

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
April 18, 2019
Sacramento, 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 10:00 a.m., April 18, 2019, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

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

Board Members Absent

Board Staff

Christina Shupe, Executive Officer
Mike Manieri, Principal Safety Engineer
Peter Healy, Legal Counsel
Lara Paskins, Staff Services Manager
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Amalia Neidhardt, Senior Safety Engineer

Others Present

Bill Mattos, CA Poultry Federation
James Mackenzie, Southern CA Edison
Charles Mcgovern, Mammoth Mountain Ski
Area

Mark Stone, Alliant Insurance Services
Nathan Heit, Mammoth Mountain Ski Area
Michael Musser, CA Teachers Association
Elda Brueggemann, Western Ag Processors
Association

Pamela Murcell, CIHC
Carl Borden, CA Farm Bureau Federation
Roger Isom, CCGGA/WAPA
Teresa Andreos, WCAHS UC Davis
Bruce Wick, CALPASC

Jamie Carlile, SCE
Anne Katten, CRLAF
Steve Johnson, Walters & Wolf
Bruce Smith, Waymo

Jora Trang, Worksafe
Robert Moutrie, CalChamber

Michael Miiller, Winegrape Growers
Verta Taylor

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.

Bruce Wick, CalPASC, stated that employers want to be prepared and in compliance when the emergency regulation regarding wildfire smoke exposure is finalized. He asked about what will happen after the advisory committee meeting on May 8, and what the timeframe will be for employers to comply. **Michael Musser, CA Teachers Association**, echoed Mr. Wick's comments. **Ms. Shupe** explained that the Office of Administrative Law (OAL) is responsible for setting the timeline for adoption of emergency regulations, and their timeframes are listed on their website. She said that once the Board adopts an emergency regulation, and it is presented to OAL, there is a 5-day public comment period, and the regulation is adopted within 10 days.

Charles McGivern and Nathan Heit, Mammoth Mountain Ski Area, submitted a petition to change the current language in Section 5357. They said that the current language limits the Division's ability to adequately review emerging technology for avalanche control that have been accepted in other jurisdictions. They stated that their proposed language would allow the Division to evaluate avalanche control devices based on their own merits.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:08 a.m.

II. **PUBLIC HEARING**

Mr. Thomas called the Public Hearing of the Board to order at 10:08 a.m., April 18, 2019, in the Auditorium of the State Resources Building, Sacramento, California.

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

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Sections 1504 and 1526
 GENERAL INDUSTRY SAFETY ORDERS
 Sections 3361, 3364, 3437, 3457, and 5192
 Single-User Toilet Facilities

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.

Michael Musser, CA Teachers Association, stated that his school district in Ventura County has implemented this for quite a few years now, and it has proven to be quite effective, with no challenges for employees or students. He said that it has added flexibility for them because it ensures that there are enough restrooms for everyone instead of there being a shortage for one gender or another. He stated that the signage makes it clear that anyone can use the restroom. He said that there is an additional expense to the school districts to provide the proper locking mechanisms on the restrooms if they weren't already there, but it was easily absorbed and has created a valuable asset to their school campuses.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Sections 3441 and 3449
 Outdoor Agricultural Operations During Hours of Darkness

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.

Anne Katten, CA Rural Legal Assistance Foundation, stated that this proposal is urgently needed to specify the minimum levels of lighting needed so workers can be seen by machinery operators and truck drivers, and so that workers can see well enough to safely use clippers and knives, avoid tripping on uneven ground or slippery plant material, falling into ditches, and avoid dangerous insects, spiders, and snakes. She said that many employers in agriculture use a wide range of lighting practices, but some workers only work with headlamps that they must supply themselves. She stated that when working with corn, the only lighting that is provided to workers comes from the harvest machine lights. When workers are harvesting corn, the lack of lighting can cause them to cut themselves or others instead of the corn stalks. She also said that there is no lighting for paths to the bathroom, in the bathroom, or to the side of the fields. When there is no lighting, or inadequate lighting, in the bathrooms, break areas, and parking areas, this puts workers at risk for workplace violence, including sexual assault and robbery, especially when they go to their cars. She stated that this proposal will greatly improve safety and lighting for night work. She made the following recommendations:

- Parking areas should be added to the areas that are required to have a 3-foot candle level of lighting. This will prevent collisions, injuries, robberies, and assaults.
- Her organization feels that portable hands-free lighting (such as headlamps) should only be relied upon when the required lighting levels cannot be achieved with area lighting.
- Revise the proposed language to establish a clear hierarchy so that area lighting must be used to the extent feasible.
- Specify the requirements pertaining to the minimum and quality of lighting required for hands-free portable lighting, including spot and wide-beam settings. Headlamps should also be required to use LED instead of halogen bulbs because halogen bulbs can get really hot.

- The headlamp model referenced in the cost estimate seems to be of appropriate quality, but there are cheaper versions available that would not be as good quality.
- In addition to reflective vests, snake bite protection should be required in areas where snakes are prevalent.
- A provision should be added to the regulation that requires employers to have a basic night safety plan in place that identifies high traffic areas, nearby bodies of water, and has a system for accounting for the location of workers. During the advisory committee process, the Division drafted language regarding night work lighting traffic plans to prevent serious and fatal accidents, but it was not added to the proposal due to lack of consensus. The Board staff should consider adding this language to the regulation unless it would significantly delay adoption of the regulation.

Ms. Katten also stated that her organization feels the cost of compliance stated in the regulation is overestimated because:

- It does not account for the amount of money that employers have already spent on lighting that is already being supplied.
- Most crop harvests only last 2-3 months, not 6 months.
- The 25% work estimate is based on an extrapolation for night work in other industries and is not reliable for agriculture because these industries operate on a 12-month basis, including the service industry which operates on a 24-hour basis.
- Her organization agrees with the assessment of benefits and prevented accidents. There are documented cases of workers injured or killed during night work because they were hit or run over by machines or trucks, they fell into bodies of water and drowned, or they were stung by bees.

Ms. Katten stated that her organization supports this proposal, and she hopes that the Board will also support this proposal and consider the revisions that her organization is recommending. **Jora Trang, Worksafe**, echoed Ms. Katten's comments.

Jora Trang, Worksafe, stated that several reports and studies show that many agricultural workers who work at night are sexually assaulted and experience workplace violence. She said that it is very important that this proposal contain language to require adequate lighting in the parking area, as well as a night safety plan that accounts for the location of workers and hazards specific to night work.

Bill Mattos, CA Poultry Federation, stated that his organization is very concerned about how this proposal will affect their operations when it comes to moving their poultry from the barn to the conveyor that loads them into the truck. He recommended excluding poultry and egg operations from the regulation, or changing the wording regarding the use of constant lighting in Section 3441(g) and excluding poultry agricultural operations from 3449(a) and the subsequent lighting table. He said that following this regulation would cause major animal welfare injuries in their birds and would affect workers who have to deal with agitated birds in

lighting that does not meet the national or state animal welfare standards. He stated that this proposal runs counter to the certification and best management practices that are used for raising poultry, especially when birds are loaded onto the module to go to the processing facility. He said that the indoor areas are kept completely dark so that the birds do not become agitated, as per animal welfare standards. He said that animal welfare standards also require catching birds at night to minimize the birds' fear reaction and aid in humane catching of the animals. He stated that his organization is happy to provide the Board staff with further information if needed.

Roger Isom, CA Cotton Ginners and Growers Association and the Western Agricultural Processors Association, stated that his organizations do not see a need for this regulation. He said that the accidents that the Division cited during the advisory committee process happened over 15 years ago, and one occurred because there were riders on the equipment, which is illegal. He stated that the cost estimate in the proposal completely underestimates what is necessary to achieve the lighting levels required, and the lighting standards require employers to provide more lighting than they usually do. He said that the cost estimate uses rechargeable lighting that only lasts for 3 hours when operated on a full charge, so employers would need to have more than one rechargeable lighting mechanism. He stated that some companies, such as Alibaba, require employers to order these lighting mechanisms in bulk (i.e. 20 or more) in order to get a discounted price on each unit, which doesn't make sense. **Carl Borden, CA Farm Bureau Federation**, echoed this comment. Mr. Isom said that in order to achieve the lighting levels required in the proposal, employers would have to use diesel fire generator-type lighting that is similar to what CalTrans uses. He stated that some folks in his organizations tried bringing those types of lights to some of their operations to measure the lighting and find out what the levels would be, but they found out that doing so creates other issues. He said that they were informed that in order to bring that type of lighting to a permanent facility, the employer must get a permit for it. They also found that the engines in these lights did not meet the latest tier, which would be another violation. He stated that these things are far more expensive than the few hundred dollars mentioned in the cost estimate. He said that his organizations do agree that it is important for employers to provide their employees with reflective clothing.

Ms. Katten and Juanita Antiveros, CA Rural Legal Assistance Foundation, read a letter into the record from Maria Elena Puente, who is a farm worker. The letter stated that Ms. Puente and her family are farmworkers, and she sorts tomatoes into machines. When the machines are picking up tomatoes, snakes and rats come out, and at night, it is more difficult to see them in the low light of the machines. The machines also throw chunks of dirt, so workers must keep an eye out when that happens. The workers must also use protective eyewear to protect their eyes, and this eyewear makes it more difficult for them to see at night. The letter also said that good lighting makes it easier for workers to do their jobs and safer for them when they are getting off of the machines to use the restrooms. The restrooms are far from the harvesting machines, and workers only get to take a break periodically because the machines cannot be stopped, so it is important that there is adequate lighting. The employees are not provided with reflective clothing and headlamps. They are only given gloves and lenses to wear, so they must buy and bring their own equipment and lighting, and some employees cannot afford anything more than what is sold at the dollar store. The letter stated that Ms. Puente's brother must carry heavy water piping for alfalfa in one hand and a lamp in the other hand, which is almost impossible to do, so it would be better for employees like him to have helmets that have lights on them. The letter said that one night, Ms. Puente's brother

was attacked by bees because he walked into a beehive that he couldn't see. He was taken to the ER and hospitalized because he was allergic to bee stings. This regulation is very much needed to prevent accidents and deaths, and to give employees the better equipment and lighting that they need to do their work safely.

Carl Borden, CA Farm Bureau Federation, stated that most of the provisions in the proposal are reasonable and acceptable, including:

- Requiring employees to wear high visibility clothing.
- Employees should be informed of the location of things at the worksite, such as rest areas and water hazards, prior to starting their shift.
- Requiring certain types of lighting to be used on agricultural machines.

He said that there is one area of concern regarding the general requirement to provide area lighting instead of portable, hands-free lighting that can be worn by employees. He stated that there are instances where area lighting is not reasonable. He said that areas where trellised crops are grown, such as grapes, can block the light. He stated that in cases like this, the proposal does allow the employer to supplement using portable personal lighting, but his organization is still concerned that this proposal provides a one-size-fits-all approach for providing area lighting. He said that unlike surface areas where construction workers use large area lights during their night work, agricultural fields are vast places that can have soft surface areas on which it would be difficult to put this type of lighting. He also stated that employees working in the fields are moving over a number of acres, and when they move, the lighting will have to be repositioned. He said that the cost estimate in the proposal is grossly underestimated because it assumes that an employer will only need one \$1,200 Bulldog light and one rechargeable generator. One light will not be enough, even if it is for a small work area, because the employer will need at least one additional light and generator to use as a backup in case the first one malfunctions. He said that the lowest cost generator that he could find was \$500, not \$200 like it was stated in the cost estimate. He also stated that a rechargeable generator would not work with a Bulldog light because it has metal halide lights. He said that metal halide lights are brighter than LED lights, but they use more power and are less expensive. He stated that an internal combustion engine would be required to operate the generator that would work with the Bulldog lights. He said that this standard needs to be more performance-based where enough light is provided for employees to do their work safely in a safe environment, and having personal portable lighting, in addition to high visibility clothing, will help them to be seen by equipment operators. He also said that the table of mandated lighting levels should be removed or moved to a non-mandatory section to provide guidance to employers as to what the aspirational levels of illumination should be. **Michael Müller, CA Association of Winegrape Growers**, echoed Mr. Borden's comments.

Michael Müller, CA Association of Winegrape Growers, stated that this proposal will have a tremendous effect on winegrape growers because it will make it impossible for them to harvest grapes at night. He said that there is no established or demonstrated need for this regulation, and vineyards are already providing adequate lighting for their workers to do their jobs. Also, there is not a large number of injuries that have occurred due to nighttime work. Mr. Müller stated that the Board staff's estimate of the costs associated with this regulation are grossly understated. He said that towers and generators are the biggest cost for employers

because these lights must light up an area the length of a football field to comply, and employers will have to buy high grade equipment that complies with the flux and lumens measurements in the proposal with pinpoint accuracy. He stated that generators will need to have the lowest emissions possible in order to comply with local air emissions requirements. He also said that this proposal will create a lot of bleed-over light. Mr. Miiller stated that many vineyards are located near neighborhoods that don't want bleed-over light and in counties that have ordinances regarding light pollution that the vineyards must comply with. This proposal will make it impossible for them to comply with these regulations. He also stated that the benefits of the regulation are overstated and manufactured, and his organization feels that the Board staff has not done an adequate job looking at alternatives to the regulation. He said that the best way to address these issues is to take a look at the injury and illness prevention plan (IIPP) requirements and make sure that there is a plan in place to deal with local vineyard issues relative to nighttime harvesting and light issues. Mr. Miiller also stated that this proposal requires a measure of the light being produced by foot candles, lumens, and flux. He said that this is not the proper method for determining how bright a surface area will be. It will only determine how much total light the specific instrument or fixture is producing at a specific moment in time, and when several instruments are combined, they affect the brightness of the working area. Mr. Miiller stated that this proposal would require vineyards to put up a row of tower lights that reach every inch of the vineyard, even though employees may only be in one spot for just a few minutes, and it is not practical to constantly move the towers of light to meet the standard.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:57 p.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:57 p.m., April 18, 2019, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated he is aware of no unresolved procedural issues regarding items A-O 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.

B. OTHER

1. Legislative Update

Mr. Healy provided an update on legislative activity and status, in the past month, of the following bills:

- AB 457
- AB 1124
- SB 363

2. Executive Officer's Report

Ms. Shupe stated that the Board staff and Division have been working together to draft a timeline for the emergency wildfire smoke regulations. She said that the Division is accepting comments on the current draft of the emergency regulatory language until April 26, and after that, the Division will update the language and post a revised draft no later than May 6. On May 8, the Division will hold an advisory committee meeting in Oakland to accept feedback on the revised draft language, and Board staff will be attending this meeting.

Ms. Shupe stated that the public hearing topic for next month's meeting will be Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment: Final Rule - Corrections. The Board will also consider the proposed decisions for petitions 571, which pertains to the use of highly automated and autonomous agricultural equipment, and petition 572, which requests that various amendments be made to the injury and illness prevention plan (IIPP) requirements.

3. Future Agenda Items

Ms. Stock asked for an update on the proposals pertaining to indoor heat illness prevention and workplace violence prevention in general industry. **Ms. Shupe** asked Ms. Neidhardt if she could provide any updates on those things. **Ms. Neidhardt** stated that she would rather refer those items to the Division headquarters and provide an update on them at next month's meeting. **Ms. Burgel** added that she would like to get an update on the lead standard.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:05 a.m.

D. REOPENING OF THE PUBLIC MEETING RECORD

Mr. Thomas reopened the Public Meeting record at 11:05 a.m.

Verta, Former Adult Film Performer, submitted a petition for specific industry regulations for adult film workers. She said that she hopes this petition will begin dialogue about why the high expense of testing is burdened by underpaid workers in the industry, as well as shine a light on the workplace environment that adult film performers face on a daily basis. She stated that a lot of the conversation about testing revolves around the straight side of the industry. Testing protocols for the gay side of the industry are very relaxed, and it is difficult to know what the regulations are for those performers. Those performers should be included in the process. She said that it is not viable to require adult film performers to use condoms, and

nobody adheres to the current regulations that require using them. Directors should be required to inform performers, on camera, that they have the right to use a condom. She stated that many workers know each other well because the adult film community is small, and many performers are able to choose their partners, but she feels that many more of them would use condoms when performing with certain people or those they don't know well if they knew that they had the choice to use a condom. She said that if performers are informed that they have the right to use a condom, there will be an increase in condom usage in the adult film industry. She also stated that it is important to have a hotline exclusively for adult film performers to use to contact the Division to legally file anonymous complaints. She also highlighted the following key points of her petition:

- If the Free Speech Coalition (FSC) wishes to continue using its Performer Availability Screening Services (PASS) system, the Green Check Mark system must be amended to add an asterisk for on-set communication between all partners if performers have medical concerns (i.e. physical limitations, mental illness, seizures, HIV positive with an undetectable viral load), have been accused of any misconduct in official complaints, or have any information that is pertinent to share with scene partners. The asterisk indicates only that a conversation must happen between that performer and anyone they may work with. No third party, including producers, directors, or agents, may receive the test results of any performer, and performers are encouraged to share their results privately before filming.
- All production holds and moratoriums must be reported immediately to the Division, and a minimum 14-day abstinence from filming must be observed.
- All “go-sees” must be performed in an office or registered building location, or in groups of no fewer than three people.
- Prior to any commercial adult film production, a contract explicitly detailing the sex acts to be expected on set must be sent directly to all performers involved. No third parties may receive these contracts on behalf of the performer. Third parties include, but are not limited to:
 - Managers
 - Romantic partners
 - Agents
 - Family Members

These contracts are to be signed and paraphrased, with all performers present, on camera before each scene is filmed and must include OSHA information.

- “Interracial” may no longer be viewed as a sex act, despite how individual scenes may be marketed.

- All complaints received by the Division are the responsibility and liability of producers, not the performers and not the directors. Performers who are named in formal complaints must have an asterisk added to their PASS information, or its equivalent.
- The petition includes the following definitions:
 - Adult Film Director: Anyone who records, to be sold, adult-themed content with others, trade or otherwise, and makes more than \$50,000 per year.
 - Adult Film Producer: Anyone who owns a porn production company and oversees the production of several companies or websites (not to include clip sites such as Fan Centro, Clips 4 Sale, Only Fans, Many Vids, I Want Clips, etc.), hires employees to oversee the daily operations (such as hiring directors), and makes more than \$50,000 per year.
 - Go-see: A meeting between a producer or director and a performer to determine the employability of a performer. This could be considered a form of interview.
 - Considering the relationship between an agent and a performer, and an agent and a producer, anyone represented by a licensed agency is considered an employee, having all the rights and obligations of an employee, not as an independent contractor. Any performers who are members of FSC or Adult Performer Advocacy Guild (APAG), which require dues, are also considered employees.
- Consent Contracts: Verta included a sample copy of a consent contract and stated that a proper consent contract must include the following information:
 - Performer's name
 - Date of filming
 - Pay amount
 - Sex acts to be performed on camera, and with whom
 - A space for performers to discuss their boundaries and any physical limitations.
 - Other acts that the performer would like to have included in the scene
 - Preferred methods of communication during the scene
 - Preferred personal protective equipment (PPE)
 - Intensity of the scene rated on a scale from 1 to 5, with specific details concerning the reasoning behind the provided numeral.
 - The contract must state that condoms are provided as a choice for PPE. It must be explicitly noted, on film, that the performer has the right to choose to use

condoms, as well as the right to file anonymous complaints to the Division for workplace grievances.

- The consent aspect must be filmed with all performers present in an open discussion. A copy of the signed contract should be given to the performer, and the producer or director should keep the original copy in their records for no less than 5 years. Video of performers discussing their contracts should be kept for no less than 10 years. In the event of a production hold or moratorium, these records should be used as a reference to confirm screen partners.

E. ADJOURNMENT

Mr. Thomas adjourned the meeting at 11:16 a.m.