

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
September 17, 2020
Teleconference in Sacramento, California

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., September 17, 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

Board Staff Present at OSHSB Office

Christina Shupe, Executive Officer
Michael Nelmda, Senior Safety Engineer
Sarah Money, Executive Assistant

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

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

Elizabeth Treanor, Phylmar Regulatory
Roundtable
Len Welsh, Western Steel Council
Olivia Gallegos Murillo, CLEAN Carwash
Campaign
Eric Frumin, Change to Win
Shane Gusman, Broad & Gusman

Zenaida Perez Fuentes, Southern CA Coalition for
Occupational Safety and Health
Maggie Robbins, Worksafe
Michael Young, CA Federation of Teachers
Silvia Hernandez, CLEAN Carwash Campaign
Isabel Urbano, Fight for \$15 and a Union
Kevin Bland, Ogletree Deakins

Christian Ramirez, Service Employees International Union – United Service Workers West	Rick Nils, former Amazon and Martinez On Time Parcel worker
Stasha Lampert, Service Employees International Union Local 2015	Carmen, Líderes Campesinas, Farm Worker
Michael Donlon, Construction Employers Association	Natasha Castro, Los Angeles Alliance for a New Economy
Jonathan Vick, Atkinson, Andelson, Loya, Ruud & Romo	Mitch Steiger, CA Labor Federation
Dr. Robert Blink, Western Occupational and Environmental Medicine Association	Mirella Deniz-Zaragoza, Warehouse Worker Resource Center
Veronica Perez, Líderes Campesinas, Farmworker Packing House	Gabriel Salazar, resident of Merced County
Irene de Barraicua, Líderes Campesinas	Ramón Castellblanch, CA Alliance for Retired Americans
Bryan Little, CA Farm Bureau Federation	Fred Walter, Conn Maciel Carey
Sylvia Alvarado, Service Employees International Union	Veronica Perez, Primex Farms
Erin Guerrero, CA Attractions and Parks Association	Steve McCarthy, CA Retailers Association
Michael Miiller, CA Association of Winegrape Growers	Mishaal Gill, CA Immigrant Policy Centers
Edward Flores, UC Merced Community and Labor Center	Salvador Sandoval, Merced County Health Officer
Jovana Morales, Leadership Counsel for Justice and Accountability	Robert Moutrie, CA Chamber of Commerce
Andrew Gross Gaitan, Service Employees International Union – United Service Workers West	Bruce Wick, CA Professional Association of Specialty Contractors
	Sheng Xiong, Leadership Counsel for Justice and Accountability
	Katherine Hughes, Service Employees International Nurse Alliance of CA
	Maria Maldonado, Fight for \$15 and a Union
	Cassie Hilaski, Nibbi Brothers General Contractors
	Eric McClaskey, International Union of Elevator Constructors
	Jeff Eldridge, Chevron North America Exploration and Production

Mr. Thomas 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 or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR), asked the Board to consider the alternative language that her organization submitted in response to petition 583. The alternative language is performance-based, has flexibility, and provides scientifically-based protective measures to address COVID-19 exposure in the workplace. Prescriptive measures such as those listed in petition 583 are impossible to apply to all workplaces due to the uniqueness of some jobs, tasks, and operations where they are not feasible.

Her organization is also concerned that the Board has implemented a deadline of November 19 by which to draft the text for the regulation, the Finding of Emergency, and the economic impact statement. Rushing to meet this deadline will cause errors, and it is dangerous to issue an emergency rule with the intent to fix the problems later. She asked the Board to extend the deadline one month so that outreach can occur and stakeholders can provide input to make the emergency regulation the best that it can be.

The following individuals echoed Ms. Treanor's comments:

- **Steve McCarthy, CA Retailers Association**
- **Robert Moutrie, CA Chamber of Commerce**
- **Erin Guerrero, CA Attractions and Parks Association**
- **Bryan Little, CA Farm Bureau Federation**
- **Michel Müller, CA Association of Winegrape Growers**

Zenaida Perez Fuentes, Southern CA Coalition for Occupational Safety and Health, encouraged the Board to adopt petition 583 because swift action is needed to protect workers from exposure to COVID-19, and an emergency standard is needed to hold employers accountable. Some employers are not providing their employees with personal protective equipment (PPE) and proper training, and not allowing employees to maintain proper social distancing, thereby putting their employees at risk of getting COVID-19. **Rick Nils, former worker for Amazon and Martinez On Time Parcel**, echoed Ms. Perez Fuentes's comments.

Olivia Gallegos Murillo, CLEAN Carwash Campaign, stated that her employer is not protecting workers from exposure to COVID-19. As a result, several employees have contracted COVID-19, and there have been no changes in working conditions or proper disinfection taking place in the workplace. More training is needed, especially for management, and the proper precautions need to be taken to protect employees.

Michael Young, CA Federation of Teachers, stated that it is important to ensure that teachers, students, and others in education are protected from COVID-19 exposure. He said that many children have been diagnosed with COVID-19 and can transmit it to others, and it is important to consider that as schools and colleges reopen.

Len Welsh, Western Steel Council, stated that there are provisions in the injury and illness prevention plan (IIPP) that cover COVID-19 exposure, so it would be a better use of the Division's resources to continue with the compliance assistance mode to identify and address noncompliant employers. However, if the Board decides to adopt petition 583 and have the Division develop an emergency regulation, it needs to be kept simple. **Robert Moutrie, CA Chamber of Commerce, Bryan Little, CA Farm Bureau Federation, and Kevin Bland, Ogletree Deakins, representing the CA Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council**, echoed Mr. Welsh's comments.

Eric Frumin, Change to Win, stated that there is too much misinformation going around to employers about how to protect their employees from COVID-19, so an emergency standard is needed. It needs to be a standard that the Division can quickly enforce and will cover employers that are not currently covered by the aerosol transmissible disease (ATD) standard.

Natasha Castro, Los Angeles Alliance for a New Economy, stated that her organization supports petition 583 because there are employers who are not following the public health orders. Many retail employers are not regulating the number of customers allowed in their stores at one time, and therefore, there is no social distancing taking place. There is also no access to cleaning supplies, and following a COVID-19 outbreak among employees, stores are not being deep cleaned.

Mitch Steiger, CA Labor Federation, stated that his organization supports petition 583 and is looking forward to participating in the advisory committee process. However, it is important that the emergency standards does not weaken the existing standards. There is a lot of confusion and conflicting guidance going around, but there are also some good strong protections that need to remain in place.

Stasha Lampert, Service Employees International Union Local 2015, stated that her organization supports petition 583 because there are healthcare workers who are still facing inadequate safety protocols to protect them during the pandemic, even though the ATD standard is in place. She read supporting testimonies into the record from Maria Carmen Vasquez, Nicole Marzano, and Devin Wood, who are nursing home workers.

Mirella Deniz-Zaragoza, Warehouse Worker Resource Center, stated that her organization supports petition 583 because the existing regulations do not address specific preventative measures necessary to prevent exposure to COVID-19 in the workplace. It is also important to expand the ATD standard so that it covers all employers.

Mr. Thomas called for a break at 11:20 a.m. and reconvened the meeting at 11:30 a.m.

Michael Donlon, Construction Employers Association, stated that the emergency regulation petition 583 seeks to establish is duplicative of existing regulations in the IIPP, and the Division has been able to easily cite employers under those existing regulations. The Division has also provided dozens of industry-specific guidance documents to assist employers. There are two main issues with the language in petition 583:

- It requires an employer to hire a competent person knowledgeable in infection control principles. This will be problematic for small employers who do not have the resources to comply with this regulation.
- It requires employers to update their compliance action plan within 10 days of a new order or regulation being issued. The Administrative Procedures Act (APA) does not allow regulations that automatically update without public comment and following Americans with Disabilities Act (ADA) procedures.

If the Board chooses to undertake emergency rulemaking in response to this petition, the language needs to be clear, concise, and consistent with other laws and regulations, including AB 685. It is important to not push it through too quickly so that there aren't any unintended consequences like there have been for the emergency wildfire smoke regulation.

The following individuals echoed Mr. Donlon's comments:

- **Robert Moutrie, CA Chamber of Commerce**
- **Erin Guerrero, CA Attractions and Parks Association**
- **Bryan Little, CA Farm Bureau Federation**
- **Cassie Hilaski, Nibbi Brothers General Contractors**

Gabriel Salazar, resident of Merced County, stated that he is concerned that it took the Foster Farms plant in his area two months to respond to local health and safety orders following a COVID-19 outbreak at the facility before temporarily shutting down. Workers at the plant need protection from COVID-19, and there needs to be stricter enforcement of

regulations to keep this from happening again.

Maggie Robbins, Worksafe, stated that her organization is pleased to see that the proposed decision for petition 583 strikes a balance between getting public input and getting an emergency standard in place quickly to address COVID-19 exposure in the workplace. A temporary standard will address COVID-19 and having an advisory committee meeting after it is adopted is a good idea so that changes can be made if necessary.

Jonathan Vick, Atkinson, Andelson, Loya, Ruud & Romo, also representing the Engineering Contractors Association, the Tilt-Up Concrete Contractors Association, United General Contractors, and the Southern CA Scaffolding Association, stated that the Division is successfully enforcing the existing rules that are designed to protect workers from exposure to COVID-19, and additional regulation will further confuse employers. The guidance documents that the Division has issued are helpful and sufficient for employers. The language in petition 583 requires employers to collect personally identifiable information from employees, which would trigger provisions in the CA Consumer Protection Act. He asked the Board to consider the proposed language from PRR if the Board chooses to move forward with developing an emergency regulation. **Bryan Little, CA Farm Bureau Federation**, echoed Mr. Vick's comments.

Dr. Robert Blink, Western Occupational and Environmental Medicine Association, stated that stronger regulations are needed to address COVID-19 exposure in the workplace because not all employers are covered under the ATD standard and the IIPP standard is not sufficient to cover them. He said that if the Board chooses to develop an emergency temporary standard, the following provisions should be included:

- Employers must properly report an outbreak to the local health officer. After that, any subsequent cases should be reported to the local health officer within a week of occurrence.
- Employers experiencing an outbreak should be required to submit a COVID-19 prevention plan to their employees detailing the control measures that are to be used, such as handwashing, cleaning procedures, social distancing, and training on these measures.
- Employers who refuse to comply with orders from the local health officer should be considered to be in violation of this regulation.
- Upon direction from the local health officer, employers should arrange with a local healthcare provider to do contact tracing.
- In the event of ongoing transmission despite implementing early steps to prevent it, employers should require employees to wear N95 masks, eye protection, and any other protection recommended by a healthcare professional.

His organization realizes that these regulations may be difficult for smaller workplaces to implement, so provisions should be made for them as well.

Steve McCarthy, CA Retailers Association, stated that a prescriptive emergency temporary standard to address COVID-19 is not necessary and will add an additional set of regulations for retailers to follow, creating further confusion. The Division has the capabilities to enforce, cite, and shut down noncompliant employers with the guidance documents that it has issued, which is more appropriate. His organization has several concerns with the proposed language in petition 583:

- The reporting language conflicts with the language in AB 685 and should be deleted.
- Confrontations with customers who refuse to wear masks do escalate to violence, so enforcement of mask mandates should remain with local law enforcement. The regulation should be limited to signage and state that companies will not be penalized because a customer refuses to wear a mask. **Andrew Gross Gaitan, Service Employees International Union – United Service Workers West**, echoed this comment.
- Employers cannot guarantee that employees will always maintain proper social distancing at all times.
- The language in petition 583 allows employees to bring their own PPE, but this could be problematic in some industries, so employers should retain the right to require their employees to wear only the PPE that the employer provides.
- The language in petition 583 requires a medical evaluation that is not required in any other COVID-19-related guidance documents.
- The language in petition 583 requires employers to retrain employees when site conditions change. This should be limited to when new hazards are recognized.

Erin Guerrero, CA Attractions and Parks Association, echoed Mr. McCarthy's comments.

Mr. Thomas called for a break at 12:25 p.m. and reconvened the meeting at 12:30 p.m. **Shane Gusman, Broad & Gusman, representing the CA Teamsters Public Affairs Council**, stated that his organization supports petition 583 because workers are being forced to come to work when sick or face disciplinary action. Other workers are forced to work next to people who are sick and are retaliated against for complaining. Some employers are also deliberately not following the guidance given to them because they know they won't get in trouble for doing so.

Bruce Wick, CA Professional Association of Specialty Contractors, stated that it is best for the Division to continue focusing its resources on enforcing the current regulations, but if the Board decides to move forward with an emergency regulation, it should consider the version that has been proposed by the PRR. If the Board decides to use PRR's version, his organization feels that the rule should relate only to guidance issued by the Division and bear in mind the fact that this guidance has not been vetted by stakeholders.

Mr. Thomas called for a break at 12:57 p.m. due to technical issues and reconvened the meeting at 1:05 p.m.

Michel Miiller, CA Association of Winegrape Growers, stated that an emergency regulation to address COVID-19 is unnecessary and will violate the APA. He said that there are already plenty of existing regulations and guidance documents that cover the same things that the emergency regulation is intended to address. Developing more regulations will not force bad actors to comply, and the Division should be conducting stringent enforcement actions against them. **Kevin Bland, Ogletree Deakins, representing the CA Framing Contractors Association, the Residential Contractors Association, and the Western Steel Council, and Cassie Hilaski, Nibbi Brothers General Contractors**, echoed Mr. Miiller's comments.

Mr. Thomas called for a break at 1:49 p.m. due to technical issues and reconvened the meeting at 2:00 p.m.

Cassie Hilaski, Nibbi Brothers General Contractors, stated that an emergency regulation is not needed to address COVID-19 exposure in the workplace. However, if the Board feels that the IIPP and ATD standards are not doing a sufficient job to address COVID-19, her organization recommends issuing a directive that mandates that all employers must follow their local shelter-in-place orders, or CDC guidelines in the rare instances where shelter-in-place orders do not exist, and then pick a date by which employers must follow them. If they refuse to follow them by that date, then they would be in violation of those orders and subject to enforcement action.

Andrew Gross Gaitan, Service Employees International Union – United Service Workers West, stated that janitors who are providing more frequent and deeper cleaning of buildings are not being given the proper training, disinfecting procedures, and protective equipment to do their jobs safely during the COVID-19 pandemic. Many of these workers are subcontracted, so it is unclear as to who must provide them with training, procedures, and PPE. There is also no current standard, including AB 685, that requires property managers to inform subcontracted janitors and security guards of a potential exposure at their workplace. That is why an emergency regulation is needed to address COVID-19 exposure in the workplace.

The following individuals also commented in support of petition 583:

- **Silvia Hernandez, CLEAN Carwash Campaign**
- **Maria Maldonado, Fight for \$15 and a Union**
- **Christian Ramirez, Service Employees International Union – United Service Workers West**
- **Ramón Castellblanch, CA Alliance for Retired Americans**
- **Veronica Perez, Primex Farms**
- **Anjolie Rodriguez, Fight for \$15 and a Union** [Ms. Rodriguez provided a written statement to Isabel Urbano of Fight for \$15 and a Union, who read Ms. Rodriguez's statement into the record]
- **Mishaal Gill, CA Immigrant Policy Center**
- **Sylvia Alvarado, Service Employees International Union**
- **Carmen, Líderes Campesinas, Farm Worker**
- **Irene de Barraicua, Líderes Campesinas**
- **Katherine Hughes, SEIU Nurse Alliance of CA**
- **Edward Flores, UC Merced Community and Labor Center**

B. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 2:25 p.m.

II. **BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 2:25 p.m., September 17, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726, via Webex/teleconference, in accordance with Executive Order N-29-20..

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Stephen Knight, Executive Director, Worksafe
Frances C. Schreiber, Labor & Employment Committee of the National Lawyers Guild
Petition File No. 583

Petitioners request to amend Title 8 standards to create two new regulations. The first, a temporary emergency standard that would provide specific protections to California employees who may have exposure to COVID-19, but who are not protected by the Aerosol Transmissible Diseases standards (Sections 5199 and 5199.1). The second standard would be a permanent rulemaking effort to protect workers from infectious diseases including novel pathogens (e.g. COVID-19).

Ms. Shupe summarized the history and purpose of petition 583, and stated that the proposed decision is to grant the petition in part with a three-pronged approach:

1. The Division shall draft and submit an emergency regulatory proposal for consideration of adoption by the Board no later than the November 19, 2020 Board Meeting.
2. Subsequent to the adoption of an emergency regulation, the Division shall work with the Board staff to convene an advisory committee at four-month intervals to review and recommend amendments to the emergency standard.
3. After the COVID-19 pandemic subsides, the Division shall convene a representative advisory committee to consider the necessity for a permanent regulation to protect workers not covered by Section 5199, including novel pathogens.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock that the Board adopt the petition decision.

Ms. Stock stated that there is clearly a need for the Board to take action to help protect workers from exposure to COVID-19 in the workplace, especially since the Division has indicated in its evaluation of the petition that an emergency regulation is needed. Developing an emergency regulation will address a lot of the confusion that employers have been facing regarding the multitude of guidance documents that have been issued. She urged the Board Members to join her in voting “aye”.

Ms. Laszcz-Davis stated that the testimony today proves there is a need for further regulation to address COVID-19 in the workplace, but the regulation needs to be performance-based, leverage the existing industry guidelines and best practices that are currently working, and allow some flexibility. She also recommended that the Board delay taking action for a month or two to allow time for stakeholder input and consideration of existing regulations.

Mr. Harrison recommended that the Board move the petition forward as presented.

Ms. Burgel stated that she hopes the process for this emergency standard will be robust and time-sensitive and will result in a performance-based standard that will focus on hierarchy of controls. She also hopes that there is greater focus on ventilation and design, with not too much reliance on PPE.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Shupe stated that she is aware of no unresolved procedural issues regarding the items A-U 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 Ms. Laszcz-Davis and seconded by Mr. Harrison to adopt the consent calendar.

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

C. OTHER

1. DOSH Update

Ms. Kennedy had submitted the following questions to Mr. Berg via the OSHSB email account following the July 16, 2020, Board Meeting:

- Is the Division investigating COVID-related hazards in response to complaints?
- Is the Division investigating COVID-related hazards in response to outbreaks or clusters?
- Is the Division targeting industries with increased COVID case rates?
- Is the Division focusing on populations that are most vulnerable to COVID?
- Of the numerous inspections that the Division has conducted, are there any situations where identified COVID-19-related workplace problems could not be cited under Section 3203 or the ATD standard?

Mr. Berg stated that the Division is conducting inspections into COVID-19-related hazards in response to complaints, outbreaks, and clusters. The Division is focusing its inspection efforts on industries that have vulnerable populations, increased rates of COVID, and that are having significant outbreaks and clusters.

Mr. Berg stated that in cases where employers do not fall under the requirements of the ATD standard, Sections 3203 and 5144 provide a regulatory basis that requires employers to protect workers from exposure to COVID-19 in the workplace. However, the Division feels that a regulation specific to COVID-19 would greatly increase their efficiency, effectiveness, and success in protecting workers.

2. Legislative Update

Ms. Shupe provided updates on the following bills:

- AB 2658
- AB 1512
- AB 2537
- AB 2043
- SB 1257
- SB 275
- AB 2092
- AB 685

3. Executive Officer's Report

Ms. Shupe stated that the Board staff has contracted with a company to help provide meeting support and expand public access to the Board Meetings. In addition to the Webex and teleconference options for attending Board Meetings, the meetings are now being broadcast live in English and Spanish, and audio-only streams are also available in both languages.

Ms. Shupe stated that during next month's meeting, the Board will consider the proposed decision for petition 579, and there will be a report on any enrolled bills that have been adopted by the Governor.

4. Board Member Comments and Future Agenda Items

No future agenda items were mentioned.

D. CLOSED SESSION

The need did not develop for the Board to hold a closed session at this time.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 3:00 p.m.