

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
October 17, 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., October 17, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

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

Board Member Absent**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

Terry Thedell, SDG&E
Bruce Wick, CALPASC
Elizabeth Treanor, PRR
Bill Taylor, PASMA
Joan Lichterman, UPTE-CWA 9119

Kate Crawford, AGC
Ken Smith, University of California
Geoff Nelson, Access Equipment
Dorothy Wigmore, Worksafe
Anke Schennink, UAW 5810

Dan Leacox, Greenberg Traurig
Dottie Green, Safeway Inc.
Michael Caringello, S.C. Johnson
Whitney Engeran, AIDS Healthcare
Foundation
Dane Hutchings, California Grocers
Association
James Tait, Bergelectric Corp.
Patricia Gaydos, OSHA
Julia Quint, SF PSR
Robert Singh, Safeway Inc.
Michael Strunk, IUOE Local No. 3
Marti Smith, CNA
Laura Boatman, SBCTC
Charley Rea, CALCIMA
Anne Katten, CRLAF
Cindy Sato, CEA
Catherine Porter, California Healthy Nail
Salon Collaborative
Peter Scholz, Cal/OSHA
Michael Vlaming, Construction Elevator
Contractors Association

Ron Lee, Safeway Inc.
Gail Bateson, Worksafe
Gary McIne, Cal/OSHA
James Meyer, James Meyer Consulting,
representing Alimak Hek
Tim James, California Grocers
Association
David Shiraishi, Fed OSHA
Matt Antonucci, CSATF
Larry Wong, UC Office of the President
Vernetta Cizek, Safeway Inc.
Mitch Seaman, CA Labor Federation
Kevin Thompson, Cal/OSHA Reporter
Steve Johnson, ARCBAC
Morena Tumiat, Caltrans
Mike Horowitz, Cal/OSHA
Rick Swan, CDF Firefighters
Sue Gathman, Center for Public Interest
Law and Practice, University of San
Diego

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.

The following individuals encouraged the Board to readopt the GHS Health (Horcher) standard for an additional 6 months:

- **Mitch Seaman, California Labor Federation**
- **Dorothy Wigmore, Worksafe**
- **Marti Smith, California Nurses Association**

Rick Swan, CDF Firefighters, commented on Petition 535. He stated that the section in Title 8 regarding protective clothing for firefighters is more than 15 years old and needs updating. He said that the state is equating firefighter health and safety issues to standards that no longer exist, and that the state mandate is causing this problem. He asked the Board to either eliminate the state mandate or move forward with updating the standard.

Larry Crabtree, Petitioner of Petition 535, echoed Mr. Swan's comments and stated that he supports the Board's proposal as long as it meets current technological capabilities and does not result in a local mandate. He thanked the Board staff for their work on this matter and said he feels this is a step in the right direction.

Whitney Engeran-Cordova, AIDS Healthcare Foundation, stated that he is pleased that a draft proposal has been created to protect workers in the adult film industry from exposure to sexually transmitted infections and urged the Board to move the proposal through the process.

Michael Vlaming, Construction Elevator Contractors Association, stated that he supports the decision regarding Petition 534 to go to advisory committee and asked that the association be included in the advisory committee. **Kevin Bland, Construction Elevator Contractors Association**, echoed Mr. Vlaming's comments and also stated that he does not feel there is enough here to warrant a rulemaking on this.

Dan Leacox, Otis Elevator, stated that he would like to be included in the advisory committee process for Petition 534.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:15 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:15 a.m., October 17, 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: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 3, Section 1520
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 10, Section 3384
Hand Protection

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.

Bill Taylor, PASMA, stated that this proposal is very vague and creates more confusion by eliminating the word "severe". He said that the proposal seems to indicate that every situation where a laceration could possibly occur would require employees to use gloves. He supports either using the exact federal language or clarifying what is meant by the terms "unusual" and "excessive".

Tim James, California Grocer's Association, stated that there is a lack of descriptors in this proposal. He feels that this proposal will require anyone performing tasks with simple tools, such as household scissors, to wear gloves, which is unnecessary. He said that some level of description similar to the federal language is needed. He urged the Board to look at the federal language, consider using the word "severe", and adding qualifiers to the proposal to eliminate this confusion.

Robert Singh, Safeway, Inc., asked the Board to fully adopt the federal language found in Sections 1910.138(a) and 1910.138(b). He said that this will provide the consistency needed in the proposal.

Anne Katten, California Rural Legal Assistance Foundation, stated that the changes made in the proposal make it clearer, and it sets the required level of protection at a more reasonable and understandable level. She said that it is not excessive and that the language in the proposal adequately captures the fact that hand protection is needed when an employee is exposed to a situation where significant injury to their hands can occur.

Dorothy Wigmore, Worksafe, stated that the Board is on the right path in removing qualifiers such as "serious" and "unusual". She said that there has been disagreement regarding what "serious" and "unusual" mean in this case. She stated that the proposal will ensure that proper hand protection equipment is available when needed.

Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association, asked the Board to revise this proposal because it is not clear and may result in hand protection being required in any situation where insignificant injury could occur. He said that the lack of modifiers in the proposal makes it too broad and could result in unintended consequences.

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

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 4, Sections 1529, 1532, 1532.1 Appendix B to 1532.1, 1532.2 and 1535
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Section 3204
Article 107, Section 5150
Article 108, Section 5157
Article 109, Sections 5161, 5189, 5190, 5191, 5192
Appendix A to 5192, 5194, Appendices A through G of 5194, 5198, and Appendix B to 5198
Article 110, Sections 5200, 5201, 5202
Appendix A to 5202, 5206, 5207, 5208
Appendix J to 5208, 5208.1, 5209, 5210, 5211, 5212
Appendix B to 5212, 5213, 5214, 5215, 5217
Appendix A to 5217, 5218, 5219, and 5220

**SHIP BUILDING, SHIP REPAIRING, AND SHIP
BREAKING SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 18, Article 4, Sections 8358
Appendix K to 8358, and 8359

**Federal Final Rule, Globally Harmonized System - Update to
Hazard Communication (Health)**

Ms. Gold 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.

Daniel Leacox, Greenberg Traurig, representing the Styrene Information Research Center, stated that most of the proposal conforms to the federal standard, but there are some differences and compromise language that the Division used that is different from the federal standard and the temporary standard, and there are concerns regarding those differences. He said that he discussed his concerns in the written comments that he submitted [Please see the Board's filed copy to view these comments]. He also said that the 3-month timeline listed in the proposal is infeasible when a chemical's classification changes based on new hazard information because there are several steps to go through in response to a classification change.

Ms. Stock stated that the current standard contains a timeline that is 3 months, and according to the Initial Statement of Reasons, there is no evidence that anyone has had a problem meeting that deadline. She asked Mr. Leacox if he felt that was true. **Mr. Leacox** stated that that is greatly undetermined because the 3-month timeline is not currently enforced. He said that the 3-month timeline would have to be enforced in order to determine where it has been complied with and if there have been any problems meeting that deadline, and just because there is no data available does not mean that there have not been problems meeting that deadline. **Ms. Stock** asked Ms. Gold if California has ever enforced the 3-month timeline. **Ms. Gold** stated that the Division is unable to retrieve specific and detailed citation information. The Division only knows that the section was cited. She said that the Division has not had any situations where extensions of temporary variances or abatement dates have been requested because of the 3-month timeline.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that her organization opposes this proposal. She said that harmonization with the federal rule will be protective for all employees, and that different categorization criteria between states will result in multiple safety data sheets and will create confusion for employers.

Catherine Porter, CHANGE and the California Healthy Nail Salon Collaborative, stated that her organization supports the inclusion of certain provisions from the federal standard, including the reference to source lists in Section 5194 (d)(3)(4). However, they strongly oppose the inclusion of the exceptions to including those source lists. She said that including those exceptions will create a hole where arbitrary and individual decision can be made by manufacturers instead of by authoritative bodies who have studied this. She also said that her organization opposes not including the one positive study language in the definition of a health hazard because it will be a step backward in protecting

workers.

Marti Smith, California Nurses Association, stated that her organization supports the proposal. She stated that the right to know rule in the hazard communication system allows workers to access the data necessary to protect themselves and others through data sheets. She said that the one study rule allows employers and workers to make informed decisions about potentially hazardous materials. She also said that the language in the proposal protects the standards that mandate that the level of protection should not be reduced as a result of harmonizing the labeling and classification systems.

Mitch Seaman, California Labor Federation, stated that this proposal is fundamental to protecting California workers because it protects the standard and aligns California with the GHS. He said that his organization does have some concerns, and that they will be sending in a letter stating those concerns by the close of business today. He also stated that the current deadline of 90 days is plenty of time to comply.

Dr. Julia Quint, representing San Francisco Physicians for Social Responsibility, supports the parts of the proposal that retain protections of the current hazard communication standard, especially regarding source lists to classify chemicals. She stated that Appendix A is very complicated and does not have a description for the term “expert judgment”. She said that scientific information underlying classifications should be robust and determinations of classifications should be made by qualified individuals, and source lists do that. **Anne Katten, California Rural Legal Assistance Foundation**, echoed this comment. She also stated that her organization supports documenting the classification process, but they would like to see it moved to Section 5194 (d)(3) so that it is away from the exceptions and will apply to all chemicals not on the source list. **Dorothy Wigmore, Worksafe**, echoed this comment. They also support the 90-day deadline for updating labels and retaining the one positive study provision. She said that they are opposed to the exceptions listed in Section 5194(d)(3)(4) for the same reasons that they support source lists. They also feel that these exceptions allow the classifier to not use the source lists. **Anke Schennink, UAW Local 5810**, stated that her organization supports the proposal as long as it is as effective as the federal standard and protects the current standard regarding the one positive study provision. She said that the right to know provision provides access to necessary documentation and data to protect workers. She stated that they support the incorporation of the GHS classification and labeling system for chemicals.

Anne Katten, California Rural Legal Assistance Foundation, stated that her organization supports the proposal, but they are concerned about the exceptions in 5194(d) because they may result in hazards not being listed on safety data sheets. She said that if source lists are used, there is no need for these exceptions. She stated that if the exceptions are retained, it is important to have the listing for the chemicals as it is currently required when the manufacturer has decided not to classify them in accordance with the source lists. She recommended including manufacturer contact information on safety data sheets so that individuals may contact the manufacturer if they have questions regarding the basis of a chemical’s classification.

Joan Lichterman, UPTE-CWA 9119 and Communications Workers of America – District 9, supports the changes to the right to know regulation, especially the retention of the following provisions currently in the California standard:

- Floor lists for classifying chemicals
- One study rule
- 90-day time limit to update data sheets
- Retention of written records by those who are classifying substances

She recommended that the following changes be made to the GHS standard upon conclusion of the rulemaking process:

- Updating the Director's list
- Including additional authoritative lists
- Implementing an across-the-board cutoff of 1/10 of a percent for disclosure of all reproductive toxins, respiratory sensitizers, and mutagens
- Listing any endocrine disruptors
- Requiring immediate updates to labels and data sheets when new information is available

Dan Leacox, Greenberg Traurig, stated that the timeline provision in question only pertains to revising the label, not the safety data sheets. He also stated that the labels have a lot more timeline issues than the data sheets because many things have to happen within that time limit.

Dorothy Wigmore, Worksafe, stated that the level of protection for workers and the public should not be reduced as a result of harmonizing the classification and labeling systems, and that downstream users want transparency so that they can make informed decisions. She said that she supports the provisions regarding one positive study, using source lists, and the 90-day timeline, but she opposes the exceptions listed in (d)(3)(4). She stated that these exceptions offer a loophole to get around classifying chemicals and getting the hazard information out to workers and others.

Mr. Thomas called for a break at 11:35 a.m. and reconvened the meeting at 11:45 a.m.

Mr. McDermott thanked everyone for participating in this process and giving their comments. He stated that this proposal will be effective in protecting employees, but it has to be understandable by those who will be implementing it, especially those who will be preparing the data sheets. He said that it would be helpful for them that when the standard is written, the differences between the California and federal standards be noted. This will eliminate confusion for SDS preparers and clarify what needs to be done to comply in California. He also stated that it might be helpful to have a deadline by when containers must have the new label on them, and a shorter deadline by which the new label information needs to be online. This might provide a solution for products that are in the chain of commerce for long periods of time.

Mr. McDermott stated that the current version of the Labor Code states that MSDS's that meet the federal requirements meet the requirements of the labor code, which is separate from what is happening in this case. He asked if the Labor Code could be updated, and if it cannot be updated, which of these would be the rule in this case if someone was trying to meet the Labor Code. **Mr. Beales** stated that Ms. Gold will take that question back to the Division staff for further discussion.

Ms. Stock stated that she does not see why the exceptions are needed and asked for further explanation regarding the need for them. She also stated that the placement and visibility of the one positive study on the safety data sheet is important for disclosure benefit, and she would like to see this discussed further so that its placement on the safety data sheet will help it meet its intent.

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

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 59, Section 4297
Definitions of Woodworking Machines and Equipment

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 11:54 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:54 a.m., October 17, 2013, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR READOPTION—GHS HEALTH

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
**Readoption of Globally Harmonized System Update to
Hazard Communication – Health (Horcher)**

Ms. Hart summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's readoption.

MOTION

A motion was made by Mr. Jackson and seconded by Ms. Quinlan that the Board readopt the proposal.

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

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Joel A. Goldman
Clark Trevithick
Petition File No. 534

Petitioner requests that the Board amend Title 8, California Code of Regulations, Construction Safety Orders to address more stringent requirements for construction industry personnel working with hoists/elevators to ensure that employers always comply with the manufacturer's recommendations, and to address additional standards for permanently enclosed governors, as well as rack and pinion safety with regard to inspection and maintenance.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to convene an advisory committee.

MOTION

A motion was made by Mr. Jackson and seconded by Ms. Stock that the Board adopt the proposed decision to convene an advisory committee.

Mr. Harrison stated that this is a petition being brought to the Board by the manufacturer. He said that he is usually not supportive of that, but he is supportive of the advisory committee process, so he is okay with adopting the petition decision.

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

2. Larry Crabtree
Mi-Wuk/Sugar Pine Fire Protection District
Petition File No. 535

Petitioner requests that the Board amend Title 8, California Code of Regulations, Section 3408 of the General Industry Safety Orders regarding foot protection (Structural Firefighting).

Ms. Hart summarized the history and purpose of the petition, and asked the Board to grant the petition decision to the extent that Board staff examine the efficacy of developing a proposal to update the firefighter protective footwear requirements in a way that does not create a new state mandate.

MOTION

A motion was made by Mr. Jackson and seconded by Ms. Stock that the Board adopt the proposed decision.

Mr. Jackson wanted to make sure he understood correctly that the current rule does not work and that the new rule will not make the taxpayer pay for boots for local fire departments. **Ms. Hart** stated that the Board staff has contacted DIR and the Department of Finance to figure out the mandate issue and update the standard in a way that will not create a new mandate.

Ms. Stock asked if the current state mandate mandates who is required to pay for the boots. **Mr. Beales** stated that when the mandate was first adopted, local fire districts did not have to comply with it until the legislature appropriated the money to pay for the boots, that this has been a pending issue in the state government for many years, and that the money has never been appropriated. As a result, the mandate was suspended for several years, and local fire districts could not be cited for violating the standard. He said that new mandates create more issues that the courts and legislature have to handle, and that is why the Board staff has been hesitant to update it. He feels that updating the standard as urged by the petitioner might well create a new state mandate that would not apply to at least one category of firefighters (private fire brigades).

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that Mr. Leacox participated in the pre-hearing process regarding case number 13-V-204 of the Gen2S decisions, and as a result, the location of variance has been updated. With that change, Mr. Beales recommended that the Board adopt the proposed decisions and the consent calendar.

MOTION

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

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

D. OTHER

1. Legislative Update

Mr. Beales updated the Board regarding the following bills that were approved by the legislature and discussed at last month’s meeting:

- Assembly Bill 1202, which requires the Board to adopt regulations regarding antineoplastic and other hazardous drugs, was signed by the Governor.
- Senate Bill 435, which pertains to employers respecting heat illness rest periods, was signed by the Governor.
- Assembly Bill 1165, which pertains to the Division’s enforcement and abatement actions, was vetoed by the Governor.

2. Executive Officer’s Report

Ms. Hart had nothing to report.

3. Future Agenda Items

No future agenda items were brought forward.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:10 p.m.