



MINUTES
KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
PUBLIC MEETING

The annual meeting of the Kentucky Occupational Safety and Health Standards Board was held in the Breathitt Room at The Galt House in Louisville, Kentucky on Tuesday, May 4, 2010 at 1:30 p.m.

Chairman J. R. Gray called the meeting to order. Ms. Lisa Barker called the roll. The following members were in attendance: Ms. Savannah Wade, Ms. Pamla Wood, Ms. Alison Muth, Mr. Vaughn Plummer, Ms. Lisa Winchester, Mr. John Brothers, Ms. Donna Haynes, Mr. Isa Shabazz, and Mr. David Hart. Mr. David Folk arrived later.

Chairman Gray stated that Ms. Beth Tillery would not be sworn in today. She was unable to make the meeting due to flooding. The Chairman welcomed everyone to the meeting.

Chairman Gray asked for a motion to approve the Minutes from the last meeting on May 5, 2009. Ms. Haynes made the motion, seconded by Mr. Hart. The Chairman asked for questions or comments. Chairman Gray commented that they were a good set of minutes and called for a vote. The motion passed unanimously.

Chairman Gray acknowledged the decision to elect a Chairman Pro Tem. The Board member filling this position will serve in Chairman Gray's absence. The Chairman asked if any Board member was interested. Mr. Brothers expressed interest. The Chairman made three calls for further nominations. Chairman Gray asked for a motion that nominations cease and Mr. Brothers be elected Chairman Pro Tem by acclamation. Mr. Shabazz made the motion, seconded by Ms. Haynes. Chairman Gray congratulated Mr. Brothers on his new position.

Chairman Gray recognized Ms. Kristi Redmon, Health Standards Specialist, Kentucky Labor Cabinet to brief the Board regarding "Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment,[PPE]" final rule published in the September 9, 2009 *Federal Register*. With this final rule, OSHA is updating references to National Consensus Standards and the PPE sections of its General Industry, Shipyard Employment, Longshoring, and Marine Terminal Rules. There are two changes to references from National Consensus Standards. The first is for the employer to comply with the most recent publications of the National Consensus Standards. Provisions have been made with a few exceptions to keep references to the older National Consensus Standards so employers can deplete their inventory before they purchase new PPE. The second change is deletion of references to ANSI Standard

Z41.1 1967 which set standards for safety footwear and ANSI Z87.1 1968 which set standards for eye and face protection. OSHA reports that employers are no longer able to locate eye and footwear that comply with either related ANSI standard. Thus, deletion of the references to these ANSI Standards is necessary. This final rule does not impose any additional or more stringent requirements on employers nor does it require them to update or replace PPE if it currently meets the existing requirements. Although adoption of this final rule is not required, adoption would be beneficial to employees and employers in Kentucky. It will retain consistency between the Kentucky Occupational Safety and Health Program and Federal OSHA. Ms. Redmon stated the Kentucky Occupational Safety and Health Program supports the adoption of this final rule. And if adopted, it will amend Kentucky Administrative Regulations (KAR) 803 KAR 2:300, 2:306, 2:308, 2:316, and 2:500.

Chairman Gray asked for questions and there being none, called for a motion adopting the changes. Mr. Brothers made the motion, seconded by Ms. Wade. The Chairman asked for discussion and there being none, called for a vote. The motion passed unanimously.

Chairman Gray recognized Ms. Redmon again to brief the Board regarding “Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards,” direct final rule published in the March 17, 2010 *Federal Register*. In 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium. Several parties had problems with the rule, one of which related to the requirements for notifying employees of exposure to Hexavalent Chromium. The problems were taken to the Court of Appeals where the court determined that OSHA must provide an explanation for its employee notification requirement or take other appropriate action. OSHA revised the notification requirement by means of a direct final rule. This direct final rule requires employers to notify affected employees of all exposure determinations whether they are above or below the permissible exposure. This language changes the current Hexavalent Chromium Standards but is consistent with other OSHA substance specific standards such as lead and cadmium. The anticipated effective date of this direct final rule is May 17, 2010. If adopted, the direct final rule would amend Kentucky Administrative Regulations (KAR) 803 KAR 2:320, 2:425, and 2:500. Ms. Redmon states that 29 CFR 1953.5 requires state implementation of a new federal standard or a more stringent amendment within six months of the confirmation of the date of the direct final rule. Further, the amendments to the Hexavalent Chromium Standards are more stringent and Kentucky does not have an effective alternative. To maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement within the six month timeframe. Ms. Redmon states the Board would need to adopt the direct final rule pending the upcoming confirmation of the effective date.

Chairman Gray asked for questions or discussion and there being none, called for a motion. Ms. Haynes made a motion accepting the changes, seconded by Mr. Folk. The Chairman asked for discussion and hearing none, called for a vote. The motion passed unanimously.

Chairman Gray recognized Mr. Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, to brief the Board regarding the Kentucky Administrative Regulation (KAR) 2:318. It amends one of the electrical standards. When a previous amendment was submitted originally, it had inadvertently been struck through for deletion by the Legislative Research Commission

(LRC). Paraphrased “If a lock cannot be applied tag-in procedures shall provide a level of safety equivalent to that obtained by the use of the lock as outline in paragraph (b)(2)(iii)(D) [29 CFR 1910.333]. Mr. Elkins states that in order to restore this deletion Board action is required.

Chairman Gray asked for questions or discussion and there being none, called for a motion. Ms. Wood made the motion, seconded by Mr. Folk. The Chairman asked for discussion and hearing none, called for a vote. The motion passed unanimously.

Chairman Gray recognized Mr. Elkins again to brief the board regarding “Revising Standards Referenced in the Acetylene Standard; final rule” published in the August 11, 2009 *Federal Register* and confirmed in the November 10, 2009 *Federal Register*. This rule updated reference materials that were developed by the Compressed Gas Association and 1974 was the last time OSHA updated reference to those. The acetylene standard [803 KAR 2:307] has references to Compressed Gas Association materials. The general standard [803 KAR 2:300] is the “incorporated by reference” standard for various materials from ANSI, NFPA, and the Compressed Gas Association. The Chairman approved adoption of this amendment to meet the six month time constraint for adoption. The amendment changes the language for usage of the most recent standards. As adopted it amended Kentucky Administrative Regulations (KAR) 803 KAR 2:300 and 2:307. The changes became effective in Kentucky April 2, 2010.

Chairman Gray asked for questions or comments and there were none.

Chairman Gray recognized Kentucky Labor Cabinet staff in attendance that included Deputy Secretary, Commissioner of Workplace Standards, Federal-State Coordinator, Director of OSH Compliance, and Director of OSH Education and Training. He expressed appreciation of the hard work of each one [Board Members], Labor Cabinet staff and all Cabinet employees.

Chairman Gray called for remarks. The Chairman recognized Ms. Barker who needed to meet with the Board Members before they leave.

Chairman Gray called for announcements or comments and there being none, called for a motion to adjourn. Mr. Shabazz made the motion, seconded by Mr. Brothers. The motion passed unanimously.