

DEPARTMENT OF INDUSTRIAL RELATIONS  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
Tel: (916) 274-5721 Fax: (916) 274-5743  
[www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**SUMMARY**  
**PUBLIC MEETING AND BUSINESS MEETING**  
**November 19, 2020**  
**Teleconference in Sacramento, California**

**I. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., November 19, 2020, via Webex/teleconference, in accordance with Executive Order N-29-20.

ATTENDANCE

Board Members Present at OSHSB Office  
Dave Thomas

Board Members Absent  
NONE

Board Members Present via  
Teleconference and/or Webex

Barbara Burgel  
Dave Harrison  
Nola Kennedy  
Chris Laszcz-Davis  
Laura Stock

Division of Occupational Safety and Health  
Staff Present via Teleconference and/or  
Webex

Board Staff Present at OSHSB Office  
Christina Shupe, Executive Officer  
Michael Nelmda, Senior Safety Engineer  
Sarah Money, Executive Assistant

Doug Parker, Division Chief  
Eric Berg, Deputy Chief of Health

Board Staff Present via Teleconference  
and/or Webex

Mike Manieri, Principal Safety Engineer  
Lara Paskins, Staff Services Manager  
David Kernazitskas, Senior Safety Engineer  
Jennifer White, Staff Services Analyst

Others Present via Teleconference and/or Webex

Alma Comacho, Maintenance Cooperation  
Trust Fund  
Rachel Reyes, Los Angeles Alliance for a  
New Economy (LAANE)  
Rico Tamayo, CA Federation of Teachers

Patrick Cirby, UNITE HERE  
Camucha King, UNITE HERE  
Brooke Billingsley, Los Angeles Alliance for a New  
Economy (LAANE)  
Melissa Love, United for Respect

Yolanda Houtby, United for Respect  
Michael Young, CA Federation of Teachers  
Carl Williams, CA Federation of Teachers  
David, ROC the Bay  
Robert Moutrie, CA Chamber of  
Commerce  
Carolyn Denise Barlage, Los Angeles  
Alliance for a New Economy  
Bruce Wick, CA Professional Association of  
Specialty Contractors (CALPASC)  
Jesus Mendoza, Central CA Environmental  
Justice Network  
Virgilda Romero, Garment Worker Center  
Francisco Tzul, Garment Worker Center  
Zenaida Perez Fuentes, Southern CA  
Coalition for Occupational Safety and  
Health (SoCalCOSH)  
Angelica Miklos, Folsom Cordova  
Education Association  
Maria Vasquez, Restaurant Opportunities  
Center of Los Angeles (Roc\_LA)  
Emma Allen-Landwehr, ROC the Bay  
Mark Hendrickson, United for Respect  
Mike Donlon, Construction Employers'  
Association  
Mike Hall, Pacific Maritime Association  
Lesly Figueroa, Leadership Counsel for  
Justice and Accountability  
Andrew Sommer, Conn Maciel Carey  
Sandra Aguila, CA Rural Legal Assistance,  
Inc.  
Linda Kjesbu, Northern CA Safety  
Consortium  
Anne Katten, CA Rural Legal Assistance  
Foundation  
Shane Ross, CA Rural Legal Assistance  
Lorena Martinez, CA Rural Legal  
Assistance  
Paz Aguilar, Fast Food Worker  
Honorata Carolina Garcia Torralba  
Brualio Alonzo Pacheco  
Julia Garcia, Lideres Campesinas  
Mirella Deniz-Zaragoza, Warehouse  
Worker Resource Center  
Bryan Little, CA Farm Bureau Federation  
Mitch Steiger, CA Labor Federation  
Steve McCarthy, CA Retailers Association  
Dan Leacox, Leacox and Associates  
Alex Mejia, Port Truck Driver, Los Angeles/Long  
Beach  
Robert Harrison, University of CA, San Francisco  
Michael Miiller, CA Association of Winegrape  
Growers  
Natasha Castro, Los Angeles Alliance for a New  
Economy (LAANE)  
Eric Frumin, Change to Win  
Katie Hansen, CA Restaurant Association  
Maggie Robbins, Worksafe  
Irene Barraicua, Lideres Campesinas  
Carlos Almarez, Garment Worker Center  
Efrain Hernandez, Garment Worker Center  
Joy Schnapper, Capistrano Unified Education  
Association  
Aimee Thompson, Livermore Education  
Association  
Keith Brown, Oakland Education Association  
Matt Rogers, AgSocio  
Claudia E.  
David, ROC the Bay  
Pamela Murcell, CA Industrial Hygiene Council  
Brian Mello, Associated General Contractors of  
CA  
Fred Walter  
Christopher Valadez, Grower-Shipper Association  
of Central CA  
Nicole Rice, CA Manufacturers & Technology  
Association  
Scott Govenar, Construction Employers'  
Association  
Lucas Zucker, Central Coast Alliance United for a  
Sustainable Economy  
Elda Brueggemann, Western Agricultural  
Processors Association  
Juvenal Solano, Mixteco/Indigena Community  
Organizing Project  
Estella Cisneros, CA Rural Legal Assistance  
Carolina Hernandez Espinoza  
Misael Jimenez, Lideres Campesinas  
Shane Gusman, Broad & Gusman  
Kristin Hamon, San Diego Gas & Electric  
Matt Hart, United Food and Commercial Workers  
Local 324  
Sarah Wiltfong, Los Angeles County Business  
Federation (BizFed)

Fernando Torres, CA Rural Legal Assistance  
Meghan Neal, PW Gillibrand  
Scott Brauninger, Build Group  
Karen Tynan, Ogletree Deakins  
Jorge Toledano, Mixteco Indigena Community Organizing Project/MICOP from Ventura County  
Kevin Goddard, CalTrans  
Marianne Bellettini, Department of Risk Management  
Brian Miller, Rudolph & Sletten  
Sarait Martinez, Centro Binacional para el Desarrollo Indígena Oaxaqueño  
Charles Folkner, Mathis Brothers  
Jen Hamelin, Public Risk Innovations, Solutions & Management (PRISM)  
Rosa Greenhalgh, Armstrong and Associates Insurance Services  
Angelica Preciado, CA Rural Legal Assistance  
Yesenia Gonzalez, UFCW Local 1167  
Regina Caldwell, Sutter Behavioral Health  
Lauren Hajik, CA Grocers' Association  
Adriana Santos, Agricultural Worker  
Elgin Avila, Blue Green Alliance  
Ken Smith, University of California  
Damon Conklin, Sacramento Regional Builders Exchange  
Elizabeth Treanor, Phylmar Regulatory Roundtable  
Gail Blanchard-Saiger, CA Hospital Association  
Don Schinske, Western Occupational and Environmental Medical Association (WOEMA)  
Stacey Wittorff, Planned Parenthood Affiliates of California  
AJ Rossitto, CA Hotel and Lodging Association  
Rosalva  
Edgar Pinto, Centro de Investigación Entrenamiento y Reclutamiento del Trabajador Organizado (CIERTO)  
Carolina (1), H2-A Worker  
Carolina (2), H2-A Worker  
Claudia Reyes, Centro Binacional para el Desarrollo Indígena Oaxaqueño  
Cynthia Rice, CA Rural Legal Assistance  
Matthew Allen, Western Growers Association  
Frank Belio, International Union of Elevator Constructors Local 18  
Ilana Morady, Seyfarth Shaw LLP  
Satti Brown, KB Home Inland Empire  
Monty Richmond, Underground Construction Company  
Ildi Carlisle-Cummins, CA Institute for Rural Studies  
Yardenna Aaron, Maintenance Cooperation Trust Fund  
Tina Taylor, Collins Electrical Company  
Elvira Herrera, Lideres Campesinas  
Clark Peterson, Skanska USA Civil  
Michelle LeBlanc, Free Speech Coalition  
Jassy Grewal, UFCW Western States Council  
Tyler Blackney, Wine Institute  
Michel Gill, CA Immigrant Policy Center  
Helen Cleary, Phylmar Regulatory Roundtable  
Rachel Torres, United Food and Commercial Workers (UFCW)  
Caitlyn Vega, UNITE HERE Local 11 and Transport Workers of America  
Elizabeth Perez  
Marilu Gonzalez, Mixteco Indigena Community Organizing Project/MICOP from Ventura County  
Mamula Ramirez  
Jennifer Zurita, CA Rural Legal Assistance  
Ana Padilla, UC Merced Community and Labor Center  
Melissa Peters, Littler Mendelson P.C.  
Andrew Gross Gaitan, SEIU United Service Workers West  
Ramón Castellblanch, California Alliance for Retired Americans  
Vincent Hundley, Associated General Contractors, San Diego Chapter  
Luz Gallegos, Training Occupational Development Educating Communities (TODEC)  
Bill Benham, Bill Benham Consulting LLC  
Dr. Nho Le-Hinds, Sacramento City Teachers Association

Norma Encinas, Centro de Investigación  
Entrenamiento y Reclutamiento del  
Trabajador Organizado (CIERTO)  
Morgan Craig, UNITE HERE

Stan Santos, Fresno Madera Tulare Kings Labor  
Council  
Lizette Aguilar, Fast Food Worker  
Joe Duffel, United Food and Commercial Workers  
Union Local 1167

## II. PUBLIC DISCUSSION (COVID-19 PREVENTION EMERGENCY REGULATIONS)

### A. PRESENTATION OF DRAFT PROPOSED TEXT

Ms. Shupe provided a brief overview to the Board regarding the draft proposed text for the COVID-19 Prevention emergency temporary standard (ETS).

### B. PUBLIC COMMENT ON COVID-19 PREVENTION PROPOSAL

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board regarding the COVID-19 Prevention ETS.

The following individuals commented on the COVID-19 Prevention ETS. To read their testimony, please refer to the transcript that is posted on the Board's website at [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb).

**Alma Comacho, Maintenance Cooperation Trust Fund**  
**Carlos Almarez, Garment Worker Center**  
**Robert Moutrie, CA Chamber of Commerce**  
**Camucha King, UNITE HERE**  
**Rico Tamayo, CA Federation of Teachers**  
**Keith Brown, Oakland Education Association**  
**Patrick Cirby, UNITE HERE**  
**Brooke Billingsley, Los Angeles Alliance for a New Economy**  
**Morgan Craig, UNITE HERE**  
**Joy Schnapper, Capistrano Unified Education Association**  
**Bruce Wick, CALPASC**  
**Efrain Hernandez, Garment Worker Center**  
**Dr. Nho Le-Hinds, Sacramento City Teachers Association**  
**Emma Allen-Landwehr, ROC the Bay**  
**Natasha Castro, Los Angeles Alliance for a New Economy**  
**Robert Harrison, University of CA, San Francisco**  
**David, ROC the Bay**  
**Michael Miiller, CA Association of Winegrape Growers**  
**Michael Young, CA Federation of Teachers**  
**Maria Vasquez, Restaurant Opportunities Center of Los Angeles (Roc\_LA)**  
**Angelica Miklos, Folsom Cordova Education Association**  
**Stan Santos, Fresno Madera Tulare Kings Labor Council**  
**Rachel Reyes, Los Angeles Alliance for a New Economy**  
**Melissa Love, United for Respect**  
**Dan Leacox, Leacox and Associates**

**Nicole Rice, CA Manufacturers and Technology Association  
Zenaida Perez-Fuentes, SoCalCOSH  
Matt Rogers, AgSocio  
Virgilda Romero, Garment Worker Center**

Mr. Thomas called for a lunch break at 12:20 p.m. and reconvened the meeting at 1:00 p.m.

**Elizabeth Treanor, Phylmar Regulatory Roundtable  
Carolyn Denise Barlage, Los Angeles Alliance for a New Economy  
Anne Katten, CA Rural Legal Assistance Foundation  
Andrew Sommer, Conn Maciel Carey, representing the CA Employers COVID-19 Prevention Coalition  
Katie Hansen, CA Restaurant Association  
Pamela Murcell, CA Industrial Hygiene Council  
Maggie Robbins, Worksafe  
Lizette Aguilar, Fast Food Worker  
Mitch Steiger, CA Labor Federation  
Juvenal Solano, Mixteco/Indigena Community Organizing Project  
Julia Garcia, Lideres Campesinas  
Helen Cleary, Phylmar Regulatory Roundtable  
Eric Frumin, Change to Win  
Michael Hall, Pacific Maritime Association  
Paz Aguilar, Fast Food Worker  
Brian Mello, Associated General Contractors of CA  
Mike Donlon, Construction Employers Association  
Lucas Zucker, Central Coast Alliance United for a Sustainable Economy  
Christopher Valadez, Grower-Shipper Association of Central California  
Linda Kjesbu, Northern California Safety Consortium  
Bryan Little, CA Farm Bureau Federation  
Mirella Deniz-Zaragoza, Warehouse Worker Resource Center  
Fred Walter  
Norma Encinas, CIERTO**

Mr. Thomas called for a break at 2:52 p.m. and reconvened the meeting at 3:08 p.m.

**Edgar Pinto, CIERTO  
Carolina (1), H2-A Worker  
Carolina (2), H2-A Worker  
Sarait Martinez, Centro Binacional para el Desarrollo Indígena Oaxaqueño  
Kristin Hamon, San Diego Gas & Electric  
Jennifer Zurita, CA Rural Legal Assistance (read testimony on behalf of Sandra Aguila of CA Rural Legal Assistance)  
Matt Hart, United Food and Commercial Workers Local 324  
Claudia Reyes, Centro Binacional para el Desarrollo Indígena Oaxaqueño  
Irene Barraicua, Lideres Campesinas  
Steve McCarthy, CA Retailers Association  
Meghan Neal, PW Gillibrand**

**Cynthia Rice, CA Rural Legal Assistance**  
**Yardenna Aaron, Maintenance Cooperation Trust Fund**  
**Scott Brauninger, Build Group**  
**Elvira Herrera, Lideres Campesinas**

Mr. Thomas called for a break at 3:58 p.m. and reconvened the meeting at 4:12 p.m.

**Yesenia Gonzalez, United Food and Commercial Workers Local 1167**  
**Jassy Grewal, United Food and Commercial Workers, Western States Council**  
**Stacey Wittorff, Planned Parenthood Affiliates of California**  
**Regina Caldwell, Sutter Behavioral Health**  
**Rachel Torres, United Food and Commercial Workers**  
**Caitlyn Vega, UNITE HERE Local 11 and Transport Workers of America**  
**Lauren Hajik, CA Grocers' Association**  
**Elgin Avila, Blue Green Alliance**  
**Ken Smith, University of California**  
**Gail Blanchard-Saiger, CA Hospital Association**  
**Elizabeth Perez**  
**Marilyn Gonzalez, Mixteco Indigena Community Organizing Project/MICOP from Ventura County**  
**Rosalva**  
**Melissa Peters, Littler Mendelson, P.C.**  
**AJ Rossitto, CA Hotel and Lodging Association**  
**Ramón Castellblanch, CA Alliance for Retired Americans**  
**Matthew Allen, Western Growers Association**  
**Karen Tynan, Ogletree Deakins**  
**Mamula Ramirez**  
**Jorge Toledano, Mixteco Indigena Community Organizing Project/MICOP from Ventura County**  
**Luz Gallegos, TODEC**  
**Ana Padilla, UC Merced Community and Labor Center**  
**Lorena Martinez, CA Rural Legal Assistance**  
**Fernando Torres, CA Rural Legal Assistance**  
**Shane Ross, CA Rural Legal Assistance**  
**Jen Hamelin, PRISM**  
**Andrew Gross Gaitan, SEIU United Service Workers West**  
**Estella Cisneros, CA Rural Legal Assistance**  
**Joe Duffel, United Food and Commercial Workers Union Local 1167**  
**Elda Brueggemann, Western Agricultural Processors Association**

C. ADJOURNMENT

Mr. Thomas adjourned the Public Discussion on the COVID-19 Prevention Emergency Regulations at 5:45 p.m.

### III. PUBLIC MEETING

Mr. Thomas called the Public Meeting of the Board to order at 5:45 p.m., November 19, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via Webex/teleconference, in accordance with Executive Order N-29-20. He 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, except for the draft COVID-19 Protection emergency regulations, or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Mr. Thomas noted that no members of the public came forward to comment.

#### A. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 5:46 p.m.

Mr. Thomas called for a break at 5:46 p.m. and reconvened the meeting at 5:55 p.m.

### IV. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 5:55 p.m., November 19, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via Webex/teleconference, in accordance with Executive Order N-29-20.

#### A. REPORTS

##### 1. Division Update

Mr. Berg did not have any updates to provide to the Board.

*[Item 2, Legislative Update, and item 3, Executive Officer's Report, from the Reports portion of the Business Meeting were presented out of order from what was listed on the agenda. They were presented after the Board voted on item C, Proposed Emergency Safety Orders for Adoption (Gov. Code Sec. 11346.1) of the Business Meeting.]*

#### B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

##### 1. Consent Calendar

Ms. Shupe stated that item E, Department of State Hospitals, OSHSB File No. 19-V-028, and item H, Patton Equities, LLC, OSHSB File No. 20-V-128, on the consent calendar are not ready for the Board's consideration and should be removed from the consent calendar. She said she is aware of no unresolved procedural issues regarding items A-D, F-G, and I-V on the consent calendar, and she believes that those items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Burgel to adopt the consent calendar as modified.

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

C. PROPOSED EMERGENCY SAFETY ORDERS FOR ADOPTION (GOV. CODE SEC. 11346.1)

1. TITLE 8:           **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7, New Sections 3205, 3205.1, 3205.2, 3205.3 and  
3205.4  
**COVID-19 Prevention**

**Mr. Parker** and **Mr. Berg** summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board’s consideration and vote.

**Ms. Kennedy** asked what gap this regulation is covering that is separate from the gap being covered by AB 685, especially when it comes to retaliation. **Mr. Parker** stated that this regulation will allow the Division to fully enforce AB 685. There are some slight differences in terms of the definition, but they are non-substantive and only there to clarify things. **Mr. Berg** stated that the regulation clarifies some things that were very vague in the bill while remaining consistent.

**Ms. Kennedy** also asked about the scientific basis for using six foot distancing in the workplace. She said that six foot distancing seems appropriate for brief encounters with people, but not for workplaces since workers are working with people for significant amounts of time. **Mr. Berg** stated that the Division does not think six feet is sufficient, but the Division wants to remain consistent with the message that other public health authorities have been issuing for the last several months so as to eliminate further confusion. He said that science has proven that aerosols can transmit COVID over 20 feet, but if the six foot distancing is combined with mask use, which is also required in the regulation, it can significantly reduce the spread.

**Ms. Laszcz-Davis** stated that she is concerned about the comments from stakeholders in the retail, restaurant, school, and hotel industries, and whether or not this regulation will bridge the gap for them. **Mr. Parker** stated that the Division feels it will bridge the gap. The standard by itself will not do that, but the Division’s implementation strategy will help provide clarity to employers and workers.

**Mr. Harrison** stated that he is concerned about the timeliness and practical process of approving the rule. He asked Mr. Berg how soon an advisory committee meeting can take place and an amendment be made to the rule. **Mr. Berg** stated that it should happen within four months, as per the Board’s instructions. **Mr. Parker** stated that it could be done sooner if warranted, but doing that would shorten the overall length of time that the standard would be in place.



**Ms. Stock** stated that she would like to see the Division get the advisory committee meeting scheduled within the next month so that the dialogue process can start. It is possible that some of the concerns might be able to be addressed through dialogue and no changes to the rule would be necessary, and having the dialogue process begin soon would help to identify the problems and determine what to do to resolve them. **Mr. Parker** agreed that having a meeting where the Division could present its resources to stakeholders would be helpful. He said that he would check with Ms. Shupe regarding the requirements for a formal advisory committee and an informal discussion with stakeholders. **Ms. Shupe** stated that the proposed decision instructs the Board staff to work with the Division to conduct those advisory committees. There is some rigidity regarding what the Division and Board staff can do with the advisory committee once the rule is adopted, but the Board staff and Division will make sure that it is collaborative.

**Mr. Thomas** stated that he would like to see an informational type of meeting or advisory committee meeting start right away.

**Ms. Laszcz-Davis** stated that she is concerned about how small employers are going to struggle with implementing this regulation. She asked if it would be possible to hold off voting on this proposal and convene an advisory committee meeting during the first week of December so that an advisory committee can discuss it, and then come back with a revised and refined regulation. By doing that, the resulting regulation may be more applicable and clear than what the Board is voting on today.

**Mr. Thomas** stated that having an advisory committee in December is fine, but there is an urgent need for this regulation right now, so the Board should vote on it today. **Ms. Stock** echoed Mr. Thomas's comments. She said that she feels it is unlikely that an advisory committee will be able to happen that quickly, and taking action now is essential to protect workers. She stated that the Division has also indicated that this regulation is needed to help them with enforcement.

**Ms. Burgel** echoed Mr. Thomas's and Ms. Stock's comments. She is glad to see that this proposal is comprehensive and includes engineering and administrative controls, such as ventilation, staggering breaks, and integrating all the guidance that has been promulgated throughout this pandemic. She also supports medical removal and continuation for workers who are sick. The testing protocols may be difficult for employers to implement, especially integrating the ATD standard when working in a complex organization, but it is a good and necessary standard.

**Mr. Harrison** stated that he supports the rule, but he hopes that some of the concerns raised regarding potential conflicts in the language with some of the recently passed legislation will not create any problems with the Office of Administrative Law.

**Ms. Laszcz-Davis** asked Mr. Berg and Mr. Parker how quickly changes can be made to the ETS if an advisory committee is held after the Board adopts the regulation. If it will be three to five months before changes are implemented, that is not adequate, and some of the requirements in this regulation are so confusing that the confusion will keep them from complying. If changes can be made after the rule is adopted, the Division should begin

working on that right away so employers are able to comply.

**Ms. Stock** stated that she is also concerned about the stories of employer retaliation that she has heard, and she hopes that retaliation will be addressed during the advisory committee process.

**Ms. Kennedy** asked if this regulation oversteps the Board's authority, especially regarding removal of an employee for 14 days who has not been tested and protecting their wages.

**Mr. Berg** and **Ms. Shupe** stated that legal counsel had been consulted and that this proposal does not overstep the Board's authority.

#### MOTION

A motion was made by Ms. Burgel and seconded by Mr. Harrison that the Board adopt the proposal.

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

#### A. REPORTS (Continued)

##### 2. Legislative Update

Ms. Shupe stated that the Legislature is in recess and will resume on January 4, 2021, and Legislative Updates will resume at that time.

##### 3. Executive Officer's Report

Ms. Shupe stated that the COVID-19 Prevention ETS rulemaking package will be taken to the Office of Administrative Law (OAL) tomorrow, and that will trigger their 10-day review of the rulemaking. Once it has been uploaded to their "Emergency Regulations Under Review" page on their website, the public will have five calendar days to submit their comments directly to OAL. Instructions on how to submit comments to OAL are provided on their website, as well as in the Notice of Proposed Emergency Action that is posted on the Board's website.

At next month's meeting, the Board will vote on a proposed decision for Petition 580, as well as version 2.0 of the Protection from Wildfire Smoke regulation.

#### B. CLOSED SESSION

The need did not develop for the Board to hold a Closed Session at this time.

#### C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 6:58 p.m.