the core of the proposed rule. But repetitive motion injuries cannot occur without repetitive motion. Unlike, for example, a worker in a poultry processing plant who stands in one place and repeats the same chopping motion ad nauseam, hotel housekeepers use a variety of muscle groups, are not stationary, use multiple tools, work on multiple work surfaces, and walk between hotel rooms. In many ways this is the opposite of “repetitive motion.” “Housekeepers perform a variety of different tasks that are short in duration (most less than 2 minutes) before moving onto different activity, and activities are peppered with . . . short breaks between exertions that allow adequate perfusion of contracting tissues. The breaks permit adequate supply of nutrients and washout of metabolic end-products from working muscle.”

Response: Regarding repetitive motion injuries being the core of the proposed rule, please see the response to Comment #CHLA25. Based on testimony from numerous housekeepers during the advisory committee meetings and a review of the injury data, the Board believes that housekeeping employees in lodging establishments perform some repetitive motion tasks and that both repetitive tasks and non-repetitive tasks are causing injury. Cumulative injuries can result over time from movement and forces that are not identical.

The Board believes that the assertion that breaks between housekeeping tasks are sufficient to prevent injury is not correct. The Wiker study is not representative of actual workplace experience of California housekeeping employees in lodging establishments as the Wiker study consisted of a short duration simulations of some housekeeping tasks. Please see the response to Comment #CHLA17.

The injury rates of housekeeping employees in lodging establishments and statements of the workers themselves provide a more representative assessment of actual workplace experiences of California housekeeping employees. Please see the response to Comment #CHLA2 and the following documents relied upon in the ISOR: “Occupational Safety and Health Standards Board Petition No. 526, submitted by Kurt Peterson and Pamela Vossen, on behalf of UNITE HERE (Jan. 23, 2012)” (document number one in the list of documents relied upon), “Issue Brief: Workplace Injuries in Hotel Housekeeping in California prepared by the DIR - Office of the Director, Research Unit, May 13, 2016” (document number four in the list of documents relied upon), and “California Workers Compensation Information System (WCIS) Preliminary Data. Occupational Hazards Faced by Housekeepers within the Hotel and Hospitality Industry. March 19,

2013” (document number eighteen in the list of documents relied upon). The injury rates confirm worker statements that housekeeping employees are experiencing excessive numbers of injuries from the physical tasks of their job.

The Board agrees that housekeepers perform a variety of housecleaning tasks and use a diversity of muscle groups, but does not agree with CHLA’s statement that these injuries cannot occur or that the proposal is at odds with common sense. The high rate of injuries suffered by housekeepers necessitates the Board move forward with this performance-based proposal. Likewise, the Board is confident its efforts to address the reduction of occurrence of musculoskeletal injuries among housekeepers are appropriate.

Comment #CHLA27: The economic implications of the proposed rule weigh against its enactment. Section 3345 would impose unpredictable yet significant costs on California’s hotel and lodging industry. The proposed new rule would result in substantial ongoing costs, as shown in the following table. Please note that these estimates do not include any equipment or changes to operations, nor do they address the liability to employers for implementing changes without any scientific evidence to demonstrate the existence of the alleged hazards or the effectiveness of mandated interventions.

The ISOR guesses the proposed rule would cause a “modest or conservative reduction of 30% of the occurrences of injury,” which would result in “annual savings of \$8.4 million” for hotels. It also calculates \$3.4 million in annual costs imposed on the industry. These estimates are defective. First, like companies in all industries, hotels seek financial profitability. Thus, if it were true that the industry stood to gain \$5 million per year – that it could spend \$3.4 million in order to save \$8.4 million each year – then the industry would obviously already be doing what section 3345 seeks to mandate. No rational for-profit enterprise would do otherwise. Relatedly, the estimate of a “30% reduction” in injuries is pure guesswork and would represent a dramatic decrease. Yet that estimate is the key variable in the economic impact analysis.

The following costs are merely an introduction to the more concerning factor, which is that the record simply ignores CH&LA’s economic analysis.

Table 1 Comment CHLA#27 Estimated Costs

<b>Cal/OSHA Housekeeping in the Hotel and Hospitality Industry Proposed Rule § 3345 Economic Impact Analysis (Source: Smith Travel Research, Wage Watch (2012))</b>			
<b>Proposed Standard</b>	<b>Costs Per Segment</b>		<b>Total Cost</b>
	<b>Full Service</b>	<b>Limited</b>	
1. Job Hazard Analysis	\$2.5 mil	\$6.8 mil	<b>\$9.3 mil</b>

2. Musculoskeletal Injury & Illness	\$425,000	\$659,000	<b>\$1.1 mil</b>
3. Housekeeper Training	\$3.25 mil	\$3.16 mil	<b>\$1.9 mil</b>
4. Monitoring & Evaluation	\$1.7 mil	\$2.6 mil	<b>\$4.3 mil</b>
5. Recordkeeping	\$212,500	\$329,700	<b>\$542,200</b>
<b>Total Costs</b>			<b>\$21.6 mil</b>
<b>5 Year Total Cost</b>			<b>\$108.2 Million</b>

Row 1. Costs are estimated at between \$2,000 - \$5,000 per property to hire a professional qualified to evaluate Musculoskeletal Disorders (MSD) hazards. For estimation purposes, \$2,000 per property was utilized.

Row 2. Estimations are for eight hours to complete such a plan. Cost estimates are for a Human Resources Manager at a full service property or the General Manager at a limited service property. Formula: 8 hours x \$42.80 (HR hourly wage) = \$342.40; 8 hours x \$24.20 (GM hourly wage) = \$193.60.

Row 3. It is estimated there would be four housekeepers and the General Manager involved in training with a total meeting time of four hours per year. Formula:

-Limited Service: (1 housekeeper per eight rooms x \$10.40 average salary per hour x 8 hours) + (1 GM x \$24.20 average salary per hour limited service hotel x 8 hours = \$193.60);

-Full Service: (1 housekeeper per eight rooms X \$10.40 salary per hour x 8 hours) + (1 GM x \$73.55 average salary per hour full service hotel x 8 hours = \$588.40)

Row 4. It is estimated this will take the Human Resources Manager at a full service property or the General Manager at a limited service property four days per year (32 hours).

Row 5. It is estimated this will take the Human Resources Manager at a full service property or the General Manager at a limited service property four hours per year. Formula: 4 hours x \$42.80 (HR hourly wage full service) = \$171.20 4 hours x \$24.20(GM hourly wage limited service) = \$96.80.

Response: The proposal will be the first regulatory effort to reduce musculoskeletal injuries in the accommodation industry and as a result, the Board believes that a good-faith implementation of the proposal will significantly reduce musculoskeletal injuries as described in the ISOR. Please see the responses to Comments #CHLA2 through CHLA5 on why existing regulations have not been effective in preventing musculoskeletal injuries. Please see the response to Comment #CHLA14 on why guidelines are not effective in preventing musculoskeletal injuries.

The Board did not ignore CHLA's economic analysis. CHLA's estimate calculated for reviewing and updating a MIPP (row 2 from the table provided in Comment #CHLA27) was accepted and utilized. However, the cost in row 1 from table 1 in Comment #CHLA27, entitled "job hazard analysis" does not exist in the proposed regulation. Proposed section 3345 does not require lodging

establishments to hire a professional to evaluate musculoskeletal disorder hazards or perform a job hazard analysis. Accordingly, cost estimates for row 1 from table 1 provided in Comment #CHLA27 were not utilized.

The Board estimated costs for the proposal as follows (see table 2 below for summary):

**Establish MIPP:** the Board estimates for the cost to establish an MIPP (row 2 from table 1 in Comment #CHLA27) are the same as the CHLA estimate (\$1.1 million). The cost is shown below in row 1 of table 2 (total statewide cost of proposal as estimated by the Board).

**Worksite evaluations and MIPP review:** Although the proposal does not require a job hazard analysis, the proposal does require employers to conduct annual worksite evaluations and an annual review of their MIPP. The Board estimates it would take a maximum of 4 hours for establishments annually to conduct worksite evaluations and a program review/update as required by the proposal. The cost would be \$100 per establishment and a total statewide cost of \$550,000 using the same hourly wages as provided by CHLA for the cost of establishing the MIPP (row 2 of the table in Comment #CHLA27). In addition, the proposal requires employers to involve housekeeping employees in the worksite evaluation and program review. The proposal does not mandate a specific number or percentage of employees to participate in the evaluation. The proposal only requires that employees be allowed to participate. For purposes of the cost estimates, the Board assumed up to 50 percent of housekeeping employees will participate, although the Board notes this assumption likely overestimates the actual number of employees who will participate. The Board estimates that employee involvement would take a maximum of 2 hours per housekeeping employee. The cost of 2 hours for 50 percent of all housekeepers (using the same hourly wages as provided by CHLA) is approximately \$700,000. The total annual statewide cost for the worksite evaluations and annual MIPP review/update including employee participation is calculated at approximately \$1.25 million. Please see row 2 of the estimated costs by the Board in table 2 below. This is lower than the \$4.3 million by CHLA (row 4 of table 1 in Comment #CHLA27) because CHLA estimates employers will need 32 hours per year per establishment to conduct evaluations and program reviews. The Board believes this is an overestimate.

**Training:** the Board estimates the training requirements of the proposal will take up to 2 hours per year for each housekeeping employee and an establishment manager or supervisor to provide the training for an estimated total cost for all lodging establishments in California of approximately \$1.6 million annually. This is slightly lower than the CHLA estimate of \$1.9 million annually for training.

**Recordkeeping:** the Board estimates an annual cost of \$550,000 for recordkeeping, which is approximately the same as the CHLA estimate. This may be an overestimate of recordkeeping costs as the proposal requires records be kept in accordance with existing regulations (Sections 3203, 3204 and 14300 – 14300.48) and adds no new requirements for retaining records.

The costs as estimated by the Board are shown in table 2 below. The costs for both the worksite evaluation and program review are combined in row 2.

<b>Table 2: Total Statewide Cost of Proposal as Estimated by the Board</b>		
<u>Requirement</u>	<u>First Year</u>	<u>Annual Cost Thereafter</u>
1. MIPP Program	\$1.1M	\$0
2. Worksite Evaluation and Program Review	\$1.25M	\$1.25M
3. Training	\$1.6M	\$1.6M
4. Recordkeeping	\$0.55M	\$0.55M
<b>Total</b>	<b>\$4.5 million</b>	<b>\$3.4 million</b>
<b>5 year cost:</b>	<b>\$18.1 million</b>	

Proposed section 3345 does not mandate specific hazard-analysis, technologies, tools or equipment, or that a health, safety, medical professional or other expert be hired. Therefore, the Board does not agree with CHLA’s statement that the estimates are defective or that proposed section 3345 will impose unpredictable or substantial ongoing costs on the California’s hotel and lodging industry.

Comment #CHLA28: Promulgating the proposed rule would violate California law due to the flawed rulemaking process. The foregoing analysis explains why, as a substantive matter, the proposed section 3345 is both unnecessary and counterproductive. The proposed rule is also procedurally flawed beyond repair. Notwithstanding the serious substantive concerns with the proposed rule, the rule cannot move forward in its present state because section 3345 and its supporting documents reflect five serious errors in the process of studying, drafting, and presenting the proposed rule. First, the proposed rule alternates between ignoring and misrepresenting CH&LA’s economic analysis. Second, the explanatory documents reflect disregard for the Board staff’s comments pointing out one-sided justifications for the rule. Third, the core premise of the proposed rule – that housekeeping tasks are inherently dangerous – defies common sense. Fourth, there is no consistent explanation for the relationship between housekeeping tasks and musculoskeletal injuries. And fifth, there is no consistent explanation for what the proposed rule would actually require, which makes it impossible for employers to satisfy their obligations. These five shortcomings mean that it would be both unwise and illegal for the Board to submit the proposed rule for promulgation before the Office of Administrative Law.

Response: The Board adhered to the requirements of the Administrative Procedure Act. The Board does not believe that proposed section 3345 is unnecessary, counterproductive, one-sided, or unclear. Please see responses to Comments #CHLA2, CHLA3, CHLA5, CHLA6, CHLA10, CHLA14, CHLA17, CHLA19, CHLA21, CHLA 22, CHLA23, and CHLA26.

The Board addresses CHLA’s five points as follows:

Regarding the first point (CH&LA’s economic analysis), please see the response to Comment #CHLA27.

Regarding the second point (Board staff’s comments), please see the responses to Comments #CHLA17 and CHLA31.

Regarding the third point, the proposed regulation does not assume all housekeeping tasks are inherently dangerous. The proposal requires employers to evaluate potential risks and investigate injuries and make changes to address any problems discovered, which is consistent with other regulations such as sections 3203(a)(6) and 5120(c)(7). Please also see response to Comment #CHLA5.

Regarding the fourth point (relationship between housekeeping tasks and musculoskeletal injuries); please see the response to Comment #CHLA2.

Regarding the fifth point (no explanation of what the proposed rule would require), the proposal is a performance-based regulation and not a prescriptive regulation. As a result, it does not require employers to purchase any specific equipment, use a specific type of hazard analysis methodology, or have employees follow any specific work practice. It requires employers to evaluate hazards and make changes as needed to prevent injuries. This is consistent with other regulations such as sections 3203 and 5120.

The Board is confident that the requirements of the Labor Code and the Government Code have been met with respect to this rulemaking. Additionally, the Board is convinced that its efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers are appropriate.

Comment #CHLA29: The proposed rule does not “take into account” CH&LA’s Economic Analysis. The economic analysis submitted by CH&LA on December 29, 2015, stands unrebutted by any other stakeholder and by the Division. This alone is fatal to the proposed rule because the Board must “tak[e] into account the totality of the record” in order for the proposed rule to be promulgated. California Government Code section 11349(a). As the Board staff’s comments make clear, the record and its presentation are distorted.

Response: Please see the response to Comment #CHLA27 regarding the CH&LA economic analysis. The Board has taken into account the totality of the record and complied with the Administrative Procedures Act, including Government Code section 11349(a).

Comment #CHLA30: The ISOR misstates CH&LA’s economic analysis. The ISOR states that “CHLA estimated it would . . . cost approximately \$200 per establishment” for hotels to “review and update their” IIPPs. This is a misquote of the December 29, 2015, CH&LA submission. As the Board staff mentioned in a comment to the draft ISOR, “CHLA also quoted a cost of approximately \$350 for a Human Resources Manager to complete the plan. . . . Why are only the lower costs stated?” This comment was ignored, and the final version of the ISOR is identical in that respect to the draft version. The following paragraph of the ISOR repeated the same type of error. It states that worksite evaluations would cost “\$100 per establishment . . . using the same assumption as provided by CHLA.” The Board staff pointed out the error, to no avail: in fact, the Staff pointed out, “CHLA estimates the costs to be between \$2,000-\$5,000 per property,” not \$100. The ISOR also quotes CH&LA that the recordkeeping requirement “cost would be \$100 per establishment.”

This is also false, as the Board staff pointed out on the draft version: “Why was the lower wage of \$24.20 used vs. the higher wage of \$171.20?”

Response: Please see the response to Comment #CHLA27 regarding the CH&LA economic impact analysis. Wages used in the Board cost estimates were from CHLA or the U.S Bureau of Labor Statistics. The CHLA estimate of \$2,000 to \$5,000 per property to conduct a worksite evaluation was the cost to hire a professional qualified to evaluate musculoskeletal disorders and perform a job hazard analysis. The proposal does not require the hiring of a qualified professional or a job hazard analysis, so this cost was not used.

Comment #CHLA31: Summarizing the question of the economic impact of the proposed rule, the ISOR states “this proposal should not result in a significant, statewide adverse economic impact.” Commenting on the draft version, the Board staff noted, “This doesn’t seem accurate.” Similarly, the ISOR states, “no economic impact is anticipated from the proposal regarding equipment and tools.” Board staff challenged this, commenting, “The text and the language above refer to ‘required’ tools and ‘appropriate’ tools. Depending on who determines what these are (the union, the employee, the employer, DOSH) there will be costs.” All of these Staff comments were ignored.

Response: Please see response to Comment #CHLA27 regarding the CH&LA economic impact analysis. Changes, replies, or explanations were provided in response to all Board staff comments prior to the proposal going out on notice to the public. No Board staff comments were ignored. The proposal does not require employers to purchase specific tools. Please also see responses to Comments #CHLA12, CHLA13, CHLA14, CHLA15 and CHLA32.

Comment #CHLA32: These inaccuracies are exacerbated by the fact that another explanatory memorandum states “[f]rom input during the advisory process . . . staff was not able to ascertain significant adverse economic (cost) impact.” This ignores both CH&LA’s detailed calculation of the economic impacts and the Staff’s repeated attempts to draw attention to CH&LA’s un rebutted analysis. In response, instead of addressing or contemplating CH&LA’s submissions, the Economic and Fiscal Impact Statement surmises “that the employer would benefit economically from an improved or better cleaning tool and that some of these options may be less expensive or of similar cost as the ones already being incurred.”

Response: Please see responses to Comments #CHLA27 and CHLA30 regarding the CH&LA economic impact analysis.

Please see the responses to Comments #CHLA17 and CHLA31 regarding the Board staff’s comments. Regarding the issuance of equipment and tools, as stated in the ISOR, proposed section 3345 does not mandate specific equipment, cleaning tools, or technologies such as fitted sheets, ergonomic cleaning tools, or motorized carts. In the course of doing business, this industry is currently providing and maintaining clean accommodations and incurring ongoing expenses with regards to cleaning supplies, tools, and equipment. Because the option of maintaining the status quo exists, no economic impact is anticipated from the proposal regarding equipment and tools. Please also see the responses to Comments #CHLA12, CHLA13, CHLA14, and CHLA15.

Comment #CHLA33: The Board staff's input was ignored. As part of the process of drafting the proposed rule, the Board staff submitted comments and provided feedback on draft versions of section 3345 and the related explanatory materials. The draft version of the ISOR circulated to the Board staff for their comments stated "The input and data gathered at the advisory meetings overwhelmingly confirmed the existence of a high number of injuries and illnesses caused by acute injury or cumulative trauma . . . . Participating stakeholders repeatedly referenced injuries to the back, shoulder and upper extremities and injuries due to falls, slips and trips." The Board staff disagreed with this assessment. They noted that 'Overwhelmingly confirmed' seems a bit one sided, especially in light of the CHLA study [conducted by Dr. Wiker]. . . . 'Participating stakeholders' may overstate the breadth of support for the regulation." Indeed, many of the hotel housekeepers who spoke at the advisory meetings read from scripts written by the union petitioner. These comments were ignored: the final version of the ISOR reflects no edits to the passages in question. Similarly, there was no response to the Staff's comment that there "is a general tone that exists throughout the ISOR that should be addressed. . . . [P]lease read through the documents and evaluate whether or not something shows a bias or is not supported by objective data."

Response: Changes, replies, or explanations were provided in response to all Board staff comments prior to the proposal going out on notice to the public. No Board staff comments were ignored. Please see the response to Comment #CHLA31. Please see the response to Comment #CHLA17 regarding the limitations of the Wiker study and Board staff comments regarding the Wiker study.

The participating stakeholders (hotel housekeepers) primarily spoke of their own personal experience with workplace injuries and these personal accounts did not appear to be prepared ahead of time by the union petitioner.

Comment #CHLA34: In at least one instance, the absence of any response to a Board staff comment is indicative of a fatal flaw in the proposed rule. For a proposed rule to be promulgated, California state law mandates that "[i]n the record of the rulemaking proceeding (record), the agency must state the specific purpose of each regulatory provision and explain why the provision is reasonably necessary to accomplish that purpose." The proposed rule mandates annual trainings and reevaluations. Commenting on the draft ISOR, the Board staff wondered, "Should you explain why this must be done annually? Why is it necessary to provide training annually when IIPP doesn't? Need rationale." The published ISOR does not answer the question. Accordingly, a key provision of the proposed rule remains unexplained, which means that the record fails to satisfy the legal mandate to explain the necessity of that provision.

Response: The Board adhered to the requirements of the Administrative Procedure Act. The specific purpose and necessity of each regulatory provision of the proposal are explained in the ISOR. Changes, replies, or explanations were provided in response to all Board staff comments prior to the proposal going out on notice to the public. No Board staff comments were ignored.

Regarding the issue of annual training, the ISOR explains that housekeepers and supervisors need annual training to maintain and update their knowledge on housekeeping hazards especially when changes to the MIPP have been made to correct problems or improve procedures.

Comment #CHLA35: Section 3345 lacks factual support. A portion of the ISOR is devoted to explaining the factual basis for the proposed rule. Since there is no apparent reason to single out hotel housekeepers for a special regulation, the ISOR attempts to explain why this specific occupation—not all hotel workers, not all housekeepers, but *hotel housekeepers*—requires its own rule. One of the chief sources cited in the ISOR simply does not say what the ISOR purports it to say.

Response: Please see response to Comment #CHLA2 regarding the necessity of the proposal for housekeeping employees at lodging establishments.

Comment #CHLA36: Citing the Federal Fiscal Year 2015-2016 High Hazard Industry List, the ISOR states, “[h]ousekeeping cleaners are within the top 10 occupations in terms of their DART rate,” which measures work days missed. The High Hazard Industry List, as its name indicates, does not list “occupations.” Rather, it lists “Industry Activities.” Nothing about the Industry List says anything about housekeeping activities. The listing for the “Accommodation” (NAICS code 721) industry activity is the closest that the Industry List comes to mentioning hotel housekeeping. This “industry activity” includes many workplaces that are not covered by the proposed rule, such as recreational vehicle parks and recreational camps. Moreover, the federal government notes that just 50.3% of employees in the Accommodation industry are housekeepers. This portrayal of the High Hazard Industry List is an evident misrepresentation.

Response: The Board recognizes the high hazard industry listing of the accommodation industry contains employees who are not housekeepers. According to the U.S. Bureau of Labor Statistics, the injury rate of housekeepers is higher than the injury rate of the accommodation industry in general. Thus, the days away, restricted and transferred (DART) rate would be higher if limited to only housekeeping employees in lodging establishments. In addition, the high hazard industry list was not the only document relied upon to establish the necessity for the proposal. For injury statistics, the Board relied upon “Issue Brief: Workplace Injuries in Hotel Housekeeping in California prepared by the DIR - Office of the Director, Research Unit, May 13, 2016,” (document number four in the list of documents relied upon), and “California Workers Compensation Information System (WCIS) Preliminary Data. Occupational Hazards Faced by Housekeepers within the Hotel and Hospitality Industry. March 19, 2013,” (document number eighteen in the list of documents relied upon). In addition, the need for the proposal is supported by statements from housekeeping employees (document six from the list of documents relied upon) and the Division evaluation on the petition to establish the proposal (document two from the list of documents relied upon). The Standards Board decision regarding the petition (document number three from the list of documents relied upon) found that Standards Board staff agreed that a significant number of musculoskeletal injuries occur in this industry and that appropriate control measures can reduce those risks.

Comment #CHLA37: The misrepresentation does not end there. The “Accommodation” industry listing is *not* even within the “top 10.” Rather, the Accommodation industry listing is tied for 13<sup>th</sup>-highest DART rate on a listing of twenty industry activities. It is telling that the primary substantiation for a hotel housekeeping regulation is a cavalier misstatement. As the Board staff pointed out in its own comments on the draft ISOR, “I do not see this statistic on the 2015/16 HH Industry list.”

Response: Please see the response to Comment #CHLA36 regarding the high hazard industry list and the accommodation industry. The Board agrees that the accommodation industry DART rate is the 13<sup>th</sup> highest in the list and not within the top ten. However, the accommodation industry is number one (1) (highest number of injuries) on the high hazard list regarding the total number of employees suffering from injuries resulting in days away, restricted and transferred. Please also see the response to Comment #CHLA2.

Comment #CHLA38: The proposed rule is unclear because it lacks consistent explanations for the premise and the effect of the rule. A proposed rule must be sufficiently clear in order for the state Office of Administrative Law to promulgate the regulation. A regulation fails the clarity standard when “[t]he regulation has more than one meaning” or when “[t]he language of the regulation conflicts with the description of its effect,” among other reasons. The proposed rule fails the clarity test because the explanations of the link between hotel housekeeping and musculoskeletal injury in the proposed rule are inconsistent with the explanations in the explanatory documents. The proposed rule also fails the clarity test because discrepancies between what the proposed rule mandates and what the explanatory documents say make the proposed rule susceptible to more than one meaning.

Response: The Board believes the proposal to be clear and complies with the requirements of the Administrative Procedure Act. It is a non-prescriptive performance based regulation and therefore does not contain specific instructions for employers, but requires employers to establish a program and procedures to reduce musculoskeletal injuries to housekeeping employees. The program and procedures are clear and consistent with other existing regulations such as sections 3203 and 5120. Housekeeping employees at lodging establishments are suffering from high injury rates. Please see response to Comment #CHLA2.

Comment #CHLA39: The proposed rule presumes that certain motions and actions inherent in housekeeping tasks are dangerous. By listing them alongside “slips, trips, and falls,” and “striking objects,” section 3345(c)(4)(E) presumes that they lead to injury. Indeed, as the ISOR notes, “hotel housekeepers are *exposed to serious occupational risks* in the course of their *normal work duties*” due to “heavier mattresses, bulky duvets and heavier bed linen together with other upgraded room and bathroom amenities.” As a result, “supervisors need to be knowledgeable of *the hazards faced* by housekeeping employees.” Similarly, the draft version of the October 24, 2016, memorandum explaining the proposed rule explains that the proposed rule “contains requirements to protect employees from musculoskeletal injuries and acute trauma *resulting from exposure to hazards present in housekeeping tasks*” because “existing regulations . . . are not focused on *the particular hazards of this occupation.*”

Response: Please see the response to Comment #CHLA2 regarding the high rate of injuries suffered by housekeeping employees in the accommodation industry. Please see the response to Comment #CHLA36 for documents relied upon that provide evidence of potential injury risks to housekeeping employees in lodging establishments. Please see response to Comment #CHLA18 regarding the Board's opinion that the proposal does not presume the existence of hazards.

Based on the documents relied upon and input from stakeholders (including health professionals), the proposal requires employers to conduct a worksite evaluation to identify and address potential injury risks such as: (1) slips, trips and falls; (2) prolonged or awkward static postures; (3) extreme reaches and repetitive reaches above shoulder height, (4) lifting or forceful whole body or hand exertions; (5) torso bending, twisting, kneeling, and squatting; (6) pushing and pulling; (7) falling and striking objects; (8) pressure points where a part of the body presses against an object or surface; (9) excessive work-rate; and (10) inadequate recovery time between housekeeping tasks.

Comment #CHLA40: The documents hedge and do not presume a definitive causal link between hotel housekeeping and injury. The ISOR states that there are "identified injuries and risk factors associated with housekeeping tasks" and the proposed rule mandates "that the employer evaluates each housekeeping task with respect to *potential* causes of musculoskeletal injuries." The Notice of the proposed rule states the "proposed rulemaking will require employers in hotels . . . to identify *potential* hazards that lead to the development of musculoskeletal injuries." The proposed rule and its explanatory materials are inconsistent and contradictory. Thus, "[t]he language of the regulation conflicts with the description of its effect," and the proposed rule cannot be promulgated.

Response: The Board believes the ISOR and proposal do not equivocate and are clear on what employers are to include in their worksite evaluation to identify and address potential musculoskeletal injury risks. The use of the words 'potential' or 'associated' is not an equivocation on the causal link between musculoskeletal injuries housekeeping work at lodging establishments. It is a recognition that even if a significant number of workers may be injured, not all housekeeping workers will be injured while performing a high-risk task. This is the case for many workplace hazards and not unique to this proposal.

Please also see the responses to Comments #CHLA2, CHLA15, CHLA18 and CHLA39. The Board believes that the proposed rule and its explanatory materials are consistent, clear, not contradictory and comply with the requirements of the Administrative Procedure Act.

Comment #CHLA41: There is no coherent explanation of what the proposed rule actually mandates. By way of explaining the need for the proposed rule, the ISOR laments that section 3203 "does not establish *specific requirements*;" as a result, the ISOR explains the proposed rule "would also . . . requir[e] . . . the availability of housecleaning tools and equipment." The ISOR goes on to explain the "proposed regulation . . . ensur[es] the availability of housecleaning tools and equipment" and it mandates use of "required tools." The draft version of the October 24, 2016, memorandum explaining the proposed rule states "[n]ew Section 3345 . . . *contains requirements* to protect employees from musculoskeletal injuries and acute trauma resulting from exposure to

hazards present in housekeeping tasks.” The proposed rule “*require[s]* that employers establish a musculoskeletal injury prevention program (MIPP) that includes a worksite evaluation *requiring* . . . methods of correction including the availability of housecleaning tools and equipment.”

Response: The Board believes the proposal to be clear and complies with the requirements of the Administrative Procedure Act. It is a performance-based regulation consistent with existing section 3203. Please see the response to the fifth point in Comment #CHLA28. Regarding the provision of tools and equipment, please the response to Comment #CHLA12.

Comment #CHLA42: The ISOR and the related documents contradict themselves as to whether the proposed rule establishes any requirements. For example, the ISOR states the proposed rule “does not mandate specific hazard-analysis, technologies, tools, or equipment.” Similarly, according to the Attachment to Economic and Fiscal Impact Statement Standard Form 399, “[t]his proposal does not mandate specific equipment, cleaning tools or technologies such as fitted sheets, ergonomic cleaning tools or motorized carts.” While it may be literally true that the proposed rule itself does not mandate *specific, particular* tools or processes, this is misleading because there will be mandatory tools and processes that result from the implementation of the rule. That distinction is especially important because portions of the ISOR state nothing is required at all. “[T]he option of maintaining the status quo exists” with respect to “specific equipment, cleaning tools or technologies.” Due to the direct contradictions in the documents—the rule either mandates certain actions or it does not—the “regulation has more than one meaning” and therefore fails to achieve the clarity that California state law mandates.

Response: The Board believes the ISOR and related documents are consistent and supportive of one another and do not contradict themselves. The ISOR is correct in that the proposed rule does not mandate any tools, technologies or equipment. Please also see the responses to Comments #CHLA12 and CHLA21. The Board believes some lodging establishments may maintain the status quo with regard to existing equipment and tools. Such determinations, however, will be decided by establishments through the procedures established in the proposal.

Comment #CHLA43: In conclusion, CH&LA opposes the proposed rule, but it does not oppose continued efforts to improve the wellbeing of its members’ employees. In fact, part of its commitment to employees is its opposition to the proposed rule: the industry does not want to be forced to fire employees for not following rigid work specifications. CH&LA supports the current regulatory regime and robust enforcement of sections 3203 and 5110, and it would also welcome non-mandatory guidelines that supplement those existing rules. As mentioned above, the proposed rule occasionally purports to inquire into *potential* hazards. CH&LA supports utilizing objective experts to assess potential hazards and to remedy actual hazards, to the extent they exist. CH&LA would support renewed efforts to develop industry-specific guidelines, which is the mechanism that Federal OSHA employs to address the potential for workplace- or occupation-specific hazards. Indeed, CH&LA and its members would offer full cooperation in developing and disseminating guidelines on hotel housekeeping safety. The first step in that productive process is the Board declining to submit section 3345 to the Office of Administrative Law.

Response: The proposal does not require rigid work specifications. Please see the response to Comment #CHLA13. Regarding sections 3203 and 5110, please see the responses to Comments #CHLA2 through CHLA5. The proposal allows employers to use experts to assess potential hazards if they wish. Please see the response to Comment #CHLA21. The Board does not believe that voluntary guidelines should be used to address musculoskeletal injuries to housekeepers in lieu of the proposal. Please see response to Comment #CHLA14.

The Board is confident that the requirements of the Labor Code and the Government Code have been met with respect to this rulemaking. Additionally, the Board is confident that its efforts to reduce musculoskeletal injuries among housekeepers are appropriate.

The Board thanks Ms. Mohrfeld and Mr. Epner for their comments and participation in the rulemaking process.

**2. Pamela Vossen, UNITE HERE (UH), letter dated May 15, 2017**

Comment #UH1: UNITE HERE supports the proposed standard as written in its entirety with the addition of a few suggested changes. Except for the suggested changes, the commenter requests all other proposed language remains intact. If implemented correctly by employers and with the participation of hotel housekeepers as stated in the proposed language, this proposed standard will significantly reduce the risk of musculoskeletal injuries from hotel housekeeping work.

Response: The Board acknowledges the commenter's strong support of the proposal and takes notice of their specific recommendation to keep the proposed language intact.

Comment #UH2: UNITE HERE supports the key components of the proposed standard, which will ensure that housekeepers will be involved in designing and conducting worksite evaluations of housekeeping hazards, identifying causes of musculoskeletal injuries, identifying and evaluating possible corrective measures, establishing and updating a program to prevent musculoskeletal injuries and training. The commenter supports the inclusion of excessive work-rate as a risk factor because hotel housekeeping work is commonly structured as a room quota per shift.

Response: The Board acknowledges UNITE HERE's support for these aspects of the proposal.

Comment #UH3: UNITE HERE strongly reiterates their support of the proposed standard, specifically for the definitions of housekeeping tasks and control measures; the inclusion of forceful whole body or hand exertions and excessive work-rates as risk factors; the involvement of hotel housekeepers along with their union representatives in the worksite evaluation, injury investigation process, corrective measures and in reviewing and updating the MIPP; making readily available appropriate housecleaning equipment, protective equipment, and tools to each housekeeper, including procedures for procuring, inspecting, maintaining, repairing, and replacing appropriate housecleaning tools and equipment; a means by which appropriate equipment or other corrective measures will be identified, assessed, implemented, and then reevaluated after introduction and while used in the workplace; and the training and records section in their entirety.

Response: The Board acknowledges UNITE HERE's support for these aspects of the proposal.

Comment #UH4: UNITE HERE recommends a change on page 2 of the proposed regulation.

(c) Housekeeping musculoskeletal injury prevention program.

(4) Procedures for identifying and evaluating housekeeping hazards through a worksite evaluation:

(C) Housekeepers shall be notified ***within 14 days*** of the results of the worksite evaluation in writing or by posting it in a location readily accessible to them. The results of the worksite evaluation shall be in a language easily understood by housekeepers.

This will serve as a way to increase the timeliness of employers notifying housekeepers of the evaluation results and as a benchmark for enforcement of this section of the proposed standard.

Response: The Board declines UNITE HERE's request to complicate the proposed regulation by adding specific dates that may or may not be realistic depending on the complexity of the evaluation. Rather, the Board prefers to allow the flexibility needed to address all types of work situations and believes the evaluation of the timeliness for the employee notification should be made on a case-by-case basis.

Comment #UH5: UNITE HERE recommends a change on pages 2-3 of the proposed regulation.

D. The worksite evaluation shall be reviewed and updated:

1. ***Within 30 days***, whenever new processes, procedures, equipment or renovation of guest rooms are introduced that may change or increase housekeeping hazards;

2. ***Within 30 days***, whenever the employer is made aware of a new or previously unrecognized housekeeping hazard based on information such as, but not limited to, the findings and recommendations of injury investigations conducted in accordance with subsection (c)(5);

The suggested language will increase the timeliness of employers performing the worksite evaluation and as a benchmark for enforcement of this section of the proposed standard.

Response: The Board declines UNITE HERE's request to complicate the proposed regulation by adding specific dates that may or may not be realistic depending on the complexity of the review and updates needed. Rather, the Board prefers to allow the flexibility needed to address all types of work situations and believes the determination of the timeliness for the review of the worksite evaluation should be made on a case-by-case basis.

Comment #UH6: UNITE HERE recommends a change on page 4 of the proposed regulation.

d. Training. The employer shall provide training to housekeepers and their supervisors in a language easily understood by these employees.

1. (E) When new equipment or work practices are introduced or whenever the employer becomes aware of a new or previously unrecognized hazard. ~~The additional training may be limited to addressing the new equipment or work practices.~~

The last sentence should be removed because it negates the intent of the following language: “or whenever the employer becomes aware of a new or previously unrecognized hazard.”

Response: This language has been part of all versions of the discussion draft throughout the advisory committee process. Additionally, this restriction was set to minimize the disruption and cost to employers and is reasonable considering the frequency of training that is provided to housekeepers. The Board does not believe that the current wording eliminates or negates the requirement to retrain housekeepers whenever the employer becomes aware of a new or previously unrecognized hazard, and declines the commenter’s recommendation.

Comment #UH7: UNITE HERE recommends a change on page 5 of the proposed regulation.

(e) Records

Add a new item between (1) and (2) so that this becomes Item (2) that says:

***Training records shall be created and maintained for a minimum of one year and include the following information: training dates; contents or a summary of the training sessions; types and models of equipment practiced during training; names and qualifications of persons conducting the training; and names and job titles of all persons attending the training sessions.***

The above suggested language comes from the Healthcare Violence standard, Section 3342(h) recordkeeping, Item 2. It is also applicable for new section 3345, and this text would help ensure effective trainings and be a benchmark for enforcement.

Response: The effectiveness of worker training is determined during the employee interviews conducted by the Cal OSHA inspector rather than by information provided in a training record. Thus, the Board declines UNITE HERE’s request for additional details on the training records and sees no need for cumbersome requirements that go beyond the requirements of section 3203.

Comment #UH8: UNITE HERE believes the term ‘appropriate’ is used mistakenly; see listed instances below.

Recommend change on page 3 of the proposed regulation.

(c)(5) Procedures to investigate musculoskeletal injuries to housekeepers, including the following:

(B) If required tools or other control measures were not used, or not used ~~appropriately~~ **correctly**, a determination of why those measures were not used or were not used ~~appropriately~~ **correctly**; and

In this context, the term ‘use’ of cleaning tools is performance-based and either the tools are being used correctly or not; so, ‘correct’ applies here and the term ‘appropriate’ does not. In other instances, appropriately is used to describe the tool and ‘appropriately’ in that context applies.

Response: The intent of subsection (c)(5)(B) is to ensure that tools or equipment used are appropriately suited or fitting for a particular task. The term “correctly” does not eliminate the possibility that an inappropriate or unsafe tool is used. Even an inappropriate tool can be used correctly. Additionally, the term “correctly” would distract housekeepers or supervisors into believing that a single person will judge or determine the correct use rather than focus on selecting and utilizing tools or equipment that are appropriately suited for the task. Thus, the Board declines the commenter’s recommendation.

Comment #UH9: UNITE HERE recommends changes on page 3 of the proposed regulation.

(c)(6). Methods or procedures for correcting, in a timely manner, hazards identified in the worksite evaluation or in the investigation of musculoskeletal injuries to housekeepers, including procedures for determining whether identified corrective measures are **effectively** implemented ~~appropriately~~ **to minimize or eliminate unsafe conditions or workplace practices that may cause musculoskeletal injuries.**

Adding this language will help clarify the intent of the standard vis a vis the effective implementation of appropriate tools and corrective measures. The ‘effectively implemented’ suggested language comes from the Health Care Violence standard section 3342(c)(12)(F): “Reviewing whether appropriate corrective measures developed under the Plan – such as adequate staffing, provision and use of alarms or other means of summoning assistance, and response by staff or law enforcement – were effectively implemented.” The additional proposed phrase ‘unsafe conditions or workplace practices that may cause musculoskeletal injuries’ is combined text from the housekeeping standard; from pages 1-2 of the proposed regulation, in the definition of ‘Worksite Evaluation’ comes “unsafe conditions or workplace practices,” and from page 1 ‘Control Measures’ comes “may cause musculoskeletal injuries.”

Response: The Board does not believe that proposed subsection (c)(6) lacks clarity and notes that the term “effectively” is unnecessary. Similarly, repeating language that already exists in the proposed definitions is redundant and not needed. Thus, the Board declines the recommendations to add unnecessary words.

Comment #UH10: UNITE HERE recommends changes on page 5 of the proposed regulation.

(d) Training

(2)(D) Body mechanics and safe practices including: identified hazards at the workplace, how those hazards are controlled during each housekeeping task, the ~~appropriate~~ **correct** use of cleaning tools and equipment to prevent injuries;

The first use of the term ‘appropriate’ as it relates to “use of cleaning tools” is performance-based and either the tools are being used correctly or not. Therefore the term ‘correct’ applies here and the term ‘appropriate’ does not. In the latter use of “appropriate”, the term is used to describe the tools and equipment and ‘appropriate’ in that context applies.

Response: Please see response to Comment #UH8.

Comment #UH11: The term ‘where applicable’ should be added regarding housekeepers and union representatives; see instances listed below.

Recommended change on page 2 of the proposed regulation.

- (c) Housekeeping musculoskeletal injury prevention program.
- (4) Procedures for identifying and evaluating housekeeping hazards through a worksite evaluation:
  - (B) The procedures shall include an effective means of involving housekeepers and, **where applicable**, their union representative in designing and conducting the worksite evaluation.

Recommended proposed changes on page 3 of the proposed regulation.

- (c)(5) Procedures to investigate musculoskeletal injuries to housekeepers, including the following:
  - (C) Input of the injured housekeeper, **where applicable** the housekeeper’s union representative, and the housekeeper’s supervisor as to whether any other control measure, procedure, or tool would have prevented the injury.
- (6) Methods of procedures for correcting, in a timely manner, hazards identified in the worksite evaluation or in the investigation of musculoskeletal injuries to housekeepers...
  - (A) An effective means of involving housekeepers and, **where applicable**, their union representative in identifying and evaluating possible corrective measures;

This suggested text clarifies that all housekeepers, whether they have a union representative or not, are eligible to participate in the activities under subsection (c)(6)(A).

Recommended change on page 4 of the proposed regulation.

- (7) Procedures for reviewing, at least annually, the MIPP at each worksite, to determine its effectiveness and make any corrections when necessary, including an effective procedure for obtaining the active involvement of housekeepers and, **where applicable**, their union

representative in reviewing and updating the MIPP. The procedures shall include a review of the Cal/OSHA Form 300 log and other relevant records such as Cal/OSHA Form 301 incident reports.

Response: The proposal as written requires that employers involve housekeepers and their union representative in the development, implementation and maintenance of the musculoskeletal injury prevention program. The term “where applicable” is not necessary to address establishments that do not have a labor union, as such establishments are automatically not covered by the requirement to include union representative participation in the MIPP. Thus, the Board declines to make these modifications.

Comment #UH12: The term ‘housecleaning’ is used mistakenly; see instances listed below. ‘Housecleaning’ is not a term defined in this proposed standard and therefore, should not be used. Hotel housekeeping involves housekeepers who perform room cleaning and related housekeeping tasks (see definitions of underlined terms, page 1). Housekeeping is a defined term and therefore, should be used.

Recommended change on page 2 of the proposed regulation. In the last sentence of subsection (c)(2), an additional comma and semi-colons are needed to clarify the meaning of ‘substantial compliance.’

(c) Housekeeping musculoskeletal injury prevention program.

(2) A system for ensuring that supervisors and housekeepers comply with the MIPP, follow in the employer’s safe workplace ~~housecleaning~~ ***practices for performing housekeeping tasks*** ~~practices~~, and use the housekeeping tools or equipment deemed appropriate for each housekeeping task. Substantial compliance with this provision includes recognition of employees who follow the employer’s safe workplace ~~housecleaning~~ ***practices for performing housekeeping tasks***, and use the appropriate tools and equipment; training and retraining programs; disciplinary actions; or other means that ensures employee compliance with the MIPP;

Proposed changes on pages 3-4:

(c)(6) Methods or procedures for correcting, in a timely manner, hazards identified in the worksite evaluation or in the investigation of musculoskeletal injuries to housekeepers, including procedures for determining whether identified corrective measures are implemented appropriately. These procedures shall include:

(C) A means of providing and making readily available appropriate ~~housecleaning~~ equipment, protective equipment, and tools to each housekeeper ***for performing housekeeping tasks***, including procedures for procuring, inspecting, maintaining, repairing, and replacing appropriate ~~housecleaning~~ tools and equipment ***for performing housekeeping tasks***.

Response: This language has been part of all versions of the discussion draft throughout the advisory committee process. Additionally, the term housecleaning is a commonly used and well-understood term and the Board does not believe this term is used erroneously, or that it needs a definition. Thus, the Board declines these recommendations. The Board acknowledges Ms. Vossen's comments and support for this regulatory proposal and thanks her for her participation in the rulemaking process.

**3. Christian Rak, UNITE HERE Local 49; Wei-Ling Huber, UH Local 2850; Enrique Fernandez, UH Local 19; Sergio Rangel, UH Local 483; Anand Singh, UH Local 2; Bridgette Browning, UH Local 30; and Thomas Walsh, UH Local 11. Letters dated from May 9 and May 15, 2017**

Comment #UHLS1: On behalf of Local (49, 2850, 19, 483, 2, 30, and 11) members who are hotel housekeepers, the commenters strongly support proposed new section 3345 Hotel Housekeeping Musculoskeletal Injury Prevention Standard as written in its entirety, with some minor but important suggested changes. For those detailed changes, please refer to comments by UNITE HERE International Union's Worker Safety & Health Director Pamela Vossen.

If implemented correctly, proposed new Section 3345 has the potential to reduce the risk of musculoskeletal injuries from hotel housekeeping work. The commenters strongly reiterate their support for the definitions of housekeeping tasks and control measures; the inclusion of forceful whole body or hand exertions and excessive work-rates as risk factors; the involvement of hotel housekeepers along with their union representative in the worksite evaluation, in the injury investigation process, in identifying and evaluating possible corrective measures and in reviewing and updating the MIPP; making readily available appropriate housecleaning equipment, protective equipment, and tools to each housekeeper, including procedures for procuring, inspecting, maintaining, repairing, and replacing appropriate housecleaning tools and equipment; a means by which appropriate equipment or other corrective measures will be identified, assessed, implemented, and then reevaluated after introduction and while used in the workplace; and the training and records sections in their entirety.

Response: The Board acknowledges the commenters strong support for this proposal, as well as their concurrence with the specific definitions, risk factors, and key elements of the proposal. Please see the responses to Comments #UH1 through UH12.

Comment #UHLS2: The commenters thank and encourage all relevant government agencies to review the comments in a timely manner and move the process forward to a vote to adopt the proposed standard by the members of the Occupational Safety and Health Standards Board before the end of 2017.

Response: The Board acknowledges UNITE HERE Local 49, UNITE HERE Local 2850, UNITE HERE Local 19, UNITE HERE Local 483, UNITE HERE Local 2, UNITE HERE Local 30 and UNITE HERE Local 11 support for this regulatory proposal and thanks them for their participation in the rulemaking process.

4. **Eric Myers, McCracken, Stemerma & Holsberry, LLP, representing UNITE HERE, letter dated May 18, 2017, including exhibits 1 through 7**

Comment #EM1: This firm represents UNITE HERE, and is resubmitting the exhibits to Petition No. 526 for inclusion in the rulemaking record because the exhibits are referred to in the ISOR; however, I am unable to locate them on the Standards Board's website. I wish to make certain they are part of the rulemaking record.

Response: The Board acknowledges receipt of these exhibits for inclusion in the rulemaking package. The Board thanks Mr. Myers for his participation in the rulemaking process.

5. **Carisa Harris Adamson, Robert Harrison, and 15 other medical and health professionals, University of California, San Francisco, University of California, Davis, and University of California, Los Angeles, letter dated May 12, 2017.**

Comment #CA1: As occupational and public health professionals, many of whom are directly involved in the treatment and prevention of work-related injuries, we strongly support the proposed Hotel Housekeeping Musculoskeletal Injury Prevention Program Standard as written in its entirety and including new section 3345, with one minor addition.

Under Section (b) Definitions, we suggest adding examples of specific recommended controls, all highlighted in Cal/OSHA publications, such as adjustable/long-handled cleaning tools, mops, fitted sheets, lightweight vacuum cleaners and light-weight or motorized carts. These tools, and others that reduce physical workloads, should not only be made available but should be implemented as appropriate following the required worksite evaluation.

Response: The Board acknowledges the commenters strong support for this proposed regulation. However, the Board declines the request to specify cleaning tools, equipment or control measures as this is a performance-oriented regulation that is not meant to limit or prescribe the measures that employers are to use.

Comment #CA2: The commenters support keeping all language consistent with the promotion of a participatory approach to musculoskeletal injury prevention programs. The literature firmly supports the effectiveness of participatory ergonomics programs; thus, housekeepers should be involved in all aspects of the program such as the evaluation of workplace hazards and implementation of controls.

Response: The Board acknowledges the commenters support for this aspect of the proposal as well as their concurrence with the requirement to include housekeepers in this development, implementation and maintenance of the musculoskeletal injury prevention program.

Comment #CA3: Since this process began, there continues to be a high incidence and prevalence of work-related musculoskeletal disorders (MSDs) among hotel room cleaners, and as indicated in

prior letters, the basis for support is as follows: 1) Scientific and medical research conclusively shows that the type of ergonomic hazards faced by hotel housekeepers are associated with work-related MSDs; 2) The ergonomic hazards faced by hotel housekeepers include forceful exertions, lifting, awkward posture, repetition and excessive work pace; 3) Studies performed among hotel housekeepers document that these ergonomic hazards increase the risk of work-related MSDs; 4) Job hazard analyses (including the work rate) in the hotel and hospitality industry are important methods that can identify ergonomic risk factors and implement effective solutions to prevent further workplace injuries; 5) Engineering and other solutions to prevent work-related MSDs in hotel housekeepers are feasible and, in many instances, can be implemented without significant cost to the employer; and 6) Early symptom reporting, training and program evaluation are essential elements of a comprehensive ergonomic program for hotel housekeepers. These elements can reduce the cost of medical care, disability and employee turnover.

Response: The Board acknowledges the commenters support for this proposal as well as their concurrence with the findings, risk factors identified and conclusion that engineering and corrective solutions are feasible and can be implemented without significant cost to the employer.

Comment #CA4: The aforementioned standard, new section 3345, if implemented correctly, has the potential to reduce the risk of preventable work-related MSDs and associated disability among hotel housekeepers.

Response: The Board acknowledges the commenters support for this proposal and thanks them for their participation in the rulemaking process.

**6. Helena Worthen, former University of Illinois Labor Educator, e-mail dated May 15, 2017, and Joe Berry, Labor Educator, letter received May 16, 2017**

Comment #HW1: The language about employee involvement in identifying and solving problems should remain intact. The commenter emphasizes the importance of the language in the proposed standard that ensures that employers of housekeepers: involve housekeepers in the various aspects of the prevention program including the worksite evaluation; corrective measures; plan updates; and in the injury investigation procedures; the causes of musculoskeletal injuries, and possible corrective measures. Workers are extremely knowledgeable about their jobs, related tasks and their workplaces. Cal/OSHA has proposed language that ensures worker knowledge is a central part of the employer's Musculoskeletal Injury Prevention Program (MIPP) thereby increasing the likelihood that this proposed standard will be effective.

Response: The Board acknowledges the commenters support for this proposal, as well as their concurrence with these specific aspects of the proposal.

Comment #HW2: The proposed standard's language about providing training for housekeepers and supervisors on risk factors, safe practices, and the elements of the employer's program to prevent musculoskeletal injuries is also essential. Worker and supervisor training is necessary to ensure that the MIPP is based on accurate information and knowledge. It is encouraging to see the progress that

has been made but only if a strong standard is adopted by the vote of the Occupational Safety and Health Standards Board before March 2018.

Response: The Board acknowledges the commenters support for these aspects of the proposal and thanks Ms. Worthen and Mr. Berry for their participation in the rulemaking process.

**7. James Howe, Safety Solutions, letter dated May 16, 2017**

Comment #JH1: One of the most important factors leading to the reduction of acute, repetitive and chronic musculoskeletal injuries is the implementation of a program by the employer. Therefore, the commenter supports the inclusion of the Musculoskeletal Injury Prevention Plan as part of the proposed standard as written.

Musculoskeletal injuries are preventable and it is the responsibility of employers to provide a safe workplace under the OSH Act. There is no reason why hotel housekeepers should have to retire early due to injuries or become permanently disabled and suffer resultant pain, injury and hardship.

Response: The Board acknowledges Mr. Howe's support for this proposal.

Comment #JH2: The UAW regularly held joint labor-management training on how to modify workstations so that MSD injuries could be prevented. A worksite evaluation was a key component of this training, performed together by workers and the employer. I applaud Cal/OSHA's language in the proposed new section 3345 that requires a worksite evaluation performed by employers and hotel housekeepers together and recommend that this language remains intact in the final standard.

Response: The Board acknowledges Mr. Howe's support for this proposal and his concurrence with these specific aspects of the proposal.

Comment #JH3: Worker participation is essential for the success of any injury control program. Worker participation is highlighted in ANSI Z10, the current draft of ISO 45001 and OSHA's Injury Illness Prevention Program. Without worker participation, employers cannot understand how work is actually performed, the organizational factors that influence it, goal conflicts and resource constraints that influence hazards and potentially increase risk. Worker participation is also necessary to ensure that corrective measures address hazards and risk and are appropriate for the work to be performed.

Therefore, I strongly suggest that the following language from the proposed standard also remains intact in the final standard, ensuring that employers of housekeepers: involve housekeepers in designing and conducting the worksite evaluation; in identifying and evaluating possible corrective measures; in reviewing and updating the musculoskeletal injury prevention plan; identifying causes of musculoskeletal injuries, and include input of the injured housekeeper about whether any control measure, procedure, or tool would have prevented the injury;

Response: The Board acknowledges Mr. Howe's support for this proposal and his concurrence with these specific aspects of the proposal.

Comment #JH4: Cal/OSHA has proposed language that ensures worker knowledge is a central part of the employer's MIPP thereby increasing the likelihood that this proposed standard will be effective, which the commenter supports.

Response: The Board acknowledges Mr. Howe's support for this proposal.

Comment #JH5: It is essential that the proposed standard's language remains intact about providing training for housekeepers and supervisors on risk factors, safe practices, and the elements of the employer's program to prevent musculoskeletal injuries. Worker and supervisor training is necessary to ensure that the MIPP is a process where workers and supervisors alike are engaged in making real progress on injury prevention in the workplace.

Response: The Board acknowledges Mr. Howe's support for this proposal, as well as his concurrence with these specific aspects of the proposal.

Comment #JH6: The commenter strongly supports this proposed standard because of its key components and because it will significantly reduce the risk of musculoskeletal injuries to hotel housekeepers, if enacted as written and implemented correctly by employers with housekeeper involvement. The Commenter would like to see the adoption of the standard before March 2018.

Response: The Board acknowledges Mr. Howe's support for this aspect of the proposal. The Board thanks Mr. Howe for his participation in the rulemaking process.

**8. Mitch Seaman, California Labor Federation; Chloe Osmer, Southern California Coalition for Occupational Safety and Health (SoCalCOSH); Jessica Martinez, National COSH, letters dated May 17 and May 18th, 2017**

Comment #CLF1: The California Labor Federation strongly supports the proposed hotel housekeeping musculoskeletal injury prevention standard. This version includes a variety of protections critically important to preventing these conditions and will, in practice, allow both affected workers and employers to minimize the human and financial toll of such crippling injuries.

Response: The Board acknowledges the commenters support for this proposal.

Comment #CLF2: The commenters support all changes detailed in the UNITE HERE letter submitted on May 15, 2017, and believe these recommendations will dramatically improve worker safety and enforceability while offering clarity for employers. The commenters strongly urge the Board to adopt these reforms while preserving the remainder of the proposed language as is.

Response: The Board acknowledges the commenters support for this proposal, as well as their concurrence with these aspects of the proposal. See responses to comments #UH1 through #UH12.

Comment #CLF3: The commenters applaud the work of both Cal/OSHA and the Standards Board in producing this proposal and look forward to continued collaborative efforts on this landmark standard.

Response: The Board acknowledges the support of the California Labor Federation, the Southern California Coalition for Occupational Safety and Health and National COSH for this regulatory proposal and thanks them for their participation in the rulemaking process.

**9. Nicole Marquez, WORKSAFE, letter dated May 18, 2017**

Comment #WS1: Worksafe strongly supports proposed new section 3345 Hotel Housekeeping Musculoskeletal Injury Prevention Standard as written in its entirety, with some minor but important suggested changes. Except for the language the commenter suggests, the commenters request all other proposed language remain intact.

Response: The Board acknowledges Worksafe's support of the proposal and takes notice of their specific recommendation to keep proposed language intact.

Comment #WS2: This proposed standard is strongly supported by hotel housekeepers and credible public health professionals alike.

Response: The Board concurs that many hotel housekeeping employees and public health professionals support the proposed regulation.

Comment #WS3: If implemented correctly by employers and with the participation of hotel housekeepers as stated in the proposed language, this proposed standard will significantly reduce the risk of musculoskeletal injuries from hotel housekeeping work. Worksafe encourages all relevant government agencies to review the comments in a timely manner and move the process forward to adopt the proposed standard before the end of 2017.

Response: The Board acknowledges that the purpose of the proposal is to reduce the number of musculoskeletal injuries to hotel housekeepers using a flexible performance-based regulation.

Comment #WS4: Worksafe supports the key components of the proposed standard taken from pages 3 of the ISOR: involvement of housekeepers in designing and conducting worksite evaluations of housekeeping hazards, identification of the causes of musculoskeletal injuries, corrective measures, program updating and training.

Response: The Board acknowledges Worksafe's support of these aspects of the proposal.

Comment #WS5: Worksafe supports the inclusion of excessive work-rate as a risk factor because hotel housekeeping work is commonly structured as a room quota per shift.

Response: The Board acknowledges Worksafe's support of this aspect of the proposal.

Comment #WS6: Worksafe strongly supports the following language of the proposed standard: the definitions of housekeeping tasks and control measures; the inclusion of forceful whole body or hand exertions and excessive work-rates as risk factors; the involvement of hotel housekeepers along with their union representative in the worksite evaluation, in the injury investigation process, in identifying and evaluating possible corrective measures and in reviewing and updating the MIPP; making readily available appropriate housecleaning equipment, protective equipment, and tools to each housekeeper, including procedures for procuring, inspecting, maintaining, repairing, and replacing appropriate housecleaning tools and equipment; a means by which appropriate equipment or other corrective measures will be identified, assessed, implemented, and then reevaluated after introduction and while used in the workplace; and the training and records sections in their entirety.

Response: The Board acknowledges Worksafe's support for this proposal, as well as their concurrence with these aspects of the proposal.

Comment #WS7: Worksafe strongly supports the language requiring meaningful worker participation in this standard. The commenter supports the language requiring worker input and involvement of hotel housekeepers along with their union representative in the worksite evaluation, in the injury investigation process, in identifying and evaluating possible corrective measures and in reviewing and updating the MIIPP. Worksafe fully supports this language remaining intact.

Response: The Board acknowledges Worksafe's support of these aspects of the proposal and takes notice of their specific recommendation to keep proposed language intact.

Comment #WS8: Worksafe strongly supports adding a mechanism by which hotel housekeepers who do not have a recognized or certified collective bargaining can designate a representative to guide them through key components of the standard: involvement in designing and conducting a worksite evaluation, input on whether control measures, input on procedures or tools would have prevented an injury, involvement in identifying possible corrective measures, and active involvement in reviewing and updating the MIIPP to determine its effectiveness and make any corrections.

Hotel housekeepers from non-union hotels face the same health hazards at work. Many hotel housekeepers may encounter fear or intimidation about using their right to be involved in the development of a strong MIIPP. If we do not incorporate a mechanism by which they are able to designate a representative, we essentially limit an equally, if not more, vulnerable population of hotel housekeepers.

Most unrepresented hotel housekeepers are unlikely to take concerns of health and safety to their employer. A power dynamic exists when you do not have a union and you interface with an employer. The ability for an unrepresented work force to designate a representative to help them with that process is crucial to ensuring fairness and transparent worker input.

With union density being at an all-time low and continuously declining, these non-traditional groups, such as legal aid, worker centers, and other labor advocacy groups fill in the gaps. Non-profit worker centers and other community-based organizations have been key partners to educate and advocate for non-union, vulnerable workforces with different state agencies. They have a certain level of trust and legitimacy, just like that of a union, established with the workers they serve.

Worksafe recommends adding a definition for designated employee representative and inserting the following language in each of the following sections where union representative appears:

*“Designated Employee Representative” means an authorized employee representative designated by two or more employees which representative shall be an attorney, a health or safety professional, union representative, or a representative of a community organization such as a worker center or worker advocacy organization.*

(c)(4)(B) The procedures shall include an effective means of involving housekeepers and their union representative, *or if there is no union representing employees of the employer, then involving a designated representative*, in designing and conducting the worksite evaluation.

(c)(5)(C) Input of the injured housekeeper, the housekeeper’s union representative, *or if there is no union representing employees of the employer, then involving a designated representative agreed to by the injured housekeeper*, and the housekeeper’s supervisor as to whether any other control measure, procedure, or tool would have prevented the injury.

(c)(6)(A) An effective means of involving housekeepers and their union representative, *or if there is no union representing employees of the employer, then involving a designated representative* in identifying and evaluating possible corrective measures;

(c)(7) Procedures for reviewing, at least annually, the MIPP at each worksite, to determine its effectiveness and make any corrections when necessary, including an effective procedure for obtaining the active involvement of housekeepers and their union representative, *or if there is no union representing employees of the employer, then involving a designated representative* in reviewing and updating the MIPP. The procedures shall include a review of the Cal/OSHA Form 300 log and other relevant records such as Cal/OSHA Form 301 incident reports.

Response: The Board notes that nothing on this proposed regulation prohibits an employee or employees from obtaining assistance or consultation from a third party. The Board declines the recommendations because the suggested addition would complicate the proposal and limit the professions of persons allowed to be employee representatives.

Comment #WS9: Employee involvement is extremely important. Therefore, as stated in previous comments, subsection (c)(4)(A) should be changed from 3 months to 90 days in two places in this clause, which is consistent with other Cal/OSHA standards.

Response: Subsection (c)(4)(A) states the following:

(c) Housekeeping musculoskeletal injury prevention program...

\* \* \* \* \*

(4) Procedures for identifying and evaluating housekeeping hazards through a worksite evaluation:

(A) The initial worksite evaluation shall be completed within three months after the effective date of this section or within three months after the opening of a new lodging establishment.

The Board notes that the commenter probably intended to recommend a change from three months to a period substantially less than three months rather than a change from three months to 90 days because three months is roughly equivalent to 90 days.

The Board declines to reduce the time period allowed for employers to conduct an initial worksite evaluation, as some employers may need the time to schedule the initial evaluation.

Comment #WS10: Worksafe recommends including a posting requirement, which promptly notifies workers of the results of the work-site evaluation in subsection (c)(4)(C). The posting language should include: "Housekeepers shall be notified *within 14 days* of the results of the worksite evaluation in writing or by posting it in a location readily accessible to them. The results of the worksite evaluation shall be in a language easily understood by housekeepers."

Response: Please see the responses to Comments #UH4 and UH5.

Comment #WS11: Other standards, such as the lead standard, include an employee notification process. (Section 5198, subd. (8)(A).) Again, the lead standard requires employers to notify each employee in writing of the exposure results within 5 working days after the receipt of monitoring results. (Ibid.) This will also serve as a way to increase the timeliness of employers notifying housekeepers of the evaluation results and as a benchmark for enforcement of this section of the proposed standard.

Response: Please see the response to Comment #UH5.

Comment #WS12: Under subsection (c)(4)(D), a timeframe for employers to complete review and update of the worksite evaluation should be added:

1. *Within 30 days of* whenever new processes, practices, procedures, equipment or renovation of guest rooms are introduced that may change or increase housekeeping hazards;
2. *Within 30 days of* whenever the employer is made aware of a new or previously unrecognized housekeeping hazard based on information such as, but not limited to, the findings and recommendations of injury investigations conducted in accordance with subsection (c)(5);

The suggested language will increase the timeliness of employers performing the worksite evaluation and serve as a benchmark for enforcement of this section of the proposed standard.

Response: Please see response to Comment #UH5.

Comment #WS13: Subsection (d)(1)(E) should be modified as follows: “When new equipment or work practices are introduced or whenever the employer becomes aware of a new or previously unrecognized hazard. ~~The additional training may be limited to addressing the new equipment or work practices.~~” The commenter believes the last sentence should be removed because it negates the intent of the following language: “or whenever the employer becomes aware of a new or previously unrecognized hazard.”

Response: See response to Comment #UH6.

Comment #WS14: Worksafe suggests adding a new item between items (1) and (2), so this becomes Item (2), as follow:

*Training records shall be created and maintained for a minimum of one year and include the following information: training dates; contents or a summary of the training sessions; types and models of equipment practiced during training; names and qualifications of persons conducting the training; and names and job titles of all persons attending the training sessions.*

The above-suggested language comes from the Healthcare Violence standard, section 3342(h)(2). This new language should also apply here to new section 3345. This text would help ensure effective trainings and be a benchmark for enforcement.

Response: See response to Comment #UH7.

Comment #WS15: The term ‘appropriate’ is used mistakenly; see listed instances below.

Under subsection (c)(5)(B), procedures to investigate musculoskeletal injuries to housekeepers, should be amended as follows:

“(B) If required tools or other control measures were not used, or not used ~~appropriately~~ correctly, a determination of why those measures were not used or were not used ~~appropriately~~ correctly; and”

The term ‘use’ of cleaning tools is performance-based and either the tools are being used correctly or not; so, ‘correct’ applies here and the term ‘appropriate’ does not. In other instances, appropriately is used to describe the tool and the commenter believes ‘appropriately’ in that context applies.

Under subsection (c)(6), the term “appropriately” should be deleted as follows:

“Methods or procedures for correcting, in a timely manner, hazards identified in the worksite evaluation or in the investigation of musculoskeletal injuries to housekeepers, including procedures for determining whether identified corrective measures are effectively implemented

appropriately to minimize or eliminate unsafe conditions or workplace practices that may cause musculoskeletal injuries.”

Adding this language will help clarify the intent of the standard vis a vis the effective implementation of appropriate tools and corrective measures. The ‘effectively implemented’ suggested language comes from the Healthcare Violence standard. (See section 3342 (c)(12)(F) “Reviewing whether appropriate corrective measures developed under the Plan - such as adequate staffing, provision and use of alarms or other means of summoning assistance, and response by staff or law enforcement - were effectively implemented;”) The additional proposed phrase ‘unsafe conditions or workplace practices that may cause musculoskeletal injuries,’ is combined text from the housekeeping standard. “Unsafe conditions or workplace practices” is from pages 1-2, in the definition of ‘Worksite Evaluation’ and “May cause musculoskeletal injuries” comes from page 1 ‘Control Measures.’

Under subsection (D)(2)(d), appropriate should be replaced with the term correct, as follows:

“body mechanics and safe practices including: identified hazards at the workplace, how those hazards are controlled during each housekeeping task, the correct ~~appropriate~~ use of cleaning tools and equipment, and the importance of following safe work practices and using appropriate tools and equipment to prevent injuries;”

The first use of the term ‘appropriate’ as it relates to “use of cleaning tools” is performance-based and either the tools are being used correctly or not. Therefore, the term ‘correct’ should be used here and not ‘appropriate.’ In the latter use of ‘appropriate’, the term is used to describe the tools and equipment and they believe ‘appropriate’ in that context applies.

Response: Please see the responses to Comments #UH8, UH9 and UH10.

Comment #WS16: The term ‘housecleaning’ is used mistakenly. Please see instances listed below.

Under subsection (c)(2), the term housecleaning should be removed and replaced with the following text:

“A system for ensuring that supervisors and housekeepers comply with the MIIPP, follow the employer’s safe workplace ~~housecleaning~~ practices for performing housekeeping tasks ~~practices~~, and use the housekeeping tools or equipment deemed appropriate for each housekeeping task. Substantial compliance with this provision includes recognition of employees who follow the employer’s safe workplace ~~housecleaning~~ practices for performing housekeeping tasks, and use the appropriate tools and equipment; training and retraining programs; disciplinary actions; or other means that ensures employee compliance with the MIIPP;”

Under subsection, (c)(6)(C), the term ‘housecleaning’ should be removed and replaced with the following text:

“A means of providing and making readily available appropriate ~~housecleaning~~ equipment, protective equipment, and tools to each housekeeper for performing housekeeping tasks, including procedures for procuring, inspecting, maintaining, repairing, and replacing appropriate ~~housecleaning~~ tools and equipment for performing housekeeping tasks.”

Housecleaning’ is not a term defined in this proposed standard and therefore, should not be used. Hotel housekeeping involves housekeepers who perform room cleaning and related housekeeping tasks. Housekeeping is a defined term and therefore, should be used. In the last sentence, an additional comma and semi-colons are needed to clarify the meaning of ‘substantial compliance.’

Response: See response to Comment #UH12. The Board acknowledges Worksafe’s comments for this regulatory proposal and thanks them for their participation in the rulemaking process.

#### **10. Mark Sale, e-mail communication dated May 18, 2017**

Comment #MS1: The commenter would like to modify the language to add an ergonomic tool that prevents MDS’s. Two-handed disposable poly bags used in housekeeping will allow the ability to perform bag-handling tasks using both hands and distribute the load 50%, reducing the risk of injury.

Response: The Board declines the request to prescribe specific ergonomic tools, equipment or control measures as this is a performance-oriented regulation that is not meant to limit or prescribe the measures that employers are to use. The Board acknowledges Mr. Sale’s comments for this regulatory proposal and thanks him for his participation in the rulemaking process.

## **II. Oral Comments Received at the May 18, 2017, Public Hearing in Oakland, California:**

### **1. Cynthia Gomez, UNITE HERE Local 2; Tatia Midwalick, UNITE HERE Local 2850; and Becky Perrine, UNITE HERE International Union in Oakland**

Comment #CG1: The commenters stated their organizations support the proposal as it is written in its entirety. UNITE HERE provided minor suggested changes in its comment letter to the Board. If employers implement the proposal correctly, it will significantly reduce the risk of musculoskeletal injuries among hotel housekeepers. The commenters stated the following provisions must also remain as written:

- Section (c)(7) regarding procedures for reviewing the MIPP at least annually, and making changes as needed to make it more effective, with the involvement of hotel housekeepers and their union representatives.

- Section (d) regarding training, especially when new equipment or work practices are introduced, as well as training managers and housekeepers on the signs, symptoms, and risk factors commonly associated with musculoskeletal injuries.

Response: The Board acknowledges UNITE HERE Local 2, Local 2850 and UNITE HERE International Union for their support of the proposal and takes notice of their specific recommendation to keep the proposed language intact. Please also see responses to UNITE HERE written Comments #UH1 through #UH12.

Comment #CG2: The commenters said this proposal is long overdue, and asked the Division to move this proposal forward quickly so the Board can vote on it by September 2017, so it can become law before May 2018.

Response: The Board thanks the commenters for their support of the proposal and acknowledges their participation in the rulemaking process.

**2. Hector Azpilcueta, UNITE HERE Local 483 and Sandra Rodriguez, UNITE HERE Local 19 San Jose**

Comment #HA1: The commenters stated that hotel housekeepers face many risks for injury at work. The housekeepers have to work at a fast pace doing things, such as vacuuming and moving furniture, which can result in injury. This proposal requires employers to have an injury control plan that actively involves hotel housekeeper input. Their organizations support the following provisions in the proposal:

- Section (c)(5) requires employers to develop procedures to investigate musculoskeletal injuries, and it requires employers to allow hotel housekeepers and their union representatives to be involved in the investigation. Hotel housekeepers know what they were doing when they were injured, how the injury occurred, and what could have prevented it. It is important to involve housekeepers and their union representatives because their input could prevent the injury from happening again.
- Section (c)(6) will help ensure that hazards are corrected in a timely manner by requiring employers to allow hotel housekeepers and their union representatives to be involved in identifying and correcting hazards and requesting the necessary tools. It will require employers to provide the necessary tools, evaluate how well they work, and ensure that they are kept in good working order.

Response: The Board appreciates UNITE HERE Local 483 and Local 19 concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. In addition, the Board acknowledges their support for these specific aspects of the proposal and thanks them for their participation in the rulemaking process.

**3. Dina Reese, Housekeeper, UNITE HERE Local 483 and Elena Sanchez, UNITE HERE Local**

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Comment #DR1: The commenters stated they support this proposal as it is written because hotel housekeepers continue to get injured on the job. Many hotel housekeepers are immigrant women who do not speak English, and even if there is translation available, employers do not always listen when non-English speaking housekeepers voice their concerns about workplace hazards. The commenters stated many hotel housekeepers worry about being retaliated against by their managers for reporting workplace hazards or injuries. This proposal requires employers to have a system in place to communicate with housekeepers that will allow housekeepers to communicate with them regarding workplace hazards and report injuries without fear of retaliation.

Response: The Board appreciates UNITE HERE Local 483 and Local 49 support of this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. In addition, the Board takes notice of their specific request to keep the proposed language intact and acknowledges their participation in the rulemaking process.

**4. Irma Perez, Housekeeper, UNITE HERE Local 2850**

Comment #IP1: The commenter stated this proposal will help both union and non-union housekeepers to avoid injury. The rights of non-union housekeepers are the ones that are violated the most by employers. This proposal will require employers to train hotel housekeepers on the cleaning chemicals and tools they use on the job and it will require employers to evaluate the efficacy of these items to see if they hurt or help the hotel housekeeper.

Response: The Board appreciates UNITE HERE Local 2850 support of this proposal and concurrence with our efforts to address reduction of musculoskeletal injuries among housekeepers. In addition, the Board acknowledges their participation in the rulemaking process.

**5. Eric Myers, McCracken, Stemerman, and Holsberry, LLP**

Comment #EM1: The commenter stated that among hotel workers, hotel housekeepers suffer the highest number of injuries, many of which are musculoskeletal, and the industry recognizes this problem. The commenter said that this proposal will help to eliminate those injuries if properly implemented. Excessive motions, such as handling linens, lifting mattresses, and walking multiple times around beds to make beds, can cause injury. This extra motion can be reduced through training and an organized process of removing and applying linens, as well as by having housekeepers work in teams to clean rooms. Steps to reduce injury must be consistently implemented and communicated to housekeepers to be effective, hotel housekeepers need to be included in the process of developing those procedures, and this proposal does that. This proposal will save \$28 million annually in worker's compensation costs, as well as save hotel housekeepers the pain and suffering that comes with being injured.

Response: The Board appreciates Mr. Myers' support of this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. In

addition, the Board thanks Mr. Myers for participating in the rulemaking process.

**6. Nicole Marquez, Worksafe and Olga Manrique, UNITE HERE Local 19 San Jose**

Comment #NM1: The commenters stated their organizations support the proposal as it is written, in its entirety, with some minor suggested changes in the sections regarding worker participation that are coupled with the ability of an employee to designate an employee representative. The commenters said these portions of the proposal could be strengthened if unrepresented housekeepers are given the opportunity to designate an employee representative.

Response: The Board appreciates Worksafe and UNITE HERE Local 19 support of this proposal and takes notice of their specific request to keep the proposed language intact. With regard to Worksafe's request to provide non-unionized housekeepers with the opportunity to designate a representative, please see response to written Comment #WS8.

Comment #NM2: The commenters stated this proposal is very much needed because it requires employers to involve hotel housekeepers in designing and conducting worksite evaluations, to train housekeepers on how to identify the causes of musculoskeletal injuries, and to involve housekeepers in identifying and evaluating corrective measures. It also requires employers to establish, and keep up-to-date, programs to prevent musculoskeletal injuries, and to provide training to housekeepers and managers on risk factors, safe practices, and elements of the employer's program to prevent musculoskeletal injuries. If this proposal is properly implemented by employers, it will reduce the risk of injury among hotel housekeepers. The Commenters asked the Division to move the proposal forward as soon as possible so that the Board can vote on it before the end of 2017.

Response: The Board appreciates Worksafe and UNITE HERE Local 19 concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers and acknowledges their participation in the rulemaking process.

**7. Carisa Harris-Adamson, University of California San Francisco and University of California Berkeley; Lizzie Keegan, UNITE HERE Local 2 San Francisco; Tatia Midwalick, UNITE HERE Local 2850; and Olga Manrique, UNITE HERE Local 19 San Jose**

Comment #CHA1: The commenters stated that their organizations support the proposal in its entirety, and they feel if it is implemented correctly with hotel housekeeper participation, it will greatly reduce the risk of injury to hotel housekeepers. The commenters stated the provisions regarding employee involvement need to be kept in the proposal.

Response: The Board appreciates Ms. Harris-Adamson, Ms. Keegan, Ms. Midwalick and Ms. Manrique for their support of this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. In addition, the Board takes notice of

their specific request to keep the proposed language intact and acknowledges their participation in the rulemaking process.

Comment #CHA2: The commenters stated their organizations also support the inclusion of forceful whole body or hand exertions and excessive work rates because they are pertinent risk factors that increase the hotel housekeeper's risk for injury. Tools should be provided and available to housekeepers at all times, and training on how to use them, as well as maintenance programs to keep them maintained, must be ongoing to ensure that their use is feasible and effective. Their organizations also support using examples of specific recommended tools, including those mentioned in Cal/OSHA publications, such as: adjustable long-handled cleaning tools, mops, lightweight vacuums, lightweight or motorized carts, and mattress lift tools. These tools will effectively reduce the housekeeper's physical workload. This proposal will help hotels to save money, and there is ongoing support available to hotels so they can effectively implement this standard. The commenters asked the Division to move this proposal forward quickly so that the Board can vote on it before the end of 2017.

Response: The Board acknowledges the commenters support for specific aspects of the proposal. With regard to the recommendation to use examples of specific tools, please see the responses to written Comments #CHLA12 through CHLA14, CA1 and MS1. The Board thanks Ms. Harris-Adamson, Ms. Keegan, Ms. Midwalick and Ms. Manrique for their participation in the rulemaking process.

#### **8. Sam Montross, Cadence Keen Innovations**

Comment #SM1: The commenter stated she invented a mattress lift tool that has helped to eliminate workers compensation claims by preventing injuries when lifting mattresses to make beds. It is very difficult to lift the corner of a mattress, hold it up, and tuck in blankets and sheets with the other hand. Some housekeepers have experienced numbness in their fingers from smoothing out blankets, while sharp objects underneath the mattress have injured others. Hotel housekeepers have used the tool to do these tasks, and it has helped them to avoid injury. It is important that hotels train their housekeepers on how to use tools like this so that they know how to use it properly.

Response: The Board appreciates Ms. Montross' support of this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. With regard to the suggestion to recommend or specify one particular tool, please see response to written Comments #CHLA12 through CHLA14, CA1 and MS1. The Board thanks Ms. Montross for participating in the rulemaking process.

#### **9. Lizzie Keegan, UNITE HERE Local 2 San Francisco**

Comment #LK1: The commenter stated this proposal is long overdue. It is important to keep provisions in the proposal that allow hotel housekeepers and their employee representatives to be involved. Musculoskeletal injury prevention programs are not common in the hotel housekeeping

industry, training is not regularly provided, and if it is provided, it is not always effective. Her organization feels that subsection (d)(2)(D) of the proposal will go a long way in preventing injuries to housekeepers and will help to keep employer costs low, but that requires the workforce to be trained, including supervisors.

Response: The Board acknowledges Ms. Keegan's support for these specific aspects of the proposal and thanks her for participating in the rulemaking process.

**10. Mary Banks, Hotel Housekeeper, UNITE HERE Local 2 San Francisco**

Comment #MB1: The commenter stated hotel housekeepers are experts at their jobs, and they know what tools and work practices work best for them. She said when they share their ideas with management, management often ignores them. She supports the provisions in the proposal that require management to involve hotel housekeepers in performing worksite evaluations, identifying and evaluating corrective measures to see if they work or not, and developing an MSD prevention plan. When an injury occurs, it is important for management to get input from the injured housekeeper as to how the injury occurred and how it could have been prevented. She asked the Division to move the proposal forward as soon as possible, so that the Board can vote on it by September 2017 and it can become law by April 2018.

Response: The Board acknowledges Ms. Bank's support for these specific aspects of the proposal and thanks her for participating in the rulemaking process.

**11. Yolanda Barron, Hotel Housekeeper, Hyatt House Emeryville**

Comment #YB1: The commenter stated this proposal will help protect hotel housekeepers from injury. It will require supervisors to be trained on how to use cleaning chemicals and tools, and it will require them to train housekeepers on how to use them. Many hotels are remodeling and putting in new items, such as showers with glass doors, that create more work for the hotel housekeeper, but they are not given enough time to do the work. Some injured housekeepers are allowed to work with restrictions on what they can do, but it is hard to get the management to follow those restrictions.

Response: The Board appreciates Ms. Barron's support of this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. In addition, the Board thanks Ms. Barron for her participation in the rulemaking process.

**12. Tatia Midwalick, UNITE HERE Local 2850 and Olga Manrique, UNITE HERE Local 19 San Jose**

Comment #TM1: The commenters stated hotel housekeepers know their jobs well and can provide

valuable input on how to make their jobs safer, but employers do not always listen to them. The commenters said it is very important the provisions in the proposal regarding hotel housekeeper and union or employee representative participation be kept in place. Their organizations support Section 4 regarding worksite evaluations and allowing hotel housekeepers and their representatives to be involved in them, as well as requiring management to make the results available to housekeepers by posting them.

Response: The Board appreciates Ms. Midwalick's and Ms. Manrique's support of this proposal and takes notice of their specific request to keep the proposed language intact.

Comment #TM2: The commenters said their organizations also support keeping the provision regarding forceful whole body or hand exertion in the list of risk factors to be considered during a worksite evaluation because these are part of doing daily housekeeping tasks. Their organizations are pleased to see that excessive work rates are also included in the list of risk factors because room quotas play a key role in whether or not the work can be done safely. They asked the Division to move the proposal forward so the Board can vote on it by September 2017 and it can become law by April 2018.

Response: The Board acknowledges Ms. Midwalick's and Ms. Manrique's support for these specific aspects of the proposal and thanks them for their participation in the rulemaking process.

**13. Candy Hu, Hotel Housekeeper, UNITE HERE Local 2 San Francisco and Elizabeth Guzman, UNITE HERE Local 19 San Jose**

Comment #CH1: The commenters stated hotel housekeepers come from all over the world and speak many languages other than English. Hotel housekeepers who speak languages other than English feel like employers are not listening to their concerns or suggestions because they do not speak English, even if they can still communicate with them in some form. These housekeepers have valuable input to give to employers regarding their concerns about workplace safety and how to make the job safer, and this input matters. Their organization supports the language in the proposal that requires employers to have a system of communication with hotel housekeepers that is understandable for all housekeepers so that they can communicate effectively with the hotel management about workplace safety and health issues. This proposal will allow hotel housekeepers to tell employers about workplace hazards that they notice, as well as when they are injured on the job, without fear of retaliation or reprisal from the employer.

Response: The Board acknowledges Ms. Hu's and Ms. Guzman's support for these specific aspects of the proposal and thanks them for their participation in the rulemaking process.

**14. Jeremy Blasi, UNITE HERE Local 11 and Sandra Rodriguez, UNITE HERE Local 19 San Jose**

Comment #JB1: The commenters stated this proposal is a clear, well-conceived, and reasonable approach to protecting housekeepers from injury, and it must remain intact as it is. From 2010 to 2014, the number of housekeepers injured on the job rose from 3,278 to 4,989, with more than 50% of the injuries being MSD injuries. These are substantial underestimates because 50-66% of injured hotel housekeepers do not report when they are injured on the job. Their organizations support all language in the proposal that requires hotel housekeeper involvement, especially in subsection (c)(4) where it requires hotel housekeeper and employee representative involvement in developing an MSD prevention plan.

Response: The Board appreciates Mr. Blasi's and Ms. Rodriguez's support for these specific aspects of the proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers.

Comment #JB2: The commenters also stated their organizations support the thorough description of the essential elements of a worksite evaluation, including injury risk factors. The fast pace of cleaning rooms to meet demanding room quotas can contribute significantly to causing injuries because it makes using safe lifting, reaching, and pushing techniques impossible. The commenters also stated it is very important to keep the provisions regarding an effective work rate and inadequate recovery time between housekeeping tasks because science has demonstrated there is a need for it. Their organization is glad to see that the proposal includes a clear description of the procedures involved in an injury investigation, and that they require employers to get input from the injured housekeeper as to how the injury occurred and how it could have been prevented. They asked the Division to move the proposal forward so that the Board can vote on it by September 2017 and it can become law by 2018.

Response: The Board acknowledges Mr. Blasi's and Ms. Rodriguez's support for these specific aspects of the proposal and thanks them for their participation in the rulemaking process.

**15. Marisela Ramos, Hotel Housekeeper, UNITE HERE Local 19 San Jose**

Comment #MR1: The commenter stated her organization supports subsection (d) regarding training because housekeepers do not receive sufficient training regarding the tools and work practices they use, and they are not given time to practice how to do these safe work practices or time to practice using the tools they are given. Subsection (d) requires that hotel housekeepers be given sufficient training on how to use new tools and how to do new work practices. This is a good thing because things in hotel rooms are changing all the time. Subsection (d) also requires hotel housekeepers and supervisors to be trained regarding the risk factors for musculoskeletal injuries and their symptoms. This will get injured housekeepers the help they need early and will allow the hotel to make necessary changes to prevent injury.

Response: The Board acknowledges Ms. Ramos' support for these specific aspects of the proposal and thanks her for participating in the rulemaking process.

**16. Mitch Seaman, California Labor Federation**

Comment #MS1: The commenter stated this proposal will require a minimal investment by employers and will help prevent injuries that could result in costly worker's compensation claims. The injuries that hotel housekeepers suffer on the job may be minimal in the beginning, but they can progress to the point that housekeepers are no longer able to work and must file a worker's compensation claim. The worker's compensation claim process is very difficult, and 2/3 of claims involving a cumulative trauma component are denied by employers. These claims require the employee to prove they were injured, and MSD injuries are difficult to prove. While some hotel housekeepers continue working while they are injured, others are forced to quit or find another line of work. It is better to prevent these injuries because they can affect workers for the rest of their lives.

Response: The Board appreciates Mr. Seaman's support for this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. The Board thanks Mr. Seaman for participating in the rulemaking process.

**17. Pamela Vossen, UNITE HERE**

Comment #PV1: The commenter stated this proposal will make a significant difference in reducing injuries on the job for hotel housekeepers. Language in the proposal should remain intact and implemented as written. It is important for housekeepers to be involved in the process of designing and conducting worksite evaluations, as well as identifying and evaluating corrective measures, because they know their jobs better than anyone.

Response: The Board appreciates Ms. Vossen's support of this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. Furthermore, the Board takes notice of the specific request to keep the proposed language intact.

Comment #PV2: The commenter said it is important to provide training to housekeepers and supervisors, especially on how to identify the causes of MSD injuries. The commenter's organization is pleased to see excessive work rates are included in the list of risk factors that can cause injury. The commenter's organization provided a letter to the Board with some suggested changes, including recommendations to replace the term "appropriate" to "correct," to clarify that all housekeepers are required to be involved by adding "where applicable, union representative;" to replace the terms "house cleaning" and "house cleaning practices" which are not in the list of definitions with language that demonstrates the same intent; to mandate a 14 day deadline by which

hotel housekeepers are notified of the results of the worksite evaluation and to require 30 days to review or update worksite evaluations to help facilitate enforcement of the standard.

Response: Please see the responses to written Comments #UH4 through UH12. The Board thanks Ms. Vossen for participating in the rulemaking process.

**18. Mark Sale, B3 Plastics; Martha Campos, UNITE HERE Local 2 San Francisco; Ana, Hotel Housekeeper, Hyatt House Emeryville; Elsa Portillo, Hotel Housekeeper, Hyatt House Emeryville; Chuck, Hotel Housekeeper, UNITE HERE Local 2 San Francisco; Gregoria Rekealado, Hotel Housekeeper, UNITE HERE Local 19 San Jose; Jim Howe, Safety Solutions; Maria, UNITE HERE Local 49 Sacramento; Maria Garcia, Hotel Housekeeper, UNITE HERE Local 49 Sacramento; Fabiola Benavides, Hotel Housekeeper, UNITE HERE Local 2 San Francisco; and Michael Musser, California Teachers Association**

Comment #MSB3P1: The commenters stated this proposal is needed to protect hotel housekeepers from MSD injuries. It is important that hotel housekeepers have the right tools available to them to do their jobs safely, and a mandate like this is needed because guidelines are not always enough. This proposal will protect all housekeepers, whether or not they are represented by a union or other group.

Response: The Board appreciates the commenters' support of this proposal and thanks them for participating in the rulemaking process.

**19. Jesse Cripps, Gibson, Dunn and Crutcher, representing the California Hotel & Lodging Association**

Comment #JC1: The commenter stated this issue was raised in May of 2012, and at that time, the Board rejected that proposal because the Board felt it would be a bad precedent to create a separate carve-out proposal for hotel housekeeping, and the types of injuries this proposal would address are already addressed in existing standards. The commenter's organization feels this is still the case today. This proposal will create a slippery slope for a very narrow class of people (only hotel housekeepers) and will result in future proposals for all manners of workplaces and jobs, such as nursing homes, assisted living facilities, and hospitals. This will create a patchwork of job- and workplace-specific regulations. A 2013 study by Dr. Steven Wiker, which is the only study that used NIOSH protocols instead of anecdotes, indicates a carve-out regulation for hotel housekeepers is not necessary.

Response: Please see responses to Comments #CHLA1, CHLA2 and CHLA17.

Comment #JC2: The commenter stated existing regulations already address injuries such as MSD injuries for all jobs including hotel housekeeping, and this proposal creates a fundamental conflict

with these existing rules. Section 3203 already requires employers to conduct an investigation into injuries that occur on the job, and Section 5110 already provides a procedure for evaluating and preventing musculoskeletal injuries. When it comes to determining what tools housekeepers should use, the methods of communication with housekeepers, and work rates, those things should be determined through the collective bargaining process. While Section 5110 requires examination and diagnosis by a licensed physician, this proposal does not. This proposal applies a one-size-fits-all approach of tools and work practices that may not work for every hotel housekeeper, and they should be subject to collective bargaining.

Response: Please see responses to Comments #CHLA2 through CHLA5 and CHLA12 through CHLA14.

Comment #JC3: The commenter said this proposal will mandate employees use certain tools and work practices, and it could result in housekeepers being disciplined if they do not use them, even if those tools and work practices do not work for them. The current standard gives employees flexibility to use the tools and work practices that work best for them.

Response: Please see responses to Comments #CHLA12 through CHLA14.

Comment #JC4: The commenter stated CH&LA performed an economic analysis of this proposal and submitted it to the Division, and the costs associated with this proposal are alarming. Costs listed in the ISOR are in direct conflict to this analysis, and the ISOR does not take certain costs into account. The commenter's organization believes more robust enforcement of existing rules, along with renewed efforts to develop industry-specific guidelines, is a better way to address this issue. The commenter asked the Board to extend the comment period for this proposal so that his organization can further address in writing the comments made today.

Response: Please see responses to Comments #CHLA27 through CHLA32. As stated by the chairperson of the Board at the end of the meeting, the comment period was extended until 5 pm of the day of the public hearing (May 18, 2017). The Board thanks Mr. Cripps for his comments and acknowledges his participation in the rulemaking process.

## **20. John Robinson, California Attractions and Parks Association**

Comment #JR1: The commenter stated his organization supports Mr. Cripps' testimony today and the written comments that were submitted by the California Hotel & Lodging Association. Having a carve-out proposal that only applies to hotel housekeepers is concerning. Employers' injury and illness prevention plans, as well as other existing standards, already address many of these issues. The commenter asked the Board to take these things into consideration when deciding whether or not to adopt this proposal.

Response: Please see responses to Comments #CHLA1 through CHLA43. The Board thanks Mr. Robinson for his comments and acknowledges his participation in the rulemaking process.

## **21. Marti Fisher, California Chamber of Commerce**

Comment #MF1: The commenter stated this proposal is duplicative, redundant, and waters down the application of the IIPP to all workplace hazards. The proposal is looking for problems instead of analyzing job tasks and needs to more appropriately mirror the IIPP. Most of the injuries the Board has heard about from hotel housekeepers throughout this process occurred because employers were violating existing regulations and worker's compensation laws, and retaliation from employers is not allowed under the existing law. This proposal does not change anything and will not make working conditions any better for employees.

Response: Please see responses to Comments #CHLA1 through CHLA43. The Board is confident that its efforts to address the reduction of occurrence of musculoskeletal injuries among housekeepers are appropriate.

Comment #MF2: The commenter stated subsection (c)(4)(D)(3) of the proposal regarding conducting annual worksite evaluations is completely unnecessary because there are other similar requirements in the IIPP and the proposal itself, including subsections (c)(4)(D)(1), (c)(4)(D)(2), and (c)(7). Requiring this many reviews is excessive, and listing it twice in the proposal is not necessary.

Response: The Board does not believe subsection (c)(4)(D)(3), which requires an annual worksite evaluation, is unnecessary or excessive. As stated in the ISOR, the goal is to provide the employer with multiple means of discovering potential workplace hazards for the purpose of preventing musculoskeletal injuries. Subsection (c)(4)(D)(1) only requires an evaluation whenever new processes, practices, procedures, equipment or renovation of guest rooms are introduced that may change or increase housekeeping hazards and is not duplicative of subsection (c)(4)(D)(3). Subsection (c)(4)(D)(2) only requires an evaluation whenever the employer is made aware of a new or previously unrecognized housekeeping hazard and is not duplicative of subsection (c)(4)(D)(3). Regarding the IIPP, please see the responses to comments #CHLA2 through CHLA5.

Comment #MF3: In subsection (c)(4)(E), the list of injuries and types of movements assumes that there is a relationship between these activities and injury. It also only lists the risks that employers are supposed to look for, not the job tasks, which is opposite of how worksite evaluations should work. To address this, the Division could do a non-mandatory appendix to advise employers and employees of this information if necessary.

Response: Subsection (c)(4)(E) lists risk factors that pose a risk of injury to housekeepers and as such need to be considered in the worksite evaluation to assist in the identification of unsafe

conditions, work practices, processes, or operations. Thus, the Board declines the recommendation to move the risk factors listed in subsection (c)(4)(E) to a non-mandatory appendix. Please also see the response to Comment #CHLA14 regarding non-mandatory guidelines.

Comment #MF4: On page 6 of the proposed regulation, in the section pertaining to records being made available to employees, the term “designated representative” should be changed to “union representative.”

Response: The term “designated representative” was used for consistency with existing section 3204(e)(1). Thus, the Board declines the recommendation to substitute the term “designated representative” with “union representative.” The Board thanks the Ms. Fisher for her comments and acknowledges her participation in the rulemaking process.

## **22. Laura Stock, Board Member**

Comment #MSK1: The commenter stated the stories hotel housekeepers have told the Board over the years demonstrate that the current regulations are not working to protect them from injury. This proposal is not one-size-fits-all and does not tell employers what specific solutions they must use in each situation. Instead, it revolves around conducting worksite evaluations, understanding what the hazards are, and implementing the necessary changes to correct them. It only tells employers that they must address these situations. Many regulations are industry-specific and help to apply general principles to specific industries. Some standards, such as the ergonomics standard, are very general and not preventive. This standard will require employers to take action and make changes before injuries occur. She is pleased to see the proposal has many requirements for employee involvement because that is critical, especially in ergonomics, because employees know their jobs best and what works for them to prevent injury.

Response: The Board appreciates Ms. Stock’s support for this proposal and concurrence with our efforts to address reduction of occurrence of musculoskeletal injuries among housekeepers. The Board thanks Ms. Stock for her comments and acknowledges her participation in the rulemaking process.

### **ADDITIONAL DOCUMENTS RELIED UPON**

None.

### **ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE**

None.

### **DETERMINATION OF MANDATE**

This standard does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

### **ALTERNATIVES CONSIDERED**

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be (1) more effective in carrying out the purpose for which the action is proposed; or (2) would be as effective as and less burdensome to affected private persons than the adopted action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.