

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
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(916) 274-5721

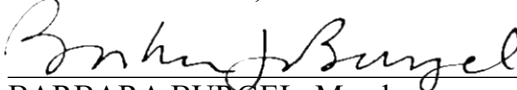
In the Matter of a Petition by:)
) PETITION FILE NO. 580
Scott Swaaley)
CEO, MAKESafe Tools)
scott@makesafetools.com)
)
_____ Applicant.)

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

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD



DAVID THOMAS, Chairman



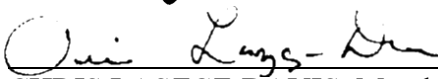
BARBARA BURGEL, Member



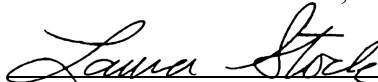
DAVE HARRISON, Member



NOLA KENNEDY, Member



CHRIS LASZCZ-DAVIS, Member



LAURA STOCK, Member

By:


Christina Shupe, Executive Officer

DATE: December 17, 2020

Attachments

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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 580)**

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on March, 17, 2020, from Scott Swaaley, CEO, MAKESafe Tools, Inc. (Petitioner). The Petitioner requests the Board to amend Title 8, Section 2530.43, to clarify the existing anti-restart (AR) standard as well as add current federal Occupational Safety and Health Administration (OSHA) language to Title 8, Section 4001 to better align with federal OSHA requirement (1910.213(b)(3)).

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. This time frame has been extended 120 days, by Governor Gavin Newsom's Executive Orders N-63-20, and N-71-20, in recognition of the State of Emergency caused by COVID-19.

Further, as required by Labor Code Section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation. The Division has 60 days after receipt to submit an evaluation regarding the proposal; this timeline, running concurrently with the Board's timeline as described above, has also been extended 120 days pursuant to Executive Orders N-63-20 and N-71-20.

SUMMARY

The Petitioner requests the Board take one or more of the following courses of action to resolve his concern:

- Work with Nationally Recognized Testing Laboratories (NRTLs) to withdraw Underwriters Laboratory (UL) Listings for AR devices currently listed under UL244A (Appliance Controls) and work with manufacturers to transition these products into UL508 compliance.
- Publish a general notice to businesses that such products present a safety hazard and clarify other options for mitigating against unintentional restarts (UL508 listed products, UL508A control panels, etc.).

- Require manufacturers of AR devices that are not NRTL listed for safe use with motors and machinery to explicitly state such on their literature and labeling.
- Clarify the existing Cal/OSHA AR standard (Title 8, Section 2530.43) and better align with the federal OSHA requirement (29 Code of Federal Regulations (CFR) Section 1910.213(b)(3)) by adding current federal OSHA language to Title 8 Section 4001 - Machine Power Control: “On applications where injury to the operator might result if motors were to restart after power failures, provision shall be made to prevent machines from automatically restarting upon restoration of power.”

DIVISION’S EVALUATION

The Division’s evaluation report dated November 20, 2020, concludes the Petitioner’s proposed amendment of Title 8 Section 4001 is not necessary to “align” Title 8 with federal OSHA regulations. Title 8 subsection 4296(q) (see text in part 4.0 of the Division evaluation) is already identical to 29 CFR subsection 1910.213(b)(3). Both the federal and Title 8 subsections apply only to woodworking equipment.

The Division also concludes the proposed change is not necessary because the hazards created by the restarting of motors regulated by Section 4001 are currently addressed by Section 4002, which requires guarding of hazardous moving parts of machinery and equipment. Therefore, the automatic restarting of motors after power failure would not create a hazard for components of machinery if guarded as required by Section 4002. Additionally, Title 8 Section 3314 requires the locking and/or tagging of machinery and equipment power sources during cleaning, repairing, servicing, setting-up, and adjusting operations

The Petitioner’s concern regarding the use of AR devices that are not approved for use with industrial machinery is already addressed by Title 8 regulations. Pursuant to Title 8 subsection 2305.4(a) (see text in part 4.0 of the Division evaluation) of the Low-Voltage Safety Orders, all conductors and equipment must be approved for their use by a nationally recognized testing laboratory or other entity with registered engineering or demonstrated competence to perform such evaluation.

Pursuant to both Title 8 Sections 2530.43 and 4296(q), machinery that cannot injure a worker when automatically restarting is not required to be equipped with an AR device. An example of this type of machinery is an electric motor running a buffing wheel with a soft cloth attachment for polishing. Despite the fast spinning wheel, a worker who makes contact with the soft buffing cloth would not be injured. The opposite extreme would be a table saw.

Additionally, Title 8 Section 2530.43 only requires low-voltage electric motors to have anti-restart functionality for shutdown due to overloading. The Division’s research shows that during the 2001 rulemaking, the Board concluded that the requirements of Section 2530.43 were adopted nearly verbatim from Section 430-43 of the 1999 edition of NFPA 70. This section more clearly states that motors are not to restart following overload tripping and hence it was the intent of Title 8 Section 2530.43 to apply to the restarting of motors due to overload conditions.

Unlike Title 8 Section 2530.43, subsection 4296(q) applies to the restarting of machinery when power is restored after power failures. However, as this subsection is included in Article 59, the requirement applies only to woodworking machinery equipment. Therefore, other types of machinery such as metal working machines and power operated presses are not required to have an AR device. The Division notes that such equipment also has the potential to cause injury upon restarting when power is restored following a power failure but is not currently addressed by Title 8 regulations.

The Division finds that several of the requests within the Petitioner's application are not within the scope of Cal/OSHA's jurisdiction, such as work with NRTLs and manufactures to withdraw consensus standard listings and notices to the public regarding hazards, and would be better directed to the Cal/OSHA Consultation Service or Communications and Publications Units as appropriate. Also, the Petitioner's request to require manufacturers of AR devices to state explicitly when their devices are not rated for industrial machinery does not fall within the scope of Cal/OSHA's jurisdiction. Pursuant to California Labor Code Section 6300, Cal/OSHA may only exercise jurisdiction when an employer-employee relationship exists.

The Division notes that manufacturers produce products that can be sold to parties or entities who are not employers. Therefore, explicitly dictating the content of the manufacturer's documentation would be acting in excess of Cal/OSHA's authority to enforce Title 8 regulations.

The Division recommends the Petition be DENIED. However, they support convening an advisory committee to determine if employee safety could be enhanced by the requirement for AR devices on other machinery not currently addressed by Title 8 regulations.

BOARD STAFF'S EVALUATION

After investigation, Board staff understands the Petitioner's primary concerns to be as follows:

- 1) Some AR devices are built to a UL standard for appliances, yet marketed for use in industrial applications. Devices intended for use with appliances are more likely to fail during industrial use, increasing the potential for employee injury.
- 2) Cal/OSHA requirements for AR devices found in the LVEISO (as opposed to the General Industry Safety Orders (GISO)), which may be difficult to find for some employers. Furthermore, because the Cal/OSHA regulations lack the word "machines," adding the word, as is done in a federal OSHA AR requirement for woodworking equipment, may alert additional employers to the need for such protections in their workplace.

Board staff believe Petitioner has a valid concern regarding inappropriate UL listing and labeling in regard to employee safety and health, stating that "machines that are not built to the correct specifications can pose serious hazards in a workplace, including death and fire". This could lead employers seeking to comply with Cal/OSHA's AR device requirements to be misled by mismatched UL markings.

Board staff notes, however, that federal OSHA, not Cal/OSHA, has authority over NRTLs, and opines that it is unlikely that federal OSHA would be able to regulate manufacturers from selling products built to inappropriate UL standards, especially when many manufacturers are located in foreign countries. Board staff concludes that the Petitioner's concern, though valid, is unlikely to be resolved by any Board regulatory action.

Board staff finds that Petitioner's second concern, regarding the location of the AR device requirement in the LVESO, may also be valid, but could apply to any Cal/OSHA requirement located outside of the GISO. Additionally, the Petitioner's suggestion that the LVESO requirement include the word "machines," similar to the federal OSHA woodworking requirement may not be a necessary amendment. Board staff points to the National Electric Code (NEC), NFPA 70, 2020 Ed. and LVESO Section 2530.43(b), noting that neither includes the word "machines".

Finally, Board staff was informed by a Division representative that Section 2530.43(b) has been cited one time since 2014. The minimal citation history could indicate general compliance with the performance standard requirement. Furthermore, because the regulatory language used closely resembles the dominant consensus standard on the topic (i.e. the NEC), staff is hesitant to recommend amending the language without substantive evidence of a deficiency in the status quo.

Board staff recommends the Petition be DENIED.

DISCUSSION

Both the Division and Board staff agree that the safety concerns at issue in Petitioner's request are addressed elsewhere in Title 8 and are therefore unnecessary, or concern matters that are outside Cal/OSHA's jurisdiction and the jurisdiction of the Board's authority.

Petitioner's requests that the Board direct Cal/OSHA to work with NRTLs to withdraw consensus standards, publish notices, and require explicit statements in product literature and labeling are outside the jurisdiction of this Board. Further, Petitioner's request to better "align" Title 8 with federal OSHA regulations is unnecessary, as Title 8 subsection 4296(q) is identical to 29 CFR subsection 1910.213(b)(3). The Board also notes that the safety concern the Petitioner raises related to automatic restart after power failure are addressed by Sections 4002 (Moving Parts of Machinery or Equipment) and 3314 (Lockout/Tagout).

While the Division makes note of its support for convening an Advisory Committee to determine if employee safety could be enhanced by the requirement for AR devices on other machinery not currently addressed by Title 8 regulations, this matter is outside the scope of the Petition. The Division is encouraged to pursue the convening of an Advisory Committee with Board staff through established channels.

CONCLUSION AND ORDER

Having considered Petition 580, and evaluations of it by the Division and Board staff, the Board hereby DENIES the Petition.