

# Occupational Safety and Health Standards Board

Public Meeting, Public Hearing and  
Business Meeting

**March 19, 2020**

Via teleconference / videoconference

Board Meeting Packet

**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)

**MISSION STATEMENT**

*The mission of the Occupational Safety and Health Standards Board is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for California workers.*

**AGENDA****PUBLIC MEETING, PUBLIC HEARING AND BUSINESS MEETING  
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD****Physical Meeting Location:**

**March 19, 2020  
1<sup>st</sup> Floor Conference Room  
2150 River Plaza Drive  
Sacramento, CA 95833  
10:00 a.m.**

**Public Comment Teleconference Instructions:**

**In addition to the physical location, the Board will accept public comment via teleconference.**

**Dial 916-274-5721 to be placed in the queue for public comment.**

***For assistance during the meeting email [OSHSB@DIR.CA.GOV](mailto:OSHSB@DIR.CA.GOV).***

**NOTE: In accordance with [Executive Order N-25-20](#),  
Board Members will participate via teleconference.**

- I. **CALL TO ORDER AND INTRODUCTIONS**
  
- II. **PUBLIC MEETING (Open for Public Comment)**

This portion of the Public Meeting is open to any interested person to propose new or revised standards to the Board or to make any comment concerning occupational safety and health (Labor Code Section 142.2). *The Board is not permitted to take action on items that are not on the noticed agenda, but may refer items to staff for future consideration.*

Original Notice Date: March 6, 2020

Updated Notice Date: March 13, 2020

2<sup>nd</sup> Updated Notice (Location Change): March 17, 2020

This portion of the meeting is also open to any person who wishes to address the Board on any item on today’s Business Meeting Agenda (Government Code Section 11125.7).

Any individual or group planning to make a presentation during the Public Meeting is requested to contact Sarah Money, Executive Assistant, or Christina Shupe, Executive Officer, at (916) 274-5721 in advance of the meeting so that any logistical concerns can be addressed.

A. ADJOURNMENT OF THE PUBLIC MEETING

III. **PUBLIC HEARING**

A. EXPLANATION OF PROCEDURES

B. PROPOSED SAFETY ORDERS (Revisions, Additions, Deletions)

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

IV. **BUSINESS MEETING – All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.**

The purpose of the Business Meeting is for the Board to conduct its monthly business.

A. PROTECTION FROM WILDFIRE SMOKE – PROGRESS UPDATE

B. PROPOSED EMERGENCY SAFETY ORDERS FOR RE-ADOPTION (GOV. CODE SEC. 11346.1)

- 1. TITLE 8:     **GENERAL INDUSTRY SAFETY ORDERS**  
                          Chapter 4, Subchapter 7, New Section 5141.1  
                          [Protection from Wildfire Smoke](#)

C. APPOINTMENT OF HEARING OFFICER

D. PROPOSED VARIANCE DECISIONS FOR ADOPTION

- 1. [Consent Calendar](#)

E. OTHER

- 1. Legislative Update
- 2. Executive Officer’s Report
- 3. Board Member Comments and Future Agenda Items

Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this

agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a)).

F. CLOSED SESSION

1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270; and
2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210.
3. Personnel

G. RETURN TO OPEN SESSION

1. Report from Closed Session

H. ADJOURNMENT OF THE BUSINESS MEETING

**Next Meeting:** April 16, 2020  
 Harris State Building  
 Auditorium  
 1515 Clay Street  
 Oakland, CA 94612  
 10:00 a.m.

**CLOSED SESSION**

1. If necessary, consideration of personnel matters. (Government Code section 11126(a)(1)).
2. If necessary, consideration of pending litigation pursuant to Government Code section 11126(e)(1).

**PUBLIC COMMENT**

In addition to public comment during Public Hearings, the Occupational Safety and Health Standards Board (Board) affords an opportunity to members of the public to address the Board on items of interest that are either on the Business Meeting agenda, or within the Board’s jurisdiction but are not on the noticed agenda, during the Public Meeting. The Board is not permitted to take action on items that are not on the noticed agenda, but may refer items to staff for future consideration. The Board reserves the right to limit the time for speakers.

**DISABILITY ACCOMMODATION NOTICE**

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

# Occupational Safety and Health Standards Board

## Public Hearing

**TITLE 8**

**CONSTRUCTION SAFETY ORDERS**

**SECTION 1630(a)**

**ELEVATORS FOR HOISTING WORKERS**

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  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



## TITLE 8. CALIFORNIA CODE OF REGULATIONS

### Construction Safety Orders

#### Section 1630(a)

(Published on January 31, 2020)

#### [Elevators for Hoisting Workers](#)

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

#### PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **March 19, 2020** in the **Council Chambers**, of the **Pasadena City Hall, 100 North Garfield Avenue, Pasadena, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

#### WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **January 31, 2020** and closes at 5:00 p.m. on **March 19, 2020**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov).

#### AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.



**INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT**  
**OVERVIEW**

This rulemaking was initiated in response to Occupational Safety and Health Standards Board (Standards Board) Petition File No. 577 submitted by Mr. Donald A. Zampa, President of the District Council of Iron Workers, and Mr. Greg McClelland, Executive Director of the Western Steel Council, dated June 7, 2019. In the Standards Board's Decision, dated June 20, 2019, the Petitioners' request was granted to the extent that Standards Board staff was directed to promptly develop a highly expedited permanent rulemaking limited in scope to clarify the definition of height as used in Section 1630, such that it is more clearly understood to require that an elevator be installed in a building or structure that will ultimately be at least 60 feet, at the time it reaches 36 feet.

The Division of Occupational Safety and Health (Division) reports and stakeholder comments concur, that it has been a prevalent practice during the construction of buildings designed to be 60 feet or more in height upon completion. Federal OSHA does not have an equivalent regulation.

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

**Anticipated Benefit**

1630(a) states that buildings or structures at least 60 feet tall require an elevator for hoisting workers. Subsection (d) states that the first landing be installed at 36 feet. A long-standing acceptance within the construction industry resulted in the elevator being installed when the building or structure reached 36 feet.

An Occupational Safety and Health Appeals Board (Appeals Board), Decision After Reconsideration (DAR) of May 29, 2019, ruled that the elevator was not required to be installed until the building reached 60 feet. The ruling has created confusion in the construction industry and creates a hazard to workers who, without an elevator, would need to climb stairs to access the 60-foot building or structure.

Benefits of having an elevator installed at 36 feet versus 60 feet include:

- Allows emergency responders to reach and evacuate workers expeditiously in the event of an injury;
- Faster labor productivity of the workforce due to not using stairs for overall access to the building from lower floors;

- Allows stocking of the building without the use of additional hoisting equipment such as forklifts and cranes;
- Allows for a safer work environment where workers are able to use the hoist rather than stairs to haul tools and equipment to upper floors; and
- Allows for emergency access to upper floors in a more timely manner.

**The specific change is as follows:**

Existing Section 1630(a) is modified to reflect that an elevator for hoisting workers is to be installed at 36 feet on a building or structure which will be at least 60 feet tall upon completion.

The proposed revision will make it clear that the elevator is required to be installed at the time the building or structure reaches 36 feet in height. The revision will end the confusion created by the Appeals Board decision and ensure it is clear to construction industry employers what their duty to comply is with regard to CPH installation.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

**Mandate on Local Agencies or School Districts:** None

**Cost or Savings to State Agencies:** None

**Cost to Any Local Government or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630:** None

**Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** None

**Cost or Savings in Federal Funding to the State:** None

**Cost Impact on a Representative Private Person or Business:**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals: Including the Ability of California Businesses to Compete:**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states.

The proposed revision to Section 1630 is not a new requirement but rather the clarification of a requirement prevalently conformed to within the building industry. As a result of the Appeals Board decision, the proposed revision is necessary to further clarify the requirements of Section 1630(a).

**Significant Affect on Housing Costs:** None.

**SMALL BUSINESS DETERMINATION**

The Board has determined that the proposed amendment will not affect small businesses, because the regulation applies to buildings or structures that are 60 feet and higher. Resources required to complete such projects are beyond the scope of small businesses.

**RESULTS OF THE ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS**

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation of new businesses or the elimination of existing California businesses or affect the expansion of existing California businesses, since this is only a clarification of a long-term understanding that an elevator is to be installed at 36 feet.

**BENEFITS OF THE PROPOSED ACTION**

The benefits of the regulation to the health and welfare of California residents and worker safety are:

- Allows emergency responders to reach and evacuate workers expeditiously in the event of an injury;
- Allows for a safer work environment where workers are able to use the hoist rather than stairs to haul tools and equipment to upper floors;
- Allows for emergency access to upper floors in a more timely manner; and
- Allows stocking of the building without the use of additional hoisting equipment such as forklifts and cranes.

This regulation provides no identified benefit to the state's environment.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

**CONTACT PERSONS**

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) or the back-up contact person, Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above or via the internet.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>

**STANDARDS PRESENTATION**  
**TO**  
**CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

TITLE 8, DIVISION 1, CHAPTER 4

Subchapter 4. Construction Safety Orders  
Article 18. Access and Egress

Amend Section 1630(a) as follows:

(a) In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure, designed to be 60 feet or more in height above or 48 feet in depth below ground level when completed. The elevator shall be installed and operational when the building or structure reaches 36 feet in height. The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls, mechanical rooms, stair towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments.

\*\*\*\*\*

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

**From:** [Bruce Wick](#)  
**To:** [DIR OSHSB](#)  
**Subject:** Modifications to CSO Section 1630(a)-Elevators for Hoisting Workers  
**Date:** Thursday, March 5, 2020 1:22:31 PM

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Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
Attn: Christina Shupe, Executive Officer

RE: Public Hearing for Construction Safety Orders, Section 1630(a), Elevators for Hoisting Workers, scheduled for March 19, 2020.

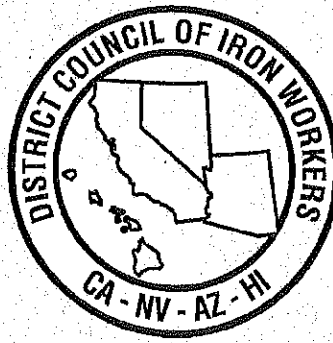
Dear Ms. Shupe,

CALPASC is a non-profit association of Specialty Contractors operating throughout California.

We strongly support the proposed modifications to Section 1630(a). Elevators for hoisting workers should be required when a building or structure reaches 36 feet in height, when the building or structure is designed to be 60 feet or more in height above, or 48 feet in depth below; ground level. We thank the Board and staff for expediting this very important rulemaking. This proposal provides important and potentially life saving support for construction workers, especially those in emergency situations.

Sincerely,

Bruce Wick  
Director of Risk Management  
CALPASC  
California Professional Association of Specialty Contractors  
[bwick@calpasc.org](mailto:bwick@calpasc.org)  
909-793-9932 office  
760-535-9623 cell



March 12, 2020

**RECEIVED**

Honorable David Thomas, Chair  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833

**MAR 16 2020**

**OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD**

Re: Public Hearing and Board Receipt of Comments on Proposed Amendment to 8 CCR section 1630(a) Elevators for Hoisting Workers

Dear Mr. Thomas:

I want to thank you for moving this matter to the March Standards Board agenda for a hearing on the proposed amendment referenced above. You may recall that I wrote the Standards Board last summer to request urgent action to fix the problem created by a wholly unexpected Decision After Reconsideration (DAR) from the Appeals Board (Alpha Construction Company et al., Inspection No.s 1180499, 1192145 and 1205214) negating decades of custom and practice and Cal/OSHA safety enforcement in the construction industry regarding the proper time to install construction personnel hoists (CPHs).

This amendment will go a long way to restoring order and common sense in the installation of CPHs, not to mention maximizing the safety of the dedicated workers who engage in some of the most hazardous work that takes place in the state.

There will be no overall increased fiscal cost associated with this move. It will restore the situation to the status quo that existed before the subject DARs were issued, and in fact if we continue to have to live under this backward approach to safety, we will be looking at not only the human cost of failure to minimize the seriousness of injuries, but the monetary cost as well.

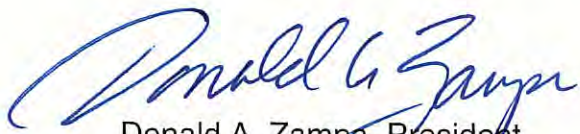
As I'm sure the Board appreciates, it is unfortunately all too common for serious injuries to occur during the construction of structural and reinforcing steel structures, even though we have made great progress over the years in improving safety. Having a CPH available for access to and exit from the site of an injury can make the difference between life and death, when minutes count in getting an injured worker off of the site and into a hospital that can provide life-saving treatment.

Proposed Amendment to 8 CCR section 1630(a) Elevators for Hoisting Workers  
Page 2  
March 12, 2020

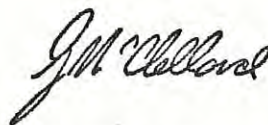
It is for this reason that we urge the Board to vote to adopt the proposed amendment so that we can return to where we were last summer and reverse the giant step backward we have been living with since the Appeals Board DAR was issued.

We urge you to vote to adopt this amendment as proposed as soon as the law allows.

Sincerely,



Donald A. Zampa, President  
District Council of Iron Workers  
of the State of California & Vicinity  
1660 San Pablo Ave., Suite C  
Pinole, CA 94564  
510-724-9277



Greg McClelland, Executive Director  
Western Steel Council  
990 Reserve Drive, Suite 104  
Roseville, CA 95678  
916-784-9110





March 16, 2020

Chairman David Thomas  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
EMAIL: oshsb@dir.ca.gov  
FAX: (916) 274-5743

Dear Chairman Thomas and Members of the Board:

On behalf of Worksafe, I write to support petitioners, Don Zampa, President of the District Council of Ironworkers of California, and Greg McClelland, Executive Director of the Western Steel Council, who submitted petition 577, proposing an amendment to title 8 California code of regulations section 1630(a) Elevators for Hoisting Workers.

Last year's Decisions After Reconsideration, (DAR) Alpha Construction Company et al. Inspection No.s 1180499, 1192145 and 1205214 negated decades of custom and practice and Cal/OSHA safety enforcement in the construction industry regarding the proper time to install construction personnel hoists (CPH).

Petitioners' amendment will go a long way to restoring order and commonsense in the installation of CPHs, not to mention maximizing the safety of the dedicated workers who engage in some of the most hazardous work that takes place in the state .

This amendment will also restore the departure from the decades of custom and practice in CPHs and will ensure that worker protection is at the center of the law. If the changes are not made, we will face the human cost in failing to minimize injuries to workers as well as monetary costs.

It is unfortunately all too common for serious injuries to occur during the construction of structural and reinforcing steel structures, even though great progress has been made over the years to improve safety. Having a CPH available for access to and exit from the site of an injury can make the difference between life and death, when minute count in getting an injured worker off of the site and into a hospital that provides life-saving treatment.

It is for this reason that we strongly urge the Board to vote to adopt the proposed amendment.

Sincerely,

Nicole Marquez-Baker  
Director of Policy and Legal Services  
Worksafe

**REICH, ADELL & CVITAN**  
A PROFESSIONAL LAW CORPORATION

3550 WILSHIRE BOULEVARD, SUITE 2000  
LOS ANGELES, CALIFORNIA 90010  
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www.rac-law.com

ALEXANDER B. CVITAN	J. DAVID SACKMAN
MARIANNE REINHOLD	MARSHA M. HAMASAKI
LAURENCE S. ZAKSON	PETER A. HUTCHINSON
NEELAM CHANDNA	ZACK METH
WILLIAM Y. SHEH	ARTHUR N. FOUR
NATALIA BAUTISTA	ILISSA B. GOLD
AARON G. LAWRENCE	
JULIUS MEL REICH (1933-2000)	HIRSCH ADELL (1931-2018)

March 17, 2020

**VIA E-Mail AND CERTIFIED MAIL**

*oshsb@dir.ca.gov*

Sarah Money  
Occupational Safety and Health Standards Board  
Department of Industrial Relations  
State of California  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833

RE: Public Comment on Construction Safety Orders  
Title 8, California Code of Regulations, Section 1630(a)  
(Elevators for Hoisting Workers)

Dear Ms. Money:

This office represents the International Union of Elevator Constructors, Local 18 (IUEC Local 18). The purpose of this letter is to provide comments on behalf of IUEC Local 18 concerning proposed rulemaking by the Occupational Safety and Health Standards Board (Board) to amend Section 1630(a) of Title 8 of the California Code of Regulations intended to clarify the definition of “height” in that Section. For the reasons that follow, IUEC Local 18 is in favor of amending Section 1630(a) as described in the Notice of Proposed Rulemaking and urges the Board to enact this necessary regulatory revision.

I. Background

Pursuant to Labor Code Section 142.3, the Board is the only State agency authorized to adopt occupational safety and health standards. As such, the Board may, consistent with the public rulemaking procedure outlined in the California Administrative Procedures Act, adopt, amend, or repeal provisions in the California Code of Regulations governing safety in the construction industry, referred to as the Construction Safety Orders, at Title 8, California Code

of Regulations, Division 1, Chapter 4, Subchapter 4, Article 18. See 11346.5(A)(3)(D).

Board Petition File No. 577 (Petition) was filed with the Division of Occupational Safety and Health Standards of the Department of Industrial Relations (Division) on June 7, 2019, seeking amendment to Title 8 of the California Code of Regulations, Section 1630 to clarify the long-standing requirement that an elevator must be installed on any building that will ultimately reach 60 feet, at the time the building reaches 36 feet.

The need for clarity was based on a recent Decision After Reconsideration by the Occupational Safety and Health Appeals Board (Appeals Board), which conflicted with the Appeals Board's longstanding rule stated in the form of multiple prior decisions requiring elevators to be installed on construction projects when a building reaches 36 feet in height.<sup>1</sup>

Contrary to the rule, on May 29, 2019, the Appeals Board, in *Alpha Construction Company Incorporated, 1180499, California Structural Concepts Inc. dba California Structural Concepts, 1205214, and KPRS Construction Services, Inc., 1192145* (hereinafter *Alpha*), found that there was no requirement to have a CPH installed until the building has reached 60 feet in height.

The Division reviewed the Petition and, on June 10, 2019, recommended that the Board, through emergency rulemaking, adopt the changes to Section 1630 proposed in the Petition.

On June 20, 2019, the Board adopted its Proposed Decision granting the Petition insofar as it directed Board staff to promptly develop a highly expedite permanent rulemaking for the purpose of specifically "clarif[y]ing] the definition of height as used in Section 1630 [to clearly] require that an elevator be installed in a building or structure that will ultimately be at least 60 feet, at the time the building reaches 36 feet."

On January 31, 2020, the Board published its Notice of Proposed Rulemaking and Informative Digest of Proposed Action, setting a public hearing on March 19, 2020, and providing for a public comment period lasting until March 19, 2020 at 5:00 p.m.

## II. The Current Formulation of Section 1360 is Unclear and Requires Amendment

The *Alpha* ruling has resulted in a sudden lack of clarity as to the requirement to install elevators for hoisting workers once a building contemplated to reach 60 feet reaches 36 feet during construction. Because the new formulation expressed in *Alpha* contradicts nearly thirty years of understanding in the industry as to when elevators are required to be installed, the Board must act quickly and definitely in order to clearly declare that the 36-foot installation requirement remains intact under Section 1630.

Left unchecked, the current confusion would have the effect of unnecessarily reducing the number of elevators required on construction projects, which would in turn drastically undermine worker safety and response times for medical emergencies on building sites. The

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<sup>1</sup> See *Anning-Johnson*, Docket No. 85-R3D1-1438, April 24, 1986 and *Rudolph and Sletten*, Docket No. 93-R1D5-1251, April 4, 1994.

Board's proposed rulemaking amending Section 1630(a) satisfies this urgent need by specifically laying out the requirements as follows:

- (a) In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure, designed to be 60 feet or more in height above or 48 feet in depth below ground level when completed. The elevator shall be installed and operational when the building or structure reaches 36 feet in height. The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls, mechanical rooms, stair towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments.

The proposed amendment, which is not even a change in existing law, but rather a clarification of a longstanding rule, would greatly benefit worker safety and efficiency in building project completion. A clearly defined rule allows for consistent compliance and enforcement, which results, in this case, in greater worker safety in the immediate and long-term.

As noted in the Board's Notice of Proposed Rulemaking and Informative Digest, because the proposed action will not create new law, the proposed amendment will result in no projected significant economic impacts on businesses and governments. Therefore, the projected major benefits to worker safety, weighed against the lack of any measurable negative economic impact, clearly merit amendment of Section 1630 as proposed.

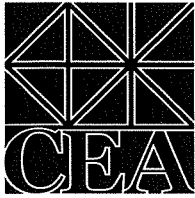
### III. Conclusion

For the foregoing reasons, the Board should amend Section 1630 as proposed in order to clarify existing law and remedy the confusion resulting from recent rulings by the Appeals Board. Indeed, worker safety requires such action.

Sincerely,



Natalia Bautista  
REICH, ADELL & CVITAN



# CONSTRUCTION EMPLOYERS' ASSOCIATION

March 17, 2020

Scott Smith  
President

Colby Powell  
First Vice President

Blair Allison  
Vice President

Mark Bley  
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Mr. Dave Thomas, Chair  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833

RE: Title 8, CCR, CSO Section 1630(a)

Dear Mr. Thomas:

The Construction Employers' Association (CEA) represents most of the largest unionized commercial and building contractors in northern California. Not only does our membership base collectively perform \$30 billion dollars in public and private construction volume annually in California, our members are strong proponents of jobsite safety. They take their responsibilities very seriously and endeavor to comply with all safety requirements. In fact, a half dozen CEA members had planned to provide comments at this week's public hearing. However, due to the COVID-19 pandemic, their respective companies have banned travel and in-person gatherings in accordance with CDC recommendations and the Governor's policy concerning gatherings. The proposed regulatory change regarding construction personnel elevators is an important industry issue. While we appreciate the recent addition of a public call-in option, contractors would have really liked the opportunity to be able to stand before the Board and share their comments in person. It is unfortunate that the public hearing portion of the meeting could not be postponed.

CEA does not want to eliminate the installation of the construction personnel elevator (CPE) nor is CEA advocating that the CPE be installed when the building reaches 60 feet.

However, we are proposing two alternatives for the Board's consideration that also takes into account today's building environment and promotes a level playing field:

### Proposed Alternative 1

§1630. Elevators for Hoisting Workers.

(a) In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure, designed to be 60 feet or more in height above or 48 feet in depth below ground level, unless or until a permanent passenger or freight elevator meeting the requirements of Article 14, Section 1604.4 provides service to all required landings specified in (d) of this section. The construction passenger elevator shall be installed and operational as soon as practicable when the building or structure reaches the third elevated level. The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls, mechanical rooms, stair towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments.

3800 Watt Avenue, Suite 215  
Sacramento, CA 95821  
Telephone (916) 978-8510  
Fax (916) 978-8505

2175 N. California Blvd., Suite 420  
Walnut Creek, CA 94596  
Telephone (925) 930-8184  
Fax (925) 930-9014

Rather than requiring that the CPE be installed at a specific height (i.e. 36 feet), we respectfully ask that the Board consider the real-world variability of the floor to floor height which can vary depending on the building. As proposed above, a contractor, subcontractor or Cal/OSHA representative can visually note the third elevated level without having to measure whether the 36 foot threshold has been met. Furthermore, the CEA proposed language provides clarity as to when the CPE must be installed and in operation as well as providing clarity as to when it can be removed. Since the current regulation is silent on the CPE's removal, there is confusion in the field and some contractors gain an advantage by removing the elevators earlier than others. CEA's proposed language not only provides clarity to contractors and enforcement personnel, it also ensures a level playing field since it would standardize its removal.

If the Board will not consider proposed amendments to the 36' threshold, please consider adding flexibility in the event the building is unable to support the CPE at 36' due to structural stability, the formwork system or the fact that 36' falls in between two floors making the attachment of the hoist difficult. Furthermore, it is not reasonable for Cal/OSHA to recommend that buildings be redesigned in order to conform with Cal/OSHA regulations as some DOSH staff have done.

### **Proposed Alternative 2**

§1630. Elevators for Hoisting Workers.

(a) In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure, designed to be 60 feet or more in height above or 48 feet in depth below ground level, unless or until a permanent passenger or freight elevator meeting the requirements of Article 14, Section 1604.4 provides service to all required landings specified in (d) of this section. The elevator shall be installed and operational when the building or structure reaches 36 feet in height, but may be delayed if impracticable, such as the formwork system interferes with the installation and/or use of the temporary construction passenger elevator or the structural integrity of the elevator cannot be maintained as a result of the building's design. The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls, mechanical rooms, stair towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments.

In accordance with Government Code Section 11346.5(a)(13), CEA is proposing reasonable alternatives. The CEA proposed language is clear about when the elevator is to be installed, when it can come down, and most importantly it is clear to construction industry employers what their duty is to comply.

Please let me know if you have any questions or interest in touring a jobsite and I will put you in contact with a CEA member.

Thank you for your consideration and the opportunity to provide comments.

Sincerely,



Michael Walton  
Secretary

# State Building and Construction Trades Council

ROBBIE HUNTER  
PRESIDENT

of California

J. TOM BACA  
SECRETARY-TREASURER

Established 1901  
Chartered by  
BUILDING AND CONSTRUCTION TRADES  
DEPARTMENT  
AFL - CIO

March 17, 2020

Mr. Dave Thomas,  
Chair, Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833

**RE: Standards Board Public Hearing on 8 CCR Section 1630(a) – Elevators for Hoisting Workers**

Dear Mr. Thomas:

On behalf of the 450,000 construction workers and 68,300 apprentices represented by the member unions of the State Building and Construction Trades Council, AFL-CIO, I am writing in support of the proposed amendment to 8 CCR Section 1630(a), which deals with construction personnel hoists (CPH), that is scheduled to be heard at the March 19<sup>th</sup> Cal/OSHA Standards Board meeting

This amendment will remedy a situation that will create an unacceptable and life-threatening hazard to construction workers if not addressed. It will reestablish the status quo that existed before the Cal/OSHA Appeals Board created the current situation with their Decision after Reconsideration.

As you know, the hazards that workers are exposed to on all construction jobsites are many and dangerous. Because jobsites are dynamic workplaces, even on jobsites run by the best contractors who make safety their number one priority, it is inevitable that a life-threatening injury will occur. In my 35 years as an Ironworker I have seen workers on upper floors of a structure who have been impaled by rebar, been electrocuted, knocked unconscious with blood coming from their ears, who have suffered heart attacks, and who have fallen from one floor to another. These are just a few examples of the truly life-threatening situations that construction workers and emergency personnel have been faced with on a building. Having a CPH installed for access and exit from a construction site when there is an injury has saved and will save the lives of construction workers when minutes count in getting a worker to medical professionals or first responders up to the location of an injured worker.

It is clear to all those in the industry who truly believe in health and safety for workers that the cost of installing a CPH on a building is incidental when compared to the large increase a CPH adds in health and safety on a jobsite as well as the increase in worksite efficiency of the workers on the job. It is imperative then that the Standards Board support this amendment.

Sincerely,



ROBBIE HUNTER  
President

RH:bp opeiu#29/afl-cio

cc: Ms. Christina Shupe, Executive Officer

DEPARTMENT OF INDUSTRIAL RELATIONS  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
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Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



## **INITIAL STATEMENT OF REASONS**

### CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 1630(a) of the Construction Safety Orders

### **Elevators for Hoisting Workers**

#### **SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

This rulemaking was initiated in response to Occupational Safety and Health Standards Board (Standards Board) Petition File No. 577 submitted by Mr. Donald A. Zampa, President of the District Council of Iron Workers, and Mr. Greg McClelland, Executive Director of the Western Steel Council, dated June 7, 2019. In the Standards Board's Decision, dated June 20, 2019, the Petitioners' request was granted to the extent that Standards Board staff was directed to promptly develop a highly expedited permanent rulemaking limited in scope to clarify the definition of height as used in Section 1630, such that it is more clearly understood to require that an elevator be installed in a building or structure that will ultimately be at least 60 feet, at the time it reaches 36 feet.

#### **Section 1630(a). Elevator for Hoisting Workers**

Section 1630(a) requires that an elevator for hoisting workers is required on buildings or structures that are 60 feet or taller.

Until a May 29, 2019, Occupational Safety and Health Appeals Board (Appeals Board) Decision After Reconsideration (DAR), it was widely accepted within the construction industry that an elevator for hoisting workers (commonly referred to as a CPH – construction personnel hoist, or a CPE construction personnel elevator) is required to be installed at 36 feet when a building that, when completed, will reach a height of at least 60 feet.

The DAR, Alpha Construction Company Incorporated, 1180499, California Structural Concepts Inc. dba California Structural Concepts, 1205214, and KPRS Construction Services, Inc., 1192145, found that there was no requirement to have a CPH installed until the building has reached 60 feet in height.

The DAR changed the long-accepted enforcement of the regulation. The Division of Occupational Safety and Health (Division) has enforced, and many employers have accepted, the



requirement to have an elevator installed when the building or structure is designed to be 60 feet or more in height at the time the building or structure reaches 36 feet in height because Section 1630(d) requires the first landing be installed at 36 feet.

Two previous DAR rulings seemed to indicate that the elevator was required before the building reached 60 feet in height.

1. Anning-Johnson, Docket No. 85-R3D1-1438, April 24, 1986, stated that Title 8 Section 1630(a) and (d) need to be read together. However, that DAR was about another issue, not the interpretation to have an elevator installed before the building reached 60 feet in height.
2. Rudolph and Sletten, Docket No. 93-R1D5-1251, April 4, 1994, although also not specifically about having an elevator installed at 36 feet, did indicate that the elevator was to be installed before the building reached 60 feet. From page 3, paragraph 3, "Section 1630(d) does not depend on any minimum height. This section requires that access be provided to the upper-most lever, whether it is lower or higher than 60 feet. Section 1630(d) imposes a separate and distinct obligation on Employer to provide access, when Employer is obligated to erect a construction elevator under section 1630(a)."

The May 29, 2019, DAR is the first time the issue of having an elevator installed before the building or structure reached 60 feet in height has been ruled upon by the Appeals Board.

The Petitioners stated that the ruling is creating widespread confusion between subcontractors and general contractors in both continuing with existing construction projects and bidding on new contracts. They contend the DAR ruling is "A giant step backwards, instead of moving forward, to prevent imminent hazards to construction workers who will be working in situations where, should life-threatening injury occur, there will be no elevator access for emergency personnel to reach the injured worker or to perform an evacuation."

The purpose of this proposal is to clarify that an elevator is required to be installed at 36 feet for buildings or structures which will be 60 feet or taller when completed. The clarification of the requirement will codify a long-standing acceptance within the industry.

**TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED ON BY THE BOARD**

1. Petition No. 577 submitted by Donald A. Zampa, and Greg McClelland, received June 7, 2019.
2. Division of Occupational Safety and Health Review of Petition 577, dated June 10, 2019.
3. Occupational Safety and Health Standards Board Decision on Petition 577, dated June 20, 2019.
4. Occupational Safety and Health Appeals Board, Decision After Reconsideration, Alpha Construction Company Incorporated, 1180499, California Structural Concepts Inc. dba

California Structural Concepts, 1205214, and KPRS Construction Services, Inc., 1192145, dated May 29, 2019.

5. Occupational Safety and Health Appeals Board, Decision After Reconsideration, Anning-Johnson, Docket No. 85-R3D1-1438, dated April 24, 1986.
6. Occupational Safety and Health Appeals Board, Decision After Reconsideration, Rudolph and Sletten, Docket No. 93-R1D5-1251, dated April 4, 1998.
7. OSHA Information System data from January 2014 to June 2019.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

### **PETITION**

Petitioners: Donald Zampa, President of the District Council of Iron Workers of the State of California and Vicinity, and Greg McClelland, Executive Director, Western Steel Council.

File No. 577

The Board received a petition on June 7, 2019, to amend Section 1630(a) of the Construction Safety Orders contained in Title 8 of the California Code of Regulations regarding elevators for hoisting workers in buildings or structures 60 feet or greater in height and 48 feet in depth. On June 20, 2019, the Board granted the petition to the extent that Section 1630(a) be amended to clarify the definition of height as used in Section 1630, such that it is more clearly understood to require that an elevator be installed in a building or structure that will ultimately be at least 60 feet, at the time it reaches 36 feet.

A copy of the Petition, the Division's evaluation and the Board's petition decision are included as Documents Relied Upon.

### **ADVISORY COMMITTEE**

The proposal was developed without the assistance of an advisory committee.

### **FIRE PREVENTION STATEMENT**

This proposal does not include fire prevention or protection standards. Therefore, approval of the State Fire Marshal pursuant to Government Code Section 11359 or Health and Safety Code Section 18930(a)(9) is not required.

### **SPECIFIC TECHNOLOGY OR EQUIPMENT**

This proposal will not mandate the use of specific technologies or equipment beyond which is already required.

## **ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The proposed regulation change will not affect the: (1) creation or elimination of California jobs, (2) creation of new businesses or elimination of existing California businesses, or (3) expansion of existing California businesses, because this is only a clarification of a long-term understanding that an elevator is to be installed at 36 feet.

Costs are negligible when considering whether an elevator becomes operational at 36 feet or 60 feet and above.

- 1) CPH's have certain fixed costs that do not vary due to operational start height, such as:
  - a) CPH foundation cost;
  - b) CPH initial erection cost;
  - c) CPH dismantle cost;
  - d) CPH trucking cost; and
  - e) CPH gates, platforms, and communication systems cost.
  
- 2) When building structures are erected, the time frames for construction between 36 feet to 60 feet are short in duration:
  - a) Structural steel frame buildings will make up this difference in height in 2-3 weeks;
  - b) Concrete structures will make up this difference in height in 4-5 weeks; and
  - c) Wood frame structures will make up this difference in 4-5 weeks.

Any savings in CPH rental (which is monthly) and operator time due to this height installation differential will be insignificant when compared to other CPH advantages.

Estimated cost of elevator mast section installation and operator hourly cost from the time a building or structure reaches 36 feet to 60 feet varies with construction type and economy. Staff surveyed companies who install and build structures over 60 feet high and collected data about potential costs, which are specific to each individual project. Reports from industry indicate that a potential range of \$14,000 to \$30,000 in hard operating costs can potentially be attributed to the elevator. Between January 2014 and June 2019, DOSH cited 3 to 4 worksites per year for failure to install a CPH between 36 and 60 feet. DOSH estimates per-installation cost of \$22,000 for a typical worksite to become compliant.

3.5 employers cited annually by DOSH

\$22,000 average per-installation cost to comply (median of \$14k-\$30k in typical industry reported costs)

$3.5 \times \$22,000 = \$77,000$  total estimated industry cost

### **BENEFITS OF THE PROPOSED ACTION**

Having the CPH operational at 36 feet economically benefits the health and welfare of California residents and worker safety in the following manner:

- a) Allows for emergency access to upper floors in a more timely manner;
- b) Allows for a safer work environment where workers are able to use the hoist rather than stairs to haul tools and equipment to upper floors;
- c) Faster labor productivity of the workforce due to not using stairs for overall access to the building from lower floors; and
- d) Allows stocking of the building without the use of additional hoisting equipment such as forklifts and cranes.

This regulation provides no identified benefit to the state's environment.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states.

For the most part, employers have already been installing an elevator at 36 feet. Staff approximates the requirement to have a CPH to have existed since 1975 in California.

Title 8 requires that an employer obtain a construction permit from the Division whenever a building or structure is to be over 36 feet in height. A permit conference is held with an employer representative and a Division representative. During the permit conference, the Division would learn whether the building or structure is designed to be 60 feet or taller and inform the employer of the requirement for a CPH. The employer's height permit is stamped with "CPH required."

Some building departments are aware of the requirement and inform employers that they must obtain a Division permit at the time the employer seeks a building permit.

Data extracted from the OSHA Information System from January 2014 to June 2019 indicated the Division issued citations for 1630(a) at 62 different jobsites and issued citations to 101 different employers. Of those, 29 employers were cited at 17 worksites when the building or structure was at least 36 feet but was not yet 60 feet high. Some employers accepted the citations, others appealed, and later settled the citations without going to hearing. Some are still under appeal.

This data implies there is understanding by employers in the affected industry that they are expected to install an elevator when a building reaches 36 feet in height.

**REASONABLE ALTERNATIVES TO THE PROPOSAL AND THE BOARD'S**  
**REASONS FOR REJECTING THOSE ALTERNATIVES**

No reasonable alternatives to the proposal were identified or brought to the Board's attention.




STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
2520 Venture Oaks Way, Suite 350  
Sacramento, California 95833  
(916) 274-5721

In the Matter of a Petition by: )  
)  
) PETITION FILE NO. 577  
Don Zampa, President )  
) DECISION  
Greg McClelland, Executive Dir. )  
)  
1660 San Pablo Ave., Suite C )  
)  
Pinole, CA 94564 )  
)  
)  
)  
\_\_\_\_\_) Applicant. )

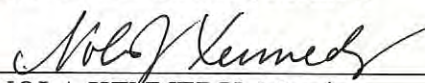
The Occupational Safety and Health Standards Board hereby adopts the attached  
PROPOSED DECISION.


OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

  
\_\_\_\_\_  
DAVID THOMAS, Chairman

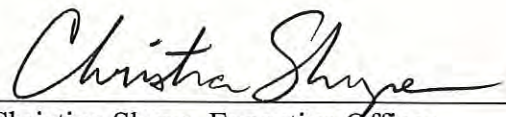
  
\_\_\_\_\_  
BARBARA BURGEL, Member

  
\_\_\_\_\_  
DAVE HARRISON, Member

  
\_\_\_\_\_  
NOLA KENNEDY, Member

  
\_\_\_\_\_  
CHRIS LASZCZ-DAVIS, Member

  
\_\_\_\_\_  
LAURA STOCK, Member

By:   
\_\_\_\_\_  
Christina Shupe, Executive Officer

DATE: June 20, 2019  
Attachments

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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(916) 274-5721  
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**PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 577)****INTRODUCTION**

On June 7, 2019, Donald A. Zampa, President of the District Council of Iron Workers of the State of California and Vicinity, and Greg McClelland, Executive Director of the Western Steel Council (Petitioners) electronically dispatched to the Occupational Safety and Health Standards Board (Board), a letter of requested action. In accord with Labor Code Section 142.2, the Petitioners letter of request has been duly received by the Board and designated Petition No. 577 (Petition).

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code Section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal.

**SUMMARY**

Petition No. 577 requests that the Board amend California Code of Regulations, Title 8, Construction Safety Orders, Section 1630(a), by means of emergency rulemaking. The request for emergency action rests upon the Petitioners' assertion that a recent decision handed down by the Occupational Safety and Health Appeals Board (Appeals Board)<sup>1</sup>, interpretation of Section 1630(a), has abruptly "nullified a long-standing enforcement posture of the Division."

Section 1630(a) states:

*In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure, 60 feet or more in height above or 48 feet in depth below ground level. The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls,*

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<sup>1</sup> A three-member, governor appointed judicial body decides appeals from private and public-sector employers regarding citations issued by the Division of Occupational Safety and Health for alleged violation of workplace safety and health regulations, the adoption, amendment, or repeal of which are within the sole authority of the Occupational Safety and Health Standards Board.



*mechanical rooms, stair towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments.*

Aside from providing a relatively safer means of vertical travel for tool and material laden workers, beyond stairs or ladders, a construction personnel elevator or hoist (CPE or CPH) serves another important purpose. Workplaces where buildings are being erected to heights of 60 feet and above pose some of the most significant risks of serious, potentially fatal injury to workers. In the unfortunate event of such injury, the availability of an operational onsite CPH for use by emergency personnel may prove critical to the recovery, or even survival, of the afflicted worker. Similarly, a CPH typically provides a method for more orderly and rapid egress down to an emergency transport vehicle, while minimizing risk of compounding harm to the physically vulnerable injured.

The subject Appeals Board Decision After Reconsideration (DAR), issued May 29, 2019,<sup>2</sup> held that the term “height,” as used in Section 1630(a), referred only to the height of the subject structure thus far constructed at the time of potential violation, rather than a potentially higher planned height yet to be reached. The Petitioners and Division argue that “height” has long been recognized to mean the final planned height of the building upon completion, such that subpart (a), in conjunction with the remainder of Section 1630, has been widely understood within the industry to require any structure in the process of construction to a height of 60 feet or greater to have a CPH installed and operational once the structure has reached the lesser of its third floor or 36 feet.

Notwithstanding the Petitioners’ assertion that prior to the recent DAR holding, Section 1630(a) had been adequately clear to serve as the basis of “a longstanding enforcement posture of the Division,” the Petitioners’ also presently requested revisions to subpart (a), going beyond the narrow scope of the DAR holding, to also add language attempting clarification of a related, but nonetheless distinguishable, provision within Section 1630, subpart (d).<sup>3</sup>

#### DIVISION’S PENDING REQUEST FOR REGULAR RULEMAKING

The Petitioners’ assert that the issues they seek to have addressed by means of emergency rulemaking are “*entirely separate and distinct* from other issues that have arisen with section 1630.”<sup>4</sup>

To quote the Petitioners:

*We are aware the (sic) DOSH has filed a Form 9 requesting a number of changes*

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<sup>2</sup> In the Matter of the Appeals of Alpha Construction, Inc., et al, (concerning Inspection Nos. 1180499, 1205214, & 1192145) [https://www.dir.ca.gov/oshab/DECISIONS/California-Structural-Concepts.\(1205214\).pdf](https://www.dir.ca.gov/oshab/DECISIONS/California-Structural-Concepts.(1205214).pdf)

<sup>3</sup> Petitioners’ proposed addition to subpart (a) of the sentence: “*The elevator shall be installed and operational when the building or structure reaches 36 feet in height or 36 feet in depth below ground level.*”

<sup>4</sup> (emphasis added)

*to section 1630, and we are also interested in participating in the normal advisory committee and rulemaking process to improve this important safety standard. However, this single issue needs to be addressed separately from that process and has become an emergency because of the unanticipated DAR referenced above.*

Despite the Petitioners' urging to the contrary, there are issues of concern in common between the present Petition and the Division's preexisting formal written Form 9 request to the Board for amendments to Section 1630.<sup>5</sup>

Quoting the Division's written Form 9 [Division's Request for New, or Change in Existing, Safety Order] request submitted to the Board on April 3, 2019:

***Section 1630 is not clear on when CPEs must be first installed...***

*It is not clear if a CPE must be operational when a structure initially reaches 36 feet in height or depth or if the CPE does not have to be operational until the structure reaches a height of 60 feet... or depth of 48 feet.*

Quoting the Petition:

*[The May 29, 2019, Appeals Board DAR] nullified a long-standing enforcement posture of the Division of Occupational Safety and Health (DOSH) and custom and practice in the construction industry that calls for a construction passenger elevator (CPH) on any building designed to be 60 feet or more in height when the building reaches 36 feet in height.*

In addition, both the Division's Form 9, and the Petition seek changes beyond the scope of the DAR's narrowly focused holding,<sup>6</sup> with the apparent purpose of clarifying the operative relationship between above discussed subpart (a) of Section 1630, and its subpart (d), which states:

*Landings shall be provided for the passenger elevator on or in buildings or structures at the upper-most floor and at intervals not to exceed 3 floors or 36 feet.*

Highlighting concerns the Petitioners seek to have addressed by emergency action, which also are among those identified within the Division's Form 9 request for regular rulemaking, is not to suggest those shared concerns lack validity, but rather the importance of considering the Petition within the broader context of the preexisting Division request.

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<sup>5</sup> Cal/OSHA Form 9, Request for New, or Change in Existing, Safety Order, dated April 4, 2019.

<sup>6</sup> Defining the applied meaning of the term "height" within Section 1630(a).

## DIVISION EVALUATION

The June 10, 2019, dated written evaluation of the Division asserts that the DAR holding is contrary to the Division's long held position that Section 1630 requires access to a structure via CPE when the height or depth of the structure initially reaches 36 feet for any structure whose final height will be 60 feet or greater. The Division reports having successfully enforced this requirement for "many years." It further summarily describes "many employers" having successfully conformed to this requirement "for many years."

The Division also cites previous Appeals Board decisions characterized as having been consistent with its long held position.<sup>7</sup> Despite this, the Division does not seem to be suggesting that the subject DAR is something other than a superseding precedent to which it is bound.

The Division is in support of the Petitioners' position and requested emergency action.

## BOARD STAFF EVALUATION

The June 17, 2019, dated Board staff evaluation of the Petition raises concerns about the scope of requested changes to Section 1630(a), having gone beyond the scope of the Appeals Board holding cited by Petitioners as the precipitating basis for emergency action. At the same time, in light of the recent DAR holding, Board staff agrees that Section 1630(a) could be clearer in its intent regarding when a CPH is required.

Of great concern to Board staff is the extent to which the requested emergency action risks over-reaching the special authority of the Board to dispense with most due process and public participation in order to take immediate action essential to avoiding the risk of serious harm to the public posed by an urgent situation.<sup>8</sup> However, Board staff also recognizes that the Board may deem those concerns less compelling than the argued need for remedial clarification of the subject regulation. Therefore, Board staff cautiously advises that should the Board chose to undertake emergency rulemaking in response to the Petition, it be strictly limited in scope to the precipitating DAR holding at issue, namely the intended meaning of the term "height," for purposes of Section 1630.

Toward that purpose, Board staff would suggest adding to Section 1630, immediately following the existing definition of "Ground Level," a definition of "Height," as follows:

\* \* \* \*

*Ground level, for the purposes of this section, is defined as the level of the primary construction entrance to the building or structure.*

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<sup>7</sup> *Anning-Johnson Company*, Cal/OSHA 85-R3D1-1438 Decision After Reconsideration, April 24, 1986; *Rudolph & Sletten, Inc.*, Cal/OSHA 93-1251 Decision After Reconsideration, Apr. 8, 1998

<sup>8</sup> Gov. Code Section 11342.545

Height, for purposes of this section, is defined as existing height, or planned height upon completion.

When computing the height...

\* \* \* \*

### DISCUSSION

Setting aside the question of the Board's statutory authority to adopt emergency regulations in the present situation, the Board's long standing dedication to the principle of meaningful public participation in the rulemaking process weighs heavily against resort to emergency adoption. Nonetheless, exceptional circumstances will sometimes arise which justify expedited action. In the present instance, the Petitioners cite with exceptional specificity the scope of the claimed emergency, in the form of an Appeals Board DAR, which itself describes the crux of its subject holding as follows:

*The issue presented is whether the Board's ALJs properly vacated the citations on the basis that the safety order did not apply because the respective buildings had not yet reached 60 feet in height at the time of the Division's inspection.*

\* \* \* \*

*We conclude the ALJ's decisions properly vacated the citations on the basis that the safety order did not yet apply because the respective buildings had not yet reached 60 feet in height at the time of the Division's inspection, and we affirm each decision.*

The Appeals Board did take the opportunity to reflect more broadly upon the potential interest of the Standards Board in restating its intent:

*These seeming anomalies in coverage warrant further consideration, a matter reserved for the Standards Board. The Appeals Board cannot substitute its judgment for that of the Standards Board, the state agency charged by statute with the responsibility of adopting occupational safety and health standards.*

However, such musing of the Appeals Board are just that, and do not constitute a justification for emergency rulemaking under APA guidelines.

CONCLUSION AND ORDER

Having read and considered the Petition and the evaluations by the Division and Board staff, the Board hereby grants, in part, Petition 577, to the extent that Board staff is directed to promptly develop a highly expedited permanent rulemaking limited in scope to address the definition of “Height” as it pertains to Section 1630. Additionally, Board staff is to proceed in considering the pending Division Form 9 requesting additional amendments to Section 1630 as a separate rulemaking proposal, and refrain from blending the two.

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeals of:

**ALPHA CONSTRUCTION COMPANY  
INCORPORATED  
14601 AETNA STREET  
VAN NUYS, CA 91411**

**CALIFORNIA STRUCTURAL CONCEPTS INC.  
dba CALIFORNIA STRUCTURAL CONCEPTS  
28358 CONSTELLATION RD #660  
VALEN CIA, CA 91355**

**KPRS CONSTRUCTION SERVICES, INC.  
2850 SATURN STREET  
BREA, CA 92821**

**Employers**

Inspection Nos.

**1180499, 1205214, 1192145**

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code issues the following consolidated Decision After Reconsideration in the above-entitled matters.

**JURISDICTION**

Alpha Construction Company (Alpha) is a general contractor. The Division of Occupational Safety and Health (the Division), through Inspector Steven Chu, conducted an inspection of a worksite maintained by Alpha at 124 West Colorado Street, Glendale, California. Alpha constructed an apartment building at that worksite.

KPRS Construction Services, Inc. (KPRS) is a general building contractor. The Division, through Inspector Steven Honjio (Honjio), commenced an inspection of a worksite maintained by KPRS at 225 West Wilson Ave., Glendale, California. KPRS constructed a hotel at that worksite.

California Structural Concepts, Inc. (CSC) is a contractor. The Division, through Inspector Honjio, conducted an inspection at a worksite maintained by CSC located at 225 West Wilson Avenue, Glendale, California—the same worksite in the KPRS matter. CSC assisted in the construction of the hotel at that worksite.

Following the Division's inspections in each matter, the Division issued each employer a citation alleging a violation of California Code of Regulations, title 8, section 1630, subdivision (a).<sup>1</sup> The citation issued to Alpha alleged a Willful, General violation with a proposed penalty of \$35,000. The citation issued to KPRS alleged a Willful, General violation with a proposed penalty of \$35,000. The citation issued to CSC alleged a General violation with a proposed penalty of \$185.

Each employer timely appealed their respective citations, contesting, among other things, the existence of the alleged violation. Alpha's matter came on regularly for hearing before Howard Chernin, an Administrative Law Judge (ALJ) for the Board, at West Covina, California on August 7, 2018. CSC's matter came on regularly for hearing before Christopher Merrill, an ALJ for the Board, at West Covina, California on December 19, 2017 and June 21, 2018. KPRS's matter came on regularly for hearing before Jacqueline Jones, an ALJ for the Board, at West Covina, California on March 13, 2018. Each ALJ issued a decision vacating the section 1630, subdivision (a) citation.

In both the KPRS and CSC matters, the Division filed petitions for reconsideration asking the Board to reconsider the ALJ's decision vacating the citations, which the Board granted. In Alpha, the Board ordered reconsideration on its own motion, as it raised issues similar to those already under reconsideration.

While each matter involves a different employer, the Board concludes the legal issues, facts, and circumstances presented in each case are sufficiently similar to warrant consolidation for decision pursuant to section 363, and so ordered.

In making this consolidated decision, the Board has engaged in an independent review of the entire record in each matter. The Board has additionally considered the pleadings and arguments filed by the parties. The Board has taken no new evidence.

## **ISSUE**

When must a construction passenger elevator for hoisting workers be installed and in operation pursuant to section 1630, subdivision (a)?

## **FINDINGS OF FACT**

1. In each matter, the subject building was designed to exceed 60 feet in height upon completion.
2. In the KPRS and CSC matters, the building at 225 West Wilson Avenue, Glendale, California was designed to be 128 feet tall upon completion.
3. In the Alpha matter, the building at 124 West Colorado Street, Glendale, California was designed to be 65 feet, five inches, upon completion.
4. At the time of the Division's inspections, construction on the subject buildings had not yet reached 60 feet, but had exceeded 36 feet in height.

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<sup>1</sup> Unless otherwise specified, all references are to the California Code of Regulations, title 8.

5. When the Division conducted its inspections in the KPRS and CSC matters, construction of the subject building had reached a height of approximately 49 feet.
6. When the Division conducted its inspection in the Alpha matter, construction of the subject building had reached a height of approximately 47 feet.

## DISCUSSION

The Division cited each employer for an alleged violation of section 1630, subdivision (a), requiring installation of a construction passenger elevator for hoisting workers. Section 1630, subdivisions (a) and (d), state,

(a) In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure, 60 feet or more in height above or 48 feet in depth below ground level. The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls, mechanical rooms, stair towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments.

The building or structure depth shall be determined by measuring from ground level to the lowest floor level excluding local depression such as sumps and elevator pits.  
[...]

(d) Landings shall be provided for the passenger elevator on or in buildings or structures at the upper-most floor and at intervals not to exceed 3 floors or 36 feet.

The issue presented is whether the Board's ALJs properly vacated the citations on the basis that the safety order did not apply because the respective buildings had not yet reached 60 feet in height at the time of the Division's inspection.

Each ALJ interpreted the plain language of section 1630, subdivision (a), as requiring that the building actually reach 60 feet in height before a construction passenger elevator will be required. The ALJs found the respective buildings had not reached 60 feet in height at the time of the Division's inspection. The ALJs also considered the Board's previous precedent on the issue. The Board has never required a construction passenger elevator on a building less than 60 feet in height. (See *Rudolph & Sletten*, Cal/OSHA App. 93-1251, Decision after Reconsideration (April 8, 1998); *Anning-Johnson Company*, Cal/OSHA App. 85-1438, Decision After Reconsideration (Dec. 31, 1986); *Armour Steel Co., Inc.*, Cal/OSHA App. 08-2649, Decision After Reconsideration (Feb. 7, 2014).)



In contrast, the Division contends that when section 1630, subdivisions (a) and (d) are harmonized, they require installation of a construction passenger elevator on a building planned to be in excess of 60 feet in height once the building reaches 36 feet in height. The Division argues each building exceeded 36 feet in height at the time of its inspections, and the buildings were all designed to exceed 60 feet upon completion.

In ascertaining at what height a construction passenger elevator is required, and in evaluating the various legal positions presented, we apply the rules of regulatory construction, which are well-settled. “[W]e first look the language of the regulation itself.” (*Department of Industrial Relations v. Occupational Safety & Health Appeals Bd.* (2018) 26 Cal.App.5th 93, 100-101; see also *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 54-55.) “If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the [agency].” (*Ibid.*) The plain meaning rule does not prohibit the Board from determining “whether the literal meaning of the [regulation] comports with its purpose...” (*Ibid.*) “[W]e do not construe a regulation in isolation, but instead read it with reference to the scheme of law of which it is a part, so that the whole may be harmonized and retain effectiveness. [Citations.]” (*Ibid.*) “The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.]” (*Katz, supra*, 117 Cal.App.4th at p. 54-55.)

Here, as each ALJ correctly concluded, we find that the plain terms of section 1630 fail to support the Division’s construction of the safety order. Subdivision (a) requires a construction passenger elevator “on or in any building, or structure, 60 feet or more in height...” This plain language compels the conclusion that the subject building must actually reach 60 feet in height before the safety order requires installation of a construction passenger elevator. (See, e.g., *Rudolph & Sletten*, Cal/OSHA App. 93-1251, Decision after Reconsideration (Apr. 8, 1998) [“The safety order at issue in this case, section 1630(a) requires that when a building under construction reaches a height of 60 feet, a construction elevator must be installed. The safety order specifies that the height of the building is determined by measuring from the ground to the top of the structure...”]; *Armour Steel Co., Inc.*, Cal/OSHA App. 08-2649 Decision After Reconsideration (Feb. 7, 2014)—[Section 1630, subdivision (a), “requires the installation of a construction passenger elevator in buildings or structures which are 60 feet or taller in height.”].) Nothing in the safety order speaks of the building’s ultimate design height, intended future height, or final height. “The provisions of Section 1630(a) are clear and precise: a building 60 feet or more in height must be provided with an operating construction passenger elevator.” (*Anning-Johnson Company, supra*, Cal/OSHA App. 85-1438.)

While the Division argues subdivision (d) requires an elevator when the building reaches 36 feet, the plain terms of that subdivision do not dictate when an elevator must be installed; they state where elevator landings must be placed to provide access in the event an elevator is required. (*Rudolph & Sletten*, Cal/OSHA App. 93-1251, Decision after Reconsideration (April 8, 1998)—[“Section 1630(d) ...requires that access be provided at every third floor or 36 feet if the structure is 60 feet tall, measured as directed in section 1630(a).”].)

Although both subdivision (a) and (d) must be read in conjunction to determine whether a violation is established, the subdivisions nevertheless serve different purposes. (*Rudolph & Sletten*, Cal/OSHA App. 93-1251, Decision after Reconsideration (Apr. 8, 1998).) As the Board has previously noted, “The [California Occupational Safety and Health] Standards Board carefully separated the requirements of access and applicability. Only after it has been determined from section 1630(a) that a construction elevator is required is section 1630(d) consulted to determine the levels at which access must be provided.” (*Ibid.*)

We conclude the ALJ’s decisions properly vacated the citations on the basis that the safety order did not yet apply because the respective buildings had not yet reached 60 feet in height at the time of the Division’s inspection, and we affirm each decision. However, in reaching this conclusion, we do observe that the Division identifies some potentially meritorious concerns with the safety order. In requiring a landing at three floors or 36 feet, the safety order does seem to indicate that employees are exposed to the hazard addressed in the safety order when they work in excess of 36 feet. (See, e.g., *Armour Steel Co., Inc.*, Cal/OSHA App. 08-2655 Decision After Reconsideration (Feb. 7, 2014); *Rudolph & Sletten*, Cal/OSHA App. 93-1251, Decision after Reconsideration (April 8, 1998).) However, the plain terms of the safety order specify that no construction passenger elevator is required until the building actually reaches 60 feet in height. Employees must work between 36 feet and 60 feet before the employer is required, creating a gap in coverage. Further, the safety order does not apply to a building that fails to reach 60 feet in height. These seeming anomalies in coverage warrant further consideration, a matter reserved for the Standards Board. The Appeals Board cannot substitute its judgment for that of the Standards Board, the state agency charged by statute with the responsibility of adopting occupational safety and health standards.

## DECISION

The Decisions of the ALJs are affirmed and the citations are vacated.

## OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair  
Judith S. Freyman, Board Member



FILED ON: 05/29/2019

# Occupational Safety and Health Standards Board

## Business Meeting

# Occupational Safety and Health Standards Board

## Business Meeting Standards for Adoption

**TITLE 8**

**CALIFORNIA CODE OF REGULATIONS**

**GENERAL INDUSTRY SAFETY ORDERS**

**NEW SECTION 5141.1**

**PROTECTION FROM WILDFIRE SMOKE**

MOVED, That the following resolution be adopted:

WHEREAS, The Occupational Safety and Health Standards Board (Board) finds that unless a regulation is adopted on an emergency basis, the developing wildfire season poses a real and substantial risk of occupational exposure to harmful effects of wildfire smoke, and that immediate action is necessary to mitigate this risk by providing more clear direction to employers on how to safeguard employees to the extent that the nature of the work reasonably permits. The Board further adopts and makes findings set forth in the Finding of Emergency that is part of the Notice of Proposed Emergency Action prepared in this matter. Therefore, be it

RESOLVED, that based on the finding stated above, the Board finds that amendments to Title 8, California Code of Regulations, Chapter 4, Subchapter 7, New Section 5141.1 of the General Industry Safety Orders, Protection from Wildfire Smoke, must be adopted on an emergency basis for the immediate and continued preservation of the public health and safety in the workplace, and general welfare in the workplace; and be it further

RESOLVED by the Board at a meeting in Pasadena, California, on March 19, 2020, that the proposed amendments of Title 8, California Code of Regulations, Chapter 4, Subchapter 7, New Section 5141.1 of the General Industry Safety Orders, Protection from Wildfire Smoke, appended hereto, be adopted as an emergency regulation; and be it further

RESOLVED that the Board shall file with the Office of Administrative Law a sufficient number of copies of said filing documents and a copy of the rulemaking file for use by the Office of Administrative Law.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

\_\_\_\_\_  
DAVE THOMAS, CHAIRMAN

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Certified As A Regulation  
Of the Occupational Safety  
And Health Standards Board

BY: \_\_\_\_\_  
Christina Shupe, Executive Officer

DATED: March 19, 2020

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  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



## NOTICE OF PROPOSAL FOR 2<sup>nd</sup> READOPTION OF EMERGENCY ACTION OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

CALIFORNIA CODE OF REGULATIONS, TITLE 8, NEW SECTION 5141.1  
PROTECTION FROM WILDFIRE SMOKE  
REFERENCE OAL FILE # 2019-0719-04E

Pursuant to the requirements of Government Code section 11346.1(a)(1), notice is hereby given that the Occupational Safety and Health Standards Board (Board) proposes to readopt, for an additional ninety (90) days, the emergency regulation "Protection from Wildfire Smoke," which was adopted at the Board's July 18, 2019 meeting, with an effective date of July 29, 2019, and was readopted at the Board's December 19, 2019 meeting, with an effective date of January 24, 2020. The emergency regulation created a new section 5141.1 under the California Code of Regulations (CCR), Title 8, Division 1, Chapter 4, of the General Industry Safety Orders (GISO), with the objective of significantly reducing employee exposure to the harmful effects of wildfire smoke.

This proposal for a second readoption of emergency action has been placed on the agenda of the March 2020 Board Meeting:

March 19, 2020 at 10:00 a.m.  
Pasadena City Hall  
Council Chambers  
100 N. Garfield Avenue  
Pasadena, California

### **Submission of Comments**

Government Code section 11346.1(a)(2) requires that, at least five (5) working days prior to submission of the proposed readoption action to the Office of Administrative Law (OAL), the adopting agency issue a notice of the proposed readoption action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed readoption to OAL, OAL shall allow any interested persons five (5) calendar days to submit comments on the proposed readoption as set forth in Government Code section 11349.6(b).

Comments must state that they are about an emergency rulemaking action currently under OAL review and include the topic of the emergency. (Title 1, CCR, section 55(b)(1) through (4).) Please reference submitted comments as regarding the following topic: "Protection from Wildfire Smoke Emergency Extension."

**By mail to Board:** Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or **by email:** [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov).

**By mail to OAL:** Reference Attorney, Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814; or **by email:** [staff@oal.ca.gov](mailto:staff@oal.ca.gov).

For the status of the Board's submittal to OAL for review, and the end of the five-day written submittal period, please consult OAL's website at <http://www.oal.ca.gov> under the heading "Emergency Regulations Under Review."

Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed readoption. OAL may approve up to two readoptions, each for a period not to exceed ninety (90) days.

The Board has complied with the provisions of Government Code section 11346.1(a)(2). This Notice was sent electronically on **March 6, 2020** to all members of the public who have requested notice of regulatory action and all attendees of Division of Occupational Safety and Health (Division) advisory meetings related to this emergency regulation. Copies of such documents have also been posted on the Board's website at the following address: <https://www.dir.ca.gov/OSHSB/Protection-from-Wildfire-Smoke-Emergency.html>.

If you have any questions regarding this proposed emergency action, please contact Christina Shupe, Executive Officer, at (916) 274-5721.



DEPARTMENT OF INDUSTRIAL RELATIONS  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
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Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



## FINDING OF EMERGENCY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

### CALIFORNIA CODE OF REGULATIONS, TITLE 8, NEW SECTION 5141.1 PROTECTION FROM WILDFIRE SMOKE REFERENCE OAL FILE # 2019-0719-04E

The current emergency rule, new section 5141.1, will expire on April 24, 2020, unless it is readopted for an additional ninety (90) days.

In accordance with emergency regulation readoption requirements, the Occupational Safety and Health Standards Board (Board) has made substantial progress and is proceeding with diligence to comply with Government Code section 11346.1(e).

On August 9, 2019, the Division provided a draft of proposed (permanent) regulatory text and associated rulemaking Notice, Initial Statement of Reasons and Form 399 to Board staff, who promptly completed initial review of those materials. Subsequently, the Division engaged in further research and analysis in order to ensure that the fiscal and economic impact disclosures will meet Department of Finance (DOF) requirements.

On August 27, 2019, the Division held a public advisory meeting to assist in development of a permanent regulation for the protection of employees from unhealthy levels of wildfire smoke. At the advisory meeting, stakeholders and the public provided further feedback and information to supplement the Division's research and analysis concerning the hazard posed to employees by wildfire smoke exposure as well as addressing the current emergency regulation's effectiveness, feasibility and costs. The Division then revised the draft regulation and rulemaking documents, which were again reviewed and approved by Board staff.

The Board and Division are presently awaiting further comment from DOF on the revised Economic and Fiscal Impact Statement. The Board expects to provide the rulemaking package to the Office of Administrative Law by March 24, 2020 in order for the Notice of Public Hearing to be published on April 3, 2020. The Board intends to conclude the 45-day public comment period by holding a hearing on the proposed regulation at the Board's regularly scheduled May 21, 2020 meeting in Rancho Cordova, California.

### **Emergency Circumstances Since the Initial Adoption of Emergency**

Pursuant to Government Code section 11346.1(h) and California Code of Regulations, Title 1, section 52(b)(2), emergency circumstances are unchanged since the original adoption of the emergency regulation.

This readoption is necessary to allow the Board with additional time to proceed with a regular rulemaking to adopt the same or similar proposal on a permanent basis. Readoption of the

emergency regulation will keep the emergency regulation in place pending a permanent rulemaking regarding protection from wildfire smoke to significantly reduce employee exposure to the harmful effects of wildfire smoke.

Government Code section 11346.1(a)(2), requires that, at least five working days prior to submission of the proposed emergency rulemaking to the Office of Administrative Law (OAL), the Board provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the Board. To this end, the Board will post the proposed emergency regulation amendments on its public website and simultaneously disseminate notice of the proposed emergency action to all persons who have filed a request for notice.

After submission of the proposed emergency rulemaking to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation amendments as set forth in Government Code section 11349.6. Comments must be in writing, submitted via U.S. mail or email, contain a reference to the topic of the emergency rulemaking, and must be received by both the Board and OAL within five days of the Board's filing with OAL. To determine OAL's five day comment period, please visit <http://www.oal.ca.gov> under the heading "Emergency Regulations Under Review."

### **Basis for the Finding of Emergency**

1. Wildfires in California became dramatically worse in 2018, causing deaths and economic damage that dwarfed previous years. The catastrophic Camp Fire was the deadliest and most destructive wildfire in state history, killing 86 people and destroying 18,804 structures. On January 8, 2019, Governor Gavin Newsom issued Executive Order N-05-19, declaring that 2018 was the most destructive fire season in California history, with over 7,600 wildfires burning across 1,846,445 acres. The Order states that "...the reality of climate change – persistent drought, warmer temperatures and more severe winds – has created conditions that will lead to more frequent and destructive wildfires."<sup>1</sup>
2. Consistent with the Governor's Order, research conducted by the U.S. Environmental Protection Agency (U.S. EPA) found that fires are increasing in frequency, size and intensity, creating the potential for greater smoke production and chronic smoke exposures in the United States, particularly in the West.<sup>2</sup> This suggests that the 2018 wildfires were not merely an aberration, and that state agencies should be prepared for a high likelihood of widespread exposure to wildfire smoke in 2019 and beyond.

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<sup>1</sup> Gavin Newsom, Governor of California, Executive Order N-05-19. <https://www.gov.ca.gov/wp-content/uploads/2019/01/1.8.19-EO-N-05-19.pdf>

<sup>2</sup> United States Environment Protection Agency (U.S. EPA); Website Wildland Fire Research to Protect Health and the Environment. <https://www.epa.gov/air-research/wildland-fire-research-protect-health-and-environment>; and U.S. EPA. Website accessed 1-7-2019. Wildland Fire Research: Health Effects Research. <https://www.epa.gov/air-research/wildland-fire-research-health-effects-research>

3. During its March 21, 2019 meeting, the Board considered Petition 573, which requested an emergency rulemaking to address the potential harm posed to outdoor workers by wildfire smoke. The Petition sought an emergency standard which would apply to outdoor occupations including agriculture, construction, landscaping, maintenance, commercial delivery, and “other activities not considered to be ‘first response’,” such as work performed by “nurses, caregivers and school staff evacuating patients, residents and students.”
4. The Board voted to grant the petition in part, stating that it found “specific grounds for considering exposure of outdoor workers to wildfire smoke events to constitute the basis for an emergency regulation.” The Board requested that Cal/OSHA draft an emergency rulemaking proposal for consideration no later than the July 2019 Board meeting.<sup>3</sup> The following day, on March 22, 2019, Governor Newsom acknowledged the danger posed by the 2019 wildfire season, proclaiming a state of emergency in California “due to a vast tree die-off” which “has contributed to worsening forest conditions, creating extremely dangerous fire risk...”<sup>4</sup>
5. While thousands of chemical compounds are present in wildfire smoke, the principal harmful pollutant of concern for persons not in close proximity to the flames is particulate matter with an aerodynamic diameter of 2.5 micrometers or smaller, known as PM2.5. Airborne particle size is directly linked to the potential for causing health risks. Small particles less than 2.5 micrometers in diameter pose the greatest risk because they penetrate deep into the lungs and can enter the bloodstream.<sup>5</sup> Adding to the risk, toxic organic compounds and metals can be adsorbed by airborne PM2.5.<sup>6</sup> These particles pose the serious risk of additional adverse health outcomes through multiple biological mechanisms. These health effects include increased local lung and systemic inflammation, acute and chronic cardiovascular effects, and acute and chronic respiratory effects.<sup>7</sup>
6. Numerous published scientific epidemiological studies have found an association between wildfire smoke and respiratory morbidity in general (for instance respiratory emergency visits, physicians visits, and declines in lung function among children), along with

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<sup>3</sup> Occupational Safety and Health Standards Board; Petition 573; Adopted Decision; March 21, 2019. <https://www.dir.ca.gov/oshsb/documents/petition-573-adopteddecision.pdf>

<sup>4</sup> Gavin Newsom, Governor of California; Proclamation of a State of Emergency; March 22, 2019. <https://www.gov.ca.gov/wp-content/uploads/2019/03/03.22.19-State-of-Emergency-Attested.pdf>

<sup>5</sup> U.S. EPA; Health and Environmental Effects of Particulate Matter (PM). <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>

<sup>6</sup> Zhang HH, Li Z, Liu Y, et al; Physical and chemical characteristics of PM2.5 and its toxicity to human bronchial cells BEAS-2B in the winter and summer; Journal of Zhejiang University-Science B (Biomedicine and Biotechnology); 2018;19(4):317–326; <https://doi.org/10.1631/jzus.B1700123>. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5964345/pdf/JZUSB19-0317.pdf>

<sup>7</sup> Navarro KM; Assessment of Ambient and Occupational Exposures to Air Contaminants from Wildland Fire Smoke; Dissertation.; Fall 2016; University of California, Berkeley, California. [http://digitalassets.lib.berkeley.edu/etd/ucb/text/Navarro\\_berkeley\\_0028E\\_16683.pdf](http://digitalassets.lib.berkeley.edu/etd/ucb/text/Navarro_berkeley_0028E_16683.pdf)

exacerbation of asthma and chronic obstructive pulmonary disease.<sup>8</sup> Epidemiological studies also show that short-term exposures to PM<sub>2.5</sub> can cause stroke, heart failure, and arrhythmias, as well as myocardial ischemia and infarction.<sup>9</sup> Emergency room admissions for respiratory, cardiovascular, and cerebrovascular illnesses increase during wildfire smoke incidents.<sup>10</sup>

7. The National Oceanic and Atmospheric Administration (NOAA) determined that wildfire smoke can spread thousands of miles from its source, affecting communities near and far.<sup>11</sup> Winds also alter the dispersion pattern of smoke.<sup>12</sup>
8. The risk posed by PM<sub>2.5</sub> emanating from wildfire smoke is distinct from the risk from elevated PM<sub>2.5</sub> from other causes generally, because air quality often worsens much more abruptly in the event of wildfire. The fire front, along with its smoke plume, is characteristically dynamic in changing direction, size, and intensity.<sup>13</sup> The proposed regulatory requirement that filtering facepiece respirators be made readily available under specified conditions, along with the requirement that employers take other precautions when feasible and provide training, will allow employers and employees to address these highly changeable conditions.
9. Occupational safety and health standards within Title 8 of the California Code of Regulations protect workers from harmful respiratory hazards in general, but there is currently no regulation that specifically addresses either PM<sub>2.5</sub> or wildfire smoke. The primary

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<sup>8</sup> Reid CE, Brauer M, Johnston FH, Jerrett M, Balmes JR, Elliot CT; Critical Review of Health Impacts of Wildfire Smoke Exposure; Environmental Health Perspectives; September 2016; 124(9); 1334 - 1343.

<sup>9</sup> Wettstein Z, Hoshiko S, Fahimi J, Harrison, R, Cascio W, Rappold A; Cardiovascular and Cerebrovascular Emergency Department Visits Associated With Wildfire Smoke Exposure in California in 2015; Journal of the American Heart Association; April 17, 2018; 7(8):e007492; Published online April 11, 2018; doi:10.1161/JAHA.117.007492.  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6015400/>

<sup>10</sup> Delfino R, Brummel S, Wu J, et al; The relationship of respiratory and cardiovascular hospital admissions to the southern California wildfires of 2003; Occupational and Environmental Medicine; March 2009; 66(3): 189-197; Published online November 18, 2008; doi:10.1136/oem.2008.041376. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4176821/> and Hutchinson J.A, Vargo, J, Milet M, French N, Billmire M, Johnson J, Hoshiko S; The San Diego 2007 wildfires and Medi-Cal emergency department presentations, inpatient hospitalizations, and outpatient visits: An observational study of smoke exposure periods and a bidirectional case-crossover analysis; July 10, 2018; PLOS Medicine; 15(7): e1002601; Pages 1 – 14.  
<https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002601>

<sup>11</sup> National Oceanic and Atmospheric Administration Twitter.

<https://twitter.com/noaasatellites/status/1032311533668319232?lang=en> and National Oceanic and Atmospheric Administration; Satellite and Information Service. Website accessed 1-9-2019.  
<https://www.nesdis.noaa.gov/content/amtrak-relies-new-noaa-satellite-smoke-data-protect-passengers-during-dangerous-california> and

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<sup>12</sup> Smoke Management Guidelines for Prescribed Burning in the Southeast, Smoke Dispersion.  
[http://www.auburn.edu/academic/forestry\\_wildlife/fire/smoke\\_guide/smoke\\_dispersion.htm](http://www.auburn.edu/academic/forestry_wildlife/fire/smoke_guide/smoke_dispersion.htm)

<sup>13</sup> “The NowCast algorithm uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a fire.” Sac-Metro AQMD website, accessed 5-28-19.  
<http://www.airquality.org/air-quality-health/climate-change/public-outreach/wildfire-smoke-information>

measurement of air quality is the Air Quality Index (AQI),<sup>14</sup> but AQI standards are not mentioned anywhere in Title 8. Without a specific reference to either PM2.5 or wildfire smoke, the existing regulations rely on employers to determine whether a given exposure is “harmful” and whether respirators are “necessary to protect the health of the employee.” (Cal. Code Regs., tit. 8, §§ 5141, 5144.) Based on the calls received by Cal/OSHA regarding wildfire smoke, a significant number of employers are uncertain about what protective measures to use or when to use them. Many of these businesses had no previous experience with wildfire smoke until the last year or two. Without specific regulatory guidance, these employers were confused about how to evaluate and respond to this hazard.

10. Cal/OSHA noted incidents in which employees were working without respirators when wildfire smoke had caused unhealthy air quality, which could pose serious health risks. Cal/OSHA received reports indicating that some employers of outdoor workers did not provide appropriate respirators or take other precautions to reduce employee exposure to wildfire smoke. Many of these employees were low-wage, minority, and/or immigrant workers. Those populations have a disproportionate number of cases of asthma and other respiratory diseases that can be exacerbated by wildfire smoke, making respirator availability especially important.<sup>15</sup>
11. Using the AQI for PM2.5—developed by the U.S. EPA and easily accessible online—would make it easier for employers to understand and comply with their existing obligation to protect workers from respiratory hazards caused by wildfire smoke. The AQI provides a simple, real-time method for determining when employers must implement protective measures to reduce the toxic and harmful effects of wildfire smoke. AQI values below 100 are characterized as acceptable. AQI values above 100 are categorized as unhealthy for certain sensitive groups, above 150 unhealthy for all, above 200 very unhealthy for all, and above 300 hazardous for all.<sup>16</sup> Information on AQI levels for PM2.5 is freely available

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<sup>14</sup> Electronic Code of Federal Regulations; Title 40, Protection of Environment; Part 58, Ambient Air Quality Surveillance; Appendix G, Uniform Air Quality Index (AQI) and Daily Reporting; June 4, 2019.

<sup>15</sup> De Matteis S, Heederik D, Burdorf A, Colosio C, Cullinan P, Henneberger P, Olsson A, Raynal A, Rooijackers J, Santonen T, Sastre J, Schlünssen V, van Tongeren M, Sigsgaard T; European Respiratory Society Environment and Health Committee; Current and new challenges in occupational lung diseases; Department of Health and Human Services; Eur Respir Rev. December 31, 2017; 26(146); Pages 1 – 25; doi:10.1183/16000617.0080-2017.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6033059/> and

Holguin F, Moughrabieh MA, Ojeda V, Patel SR, Peyrani P, Pinedo M, Celedón JC, Douglas IS, Upton DJ, Roman J; Respiratory Health in Migrant Populations: A Crisis Overlooked; Ann Am Thorac Soc; Vol 14; No 2. Pages 153 – 159; February 2017.

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Celedón JC, Roman J, Schraufnagel DE, Thomas A, Samet J; Respiratory Health Equality in the United States. The American Thoracic Society Perspective; Ann Am Thorac Soc. Vol 11; No 4; Pages 473 – 479; May 2014.

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U.S. EPA; U.S. Forest Service, U.S. Centers for Disease Control and Prevention, California Air Resources Board. Wildfire Smoke A Guide for Public Health Officials; Page 7; May 2016. [https://www3.epa.gov/airnow/wildfire\\_may2016.pdf](https://www3.epa.gov/airnow/wildfire_may2016.pdf)

<sup>16</sup> U.S. EPA; Code of Federal Regulations; Title 40, Protection of Environment; Part 58, Ambient Air Quality Surveillance; Appendix G, Uniform Air Quality Index (AQI) and Daily Reporting; Pages 317 – 320.

<https://www.govinfo.gov/content/pkg/CFR-2016-title40-vol6/pdf/CFR-2016-title40-vol6-part58-appG.pdf>

through the AirNow – U.S. EPA webpage and other state and local government websites. The proposed regulation uses the AQI values to establish when and what kind of controls an employer should implement in order to reduce the health effects of wildfire smoke.

12. The proposed regulation clarifies when employers must respond to a heightened risk of employee exposure to wildfire smoke—namely, when the AQI for PM<sub>2.5</sub> exceeds 150 (unhealthy for everyone). When employers cannot eliminate workers’ exposure through engineering controls (e.g. enclosed structures with air filtration), administrative controls (e.g. shifted time or location of work), or a combination of both, then, the proposal makes clear, employers must make effective, filtering facepiece respirators available to employees. N95 masks are identified as a commonly available type which provide effective protection, when used as directed, under suitable conditions. By specifying when such respirators should be provided for voluntary use, under simply quantified wildfire smoke conditions (AQI), the proposed regulation is intended to provide employers with readily understandable parameters for such respirators’ permissible use in accordance with existing Title 8 respiratory protection standards. The proposed regulation also identifies (per its Appendix B) the basic elements of employee training essential to the appropriate use of such respirators.
13. The proposed regulation also responds to the uniquely unpredictable nature of wildfire smoke, an issue which is not included in any existing regulations. Section 5144 of Title 8 primarily addresses mandatory respirator use requiring both medical evaluations and fit testing prior to use, which can be an unrealistic requirement in the context of wildfires, given the speed at which large areas can be covered with harmful smoke.
14. Adoption of an emergency standard is essential, before the height of the next wildfire season, to clarify how employers should protect California’s workers from the seriously toxic and harmful effects of wildfire smoke. The proposed emergency adoption of Title 8, section 5141.1 would preserve worker safety and health by making existing general requirements specific and easily understandable.

### **AUTHORITY AND REFERENCE CITATIONS**

These regulations are submitted pursuant to the Occupational Safety and Health Standards Board's authority under Labor Code section 142.3.

California Labor Code section 142.3 establishes that the Board may adopt, amend, or repeal occupational safety and health standards or orders. Section 142.3 permits the Board to prescribe suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and to provide for monitoring or measuring employee exposure for the protection of employees.

Additionally, California Labor Code section 144.6 requires the Board, when dealing with standards for toxic materials and harmful physical agents, to “adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life.” Section 144.6 also requires that the Board base standards on research, demonstrations, experiments and other appropriate information, taking into consideration the latest scientific literature, the reasonableness of the standards, and the experience gained under the health and safety laws.

Authority: Labor Code section 142.3.

Reference: Labor Code sections 142.3 and 144.6.

## **INFORMATIVE DIGEST OF PROPOSED ACTION/ POLICY STATEMENT OVERVIEW**

### **Summary of Existing Regulations and the Effect of the Proposed Regulation**

Existing law, Title 8, section 3203, “Injury and Illness Prevention Program (IIPP),” establishes a general framework for the identification, evaluation, and correction of unsafe or unhealthy work conditions; communication with employees; and employee safety and health training.

Existing law, Title 8, section 5140, “Definitions,” states that a “harmful exposure” is an “exposure to dusts, fumes, mists, vapors, or gases” which is either “(a) In excess of any permissible limit prescribed by section 5155; or (b) Of such a nature by inhalation as to result in, or have a probability to result in, injury, illness, disease, impairment, or loss of function.” No permissible limit for PM<sub>2.5</sub> is prescribed by section 5155, and no existing regulation specifies when wildfire smoke may result in injury, illness, disease, impairment or loss of function.

Existing law, Title 8, section 5141, “Control of Harmful Exposures to Employees,” lists the hierarchy of controls that employers must follow to address employee exposure to harmful air contaminants. Employers must first rely on engineering controls whenever feasible, but if engineering controls are not feasible or do not achieve full compliance, administrative controls must be implemented “if practicable.” When engineering and administrative controls fail to achieve full compliance, then respiratory protective equipment shall be used.

Existing law, Title 8, section 5144, “Respiratory Protection,” establishes that respirators “applicable and suitable for the purpose intended” must be provided “when such equipment is necessary to protect the health of the employee.” To determine when respiratory equipment is necessary, section 5144 requires employers to “identify and evaluate the respiratory hazard(s) in the workplace” and “include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form.” Section 5144 sets forth the requirements for respiratory protection programs, how appropriate respirators should be selected, and related matters. This regulation does not expressly state the protection necessary for wildfire events, the concentration of PM<sub>2.5</sub> necessitating respiratory protection, nor does it identify a type of respirator providing at least minimally effective filtration of PM<sub>2.5</sub>.

from wildfire smoke exposure, or make specifically clear what circumstances and conditions in which voluntary use of such respirators could occur in permissible accord with existing Title 8 respiratory protection requirements.

Existing law, Title 8, section 5155, “Airborne Contaminants,” sets permissible exposure limits for particular substances. No permissible exposure limit is listed for either wildfire smoke or PM2.5.

### **New Section 5141.1. Protection from Wildfire Smoke.**

This proposed emergency standard, new section 5141.1, would be in Article 107, Dusts, Fumes, Mists, Vapors and Gases, directly after section 5141, Control of Harmful Exposure to Employees. The regulation would include the following specific requirements.

#### **New Section 5141.1(a). Scope.**

This proposed subsection (a)(1) establishes the application of the proposed regulation to all workplaces where the current Air Quality Index (AQI) for PM2.5 is 151 or greater and the employer should reasonably anticipate that employees may be exposed to wildfire smoke.

The subsection is necessary to establish the conditions in which employers will be required to comply with the proposed regulation and to take action to protect employees from the harmful effects of wildfire smoke.

Proposed subsection (a)(2) sets forth exceptions to the application of the regulation. Petition 573 sought protection from wildfire smoke for outdoor workers in particular, and the scope of proposed regulation limits its application to workers with direct, immediate exposure to outdoor air. This is accomplished by exempting enclosed and mechanically ventilated buildings and structures, as long as any windows, doors, bays, or other openings are kept closed to minimize contamination by outdoor or unfiltered air. Likewise, enclosed vehicles are exempted when the air is filtered by a cabin air filter and windows, doors, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.

Workplaces are also exempt if the employer can demonstrate that the concentration of PM2.5 in the air does not exceed a concentration that corresponds to a current AQI of 150. This is necessary to allow employers who choose to monitor the PM2.5 level at their worksites rather than relying on the reported current AQI. Employers seeking this exemption would have to follow Appendix A, described below, to ensure the accuracy of their measurements.

This subsection also exempts employees exposed to a current AQI for PM2.5 of 151 or greater for an hour or less during a shift, and firefighters engaged in wildland firefighting.

Proposed subsection (a)(3) makes it clear that employers within the scope of this regulation should comply with this section for the purpose of addressing the hazard of wildfire smoke resulting in a current AQI for PM 2.5 of 151 or higher, rather than referring to the more general requirements in the existing respiratory protections found in sections 5141 and 5155.



**New Section 5141.1(b). Definitions.**

This proposed subsection provides definitions for the terms “Current Air Quality Index (Current AQI),” “NIOSH,” “PM2.5,” and “Wildfire Smoke.”

The subsection is necessary to clarify the application and meanings of terms used in the proposed regulation.

**New Section 5141.1(c). Identification of harmful exposures.**

This proposed subsection requires employers to obtain the current AQI for PM2.5 for their workplaces before each shift and periodically thereafter, as needed. An employer may acquire this information by checking specified government agency websites, obtaining the current AQI for PM2.5 directly from listed government agencies, or by measuring the PM2.5 levels at the worksite.

The subsection is necessary to ensure that employers regularly check the AQI levels during wildfire events so they will be able to determine when protective measures are needed.

An exception is provided for employers who *assume* the AQI is over 500 and complies with subsection (f)(4)(B), which addresses respirator use when the AQI for PM2.5 is above 500. This exception is included because there is no need for an employer to monitor the current AQI for PM2.5 if the employer is already complying with the maximum respiratory protection requirements of the regulation.

**New Section 5141.1(d). Communication.**

The proposed subsection refers to section 3203, Injury and Illness Protection Program (IIPP), which requires employers establish a system for communicating wildfire smoke hazards with employees in a form readily understandable by all affected employees. This includes the current AQI for PM2.5 and related protective measures. The subsection also requires employers to encourage employees to inform their employer about worsening air quality or possible symptoms of wildfire smoke exposure.

The subsection is necessary both to ensure employees receive accurate and timely information and to ensure the employer receives necessary feedback from employees at their work location.

**New Section 5141.1(e). Training and instruction.**

The proposed subsection refers to section 3203, Injury and Illness Protection Program (IIPP), which requires employers to provide effective training and instruction to employees. The training shall contain, at a minimum, the information contained in Appendix B, described below.

The subsection is necessary to ensure that employees understand various topics necessary to protect their health during wildfire events, including the hazards posed by wildfire smoke and the appropriate use of respirators.

**New Section 5141.1(f). Control of harmful exposures to employees.**

The proposed subsection requires employers to protect employees using the hierarchy of controls set forth in Title 8, section 5141. In order of priority, these are: engineering controls, administrative controls, and control by respiratory protective equipment.

Proposed subsection (f)(1) states that only respiratory protection per subsection (f)(4) is required during emergencies, including rescue and evacuation. Emergencies include utilities, communications, and medical operations, when they are directly aiding firefighting or emergency response.

This is necessary to allow employers and workers during an emergency to act quickly, without evaluating the possible application of engineering or administrative controls. Respirators, however, can be provided in advance to emergency personnel and other employees directly assisting emergency response.

Proposed subsections (f)(2), (f)(3), and (f)(4) clarify the application the hierarchy of controls to the specific context of wildfire smoke exposure.

Subsections (f)(2) and (f)(3) give examples of engineering and administrative controls that may reduce employees' exposure to PM2.5. Engineering controls should be used whenever feasible and include providing enclosed structures or vehicles where the air is filtered. If engineering controls are not feasible, employers shall implement administrative controls, if practicable. Administrative controls can include relocating work, changing work schedules, reducing work intensity, or providing additional breaks.

Subsection (f)(4)(A) mandates that employers provide respirators consistent with Title 8, section 5144 for employees' voluntary use when the current AQI for PM2.5 is 151 or greater, but not exceeding 500. Subsection (f)(4)(A) specifically states that N95s are appropriate respirators for these conditions and provides requirements for the selection and maintenance of the respirators. It also explains that employers shall provide training about respirator use in accordance with Appendix B rather than section 5144 Appendix D.

This is necessary because it provides clarity for those employers which may be uncertain about what type of respiratory protection addresses PM2.5.

Under section 5144(c)(2), if respirators are provided but not required, employers may give respirators to their workers without first completing medical evaluations or fit testing as required under section 5144(c)(1).

A Note to the proposed subsection (f)(4)(A) ensures that employees may be given respirators, such as N95s, in response to wildfire smoke without first waiting for medical evaluations or fit testing to be completed.

Under the proposed subsection (f)(4)(B), respirator use would be required when the AQI for PM<sub>2.5</sub> exceeds 500. AirNow has occasionally published AQI levels above 500 within California, but that occurs so rarely that the EPA's AQI categories, depicted in the chart in proposed subsection (b), only go up to 500.

This subsection is necessary to address conditions that are so infrequent, and pose so much potential health risk, that more protective measures are appropriate. Subsection (f)(4)(B) also states that respirators provided for mandatory use should have an assigned protection factor in accordance with section 5144. The existing section 5144 provides a method for employers to determine which respirators will reduce the current AQI for PM<sub>2.5</sub> within the respirator to 151 or less, based AQI for PM<sub>2.5</sub> that exists outside the respirator.

#### **Appendix A to Section 5141.1: Measuring PM<sub>2.5</sub> Levels at the Worksite (Mandatory if an Employer Monitors with a Direct Reading Instrument)**

This appendix sets forth the requirements for measuring the PM<sub>2.5</sub> levels using a direct-reading particulate monitor. The appendix also states how such measurements can be used to determine the equivalent current AQI for the purposes of proposed section 5141.1, using a table adapted from 40 Code of Federal Regulations, Part 58, Appendix G, Table 2. The appendix also states that the person supervising, directing, or evaluating the monitoring should have the necessary training or experience needed to use the monitor correctly.

This appendix is necessary to ensure that employers who elect to perform their own PM<sub>2.5</sub> monitoring do so using accurate equipment and methods.

#### **Appendix B to Section 5141.1: Information to Be Provided to Employees (Mandatory)**

The appendix provides information about the health effects of wildfire smoke, medical treatment, how to obtain the current AQI for PM<sub>2.5</sub>, the requirements of the proposed regulation, the employer's two-way communication system, employer's methods to protect employees from wildfire smoke, the benefits and limitations of respirators when exposed to wildfire smoke, and how to properly use and maintain employer provided respirators.

This appendix is necessary in order to assist employers with training regarding wildfire smoke and to ensure that employees have information critical for protecting their health. Employers addressing the potential hazard of wildfire smoke for the first time may be uncertain about what training should be provided. This appendix provides a convenient method for ensuring that critical information is conveyed to employees, including the health effects of wildfire smoke, available protections, and the appropriate use of respirators. For ease of use, the appendix includes blank lines to allow employers to easily customize the information.

### **Policy Statement and Anticipated Benefits**

The Board is proposing this emergency regulation, Title 8, new section 5141.1, to preserve worker safety and health and to clarify employers' existing obligations, making compliance easier and more straightforward. As wildfire seasons worsen, the proposed regulation will avoid a potential increase in debilitating and sometimes life-threatening illnesses faced by workers exposed to wildfire smoke. This will reduce the financial costs caused by medical care and lost workdays, costs which may be borne by employees, their families, employers, insurers, and public benefits programs.

This emergency regulation is also proposed in response to the Board's March 21, 2019 Petition Decision to partially grant Petition 573, to protect outdoor employees from wildfire smoke.

It is the well-recognized reality of climate change that persistent drought, warmer temperatures, and severe winds have created conditions that will lead to wildfires that are more frequent and more destructive. In addition to the threat posed to life and property by wildfire itself, the huge volumes of smoke generated by large and increasingly common wildfire events pose a danger to workers who are exposed to unfiltered outdoor air contaminated with PM2.5. As described above, PM2.5 is the substance of greatest health concern to people who are not in close proximity to the fires but are nonetheless working in the path of wildfire smoke.

Current regulations are not sufficiently specific as to what employers are required to do during wildfire events. This results in confusion on behalf of both employers and employees, leaving many employees unprotected.

This confusion also causes Cal/OSHA to expend staff resources in order to respond to questions that would be answered by Title 8, new section 5141.1.

The emergency standard, Protection from Wildfire Smoke, Title 8, new section 5141.1 will provide clear and specific requirements to employers so that they may better protect employees from the toxic and harmful effects of wildfire smoke.

### **Federal Regulations and Statutes**

Code of Federal Regulations, Title 29, section 1910.134 is similar to the existing respiratory protection regulation with the California Code of Regulations, Title 8, section 5155.

No federal law or regulation exists or has been promulgated that specifically addresses occupational exposure to either wildfire smoke or PM2.5.

### **Evaluation of Inconsistency/Incompatibility with Existing State Regulations**

Under California Labor Code 142.3, the Occupational Safety and Health Standards Board is the only agency in the state authorized to adopt occupational safety and health standards. The Board has reviewed existing regulations on this topic and has concluded that these proposed amendments are not inconsistent or incompatible with existing state regulations.

To the extent that there may be any potential conflict between the proposed section 5141.1 and existing sections 5141 and 5155, that has been resolved by proposed section 5141.1(a)(3). This subsection expressly states that an employer following section 5141.1 will be considered compliant with sections 5141 and 5155 for the limited purpose of exposures to a current AQI for PM2.5 of 151 or greater for wildfire smoke.

### **DOCUMENTS INCORPORATED BY REFERENCE**

Pursuant to California Code of Regulations, Title 1, section 52(c), the Board hereby incorporates by reference the rulemaking record of OAL File No. 2019-0719-04E.

### **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON**

The Board has relied upon the following documents as part of this emergency action:

1. Gavin Newsom, Governor of California, Executive Order N-05-19.  
<https://www.gov.ca.gov/wp-content/uploads/2019/01/1.8.19-EO-N-05-19.pdf>
2. Gavin Newsom, Governor of California; Proclamation of a State of Emergency.; March 22, 2019.  
<https://www.gov.ca.gov/wp-content/uploads/2019/03/03.22.19-State-of-Emergency-Attested.pdf>
3. Occupational Safety and Health Standards Board; Petition 573; Adopted Decision; March 21, 2019.  
<https://www.dir.ca.gov/oshsb/documents/petition-573-adopteddecision.pdf>
4. Division of Occupational Safety and Health's Evaluation of Petition 573; February 8, 2019.  
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11. U.S. Forest Service; Temperature Inversion and Smoke.  
[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5354046.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5354046.pdf)
12. Smoke Management Guidelines for Prescribed Burning in the Southeast, Smoke Dispersion.  
[http://www.auburn.edu/academic/forestry\\_wildlife/fire/](http://www.auburn.edu/academic/forestry_wildlife/fire/) and  
[http://www.auburn.edu/academic/forestry\\_wildlife/fire/smoke\\_guide/smoke\\_dispersion.htm](http://www.auburn.edu/academic/forestry_wildlife/fire/smoke_guide/smoke_dispersion.htm)
13. California Air Resources Board; Inhalable Particulate Matter and Health (PM2.5 and PM10) August 10, 2017.  
<https://ww3.arb.ca.gov/research/aaqs/common-pollutants/pm/pm.htm>
14. U.S. EPA; Health and Environmental Effects of Particulate Matter (PM); June 20, 2018.  
<https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>
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30. Economic Impact Analysis: Emergency Regulations for Wildfire Smoke; to Division of Occupational Safety and Health, Research and Standards Unit; from Public Agency Safety Management Association; by letter dated May 13, 2019.

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These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Board has determined that proposed section 5141.1 does not impose a mandate on local agencies or school districts requiring reimbursement by the State pursuant to Part 7 of Division 4 of the Government Code (commencing with section 17500).

### **COST ESTIMATES OF PROPOSED ACTION**

#### **Costs or Savings to State Agencies**

State agencies, like other employers, are already required by existing Title 8 regulations to provide their employees with the protections in this proposal. All public employers should already be providing respirators to employees exposed to unhealthy levels of PM2.5 from wildfire smoke, under existing law. Likewise, under existing law, public employers should be using engineering and administrative controls when appropriate, for instance by moving tasks



indoors or delaying non-critical tasks until the smoke clears, and should provide effective training and communication as required in the proposed regulation.

However, the proposed regulation includes some newly *prescriptive* elements that simplify and clarify existing performance standards, so the cost of these portions of the proposed regulation have been estimated below.

These calculations assume that *all* covered state entities unable to limit employee exposure to unhealthy PM<sub>2.5</sub> from wildfire smoke through feasible administrative or engineering controls—i.e. those public employers which cannot readily postpone work during a wildfire or move work indoors to ventilated buildings—will incur *new* costs when complying with the requirements for respiratory protective equipment and training. In fact, Cal/OSHA believes that the majority of state entities with workers who may be exposed to wildfire smoke during the 2019 fire season are already compliant with the proposed section 5141.1. The numbers below have not been reduced to account for this, however, because of the difficulty in ascertaining the percentage of state entities which already provide N95s in response to wildfire smoke.

California Department of Forestry and Fire Protection (CalFire) employees have not been included in the estimates below. Although it is possible that a few CalFire employees may be covered by this regulation, among the CalFire employees who do not work in ventilated buildings, the rest are generally engaged in wildland firefighting. That activity is expressly excluded from proposed section 5141.1.

Among other large state agencies, the California Department of Transportation (CalTrans) and the California Highway Patrol (CHP) are the entities with the most workers subject to the proposed regulation. Although a large number of the individuals working on outdoor CalTrans projects are actually employed by private entities, Cal/OSHA has estimated that about half of CalTrans' own workforce could be covered during a wildfire smoke event. Cal/OSHA also estimates that about 70% of the CHP workforce would be covered during a wildfire event, even though employees in enclosed vehicles are exempt from the proposed regulation. For other state entities, Cal/OSHA has estimated that about 15% of employees could also be covered.

Using 2018 geographic and air quality data from the California Air Resources Board, Cal/OSHA has calculated that about  $\frac{1}{3}$  of the California population is exposed to unhealthy levels of PM<sub>2.5</sub> from wildfire smoke for about 10 days per year, under a worst-case scenario. Because the worst-case level of wildfire smoke is unlikely to occur on an annual basis, however, Cal/OSHA has assumed that approximately half of that number of employers and employees will be affected in any given year.

	Employees <sup>[1]</sup>	Assumed percentage within scope (50% CalTrans, 70% CHP, 15% other)	Worst case wildfire scenario exposure (1/3 of population) <sup>[2]</sup>	50% covered by the proposal in a typical year
# CalTrans employees	20,163	10,082	3,361	1,681
# CHP employees	10,865	7,606	2,536	1,268
# other employees, excluding CalFire	188,467	28,270	9,424	4,712
<b>Total # state employees</b>				<b>7,661</b>

[1] <http://www.ebudget.ca.gov/budget/2019-20/#/Agency/2500>

[2] CARB data from queries made at <https://www.arb.ca.gov/aqmis2/aqdselect.php>

Safety and Health Requirement in 5141.1	Total number of employees exposed	Cost per employee	Days of wildfire exposure	Total Cost
N-95 Respirator	7,661	\$0.75	10	\$57,458
Training	7,661	\$7.27		\$55,695
<b>Total Cost</b>				<b>up to \$113,153</b>

The costs of the training, which is expected to last 15 minutes, is based on average hourly wage data published by the California Employment Development Department. The cost per N95 mask was estimated by the Public Agency Safety Management Association (PASMA) in a written public comment.

The proposed regulation may result in marginal savings to state agencies in their capacity as employers, since improved regulatory clarity could save those entities staff time that would otherwise be spent trying to understand and apply the current regulations to the specific situation of wildfire smoke exposure. In particular, checking the current AQI, as required by the proposal, provides a faster, more efficient, and easier method for evaluating the risk posed by wildfire smoke than following the existing section 5144(d)(1)(C) to determine the respiratory hazards.

The fact that the proposed regulation allows public employers to provide N95s to workers without a medical evaluation or fit testing may also result in some savings. However, these savings only apply to organizations that do not already *require* their employees to wear respirators, and public employers with workers who are regularly exposed to smoke or other respiratory hazards, including public agencies involved in emergency response, already have fully developed respiratory protection plans with required respirator use, medical evaluations, and fit testing. Among the remaining public agencies, it is unknown how many will recognize

this potential savings. Wildfires are unpredictable; the number, location, extent, and length of fires in 2019 and later years is unknown. Smoke adds another layer of uncertainty, since the people and entities affected by a given wildfire may be far from the event.

Cal/OSHA expects that it would receive fewer queries about wildfire smoke if proposed section 5141.1 is enacted. The proposed regulation would also make it easier and faster for Cal/OSHA staff to respond to questions. However, this is unlikely to lead to any fiscal savings. Those staff who have been diverted from their usual duties in response to wildfire smoke-related issues would simply be returned to their usual enforcement activities, since they had full schedules before the wildfire crisis occurred.

Cal/OSHA would need to train its enforcement staff about the new regulation, which would probably require a webinar lasting approximately 60 minutes for approximately 200 associate safety engineers (the equivalent of .1 associate safety engineer for one year) and other staff. However, Cal/OSHA believes this can be absorbed into the existing budget.

**Costs to Any Local Agency or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630:** None.

**Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** The above analysis for state agencies’ costs and savings applies to local agencies as well. Cal/OSHA has estimated costs for the prescription portions of the proposed regulation by assuming that these will be entirely new costs for local agency employers within the scope of the regulation, even though Cal/OSHA believes that the majority of local agencies are already in compliance with the proposed section 5141.1.

Cal/OSHA has calculated respirator and training costs in the same manner as the estimates for state agencies, above, and has estimated that approximately one quarter of local agency employees may fall within the scope of the proposed regulation. Affected local agency employees would include certain inspectors/code enforcement personnel and people working in parks/outdoor recreation, traffic control, public safety, some types of vehicle and building maintenance, and other fields. However, the majority of local agency employees work in buildings or vehicles that would not be covered by this proposed regulation.

	PASMA estimates	Assume 25% within scope	Worst case wildfire scenario exposure (1/3 of population) <sup>[2]</sup>	50% covered by the proposal in a typical year
# employees estimated <sup>[1]</sup>	760,000	190,000	63,333	31,667

[1] Source: <https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/Comments-2/PASMA.pdf>

[2] CARB data from queries made at <https://www.arb.ca.gov/aqmis2/aqselect.php>

Safety and Health Requirement in 5141.1	Total number of employees exposed	Cost per employee	Days of wildfire exposure	Total Cost
N-95 Respirator	31,667	\$0.75	10	\$237,503
Training	31,667	\$7.27		\$230,219
<b>Total Cost</b>				<b>Up to \$467,722</b>

**Costs or Savings in Federal Funding to the State:** None.

### **AMENDMENT: FINDING OF EMERGENCY**

1. Emergency rulemaking is required in this matter to address the immediate potential threat to employees from wildfire smoke exposure. The nature of the threat has been characterized by the occupational health and medical community as both acute and chronic adverse health effects which could manifest as permanent incapacitation or death. Regular rulemaking, which requires a fiscal analysis and approval from the Department of Finance, cannot be completed in time to address the risks to workers presented by the current fire season.
2. 5141.1(b) – Table which lists hazardous AQI as 301-500 was sourced from the U.S. EPA Air Now website. “Values above 500 are considered Beyond the AQI.” *Source: United States Environment Protection Agency (U.S. EPA); Website AirNow.gov: Air Quality Index (AQI) Basics.* <https://www.airnow.gov/index.cfm?action=aqibasics.aqi>
3. 5141.1(b) - The National Institute for Occupational Safety and Health (NIOSH) is a division of the federal Centers for Disease Control and Prevention (CDC) and is the recognized national expert on workplace safety and health research. NIOSH is the world’s preeminent occupational safety and health research organization who through the scientific method, develops the data that is often used to established occupational safety and health standards by the Federal Occupational Safety and Health Administration and other public entities charged with this responsibility.
4. 5141.1(c)(1) and (2) – Encourages compliance by listing reputable resources for employers to easily find AQI forecasts for current AQI for PM2.5, while allowing employers to also identify other effective methods that may be more suitable for their work environment.
5. 5141.1(d)(1) and (2) – Identifies minimum items to be communicated to employees for compliance with the communication requirement of 5141.1, and guidelines for when employees should report to employers conditions that may indicate 5141.1 triggering events exist.
6. 5141.1, Appendix A – The table in Appendix A was established using formulas outlined in Title 40, part 58, appendix G of the Code of Federal Regulations, for converting PM2.5 readings for AQI.
7. 5141.1(f)(4)(A) - The NOTE: for subsection (f)(4)(A) provides clarity that only some of the requirements in section 5144 apply for voluntary respirator use, while others such as fit testing and medical evaluations are not required for voluntary use. Subsections 5144(c)(2)(A) and 5144(c)(2)(B) explain clearly which requirements of section 5144 apply and which do not apply for voluntary use of respirators. We did not want to repeat that explanation in 5141.1. The note is somewhat similar to the language currently in section 5144(c) “...*In addition, certain program elements may be required for voluntary use to prevent potential hazards associated with the use of the respirator.*”\*

\*underline added for emphasis.

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Subchapter 7. General Industry Safety Orders  
Group 16. Control of Hazardous Substances  
Article 107. Dusts, Fumes, Mists, Vapors and Gases

Add new Section 5141.1 to read:

§5141.1. Protection from Wildfire Smoke.

(a) Scope.

(1) This section applies to workplaces where:

- (A) The current Air Quality Index (current AQI) for PM<sub>2.5</sub> is 151 or greater, regardless of the AQI for other pollutants; and
- (B) The employer should reasonably anticipate that employees may be exposed to wildfire smoke.

(2) The following workplaces and operations are exempt from this section:

- (A) Enclosed buildings or structures in which the air is filtered by a mechanical ventilation system and the employer ensures that windows, doors, bays, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
- (B) Enclosed vehicles in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
- (C) The employer demonstrates that the concentration of PM<sub>2.5</sub> in the air does not exceed a concentration that corresponds to a current AQI of 151 or greater by measuring PM<sub>2.5</sub> levels at the worksite in accordance with Appendix A.
- (D) Employees exposed to a current AQI for PM<sub>2.5</sub> of 151 or greater for a total of one hour or less during a shift.
- (E) Firefighters engaged in wildland firefighting.

(3) For workplaces covered by this section, an employer that complies with this section will be considered compliant with sections 5141 and 5155 for the limited purpose of exposures to a current AQI for PM<sub>2.5</sub> of 151 or greater from wildfire smoke.

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(b) Definitions.

Current Air Quality Index (Current AQI). The method used by the U.S. Environmental Protection Agency (U.S. EPA) to report air quality on a real-time basis. Current AQI is also referred to as the “NowCast,” and represents data collected over time periods of varying length in order to reflect present conditions as accurately as possible.

The current AQI is divided into six categories as shown in the table below, adapted from Table 2 of Title 40 Code of Federal Regulations, Part 58, Appendix G.

<u>Air Quality Index (AQI) Categories for PM2.5</u>	<u>Levels of Health Concern</u>
<u>0 to 50</u>	<u>Good</u>
<u>51 to 100</u>	<u>Moderate</u>
<u>101 to 150</u>	<u>Unhealthy for Sensitive Groups</u>
<u>151 to 200</u>	<u>Unhealthy</u>
<u>201 to 300</u>	<u>Very Unhealthy</u>
<u>301 to 500</u>	<u>Hazardous</u>

NIOSH. The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

PM2.5. Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller.

Wildfire Smoke. Emissions from fires in “wildlands,” as defined in Title 8, section 3402, or in adjacent developed areas.

(c) Identification of harmful exposures. The employer shall determine employee exposure to PM2.5 for worksites covered by this section before each shift and periodically thereafter, as needed to protect the health of the employee, by any of the following methods:

(1) Check AQI forecasts and the current AQI for PM2.5 from any of the following: U.S. EPA AirNow website, U.S. Forest Service Wildland Air Quality Response Program website, California Air Resources Board website, local air pollution control district website, or local air quality management district website; or

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(2) Obtain AQI forecasts and the current AQI for PM2.5 directly from the EPA, California Air Resources Board, local air pollution control district, or local air quality management district by telephone, email, text, or other effective method; or

(3) Measure PM2.5 levels at the worksite and convert the PM2.5 levels to the corresponding AQI in accordance with Appendix A.

EXCEPTION: Subsection (c) does not apply where an employer assumes the current AQI for PM2.5 is greater than 500 and uses that assumption to comply with subsection (f)(4)(B).

(d) Communication. As required by section 3203, the employer shall establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal. The system shall include effective procedures for:

(1) Informing employees of:

(A) The current AQI for PM2.5 as identified in subsection (c); and

(B) Protective measures available to employees to reduce their wildfire smoke exposures.

(2) Encouraging employees to inform the employer of:

(A) Worsening air quality; and

(B) Any adverse symptoms that may be the result of wildfire smoke exposure such as asthma attacks, difficulty breathing, and chest pain.

(e) Training and instruction. As required by section 3203, the employer shall provide employees with effective training and instruction. At a minimum, this shall contain the information in Appendix B.

(f) Control of harmful exposures to employees.

(1) In emergencies, including rescue and evacuation, subsections (f)(2) and (f)(3) do not apply, and employers shall comply with subsection (f)(4). Emergencies include utilities, communications, and medical operations, when such operations are directly aiding firefighting or emergency response.

(2) Engineering Controls. The employer shall reduce employee exposure to PM2.5 to less than a current AQI of 151 by engineering controls whenever feasible, for instance by providing enclosed buildings, structures, or vehicles where the air is filtered. If engineering controls are



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not sufficient to reduce exposure to PM2.5 to less than a current AQI of 151, then the employer shall reduce employee exposures as much as feasible.

(3) Administrative Controls. Whenever engineering controls are not feasible or do not reduce employee exposures to PM2.5 to less than a current AQI of 151, the employer shall implement administrative controls, if practicable, such as relocating work to a location where the current AQI for PM2.5 is lower, changing work schedules, reducing work intensity, or providing additional rest periods.

(4) Control by Respiratory Protective Equipment.

(A) Where the current AQI for PM2.5 is equal to or greater than 151, but does not exceed 500, the employer shall provide respirators to all employees for voluntary use in accordance with section 5144 and encourage employees to use respirators. Respirators shall be NIOSH-approved devices that effectively protect the wearers from inhalation of PM2.5, such as N95 filtering facepiece respirators. Respirators shall be cleaned, stored, maintained, and replaced so that they do not present a health hazard to users. Employers shall use Appendix B to this section in lieu of Appendix D to section 5144 for training regarding voluntary use of respirators.

NOTE: For voluntary use of filtering facepieces, such as N95 respirators, some of the requirements of section 5144 do not apply, such as fit testing and medical evaluations.

(B) Where the current AQI for PM2.5 exceeds 500, respirator use is required in accordance with section 5144. The employer shall provide respirators with an assigned protection factor, as listed in section 5144, such that the PM2.5 levels inside the respirator correspond to an AQI less than 151.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.

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Add new Appendix A to new Section 5141.1 to read:

**Appendix A to Section 5141.1. Protection from Wildfire Smoke**  
**Measuring PM2.5 Levels at the Worksite**  
**(Mandatory if an Employer Monitors with a Direct Reading Instrument)**

- (a) An employer may use a direct-reading particulate monitor to determine PM2.5 levels for section 5141.1, if the employer can demonstrate that it has complied with this appendix and selected a monitor that:
- (1) Does not underestimate employee exposures to wildfire smoke; or
  - (2) May underestimate wildfire smoke exposures, but the employer has obtained information on the possible error of the monitor from the manufacturer or other published literature and has accounted for the error of the monitor when determining exposures to PM2.5 to ensure that employee exposure levels are not underestimated.
- (b) The monitor shall be designed and manufactured to measure the concentration of airborne particle sizes ranging from an aerodynamic diameter of 0.1 micrometers up to and including 2.5 micrometers. The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the PM2.5 levels.
- (c) The employer shall ensure that the monitor it uses is calibrated, maintained, and used, including the use of necessary accessories, in accordance with the manufacturer's instructions for accurately measuring PM2.5 concentrations.
- (d) The employer shall use the following table to convert the PM2.5 concentration to the AQI for PM2.5.

<b><u>PM2.5 in Micrograms per Cubic Meter (<math>\mu\text{g}/\text{m}^3</math>)</u></b>	<b><u>Air Quality Index (AQI) Categories for PM2.5</u></b>
<u>0 to 12.0</u>	<u>0 to 50</u>
<u>12.1 to 35.4</u>	<u>51 to 100</u>
<u>35.5 to 55.4</u>	<u>101 to 150</u>
<u>55.5 to 150.4</u>	<u>151 to 200</u>
<u>150.5 to 250.4</u>	<u>201 to 300</u>
<u>250.5 to 500.4</u>	<u>301 to 500</u>

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(e) The person supervising, directing, or evaluating workplace monitoring for PM2.5 shall have the training or experience necessary to apply this section and to ensure the correct use of the monitor and the interpretation of the results, so that exposures are not underestimated.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.

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Add new Appendix B to new Section 5141.1 to read:

**Appendix B to Section 5141.1. Protection from Wildfire Smoke  
Information to Be Provided to Employees (Mandatory)**

(a) The health effects of wildfire smoke.

Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is “particulate matter,” the tiny particles suspended in the air.

Particulate matter can irritate the lungs and cause persistent coughing, phlegm, wheezing, or difficulty breathing. Particulate matter can also cause more serious problems, such as reduced lung function, bronchitis, worsening of asthma, heart failure, and early death.

People over 65 and people who already have heart and lung problems are the most likely to suffer from serious health effects.

The smallest—and usually the most harmful—particulate matter is called PM2.5 because it has a diameter of 2.5 micrometers or smaller.

(b) The right to obtain medical treatment without fear of reprisal.

Employers shall allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not punish affected employees for seeking such treatment. Employers shall also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

(c) How employees can obtain the current Air Quality Index (AQI) for PM2.5.

Various government agencies monitor the air at locations throughout California and report the current AQI for those places. The AQI is a measurement of how polluted the air is. An AQI over 100 is unhealthy for sensitive people and an AQI over 150 is unhealthy for everyone.

Although there are AQIs for several pollutants, Title 8, section 5141.1 about wildfire smoke only uses the AQI for PM2.5.

The easiest way to find the current and forecasted AQI for PM2.5 is to go to [www.AirNow.gov](http://www.AirNow.gov) and enter the zip code of the location where you will be working. The current AQI is also available from the U.S. Forest Service at <https://tools.airfire.org/> or a local air district, which can be located at [www.arb.ca.gov/capcoa/dismap.htm](http://www.arb.ca.gov/capcoa/dismap.htm). Employees who do not have access to the

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internet can contact their employer for the current AQI. The EPA website [www.enviroflash.info](http://www.enviroflash.info) can transmit daily and forecasted AQIs by text or email for particular cities or zip codes.

(d) The requirements in Title 8, section 5141.1 about wildfire smoke.

If employees may be exposed to wildfire smoke, then the employer is required to find out the current AQI applicable to the worksite. If the current AQI for PM2.5 is 151 or more, the employer is required to:

- (1) Check the current AQI before and periodically during each shift.
- (2) Provide training to employees.
- (3) Lower employee exposures.
- (4) Provide respirators and encourage their use.

(e) The employer's two-way communication system.

Employers shall alert employees when the air quality is harmful and what protective measures are available to employees.

Employers shall encourage employees to inform their employers if they notice the air quality is getting worse, or if they are suffering from any symptoms due to the air quality, without fear of reprisal.

The employer's communication system is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(f) The employer's methods to protect employees from wildfire smoke.

Employers shall take action to protect employees from PM2.5 when the current AQI for PM2.5 is 151 or greater. Examples of protective methods include:

- (1) Locating work in enclosed structures or vehicles where the air is filtered.
- (2) Changing procedures such as moving workers to a place with a lower current AQI for PM2.5.
- (3) Reducing work time in areas with unfiltered air.
- (4) Increasing rest time and frequency, and providing a rest area with filtered air.
- (5) Reducing the physical intensity of the work to help lower the breathing and heart rates.

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The employer's control system at this worksite is: \_\_\_\_\_

\_\_\_\_\_

(g) The importance, limitations, and benefits of using a respirator when exposed to wildfire smoke.

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the AQI for PM2.5 is less than 151, to provide additional protection.

When the current AQI for PM2.5 is 151 or greater, employers shall provide their workers with proper respirators for voluntary use. If the current AQI is greater than 500, respirator use is required.

A respirator should be used properly and kept clean.

The following precautions shall be taken:

(1) Employers shall select respirators certified for protection against the specific air contaminants at the workplace. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Center for Disease Control and Prevention certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will list what the respirator is designed for (particulates, for example).

Surgical masks or items worn over the nose and mouth such as scarves, T-shirts, and bandannas will not provide protection against wildfire smoke. An N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(2) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations. The manufacturer's instructions for medical evaluations, fit testing, and shaving should also be followed, although doing so is not required by Title 8, section 5141.1 for voluntary use of filtering facepiece respirators.

(3) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect employees against gases or vapors, and it will not supply oxygen.

(4) Employees should keep track of their respirator so that they do not mistakenly use someone else's respirator.

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(5) Employees who have a heart or lung problem should ask their doctor before using a respirator.

(h) How to properly put on, use, and maintain the respirators provided by the employer.

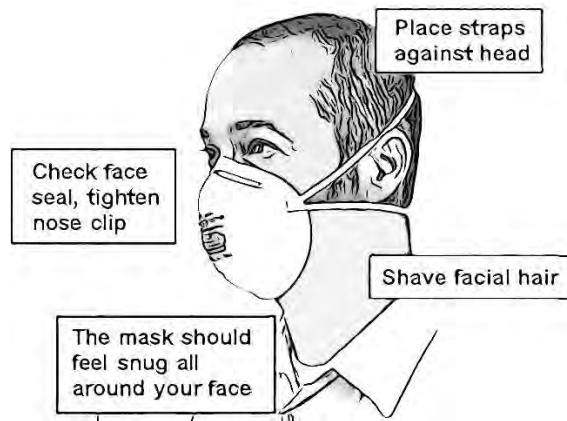
To get the most protection from a respirator, there must be a tight seal around the face. A respirator will provide much less protection if facial hair interferes with the seal. Loose-fitting powered air purifying respirators may be worn by people with facial hair since they do not have seals that are affected by facial hair.

The proper way to put on a respirator depends on the type and model of the respirator.

For those who use an N95 or other filtering facepiece respirator mask that is made of filter material:

(1) Place the mask over the nose and under the chin, with one strap placed below the ears and one strap above.

(2) Pinch the metal part (if there is one) of the respirator over the top of the nose so it fits securely.



*Drawing Showing Proper Fitting of a Filtering Facepiece Respirator  
(shaving is not required for voluntary respirator use)*

For a respirator that relies on a tight seal to the face, check how well it seals to the face by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the seal and the face. The more air leaks under the seal, the less protection the user receives.

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Respirator filters should be replaced if they get damaged, deformed, dirty, or difficult to breathe through. Filtering facepiece respirators are disposable respirators that cannot be cleaned or disinfected. A best practice is to replace filtering facepiece respirators at the beginning of each shift.

If you have symptoms such as difficulty breathing, dizziness, or nausea, go to an area with cleaner air, take off the respirator, and get medical help.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.



# Occupational Safety and Health Standards Board

**Business Meeting**  
**Variance Consent Calendar**

**CONSENT CALENDAR—PROPOSED VARIANCE DECISIONS  
MARCH 19, 2020, MONTHLY BUSINESS MEETING  
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

**A. LH SHORELINE, LP —HEARD MARCH 10, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
16-V-219M1	LH Shoreline, LP	Elevator	GRANT

**B. AIRPORT COMMISSION OF CITY AND COUNTY OF SAN FRANCISCO —  
HEARD MARCH 3, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-026	Airport Commission of City and County of San Francisco	Elevator	GRANT

**C. CITY OF MARTINEZ —HEARD MARCH 3, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-072M1	City of Martinez	Elevator	GRANT

**D. SCHINDLER MODEL 3300 ELEVATORS (GROUP IV) —HEARD MARCH 10, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-413	EchoPark CA, LLC	Elevator	GRANT
19-V-521	PPF/AHP Off Parkway Corporate Plaza Owner, LP	Elevator	GRANT
19-V-522	1200 Second Street Investors, LLC	Elevator	GRANT

**E. OTIS RADAR SLEEP MODE ESCALATORS —HEARD MARCH 3, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-499	Oceanside Center SF, LLC	Elevator	GRANT

**F. OTIS E2 CONTROLLER, W/VARIANT RAILING AND GOV. (GROUP IV) — HEARD MARCH 3, 2020**

<b>OSHSB FILE NUMBER</b>	<b>APPLICANT NAME</b>	<b>SAFETY ORDERS</b>	<b>PROPOSED DECISION</b>
19-V-500	Oceanside Center SF, LLC	Elevator	GRANT

**G. OTIS GEN2S ELEVATORS (GROUP IV) — HEARD MARCH 3, 2020**

<b>OSHSB FILE NUMBER</b>	<b>APPLICANT NAME</b>	<b>SAFETY ORDERS</b>	<b>PROPOSED DECISION</b>
19-V-513	Mercy Housing CA 78, LP	Elevator	GRANT
19-V- 514	Sierra Joint Community College District	Elevator	GRANT
19-V-515	FSTAR 1613 LLC	Elevator	GRANT
19-V-520	Nordhoff Darby LLC	Elevator	GRANT
19-V-526	BWV Marble LLC	Elevator	GRANT
19-V-527	237 Windward LLC.	Elevator	GRANT
19-V-528	Del Mar Highlands Town Center Associates II, LLC	Elevator	GRANT
19-V-529	Millennium Hawthorne, LLC	Elevator	GRANT
19-V-530	Millennium Hawthorne, LLC	Elevator	GRANT
20-V-003	1990 Folsom Housing Associates LP	Elevator	GRANT
20-V-004	Pathline, LLC	Elevator	GRANT
20-V-005	Anton NoMa, LLC	Elevator	GRANT
20-V-006	827 Kearny, LLC	Elevator	GRANT
20-V-007	Sisters of Notre Dame	Elevator	GRANT

**H. OTIS ELEVATOR (GROUP IV) GEN2(O) AND/OR GEN2L ALTERATIONS — HEARD MARCH 3, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-516	OSIB 72 Ellis Street Properties, LLC	Elevator	GRANT
19-V-525	505 North Brand Owner, LLC	Elevator	GRANT

**I. OTIS GEN2(O) AND/OR GEN2L ELEVATORS (GROUP IV) — HEARD MARCH 3, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-518	Oceanwide Center SF, LLC	Elevator	GRANT

**J. SCHINDLER MODEL 3300 ELEVATORS W/VARIANT GOV (GROUP IV) — HEARD MARCH 10, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-523	CHF Riverside II, LLC	Elevator	GRANT
19-V-524	CHF Riverside II, LLC	Elevator	GRANT

**K. MITSUBISHI ELEVATORS (GROUP IV) — HEARD MARCH 10, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-531	Kilroy Realty, LP	Elevator	GRANT
19-V-532	Kilroy Realty Academy, LLC	Elevator	GRANT

**L. CITY OF FREMONT — HEARD MARCH 10, 2020**

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-533	City of Fremont	Elevator	GRANT

**M. THYSSENKRUPP ELEVATORS (GROUP IV; WIRE ROPES AND SHEAVES) —  
HEARD MARCH 3, 2020**

<b>OSHSB FILE NUMBER</b>	<b>APPLICANT NAME</b>	<b>SAFETY ORDERS</b>	<b>PROPOSED DECISION</b>
20-V-001	McMahon-McInerny	Elevator	GRANT
20-V-002	SJ North 1st LLC	Elevator	GRANT

**N. KONE MONOSPACE 500 ELEVATORS — HEARD MARCH 10, 2020**

<b>OSHSB FILE NUMBER</b>	<b>APPLICANT NAME</b>	<b>SAFETY ORDERS</b>	<b>PROPOSED DECISION</b>
20-V-008	The Regents of the University of California	Elevator	GRANT
20-V-009	The Regents of the University of California	Elevator	GRANT

# Occupational Safety and Health Standards Board

**Business Meeting**  
**Legislative Update**

**Legislative Update, March 19, 2020  
Meeting of the Occupational Safety and Health Standards Board**

<b>AB 2028</b>	<b>AB-2028 - State agencies: meetings.</b> (Aguiar-Curry)	
	02/14/20	Referred to Com. on G.O.
	01/31/20	From printer. May be heard in committee March 1.
	01/30/20	Read first time. To print.
<p><u>Summary:</u> Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.</p> <p>This bill would, except for closed sessions, require that this notice include all writings or materials provided for the noticed meeting to a member of the state body by staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require these writings and materials to be made available on the internet at least 10 days in advance of the meeting. The bill would provide that a state body may only distribute or discuss these writings or materials at a meeting of the state body if it has complied with these requirements.</p> <p>Existing law requires that a state body provide an opportunity for members of the public to directly address the body on each agenda item. Existing law exempts from this requirement, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.</p> <p>This bill would delete this exception, thereby making the requirement to provide an opportunity to address the state body applicable to an agenda item for which the public had an opportunity to address it at a public meeting of a committee of the state body.</p>		

<b>AB 2092</b>	AB 2092 - Emergency ambulance employees: protective gear and safety equipment. (Rodriguez)	
	Date	Action
	02/20/20	Referred to Com. on L. & E.
	02/06/20	From printer. May be heard in committee March 7.
	02/05/20	Read first time. To print.
	<p><u>Summary:</u> Existing law establishes a statewide system for emergency medical services and establishes the Emergency Medical Services Authority, which is responsible for establishing training, scope of practice, and continuing education for emergency medical technicians and other prehospital personnel.</p> <p>This bill would require an emergency ambulance provider to provide each emergency ambulance employee who drives or rides in the ambulance with protective gear and safety equipment to wear during the employee's work shift and to make the protective gear and safety equipment readily available for the employee to use when responding to an emergency call. The bill would also require the emergency ambulance employer to provide training to the emergency ambulance employee on the proper fitting and use of the protective gear and safety equipment. The bill would not apply to the state or a political subdivision thereof.</p>	
<b>AB 2162</b>	AB 2162 - School facilities: indoor air quality. (O'Donnell)	
	Date	Action
	02/20/20	Referred to Com. on ED.
	02/12/20	From printer. May be heard in committee March 13.
	02/11/20	Read first time. To print.
	<p><u>Summary</u></p> <p>The Leroy F. Greene School Facilities Act of 1998 establishes a program under which the State Allocation Board allocates funding for new construction and modernization of school facilities to school districts that apply for an allocation of state funds. The act requires a school district, as part of its application for funding under the act, to certify that it has considered the feasibility of using designs and materials for the project that promote, among other things, the maximum use of natural light and indoor air quality. This bill would require a school district to ensure that school facilities meet the minimum requirements of regulations enacted by the Occupational Safety and Health</p>	



Standards Board that govern the quality of air provided to employees in places of employment. The bill would require school districts to use contractors who have been certified by a nationally recognized organization for the inspection, maintenance, and repair of heating, ventilation, and air-conditioning systems. By adding to the duties of school districts, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

<b>AB 2966</b>	AB 2966 - Occupational safety and health. (Obernolte)	
	Date	Action
	03/05/20	Referred to Com. on L. & E.
	02/24/20	Read first time.
	02/22/20	From printer. May be heard in committee March 23.
	02/21/20	Introduced. To print.
<p><b>Summary:</b></p> <p>The California Occupational Safety and Health Act of 1973 provides the Division of Occupational Safety and Health within the Department of Industrial Relations with the power, jurisdiction, and supervision over all employment and places of employment necessary to enforce and administer all occupational health and safety laws and standards and to protect employees. The Occupational Safety and Health Standards Board, an independent entity within the department, has the exclusive authority to adopt occupational safety and health standards within the state. Existing law requires every employer to comply with those standards.</p> <p>Existing law requires all meetings held by the board to be open and public and requires that written notice of all meetings and a proposed agenda be given to all persons who make request for the notice in writing to the board. Existing law requires the board, at each of its meetings, to make time available to interested persons to propose new or revised orders or standards appropriate for adoption or other items concerning occupational safety and health. Existing law requires the board to consider a proposed order or standard and report its decision no later than 6 months following receipt.</p>		

	<p>This bill would require the written notice and agenda to be posted on the board's internet website at least 30 calendar days before a meeting. The bill would require the board to post information on any proposed order or standard on its internet website no later than one calendar day following a meeting.</p>
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# Occupational Safety and Health Standards Board

## Business Meeting Executive Officer Report