

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
March 21, 2013
Sacramento, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., March 21, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

Dave Thomas
Bill Jackson
Barbara Smisko
David Harrison
Laura Stock
Patty Quinlan

Board Members Absent

Hank McDermott

Board Staff

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

Division of Occupational Safety and Health

Deborah Gold, Deputy Chief of Health

Others present

Mitch Seaman, CA Labor Federation
Joan Lichterman, UPTE – CWA 9119 and
CWA District 9
Terry Thedell, San Diego Gas & Electric
Anne Katten, CRLAF
Marti Fisher, CalChamber
Tom Peace, CalChamber

Mike Donlon, DOSH
Michael Strunk, OE-3
Mike Wilson, LOHP UCB
Dennis Shusterman, CA Dept. of Public
Health
Suzanne Marria, DOSH
Patrick Bell, DOSH

Kevin Bland, Esq., Ogletree Deakins	Russ McCrary, Ironworkers
Greg McClelland, Western Steel Council	Bob Hornauer, NCCCO
John L. Bobis, Aerojet	Patricia Gaydos, DOL/OSHA
Andrew Hamilton, USD Law Center for Public Interest Law	Elizabeth Treanor, PRR-OSH
David Shiraishi, Fed OSHA	Mark Cameron, CA Dept. of Justice
Ken Smith, University of California	Dan Leacox, Greenberg Traurig
Dorothy Wigmore, Worksafe	Mike Horowitz, DOSH
Kate Smiley, AGC	Kevin Thompson, Cal/OSHA Reporter
Jay A. Weir, AT&T	Ezequiel Rocha, Cemex
Steve Johnson, Associated Roofing Contractors of the Bay Area Counties, Inc.	Amalia Neidhardt, DOSH
Mark Stone, Epic Insurance Brokers	Michael Musser, California Teachers Association
	Charley Rea, CalcIMA
	Becky Wood, ATS

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. Comments regarding Item A.1 of the Business Meeting agenda were deferred until that item was to be heard. No other matters were discussed during the Public Meeting.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:04 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:05 a.m., March 21, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 10, Section 3385
Strap-On Foot Protectors

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.

Terry Thedell, San Diego Gas and Electric, commented in support of the proposal. Mr. Thedell's company was granted a variance to use strap-on foot protectors. He stated that employees in his industry face a problem regarding flexibility in protection. He said that metatarsal guards can pinch the employee's toe when they are kneeling or bending down, so strap-on foot protectors are a better option. He also stated that employees only wear foot protectors when the hazard is present and that the strap-on foot protectors have not changed the footwear policy that requires employees to wear boots.

Patrick Bell, DOSH, stated that the Informative Digest states that the strap-on foot protectors are intended to be used as an alternative to metatarsal protection, not toe cap protection. This change is not reflected in the proposed Section 3385 language. Both the Informative Digest and the Section 3385 language need to speak in harmony. He also stated that these strap-on foot protectors are not the same thing as ANSI- or ASTM-approved devices that are usually found in boots or shoes, which may cause some employers to exclusively offer the strap-on foot protectors instead of ANSI- or ASTM-approved footwear, and most employees will not be in a position to challenge it.

Ms. Quinlan asked Mr. Bell if this proposal would allow the use of safety toed shoes without a metatarsal guard. Mr. Bell said yes.

Ms. Smisko asked Mr. Bell for clarification on where the problem is: is it in the fact that the proposal does not meet the ANSI standard, the fact that the actual protective device is not commensurate with the boot, or the concern regarding employers and employees not choosing the correct footwear, and therefore, not being protected? Mr. Bell said that the problem concerns all of those things. He stated that strap-on foot protectors do not meet the ANSI or ASTM standards and that there are many foot protection devices on the market, not all of them have been tested, and not all of them are equal to the ANSI standard, making it easy for employers and employees to make the wrong choice. He also stated that the proposal could put pressure on employers and employees to use the cheapest alternative.

Anne Katten, California Rural Legal Assistance Foundation, said that although the Board has granted variances for some employers in special situations allowing them to use strap-on foot protectors, this is not the time to allow broader use of them. She stated that the effectiveness of the strap-on foot protectors cannot be guaranteed due to the various sizes of feet and types of shoes worn underneath the protectors. They can also be more difficult to maintain or fit, especially if they are one size fits all. She also said that there is no ANSI or ASTM standard to determine how well strap-on foot protectors have been tested and that training for strap-on foot protectors will be difficult for small employers. She also stated that because strap-on foot protectors do not provide adequate protection, costly painful and disabling injuries will result. If special situations arise, they should continue to go through the variance process.

Dorothy Wigmore, Worksafe, said that it is bad policy to turn variance decisions into permanent standards and that the Board has not demonstrated that this change is necessary. She stated that standard-setting organizations do not allow strap-on foot

protectors to be used. She also stated that this change will result in a lesser standard and that it needs to be better than that of federal OSHA. The standard provides no assurance of protection that is required by ANSI and ASTM. She also said that the Initial Statement of Reasons is misleading in three ways. First, the reference on page 1 to federal OSHA's regulation which states that employers do not have to pay for it is misleading because California employers are required to pay for personal protective equipment. Second, the statement in the "specific purpose" section that says this proposal is the least burdensome cost is also not correct. Third, she disagrees with the statement regarding feedback from stakeholders during the Virtual Advisory Committee process indicating general support for the use of strap-on foot protectors. She stated that Worksafe has not supported this proposal and has even questioned the need for the proposal and the effectiveness of these devices. She asked the Board to reject the proposal, and if it continues to move forward with this proposal, she asked the Board to look at her recommendations and revise the proposal.

Mr. Harrison asked the Board staff how many permanent variances have been applied for regarding this issue since 2009. Mr. Beales and Ms. Hart informed him that that information will be stated in the Final Statement of Reasons. Mr. Harrison stated that he does not support the language of this proposal as it has been proposed. He said that he felt the Virtual Advisory Committee process was not successful in this case and that a lot of the issues spoken about today could have been resolved if the advisory committee meeting had been a face-to-face meeting. He stated that he disagrees with the statement in the Informative Digest that states that built-in protectors are cumbersome and uncomfortable, and he indicated that strap-on foot protectors can create a trip hazard. He also stated that the language in the proposal must separate toe guards from metatarsal guards and needs to be tightened up in Section (B)(1) to clarify the employer's responsibility in regards to paying for it.

Mr. Jackson stated that the current standard requires employers to buy a pair of safety-toed shoes for every employee on their payroll, regardless of how long they will be employed there or what they will be doing, because the employee might be exposed to a hazard at some point, even if it is only for a brief period of time. He said that the proposal gives employers the opportunity to protect people immediately who are performing a task that they do not normally perform, but that requires them to have that protective footwear. He stated that it will be very difficult for employers to get ANSI-approved footwear right away for all of their employees who will need to do a task right away that may expose them to a hazard. He also said that this should not be the standard that is used all the time; this should remain an exception.

Ms. Stock stated that the issue that Mr. Jackson raised is not reflected in the language and not as narrowly defined as he stated. She said that the issue that most comments have raised is whether or not strap-on foot protectors are effective. She stated that regardless of how long the exposure is, the protection that is used needs to be effective. She also said that the issue regarding flexibility and short-term use should be analyzed and addressed, and interested parties should be allowed to comment on that.

Mr. Thomas then introduced the next item noticed for Public Hearing:

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 98, Section 4994
Hoisting, Use of Cribbing, ASME Reference Correction

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 or Board comments on this proposal.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:49 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:50 a.m., March 21, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Subchapter 4, Article 4
Sections 1529, 1532 and 1532.1
Appendix B to 1532.1, Sections 1532.2 and 1535
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Subchapter 7, Article 107, Section 5150
Article 109, Sections 5189, 5190, 5191 and 5192
Appendix A to 5192, Section 5194
Appendices A through G of 5194, Section 5198 and
Appendix B to 5198
Article 110, Sections 5200, 5201 and 5202
Appendix A to 5202, Sections 5206, 5207 and 5208
Appendix J to 5208, Sections 5209, 5210, 5211 and 5212
Appendix B to 5212, Sections 5213, 5214 and 5217
Appendix A to 5217, Sections 5218 and 5220
**SHIP BUILDING, SHIP REPAIRING AND SHIP
BREAKING SAFETY ORDERS**
Division 1, Subchapter 18, Article 4, Sections 8358
Appendix K to 8358, and Section 8359
**Globally Harmonized System Update to Hazard
Communication – Health (Horcher)**
(Heard at the November 15, 2012 Public Hearing)

Mr. Thomas stated that the Board will allow the public to comment on this proposal after Ms. Gold briefs the Board on the proposal.

Ms. Gold summarized the history and purpose of the proposal and indicated that the proposal was ready for the Board's adoption.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that the proposal will not be more protective than the federal standard. She said that it blurs the responsibilities of employers and manufacturers and does not meet the criteria for clarity under the Administrative Procedures Act. She also stated that in order to meet the goal of being harmonized, the hazard classification needs to be identical to that of the federal standard. **Terry Thedell, Kate Smiley, and Daniel Leacox** supported Ms. Treanor's comments.

Dennis Shusterman, CA Dept. of Public Health, stated that the pending revisions to GHS need to reflect California's unique regulatory history and that respecting this history will require that there be differences between California's hazard communication revision and federal OSHA's GHS classification and labeling. He said that maintaining the director's list of hazardous chemicals is essential for avoiding confusion regarding which chemicals must be disclosed on safety information provided to employers who purchase chemicals and chemical products. He stated that if this list is not maintained, hazardous chemicals will be subject to lengthy and inconsistent discussion as to whether or not the weight of evidence indicates that they and their hazards need to be disclosed on safety data sheets. He also stated that availability and completeness of data sheets is essential for diagnosing and treating work-related medical conditions. He said that improvements to the GHS standard should not be at the expense of completeness of chemical hazard data disclosed to employers and employees.

Dr. Michael Wilson, UC Berkeley, supported the Division's proposal not to Horcher the federal GHS standard completely and to defer key aspects of the proposal to a more transparent process. He said that the single study requirement listed in the current state standard matters for workers and public health and is more protective than the federal standard. He said that it is more protective to require chemical companies to disclose the findings of a single health study than to allow them to withhold it from customers and workers. He also said that the findings of a single study are important to businesses because businesses act on early indicators of harm to health and safety. He stated that the concern about disclosure information comes from chemical formulators who want to sell their product, but businesses who purchase and use their product carry the long-term liability for purchasing and using their product. He said that retaining the single study requirement and other aspects that the Division has pointed out will prevent the erosion of health standards and will provide businesses with important purchasing information, making it consistent with the original intent for GHS.

At 11:35 a.m., Mr. Thomas called for a break. The meeting was called back to order at 11:45 a.m.

Anne Katten asked the Board to adopt the Horcher package that the Division has proposed that contains the non-controversial parts of the federal GHS standard. She stated that by doing this, the non-controversial items can be put into place, and workers will be trained in a prompt fashion to read the new safety labels. She also stated that her organization will be present at the GHS advisory committee meeting April 9, 2013 in Oakland and that the advisory committee meeting is the best place to discuss the controversial items.

Becky Wood, Teichert, asked the Board about what manufacturers will need to do if the state GHS standard is different from the federal standard. She stated that there are situations where manufacturers' products are used on a federal job that will not leave the state (such as highway construction). She asked if they will need to have two safety data sheets to hand out to customers: one that complies with the federal standard and one that complies with the state standard. She also asked who will be responsible for notifying manufacturers that a single study was done on a chemical, and how much time will they have after they are notified of the single study to update their safety data sheets.

Kate Smiley, AGC, stated that the Board should reject the proposed changes to the GHS standard and adopt the entire federal standard. She stated that practical application, reasonableness, and consistency regarding issues such as GHS is key for businesses and needs to be handled properly.

Daniel Leacox, Greenberg Traurig, stated that he supports adopting the entire federal GHS standard. He also stated that if the Board does not adopt the entire federal standard, he supports the temporary adoption of the current rule and sending the conflicting points to advisory committee for further discussion, but he will always advocate for the adoption of the entire federal standard. He said that employers have been spending all of the last year preparing for what is being required in the federal standard, and if the Board adopts something else, it will create problems for them. He also said that the federal record includes a determination that harmonization is a protective measure, and by adopting a standard that is different, it is causing de-harmonization and taking a step backward.

Dorothy Wigmore, Worksafe, commented on behalf of the Service Employees International Union and the California Nurses Association, stating that the GHS standard needs to provide information to employers, not keep information hidden. She stated that the Board should adopt the Division's proposed Horcher package for GHS and send the non-Horchered items to an advisory committee for discussion.

Joan Lichterman, CWA 9119 and CWA District 9, commented in support of the Division's proposal to Horcher the GHS items that have been agreed upon and send the non-Horchered items to an advisory committee for discussion. She stated that this will allow speedy passage of agreed upon parts of the proposal and will give employers extra time to meet the December 1, 2013 training deadline while discussing the non-Horchered items. She also stated that by law, the Board cannot adopt items from a federal standard that downgrade the state standard.

Mitch Seaman, California Labor Federation, stated that that the Division's proposal is the only way to ensure that the state standard is not weakened and that it will give the non-Horchered items the attention that they deserve via an advisory committee and additional rulemaking. He said that this is especially important regarding a worker's right to know what is in the chemicals that they are working with. He stated that the language in the proposal affects this right because it has the ability to strengthen it or weaken it, and an advisory committee is the right place to discuss that.

Marti Fisher, California Chamber of Commerce, supported the comments made by Ms. Treanor and Mr. Leacox.

Ms. Wigmore stated that she has supported the proposal to put non-Horchered items through an advisory committee, since the original proposal was heard at the public hearing in November of 2012. She stated that it is important that we continue to shine the light on the fact that employees and employers have the right to know what is in the chemicals that they are using. She stated that manufacturer's safety data sheets are not completely perfect for disclosing this information, but they are available. She said that she supports Dr. Wilson's comments regarding one positive study. She also stated that the GHS standards in each country are different from each other, but accomplish the same goal: to improve worker safety. She said that whatever disagreements people have regarding the federal GHS standard need to be discussed in an advisory committee where the public can have their say. She also said that it is inaccurate to adopt the full federal version of the GHS standard because it is "the standard", and that the only true GHS standard is the latest version of the international agreement that is regularly updated by working committees.

Suzanne Marria, DOSH, clarified the purpose of the Division's proposal. She stated that the proposal uses a part of the Horcher process that allows for the rulemaking process to be streamlined by adopting the majority of the federal language that no one is arguing about. She said that it results in a 6-month regulation and enables discussion of the portions of the federal language that are different from existing California law to be discussed during an advisory committee and then generate another proposal pertaining to those items. At the end of 6 months, the Board will have to decide whether to adopt this regulation for another 6 months or to adopt it on a permanent basis. She also stated that California continues to discuss the complicated differences in the language with federal OSHA.

Mr. Beales explained that what the Board will be voting on will depend on the motion that the Board makes. He said that one option that the Board could choose is to adopt the Division's proposal in accordance with Labor Code Section 142.3(a)(4)(B), which the Division suggested. He stated that this section would ensure that the Horcher process does not put federal provisions in place that are less protective than the state standard. He also stated that if the Division's proposal is adopted, it will be effective on filing with the Secretary of State and will remain in effect for 6 months. At the end of the 6-month period, it can be renewed for an additional 6 months, but after that, a new permanent standard must be adopted.

Ms. Stock asked what the process is that the Horchered items will have to go through in order to become permanent at the end of the 6-month period. Mr. Beales stated that all items in the temporary standard, plus changes, additions and deletions would need to be put into a new rulemaking, and the new rulemaking would need to be advertised in the California Regulatory Notice Register, then given a 45-day comment period, a public hearing, and, if necessary, a 15-day notice. After that, it would need to be adopted by the Board. Ms. Stock asked if that could be done in enough time to give employers the time that they need to do the training that is required to be completed by December 1, 2013. Mr. Beales stated that, based on what Ms. Gold stated, with the temporary adoption, there would be framework in place for employers to meet that goal.

Ms. Smisko asked if the Division had a list of items that will go to advisory committee. Ms. Gold stated that the agenda will not address the safety items, but it will address the items in subsection D which apply to manufacturers and importers regarding their material safety data sheets. She said that it will also address items on the Director's list, partially Horchered items, and the label requirement that was not Horchered. She also stated that the Division will try to put out a copy of the potential language that might be adopted, along with a copy of the current state and federal language.

Mr. Beales stated that one of the effects of sending the controversial items through the regular rulemaking process is that all parties involved will be free from the wording restrictions that are imposed when the Horcher process is used. When this happens, all parties involved will be free to discuss the controversial items and propose language that is different from the federal language.

Mr. Jackson stated that during the public hearing in November of 2012, the Board members raised several issues regarding the differences between the proposed language and the federal language, because the differences between them were much more than editorial. He said that he asked the Division to state the reasons why the Board needed to keep the federal changes, but none were given.

Mr. Harrison stated that he is pleased with the proposal that the Division came up with and supports the idea of sending the controversial items to an advisory committee.

Ms. Stock acknowledged the hard work that the Division did on this proposal and stated that she hopes that the Board will move this proposal forward now and discuss the controversial items at an advisory committee.

MOTION

A motion was made by Mr. Jackson to reject the revisions as proposed and to direct the Division to bring back a rulemaking package that includes all of the federal changes. No one seconded the motion.

A motion was made by Ms. Quinlan and seconded by Ms. Stock to adopt the revisions as proposed.

A roll call was taken. Mr. Jackson voted “no”, and all other members present voted “aye.” The motion passed.

2. TITLE 8: **HIGH VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5, Article 36, Section 2940.8
The Securing of Poles During Removal Operations
(Heard at the February 21, 2013 Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal was ready for the Board’s adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Harrison to adopt the proposal.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that there was a variance hearing before today’s meeting, and the hearing panel recommends that the Board adopt all of the variance decisions that are listed in the Board packet.

MOTION

A motion was made by Ms. Stock and seconded by Mr. Jackson to adopt the consent calendar.

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

C. OTHER

1. Legislative Update

Mr. Beales stated that there are 4 bills to mention that are not listed in the written Legislative Update.

- Assembly Bill 811 calls for the Contractors’ State License Board to establish an excavation certification exam. This bill impacts occupational safety and health because it references Section 1509 of Title 8 and allows the Division to require operators and excavators to attend an education program that meets the requirements in Section 1509.

- Assembly Bill 1165 concerns stays of abatement in Division enforcement proceedings.
- Assembly Bill 176 would require that advisory committee meetings be noticed in the California Regulatory Notice Register.
- Assembly Bill 1277 was amended so that it now concerns the Appeals Board hearing schedule.

2. Division Update on Advisory Committees and Possible Rulemakings

Ms. Gold provided an update regarding the following activities that the Division is working on:

- a. Tramway Safety Orders: The Division still plans to have a package sent to the Board no later than June 1, 2013. Meanwhile, they are negotiating with the Forest Service to harmonize their inspections with the ones that are required for ski resorts on Forest Service land so that the ski resorts will not have to pay for two inspections. The Tramway Unit is working on the regulatory language.
- b. Elevator Safety Orders: The Division is working with the comments that continue to be received on updates to the safety orders. Ms. Hart asked Ms. Gold if there have been any deadlines set for receiving comments. Ms. Gold stated that there have been deadlines, and they keep moving up the deadlines, but they continue to get substantial comments. She stated that they will soon need to move forward and address the comments during the rulemaking process.
- c. Tunnel Safety Orders: The rulemaking package is almost ready to come back to the Board. Pat Bell and Steve Hart are reviewing the Board's comments.
- d. Safe Patient Handling: The rulemaking package for Section 5120 is on track to be sent to the Board staff by the end of the month.
- e. Hotel Housekeeping: An advisory committee meeting was held yesterday and had lively discussion. The Division will be proposing regulatory language to the Board next month.
- f. Globally Harmonized System: An advisory committee meeting has been scheduled for April 9, 2013 at 10:00 a.m. in Oakland to discuss the non-Horcher "health" items.
- g. Airborne Contaminants: The Division is trying to advance the information from the Health Expert Advisory Committee and Feasibility Advisory Committee through the pipeline in preparation for Bob Barish's retirement at the end of April. No further Health Expert Advisory Committee meetings are scheduled at this time.

- h. Petition 513 - Bloodborne Pathogens Protection, Adult Film Industry: The Division is now working with Los Angeles County following activities that have occurred on the local level. The Division is also still working on a new draft of the proposal.
- i. Night Work in Agriculture: The Division has not submitted a new Form 9 to the Board to address the issue of illumination around moving equipment, because they are still consulting with various interested parties and organizations on this issue.

Ms. Gold also announced that Mike Donlon is going on to a position as Chief of Occupational Safety and Health for the Department of Water Resources Board, and that Bob Barish will be retiring at the end of April.

Ms. Hart asked Ms. Gold for an update regarding medical first aid. Ms. Gold stated that it was sent out and that one comment has been received. Ms. Hart asked what the deadline was for receiving comments. Ms. Gold said that there is no deadline for receiving comments at this time. Ms. Hart asked that the Division let the Board staff know when the deadlines are and to share the comments that are received.

Ms. Stock asked when the Division will do its presentation on determining feasibility of chemical exposure limits, which she asked for at the last meeting. Ms. Hart stated that it will occur at the May meeting.

3. Executive Officer's Report

Ms. Hart stated that the Senior Safety Engineer position that was vacated by Hans Boersma in December has been filled. Maryrose Chan will start working in the position on April 15. She is coming from southern California and has a wealth of industrial hygiene and safety experience.

4. Future Agenda Items

Mr. Harrison asked the Board staff to put together a rulemaking package in the future that will bring both CDAC standards together into one rulemaking. He stated that federal OSHA will be having an advisory committee meeting on CDAC next month in Washington, D.C., and hopefully, something will come out of it that the Board can use to get it going.

D. ADJOURNMENT

Before adjourning the meeting, Mr. Thomas called for a moment of silence in honor of former Board Member Willie Washington, who passed away. Mr. Thomas adjourned the Business Meeting at 1:11 p.m.