

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
January 18, 2018
Oakland, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:03 a.m., January 18, 2018, in the Auditorium of the Harris State Building, Oakland, California.

ATTENDANCE

Board Members Present

Dave Thomas
David Harrison
Chris Laszcz-Davis
Barbara Smisko
Laura Stock

Board Member Absent

Patty Quinlan

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
Peter Healy, Legal Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Garrett Keating, Toxicologist for the
Research and Standards Unit
Amalia Neidhardt, Senior Safety Engineer,
Research and Standards Unit

Others Present

Alejandro Negrete, Unite Here Local 2
Kathy Hu, Unite Here Local 2
Michael Musser, CA Teachers Association
Francisca Carranza, Unite Here Local 2850
Ty Hudson, Unite Here Local 2850
Nicole Marquez, Worksafe
Rachael Huber, Unite Here Local 2850
Soledad Cabrera, Unite Here Local 11
Val Martinez, Unite Here Local 11
Armando De Leon Lavenant, Unite Here
Local 30
Roxana Tapia, Unite Here Local 49

Candy Hu, Unite Here Local 2
Doris Hernandez, Unite Here Local 11
Doug Parker, Worksafe
Elsa Portillo, Unite Here Local 2850
Zeferina Hernandez, Unite Here Local 2850
Roxana Aguilar, Unite Here Local 2
Antonio Mendoza, Unite Here Local 11
Alicia Quiros, Unite Here Local 11
Rocio Leon, Unite Here Local 30
Antonio Arenas, Unite Here Local 2
Enriqueta Layune, Unite Here Local 49
Helena Worthen, NWO/NAW

Sarah Julian, Unite Here Local 19	Olga Manrique, Unite Here Local 19
Socorro Espinoza, Unite Here Local 2850	Ana Gutierrez, Unite Here Local 2850
Sarai Gutierrez, Unite Here Local 2850	Irma Perez, Unite Here Local 2850
Edgar Bairo, Unite Here Local 2850	Raquel Morales, Unite Here Local 2850
Leticia Pacheco, Unite Here Local 2850	Jamie Carlile, SCE
Kevin Bland, Ogletree Deakins	Michael Vlaming, CECA
Ken Clark, BBT	Fabiola Benavides, Unite Here Local 2
Susana Rodriguez, Unite Here Local 2	Anabel Ramirez, Unite Here Local 2
David Jones, AGC of California	Carmen Vega, Unite Here
Binda Segovia, Unite Here Local 2850	Pamela Vossen, Unite Here
Dearia Guzman, Unite Here	Courtney Alexander, Unite Here
Ana Rodriguez, Unite Here	Michelle Bain, Unite Here Local 30
Jeanette Rodriguez, Unite Here Local 11	Carmen Conesti, CA Nurses Association
Laurel Fish, Unite Here Local 2	Radhika Mishra, Unite Here Local 2
Joan Lichterman, CWA 9119	Jake Doolittle, Unite Here Local 2
Linda Gonzales, Unite Here Local 49	Angelina Garcia, Unite Here Local 49
Joe Berry, CCSF Labor Studies	Maria Arce, Unite Here Local 2850
Maria Cardenas, Unite Here Local 2850	Yulisa Elenes, Unite Here Local 2850
Jeremy Blasi, Unite Here Local 11	Placido Calixtro, Unite Here Local 49
Yolanda Barron, Unite Here Local 2850	Sara Marroquin, Unite Here Local 2850
Ofelia Cardenas, Unite Here Local 2850	Robin Dewey, LOHP, UC Berkeley
Kevin Thompson, Cal/OSHA Reporter	Dan Leacox, Leacox & Associates
Elizabeth Treanor, PRR	Jennifer McNary, CA Dept. of Public Health,
Marti Fisher, CalChamber	Occupational Health Branch, HESIS

B. OPENING COMMENTS

Mr. Thomas 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.

Dan Leacox, Leacox & Associates, stated that his organization did not participate in the advisory committee process, but they are concerned about an element in Section 3345(e)(2) that could be taken broadly and set a concerning precedent that could affect the business community. He said that Section 3204(e)(1) gives an employee and their representative access to that employee's medical and exposure records, and the other provisions in Section 3204 provide protections for the employer so that an employee's access does not turn into an opportunity for the employee and their representative to seek a lot of employer records. **Marti Fisher, California Chamber of Commerce, and Kevin Bland, Ogletree Deakins**, echoed this comment. Mr. Leacox stated that Section 3204 also defines what items the employee and their representative have access to, and what items are off limits. He said that the way that Section 3204(e)(1) is brought into Section 3345(e)(2) creates broader access to an employer's records that is not specific to an individual employee, and as a result, this would allow employees and their representatives to request documents that are not specific to that employee. He stated that this provision will allow the employee and their representative to investigate someone, or to conduct discovery outside the context of a lawsuit before a lawsuit is brought. He said that discovery inside the context of a lawsuit provides protections for the employer, and even if the other provisions of Section 3204 are brought into Section 3345,

these protections that are built into discovery of a lawsuit will not be brought in. He also stated that his organization is concerned that this provision could have wide applicability in other rules.

Mr. Leacox also commented on the permissible exposure limit (PEL) process presentation that Mr. Keating will be doing during the business meeting portion of the meeting today. He said that he reviewed the slides for Mr. Keating's presentation that were posted online. He stated that his organization applauds the PEL process and Mr. Keating's work regarding the process, but his organization feels that the presentation is missing a few things. He said that in addition to the information that Mr. Keating will present today, there are several sources that exist for setting policies and procedures for setting PEL's, including a PEL-setting policy and procedure document that is still valid and rich with knowledge of what the policies and procedures are supposed to be. He stated that some changes were made to this document in 2016 and 2017 regarding the Health Experts Advisory Committee (HEAC), so the newest version specifically applies to the HEAC. He also stated that there is testimony that was provided by Deborah Gold in 2013 that can be used as another source for setting policies and procedures for setting PEL's.

Mr. Leacox said that his organization agrees that to promulgate a standard for a PEL, the standard needs to adequately assure, to the extent feasible, that no employee will suffer material impairment or functional capacity. He stated that federal OSHA has similar requirements when promulgating standards for PEL's:

1. Compliance with the standard must be technically feasible.
2. Compliance with the standard must be economically feasible.
3. The standard must reduce the risk of adverse health effects to workers to the extent feasible.
4. The standard must be supported by substantial evidence in the record.
5. The standard must substantially reduce the significant risk of material harm.

His organization believes that the first 4 items are adequately addressed in Mr. Keating's presentation, but the last item is not. He said that when a PEL is proposed, the Board must decide if that proposed PEL will substantially reduce the significant risk of material harm to employees. He said that the recommended level is often perceived as a line between life and death, but in this context, it is not like that at all. It is more like a graduated scale that the Board needs to understand, and the documentation on the PEL needs to illuminate that so that the Board can measure that.

Mr. Leacox stated that there are transparency provisions in the policies and procedures document that are not covered in Mr. Keating's presentation, such as the provision that requires the statement of reasons to include a basis for the Division's draft proposal PEL for each substance, where it differs from committee recommendations,

Doug Parker, Worksafe, stated that the hotel housekeeping proposal incorporates the procedural provisions of Section 3204(e)(1) regarding requesting records. He said that it is a procedural reference to the manner of which these records are to be requested by parties that have a right to request them. He stated that it does not expand the scope of these types of requests, nor does it upset the process or introduce anything new. He said that this is an established standard that has been in place for a long time.

Mr. Parker also commented on the PEL process presentation. He said that his organization is looking forward to the Board learning more about the process, but his organization wished to make one point regarding adopting the banding approach in regulating chemicals based on a future rulemaking by federal OSHA. He stated that his organization feels that the Division does not have to wait for a regulation from federal OSHA in order to engage in regulating a PEL or chemical based on a banding-based process as long as the regulation is at least as effective as the federal OSHA standard on any regulated chemical.

Nicole Marquez, Worksafe, stated that her organization strongly supports the proposal regarding hotel housekeeping that is scheduled for a vote today, and she urged the Board to vote “aye”. She said that if this proposal is adopted and implemented properly by employers, and with hotel housekeeper input, it will significantly reduce the number of musculoskeletal injuries that hotel housekeepers experience from hotel housekeeping work. She stated that musculoskeletal injuries are very painful, and some housekeepers have a difficult time getting time off to recover or get treated for their injuries. She said that some housekeepers have no choice but to continue working through the pain. She stated that the key components of this proposal are hotel housekeeper involvement and access to records. She said that this will help workers understand what they are being exposed to at their workplace, and it will give employers the opportunity to make changes or corrections when needed. She also stated that this proposal will reduce the fiscal and legal costs, such as workman’s compensation claims or hiring replacement staff.

Michael Musser, California Teachers Association, stated that his organization supports the proposal for hotel housekeeping that is scheduled for a vote today. He also said that his organization is looking forward to working with the Division and Board staff to address workplace violence prevention in general industry and indoor heat illness prevention.

Joan Lichterman, CWA 9119, stated that she suffered musculoskeletal injuries on the job doing editorial work, which is much less physically demanding work than hotel housekeeping. She said that her injuries could have been prevented by using the proper tools for her job, getting the proper training on how to prevent these injuries, and allowing employees to be involved in creating and implementing safety procedures and programs, such as the employer’s injury and illness prevention plan. She stated that all of these things are included in this proposal. She said that once someone suffers a musculoskeletal injury, they aren’t always able to recover, so prevention is the cure for these injuries. She stated that these injuries can require an employee to seek ongoing medical care and can impede the employee’s ability to do basic daily tasks, such as making a bed. She asked the Board to adopt the proposal.

Pamela Vossen, Unite Here International Union, stated that the hotel housekeeping proposal is a well-crafted, well-considered, scientifically sound proposal that is substantially feasible and will reduce hotel housekeeping injuries. She said that the proposal has received

overwhelming support, and as a result, no changes were made to the proposal. She stated that hotel housekeepers are experts at their jobs, and their expertise has been incorporated into this standard. She said that hotel housekeeping work has been taking a physical toll on housekeepers since the “bed wars” began over 20 years ago, with hotels offering bigger beds, heavy duvets, thick sheets, and more of everything in each room in an effort to win customers. **Sarah Julian, Unite Here Local 19 San Jose**, echoed this comment. Ms. Vossen stated that musculoskeletal injuries are painful and can limit a person’s ability to do daily tasks. They also can be permanently debilitating, resulting in job loss and economic hardship for families. She said that they can be prevented, and employers are legally obligated to provide a safe and healthy workplace. She stated that this standard will provide an enforceable blueprint for workers and employers so that they will know how hotel housekeeping injuries can be prevented, and it will be an example for the rest of the nation to follow. She asked the Board to vote “aye” on the proposal.

Alicia Quiros, Unite Here Local 11 Orange County, stated that the hotel housekeeping proposal is urgently needed. She said that amenities in hotel rooms are constantly changing, but no new tools or training on how to do the job safely are provided. She stated that this proposal will allow housekeepers and their representatives to share firsthand knowledge with their employer about how to prevent injuries when doing hotel housekeeping work. She asked the Board to vote “aye” on the proposal.

Ana Maria Rodriguez, Hotel Housekeeper, Disneyland Hotel, stated that her hotel has made some changes in the rooms over the last several months, including replacing shower curtains with glass shower doors and 30-inch-high mattresses with 35-inch-high mattresses. As a result of these changes, her back muscles have become inflamed to the point that she has a constant ringing in her ear. She also said that the housekeeping carts that her hotel is currently using weighs 242 lbs., and the hotel is planning to replace them with carts that weight 463 lbs. The new carts have not been implemented yet because the housekeepers’ union has been able to delay it for now, but many of her coworkers are worried because they know it’s coming. She stated that many housekeepers take pain pills every day so that they can continue to work. She asked the Board to vote “aye” on the hotel housekeeping proposal.

Mr. Thomas called for a break at 10:45 a.m. and reconvened the meeting at 10:50 a.m.

Jeremy Blasi, Unite Here Local 11, stated that the hotel housekeeping proposal is feasible and will be very effective at preventing musculoskeletal injuries to hotel housekeepers. He said that it is a clear and well-conceived approach to protecting hotel housekeeper health. He stated that the following aspects of the proposal are very important:

- 1.) The proposal requires employers to incorporate worksite evaluations into their musculoskeletal injury prevention plans.
- 2.) The proposal requires hotel housekeeper involvement in planning and carrying out worksite evaluations and injury investigations.

He asked the Board to vote “aye” on this proposal.

Rocio Leon, Unite Here Local 30, stated that many of her coworkers who are injured on the job have gone out on injury leave only to come back a while later still injured, and for some, once they have been injured, they are never the same again. She said that many of her coworkers take pain pills before their shift so that they can continue to work. She asked the Board to vote “aye” on the hotel housekeeping proposal.

Armando DeLeon, Unite Here Local 30, stated that many hotels expect their injured housekeepers to come back quickly from injury leave, and they expect that the housekeepers will function at 100%. He urged the Board to vote “aye” on the hotel housekeeping proposal.

Enrica, Hotel Housekeeper in Sacramento, stated that she was injured on the job 7 years ago while lifting a mattress to tuck in sheets, and she has had to take medicine with codeine in it, and wear back support, since then so that she can continue to work. She said that the medication has had a negative effect on her health, and the pain and fatigue that she and her coworkers suffer from doing their work affects their ability to enjoy their families. She asked the Board to vote “aye” on the hotel housekeeping proposal.

Maria, Hotel Housekeeper, Unite Here Local 49, stated that many hotel housekeepers choose to work through the pain following a workplace injury because they are afraid of being retaliated against by the hotel management for reporting injuries or having work restrictions. She said that the hotel housekeeping proposal contains important provisions that require employers to create a work environment that is free from fear of retaliation. She asked the Board to vote “aye” on the proposal.

Sergio Ramos, Unite Here Local 483, stated that voting “aye” on the hotel housekeeping proposal will send a message to the rest of the nation that it is important to protect the health of hotel housekeepers. He said that when workers are injured because they are rushing to get their work done and doing repetitive motions such as pushing and pulling, they get injured, and those injuries affect them and their families. He stated that 4% of the workers represented by Local 483 have been injured doing hotel housekeeping tasks.

Olga Manrique, Hotel Housekeeper, Unite Here Local 19, stated that hotel housekeepers are not always given the proper tools to do their jobs safely and prevent injury, and for those who are given tools, they are not trained on how to use them. She stated that many housekeepers must reach up high to clean walls and other surfaces, and as a result of not having the proper tools, they injure their arms and backs. She said that the hotel housekeeping proposal is needed because it requires employers to provide the tools that housekeepers need to do their jobs safely, as well as training on how to use those tools safely and effectively.

Candy Hu, Hotel Housekeeper, Unite Here Local 2, stated that she has to clean 14 rooms per day, which means that she makes 28 beds, changes 168 pillowcases, handles 84 bed sheets, removes and replaces at least 80 towels, and replaces many amenities in each room. She said that the hardest part of her job is cleaning the bathroom because she must stand on her tiptoes and reach up high to clean the top part of the glass shower doors. She stated that when she is done working for the day, her entire body aches and she must take a nap and pain medication before she can cook dinner for her family. She asked the Board to vote “aye” on the hotel housekeeping proposal.

Cathy Hu, Hotel Housekeeper, Unite Here Local 2, stated that she was injured at work after the housekeeping cart rolled onto her toes several times. She said that the carts are very heavy to push and are very difficult to control when they are being pushed over carpeting. She stated that if a housekeeper is required to clean 14 rooms in a day, they will have a minimum of 14 towels, sheet sets, cups, shampoo, coffee necessities, hangers, and other things for each room on the cart, and each item makes the cart heavier and more difficult to push. She asked the Board to vote “aye” on the hotel housekeeping proposal.

Yolanda Barron, Hotel Housekeeper at the Hyatt House in Emeryville, stated that she was permanently injured on the job, and nearly half of the other housekeepers at her hotel have also been injured on the job. She said that when these housekeepers return to work, the hotel does not respect the work restrictions that the housekeepers are given, and in some cases, they even add more work to the housekeeper’s workload. She asked the Board to vote “aye” on the hotel housekeeping proposal.

Ofelia Cardenas, Hotel Housekeeper at Hyatt Hotel in Santa Rosa, stated that housekeepers at her hotel can be required to clean up to 30 stay-over rooms in one shift, which is a very heavy workload for them. She said that the hotel recently remodeled and put in glass shower doors that are difficult to clean, and when the housekeeper is given stay-over rooms, they are required to clean the glass shower doors in each of the rooms. She stated that when housekeepers are given work restrictions following an injury, the hotel does not respect those restrictions and still requires the housekeepers to clean 12 or 13 rooms a day. She said that she has pain every day that makes it difficult to sleep at night, and she must take medication for it. She asked the Board to vote “aye” on the hotel housekeeping proposal.

Irma Perez, Hotel Housekeeper, Unite Here Local 2850 Oakland, stated that it is important that employers provide hotel housekeepers with the proper tools to do their jobs safely, and that they also provide training for their housekeepers and supervisors on how to use those tools properly. She also said that it is important that housekeepers and supervisors are given an opportunity to practice using these tools and are given an opportunity to ask questions about them. She stated that the hotel housekeeping proposal requires this, so she asked the Board to vote “aye” on it.

The following individuals also commented in support of the hotel housekeeping proposal:

- **Soledad Cabrera, Unite Here Local 11**
- **Roxana Tapia, Unite Here Local 49 Sacramento**
- **Carmen Reyes, Hotel Housekeeper at Acedo Mar**
- **Sarah Julian, Unite Here Local 19 San Jose**
- **Alejandro Negrete, Unite Here Local 2 San Francisco**
- **Wei Ling Huber, Unite Here Local 2850**
- **Fabiola Benavides, Hotel Housekeeper, Unite Here Local 2**

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:38 a.m.

II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:38 a.m., January 18, 2018, in the Auditorium of the Harris State Building, Oakland, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
New Section 3345
Hotel Housekeeping Musculoskeletal Injury Prevention

Ms. Neidhardt summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Ms. Stock and seconded by Mr. Harrison that the Board adopt the proposal.

Mr. Harrison thanked the Division staff and Unite Here for their work on this proposal. He also thanked the housekeepers who have come to testify at the Board meetings every month for the last several years. He said that this proposal will benefit all housekeepers and serve as a model for the rest of the nation to follow. He stated that it is an honor to second the motion to adopt this proposal and to vote "aye" on the proposal. **Ms. Stock** echoed Mr. Harrison's comments.

Ms. Stock stated that this proposal is a very reasonable standard that provides flexibility for employers for how to comply, and it also requires worker involvement. She said that hotel housekeepers are experts at their jobs, they know what problems they face, and what solutions will fix these problems. She stated that musculoskeletal injuries can be prevented, and this proposal will go a long way in ensuring that problems are identified and solutions are developed to address them. She urged her fellow Board Members to join her in voting "aye" on the proposal.

Ms. Laszcz-Davis stated that this proposal is very important and will be very impactful and valuable, but she has 2 concerns about it. First, she said that the economic impact analysis is not as clear as it should have been, and it does not make sense to her. She is also concerned about the fact that this proposal allows broad access to records, and she feels that this issue needs to be further discussed and addressed.

Ms. Smisko stated that she agreed with the comments made by the other Board Members, and that it would be helpful to hear the Division's response to Ms. Laszcz-Davis's concerns.

Ms. Neidhardt stated that hotel industry submitted an economic analysis during the process of developing this proposal, and the Division utilized that information to develop this proposal. She said that this analysis included cost information associated with hiring health and safety professionals to conduct the required evaluations, but the Division did not include that information in its economic impact analysis because the Division feels that hiring experts and conducting complex ergonomic evaluations is not necessary. She stated that the Division

feels the employer can find solutions by working in conjunction with employees. She said that the training costs in the Division's economic impact analysis are very close to those in the hotel industry's economic analysis. She also said that this proposal does not require employers to use specific equipment or tools, nor does it add any new regulations regarding record keeping. She stated that the record keeping requirements in the proposal are consistent with those already listed in Section 3203 regarding accident investigations, and requirements regarding access to medical records are already in existing Section 3204. She said that access to an employee's medical records will still require the employee's consent.

Mr. Thomas thanked the hotel housekeepers who have been coming to the meetings every month and testifying. He said that this proposal will have a profound effect on the lives of hotel housekeepers. He stated that when the initial petition was voted down 6 years ago, it was because the Board Members at that time felt that this was a union issue. He said that this is not just a union issue, but a worker issue. He stated that the injuries that hotel housekeepers have been sustaining on the job can be prevented if the right tools and training are provided to them.

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

Mr. Thomas called for a break at 12:02 p.m. and reconvened the meeting at 12:16 p.m.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated for the record that regarding item "K" on the consent calendar, the proposed decision is for conditional grant of the variance. He said that other than that, he is aware of no unresolved legal issues regarding items A-K on the consent calendar, and he believes that those items are ready for the Board's decision on the question of adoption.

MOTION

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

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

C. OTHER

1. Presentation on Health Experts Advisory Committee – Feasibility Advisory Committee (HEAC-FAC) – Garrett Keating, Division

Mr. Keating showed a PowerPoint slide show during his presentation. Please see the file copy of the Board packet to view a printed copy of the slide show.

Mr. Keating began his presentation with a brief history of how the HEAC-FAC started. He said that from 1977 to 2005, a group called the Airborne Contaminants Advisory Committee was formed. He stated that this group was staffed with agency people from various groups, and it was open to stakeholders. He said that this advisory committee informally reviewed

PEL's, summarized the occupational exposure limit (OEL) science, and made recommendations. He stated that from 2006 to 2012, things became more formal with the development of the HEAC and FAC. He said that the HEAC and FAC committee members had experience in industrial hygiene, toxicology, epidemiology, and medical. He stated that these committees developed a policies and procedures manual to formalize the process, the criteria for review, and other elements of the committee. They would also select PEL's that needed to be reviewed that they felt they could work on, prepare summaries for them, make recommendations as to whether or not a PEL should be produced, present them to the committee, and seek consensus from the committee. He said that the HEAC was responsible for performing a health effects assessment of a substance, absent feasibility, and to come up with the best base PEL based on the health effects associated with exposure to that substance. He stated that the FAC was responsible for determining the feasibility of the PEL that the HEAC came up with for that substance. He also said that a Special Substances Committee was developed to address substances that were very controversial, complex, or devoid of toxicology data. He stated that the Division would appoint committee members for this group, but it hasn't been convened, and there are 10 substances awaiting evaluation by this group. From 2006 to 2012, 16 recommendations were developed by the HEAC and FAC, as well as a priority list that helps drive the work being done today. This priority list is divided into 3 sections:

- P1: Top 10 substances
- P2: Top 200 substances

- Everything else

He said that in 2012, the HEAC and FAC were put on hold, and in 2016, the committee was reconvened, but the FAC was dissolved because it was difficult to staff and get an economic analysis. He stated that that was the FAC's responsibility, but it was not as effective as the HEAC.

Mr. Keating stated that the chemical substance review process begins with prioritization, which is done annually. Chemicals and substances are prioritized based on a number of criteria, including:

- A substantial change in the value of the PEL. To determine if a substantial change is needed, a review is done of other agencies and organizations, such as ACGIH, to see what their standard is.
- Evidence of a serious potential hazard not adequately addressed by existing regulations.
- Whether a substance is in widespread use in California. This is assessed through surveys regarding workplace chemical use.
- Serious nature of the health hazard presented by the substance.
- The substance does not have a PEL.

Mr. Keating stated that the second step in the chemical substance review process is reviewing scientific literature and data. He said that this is done by HESIS and includes a review of the published literature available on PubMed, as well as a review of what other agencies, such as ACGIH and NIOSH, have done. From there, the third step in the chemical substance review process is summarizing the data for recommendation and discussion, where the data is broken down into tables and presented over the course of 2 or more meetings. He said that at least 2 meetings are held per substance because when the FAC was eliminated, there was concern about being able to discuss the health effects of a chemical and the feasibility of a PEL for the chemical in just one meeting, and most substances need more than 2 meetings most of the time. He stated that the first meeting is very informal, participants are given a list of the literature that was reviewed, and the participants identify the key studies. A legitimate mode of action for the chemical is also identified to determine the endpoint. He said that at the meeting, a risk-based assessment is presented. He stated that the risk-based assessment can be as simple as a classic qualitative risk assessment to estimate a safe exposure level. He said that the committee also considers if there is a need for STEL and other notations. For the meetings that follow, the committee works toward achieving a consensus on a recommended PEL.

Ms. Stock asked Mr. Keating if reaching consensus is required. **Mr. Keating** stated that the committee is not required to reach a consensus. **Ms. Stock** asked Mr. Keating what happens when consensus is not reached. **Mr. Keating** stated that the committee tries to put as much information into the record as possible and note where there are points of difference. From there, the committee tries to determine if another meeting is needed to address those points. He said that if the committee feels strongly about them, or that consensus can be reached by having another meeting, they will convene another meeting. He stated that if the committee feels that there is no point in convening another meeting, or that consensus will not be reached, another meeting will not be convened, and they will interpret the information that they have in the record.

Ms. Laszcz-Davis stated that she previously served on the board for ACGIH, and when she was there, there was a gradient of risk in data that required laying out a protocol so people would know which path to take when decision points came up. She asked Mr. Keating if the Division has a formalized process like that. **Mr. Keating** stated that he is not familiar with the ACGIH method, and the Division does not have a process that is that formalized, but many risk assessments are done and uncertainty factors are clearly stated. He said that this helps inform committee members so that they can decide if they are confident in the estimate. **Ms. Laszcz-Davis** stated that she assumes the report that is given to the committee is scientifically based, since it relies on a number of resources. She said that those databases do not always reflect real life situations. She asked Mr. Keating when industrial hygiene data is secured to support that, and how it is captured. **Mr. Keating** stated that every summary document that is submitted contains physical chemical data, existing OEL's and RFC's from other agencies, a health effects assessment, and a feasibility section. He said that it notes the analytical method used for measuring, the limits of detection, and sampling methods. He stated that sometimes, there is an obvious disconnect between the recommended health value and the analytical capabilities, which generates discussion at the meeting about the methods and sampling procedures needed to achieve that. He said that when the meetings take place, he tries to get the committee to discuss the health effects during the first meeting, and the feasibility at subsequent meetings so that the committee does not mix up the two. He stated that it also gives the committee the chance to recalculate. He also said that things can vary from chemical

to chemical because some are very risk-based, while others are based on epidemiological studies.

Ms. Smisko stated that in the copy of the presentation that was provided in the Board packet, it appears that later in the presentation, feasibility is split into technical and economic feasibility. She said that the information Mr. Keating just spoke about appears to address technical feasibility, but she was curious about how economic feasibility is addressed. **Mr. Keating** stated that economic feasibility regarding a PEL is addressed in each draft by industrial hygienists using standard approaches, and he will go more into that later in the presentation.

Mr. Keating stated that when it comes to considering industry studies, the Division prefers to use peer-reviewed studies, but it also considers stakeholder presentations. He said that many stakeholders used to do presentations on the day of the meeting, which did not give the committee adequate time to review and consider the information that the stakeholders presented, so a provision was added to the committee's policies and procedures to require stakeholders to submit their presentations well in advance of the meeting to give the committee members time to review and consider them. He stated that when it comes to considering industry use of a chemical, such as epidemiological studies, there are 2 epidemiologists on the committee who review epidemiological studies. He also said that many PEL's and STEL's seem to be influenced by early industry-sponsored human studies with some chemicals, and these studies are still used today by industries such as ACGIH. He stated that they are also open to information from stakeholders as long as it is submitted in a timely manner for the committee to consider.

Mr. Keating stated that once federal OSHA adopts a regulation regarding hazard banding of chemicals, the Board will have 6 months to adopt a rule that is at least as effective as the federal rule. He said that the Division is aware of NIOSH's research and recommendations regarding hazard banding. He stated that it will be difficult to apply hazard banding to retrospective PEL's and group them into a banding, but it is something to consider doing because it does apply to special substance chemicals.

Ms. Stock stated that the grouping approach that Mr. Keating just spoke about is promising. She said that it would behoove the Board and the Division to come up with strategies such as that to speed up the process because the process already takes several years to complete. She asked Mr. Keating if there is anything that would preclude the Division from exploring that approach where appropriate. **Mr. Keating** stated that he does not see anything precluding the Division from exploring that approach, as long as the California rule continues to be at least as effective as the federal OSHA rule. He said that if that strategy will result in more rapid assessment of PEL's, then it is something that can be done. **Ms. Laszcz-Davis** echoed Ms. Stock's comments, adding that the banding process was recommended at the federal level because it has been used well in the pharmaceutical industry for over 25 years. She said that the Division and the Board can build on that experience. She stated that internationally, there are 2,000 PEL's and over 100,000 chemicals in existence, and there is no way that all of those chemicals will get through the process, so banding is an attempt to capture all of those other chemicals and provide preventative measures around them before getting to singular numbers on PEL's. **Ms. Smisko** stated that she also supports looking into using the banding process.

Mr. Keating stated that selection of committee members for the HEAC is done internally by the Division. He said that after the HEAC-FAC disbanded in 2012, the Division contacted the members in 2016 to see if they wanted to come back and be on the new HEAC committee. Most of them did. He stated that each committee member serves a 2-year term, and there are 4 core disciplines from which committee members are selected:

- Toxicology
- Epidemiology
- Occupational Medicine
- Industrial Hygiene

He said that to fill vacant positions on the committee, the Division considers recommendations of candidates from past committee members, experts who are unable to participate, and relevant professional associations. He stated that the Division also accepts applications and recommendations from interested parties and the public. He said that the pool of interested parties could be useful for convening a subcommittee to address special substances.

Mr. Keating stated that the rest of the slides in this presentation pertain to feasibility, which Eric Berg was going to address. He said that the slides appear to focus more on the rulemaking feasibility. He also stated that there are slides in the presentation that address “field feasibility”, which is something that the HEAC deals with.

Ms. Smisko stated that she would like to have Mr. Berg attend a future Board meeting and provide that background information. **Ms. Stock** echoed this comment. Ms. Smisko said that employers seem to be struggling right now with the economic side of feasibility, and they may or may not be gathering the information that the Division needs to figure that out because it may be costly for them to do so. She asked Mr. Keating if it is possible to have a more laid out process to consider economic feasibility and not mix it up with technical feasibility. She said that it might be a good idea to have a different group of people focus on the economic feasibility, since the HEAC is mainly focused on things pertaining to the technical feasibility. **Mr. Keating** stated that he will take that recommendation back to Mr. Berg for consideration.

Ms. Stock stated that one slide contained the following information from the D.C. Circuit:

- “A rule is economically feasible in a particular industry so long as it does not threaten massive dislocation to, or imperil the existence of, the industry.”
- “[a] standard is not infeasible simply because it is financially burdensome or even because it threatens the survival of some companies within an industry.”

She said that this slide demonstrates the subjective determination that is very critical to the process, and it shows where a lot of thought, discussion, and debate happen. **Mr. Keating** stated that Mr. Berg will discuss this further with the Board when he does his portion of the presentation at a future Board meeting.

Ms. Smisko stated that she feels employers want to know what happens in cases where there are a lot of unknowns. She said that having an unknown cost makes it easier to err on the side of health impacts because the health impacts are known information. She stated that she is concerned about giving more weight to known information than to what is unknown. **Ms. Stock** stated that she would like to discuss this issue further at a future meeting with Mr. Berg, and that she feels that situations like this help to drive technology and solutions further.

Ms. Laszcz-Davis stated that the HEAC and FAC have been working together as a merged process for about 2 years now. She asked Mr. Keating how he felt things are going with the two groups merged together. **Mr. Keating** stated that he feels it works well. He said that it is important to have the committee focus on the health studies first, then come up with a PEL, and then discuss the feasibility of that PEL. He stated that at the next committee meeting, the committee will be discussing prioritization of the next round of chemicals, and he asked the Board Members to let the Division know if there are any particular chemicals that are of interest to them, or if they know of any stakeholder groups who would like to participate.

2. Legislative Update

Mr. Healy stated that the Legislature returned to session on January 3, and this is the second year of the 2-year session. In addition to the written version of the legislative update, Mr. Healy provided the following additional updates:

- SB 772 exempts any occupational safety and health standard and order from the standardized regulatory impact analysis (SRIA) requirement of the Administrative Procedures Act that has the \$50 million threshold for extensive economic analysis. Language was added to this bill to clarify that standards and orders that are lesser than the \$50 million threshold are still required to undergo a general economic analysis.
- AB 1576 (formerly AB 2539) This bill pertains to working conditions in the modeling industry. It is still under suspension in the Assembly Appropriations committee. He stated that the Labor Commissioner is involved in licensing modeling agencies, and under this bill, the Labor Commissioner will be responsible for developing and approving training curricula for agencies to use to train their supervisors in sexual harassment as part of the licensing process. He said that under this bill, the Board will be required to adopt standards to protect minors in the modeling industry and address eating disorder prevention, all while protecting the privacy rights of models.

3. Executive Officer's Report

Ms. Hart stated that the 2017 Year in Review report was included in the Board packet. She said that the Summary of Activities indicates the following things:

- The number of docketed petitions remained the same.
- The number of advisory committees convened by the Board staff remained the same. This list does not include the advisory committees that were convened by the Division.

- There was a considerable drop-off in the number of rulemakings noticed for public hearing. This occurred for various reasons that led to the rulemaking process slowing down considerably.
- The number of variances docketed continued to rise, and they take up a large chunk of time for the Board staff and the Hearing Officer. Of the 521 variances docketed in 2017, 514 pertained to elevators. This is a huge indicator that the Elevator Safety Orders need to be updated. Once they are updated, this will free up a lot more time for the Board staff and the Hearing Officer to do other things.

Ms. Stock asked Ms. Hart what the status is on updating the Elevator Safety Orders. **Ms. Hart** stated that the rulemaking package is currently going through the SRIA process, and she believes that the Division has completed the regulatory language. She also said that the Division is waiting on the economic impact analysis to be completed, and once it is completed, it will need to be reviewed by the Department of Finance. She stated that the Board staff has not received the regulatory package to do its review, so the Board staff is not sure what's in it.

Ms. Hart stated that the list of proposed rulemaking projects for 2018 for the Division and the Board staff will be included in next month's Board packet.

Ms. Stock asked if it would be possible to get a list of the advisory committees that the Division held in 2017. **Ms. Hart** stated that the Division maintains a website that lists the advisory committee meetings that it has held and that are upcoming. **Ms. Neidhardt** stated that the Division has 3 upcoming advisory committee meetings: one on January 25 to discuss workplace violence in general industry, one on January 31 to discuss recreational marijuana secondhand smoke, and one on February 8 to discuss indoor heat. **Ms. Hart** stated that the Board staff will hold an advisory committee to discuss employee access to an employer's IIPP on February 13.

D. OTHER

4. Future Agenda Items

No future agenda items were mentioned by the Board.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 1:18 p.m.