

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
January 21, 2016
Costa Mesa, 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., January 21, 2016, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

ATTENDANCE**Board Members Present**

Dave Thomas
Dr. Robert Blink
David Harrison
Patty Quinlan
Barbara Smisko
Laura Stock

Board Member Absent**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

Hal Lindsey, Diversified Utility Services
Ana Lepe, Unite Here Local 11
Natalia Torres, Grand CA Hotel
Erik Anderson, BSA Framing
Pat Gaydos, Federal OSHA
A.J. Reid, Fed OSHA
Steve Johnson, Condon-Johnson & Assoc.

Jodi Blom, CFCA
Yvette Llamas, Unite Here Local 11
Cesar De La Cruz, Unite Here Local 11
Robert Smith, Painter Union IUPAT
Chris C. Cetin, LHI Framing
Don Myers, So. Cal. Gas Company
Kate Mergen, AGC of CA

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| Dr. William Callahan, Associated Roofing Contractors | Jill King, SAG AFTRA |
| Keythe Farley, SAG AFTRA | Courtenay Taylor, SAG AFTRA |
| Kevin Thompson, Cal/OSHA Reporter | Larry Pena |
| Lynn Mohrfeld, CA Hotel & Lodging Association | Harper Otanwka, PILP USD |
| | Tony Clemont, Circle M Contractors |
| | Jeremy Smith, State Building & Construction Trades Council |
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| Bruce Wick, CALPASC | Leo Jordan, Power Line Const. |
| Michael Strunk, IUOE Local #3 | Elizabeth Treanor, PRR |
| Jay Weir, AT&T | Heather Gribben, Ogletree Deakins |
| Kevin Bland, Ogletree Deakins | Joseph Murphy, Unite Here Local 11 |
| Celia Lopez, Unite Here Local 11 | Chad Smith, IUPAT |
| Zoe Palitz, IUPAT | Neal Lauzon, IBEW #441 |
| Michael Musser, CA Teachers Association | Barbara Goto, Fed OSHA |
| Marti Fisher, CalChamber | Glen Davies, GDT Framing |
| David Shiraishi, Fed OSHA | Dean McKenzie, Fed OSHA |
| David Burtle, IUPAT | Trina Panaqua, Brush Chipper |
| Jeff Buchanan | |
| Miguel Bazan, Asia L-Tech | |

Ms. Hart stated that on December 22, Board Member John Sacco was killed in a plane crash. She said that some of the Board staff attended his memorial service, and his cousin wrote a poem about him that was read at his memorial. She read the poem to the Board Members. Mr. Thomas stated that he will be greatly missed.

The following individuals also expressed their condolences for the loss of Mr. Sacco:

- **Randy Gordon, West Coast Industrial Coatings**
- **Harry Mowry, Industrial Coatings Instructor, IUPAT DC 16**
- **Jeff Buchanan**
- **Lynn Mohrfeld, CA Hotel & Lodging Association**
- **Bruce Wick, CALPASC**

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.

Ana Lepe, Housekeeper, Grand CA Hotel Disneyland, stated that housekeepers need protection from the safety and health hazards that they experience on the job. She said that they have been given tools, such as a bed wedge, to help them lift the mattresses when making the beds, but they do not help, and housekeepers continue to get injured from having to lift them. She stated that housekeepers at her hotel are forced to clean 13 rooms during their shift, and each room contains 2 or more beds that must be made. She said that is too many beds to make, and after having to lift the heavy mattresses on each bed, it makes her arms and back

sore. She also stated that the duvet covers on the beds are too heavy, and the blankets on the bed must be tucked in under the heavy mattresses, which hurts her hands and wrists. She said that using elastic sheets on hotel beds would help because housekeepers would not have to lift the heavy mattresses to put them on. She also stated that having electric housekeeper carts would help because they are easier to push down long carpeted hallways. She said that the carts that housekeepers currently have are too heavy for them to push and are difficult to push down carpeted hallways. She stated that housekeepers at her hotel are now required to carry glass cups, ceramic coffee mugs, and clean linens on their carts, in addition to dirty linens, trash, and towels, making the carts heavier than before. **Celia Lopez, Housekeeper, Hilton Anaheim Hotel and Joseph Murphy, Unite Here Local 11**, echoed Ms. Lepe's comments. **Celia Lopez, Housekeeper, Hilton Anaheim Hotel**, stated that making beds is very hard work because the mattresses are very heavy. She said that housekeepers must lift the mattress 4 times to push and tuck in sheets and blankets under it. She stated that this is a very repetitive motion that causes pain. **Yvette Llamas, Housekeeper, Grand CA Hotel Disneyland**, echoed this comment. Ms. Lopez also said that housekeepers must push and pull heavy furniture to move it for vacuuming. She asked the Division to come up with a regulation that will help protect housekeepers from injury on the job. **Joseph Murphy, Unite Here Local 11**, echoed this comment.

Yvette Llamas, Housekeeper, Grand CA Hotel Disneyland, stated that she sustained a shoulder injury on the job that required surgery last March. She asked the Division to review the timeframes that hotel management gives housekeepers to clean rooms because they are not given enough time to clean each room, and they often have to rush to get the job done. She said that if housekeepers did not have to rush to get the rooms cleaned, there would be fewer injuries and accidents. She stated that the amount of work that housekeepers are expected to do in the amount of time that they are given by management to do it is too much. She said that when hotel housekeepers are injured, it is hard for them to be able to continue to work so that they can provide for their families.

Natalia Torres, Housekeeper, Grand CA Hotel Disneyland, stated that there are many occupational hazards in the hotel housekeeping industry. She said that she permanently injured a nerve in her back from doing the repetitive motion of vacuuming. She stated that hotel housekeepers often go home very tired and in pain because they had to clean 13 rooms in one shift, perform very heavy work with repetitive movements, and still deliver high quality work. She said that cleaning 13 rooms in one shift is too hard, and management often does things, such as implementing the use of heavier mattresses, without getting input from the housekeeping staff to find out how it might affect them. She asked the Division to help protect hotel housekeepers from the occupational hazards that they face so that they can continue to provide for their families.

Joseph Murphy, Unite Here Local 11, asked the Division to add lifting and forceful exertion to the list of job hazards listed in the current draft of the hotel housekeeping proposal. He said that lifting things and using forceful exertion is part of the job for hotel housekeepers, but it can cause injuries. He also asked the Division to list the names of the tools that employers should consider using to prevent housekeeper injuries. He suggested using the following language:

“Consider using the following tools, such as, but not limited to, mops, long-handled tools, fitted sheets, lightweight or motorized carts.”

He said that these tools might cost employers a little more money, but they would be beneficial to hotel housekeepers.

Zoe Palitz, Altshuler & Berzon, representing the International Union of Painters and Allied Trades (IUPAT), stated that her organization supports the Board staff’s recommendation to adopt Petition 550 and go to an advisory committee. She said that this petition seeks to establish health and safety standards for employees who do corrosion prevention work.

Robert Williams III, DC 16 Local Union 741 of IUPAT, stated that painters who do corrosion prevention work are exposed to carcinogens, reproductive mutagens, and neurotoxins, in addition to falls and other hazards on the job. He said that the proposal that is being proposed today through Petition 550 implements the National Association of Corrosion Engineers (NACE) 13/ACS 1 standard that requires certification and training by a third party, such as the Society of Steel Protective Coatings (SSPC), for employees performing corrosion prevention work. He stated that there are industrial painter apprenticeship programs in California who have implemented training into their program to comply with the NACE 13/ACS 1 standard, and as a result, graduates have come out with an attitude of awareness about worker safety and how to protect themselves. He said that the NACE 13/ACS 1 standard contains much better training about chemicals in paint, which has encouraged employees to wear personal protective equipment and respirators when necessary. He stated that he has seen job sites where corrosion prevention work is being done where contractors are not providing the necessary information to employees about the hazards that they face doing this work, and if they are, they are not making sure that employees understand it. **Randy Gordon, West Coast Industrial Coatings**, echoed this comment. Mr. Williams said that the proposal that is being proposed in Petition 550 today will not require radical changes to be made in the industry.

Jesus Hernandez, Training Director for the Industrial Apprenticeship Program, IUPAT DC 36, stated that the standard being proposed today in Petition 550 will give workers in corrosion prevention work the knowledge and training that they need to meet the NACE 13/ACS 1 standard. **Randy Gordon, West Coast Industrial Coatings**, echoed this comment. Mr. Hernandez said that he wrote the curriculum for the state’s apprenticeship programs to train apprentices to meet the NACE 13/ACS 1 standard, and the standard includes all essential safe performance practices for corrosion prevention work. He said that the curriculum teaches apprentices about the current regulations, how to use personal protective equipment, fall protection, and other safety measures, how to identify hazardous conditions, and how to properly handle the toxic materials that they work with. He said that the hazards that industrial painters face are far worse than those that the commercial painter faces, and their work takes place under challenging conditions, such as confined spaces.

Harry Mowry, Industrial Coatings Instructor, IUPAT DC 16, stated that the standard being proposed today in Petition 550 is necessary in order to protect workers from accidents and health problems. He said that the NACE 13/ACS 1 standard is much more thorough when it comes to using safety measures such as personal protective equipment and respiratory

protections. He stated that it requires that the painter know about the specific health hazards that can occur while working in the industry, as well as where to find information and SDS sheets on how to use a certain product, emergency procedures, and proper ventilation.

The following individuals also commented in support of the standard being proposed today in Petition 550:

- **Alex Beltran, Director of Training, DC 16 State Approved Apprenticeship Program**
- **Jeremy Smith, State Building Construction Trades Council**

Keythe Farley, Screen Actors Guild and American Federation of Television and Radio Artists (SAG AFTRA), stated that he has worked as a voice actor on several video games, and for voice actors, there are no health and safety issues related to vocal stress. He said that some video games require 10 to 50 hours of vocal work to create, and some voice actors work a 4-hour stretch at high volume levels with minimal breaks. He also stated that some of the characters in video games, such as wizards and soldiers, are more vocally stressful than others. He said that his organization is currently in contract negotiations, and one of the items that they are trying to get passed is reducing vocally stressful work sessions from 4 hours to 2 hours.

Courtenay Taylor, SAG AFTRA, stated that when voice actors work a 4-hour shift, they do 55 minutes of work followed by a 5 minute break. She said that during a shift, they can do a variety of voice types, which can be very taxing on the voice. She stated that as a result of her work as a voice actor, she hemorrhaged one of her vocal cords and had to take 4 months off from work, with 6 weeks of complete vocal silence, to recover. She said that she has suffered permanent damage to her vocal cords and throat, including thickening and polyps on her vocal cords, because of her work.

Jeff Buchanan, Petitioner for Petition 549, read letters from Senators Bob Huff and Tony Mendoza in support of Petition 549 [Please see the file copy of the Board packet to view these letters]. He said that when he petitioned the Board back in August of 2015, he was asking for stronger regulations to protect workers who use wood chipping machines by means of a passive device that is installed on them, not his device specifically. He said that this was not conveyed to the Board in the petition decision. He stated that there are 5 ways to achieve the same protective result using other technology that is available, and he never wanted or recommended that a passive device be the only method to keep wood chippers safe. He said that passive systems should have a method of starting the in-feed rollers with wearable devices that must be present in order to initiate the feed rollers so that the machine is rendered useless without the wearable devices.

Trina Panaqua, Garvey Equipment Company, stated that many wood chipper manufacturers have already gone beyond the ANSI requirement of 85 inches from the ground to the pinch point and have added a control bar because they feel they have a moral obligation to make the unit safer. She said that passive safety devices on wood chippers are absolutely necessary. She stated that it may not prevent every accident from occurring, but it is an important safety measure. She said that the importance of having passive safety devices on a wood chipper is acknowledged in the petition decision, but there seems to be hesitancy to

embrace it because of proprietary issues. She stated that requiring wood chippers to have passive safety devices on them will have long-lasting effects on employees in the industry and their families.

Lynn Mohrfeld, CA Hotel and Lodging Association, stated that the hotel housekeeping industry is already taking the necessary steps to reduce the number of injuries that housekeepers sustain on the job, and the proposed hotel housekeeping standard does not help protect hotel housekeepers from injury. He said that since Senator De Leon introduced legislation requiring the use of fitted sheets and long-handled cleaning tools, the hotel housekeeping industry has been working to find ways to prevent hotel housekeeper injuries, and as a result of this, the hotel housekeeper injury rate has declined significantly from 2010 to 2014. He stated that the CH&LA education foundation funded research to find out the effects on hotel housekeepers who make beds with flat and fitted sheets. He said that this research found that there is no difference in physical exertion level between making beds with regular sheets and making beds with flat and fitted sheets. He also stated that hotel housekeeper jobs have been made easier because of environmental standards, such as giving the guest the option of having their bedding changed every third day of their stay, rather than every day, and 98% of guests use this option. He stated that to help with the drought in California, hotels are required by law to put a card in each room asking guests to not have their towels laundered every day. He said that hotels also have reward or incentive programs to encourage guests to refuse daily maid service. He stated that when Unite Here filed its petition, the Division evaluated it and found that it did not provide sufficient information to establish necessity for each proposed control measure, nor did it analyze alternative measures that may be as effective. He said that the current draft of the standard assumes that the entire hotel housekeeping job is hazardous and does not provide a basis for that assumption. He stated that it will cost the industry an estimated \$22.6 million annually and will impose sweeping obligations on hotel housekeeping employers without evidence to demonstrate that the alleged hazards exist, or the effectiveness of the mandated intervention. He also said that it will conflict with Title 8, Sections 5110 and 3203, which require employers to reduce repetitive motion injuries under specific circumstances and to find and fix workplace hazards. He stated that since it lacks justification for giving housekeepers special treatment, other job classifications will seek their own standards that provide them with the same unique treatment. He also said that it replaces the assessment of a medical professional with that of individual housekeepers and union representatives, which is counter-productive.

Miguel Bazan, Asia L-Tech, stated that he submitted a petition on January 12 to require that porta potties have fans attached to them to circulate air so that the heat and smell inside them can be eliminated. He said that in 2015, he suffered heat exhaustion while using a porta potty, and none of his co-workers knew about it. He stated that he invented a solar-powered fan that attaches to the vents on the top of the porta potty to help get rid of the heat and smell inside the porta potty. He said that the fan provides air movement and will help eliminate the risk of heat exhaustion for workers who use porta potties.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:30 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 11:30 a.m., January 21, 2016, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Section 3273
 Working Area Catwalk Exception

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is ready for the Board's consideration and the public's comment.

There were no public comments on this proposal.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 11:35 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:35 a.m., January 21, 2016, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

A. RESIDENTIAL CONSTRUCTION FALL PROTECTION TRIGGER HEIGHTS

Mr. Thomas stated that the Board will accept public testimony on this topic. Ms. Hart stated that there has been a lot of discussion over the years between the Board staff and federal OSHA regarding residential construction trigger heights. She said that federal OSHA has a 6-foot fall protection trigger height for residential construction, but California has a different trigger height. She stated that the determination was made to go to an advisory committee and discuss the differences between the California and federal standards and determine if changes need to be made to the California standard, and if so, where and how those changes will be made. On November 3, 2015, an advisory committee meeting was held with federal OSHA and stakeholders, and it was determined that it would be beneficial to revisit the California standard and work to improve it. She asked the Board to provide guidance and direction on how to proceed on this matter, and that this topic has been placed on the business meeting agenda so that the Board can take action if it wants to.

Dean McKenzie, Acting Deputy Director for the Director of Construction, Federal OSHA, stated that federal OSHA moved its residential construction fall protection trigger heights to 6 feet in 2010 and has been pushing all of the states to move their trigger heights to that minimum. He stated that 7 states, including California, have trigger heights that are around 10-15 feet, and all of them, except for California, have moved their trigger heights to

comply with the federal OSHA standards. He said that California has not committed to moving its trigger heights to 6 feet, and this is something that must be done in order for the California standards to be at least as effective as the federal standard. He stated that other states have done it and workers feel liberated when it is done because they don't have to worry about falling. He also said that there are very few situations where the 6-foot trigger height will be infeasible, and for those situations, there is a feasibility allowance. He said that California has fall protection requirements in so many places, in addition to residential construction, that the Board should consider looking at all construction fall protection when addressing this issue. He stated that there are several ways to make California's fall protection trigger heights standards at least as effective as the federal standard, including honoring the existing federal standard in its entirety or going through and fixing it in pieces at a time. He said that federal OSHA wants the Board to make a commitment within the next 30 days to move forward with implementing the 6-foot trigger height, and for the Board to give federal OSHA a plan on how it will implement it. He also stated that there are other issues in the standards that need to be addressed, including defining the term "short duration work".

Ms. Stock asked Mr. McKenzie what federal OSHA's authority is in this situation, and what happens if the Board does not comply. **Mr. McKenzie** stated that if California does not comply, federal OSHA will issue a show cause letter to California with 30 days' notice prior to concurrent jurisdiction and federal OSHA beginning to enforce the federal construction standards. **Barbara Goto, Administrator, Federal OSHA**, stated that the state is required to provide protection equal to the comparable federal standard. She said that the federal standard for residential construction requires fall protection at 6 feet, and since the California standards are in different places, there is nothing comparable that gives the employee protection at 6 feet. She stated that if the state does not comply, federal OSHA is obligated to step in and ensure that employees are protected.

Ms. Quinlan asked how broad federal OSHA's takeover would be if the Board decides not to comply. She asked if federal OSHA would take charge of all of the construction safety orders, or just the implementation of this specific one. **Ms. Goto** stated that federal OSHA can only enforce the federal standard, and in this case, it would take charge of all of the construction safety orders.

Dr. Blink asked Ms. Goto and Mr. McKenzie for clarification regarding the fact that the state must have protection that is equal to the comparable federal standard. **Ms. Goto** stated that if the state standards do not provide protection equal to the comparable federal OSHA standards, federal OSHA will consider the state to not be operational as to the issues covered by the inadequate state standard. She said that the protection provided by the state standard must be equal to that of the comparable federal standard.

Ms. Stock stated that it appears that even if there is evidence to suggest that other alternative trigger heights may be at least as effective as the 6-foot trigger height in the federal OSHA regulation, federal OSHA will not accept those arguments and will not consider the alternatives to be at least as effective as its 6-foot standard.

Dr. Blink stated that requiring the state standard to be at least as effective as the federal standard is different from requiring the state standard to be equal to the federal standard. **Ms. Goto** stated that the state standard must provide protection that is equal to the comparable

federal standard. **Ms. Quinlan** stated that it is clear that if California does not change its trigger heights to 6 feet, it will be in violation of the federal rules and federal OSHA will take over the construction standards. **Ms. Smisko** stated that it might be a good idea to hear opinions on this from the Division and Mr. Healy.

Ms. Hart asked Mr. McKenzie and Ms. Goto if federal OSHA wants California to update all construction trigger heights to 6 feet or just residential construction trigger heights. **Mr. McKenzie** stated that federal OSHA wants California to update the trigger heights for all construction.

Mr. Thomas invited the public to comment further on this issue at this time.

Bruce Wick, CALPASC, Kevin Bland, Ogletree Deakins, showed a PowerPoint presentation to the Board [Please see the file copy of the Board packet to view this presentation]. Mr. Wick provided a historical perspective of the development of California's residential fall protection. He said that 13 advisory committee meetings were held beginning in 2001 to discuss the issue of fall protection trigger heights, and after the third meeting, the advisory committee decided to have California use positive fall protection for two-story construction and up, and this was published in Section 1716.2 for residential framing and light commercial construction. He stated that the actual rescinding of the federal OSHA 8-foot trigger height did not happen until 2011, so for 8 years, California led the nation in protecting workers from those serious falls. He said that during the other 10 meetings, the advisory committee discussed what to do about the first story. He stated that they decided to discuss what the safest way is to do every task and then publish that list in Section 1716.2. He said that 1716.2 is the safest and best protection for workers, and as a result, construction fatalities in California have been 39% less over the past 6 years. He presented a chart comparing the number of construction fatalities that occurred in California and the US each year from 2008 to 2013. He stated that stakeholders would like to sit down with federal OSHA and find out why federal OSHA feels its regulations regarding fall protection trigger heights are safer than California's.

Mr. Thomas stated that the chart does not define what the fatalities were. He asked Mr. Wick if there is any information available to tell how many of these fatalities were due to falls. **Mr. Wick** stated that a lot of fatal falls occur through floor openings, and many of those were violations. He said there is not enough clarity about that and several other things, and stakeholders would like to get clarity on that from federal OSHA. **Ms. Quinlan** stated that the chart is very misleading because it addresses all fatalities that occurred in construction, not just falls. She said that it also does not indicate whether or not California's fall protection standards are more protective than the federal standards.

Mr. Thomas asked if there is data available to show how many people have died from falls over 6 feet and how many have died from falls that were under 6 feet. **Dr. Bill Callahan, Associated Roofing Contractors**, stated that there is some data available, but falls is a broad category that includes many things. He said that during the advisory committee meeting in November, the committee analyzed the fall fatality data from 2014 and discovered that California has a fall fatality rate of 3.0, which is half the rate of those states that follow the federal 6-foot standard. **Ms. Quinlan** stated that the reason other states have higher fall fatality rates could be due to more than just the trigger height. She said that California has

good enforcement and regulations, and other states may not have regulations or enforcement that are as good as California's, if they have any at all, which may be why their fall fatality rates are higher. **Dr. Callahan** stated that he would like to have federal OSHA and stakeholders come together and discuss this issue.

Mr. Thomas stated that in his experience in construction, most companies comply with the 6-foot trigger height rule, no matter what. He asked why it is hard to achieve a 6-foot trigger height in residential construction. He also asked if there are ways to do it that would work, and what ways would not work.

Ms. Hart asked Mr. Berg if the Division has comprehensive data that differentiates between the different types of fatal falls that have occurred in California. **Mr. Berg** stated that the Division has worker's compensation data that it presented during the advisory committee, and it has some differentiation, but the data is incomplete. **Ms. Hart** stated that if federal OSHA can give the Division and Board staff any data that they have, then a proper comparison can be made to see which standard is more effective. **Mr. Wick** stated that the stakeholders at the advisory committee meeting requested the data broken down from federal OSHA so that they can determine what the safest ways are to do these processes.

Ms. Stock stated that federal OSHA has made their request very clear, but there are a lot of good things in the current California standard that are worth preserving. She said that a standard needs to be developed that complies with federal OSHA's request, but also maintains the good things that are in the current California standard. She asked the other speakers from the public to tell the Board what they feel needs to be put in place so that the standard complies with federal OSHA's request, but also preserves the good things that are in the current California standard.

Tony Clement, Circle M Contractors, stated that complying with the 6-foot trigger height rule is less safe, or not safe at all, for employees. He said that it would be beneficial to have a discussion about this with everyone that is involved, along with providing demonstrations or visits to job sites to show everyone what employees do, and how they do it. He stated that a large number of accidents that occur relate to the use of ladders and nail guns, and his organization is scared that requiring employees to work off of a ladder with a nail gun in order to be compliant is a setup for bad things to happen.

Chris Cetin, LHI Framing, stated that the 6-foot trigger height does not work. He said that there are three conventional means of fall protection that are mentioned in the current regulation, but they do not work for a 6-foot trigger height:

- Safety rails. Safety rails do not work inside the building because of what is being built on the inside of the building. Using temporary means to brace studs in walls and other structural components causes other obstacles.
- Safety nets. Safety nets are infeasible because the temporary means to brace studs in walls and other structural components create obstacles.
- Personal fall arrest systems. There are three types of personal fall arrest systems that would work and comply with the law: a full body harness, lanyard, and retractable (yo-

yo) systems. These systems must be located above the worker's head, so they would not work for protecting employees working on the first floor. He said that the average height that a worker works at is 9 feet 1 inch, and falling in a retractable fall arrest system from that height will not keep an employee from hitting the ground. He also said that when an employee falls, the employee may reach out and grab onto things in an attempt to break or control his fall, and as a result, he may get injured by bumping into things or being cut off by the harness from a small height.

He stated that these methods can be implemented and do comply with the law, but they will not provide sufficient safety for workers if the 6-foot trigger height is implemented.

Mike Harris, CW Constructional Framing Contractors, stated that there are no methods out there to stack a roof or joist a floor and keep a worker under 6 feet or tie him off over 6 feet because there is no anchorage point. He said that this was proven when Section 1716 was developed, and contractors who follow Section 1716 feel that it is the right thing to do. He stated that Section 1716 has common sense approaches to safety that are working for employees in California, and as a result, the number of injuries due to falls has gone down. He asked the Board to focus on providing common sense safety for employees instead of just a 6-foot trigger height. He said that he is concerned that all of the work that was done to create Section 1716, which is working really well for the industry and providing a safer workplace, will be thrown away.

Mr. Thomas stated that even if the Board adopts the federal OSHA rule regarding the 6-foot trigger height, California can still keep the other portions of the standard that are working.

Ms. Stock stated that a tremendous amount has been accomplished by the collaborative efforts that have happened over the years that led to the development of a regulation that put California ahead of federal OSHA for protecting employees from falls, and she does not want to undo that work. However, she said that the consequence for not complying with federal OSHA's rule is too great, and it would be irresponsible to not follow it. She recommended telling federal OSHA that California will comply, but sufficient time will be needed to come up with a compliance plan so that California can meet the 6-foot trigger height requirement and preserve the parts of the current California law that have been carefully put together, as well as address the concerns that have been mentioned today.

Mr. Thomas stated that he would like the Board to have 60 to 90 days to decide what it will do instead of making a decision today. **Ms. Stock** stated that she wanted to hear from federal OSHA what their thoughts are on that. **Ms. Goto** stated that federal OSHA is looking for the Board to make a commitment on how it will move forward on this issue. She said that the Board has 3 options:

1. Comply with federal OSHA's request to change the trigger heights to 6 feet in the California standard, and submit a plan to federal OSHA stating how it will be done. This is the option that federal OSHA would prefer that the Board take.
2. Discuss this issue further before making a decision on how to proceed.
3. Make the decision to not comply with federal OSHA's request.

She said that if the Board decides not to comply, or the Board does not make a decision after further discussion on this matter, federal OSHA will issue a show cause letter to California giving the state 30 days to tell federal OSHA why it should not step in and enforce its 6-foot rule. After that, if California still does not comply, a federal registry notice would be issued.

Ms. Stock stated that she is ready to tell federal OSHA that California will comply with federal OSHA's request to move the trigger height to 6 feet, and that the Board would like to have some time to have discussion with stakeholders and develop a plan for how California will comply.

Ms. Hart stated that there are many ways that California can comply with federal OSHA's request. She said that if the Board chooses to meet with stakeholders and then develop a compliance plan, it will take some time to do that, and then after that, it will still have to go through the regular rulemaking process. She estimated that it could take at least 2 years to complete the entire process. **Ms. Goto** stated that that is longer than federal OSHA would like for it to take, but federal OSHA would have to see what the compliance plan entails. She said that the horcher process is an option too. **Ms. Hart** stated that the horcher process is an option, but it is not straightforward and simple in this case because the federal standard and Title 8 are very different. She said that whether the Board chooses to focus on just residential construction or all of construction, there will still be conflicts that need to be addressed outside of the horcher process because the horcher process is very restrictive on what can be done. She also stated that horchering the federal standard may create other issues, and this needs to be considered before a plan is made.

Mr. Harrison stated that he has several comments on this issue, but he would like to hear from the rest of the speakers first.

Erik Anderson, BSA Framing, stated that the Board's decision on this issue will have severe implications on employee safety and financial burdens on home buyers. He encouraged the Board to take time and think this through before making a decision.

Clark Bam, BMC, stated that the 6-foot rule will put employees in a dangerous situation, and the 15-foot rule that California currently has in place is much safer.

Richard Harris, President, Residential Contractors Association, stated that there are exceptions to the 6-foot trigger height in the California and federal standards that must be considered. He said that some exceptions in the California rule are necessary, and if they are not in the federal rule, they should be included in the California rule, such as the 30-foot fall height for iron workers. He stated that there is no way to joist, stack, and sheet on the inside of a building because there is nothing above the worker to tie off to. He said that federal OSHA had exceptions in its regulations from 1990 to 2010, and those exceptions allowed California workers to develop a plan to set a stack of joists on the wall, lay them down, and walk on them. However, since the exception was removed in 2010, it made it very difficult for them by not allowing them to even load the joists up there. He said that federal OSHA has forced them to comply and will not listen to other suggestions. He stated that exceptions are needed, and he asked the Board to look at both the California and federal regulations and come up with a good solution.

Dr. Callahan stated that the best way to go about this is to hold an advisory committee with stakeholders and federal OSHA to discuss this further and come up with a regulation that is more protective than what California has now. He said that there need to be exceptions in place for situations where the 6-foot trigger height is not feasible. He stated that there is room to find a way to comply with what federal OSHA is asking for while preserving the options that make compliance so good in California. He said that the California roofing regulations mention fall protection methods, and if the federal standard is horchered, that protection will go away, along with the 0-foot trigger height requirement for roofing.

Mr. Bland stated that from an engineering standpoint, it is easy to prove infeasibility with the federal 6-foot rule. He said that the Board must be careful about adopting the 6-foot rule because it goes back to the site-specific fall protection plan that California got rid of. He stated that in the federal OSHA steel erection standard, federal OSHA's standard ignores the fact that California did a lot of work analyzing each process that is done, and as a result, California's standard provides better protection than the federal standard.

Mr. Harrison stated that this issue should be sent back to the advisory committee process, moved up higher on the priority list, and be given an escalated timeline. He said that California's law regarding this can be made better, and the advisory committee can determine how it should be done. He stated that he reached out to stakeholders on this issue to get their opinion, and their opinions seem to be mixed. He believes that there is a way to strengthen the California rule while also complying with federal OSHA's request, but compliance and protection are equally important, and he does not want to vote on something that puts one of those ahead of the other.

Ms. Stock stated that the consequences of not complying with federal OSHA's request are too great. She said that the Board should tell federal OSHA that California will comply with its request, but input from an advisory committee will be needed to determine how California will get there. She stated that this will show federal OSHA that California is committed to complying with federal OSHA's 6-foot trigger height rule. She said that it would be a good idea to take the same compliance approach that the Board took regarding complying with federal OSHA's GHS standard: horcher the pieces of the federal standard that have to move forward, and then create another rulemaking that will preserve the good parts of the current California standard. She said that the advisory committee will help to navigate issues in the standard such as feasibility and exceptions.

Dr. Blink stated that since the Board just received word about this issue today, he would prefer to not take any action on it today, and further discussion on how to comply would be best. He said that there is the option of developing a standard that is at least as effective as the federal standard, which would be determined by federal OSHA. He said that he wants to know what the comparable number of injuries is per person or hours worked in the comparable California standard versus the federal OSHA standard, and what the comparable number of fatalities is that occur between 6 and 15 feet. He stated that he wants to go with whichever standard will protect workers the best. He said that the reasons for requiring fall protection to be used on the first story, and the kinds of fall protection that can be used, are reasonable. He also stated that for certain kinds of construction where a building is not enclosed and there are no tie-offs, weather may have a case for a built-in exception.

Ms. Stock stated that the injury data in this case is complicated, and it is not a good idea to use injury data to determine the effectiveness of a regulation because so many factors influence injury data. She said that the Board can commit to complying with federal OSHA's request, but a reasonable timeframe needs to be developed by which compliance can be achieved. She said that she would like to hear the Division's opinion on what the Board should do.

Mr. Berg stated that the Division recommends adopting the federal standard for fall protection in its entirety. He said that the Board would need to work with the Board staff to determine how to do that. He stated that federal OSHA will need to clarify whether the 6-foot trigger height needs to apply to the entire construction standard or only to residential construction. He also said that federal OSHA needs to inform its stakeholders about what it wants the Board to do at this stage, and what parts of the Cal/OSHA program it intends to take over if its requirements are not satisfied. He stated that if federal OSHA does take over, it would be taking over approximately 1/3 of the Division's work, and this could result in a 1/3 cut in funding to the Division, as well as create logistical bumps for the Division and problems regarding complex joint jurisdiction.

Ms. Hart stated that adopting the federal rule will have a tremendous economic impact on California, and this impact must be addressed. She said that data will need to be gathered to determine what that economic impact will be, which will take some time. She stated that if this action will have a significant impact on housing costs, that impact will need to be determined, as well as what the resulting costs will be, which will also lengthen the process. She said that these things will need to be done, even if the Board chooses to honor the entire federal standard, so that all possible conflicts will be addressed.

Ms. Smisko stated that this is a process that she has never seen before, and it feels like the Board will have to make a split second decision that will impact the Division's funding. She said that the testimony today only made it more confusing, so more information is needed. She stated that the Board should spend the next 30 days working with the Division, federal OSHA, and attorneys to come up with something that clarifies what options and processes are available for the Board to consider.

Mr. Thomas asked Ms. Hart if it would be proper to make a motion that the Board will comply with federal OSHA's request at some point in the future, but will have to convene an advisory committee to come up with exceptions to the fall protection rule. **Ms. Stock** stated that making a motion that includes finding exceptions would be too specific, and if an advisory committee is convened, the advisory committee will be better able to determine if exceptions are needed, and if they are, what they should be. She said that she is quite surprised that the Division is recommending that the Board comply with federal OSHA's request, but based on that recommendation and federal OSHA's request, she feels that a motion could be made as follows:

The Board agrees to comply with the federal OSHA standard and will set up an advisory committee process to determine the best way to reach compliance, as well as how to preserve the good parts of the current California standard.

She stated that the in the next month or so, the Board staff, Division, and federal OSHA could come up with a proposed timeframe and process to present to the Board for consideration.

Mr. Thomas asked how the Board can agree to comply with federal OSHA's request when it does not know what the cost will be. **Ms. Hart** stated that if the Board decides to adopt the federal rule verbatim and relies on federal OSHA's evaluation of the cost, the Board staff extrapolates 12.7% of that cost as California's cost and uses federal OSHA's numbers as the basis for the cost. She also said that if the Board chooses to adopt a standard that is identical to federal OSHA's standard, it would be exempt from having to comply with the APA requirements, one of which is performing an economic impact analysis. **Mr. Thomas** stated that because the Board was just made aware of this issue today, and there is a lot of confusion surrounding it, he is not going to vote on it today. He said that the Board and Division staff can provide recommendations in the future for the Board to consider before it makes a decision.

Mr. Healy asked the Board to be mindful of the terms "compliance" and "effective" in this case because they are very distinct terms. He said that there could be problematic ambiguity with using the term "compliance" instead of "effective", and it could result in the Board's motion being more restrictive than the Board may be intending.

Mr. Thomas called for a break at 1:55 p.m. and reconvened the meeting at 2:15 p.m.

MOTION

A motion was made by Mr. Harrison and seconded by Mr. Thomas to make a commitment to federal OSHA to move the trigger height to 6 feet, with no commitment to a specific timeline or to how it will happen, and with the commitment to involve stakeholders in the process by holding an advisory committee.

Ms. Stock stated that directing the Board and Division staff through the Board's motion to use the advisory committee process may not move this issue forward. She recommended changing that portion of the motion to say that the Board would like for the Board staff and Division to come back in the near future with suggestions regarding the best way to proceed on this matter.

Ms. Hart stated that there are some options that the Board could consider:

- The Board could choose to horcher the entire federal standard and then determine what to do to bring back other parts of the California standard that may have been lost. If the Board chooses to do that, the Division and Board staff would bring a proposal back to the Board, along with a summary showing how the federal standard impacts the current California standard. She said that it is not a simple thing to do, and it will take some work.
- The Board could choose to have the Division and Board staff go into the current California standard and only change all of the trigger heights to 6 feet, leaving the rest of the California standard intact.

Mr. Healy stated that there is potential for ambiguity with Ms. Stock’s amendment to the motion. He said that it brings into question whether exceptions will be allowed, or if it will be a verbatim horcher. He advised the Board to consider using the term “come into compliance” or be much more specific about what is meant by 6 feet and how the Board intends to use it.

Mr. Harrison stated that the goal of his motion is to reach the 6-foot trigger height through stakeholder input. He said that he is willing to accept Ms. Stock’s amendment to his motion, but he does not want to limit how the 6-foot trigger height is reached and wants to ensure that stakeholders are able to give their input.

Dr. Blink stated that he is hesitant to commit to a specific action on this regarding all of construction because data has not been presented that shows the implications of it. He said that careful thought should be given to the Board Members’ concerns about protecting workers and complying with federal OSHA’s rule. He recommended that the motion state the following:

“The Board agrees to move forward with all deliberate speed to comply with Section 1954.3(b)(2).”

He also stated that there have been many technological advances made in fall protection equipment that the advisory committee should consider, and how they can help California to comply with federal OSHA’s rule.

Mr. Thomas asked Mr. Healy if it would be better to say that the Board “will come into compliance with” Section 1954.3(b)(2). **Mr. Healy** stated that if the Board wants to direct the Board staff and Division to make compliance a priority and have them addressed right away, he recommended adding the term “address expeditiously”. **Mr. Thomas** asked Mr. Healy to draft a motion for the Board to consider after the other items on the Board’s business meeting agenda have been completed.

B. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
Section 3328(a)
Definition of Adequate Design

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 Ms. Quinlan and seconded by Ms. Stock that the Board adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 4307
**Exception for Portable Power-Driven Circular Saw Blade
Guarding (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 Dr. Blink that the Board adopt the proposal.

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

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 4412
**Pulp, Paper and Paperboard Mills – Conveyor Warning Sign
(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. Stock that the Board adopt the proposal.

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

C. **PROPOSED PETITION DECISIONS FOR ADOPTION**

1. Jeff Buchanan
Petition File No. 549

Petitioner requests the Board to amend Title 8, General Industry Safety Orders, Section 3424(c) to add additional brush chipper safety.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to deny the petition.

MOTION

A motion was made by Ms. Quinlan and seconded by Ms. Stock that the Board send the petition to an advisory committee to look at the safety and economic benefits of such a regulation, as recommended by the Division in its evaluation.

Ms. Hart asked Mr. Berg to clarify the Division's recommendation. **Mr. Berg** stated that the concept of having a passive device is a good one and should be discussed in an advisory committee. **Ms. Hart** asked what the Division and Board staff would do if the concept is good, but there are no products to look at. **Mr. Berg** stated that the Division and Board staff would gather more data from the advisory committee to see what other passive devices are out there. **Ms. Hart** stated that she wants to make sure that there is something out there for the Division and Board staff to study, not just a concept, and an advisory committee should not be held just to see what's out there. **Ms. Stock** stated that it seems that the reason that the petitioner and the Division are recommending sending this to advisory committee is because they feel there may be some value in having a standard that requires passive restraint devices to be used when working with wood chippers, and the advisory committee can help look into whether or not they should be required.

Ms. Quinlan recommended setting up an advisory committee to look into the possibility of mandating the use of passive restraint devices in the wood chipping industry.

Ms. Smisko stated that someone could easily do a search to see if there are other passive restraint devices available, so an advisory committee may not be needed to do that. **Mr. Thomas** recommended amending the motion to send the petition to an advisory committee if necessary because it is unknown what types of passive restraint devices are out there. **Mr. Berg** stated that the Division could do the search to see if there are other passive restraint devices available.

MOTION

A motion was made by Ms. Quinlan and seconded by Ms. Stock to grant the petition to the extent that the Division will explore additional passive restraint device technology for wood chippers and, if it exists, convene an advisory committee to evaluate the merits of having a rule mandating the use of passive restraint devices.

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

2. Zoe Palitz **Petition File No. 550**

Petitioner requests the Board amend Title 8, Construction Safety Orders, to establish a vertical standard for the training and certification of paint preparation and coatings technicians for corrosion prevention of steel and concrete infrastructure surfaces.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to grant the petition to the extent that an advisory committee is convened.

MOTION

A motion was made by Ms. Quinlan and seconded by Mr. Harrison that the Board adopt the proposed decision to deny the petition.

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

3. Ronald Rudolph
Petition 551

Petitioner requests the Board amend Title 8, General Industry Safety Orders, Section 3423, with regard to employees engaged in tree trimming activities.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to deny the petition.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Quinlan that the Board adopt the proposed decision to deny the petition.

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

D. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he was aware of no unresolved legal issues that would prevent the Board from adopting the items on the consent calendar.

MOTION

A motion was made by Mr. Harrison and seconded by Dr. Blink to adopt the consent calendar.

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

RETURN TO DISCUSSION FOR RESIDENTIAL CONSTRUCTION FALL PROTECTION TRIGGER HEIGHTS

Mr. Healy stated that the following motion may provide an initial point of policy for the Board to consider that contains the specificity and latitude that the Board is looking for:

The Board directs staff to treat as high priority, and to work expeditiously in support of the Board, to ensure California regulatory compliance with federal construction fall protection standards.

MOTION

A motion was made by Mr. Harrison to direct staff to treat as high priority, and to work expeditiously in support of the Board, to ensure California regulatory compliance with federal construction fall protection standards.

Ms. Stock asked if it would make sense to add something to the motion to request that the Board staff and Division come back to the Board with recommendations of a process or plan on how they will do that, and to make sure it includes stakeholder involvement. **Mr. Harrison** stated that the phrase “through a work plan and stakeholder involvement” could be added to the end of the motion. **Mr. Healy** recommended that the Board begin with general terms of what it wants done, and in the future, it can add more specificity.

MOTION

A motion was made by Mr. Harrison and seconded by Dr. Blink to direct staff to treat as high priority, and to work expeditiously in support of the Board, with stakeholder involvement, to ensure California regulatory compliance with federal construction fall protection standards.

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

E. OTHER

1. Executive Officer’s Report

Ms. Hart stated that the 2015 Year in Review is included in the Board packet. She said that in 2015, there were 465 variances, only 10 of which were not for elevators. She stated that the Division is working on revising the Elevator Safety Orders and hopes to get that to the Board sometime in 2016. She said that the revised safety orders will eliminate the need for a lot of the elevator variances.

Ms. Hart stated that the list of proposed OSHSB 2016 rulemaking projects is also included in the Board packet. She said that some of these projects will spill over into 2017, but others are already in progress, such as:

- Electric Power Generation Distribution and Transmission, which is a large and lengthy process and is still being reviewed by the Board staff.
- Nighttime Illumination and Use of High Visibility Attire for Agricultural Operations. 2 advisory committees have already been held regarding this issue, and the Board staff is currently reviewing the fiscal impact of it. She said that the Board staff hopes to notice it for public hearing in a few months.
- Update of Firefighter Personal Protective Equipment Consensus Standards. A second advisory committee was held in southern California yesterday regarding this issue.
- Consolidation of the Crane and Derrick Standards from the Construction Safety Orders into the General Industry Safety Orders, which is currently with a Board staff analyst for review.

She stated that this list does not include rulemakings that the Division is planning to send to the Board, such as the revised elevator safety orders, process safety management, and hotel housekeeping. **Mr. Berg** stated that the Division is finished with the advisory committee process and is responding to comments and finalizing the rulemaking documents for hotel housekeeping. He said that the Division plans to submit it to the Board staff in June.

Ms. Quinlan asked for an update on the proposals for sexually transmitted infections and workplace violence in healthcare. **Ms. Hart** stated that the Board staff is planning to bring the rulemaking for sexually transmitted infections to the Board for a vote at next month's meeting, but the Board staff is waiting for the Department of Finance approval. She said that the Division is working on summarizing and responding to comments received during the public hearing last month for workplace violence prevention in healthcare, and will determine whether or not it will issue a 15-day notice to clear up some inconsistencies in the health and safety code. **Ms. Quinlan** asked what the deadline is by which the workplace violence prevention proposal must be adopted. **Mr. Berg** stated that the rule must take effect on July 1, 2016. **Ms. Hart** stated that in order for that to happen, the Board will need to take action on it in May or June. **Ms. Smisko** asked Mr. Berg when that 15-day notice will be issued. **Mr. Berg** stated that he was not sure, but will find out from the Division and report back to the Board at next month's meeting.

Ms. Stock asked Mr. Berg about beginning the process to develop a workplace violence prevention regulation for all workplaces. **Mr. Berg** stated that the process has not started yet because the person who was going to start working on it has retired. He said that the project will be picked up again when the Division hires again or has staff available to work on it. He estimated that the advisory committee process will begin before June.

2. Future Agenda Items

No other future agenda items were suggested.

A moment of silence was held in memory of Board Member John Sacco.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 3:15 p.m.