

MAY 20, 2024 | LEGISLATIVE & STANDARDS BOARD UPDATES

# Extensive Rulemaking Updates Offered at the May Cal/OSH Standards Board and Cal/OSHA Advisory Committee Meetings

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The May 16th Standards Board Meeting and May 20th Cal/OSHA Advisory Committee meetings offered many rulemaking updates and even clarified some questions that have been posed to Cal/OSHA in recent months.

## Petition 605 (Rolling Gates)

The Standards Board meeting started on a somber note with Board Member Joseph Alioto, Jr., introducing Petition 605 and asking for Board support. The Petition requests amendments to Cal/OSHA regulation 3324 concerning operations of horizontal sliding gates and asks the Board to consider adopting new regulations governing swinging gates. Mr. Alioto's comments were followed with a presentation by the father of a seven-year old who tragically died after a rolling gate adjacent to his school's playground fell.

## Silica ETS

The Standards Board unanimously voted to adopt the proposed readoption of the Silica Emergency Temporary Standard (ETS) for another 90 days, to September 24, 2024.

Prior to the vote, Cal/OSHA Staff presented on the proposed changes to the Silica ETS, which has been in effect since December 29, 2023 and was set to expire at the end of June. The changes include:

- Two new exemptions to the definition of "high exposure trigger tasks" to include outdoor work at quarries or open pit mines and fabrication or finishing of natural stone tombstones, monuments, memorials, burial vaults, sculptures. Exceptions do not apply to artificial stone.
- Added an assigned protection factor (APF) for respirators required for high exposure trigger tasks to simplify selection of acceptable respirators.
- Removed requirement for organic vapor cartridge, leaving requirement for HEPA filter only.

Following the Board vote, the Silica ETS will continue with the adopted changes into December. The Silica ETS is expected to be replaced with a permanent regulation. Proposed language is currently in its 45-day comment period, with a public hearing set for June 20, 2024 (the next Standards Board meeting).

### **Fit-Testing Protocols for Respiratory Protection**

The Standards Board also unanimously voted to adopt proposed amendments to the Respiratory Protection standard to match similar changes at the federal level. Specifically, the changes add additional fit-testing protocols to Appendix A of Section 5144. The vote was pursuant to requirements that the Standards Board adopt standards that are “at least as effective as the federal standards” promulgated under the OSH Act.

### **Indoor Heat Illness Prevention**

Cal/OSHA noticed a Fourth Modification to the proposed indoor heat illness prevention regulation. This comes after the Office of Administrative Law (OAL) rejected the Standards Board’s March 2024 vote to approve the Third Modification, stemming from concerns from the Department of Finance about certain state agencies’ ability to comply. The key change includes a new exemption from the entire regulation for certain correctional facilities. The proposal is expected to be presented to the Standards Board for a vote at the June meeting. If approved by the Board, OAL has 30 working days to review. Cal/OSHA estimates the regulation could be in effect by July or August.

During the Standards Board meeting, Division Staff also received questions about the coverage of vehicles. Division Staff explained that vehicles would be covered by the indoor heat regulation if the vehicles are fully enclosed, but not if the air conditioning cools the vehicle down. There remained confusion over coverage when there’s a period of time before a vehicle’s air conditioning could cool down the indoor vehicle space. Division Staff made contradictory statements that such a situation would both not be covered and would not be enforced. To clarify, Division Staff offered to cover the issue in more detail in the Final Statement of Reasons for the proposed regulation. Chair David Thomas agreed that such clarification would be helpful so everyone understands what is required. Division Staff also noted that vehicles would be exempted from the recordkeeping requirements when they have air conditioning.

Prompted by questions from Board Members, Division Staff confirmed that there remains an opportunity for the public to provide input on the proposed regulation and that such feedback will be considered.

During the May 20th Advisory Committee Meeting, the Publications Unit stated that it is working on written materials to support the anticipated indoor heat illness prevention regulation, including a model Indoor/Outdoor Plan, Facts Sheets, and more.

### **ATD/Infectious Disease**

In response to a question from Board Member Laura Stock about an Infectious Disease Standard, Division Staff agreed to provide an update at the next meeting. Division Staff noted that the standard will not be in effect by February 2025 when the COVID Non-Emergency Rule begins to sunset. As such, there will likely be a gap between when the permanent COVID-19 regulation ends and when this new regulation might take effect. Board Member Nola Kennedy pointed out that there has been reference to both an Aerosol Transmissible Diseases and Infectious Disease Standard. Division Staff confirmed it would be an ATD Standard, in other words, that it would not cover all infectious diseases.

### **Worker Walkaround Rule**

Division Staff noted that the Cal/OSHA Legal Unit is working on adopting something similar to federal OSHA's Worker Walkaround Rule and that a further update would be provided at the next meeting.

### **Workplace Violence Prevention**

At the May 20th Advisory Committee Meeting, Division Staff confirmed that the Division is working on draft language for a Workplace Violence Prevention regulation, stemming from CA Senate Bill 553. Draft language is expected to be ready to post in a month or two and an advisory committee meeting will be scheduled.

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The next Standards Board meeting is scheduled for June 20, 2024.