

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**SUMMARY  
PUBLIC MEETING AND BUSINESS MEETING  
March 19, 2020  
Teleconference in Sacramento, California**

**I. BUSINESS 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 10:00 a.m., March 19, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-531-0749, and via WebEx at [www.webex.com](http://www.webex.com).

ATTENDANCE

Board Members Present at OSHSB Office

Dave Thomas

Board Members Absent

NONE

Board Members Present via Teleconference  
and/or WebEx

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

Board Staff Present at OSHSB Office

Christina Shupe, Executive Officer  
Sarah Money, Executive Assistant  
Michael Nelmidia, Senior Safety Engineer

Division of Occupational Safety and Health  
(Division) Present via Teleconference and/or  
WebEx

Amalia Neidhardt, Senior Safety Engineer  
Eric Berg, Deputy Chief of Health

Board Staff Present via Teleconference  
and/or WebEx

Lara Paskins, Staff Services Manager  
Mike Manieri, Principal Safety Engineer  
Marian Johnston, Legal Counsel  
David Kernazitskas, Senior Safety Engineer  
Jennifer White, Staff Services Analyst

Others Present via Teleconference and/or WebEx

Kurt Krueger, ORCHSE Strategies  
Brian Heramb, San Diego Gas & Electric  
Frank Belio, I.U.E.C. Local #18 AFL/CIO  
Kennell Sambour, Littler  
Pamela Murcell, CIHC

Alice Berliner, SoCalCOSH  
Rosa Greenhalgh, Armstrong & Associates  
Insurance Services  
Anne Katten, CRLAF  
Elizabeth Treanor, PRR

Kevin Goddard, Department of  
Transportation  
Eric McClaskey, Elevator Industry Work  
Preservation Fund  
Nancy Zuniga, IDEPSCA  
Laura Little, Comcast  
Augustine Eichwald-Romero, Worksafe  
Greg McClelland, Western Steel Council  
and Ironworkers District Council

Morena Tumiaty, DFM  
Michelle LeBlanc, Free Speech Coalition  
Elda Brueggermann, Western Agricultural  
Processors Association and California  
Cotton Ginners and Growers Association  
Dirk Duchscherer, Leavitt United Insurance  
Services  
Len Welsh, Iron Workers and Western Steel  
Council  
Scott Swaaley, MAKESafe Tools

B. PROTECTION FROM WILDFIRE SMOKE – PROGRESS UPDATE

Ms. Shupe provided an update on the three versions of the proposal for Section 5141.1, pertaining to protection from wildfire smoke.

C. PROPOSED EMERGENCY SAFETY ORDER FOR READOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7,  
New Section 5141.1  
**Protection From Wildfire Smoke**

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

BOARD MEMBER COMMENTS

**Ms. Laszcz-Davis** stated that an interactive session needs to be held as this regulation moves forward to a final standard so that it is practical and easily understood by employers and employees. She asked Ms. Shupe if that interactive session will still be able to take place despite the current restrictions that are in place to protect people from the COVID-19 coronavirus. **Ms. Shupe** stated that many other states and state agencies are beginning to use remote teleconference operations, if they haven't already, and the Department of Industrial Relations is working to make sure that public participation is available while maintaining public safety.

PUBLIC COMMENTS

**Alice Berliner, Southern California Coalition on Occupational Safety and Health (SoCalCOSH)**, commented in support of readopting the emergency standard and urged the Board staff to work quickly on getting a permanent standard put into place. **Augustine Eichwald-Romero, Worksafe**, echoed this comment. Ms. Berliner also asked for domestic workers to be included in the permanent standard.

**Brian Heramb, San Diego Gas & Electric**, stated that his organization supports the proposal, but there are two ongoing concerns that need to be addressed:

- 1.) It is difficult to find N95 masks that are arc-rated. This presents a hazard for first responders who must enter situations where arc flash may be present because they

will have to remove their masks before entering the situation.

- 2.) N95 masks are not tested for ignitability, melting, or dripping, and many that are deemed to be flame resistant do ignite under certain conditions.

**Kurt Krueger, ORCHSE Strategies**, stated that his organization is concerned about the impact that this regulation will have on the COVID-19 coronavirus national health emergency, which is the much more urgent health hazard. He said that readopting this temporary standard will create competition for respirators that are already in critically short supply for medical personnel and difficult to get under normal circumstances. It will also cause many companies with fixed and field operations in affected locations to have to either shut down operations or operate in violation of the standard by not giving their workers respirators. He recommended that the Board consult with the CA Department of Public Health to determine the best path forward given that COVID-19 is predicted to be around for a while, and to consider temporarily halting enforcement of this standard until the pandemic is under control.

**Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR)**, encouraged the Board to readopt the emergency wildfire standard and hopes that when the permanent rule is drafted, the Board staff will address her organization's concerns regarding the following:

- The need for respirators that will protect against arc flash.
- The fact that many masks and respirators are in short supply and, in many cases, are on back order until July or later.

**Elda Brueggermann, Western Agricultural Processors Association and CA Cotton Ginners and Growers Association**, asked the Board to provide a recommendation to employers explaining what they should do to comply with the emergency standard if no masks are available during the fire season.

Mr. Thomas called for a break at 10:30 a.m. and reconvened the meeting at 10:35 a.m.

**Cynthia Rice, CA Rural Legal Assistance Foundation**, asked the Board to readopt the emergency wildfire smoke standard. She said that if a shortage in respirators and masks does occur, that can be dealt with by regulatory powers when it occurs. **Nancy Zuniga, IDEPSCA**, echoed Ms. Rice's comments.

#### MOTION

A motion was made by Mr. Harrison 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.

#### D. APPOINTMENT OF HEARING OFFICER

Ms. Shupe stated that due to staffing shortages not related to COVID-19, the Board has been getting assistance from Autumn Gonzales of the Occupational Safety and Health Appeals Board staff to conduct variance hearings. Ms. Gonzales has been temporarily acting as the Hearing Officer for these hearings and assisting with variances. Due to Ms. Gonzales's

unavailability for the Board's next common variance hearing on March 25, and the fact that her ability to participate in future common variance hearings is uncertain, Ms. Shupe proposed that the Board appoint her as an additional Hearing Officer for common variances. This will help keep operations on track and moving forward during the staffing shortage and the challenges of COVID-19. She stated that the Executive Officer is able to act as the Hearing Officer for common variance applications when necessary if appointed to do so by the Board.

#### PUBLIC COMMENTS

There were no public comments.

#### MOTION

A motion was made by Mr. Harrison and seconded by Ms. Laszcz-Davis that the Board appoint Ms. Shupe to be a Hearing Officer.

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

#### E. PROPOSED VARIANCE DECISIONS FOR ADOPTION

##### 1. Consent Calendar

Ms. Shupe stated that she is aware of no unresolved procedural issues regarding items A-N 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 Mr. Harrison and seconded by Ms. Stock to adopt the consent calendar.

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

#### F. OTHER

##### 1. Legislative Update

Ms. Shupe stated that on March 16, lawmakers voted unanimously to go into recess until April 13, but the Legislative Update was prepared in advance of that and is in the Board packet [Please see the file copy of the Board packet to view this document] and will be posted on the Board's website. Ms. Shupe stated Board staff is monitoring the following bills:

- AB 2028
- AB 2093
- AB 2161
- AB 2966

Ms. Shupe also stated that the Governor has issued Executive Orders N-25-20 and N-29-20 which provide suspension of public notice statutes.

## 2. Executive Officer's Report

Ms. Shupe stated that while the Governor's Executive Orders are in place, the Standards Board will ensure that mission critical operations continue, but due to the shelter in place orders, the Standards Board office has gone to remote operations for all staff. She said that the phone lines and email are still being monitored and responded to, and that all meetings and variance hearings will continue as scheduled, but will be done remotely via teleconference.

## 3. Board Member Comments and Future Agenda Items

**Ms. Burgel** asked if the Division is conducting any regulatory enforcement activity or consultation regarding COVID-19 coronavirus. **Mr. Berg** stated that although the Division is not doing any on-site enforcement activities, they are providing remote and electronic outreach to employers, as well as technical assistance in accordance with the Governor's Executive Orders. When they receive complaints, they are contacting employers to inform them of the allegations made and helping them to come into compliance.

Ms. Burgel stated that she is concerned about the lack of availability of N95 masks. She asked the Division if there have been any policy discussions regarding that. **Mr. Berg** stated that the Division is working with the CA Department of Public Health to figure out a way to improve the respirator stockpile going forward. He said that the federal government plans to purchase 500 million respirators after the pandemic is over in order to have a large stockpile on hand and avoid another shortage. He stated that some respirators expire within a certain amount of time, so they are considering giving away respirators once a year to some employers at no cost to use to protect their employees from exposure to wildfire smoke. By doing this, they will be able to replenish the respirator stockpile with new ones.

## G. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 10:54 a.m.

## II. PUBLIC HEARING

Mr. Thomas called the Public Hearing of the Board to order at 10:54 a.m., March 19, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-531-0749, and via WebEx at [www.webex.com](http://www.webex.com).

Mr. Thomas opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8:        **CONSTRUCTION SAFETY ORDERS**  
                                 Section 1630(a)  
                                 Elevators for Hoisting Workers

Mr. Manieri prepared the briefing for this proposal, and Ms. Shupe read the briefing into the record. The briefing summarized the history and purpose of the proposal, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

## PUBLIC COMMENTS

**Len Welsh, representing Iron Workers and the Western Steel Council**, stated that his organization supports the proposal because it is a long-standing requirement that has been uniquely enforced and complied with until the Appeals Board Decision After Reconsideration (DAR) came along, which has caused a lot of confusion. This proposal will not increase costs, but rather will maintain the status quo for a regulation that has proven its value. He said that a lack of construction personnel hoists causes several problems, including:

- No ability to remove injured workers, or get first responders to the injured worker, in a timely fashion. Instead, injured workers will have to be transported up or down staircases, and it will take first responders longer to get to the injured worker.
- Climbing multiple flights of stairs, especially with heavy equipment in hand, can be very tiring for workers.

**Frank Belio, International Union of Elevator Constructors (IUEC) Local 18**, stated that his organization supports the proposal because it will increase safety for all construction workers.

**Greg McClelland, Western Steel Council and Ironworkers District Council**, stated that his organizations support this proposal because it will clear up a lot of confusion and disruption that has occurred over this long-standing rule that has worked effectively for a long time.

**Reese Fortin, Sundt Construction**, stated that her organization is concerned that there may be structures where a hoist cannot be installed at 36 feet, so they would like to see something added to the proposal that requires an engineer to do a review and the contractor has to install the hoist where the engineer feels that it is feasible and practicable to do so.

**Russell McCrary, CA Ironworkers Employers Council and the District Council of Ironworkers**, stated that his organizations support this proposal because it will clear up a lot of confusion. He said that when it comes to installing construction personnel hoists, it is better to require them to be installed at 36 feet instead of 60 feet because many structures have floors that fall short of the current 60-foot height requirement, and as a result, employers are not required to install them until the floors reach 80 feet high.

## BOARD MEMBER COMMENTS

**Ms. Burgel** stated that there is a definition of structure height for structures built above ground that tells how to measure above-ground structures, but there is no definition of structure height for structures built below ground that tells how to measure below-ground structures. She said she would like clarification as to how below-ground structure height is determined. **Ms. Shupe** stated that this proposal is very discreet and is only seeking to replicate the language in Section 1630(a) that currently exists in Section 1630(d). She said that the Division has submitted a Form 9 to do a more substantial rulemaking regarding this, and at that time, the Board staff will consider adding additional language.

Mr. Thomas stated that due to the current events regarding COVID-19, the public comment period for this proposal has been extended to 5:00 p.m. on March 23, 2020.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 11:12 a.m.

**III. PUBLIC MEETING**

Mr. Thomas called the Public Meeting of the Board to order at 11:12 a.m., March 19, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-531-0749, and via WebEx at [www.webex.com](http://www.webex.com).

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.

**Michelle LeBlanc, Free Speech Coalition**, stated that her organization submitted a letter to the Board regarding AB 2389. She said that this bill conflicts with the advisory committee process for Petition 576 because it circumvents the Board's authority as the sole agency drafting and implementing this type of workplace safety regulation by mandating the conduct, the make-up, and the outcome of the advisory committee process. She asked the Board to contact the author, Assembly Member Christina Garcia, and ask her to put a hold on the bill until the advisory committee process for Petition 576 is complete.

**Scott Swaaley, MAKESafe Tools**, stated that his organization submitted a petition to strengthen the regulations pertaining to anti-restart devices.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 11:21 a.m.

**IV. REOPENING OF THE BUSINESS MEETING**

Mr. Thomas reopened the Business Meeting record at 11:21 a.m. for the purpose of conducting a Closed Session.

A. CLOSED SESSION

Pursuant to Government Code Sections 11126(e)(1) and 11126(a)(1), the Board conferred with counsel regarding pending litigation. Closed Session began at 11:21 a.m.

B. RETURN TO OPEN SESSION

1. Report on any Closed Session Action

Closed session ended at 11:59 a.m. Ms. Burgel and Mr. Harrison did not return to the teleconference after the Closed Session.

No action was taken during the Closed Session.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:01 p.m.