

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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Minutes from the Advisory Committee Meeting For  
All Terrain Vehicles (ATVs) and All Terrain Utility Vehicles (ATUVs),  
Title 8, General Industry Safety Orders, Article 27, Sections 3711 - 3712  
Tuesday, November 29, 2011, Training Room  
2211 Park Towne Circle, Sacramento, CA 95825

The meeting was called to order by the Chairman, Hans Boersma, Senior Engineer-Standards, Occupational Safety and Health Standards Board (Board) at approximately 10:00 a.m. Ms. Bernie Osburn, Staff Services Analyst, was present to provide assistance. Mr. Michael Donlon represented the Division of Occupational Safety and Health (Division).

The Chairman explained the Board's policies and procedures regarding advisory committees and reviewed the Administrative Procedure Act requirements that must be considered during the rulemaking process. The Chairman stated that the committee would consider the necessity, clarity and reasonableness of the proposed standards regarding the operation of All Terrain Vehicles (ATVs) and All Terrain Utility Vehicles (ATUVs). Additionally, the committee would review standards that currently regulate these vehicles to determine whether the proposal would constitute a duplicative requirement.

In reviewing the background of the proposed standards, the Chairman explained that the proposal is the result of a September 29, 2010 Form 9, Request for New, or Change in Existing, Safety Orders, submitted by the Division of Occupational Safety and Health (Division) to the Board. The Division is of the opinion that existing Title 8 Standards do not adequately address the hazards associated with ATVs and ATUVs. The Chairman clarified that the proposal would apply to ATV and ATUV operations in all industries and places of employment regulated under Title 8. The Chairman noted that the proposal is a starting point and that the committee may make changes it deems necessary. The Chairman stated that a performance based standard is usually encouraged; however, a prescriptive standard may be justified when a performance standard does not effectively address the hazards.

In his presentation to the committee, Mr. Donlon stated that he started working on the proposal several years ago when working as the regional senior safety engineer and noticing the number of accidents that occurred with ATVs. Mr. Donlon indicated that this accident trend continues today where the Division's accident investigations consistently find inadequate operator training, unsafe operation on slopes, excessive payloads and head injuries. Mr. Donlon stated that the intent of the standard is to address these findings by ensuring proper training, following manufacturer's recommendations as far as payload and towing and the wearing of helmets, and that any concerns over the proposal can be corrected during this committee meeting. Mr. Donlon, responding to recent feedback that the proposal was duplicative of some ANSI standards and inconsistent with national consumer safety design standards, stated that because the ANSI standards are voluntary, they are not enforceable and that inconsistent design standards can be changed to provide consistency with national standards. Mr. Donlon stated that he consulted numerous sources, such

as other state's standards, manufacturers' operations manuals, Federal OSHA guidelines and the Army Corps of Engineers recommendations, in the process of developing the proposed standard for the ATVs and ATUVs. Mr. Donlon noted that when he proposed this standard he could not find an ANSI standard that specifically addresses these vehicles. With regard to helmet use, Mr. Donlon stated that the proposed helmet requirements are primarily directed at ATV operations, where ATUVs with seatbelts and rollover protection would effectively protect the operators.

Mr. Donlon noted that there is some confusion about the scope of the proposed standard and that the proposal intends to regulate the ATV or quad type vehicle with handle bars and the saddle in one section and the utility type all-terrain vehicles (ATUVs) in another section. Mr. Donlon stated that the committee could refine the proposal by developing clear definitions for the type of vehicle regulated by the proposal. Mr. Donlon noted that the proposal does not regulate golf carts and such other vehicles as mini trucks.

Mr. Thomas S. Yager, Specialty Vehicle Institute of America, stated that the U.S. Consumer Product Safety Commission has adopted the ANSI (2007) for ATVs in its entirety in the federal consumer product safety regulations and that this would apply to all purchasers. Mr. Yager noted, for example, that these standards require any company in the United States to provide training for the purchaser of the ATVs including employers and employees and that these standards do provide a framework of federal standards this committee can draw from.

Mr. Donlon stated that these national standards regulate consumers; however the proposed standards would regulate employers and employees in California, not recreational activities.

Mr. Rudy Avila, Sun World International, stated that the ATV Safety Institute has a comprehensive training program and has agreements with ATV manufacturers to provide a 4-hour safety training course for up to three riders of each ATV sold. Additionally, it has developed a four day training course for trainers. Mr. Avila noted that the training requirements in this proposed standard go well beyond what is necessary for the agricultural operations his company is involved with.

Mr. Joel Sherman, Grimmway Farms, noted that probably everyone present at the meeting recognizes that ATVs improperly operated can be dangerous. Mr. Sherman asked Mr. Donlon if he had developed any incident rate per hour worked when reviewing the accident data to determine the scope of the problem.

Mr. Donlon stated that that information would be difficult to access without the necessary resources that such assessment or study would require and that most of the studies done on ATVs have been related to recreational use. Mr. Donlon noted that with the exception of payload related accidents, ATV and ATUV accidents in occupational settings are similar to the ATV and ATUV accidents found in recreational settings. Mr. Donlon opined that, notwithstanding the fact that accident rates involving these vehicles are relatively low compared to accident rates found, for example, with falls at construction sites, he feels these accident rates are significant enough to develop a standard that would prevent these types of accidents. Mr. Donlon stated that he generally feels that the design of the ATV's and ATUVs is fine. He found that the problem was with the operation of these vehicles, and felt that this should make the majority of these accidents relatively easy to prevent.

Several committee members, representing ATV and ATUV manufacturers provided comments that the proposal was in direct conflict with existing national safety and design standards, and that the requirement that mandates adding aftermarket components such as roll-over protection structures could result in changes in the center of gravity that could lead to decreased stability.

Mr. Larry Pena, Southern California Edison Company, asked if Mr. Donlon had considered that section 3203 already regulates training requirements for ATVs and ATUVs and that the proposal would therefore add unnecessary requirements.

Mr. Donlon stated that he often gets calls about what type of training would satisfy the section 3203 training requirement and that this standard would provide that guidance. Mr. Donlon stated that he finds that when crafting a general standard, people complain that there is not enough detail, and when greater detail is provided, the proposal is too prescriptive. Mr. Donlon noted that the proposed requirements mirror those found in the operator manuals and are consistent with manufacturer's recommendations. Mr. Donlon opined that, because these vehicles are so unique, they should have more specific training requirements than those required under section 3203.

Mr. Jay A. Weir, AT&T, stated that his company experienced a few ATV/ATUV accidents despite the company's extensive safety program based on the manufacturer's recommendations and section 3203. Mr. Weir stated that his investigation found these vehicle accidents were due to employee recklessness which is something no regulation or safety program can eliminate. Mr. Weir questioned the wisdom in advancing this proposal when section 3203 is a sound basis for an ATV and ATUV safety program.

Mr. Donlon stated that, when a standard merely mandates a general training requirement, there is less compliance than when the training requirement is more specific. Mr. Donlon indicated that, during his accident investigations, it became apparent that most employees involved in the accidents are not properly trained.

Mr. Bryon Little, California Farm Bureau, stated that he does not know of any employer that would hand an employee an ATV key without adequate training. He asked Mr. Donlon if his understanding was correct that the Cal/OSHA standards currently require employers to provide training for anyone operating equipment.

Mr. Donlon stated that the standards currently require such training. Mr. Donlon recognized that the companies represented at this advisory committee meeting generally comply with these standards, but that compliance officers run into a subset of employers that either do not know about the Cal/OSHA program or do not care about what is required and therefore do not comply with the standards.

Mr. Little commented that the noncompliant employers mentioned by Mr. Donlon would likely not comply with the requirements of this proposed standard either.

Mr. Kevin Bland, Western Steel Council, asked what search criteria were used to find the accident data.

The Chairman indicated that “ATV”, “UTV” and “All Terrain Vehicles” was used to retrieve accident data from the Federal OSHA website.

Mr. Johnson noted that there are significant differences in hazards at the different worksites and activities. For example, at construction sites, these vehicles travel at relatively slow speeds while transporting personnel and or materials on relatively level terrain and even on flat roofs; whereas during lumber operations, for example, ATVs and ATUVs will be going up and down trails or sloped terrain at higher speeds.

Mr. Little stated that the ATVs and ATUVs travel at relatively slow speeds compared with the high operating speeds found in recreational activities, and therefore, it would be useful if the committee would consider this difference in application during occupational versus recreational use of these vehicles.

Mr. Sherman noted that his agricultural operations are subject to several training requirements, including training under section 3203, annual training for operators of agricultural equipment and forklift training. Mr. Sherman asked Mr. Donlon if the proposed ATV/ATUV training is a one-time training requirement or if this is a yearly requirement.

Mr. Donlon stated that the proposal only addresses one-time training requirements; however, consideration could be given to a requirement for additional training after an employee had an accident.

Mr. Avila had comments about the requirement for helmets. However, the Chairman asked Mr. Avila to wait until the discussion about the specific head protection text of the proposal later in the committee proceedings.

Mr. Bland asked the Chairman if the meeting was at a point to question if there is a necessity to move forward with this proposal based on existing standards that currently regulate this type of equipment.

The Chairman stated that after the review and consideration of the accident data, the committee would consider the general necessity for a standard and once the necessity for a new standard is established the committee would consider the specific text and wording of the proposal. The Chairman directed the committee’s attention to the two handouts that summarized the 44 accidents that occurred nationally including eleven fatalities, and the seventeen accident summaries of California accidents that included four fatalities. The Chairman indicated that he searched the IMIS data base for accidents including the time period from 2002 to 2012; however, the lack of accident data from mid 2010 to 2012 probably represents a lag in posting of completed accident investigations. In reviewing the California accident data, the Chairman noted that seven accidents were reported in agricultural operations, three accidents in the construction operations, two accidents at parks and recreation worksites. Work operations involving surveying, logging, ATV sales, law enforcement and well drilling operations each showed one accident during that time period.

Mr. John Sutton, Law Enforcement Division, California Emergency Management Agency, stated that, even though the reports show that a large portion of the seventeen California accident cases clearly appear to be the result of operator error, he expressed concerns about the lack of specific information provided in the accident reports to draw specific conclusions.

Mr. Donlon responded to Mr. Sutton's comment that operator error is a training issue, and if employees are misusing this equipment, the training program is not being properly enforced. Regarding the brevity of the accident data, Mr. Donlon stated that the federal data base only allows the Division to input a short narrative; however, when Division Enforcement creates a case file, the data about accidents is extensive and addresses all the issues related to cause, conditions and whether safety equipment was or was not applied. Mr. Donlon noted that even though the summary posted on the Federal OSHA website lacks information on safety equipment worn, every accident investigation he was involved in showed that none of the operators wore a helmet.

Mr. Jimmy N. Eavenson, MTD Products, Inc., asked whether this data identified ATV and ATUV accidents separately.

The Chairman stated that, in many cases, it is clear what type of vehicle is involved in the accident; however, in some cases, the data does not clearly indicate whether the accident involved ATVs or ATUV vehicles, making it difficult to categorize the data. This was the reason the Chairman didn't separate the data and provide the committee with a printout of the actual accident summaries.

Mr. Donlon noted that the investigators' inconsistent use of terminology for this equipment also makes it difficult to search the Federal OSHA data base. In some cases the summary identifies the manufacturer's model, others use generic names. Mr. Donlon noted that after 2007 ATUVs have become more popular in the workplace. He considers this development a good trend, because the ATUVs appear to be safer to operate.

Several committee members questioned the scope and limits of the accident data and asked if there are assumptions made based on this data that the accidents were the result of the lack of operator training.

The Chairman stated that this summarized data usually does not provide information regarding training; it is generally limited to information about the accident site, what occurred during the accident event and the type of employee injuries or fatalities that resulted.

Mr. Bland felt that data, showing seventeen accidents over an eight year period, represents a relatively low incident rate. Additionally, Mr. Bland noted there are standards that address these hazards, since the employers involved with these accidents appeared to have been cited under several Title 8 standards, including section 3203. Mr. Bland stated the Injury and Illness Prevention Program (IIPP) under section 3203 was specifically designed to control hazards at the unique and varied workplaces and conditions where these vehicles are used. Mr. Bland stated that the proposal appears to be duplicative of section 3203. Mr. Bland stated that he understands that Mr. Donlon gets many questions about the IIPP and the type of training that satisfies section 3203. However, Mr. Bland felt that the confusion can be addressed by a guidance document to help

employers determine appropriate compliance with the existing standards. Mr. Bland opposes this very prescriptive general industry standard that would be difficult to apply to the many different workplace uses of this equipment. Mr. Bland felt that there does not appear to be a necessity for this proposal.

The Chairman reviewed Title 8 standards that apply to ATV and ATUV operations including the safety program requirements in section 3203 and the use, design and maintenance requirements in section 3328 that would affect operations that utilize ATVs and ATUVs.

Ms. Anne Katten, California Rural Legal Assistance Foundation (CRLA) asked how the Division enforces a need for training for specialized equipment and unique work conditions under the IIPP.

Mr. Donlon stated that, under section 3203, it is up to the employer to determine what the hazards are at its worksite and then to train according to those hazards. Mr. Donlon noted that the Division finds greater compliance with prescriptive standards, than with the performance standards. Mr. Donlon agreed with comments that some of the proposed requirements may not be appropriate for all sites and that these could be changed to make the standard more reasonable. Mr. Donlon stated that 20 years after the IIPP became effective, many employers are still not complying with the basic safety requirements, and that by having a more prescriptive requirement, these employers are more likely to comply. Mr. Donlon noted that similar prescriptive training requirements have been effective for forklifts, lock-out/tag-out and ladder use.

Mr. Weir stated that forklifts, lock-out/tag-out and ladders are very common and are responsible for many injuries, whereas ATVs and ATUVs are far less common. Mr. Weir notes that the IIPP was designed to address the hazards at these unique and varied worksites and operations. Mr. Weir noted that training requirements under section 3203 are effectively enforced because, during inspections, the Division inspectors require the employers to show that employees are properly trained per section 3203 and to provide the training materials. Mr. Weir noted that the ATV accident investigations he conducted for his company showed that, even after employees were extensively trained about the safe operation of ATVs, the employee would still recklessly play with this equipment and cause accidents. Mr. Weir agrees that there are some employers that do not comply with current training requirements, but that does not mean we need another standard. Mr. Weir stated that the proposed standard is not necessary.

Mr. Jim Fisher, E-Z-GO Textron, noted that the accident data for ATUVs included three accidents: an incident where an employee ran into a tree, an incident where an employee went airborne with the vehicle, and an incident where an employee was hurt because he caught his hand under the roll bar. Mr. Fisher opposed including the ATUV in the proposed standard considering their significantly lower accident rates and the fact the ATUVs are designed to travel at 12 MPH, versus the 40 to 70 MPH design speeds for ATVs.

Mr. Donlon stated that the proposal includes separate sections and requirements for ATV and ATUVs that address these differences in design and use.

Mr. Dan Thiemke, John Deere Company, noted that employers involved with the accidents identified in the data were cited and feels that current regulations effectively promote the safe operation of these vehicles.

Mr. Bland again said that section 3203 is effective in regulating the use of these vehicles under the many different work conditions where they are used. Because of the unique hazards posed by the different work conditions, Mr. Bland recommended the development of a guidance document that addresses, for example, hazards associated with ATV use herding cattle or during roof-top applications or agricultural use. He felt that his opinion appears to be consistent with the majority of the comments expressed.

Following the review and presentation of the proposal by Mr. Donlon and that discussion about the accident data and current regulations, the Chairman noted that the committee would consider the necessity of the proposal.

Ms. Katten felt that there is necessity for the proposal. She stated that, although CRLA did not conduct a thorough survey, CRLA staff had spoken with experienced irrigators at agricultural operations. The irrigators indicated that their training was inadequate to operate this type of equipment and that they were not trained in the appropriate safety rules, especially for traveling alongside irrigation canals and on uneven terrain. Additionally, Ms. Katten was not sure the Division was able to cite improperly maintained ATVs and ATUVs. Ms. Katten felt that agricultural workers are not adequately protected by current standards.

The Chairman polled the committee members to determine the committee consensus. After reviewing the committee's response, the Chairman noted that there appeared to be a clear consensus not to go forward with the proposal, with some members indicating that they would support the development of a guidance document by Cal/OSHA Consultation.

The Chairman asked for further comments regarding the proposal or the consensus.

Mr. Donlon noted that the discussion had centered primarily on training. He felt that other elements of the proposal should be considered for adoption and asked whether there was anyone that felt helmets on ATVs or seatbelts for ATUV were not necessary.

A majority of committee members indicated that the use of helmets depended on the operations and hazards at the particular site. Additionally, some committee members noted that the issue of heat illness was a concern that would be compounded by a tight fitting DOT type helmet, especially when employees are exerting themselves without the benefit of air flow one might find when traveling at higher speeds.

Mr. Avila demonstrated the type of construction type helmet with large rims that his agricultural workers use when traveling for any distance on ATVs. He indicated that his workers had tried the DOT helmets, equestrian helmets and the construction type helmet with large rims and indicated that the majority prefer the latter.

Mr. Donlon indicated that the ANSI standard would indicate that the wide rimmed construction helmet or hardhat is not intended for use on ATVs.

Mr. Bland stated that this is why the IPP is well designed for these issues, including the wearing of helmets when speeds and significant travel on the ATV at some work locations might dictate that helmets be worn. Mr. Bland stated that that should be an issue worked out by each employer for its particular operations.

The Chairman polled the committee to determine the number of committee members in favor of going forward with one or more elements of the proposal. The Chairman noted that only two members of the committee recommended going forward with one or more elements of the proposal. The clear consensus, therefore, was not to go forward with any part of the proposal.

The Chairman stated that each Committee member would receive a copy of this meeting's minutes and a letter explaining the Committee consensus not to go forward with the proposal.

There being no further comments or questions the Chairman adjourned the meeting at approximately 11:45 am.