

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

PETITION FILE NO. 572

BOARD STAFF EVALUATION

Submitted by: Elisa M. Koski, Senior Safety Engineer

May 1, 2019

INTRODUCTION

On December 3, 2018, Ms. Pamela Murcell, President of the California Industrial Hygiene Council (Petitioner), requested that an advisory committee be formed to consider amending the Injury and Illness Prevention Program (IIPP), General Industry Safety Orders, Section 3203.

REQUESTED ACTION

The Petitioner requests that Section 3203 be amended as follows:

1. To define “effective” within 3203(a).
2. To require a competent person to be the IIPP administrator.
3. To amend Section 3203(a)(4) to require workplace inspections be conducted by a qualified person.
4. To amend Section 3203(a)(5) to incorporate a qualified person requirement for accident investigations. The qualified person could be an employee or a third party.
5. To amend Section 3203(c) to require employers with more than 20 employees have mandatory labor/management safety meetings.

PETITIONER’S ASSERTIONS

The Petitioner asserts that there were 9,883 IIPP violations recorded in California fiscal years 2014-2018 with Section 3203(a) being cited the most frequently with 4,080 citations.

The Petitioner cited several examples of wording from citations issued by the Division of Occupational Safety and Health (Division) as a basis for recommending that Section 3203 be amended. Citations alleged employers failed to comply with the various subsections of 3203.

1. The Petitioner requested that Section 3203 define “effective” and provided the Merriam-Webster definition of effective and effectiveness. The Petitioner stated, “Our recommendation for determining an effective IIPP would be one that has a written program in compliance with the basic Cal/OSHA elements; has a “competent person” as the IIPP administrator; can demonstrate employee awareness and involvement; is providing training to line employees, supervisors, and upper level management which imparts information and skills each of these groups needs to ensure that all health and safety issues are fully addressed; and can document that planned activities are being realized.”
2. The Petitioner recommended amending subsection (a)(1) to require a competent person to be the IIPP administrator. The Petitioner recommended language for (a)(1) as follows: “The employer shall appoint a competent person to administer their health and safety duties. A competent person is someone with the necessary skills, knowledge and experience to manage health and safety, recognize the hazards and risks in operational activities, and assure availability of the correct measures to control and manage those hazards and risks.”

3. The Petitioner recommended subsection (a)(4), which requires workplace inspections, incorporate a qualified person requirement. The Petitioner suggested that the qualified person could be an employee or a third party. “A qualified person should be defined as a person designated by the employer who by reason of training, experience, instruction or certification from a recognized occupational health and safety organization (e.g., ABIH, BCSP)¹ has demonstrated the ability to identify and evaluate workplace hazards. As above, we propose to use language that is consistent with many other regulations found in Title 8 requiring a “qualified person”.”
4. The Petitioner recommended subsection (a)(5), which requires the IIPP include procedures to investigate occupational injuries and illnesses, to include the requirement that a qualified person conduct the accident investigation. The qualified person could be an employee or a third party.
5. The Petitioner recommended amending subsection (c) to require that employers with greater than 20 employees be required to have a labor/management safety committee. Currently, subsection (c) language allows safety committees as an option.

The Petitioner listed the following references:

1. ISO 45001 “Occupational health and safety management systems – Requirements”
2. Health & Safety Executive, What is Competence?
3. RAND Corporation, “An Evaluation of the California Injury and Illness Prevention Program”, 2012.
4. Title 8 California Code of Regulations Sections 3203 and 1509.
5. California Labor Code Section 6401.7
6. Division of Occupational Safety and Health, Policy and Procedure Manual, P&P C-45A, 4/1/2003, “Enforcement of 8CCR Section 3203: Injury and Illness Prevention Program with Checklists for Self-Inspection”.
7. Cal OSHA Reporter, May 11, 2018, Vol 45, No 18.
8. Cal OSHA Reporter, May 21, 2017, Vol 44, No 18.
9. Cal OSHA Reporter, May 6, 2016, Vol 43, No 18.

STAFF EVALUATION

The injury and illness prevention program (IIPP) is a regulation, codified in California Code of Regulations, Title 8, General Industry Safety Orders, Section 3203, requiring employers to establish, implement, and maintain a written health and safety program to minimize or, where

¹ ABIH – American Board of Industrial Hygiene, BCSP – Board of Certified Safety Professionals

possible, eliminate injuries and illnesses to employees. It is a general program meant to apply to all employers. Section 1509 of the Construction Safety Orders requires employers to follow Section 3203. An IIPP is also required by other vertical safety orders, which refer to Section 3203.

The portions of 3203 that the Petitioner requests be modified, in relevant part, are:

- (a) Every employer shall establish, implement and maintain an effective IIPP.
- (1) Identify the person or persons with authority and responsibility for implementing the Program.
- (4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices.
- (5) Include a procedure to investigate occupational injury or occupational illness.
- (c) Employers who elect to use a labor/management safety and health committee to comply with the communication requirements of subsection (a)(3) of this section shall be presumed to be in substantial compliance with subsection (a)(3) if the committee follows [seven listed requirements].

Background

Section 3203 existed before the current version known as the IIPP. It was called the Accident Prevention Program. The current version of Section 3203 came about as a result of Chapter 1369, Senate Bill 198 (SB 198) passed in 1989, and from two petitions (OSHSB Petition Nos. 222 and 224) submitted to the Standards Board in 1986. SB 198 provided the basic requirements of the program and resulted in Labor Code Section 6401.7. The resulting elements of Section 3203 closely mirror the Labor Code.

- A person designated to be responsible for implementing the program
- A system to assure compliance with the program (i.e. recognition and disciplinary policy)
- Communication between management and employees
- Hazard identification (workplace inspections)
- Injury and illness investigation
- Correction of identified unsafe and unhealthy conditions
- Training of supervisors and employees

Although the IIPP has a specific framework, Section 3203 is a performance-based standard. The employer is required to develop an IIPP and, ideally, tailor it to their company's operations.

In evaluating the petition, Board staff reviewed several documents and internet sources. Refer to the list of references at the end of this evaluation.

Relevant Standards

Federal Standards

Federal OSHA does not have a regulation that requires employers to have a generalized written health and safety program similar to California's IIPP. OSHA held stakeholder meetings in 2010 regarding a proposed regulation they called "I2P2" and mentioned it in a 2014 budget justification report (<https://www.dol.gov/dol/budget/2014/PDF/CBJ-2014-V2-12.pdf>). It was considered a top priority during President Obama's administration, but nothing came to fruition and now the item is tabled.

Consensus Standards

The International Organization for Standardization (ISO) 45001, Occupational Health and Safety Management Systems—Requirements, is an international consensus standard that was developed from the input of experts from more than 70 countries. The standard was published in March 2018 and replaces previous consensus standards such as, The International Labour Organization's guidelines (ILO-OSH 2001), and Occupational Health and Safety Management (OHSAS 1800).

ISO 45001 contains several elements very similar to California's IIPP, but is more comprehensive. The requirement that employers continually improve their program is notably different from IIPP requirements.

ANSI/AIHA Z10-2012, American National Standard – Occupational Health and Safety Management Systems, is the United States' consensus standard for occupational safety and health. Z10 is similar to ISO 45001. It also recommends an annual management review of an organization's program.

ISO 45001 states that the organization shall ensure that workers are competent (including the ability to identify hazards) on the basis of appropriate education, training or experience. Likewise, ANSI/AIHA Z10-2012 mentions that employees, as well as contractors, need to be trained to be aware of their roles in the occupational health and safety management system. Training responsibilities should include hazard recognition, risk assessment, mitigation, etc. However, neither standard specifies a particular certification requirement.

Other Standards, Guidelines, Codes

California is one of the few states whose occupational safety and health regulations differ significantly from Federal OSHA's. Most states that have approved state plans simply adopt Federal OSHA regulations verbatim including the numbering system. A few states have their own numbering system (i.e. California, Washington), but most states that have unique regulations insert them with a different numbering system.

State plan states with some requirement for a health and safety program include: AK, AZ, CA, HI, KY, LA, ME, MN, MO, MT, NC, NE, NH, NM, NV, NY (government only), OK, OR, PA, TX, UT, VA, WA, and WV. Some of these states also provide incentives to certain employers that do not meet the regulatory threshold for a required plan. The states that offer incentives for health and safety plans but do not require them are CO, FL, MA, ND, OH, and WY.

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(Source: <https://safety.blr.com/workplace-safety-news/safety-administration/safety-plans/OSHAS-I2P2-Injury-and-Illness-Prevention-Program-I/>).

Position of Division

The Division's evaluation, dated April 5, 2019, recommended the petition be denied.

Analysis

In evaluating the petition, Board staff reviewed the 1990 rulemaking file to determine how the existing language in the regulation was determined. The file contained notes indicating an advisory committee met three times in 1990. The Board adopted the resulting language in Section 3203 in August 1990. No significant changes have been made to the regulation since the injury and illness prevention program became effective in 1991.

The 1990 rulemaking file addressed most of the points raised in this petition.

Petitioner's request to define "effective"

Within the 1990 rulemaking file there was a suggested discussion item to define "effective" but no notes regarding the discussion were in the file. However, a written comment from Mr. Stuart L. Niesen, Corporate Safety Engineer Specialist, Northrup Corporation from August 1990, recommended the word "effective" be defined in subsection 3203(a).

The Board staff response was:

"The term "effective" is defined by Webster as "producing a decided, decisive or desired effect." It is unnecessary to place a definition into Title 8. It is the Board's belief that a written effective program will help in the reduction of lost time injuries where needed and maintain safe work environments where a working program already exists. 100% effectiveness is a goal, but understandably an idealistic endeavor."

Effective is used throughout Title 8. Defining it within the context of Section 3203, could prove problematic. Section 3203 is a performance standard, which is what the advisory committee desired. To define it to a specific meaning could have unforeseen and unintended consequences. For example, Section 5189.1, Process Safety Management for Petroleum Refineries, uses "effective" 66 times.

The Petitioner's request that the IIPP administrator be a competent person and the person performing workplace inspections be qualified.

The Petitioner's request that the IIPP administrator be a competent person appears desirable on the surface. Section 1504 of the Construction Safety Orders defines competent person as, "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."

Title 8 Section 1504 of the Construction Safety Orders defines qualified person, "Qualified Person, Attendant or Operator. A person designated by the employer who by reason of training, experience or instruction has demonstrated the ability to safely perform all assigned duties and, when required, is properly licensed in accordance with federal, state, or local laws and regulations."

A definition of qualified is not found in Title 8 General Industry Safety Orders, but Federal OSHA's walking-working surfaces regulation incorporates a definition of qualified. "Qualified describes a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work, or the project."

One of the proposed versions of Section 3203 in 1990 stated in relevant part, "Capable, responsible supervisors make regular inspections." However, that language did not make it into the final version because of public comments.

Board staff comment from the 1990 rulemaking file:

"The statute requires the employer to establish, implement and maintain an effective written illness and injury prevention program. The statute does not require that the regulation go into the employer's management chain and dictate policy. As long as the responsible person is clearly stated and the person is aware of his/her responsibility to carry out the program, this is all that the statute requires. It is incumbent upon the Division to determine this through interviews and through actual inspection of the site to determine whether the program is effective or not."

Board staff agrees—it is incumbent upon the employer to obtain the resources necessary to have an effective program. To mandate that the responsible person, the person(s) who conducts workplace inspections and accident investigations have a particular certification or training could place a significant financial burden on the employer and it is not necessary to render the IIPP effective.

Since adoption of Section 3203 in 1991, the IIPP has been one of the most frequently cited sections during inspections. Many small employers have no written program at all, while others who have one, may have either the Division's model program or a program created by a third party consultant. Indeed, the statistics published in the Cal-OSHA Reporter, May 11, 2018, Vol 45, No 18, May 21, 2017, Vol 44, No 18 and, May 6, 2016, Vol 43, No 18, cited by the Petitioner, show that the IIPP was cited more than any other section.

The California Commission on Health and Safety and Workers' Compensation (CHSWC) funded the 2012 RAND, Center for Health and Safety in the Workplace, report, also cited by the Petitioner. The report indicated that Cal/OSHA inspectors relied too heavily on determining whether an employer had a written IIPP and spent too little time determining how the program actually worked. The RAND report also noted that the Division's policy is to cite only 3203(a) unless one of the other IIPP violations are cited as serious. This is set forth in the Division's policy & procedure (P&P) manual, section C-45A. The footnote in the RAND report (page 45) stated the policy should change. The RAND report was silent regarding specifically how the policy should change and, as of this writing, P&P section C45-A remains the same and shows no updates by the Division since 2003.

Although, there may be a greater than expected number of workplaces in California that are not in compliance with the established (since 1991) requirements of Section 3203, adding additional requirements to the IIPP, will not necessarily remedy this and make workplaces safer.

The Petitioner's recommendation to require that employers with greater than 20 employees have a mandatory labor/management safety committee.

Section 3203 allows employers to use a safety committee as a means to communicate safety and health information to its employees, but it is an option, not a mandatory requirement. The larger an employer is, the more likely it is that they have a committee.

Interestingly, within the legislative counsel's digest for SB 198 was the following, "This bill would require the standards board to adopt a standard setting forth the employer's duties with regard to the injury prevention program, including, among other things, requiring an employer and employee occupational health and safety committee with specified duties for specified size and types of employers."

However, the final version of Labor Code 6407.1 did not contain the requirement for compulsory safety committees. Subsection (f) states in relevant part, "...shall specifically *permit* [emphasis added] employer and employee occupational safety and health committees to be included in the employer's injury prevention program."

The 1990 advisory committee followed the Labor Code and chose to make having a safety committee an option. This is clarified through the response to a comment made by Elizabeth Treanor, Organization Resources Counselors, Inc. (ORC):

"ORC is concerned that the language in section 3203(a)(3) may be construed to require all of the communication methods identified. ORC recommends inserting the word "may" to read "Substantial compliance with this provision may include meetings,..."."

The Board responded, "*Subsection 3203(a)(3) is constructed using accepted rules of grammar which permit the use of "or" within the sentence to denote that any of the listed conditions may be acceptable as fulfilling the intent of the regulation. Therefore, no additional modifications are necessary.*"

The RAND report found when the Division cited Section 3203(a) it did not result in an improvement in injury rates. However, citations for a specific 3203 subsection, such as (a)(7) for training, were followed by improvements in injury rates. The study found the decreases in injury rates occurred both where the inspection citing the subsection was due to an accident investigation and where it was not.

A study called, “The Pennsylvania Certified Safety Committee Program: An evaluation of Participation and Effects on Work Injury Rates”, Liu et al., 2010, unexpectedly found that companies that voluntarily started joint labor-management safety committees in return for a 5 percent reduction in their worker’s compensation insurance premium, had a worse rate of injury compared to a control group of companies that did not participate.

The study showed that although companies stated they had a committee, when they were audited, some had none at all, while others had deficiencies. Those that were most compliant did see a reduction in injury rates. There were no penalties for being non-compliant, such as losing the 5 percent discount. The study did find, however, that training members of the safety committee resulted in improvements in injury rates.

Several states require safety committees depending on employer size, workers compensation experience modification rating, or other factors. Some states require a safety committee due to workers compensation requirements, while other state’s OSHA regulations require one. The states listed below require a safety committee in most circumstances.

Minnesota Statute Section 182.676 requires all employers with 25 or more employees to have a joint labor-management safety committee.

Montana Code 39-71-1505 requires employers with five or more employees to have a joint labor-management safety committee. The requirement may be waived if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory modification factor, if applicable, or has a low incident record of injuries.

Nevada Revised Statutes 618.383 requires an employer with more than 25 employees, or if an employer’s employees are engaged in the manufacture of explosives, to establish a safety committee. The safety committee must include representatives of employees. If the employees are represented by a labor organization, the representatives of employees must be selected by the employees and not appointed by the employer.

New Hampshire Labor Code 281-A:64 requires every employer with 15 or more employees to establish and administer a joint loss management committee composed of equal numbers of employer and employee representatives. The employees shall select employee representatives. If a union represents workers, the union shall select the employee representatives. The joint loss management committee shall meet regularly to develop and carry out workplace safety programs, alternative work programs that allow and encourage injured employees to return to work, and programs for continuing education of employers and employees on the subject of workplace safety. The committee shall perform all duties required in rules adopted pursuant to this section.

Oregon Administrative Rule 437-001-0765 requires every employer to have safety meetings or a safety committee. If an employer has more than 10 employees in one location, it must have a safety committee. Other considerations apply for the construction, agriculture, and logging industries.

Washington Administrative Code 296-800-140 accident prevention program requires all employers that employ 11 or more employees on the same shift at the same location to establish safety committees.

Board staff could find no studies to indicate whether states' injury and illness rates improved after the requirement to have a safety committee became effective. Neither ANSI/AIHA Z10 nor ISO 45001 specify requiring mandatory safety committees.

The Petitioner listed examples of Division citation wording as a basis for the petition and provided references with statistics of how often Section 3203 was cited. The Petitioner asserts that amending Section 3203 to incorporate their requested changes will make the workplace safer, but they offer no evidence to support their hypothesis.

Board staff research found that California has consistently had one of the lowest workplace fatality rates in the country. In 2015, 2016, and 2017 it held steady at 2.2 fatal injuries per 100,000 workers. In comparison to other states, California ranked fifth lowest in the rate of workplace fatalities in 2016 and 2017 (the years for which the comparison is available).

The written IIPP is one of an employer's most effective means of addressing workplace hazards systematically. The existing IIPP requirements for communication, training, periodic inspections, disciplinary action, and accident investigation make the program an effective means of protecting workers on the job.

However, the overall effectiveness of the IIPP is a direct result of the employer's intention to conform to the requirements. Factors that will improve workplace safety include management making a commitment to the concept that a safer workplace has intrinsic benefit in both workplace morale and the bottom line. The IIPP standard has now been in place for 28 years and remains the most cited regulation. It is unclear whether adding additional qualification requirements for the IIPP administrator, person(s) who conduct workplace inspections and accident investigations or requiring mandatory safety committees would improve the workplace injury and illness rate.

In summary, although the IIPP is the most often cited regulation by the Division, adding requirements to the program as given by the Petitioner's requested amendments, will not ensure that the workplace will be safer or that the IIPP will become better at doing the job for which it was intended. What is needed is employer awareness of the regulation and recognition of its importance to workplace safety and health.

STAFF RECOMMENDATION

For the reasons stated above, Board staff recommends Petition File No. 572 be DENIED.

References

The 1990 rulemaking file for the current version of Section 3203.

The California Legislative Counsel's Digest pertaining to SB 198.

Bureau of Labor Statistics, www.bls.gov

The report, "Senate Bill 198: Impact and Effectiveness on Workers' Health and Safety" results of a sixteen-question survey taken in 1992 on the effectiveness of the IIPP.

The 2012 RAND technical report, entitled, "An Evaluation of the California Injury and Illness Prevention Program"

©Cal-OSHA Reporter tables for most cited safety orders from May of 2015, 2016 and 2017.

California Code of Regulations Title 8 Section 3203

California Labor Code 6407.1

Division of Occupational Safety and Health, Policy and Procedure Manual, P&P C-45A, 4/1/2003, "Enforcement of 8CCR Section 3203: Injury and Illness Prevention Program with Checklists for Self-Inspection"

Federal OSHA and State OSHA websites

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The Pennsylvania Certified Safety Committee Program: An evaluation of Participation and Effects on Work Injury Rates”, Liu et al., 2010

Injury and Illness Prevention Programs White Paper, January 2012,
<https://www.osha.gov/dsg/InjuryIllnessPreventionProgramsWhitePaper.html>

ANSI/AIHA Z10 - 2012 American National Standard-Occupational Health and Safety Management Systems.

OHSAS 18001:2007 – Occupational health and safety management systems –requirements.

ISO 45001:2018 – Occupational health and safety management systems – Requirements with guidance for use.