



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
December 4, 2017 Public Meeting Minutes

The Kentucky Occupational Safety and Health (OSH) Standards Board, hereinafter referred to as Board, met Tuesday, December 4, 2017 in the Oscar Morgan Conference Room at the Labor Cabinet Workers' Claims Building, 657 Chamberlin Avenue, Frankfort.

Chairman Derrick K. Ramsey called the meeting to order at 1:30 pm EST.

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

Chairman Ramsey called for comment or questions of the May 5, 2016 minutes. There being no comments or questions, Chairman Ramsey asked for a motion to approve. Motion made by Ms. Haynes, seconded by Ms. Ringo. The motion passed unanimously.

Chairman Ramsey called for Old Business. He called upon Chief of Staff Brooken Smith to discuss an amendment to 803 KAR 2:425 which modified the silica enforcement deadline to mirror the federal policy. Mr. Smith reminded the board that OSHA had issued a final rule regarding the exposure to crystalline silica in construction in the March 25, 2016 Federal Register and that the board had adopted the final rule at its May 10, 2016 meeting. This rule established a new permissible exposure limit for all covered industries and required additional employee protections. These changes were to be effective June 23, 2017. However, on April 6, 2017, OSHA issued a memorandum delaying enforcement of the construction standard until September 23, 2017. Because of the delay in enforcement and unavailability of guidance to the regulated community, Secretary Ramsey issued an emergency regulation delaying Kentucky's enforcement of the silica standard until the September 23, 2017 deadline.

Enforcement of this standard began September 23, 2017, however, for the first thirty (30) days, compliance assistance was offered in lieu of enforcement for employers making good-faith efforts to comply with the new standard. The rule became permanent as an ordinary regulation was filed along with the emergency regulation. Chairman Ramsey asked for a motion to accept Mr. Smith's report. Motion made by Mr. Stone, seconded by Ms. Haynes. There being no questions or discussion, the motion passed unanimously.

Chairman Ramsey recognized Mike Pettit, OSH Standards Specialist, for an update regarding the adoption of walking-working surfaces final rule published in the November 18, 2016 Federal Register. Mr. Pettit explained the rule became effective in Kentucky March 31, 2017 through an emergency adoption by Secretary Ramsey in order to meet OSHA's required six (6) month mandate. The rule revises provisions for fixed ladders, stairways and dockboards. It includes



fall protection systems as well as requirements for design, performance, and use of those systems. The rule added a training requirement for employers whose workers use fall protection systems. Employers now have greater flexibility in choosing a fall protection system as the rule eliminates the existing mandate for use of guardrails as a primary fall protection method and allows employers to choose from other accepted fall protection systems that work best in their particular situation. Chairman Ramsey asked for questions and there being none, called for a motion to accept Mr. Pettit's report. Motion made by Mr. Chrisman, seconded by Mr. Hart. The motion passed unanimously.

Chairman Ramsey called upon OSH Standards Specialist Kristi Redmon to inform the board of the adoption of the Beryllium final rule as published in the January 9, 2017 Federal Register. Ms. Redmon explained the rule was also adopted through an emergency order issued by Secretary Ramsey in order to meet OSHA's required six (6) month mandate. The rule changed the beryllium permissible exposure limit and provided engineering and workplace controls to limit exposure. When those exposures are not fully limited, the rule requires the employer to provide appropriate personal protection equipment. Additionally, it requires employers to assess exposure, develop written exposure control plans, and provide employees with training, information, and hygiene facilities when appropriate. The rule requires employers to provide or perform medical surveillance to certain exposed employees in order to identify beryllium-related health concerns. The rule applies to all industries including general, construction, and maritime. The regulations affected by this final rule were 803 KAR 2:320, 403, 425 and 500. They became effective on June 2, 2017. Employers must comply with most of the requirements of this final rule by March 12, 2018. However, they have until 2019 to provide change rooms and showers and until 2020 for engineering controls. Chairman Ramsey asked for a motion to accept Ms. Redmon's report. Motion made by Mr. Holder, seconded by Ms. Haynes. There being no questions or discussion, the motion passed unanimously.

Chairman Ramsey then called for New Business. He invited Mr. Pettit to discuss the emergency adoption to delay the deadline for crane operator certification final rule published in the November 9, 2017 Federal Register. Mr. Pettit explained this was an emergency regulation as it poses an imminent threat to public health, safety and welfare. Kentucky did not require employers to ensure crane operator competency of their employees. The rule was originally published on August 9, 2010 and required crane operators on construction sites to meet one (1) of four (4) qualifications / certifications by November 10, 2014. Stakeholders questioned the requirements to certify operators by type and capacity of the crane and whether certification was sufficient for determining safe operation of the crane. In response to those concerns, OSHA issued a September 25, 2014 final rule that extended the operator certification deadline for three (3) years until November 10, 2017, complete the rulemaking process, and address deficiencies in the original final rule. OSHA did not address the deficiencies by that time and has again delayed the deadline until November 10, 2018. Mr. Pettit stated the OSH Program supports the adoption of the final rule. The final rule amends 803 KAR 2:505 if adopted by the Board. Chairman Ramsey asked for a motion to adopt the final rule by emergency regulation. Motion made by Ms. Haynes, seconded by Mr. Chrisman. There being no questions or discussion, the motion passed unanimously. Chairman Ramsey called for a motion to adopt the final rule by ordinary



regulation. Motion made by Mr. Stone, seconded by Ms. Ringo. The motion passed unanimously. Chairman Ramsey asked Mr. Smith to deliver the emergency regulation to the Governor's office for signature and file the regulations with the Legislative Research Commission.

Chairman Ramsey recognized Fed-State Coordinator Chuck Stribling to report on House Bill 50. Mr. Stribling stated House Bill 50 was passed by the House on February 27, 2017. It was passed by the Senate on March 8, 2017. It was signed into law by the Governor on March 14, 2017 and was effective on July 1, 2017. House Bill 50 is an act that establishes a seven (7) year expiration date for all Executive Branch regulations. It uses a July 1, 2012 date to determine if a regulation is old (before that date) or new (after that date). Old regulations are considered Group 1 and are first for review / reconsideration. New regulations are considered Group 2 and will be reviewed after Group 1. Mr. Stribling noted that there were forty-seven (47) Group 1 OSH regulations and thirty-two (32) Group 2 OSH regulations. All Group 1 OSH regulations expire July 1, 2019. House Bill 50 also sets up provisions to preserve a regulation. If an administrative body does not want a regulation to expire, it must review the regulation for compliance with KRS 13A and related current law and, prior to the expiration date, file a certification letter with the regulations compiler as to whether it will remain in effect as is or with amendment. If it will remain in effect without amendment, the regulation's last effective date will be updated to the date the certification was received and the seven (7) year clock resets. If the regulation will be amended, the administrative body has eighteen (180 months from the date the certification letter was received to file an amendment. Once filed, the regulation does not expire while it continues through the promulgation process. Mr. Stribling explained the forty-seven (47) Group 1 OSH regulations will need to be addressed by the OSHA Standards Board by July 1, 2019. In house processing of those regulations will soon begin and will be prepared for board review. Chairman Ramsey asked for a motion to accept Mr. Stribling's report. Motion made by Mr. Hart, seconded by Ms. Ringo. There being no questions or discussion, the motion passed unanimously.

Ms. Ringo asked to be recognized. She asked about the tenure of the OSH Standards Board as the current board's tenure had passed. Chairman Ramsey indicated that the current board would remain in place until such time as the Governor appoints new members.

Chairman Ramsey asked for a motion to adjourn. Ms. Haynes moved, seconded by Mr. Holder. The motion passed unanimously.