



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
Public Meeting Minutes
May 10, 2016

The annual meeting of the Kentucky Occupational Safety and Health (OSH) Standards Board, hereinafter referred to as Board, was held at 1:30 p.m., Tuesday, May 10, 2016, in the Breathitt Room at the Galt House in Louisville.

Chairman Derrick K. Ramsey called the meeting to order.

Ms. Amy Tennill called the roll. Members attending were Mr. Randy Chrisman, Mr. Howard "Butch" Collins, Ms. Donna Haynes, Mr. Barry Holder, Mr. Ron Lynch, Mr. Neil McElroy, Mr. Van Mitchell, Ms. Donna Ringo and Mr. Steven Stone. Noted absences were Ms. Michelle Barnett, Mr. David Hart and Ms. Shea Lowe.

Chairman Ramsey called for comment or questions of the May 5, 2015 minutes. There being no comments or questions, Chairman Ramsey asked for a motion to approve. Motion made by Ms. Haynes, seconded by Mr. Holder. The motion passed unanimously.

Chairman Ramsey called for Old Business. There was none.

Chairman Ramsey introduced Commissioner Ervin Dimeny who updated the Board on discrimination regulation changes since the last meeting. Commissioner Dimeny reminded the Board of last year's proposed amendment that stemmed from a decision by the Kentucky Court of Appeals. Subsequent to the ruling, all OSH discrimination cases were then forwarded to the U.S. Department of Labor. On October 2, 2015, the relevant administrative regulations were amended returning Kentucky to "as effective as" status and Kentucky resumed investigations of OSH discrimination.

Chairman Ramsey recognized Ms. Kristi Redmon, CIH, CSP, Health Standards Specialist, Labor Cabinet, for an update to the confined spaces in construction rule. Ms. Redmon reminded the Board that the rule was published on May 4, 2015, one day before the 2015 Board meeting which prevented the Board from taking any action at that time. Prior to the publication of this rule, federal OSHA had more defined general industry requirements while confined space requirements in construction were limited to training. Kentucky had its own state specific regulation that addressed some of the hazards associated with confined space in construction but was not as detailed as OSHA's new rule. The new OSHA rule addressed classifying spaces, permit entry procedures, training, and rescue for all entries. OSHA included detailed provisions



requiring coordination between host employers, contractors, and entry employers to ensure that all affected site employers are aware of the hazards and will not introduce any additional hazards to the confined space by performing hazardous tasks outside the space. The new rule required evaluation of the confined space and worksite by a competent person. Continuous atmospheric monitoring of a permit space whenever possible and continuous monitoring of engulfment hazards were mandated. Also, when a hazard is detected in the space, a permit may be suspended rather than completely cancelled. The rule clarified that reliance on an outside rescue service must be coordinated in advance. Because Kentucky's state specific regulation was not as effective as OSHA's new final rule, Kentucky was mandated to adopt the new rule. In order to meet the six (6) month deadline to adopt the new rule, former Board Chairman Larry Roberts exercised his authority to adopt OSHA's new rule. The adoption deleted 803 KAR 2:200 and was replaced with the new federal rule, effective October 2, 2015.

Chairman Ramsey recognized Mr. Mike Pettit, Safety Standards Specialist, Labor Cabinet, to present for consideration the amendments published in the October 5, 2015 *Federal Register*. The amendments corrected electrical safety-related work practices for general industry and electrical power generation, transmission and distribution as well as for construction as it relates to tree trimming operations. Mr. Pettit stated that the amendment changed the definition of general industry line clearance tree trimming in 29 CFR 1910.269 and in construction 29 CFR 1926.950 to only include work performed for the purpose of clearing space around electric power generation, transmission or distribution lines or equipment and the organizations that operate or control the operating procedures for those lines or equipment. Mr. Pettit added the amendment added language to 29 CFR 1910.331(b) clarifying that electrical safety-related work practices in Subpart S cover qualified person performing work near, but not on, or directly associated with, installations listed in 29 CFR 1910.331(c)(1) and (c)(4). Mr. Pettit also noted that this amendment corrected minor errors in minimum approach distances in Tables R-3 and R-6 of 29 CFR 1910.269 and Tables V-2 and V-5 of Subpart V, 1926. The amendment also corrected the voltage ranges for approach distances up to 72.5 kilovolts in Tables R-6 and V-5 referenced above. Mr. Pettit stated the OSH Program supports the adoption of this final rule. The final rule amends 803 KAR 2:317, 803 KAR 2:318, and 803 KAR 2:421 if adopted by the Board. Chairman Ramsey asked for questions and there being none, called for a motion to adopt the final rule. Motion made by Mr. Chrisman, seconded by Ms. Haynes. The motion passed unanimously.

Chairman Ramsey called again upon Ms. Redmon to present the amendments published in the *Federal Register* on March 1, 2016. Ms. Redmon stated that definition of flashpoint was inadvertently deleted from 29 CFR 1910.106, Flammable Liquids. This amendment reinstates that definition. Ms. Redmon noted that the OSH Program supports the adoption of this amendment and if adopted, will amend 803 KAR 2:307. Mr. Chrisman moved to adopt the amendment and Ms. Haynes seconded. The motion passed unanimously.



Chairman Ramsey called upon Mr. Chuck Stribling, Federal-State Coordinator, to discuss consideration of an amendment to 803 KAR 2:412, Fall Protection. In 1994, OSH published the final rule for construction requiring all employees, including those in residential construction, to use personal protective fall equipment, guardrail systems, or safety net systems when working above levels of six (6) feet. This was adopted by the Board in November 1994 without amendment. In 1995, OSHA issued a compliance directive, STD 3.1, Interim Fall Protection Guidelines for Residential Construction. The Kentucky OSH Program agreed to follow to that directive as it did not change the initial rule and established some alternate policies. In 2004, there was a significant increase in residential housing construction fatalities which resulted in the issuance of Kentucky OSH Program Instruction 01-2005. That instruction established enforcement of the six (6) foot requirement as found in the initial standard. The residential construction industry expressed concerns, and after working closely with them, a negotiated rule was adopted August 18, 2005 and became effective January 6, 2006. This negotiated rule established a ten (10) foot trigger height under certain limited activities and provided for alternative fall protection measures in very specific instances. Since that time, there have been no residential construction fatalities when the employers have been in compliance with that rule. In December 2010, OSHA issued directed STD 03-11-002, Compliance Guidance for Residential Construction. That directive enforces the six (6) foot fall protection requirement found in CFR 1926.501(b)(13). This rule was not actively enforced by OSHA until 2013 giving residential construction employers time to adjust. In May 2013, Kentucky received a letter from OSHA advising that our residential construction standards and enforcement policies were greatly different from OSHA's policies. In October 2013, OSHA convened a meeting of states who had different requirements; specifically Kentucky, Washington, California, Arizona and Oregon. These states were told the ten (10) foot rule was not "as effective as" and must be changed. In November 2014, Kentucky OSH met with the Home Builders Association of Kentucky and advised them of OSHA's position and the need to develop a rule agreeable to the industry and OSHA. In December 2014, Kentucky OSH and OSHA's Region 4 staff met and discussed, in great detail, the specifics of Kentucky's rule. In 2015, OSHA's Region 4 advised Kentucky that our rule could not be considered as effective as OSHA's rule. It also specified three distinct issues with Kentucky's rule, the ten (10) foot trigger height, the permissible use of nonconventional fall protection methods, and Kentucky's sample fall protection plan.

The amendment presented to the Board retains Kentucky definition of residential construction. This amendment also changes all references from a ten (10) foot trigger height to six (6) feet. It eliminates the use of slide guards as an alternative fall protection measure. A definition of platform was added. This amendment preserves Kentucky's residential construction alternative fall protection measures. The alternative measures are described in detail and allows the employer to work at heights greater than six (6) feet using these alternative measures. Mr. Stribling stated the OSH program supports this measure and if adopted, affects 803 KAR 2:412. Mr. Holder



asked how the enforcement staff perceived this change. Mr. Stribling noted that it was unknown and it would be a change for the industry as well. He added that, if adopted, outreach training will be conducted throughout the state and that this amendment would not be effective until January 1, 2017. Lastly, he stated that this was a negotiated rule developed between Kentucky OSH, OSHA, and the regulated community. Chairman Ramsey asked for additional questions or comments. OSHA Regional Administrator Kurt Petermeyer was recognized and took the floor. Mr. Petermeyer acknowledged the efforts Kentucky OSH had made to improve residential fall protection within the commonwealth. He stated that federal OSHA will closely monitor the standard through standard FAME visits and audits to ensure protections remain at least as effective as the federal standard. Chairman Ramsey thanked Mr. Petermeyer and asked if there were any additional questions or comments. Bob Weiss, Executive Vice President of the Home Builders Association of Kentucky, was recognized. Mr. Weiss stated that he was proud of the standard presented. He commended Kentucky OSH and Mr. Stribling for working with the industry. Chairman Ramsey asked if there were further questions and there being none, called for a motion to adopt the final rule. Motion made by Mr. Holder, seconded by Mr. Collins. The motion passed unanimously.

Chairman Ramsey moved on to consideration of amending the existing standards for occupational exposure to respire crystalline silica as published in the March 25, 2016 *Federal Register*. Ms. Redmon was called upon to explain. She stated that OSHA had recognized that exposure limits for silica were based on studies from the 1960s and were no longer adequate to protect workers. The new rule requires employers to implement work practices and engineer controls to reduce workers' exposure to silica dust. With this rule, OSHA has reduced the permissible exposure limit (PEL) to 50 micrograms of respirable crystalline silica per cubic meter of air. This is the same for general industry, construction and maritime industries. OSHA also included a requirement for a regulated area in the general and maritime industries. All industries are now required to develop and implement a written exposure control plan that identifies tasks involving exposure to respirable crystalline silica and restricts access to those exposure areas. All industries' affected employers must also determine exposure limits of subjected employees and must follow new monitoring frequency requirements depending on actual exposure levels. In the construction industry, OSHA provides alternative control methods for certain tasks in lieu of personal monitoring as described in Table 1. All industries are required to prohibit dry sweeping or brushing in the workplace unless other methods like wet sweeping or the use of HEPA filtered vacuums are not feasible. Medical surveillance is also required for all industries where employees are exposed at or above the action level for more than thirty (30) days per year. This includes chest x-rays and lung function tests every three (3) years. Compliance requirements for all industries would be effective June 2017 and requirements for certain parts of the regulation to be spread out over four years after that. Ms. Redmon stated the Kentucky OSH program is mandated by 29 CFR 1952 and 1953 to have standards that are at least as effective as federal OSHA's. 29 CFR 1953.5 requires state implementation of new federal standards or an equal alternative



within six (6) months of the final rule. Kentucky OSH does not have an alternative to this final rule and, in order to maintain its state program, Kentucky must incorporate this federal requirement within six months or develop an equally effective regulation. If adopted, this final rule amends 803 KAR 2:320, 803 KAR 2:403, 803 KAR 2:425, and 803 KAR 2:500. Mr. Holder had questions regarding the PEL and the deadline to submit the regulation to the regulations committee. Ms. Ringo shared concerns for employer monitoring of the PEL stating that it will be difficult. Ms. Redmon assured her that, because of the lapse time until effectiveness, it could be done. Mr. Collins asked if there was a stay by the court, would Kentucky also stay as adopted. Mr. Stribling explained that seven (7) petitions had been filed against the rule from industry and organized labor but no stay had been issued. Chairman Ramsey asked if there were any additional questions and there being none, called for a motion to adopt the final rule. Motion made by Mr. Holder, seconded by Ms. Ringo. The motion passed unanimously.

Chairman Ramsey again recognized Mr. Mike Pettit to present for consideration the amendments published in the March 25, 2016 *Federal Register*. These amendments revised eye and face protection requirements in OSHA's general industry, shipyard, marine terminals, longshoring and construction standards. They incorporate the latest ANSI Z87.1-2010 standards for eye and face protection while deleting the 1986 versions. The 1989 and 2003 versions of the standard are retained. The amendment also modifies the language of the construction standard to make it more consistent with general industry and maritime. These changes also allow employers to use either the ANSI standards referenced or to follow the latest version of the ANSI standard when published. Mr. Pettit stated the OSH Program supports the adoption of this final rule. If adopted, this final rule would amend 803 KAR 2:300, 803 KAR 2:308, 803 KAR 2:400, 803 KAR 2:404 and 803 KAR 2:500. Chairman Ramsey asked for questions and there being none, called for a motion to adopt the final rule. Motion made by Mr. Stone, seconded by Mr. Collins. The motion passed unanimously.

Chairman Ramsey then asked for a motion to adjourn. Ms. Haynes moved, seconded by Mr. Collins.