

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
April 19, 2018
Oakland, California

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:02 a.m., April 19, 2018, in the Auditorium of the Harris State Building, Oakland, California.

ATTENDANCE**Board Members Present**

Dave Thomas
David Harrison
Chris Laszcz-Davis
Barbara Smisko

Board Member Absent

Laura Stock

Board Staff

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

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health

Others Present

Jay Weir, AT&T
Michael Musser, CA Teachers Association
Bruce Wick, CALPASC
Michael Strunk, IUOE Local No. 3
Kevin Thompson, Cal/OSHA Reporter
Pamela Murcell, KWA Safety & Hazmat
David Jones, AGC of California
Jamie Carlile, SCE
Nicole Marquez, Worksafe

Dan Leacox, Leacox & Associates
Charley Rea, CALCIMA
Kevin Bland, Ogletree Deakins
John Swartos, Aerotek
Cassie Hilaski, Nibbi Brothers
Elizabeth Treanor, PRR
Amber Novey, LIUNA
John Egoavil, Aerotek
Jane Thomason, CNA/NUU

B. OPENING COMMENTS

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

Michael Musser, California Teachers Association, stated that a national day of action will be taking place tomorrow to raise awareness regarding gun violence in schools. He said that everyone is invited to participate and help to call on leaders to take action to prevent gun violence. He stated that gun violence also takes place at people's workplaces, and putting active shooter language in the proposed regulation for workplace violence prevention in general industry is very important.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:09 a.m.

II. **PUBLIC HEARING**

Mr. Thomas called the Public Hearing of the Board to order at 10:09 a.m., April 19, 2018, in the Auditorium of the Harris State Building, Oakland, California.

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Section 3999(b)
 Guarding of Conveyor Belt Support Rollers - Deletion of Note

Mr. Manieri summarized the history and purpose of the proposal, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

Charley Rea, California Construction and Industrial Materials Association, stated that removing the note may seem like a small change, but his organization has concerns about it. He said that this change has come out of the blue, and no reason has been given as to why this change is necessary. He stated that the note provides clarity between Sections 3999 and 4002 that indicates that support rollers are a separate matter and do not need to be guarded. He also said that the economic impact analysis says that there is no economic impact, but there is no mention of what industries will be affected by this change, or how much it will cost. He stated that it costs \$125 to guard a roller, and \$250 if you have to guard both sides of the roller, and if a business has several miles of conveyor belts and thousands of rollers, this will be very costly for the business. He also said that it would add additional hazards for workers who would install, weld, and cut the guards, as well as for the workers who would be responsible for maintaining the guards.

Kevin Bland, representing the California Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council, stated that the note is very important because it is explanatory and provides better understanding and guidance regarding the equipment that is being used, and the hazards that are at play when the equipment is used. He said that removing this note will remove the necessary guidance. He stated that removing this note, which has worked for many years and was well thought out and discussed by an advisory committee, would set bad policy.

Bruce Wick, CALPASC, stated that he echoed the comments made by Mr. Rea and Mr. Bland. He said that no reason has been given as to why the note needs to be removed, removing it is unnecessary, and removing it will cost employers a lot of money. He recommended that the Board staff conduct an advisory committee via conference call so that this issue can be discussed before proceeding further.

Mike Herges, Granite Rock, stated that his organization does not support removing the note because the note explains the difference between a support roller and a pulley. He said that it adds clarity to the regulation that is very helpful to employers.

Michael Musser, California Teachers Association, stated that there are things in this proposal that are somewhat confusing and challenging, including under Section 4000 where it says that “any piece of equipment that could hurt someone needs to be guarded”. He said that it seems like this was done without very much input from industry stakeholders. He recommended that the Board staff hold another advisory committee meeting to discuss this and get more industry input before proceeding any further.

Mr. Harrison stated that he is not comfortable moving forward with this rulemaking at this time. He said that he cannot figure out why this note is being deleted, and he is not comfortable changing a rule that has been effective for many years just because there is possibly redundancy or clarity issues. He asked the Board staff if there is any history of injuries related to this note that may justify removing it. He said that if this change is made based on redundancy or an inspector’s misunderstanding, then it will open the door for many other rules to be challenged on the same grounds, and that will take up a lot of the Board’s time. He stated that if the Board decides to move forward on this, the Board staff will need to spend some more time working on it. **Ms. Laszcz-Davis** and **Mr. Thomas** echoed Mr. Harrison’s comments.

Mr. Thomas stated that it would be helpful to convene an advisory committee meeting to discuss this before moving forward. **Ms. Hart** stated that before the Board decides to go to an advisory committee on this, she would like the Board to allow the Board staff to take this rulemaking back to the office to study potential courses of action, and then report back to the Board at a later date with recommendations on how to proceed.

Mr. Thomas agreed and all Board Members present agreed with Ms. Hart’s recommendation. The proposal has been sent back to the Board staff for further review and future recommendations to the Board on how to proceed.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:39 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:39 a.m., April 19, 2018, in the Auditorium of the Harris State Building, Oakland, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Section 1618.1 Operator Qualification and Certification
Operator Qualification and Certification - Effective Dates
(HORCHER)

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

MOTION

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

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated he is aware of no unresolved legal issues regarding items A-S on the consent calendar, and he believes that those items are ready for the Board's decision on the question of adoption.

MOTION

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

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

C. OTHER

1. Division Update on Rulemakings and Advisory Committees

In addition to the information provided in the written version of the update [Please see the file copy of the Board packet to view this document], Mr. Berg provided the following updates:

Antineoplastic Drugs: The Division is still working on the financial impact analysis. It will take the Division several months to complete it.

First Aid: The Division has completed its work on this rulemaking, and the rulemaking has been submitted to the Labor and Workforce Development Agency for its review.

Indoor Heat: The Division held an advisory committee meeting on February 8, and on February 15, the Division made changes to the draft proposal and posted them online. The Division has received comments in response to the changes and has posted them online, and the Division is working on another draft response to comments. The minutes from the meeting will be posted shortly.

Lead in Construction and General Industry: The Division is working with an outside company to do the Standardized Regulatory Impact Analysis (SRIA) for this rulemaking. The Division plans to have it completed sometime this summer.

Recreational Marijuana: The Division convened an advisory committee in January to consider whether it needs to develop any regulations for that.

Prohibition of Indoor Smoking: The Division is working on changing this regulation to delete the word “tobacco” so that the regulation indicates that no smoking of any kind is allowed in enclosed spaces.

Permissible Exposure Limits (PEL’s): The Division is continuing to hold advisory committees to discuss various PEL’s, but there are no changes being proposed at this time.

Sexually Transmitted Infections (STI’s): The Division is not doing a rulemaking on this issue, but has made some major changes to its STI website to provide guidance for employers and employees regarding what is required of them.

Workplace Violence Prevention in General Industry: The Division convened an advisory committee meeting in January and recently posted comments that were received following the meeting. The Division is working on making changes to the draft language.

2. Legislative Update

In addition to the written version of the legislative update, Mr. Healy provided the following additional updates:

- SB 772 exempts any occupational safety and health standard and order from the standardized regulatory impact analysis (SRIA) requirement of the Administrative Procedures Act that has the \$50 million threshold for extensive economic analysis. On January 22, this bill was placed in the inactive file at the request of an Assemblymember.
- AB 1761 pertains to hotel worker safety and workplace violence prevention. This bill includes proposed means of addressing these issues, including providing panic buttons for employees to use who are working alone, as well as a method for tracking violent or threatening guests. On March 22, this bill was referred to the Senate Labor and Employment Committee, as well as the Senate Judiciary Committee.
- AB 1789 would require the Standards Board to adopt safety and health standards that address valley fever. This bill has been referred to the Assembly suspension file.

- AB 3031 pertains to power tool safety by requiring employers whose employees use power tools to provide specific employee training on how to minimize inhalation or ingestion of dust rising from those operations. This bill has been referred to the Senate Labor and Employment Committee.

3. Executive Officer's Report

Ms. Hart stated that the rulemaking packages for residential fall protection in construction and firefighter personal protective equipment are fully developed, but the Board staff is waiting on the SRIA's to be completed for each of them. She said that these SRIA's should be completed and ready to submit to the Department of Finance in the next month or so. She stated that once the Department of Finance has reviewed these packages, they can be noticed for public hearing.

Ms. Hart stated that the proposal regarding nighttime illumination in agriculture has been completed and submitted to the Department of Industrial Relations and the Labor and Workforce Development Agency for their review. She said that once the proposal has been reviewed and approved by both of these agencies, the proposal will be noticed for public hearing.

Ms. Hart stated that she and Mr. Manieri conducted interviews this week for the Staff Services Manager position on the Board staff. She said that they are now moving on to the screening phase and checking references, with the hopes that a hire will be made soon. She also stated that she is still planning to retire, but is planning to work through the transition, which will probably continue into the summer.

D. CLOSED SESSION – NONE HELD

E. OTHER

4. Future Agenda Items

No future agenda items were mentioned by the Board.

Mr. Thomas called for a moment of silence for all victims of workplace violence and shootings.

F. ADJOURNMENT

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