

DEPARTMENT OF INDUSTRIAL RELATIONS
 Occupational Safety and Health Standards Board
 2520 Venture Oaks Way, Suite 350
 Sacramento, CA 95833
 Tel: (916) 274-5721 Fax: (916) 274-5743
www.dir.ca.gov/oshsb



SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
December 17, 2020
Teleconference in Sacramento, California

I. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., December 17, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-5726, via WebEx/teleconference, in accordance with Executive Order N-29-20.

ATTENDANCE

<u>Board Members Present at OSHSB Office</u>	<u>Board Members Absent</u>
Dave Thomas	NONE

Board Members Present via
Teleconference and/or Webex

Barbara Burgel
 Dave Harrison
 Nola Kennedy
 Chris Laszcz-Davis
 Laura Stock

Division of Occupational Safety and Health
Staff Present via Teleconference and /or
Webex

Board Staff Present at OSHSB Office
 Christina Shupe, Executive Officer
 Michael Nelmidia, Senior Safety Engineer
 Sarah Money, Executive Assistant

Eric Berg, Deputy Chief of Health

Board Staff Present via Teleconference
and/or Webex

Mike Manieri, Principal Safety Engineer
 Lara Paskins, Staff Services Manager
 David Kernazitskas, Senior Safety
 Engineer
 Jennifer White, Associate Government
 Program Analyst

Others Present via Teleconference and/or Webex

Amalia Zimmerman Lommel, Good Farms, LLC	Sasha Feldstein, CA Immigrant Policy Center
Karin Umfrey, Worksafe	Kevin Bland, Ogletree Deakins
Gabriel Machabanski, Graton Day Labor Center	Dennis Pocekay, Petaluma City Council
Mike Donlon, Construction Employers Association	Constance Barker, SEIU 2015
Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR)	Frank Belio, IUEC Local 18 AFL/CIO
Maggie Robbins, Worksafe	Anne Katten, CA Rural Legal Assistance Foundation
Mishaal Gill, CA Immigrant Policy Center	Nancy Zuniga, Instituto de Educacion Popular del Sur de California (IDEPSCA)
	Robert Moutrie, CA Chamber of Commerce
	Helen Cleary, Phylmar Regulatory Roundtable (PRR)

II. PUBLIC MEETING

Mr. Thomas called indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that this is her last meeting, and she has enjoyed working with the Board throughout the years on many different rulemakings.

Helen Cleary, Phylmar Regulatory Roundtable, stated that she is taking Elizabeth's place at PRR and is looking forward to working with the Board.

Amalia Zimmerman Lommel, Good Farms LLC, asked the Board to review Sections 3205.3(c)(2) regarding the new bunk bed policy and the requirement of six feet between heads and 3205.4(c)(2) requiring transportation distance of three feet between people. These new regulations will hinder her organization's ability to invite new H-2A guest workers to harvest their crops. She also asked the Board to consider adding an exception to the regulation for farm workers who get vaccinated against COVID-19.

Karin Umfrey, Worksafe, stated that her organization supports the wildfire smoke standard that is scheduled for a vote today, but they feel it is not effective enough. The air quality index (AQI) trigger for respiratory protection should be lowered to an AQI of 101 and the trigger for required respirator use should be lowered to 300. The Division also needs to conduct more enforcement sweeps to ensure that employers are complying with the regulation. **Gabriel Machabanski, Graton Day Labor Center, and Constance Barker, SEIU 2015**, echoed Ms. Umfrey's comments.

Mishaal Gill, CA Immigrant Policy Center, stated that her organization supports the wildfire smoke standard, but they feel that it falls short in certain areas. There needs to be a requirement that employers inform workers about the new standard and wildfire alerts when they occur. The standard needs to provide clear guidance to employers regarding their responsibilities. The Division also needs to conduct more sweeping enforcement action to ensure employers are complying, as well as education and outreach so workers know their rights. **Sasha Feldstein, CA Immigrant Policy Center**, echoed Ms. Gill's comments.

Kevin Bland, Ogletree Deakins, thanked the Board for its hard work throughout the year.

Dennis Pocekay, Petaluma City Council, asked the Board to adopt the wildfire smoke standard because exposure to wildfire smoke aggravates asthma and other respiratory and cardiovascular diseases. He said that outdoor work is more physical than indoor work, so it is important to require employers to provide respiratory protection to their employees and inform their employees about this standard. This standard is also needed so that the Division may conduct robust enforcement to protect workers.

Gabriel Machabanski, Graton Day Labor Center, stated that his organization supports the wildfire smoke standard, but it needs to go further to protect workers. A broad reaching educational campaign that is culturally and linguistically relevant must be conducted for workers so that workers are informed of their rights. The Division must also provide clear guidance to employers and do more enforcement sweeps to make sure employers are complying.

The following individuals also commented in support of the wildfire smoke standard, but feel that it needs to be strengthened:

Nancy Zuniga, Instituto de Educacion Popular del Sur de California (IDEPSCA)

Robert Moutrie, CA Chamber of Commerce, stated that his organization is glad to see the wildfire smoke regulation moving along. They still have concerns regarding the feasibility of it that will hopefully be addressed in version 3.0. He also stated that the regulation does include some educational requirements.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 10:42 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:42 a.m., December 17, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726, via Webex/teleconference,

in accordance with Executive Order N-29-20.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
New Section 5141.1
Protection from Wildfire Smoke

Mr. Berg summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's consideration and vote.

Ms. Stock asked Mr. Berg to clarify when communication and training needs to be provided. **Mr. Berg** stated that the regulation only takes effect when the AQI for PM2.5 is 151 or greater and there is reasonable anticipation that it is from wildfire smoke, so communication and training does not need to happen until then.

Ms. Burgel asked Mr. Berg to explain why the Division did not lower the trigger to 101 for sensitive groups and to also discuss the pros and cons for lowering the trigger for mandatory respirator use to 300. **Mr. Berg** stated that the AQI of 151 was chosen in an effort to balance practicality with protecting the health of employees. He said that the Division would prefer to have the trigger be at 101, and they will be discussing that for future revisions. **Ms. Burgel** stated that not providing education to sensitive groups until the AQI hits 151 is a missed opportunity to protect them. **Ms. Stock** echoed Ms. Burgel's concerns regarding the AQI triggers.

Ms. Stock stated that waiting to provide education to employees about their rights under this standard until the event is happening is not optimal. She feels it would be best to include this information in regular training for employees who may possibly be exposed to wildfire smoke during their work. She would also like to see domestic workers included in this standard.

Ms. Kennedy stated that the triggers that the Division selected are in line with occupational limits for other worker categories who are also exposed to particulates in their work environments. She also suggested that the wildfire smoke regulation could be used as a driver for improving occupational exposure limits for all workers.

Ms. Laszcz-Davis stated that she echoes many of the comments made by the other Board Members and thanked the Division for their hard work on this standard. **Mr. Harrison** echoed Ms. Laszcz-Davis's comments.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Laszcz-Davis that the Board adopt the proposal.

A roll call was taken, and all members present voted “aye.” The motion passed.

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Scott Swaaley, CEO
Petition File No. 580

Petitioner requests to amend title 8, section 2530.43 to clarify the existing anti-restart standard as well as add current Federal OSHA language to title 8, section 4001 to better align with Federal OSHA requirement (1910.213(b)(3)).

Ms. Shupe summarized the history and purpose of petition 580 and stated that the proposed decision is to deny the petition.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock to deny the petition.

A roll call was taken, and all members present voted “aye.” The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Shupe stated she is aware of no unresolved procedural issues regarding items A-S on the consent calendar, and she believes that those items are ready for the Board’s decision on the question of adoption.

MOTION

A motion was made by Ms. Laszcz-Davis and seconded by Mr. Harrison to adopt the consent calendar.

A roll call was taken, and all members present voted “aye.” The motion passed.

D. REPORTS

1. Division Update

Mr. Berg provided the following updates:

COVID-19 Emergency Temporary Standard (ETS): The Division will be holding a stakeholder meeting virtually tomorrow, December 18, at noon to get input for future advisory committee meetings and to make improvements and clarifications to the emergency temporary standard.

The Division continues to work on the following regulations and hopes to do rulemakings on them next year:

- Lead in Construction and General Industry
- Indoor Heat
- Antineoplastic Drugs
- Workplace Violence

Ms. Laszcz-Davis stated that she hopes the stakeholder meeting tomorrow for the COVID-19 ETS and advisory committee meetings in 2021 will be more interactive instead of just input only.

2. Executive Officer's Report

Ms. Shupe stated that on December 14, 2020, the Governor issued Executive Order N-84-20 which provides for the suspension of section 3205(c)(10) and (c)(11) only to the extent that they exceed the longer of any applicable quarantine or isolation period recommended by the CA Department of Public Health (CDPH) or a local health officer who has jurisdiction over the workplace. It does not impact the Board's rulemaking or ability to readopt the COVID-19 ETS as allowed for in the Administrative Procedures Act.

Ms. Shupe stated that the Board staff has hired Autumn Gonzalez to the attorney position. Ms. Gonzalez will start working on December 18, 2020.

Ms. Shupe stated that the Legislature will reconvene on January 4, 2021, and legislative briefings will resume again at the January Board Meeting.

E. NEW BUSINESS

1. Future Agenda Items

No future agenda items were mentioned.

Mr. Harrison thanked Ms. Treanor for her hard work with the Board and Division staff throughout her career. **Ms. Stock** and **Ms. Laszcz-Davis** echoed Mr. Harrison's comments.

Ms. Stock thanked the Board staff and Division staff for their hard work throughout the year. **Ms. Kennedy** and **Mr. Thomas** echoed Mr. Harrison's comments.

A. CLOSED SESSION

The need did not develop for the Board to hold a Closed Session at this time.

B. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:16 a.m.