

STATE OF CALIFORNIA
DEPARTMENT of INDUSTRIAL RELATIONS

Public Meeting of the OCCUPATIONAL SAFETY and
HEALTH STANDARDS BOARD

TRANSCRIPT OF PROCEEDINGS

August 20, 2020

In accordance with Executive Order N-29-20 and Executive Order N-33-20, the physical location was canceled and the meeting was held via WebEx video/audio internet and via teleconference platforms.

Reported by:

Peter Petty

APPEARANCES

OSHSB Board Members Present:

David Thomas, Chair
Barbara Burgel
David Harrison
Nola J. Kennedy
Chris Laszcz-Davis
Laura Stock

OSHSB Staff Present:

Christina Shupe, Executive Officer
Sarah Money, Executive Assistant
Michael Nelmda, Senior Safety Engineer
Michael Manieri, Principal Safety Engineer
Lara Paskins, Staff Services Manager
David Kernazitkas, Senior Safety Engineer
Jennifer White, Staff Services Analyst

Also present:

Eric Berg, Deputy Chief of Health, Division of
Occupational Safety and Health (DOSH)
Susana Haikalis, Spanish-English Interpreter

Public Commenters (in order of appearance):

Dan Leacox, Leacox and Associates
Lorena Perea Elox, Fight for \$15 and a Union
Maggie Robbins, Worksafe
Alfredo Lahud, SEIU USWW
Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR)
Edith Aburto, Fight for \$15 and a Union
Michael Donlon, Construction Employers' Association
Margarita Tomas, Fight for \$15 and a Union
Kevin Bland, Ogletree Deakins, representing the California
FramingContractors Association, the Residential Contractors
Association, and the Western Steel Council
Johanna Bernal, SEIU USWW
Ramon Castellblanch, California Alliance for Retired
Americans
Mirella Deniz-Zaragoza, Warehouse Worker Resource Center
Robert Blink
Bryan Little, California Farm Bureau Federation

APPEARANCES, continued

Public Commenters (in order of appearance):

Len Welsh, Western Steel Council

Lisa Prince, The Prince Firm

Alice Berliner, Southern California Coalition for
Occupational Safety and Health (SoCalCOSH)

Bruce Wick, California Professional Association of Specialty
Contractors (CALPASC)

Rosa Trevizo, Associated General Contractors of
California (AGC of CA)

Anne Katten, California Rural Legal Assistance
Foundation (CRLAF)

Stephen Knight, Worksafe

Robert Moutrie, California Chamber of Commerce

Cassie Hilaski, Nibbi Brothers General Contractors

Michael Miiller, California Association of Winegrape Growers

Kathy Hughes, SEIU Nurse Alliance of California

Michael Young, California Federation of Teachers

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P R O C E E D I N G S

Thursday, August 20, 2020 10:02 o'clock a.m.

CHAIRMAN THOMAS: Good morning. This meeting of the Occupational Safety and Health Standards Board is now called to order.

I'm Dave Thomas, Chairman. And the other Board Members present today remotely are: Ms. Barbara Burgel, Occupational Health Representative; Mr. David Harrison, Labor Representative; Ms. Nola Kennedy, Public Member; Mrs. Chris Laszcz-Davis, Management Representative; and Ms. Laura Stock, Occupational Safety Representative.

Also present from our staff for today's meeting are: Ms. Christina Shupe, Executive Officer; Ms. Sarah Money, Executive Assistant; and Mr. Michael Manieri, --

MS. SHUPE: No.

CHAIRMAN THOMAS: -- Senior Safety Engineer -- I'm sorry -- Nelmidia, Senior Safety Engineer, who is providing technical support. Sorry about that.

Supporting the meeting remotely are: Mr. Michael Manieri, Principal Safety Engineer; Ms. Lara Paskins, Safety Services Manager; and Mr. David Kernazitkas, Senior Safety Engineer; and Ms. Jennifer White, Staff Services Analyst. Via teleconference, we are joined today by Mr. Eric Berg, Deputy Chief of Health, representing the Division of Occupational Safety and Health.

1 If you have not already done so, we ask that you
2 email OSHSB@Dir.ca.gov to provide your name and contact
3 information which will become part of the official record for
4 today's proceedings. Today's agenda and other materials
5 related to today's proceedings are posted online at
6 Dir.ca.gov/OSHSB/Agendas.html. -- is there a dot at the end
7 of that, or no?

8 MS. SHUPE: No, it's just a period.

9 CHAIRMAN THOMAS: It's just a period. So no dot at
10 the end.

11 In accordance with the Executive Order N-29-20, the
12 physical meeting location for today has been canceled. In
13 addition to the emailed notice -- notices, signs have been
14 posted at the previously-noticed physical location with
15 instructions on how to participate in today's meeting.

16 Today's meeting is being held exclusively via
17 teleconference with an optional video component. We are
18 living in unprecedented times, and the Board is committed to
19 taking the steps necessary to protect the health and safety
20 of our participants. I'm asking for everyone's patience as
21 we navigate the remote meeting process. We have limited
22 capabilities for managing participation during public comment
23 periods, so we're asking everyone who is not speaking to
24 please mute their phones and computers, and wait to unmute
25 when they are called on to speak.

26 As reflected on the agenda, today's meeting

1 consists of two parts. First we will hold a public meeting
2 to receive public comment or proposals on occupational safety
3 and health matters. Anyone who would like to address any
4 occupational safety and health issues, including any of the
5 items on our Business Meeting agenda, may do so at this time.
6 Members of the public who have contacted staff either by
7 email or phone and asked to be placed in the public comment
8 queue will be called on in turn. Additionally, those joining
9 via WebEx may ask to join the queue via the chat function.

10 The WebEx chat function is monitored exclusively by
11 staff and only available to send requests to join the public
12 comment queue. It is not a method for providing public
13 comment to Board Members. Board Members will not consider or
14 respond to any messages delivered via the chat function, nor
15 will such comments become part of the official rulemaking
16 record.

17 Please listen for your name and invitation to speak
18 before addressing the Board. And please remember to mute
19 your phone or computer after commenting. After everyone in
20 the queue is provided an opportunity to speak, we will then
21 open public comment to anyone on the -- on the call who has
22 not been able to enter the queue. If you wish to speak more
23 than once, please contact staff and have your name placed
24 back into the queue if you are able.

25 During the meeting Board staff can be contacted by
26 email at OSHSB@Dir.ca.gov or via phone at 916-274-5721. If

1 you experience a busy signal or are routed to voicemail,
2 please hang up and call again.

3 After the public meeting we will conduct the second
4 part of our meeting which is the Business Meeting to act on
5 those items listed on the Business Meeting agenda. The Board
6 does not accept public comment during its Business Meeting
7 unless a Member of the Board specifically requests public
8 input.

9 We will now proceed with the Public Meeting.
10 Anyone who wishes to address the Board regarding matters
11 pertaining to occupational safety and health is invited to
12 comment except, however, the Board does not entertain
13 comments regarding variance decisions. The Board's variance
14 hearings are administrative hearings where procedural due
15 process rights are carefully preserved. Therefore, we will
16 not grant requests to address the Board on variance matters.

17 At this time anyone who would like to comment on
18 any matters concerning occupational safety and health will
19 have an opportunity to speak. Spanish language comments will
20 be translated into English by an interpreter, Susana
21 Haikalis. At this time Ms. Haikalis will provide instruction
22 to the Spanish speaking participants so they are aware of the
23 public comment process during this remote meeting.

24 Ms. Haikalis.

25 MS. SHUPE: Ms. Haikalis, we can't hear you. Are
26 you available and able to translate at this time?

1 CHAIRMAN THOMAS: It looks like we're having a
2 problem with that.

3 MS. SHUPE: Okay. While we resolve that we'll go
4 ahead and start with our English speaking commenters. The
5 first commenter in the queue is Dan Leacox from Leacox and
6 Associates.

7 Mr. Leacox.

8 Okay, we can't hear Mr. Leacox either. So at this
9 moment I'm going to ask for a two-minute pause.

10 CHAIRMAN THOMAS: Yeah. I think we've got a glitch
11 here, so we're going to pause for two minutes, and then we'll
12 come back online. So we're adjourned for just a few seconds.

13 (Off the record at 9:07 a.m.)

14 MR. LEACOX: Am I coming across clearly?

15 CHAIRMAN THOMAS: Yeah, we can hear you.

16 MR. LEACOX: Okay, I'll do it this way.

17 CHAIRMAN THOMAS: Okay, Dan, go ahead. We're
18 recording.

19 MR. LEACOX: Okay. Thank you.

20 Well, I'll just start off with there's going to be
21 a number of comments from the business community today. I'm
22 not going to try -- and I'm the first up, so I'm not going to
23 try to encompass everything that you're going to hear from
24 others. But I would like to say in particular express a me
25 too comment on behalf of -- this is Dan Leacox on behalf of
26 the employers in California that I represent -- and in this

1 case particularly the composites industry and the elevator
2 industry, among them who have employers -- employees in
3 California.

4 And the first thing I'd like to do is lend me too
5 support to comments being made by the Phylmar Regulatory
6 Roundtable. Are you hearing me okay?

7 CHAIRMAN THOMAS: Yeah.

8 MR. LEACOX: Okay, good. They're an excellent set
9 of comments, and I would express full support for those,
10 particularly regarding the necessity of this rule and that it
11 wouldn't appear to me to be necessary given the extent of
12 enforcement and rules that are enforceable by the Division.
13 But I'll leave more to that for the Phylmar Regulatory
14 Roundtable and others.

15 I would start my comments with sort of a be-
16 careful-what-you-ask-for admonition in looking at Petition
17 583 and approving it. As we saw with the wildfire smoke
18 rule, an emergency rulemaking tends to take on a life of its
19 own and bypass meaningful engagement with the regulated
20 community. And that lack of engagement can result in unreal
21 provisions with unjustified burdens. And in the end the
22 Board is faced with an up or down choice on a rule that is
23 not substantially and fully vetted.

24 The third -- my third comment would be that this is
25 essentially a public health issue. And in trying to control
26 a public health issue through the employment relationship is

1 extremely prone to overreaching. It's like asking employers
2 to prevent exposure to traffic accidents because employees
3 sometimes drive to work. Some of the potential overreach
4 includes aspects of the petitioned rule, for example, that
5 calls for employers to collect and disseminate personal
6 information about employees, and we're seeing a lot of
7 consternation over this around the country of this very fact.

8 The petition rule also calls for the employer to
9 establish and implement and maintain an effective written
10 compliance plan. That apparently innocuous word we know from
11 enforcement parlance that "effective" means that an employer
12 may be cited if a single employee gets sick. This is really
13 an impossible standard particularly, you know, when you're
14 talking about exposure to a disease and virus that's
15 ubiquitous everywhere in the environment. And when the
16 health -- and the illness occurs latent to the exposure, it
17 isn't really a standard that employers can reasonably
18 expected to live up to. The petition rule also has wage and
19 hour provisions in it. So these are just among the things
20 that could show up at the end if this rule goes forward.

21 The Board should be mindful that the petition rule,
22 if it adds anything at all to the existing rules, and I got
23 directed to the Division's evaluation for all the different
24 rules that it has to enforce in this situation, and I think
25 you will hear other information about the extent of
26 enforcement that's occurring. And a rule like this, if it

1 does add anything to existing rules, will almost certainly be
2 -- cross the threshold for major regulation and be subject to
3 a Standard Regulatory Impact Assessment. A rule like this
4 affects virtually every one of the million or so employers,
5 and it takes just a cost of \$50 per employee to exceed that
6 threshold -- or \$50 per employer. Excuse me.

7 So the last thing I'd like to say it's just
8 something about the employer's voice in this process. I've
9 heard a number of commenters saying employers need clarity as
10 a reason for this petition and rulemaking. While clarity is
11 a rulemaking requirement, and that is something that
12 employers enjoy, it could not become a reason to ignore all
13 else that the regulated community is saying about this rule.
14 And so my last comment is just the employer, please listen to
15 what the regulated community is telling you about it. Thank
16 you.

17 CHAIRMAN THOMAS: Thank you.

18 Do we have our next commenter?

19 MS. SHUPE: Before we go to our next commenter, I'd
20 like to go ahead and test the audio with our translator, Ms.
21 Susana Haikalis.

22 Ms. Haikalis, can you hear us?

23 THE INTERPRETER: I hear you, but -- can you hear
24 me?

25 CHAIRMAN THOMAS: Yes.

26 MS. SHUPE: We can hear you, yes.

1 THE INTERPRETER: Okay. And you do hear me there?

2 MS. SHUPE: We do.

3 CHAIRMAN THOMAS: Yes.

4 THE INTERPRETER: Thank you. Okay.

5 MS. SHUPE: Are you ready to begin translating?

6 THE INTERPRETER: Yes. Thank you. Thank you, good
7 morning. (Speaking Spanish.)

8 CHAIRMAN THOMAS: So who's our first commenter?
9 Edith?

10 MS. SHUPE: I believe that our first commenter is
11 Edith Aburto.

12 THE INTERPRETER: Mr. Chairman, do you -- ladies and
13 gentlemen, do you still need to hear me?

14 CHAIRMAN THOMAS: We can hear you. We're just trying
15 to bring in --

16 THE INTERPRETER: Okay. I do not hear you for some
17 reason.

18 MS. SHUPE: It's because we're muted. I apologize.
19 Yes, our first speaker is Edith Aburto, and we're getting
20 that person on the phone right this moment.

21 THE INTERPRETER: Thank you.

22 MS. SHUPE: I apologize. Our first speaker will be
23 Lorena Parea.

24 MS. PAREA ELOX: Parea.

25 THE INTERPRETER: Thank you.

26 MS. SHUPE: Parea.

1 THE INTERPRETER: (Speaking Spanish.)

2 (Susana Haikalis, Spanish-English interpreter,
3 translates for the commenter and meeting attendees at large:)

4 MS. PAREA ELOX (through the Translator): Should I
5 begin?

6 MS. SHUPE: Yes, please.

7 CHAIRMAN THOMAS: Yes.

8 MS. PAREA ELOX (through the Translator): And good
9 afternoon. My name is Lorena Parea Elox.

10 I am a McDonald's worker and leader in the fight
11 for \$15 and a union.

12 I am currently on strike because my store on South
13 La Brea Avenue and Obama Boulevard has failed to keep the
14 workers safe during the pandemic.

15 Over the past few weeks I have heard about two
16 cases of COVID-19 from management, but I have also heard
17 about another four cases from my coworkers. I am concerned
18 that McDonald's is not being open about who is sick in our
19 store and who might have been exposed.

20 Most of the workers who are sick are night shift --
21 is a night shift crew. This scares me because I start my
22 shift right after theirs and I am unsure if the store has
23 been properly sanitized before I arrive. Also I'm afraid
24 that workers are coming in sick because they fear getting
25 their shifts cut or changed if they call out sick.

26 Even before the pandemic this was an issue. If you

1 call in sick, there were reprisals. Sometimes they cut your
2 shifts. And that is not right, especially when essential
3 workers, like myself, have to risk COVID-19 exposure to be
4 able to support our families.

5 I live with my mother who is 53 years old and has
6 diabetes, also with my husband and two children. I am
7 terrified to bring the virus home and get my family sick.
8 Working families like mine need help during this crisis.

9 McDonald's and other fast food companies have
10 ignored the workers' voices. The Los Angeles County Health
11 Department has failed to act on dozens of fast food health
12 complaints our movement has filed. The rules as we know them
13 are not working and we are asking Cal/OSHA to rewrite those
14 rules. Workers need to -- need more power at the workplace,
15 and our employers need to know that there will be
16 consequences if they don't hear us and they fail to keep us
17 safe.

18 Thank you.

19 MS. HAIKALIS: Thank you. (Speaking Spanish.)

20 CHAIRMAN THOMAS: Thank you.

21 MS. HAIKALIS: (Speaking Spanish.)

22 CHAIRMAN THOMAS: Our next commenter is...in one
23 second. If you hear me whispering it's because I'm
24 frustrated, so pay no attention.

25 MS. HAIKALIS: The interpreter would like to know
26 who is the next person that will be commenting. Has it

1 changed?

2 CHAIRMAN THOMAS: No, I think it's Johanna Morales.

3 MS. SHUPE: We're going to go ahead and switch out
4 to an English speaking commenter right now, --

5 CHAIRMAN THOMAS: Okay.

6 MS. SHUPE: -- while Mr. Nelmidia gets our next
7 Spanish speaking commenter on the line.

8 THE INTERPRETER: (Speaking Spanish.)

9 MS. SHUPE: And our next speaker in the queue is
10 Maggie Robbins from Worksafe.

11 Ms. Robbins, if you could please unmute and join
12 the call.

13 MS. ROBBINS: Hello. Okay, I think I managed to
14 unmute. Can you hear me?

15 CHAIRMAN THOMAS: Yes, we can.

16 MS. ROBBINS: All right, great. Thank you.

17 Hi. I'm here at this point to talk mainly about
18 the COVID issue and specifically to comment a little bit
19 about some of the analysis that has been put forward by staff
20 about whether or not a standard is necessary. And I just
21 want to make a couple of points.

22 One of them is that there was a statement that a
23 lack -- there is lack of evidence of employer noncompliance
24 with guidance and standards, and somehow that was deemed as
25 equating to evidence of compliance. However, we don't really
26 have data to support this contention, such as inspections in

1 businesses that have been done by either the State
2 Enforcement Task Force or Cal/OSHA that gets into a level of
3 detail we need to know to understand what is being complied
4 with and who is complying.

5 What we do have, though, are ongoing media reports
6 of worksite outbreaks, of reports of workers being asked to
7 work in conditions with inadequate attention to physical
8 separation of workers at all times. So worksite cleaning and
9 handwashing access that is appropriate and of sick workers
10 being expected or allowed to remain at work, as was just
11 testified to.

12 So we're having to contrast no data to reports that
13 workers are giving us, and it's really hard for us to feel
14 confident that we've got a lot of compliance. There was also
15 reference to Nevada OSHA and their enforcement and outreach
16 work. And while I applaud Nevada OSHA's aggressive, high
17 profile, public use of their enforcement of the governor's
18 health orders, we don't have that in California. And perhaps
19 I would guess they're very public, outgoing enforcement
20 activities and communication about the results of that have,
21 in fact, increased employer compliance to the relatively good
22 levels that they report, though even that is uneven across
23 the state.

24 So I think we need to focus on what's going on in
25 California and what we're hearing and reading about going on
26 here in and not rely on what another state might be doing. I

1 guess one other issue I'd like to touch on is just to do a
2 little comparison here. This is a public health matter, I
3 would agree with that. However, it does have a strong
4 worksite component. We do have a lack of data as to what the
5 worksite element is, but let's just look at currently as of
6 last night, I think. The COVID fatality number in California
7 is 11,523 people. We don't know how many of those were
8 occupationally acquired or were secondary to an occupational
9 exposure, that is, family members, for example, of somebody
10 who got an occupational infection. But if we just for a
11 moment assume it's, say, five percent, which is a pretty
12 modest rate. I have no data to support whether it's 5, 15,
13 50, or any other number, but I'm just saying by way of
14 example if 5 percent of those fatalities, as 11,523
15 fatalities from COVID are work related, that would be 576
16 fatalities that would be work related. And we can compare
17 that to the number of fatal occupational injuries that we get
18 from the CFOIA reports that Cal/OSHA publishes online, which
19 in 2018, the most recent data we have available, was 422
20 fatal occupational injuries.

21 So even if say it's only five percent or
22 occupationally related, it's out-matching the entire
23 occupational fatality numbers at this date. So we need to
24 pay attention to it. This is not a typical situation, and we
25 need to do our best to try and come up with better
26 protections for workers.

1 Just by way of one other comparison is in the
2 fatality data, an issue that the Board has spent a fair
3 amount of time thinking about over the years are slip, trip,
4 and fall deaths, there were 73. That's tragedy that there
5 were 73 slip, trip, and fall deaths in the state in 2018.
6 And that's a drop in the bucket compared to what we're seeing
7 with COVID. So I do think we need to focus attention on it.
8 It is unprecedented.

9 And I think that's all the comments I'll make right
10 now. Thank you.

11 CHAIRMAN THOMAS: Thank you.

12 MS. SHUPE: Thank you. Our next speaker in the
13 queue is a Spanish speaker, so I'm going to go ahead and
14 unmute our translator at this time. And just one moment, but
15 our speaker will be Alfredo Lahud.

16 THE INTERPRETER: (Translating.)

17 MS. SHUPE: I'm sorry. Our speaker just
18 disconnected the call.

19 THE INTERPRETER: No. Can you hear me -- oh, they
20 did?

21 MS. SHUPE: He did, yes.

22 THE INTERPRETER: Okay.

23 MS. SHUPE: We're calling him back now.

24 MR. LAHUD (through the Translator): Can you hear
25 me?

26 THE INTERPRETER: (Translating.)

1 MR. LAHUD: Can you hear me?

2 THE INTERPRETER: (Translating.)

3 MS. SHUPE: Señor, we can hear you.

4 Our speaker has disconnected the call. We'll try
5 him one more time.

6 THE INTERPRETER: (Translating.)

7 MS. SHUPE: Can you turn up the volume on our
8 translator, please?

9 THE INTERPRETER: Thank you.

10 MS. SHUPE: The other side and you've got to turn
11 the speaker on.

12 MS. MONEY: Hello? Okay, go ahead.

13 MR. LAHUD: (Speaking Spanish.)

14 THE INTERPRETER: Mr. Lahud, can you hear us?
15 (Speaking Spanish.)

16 MS. MONEY: Can you hear us?

17 MR. LAHUD: (Speaking Spanish.)

18 MS. MONEY: Go ahead.

19 MR. LAHUD: Ok. (Speaking Spanish.)

20 THE INTERPRETER: I'm sorry. The interpreter
21 cannot hear Mr. Lahud.

22 MR. LAHUD: (Speaking Spanish.)

23 THE INTERPRETER: (Translating.) Speak a little bit
24 louder, please. (Speaking Spanish.)

25 MR. LAHUD: (Speaking Spanish.)

26 CHAIRMAN THOMAS: Our speaker disconnected again,

1 so we're going to go to the next person we have in the queue.
2 We'll come back to that.

3 MS. SHUPE: The next speaker in our queue is
4 Elizabeth Treanor from the Phylmar Regulatory Roundtable.

5 Ms. Treanor, if you could unmute and join the
6 meeting?

7 One moment, Ms. Treanor, I'll see if I can unmute
8 you.

9 CHAIRMAN THOMAS: Try now.

10 MS. TREANOR: Okay, is this better?

11 CHAIRMAN THOMAS: Yes, go right ahead.

12 MS. TREANOR: Excellent. Thank you so much. My
13 name is Elizabeth Treanor and I'm Director of PRR. Thank you
14 for this opportunity and thank you for your service.

15 Since May 2020 the Board has been considering
16 Petition 583 for a COVID-19 emergency regulation. Throughout
17 we have insisted that developing a regulation is not the best
18 course of action to protect workers during this pandemic. As
19 existing Title 8 regulation --

20 MS. SHUPE: Elizabeth --

21 CHAIRMAN THOMAS: We lost you, Elizabeth.

22 MS. TREANOR: Is this better?

23 CHAIRMAN THOMAS: Yup, go ahead.

24 MS. TREANOR: We urge the Board to step back and
25 assess the potential negative consequences of adopting an
26 ETS. We ask the Board to --

1 CHAIRMAN THOMAS: We lost you again.

2 MR. HARRISON: You keep muting yourself.

3 CHAIRMAN THOMAS: I'm not sure how she's -- she is
4 muted up here now.

5 MS. SHUPE: Yeah, she's muting herself.

6 MS. TREANOR: No, I'm not.

7 MS. SHUPE: I think you're having an equipment
8 failure because you --

9 CHAIRMAN THOMAS: Yeah, something is not --

10 MS. SHUPE: -- just unmuted again.

11 MS. TREANOR: Is this better?

12 MS. SHUPE: It is.

13 CHAIRMAN THOMAS: Yeah, don't move. Don't move.

14 MS. TREANOR: I won't touch anything, okay.

15 And we ask the Board to -- to review the
16 prescriptive and overreaching requirements in the petition.

17 First, Doug Parker at the August 6th advisory committee
18 identified a series of events and actions that the Division
19 has taken. They have conducted more investigations in July
20 2020 than they did in all of 2019. They directly contacted
21 over 400,000 employers in high-risk areas with information
22 about protecting workers. They responded to over 5,000
23 worker complaints from February through July. And they have
24 been participating in the Governor's multi-meam -- multi-
25 agency team conducting over 7,900 on-site inspections.

26 These numbers and activities are impressive and

1 highlight a strategy based on science and data. The greatest
2 positive impact on workers will result from targeting exactly
3 these high-risk industries and areas, instead of codifying
4 requirements running the risk of being out of date. Yes,
5 this is a public health crisis. And I agree with Ms. Robbins
6 that there is a workplace component to it, but the petition
7 fails to take into consideration the community exposure as a
8 significant source of infections.

9 Third, emergency regulations may have undesirable
10 outcomes. We remind the Board that quickly adopting an
11 emergency regulation with applicability to all employers has
12 unintended negative consequences. We are experiencing this
13 now with wildfire smoke.

14 Employers seeking N95 respirators are left without
15 any solution as wildfires rage through California because
16 public health agencies continue to say that N95 should be
17 reserved for healthcare workers. We ask the Board to heed a
18 lesson from this experience.

19 Fourth, we have particular concerns about the draft
20 proposal from Worksafe. Our written comments go into detail,
21 but I will highlight only one. The petition and the draft
22 language were submitted on May 20th. Two months later, CDC
23 changed its recommendations, making that language out of
24 date. For example, the petition would require employers to
25 immediately deep clean areas and surfaces that a diagnosed
26 employee may have come in contact with. CDC advises against

1 this. They suggest that employers wait 24 hours before
2 cleaning and disinfecting to minimize the potential for other
3 employees to be exposed to respiratory droplets. This will
4 result in protecting janitorial and maintenance personnel.

5 It demonstrates the danger of prescriptive measures
6 in an ETS when public health guidance evolves. If more
7 protective measures are recommended by a public health agency
8 after an ETS is in effect, employers will be facing a
9 decision whether to implement more protective measures with
10 the ET- -- or comply with the ETS. This is not a desirable
11 outcome.

12 We're also astonished that the workers would
13 actually want their Social Security Numbers included in all
14 of these reports.

15 The Division's statement in its evaluation that
16 IIPP requirements are general in nature and, as such, require
17 employers to address all workplace hazards, including those
18 not specifically addressed by regulations, by design and as
19 affirmed in the DOSH evaluation, the IIP does encompass all
20 hazards in the workplace, including COVID-19.

21 The statement in the Division's evaluation that the
22 IIPP is not comprehensive enough is inaccurate. Cal/OSHA has
23 clarified on its website and in its petition evaluation that
24 it has clear expectations for employers under four sections
25 of the IIPP, under Section 5141, Control of Harmful
26 Exposures; 5144, Respiratory Protection; 3362, Sanitation

1 Requirements; and 3366, Washing Facilities. The Division
2 already has the ability to cite employers under all these
3 regulations.

4 The existing Title 8 regs, the 33 industry-specific
5 guidance documents that employers are implementing, and the
6 Division's direction communications to employers provide
7 workplace protections for California workers when they're in
8 compliance -- when employers are in compliance.

9 To truly protect workers, we encourage Cal/OSHA to
10 continue targeting community hot spots, noncompliant
11 employers, and high-risk groups through investigations, on-
12 sites, and inspections. This has been a successful approach
13 and should not be derailed by shifting resources to a
14 rulemaking process.

15 Thank you for the opportunity to speak and please
16 take good care.

17 CHAIRMAN THOMAS: Thank you.

18 MS. SHUPE: Thank you.

19 Our next speaker in the queue is Spanish speaker
20 Edith Aburto. I'm going to bring our translator online now.

21 Ms. Haikalis, can you hear me?

22 THE INTERPRETER: Yes. Thank you. Can you hear
23 me?

24 MS. SHUPE: We can. One moment, please.

25 THE INTERPRETER: Thank you.

26 (Translating.)

1 MS. ABURTO: (Speaking Spanish at length.)

2 CHAIRMAN THOMAS: Can we get translation before she
3 gets too far ahead of you, Susana?

4 THE INTERPRETER: Yes, of course.

5 (Translating.)

6 MS. ABURTO (through the Interpreter): Hello. My
7 name is Edith --

8 THE INTERPRETER: (Conversing with Ms. Aburto in
9 Spanish.)

10 MS. ABURTO (through the Interpreter): Hello. My
11 name is Edith Aburto. I have worked at the McDonald's in
12 Berkeley --

13 MS. ABURTO: (Briefly speaking Spanish.)

14 THE INTERPRETER: (Briefly speaking Spanish to Ms.
15 Aburto.)

16 Ms. Aburto cannot hear me. I'm trying to tell her
17 that I am going to translate, but it seems she cannot hear
18 me.

19 Okay. The interpreter is going to interpret now:

20 MS. ABURTO (through the Interpreter): Hello. My
21 name is Edith Aburto. I have worked at the McDonald's in
22 Berkeley for six years. And they have failed to keep workers
23 safe during the pandemic. Since May, 10 of my coworkers have
24 tested positive for COVID-19. My coworkers have reported
25 that eight family members have also tested positive for
26 COVID-19, including a baby, four minors, and four adults.

1 The spread of this virus in our store not only impacts the
2 workers but it impacts our families and the communities as
3 well.

4 My coworkers and I had to go on strike, and after
5 four weeks nothing has changed at the store. Since this
6 outbreak began, the store has not been closed and disinfected
7 properly. They have asked us to clean the surfaces of the
8 bathrooms and kitchens -- kitchen, but we cannot, we are not
9 professional cleaners.

10 THE INTERPRETER: May I ask Ms. Aburto to continue?

11 MS. ABURTO: (Asking a brief question in Spanish.)

12 THE INTERPRETER: (Translating.)

13 MS. SHUPE: *Si, por favor.*

14 MS. ABURTO: (Speaking Spanish at length.)

15 THE INTERPRETER: (Briefly speaking Spanish.)

16 MS. ABURTO (through the Interpreter): My coworkers
17 and I are in a fight -- are in the fight for \$15 and a union.
18 And we have brought this to the attention of the mayor of
19 Berkeley and the city health department, but even they have
20 not taken action to enforce health and safety standards.
21 Instead of honoring our demands for changes in the store,
22 management and the corporation retaliated against us by
23 cutting our hours. This is why I am sharing my story with
24 all of you today, because there needs to be more protection
25 for workers in these vulnerable positions to stop the virus
26 from spreading. California is the second city -- the second

1 state with most COVID cases, and I want our voices to be
2 heard.

3 (Briefly speaking Spanish.)

4 CHAIRMAN THOMAS: Can you continue, please?

5 THE INTERPRETER: (Translating.)

6 MS. SHUPE: *Continua por favor?*

7 MS. ABURTO: (Speaking Spanish at length.)

8 THE INTERPRETER: (Briefly speaking Spanish.)

9 MS. ABURTO: (Speaking Spanish) --

10 THE INTERPRETER: The interpreter right now is
11 unable to hear very well. If you could ask Ms. Aburto to
12 speak a little louder, please.

13 MS. SHUPE: *Uno momento, uno momento.*

14 MS. ABURTO (through the Interpreter): Okay. At
15 this time this is all I want to say and I want to ask for
16 your assistance to help us.

17 THE INTERPRETER: And then it was cutting off, so I
18 was unable to hear everything.

19 (Speaking Spanish.)

20 MS. ABURTO (through the Interpreter): That is all
21 I have to say.

22 CHAIRMAN THOMAS: Okay. Thank you very much.

23 THE INTERPRETER: (Translating.)

24 CHAIRMAN THOMAS: So at this time our next speaker
25 will be...

26 MS. SHUPE: One moment, please.

1 The next speaker in the queue is Michael Donlon,
2 representing the Construction Employers' Association.

3 MR. DONLON: Hi. This is Michael Donlon,
4 representing the Construction Employers' Association. And I
5 would like to address two topics: Section 5141, Wildfire
6 Smoke, and the Petition 583.

7 CHAIRMAN THOMAS: Go right ahead.

8 MR. DONLON: As for the wildfire smoke, at this
9 time it is impossible to comply with Section 5141 due to no
10 availability of N95 filtering face pieces. The Division has
11 been looking but has not found any KN95s to be adequate. At
12 the request of Governor Newsom, most of our members gave
13 their stockpiles to our frontline heroes, and now are subject
14 to citations and fines. And, again, this leads to unintended
15 consequences of regulations put in place too quickly.

16 As to Petition 583, Section 11349 of the Government
17 Code, gives six standards that a regulation must meet. I'm
18 going to address three of those standards: necessity, non-
19 duplicative, and consistency.

20 The necessity, DOSH Chief Doug Parker gave some
21 data at the last Cal/OSHA advisory committee on August 6th.
22 And, you know, talking just about the enforcement. There was
23 a lot of other outreach than this. But 538 inspections have
24 been done on COVID employers not covered by aerosol-
25 transmitted disease regulation. No citations have been
26 issued as of August 6th.

1 Another 4,137 inspections by letter have been
2 accomplished, which means the employer has to respond back to
3 the Division. And then 2,700 compliance-assistant onsite
4 visits.

5 Now the Division has done all this, but have they
6 compiled any data on non-compliance with the existing
7 regulations? I have heard a lot of passion, a lot of
8 conjecture. Ms. Robbins earlier stated that a lack of data
9 gives necessity to have a regulation.

10 We have done all this and another -- Ms. Treanor
11 spoke earlier, the regs have been somewhere around 40,000
12 contacts with employers. We should have some kind of data on
13 -- on the compliance that's going on with the existing public
14 health orders. I did not see any of that in the DOSH
15 evaluation.

16 The next thing is being non-duplicative. On its
17 face this proposed regulation is very duplicative of public
18 health orders. You know, it's also very duplicative. And
19 DOSH in their evaluation goes through step by step saying
20 what regulations apply. First there's, you know, procedures
21 to identify and evaluate workplace hazards, 3203(a)(4);
22 methods to control exposure and correct unsafe and unhealthy
23 conditions, 3203(a)(6); 5141; 3362; 3366. I could go on.
24 You know, provide PPE, 3380, which as we've learned in an
25 emergency, PPE may just not be available. Train employees,
26 that's already required.

1 And then Mr. Parker said that Cal/OSHA guidance
2 given for the numerous industries they have given it for is a
3 roadmap on how employees [sic] can comply with these
4 regulations and protect their employees.

5 Consistency is another one of the -- of the
6 standards that new regulations must comply with. The problem
7 is the public health orders change as conditions change and
8 our knowledge of the specific health outbreak change. And
9 all these health outbreaks are not -- in the future are not
10 going to be identical to this one. And so those -- if we
11 write a specific regulation and those change, we're in
12 constant catch-up mode, kind of like the Cal/OSHA regulations
13 on fire. You know if you look at any of the regulations
14 dealing with workplace fires, they're based on 1986 NFPA
15 standards, which is not a good way to enforce things.

16 Also there may be a lack of consistency with HIPAA
17 laws. I've heard a couple of people now saying their
18 employers aren't telling them who specifically has gotten
19 COVID. Well, their employers are not allowed to.

20 So I mean this regulation talks about developing a
21 plan that has a competent -- the employer must have a
22 competent, responsible person implementing this plan. Now
23 what -- what makes someone competent in this kind of health
24 emergency? Most employers do not have someone on staff that
25 would be considered competent. And so should we develop
26 employer by employer different plans or follow the public

1 health orders specific to the current health concern and
2 developed by true experts?

3 So the final question is: How will the proposed
4 regulation make the workplace safer than following existing
5 regulations and public safe -- health orders? And I do not
6 believe it will make the workplace any safer than doing those
7 things. So I don't see where the Division has shown
8 necessity. I find it to be very duplicative of other
9 regulations. And I really see an issue with it being
10 inconsistent with the next medical outbreak or even has
11 COVID-19 has evolved and changed and our actions to protect
12 our employees have changed.

13 Thank you for your time.

14 MS. SHUPE: Thank you Board Chair and Board Members.
15 We've been having some difficulty as I think you've all
16 experienced with the Spanish translation, so we're trying
17 something new now. We now have our Spanish translator in a
18 three-way call with the commenter, so I'm going to go ahead
19 and bring the phone in and they'll be addressing you in just
20 a moment.

21 MR. HARRISON: Dave?

22 MS. SHUPE: Thank you, we have Margarita Tomas.

23 MS. SHUPE: I'm sorry. I'm sorry. Just one moment
24 please.

25 CHAIRMAN THOMAS: We can't hear.

26 MS. SHUPE: Our next speaker in the queue is

1 Margarita Tomas. We now have our translator and our speaker
2 on a three-way call.

3 MS. TOMAS: (Speaking Spanish at length.)

4 MS. TOMAS (through the Interpreter): Hello. My
5 name -- I am Margarita Tomas. My daughter and I both work at
6 the McDonald's in Oakland. At McDonald's, seven people have
7 tested positive for COVID-19, including me. Eight of my
8 coworkers and family members have tested positive for COVID-
9 19, including an infant.

10 On May 26th, 33 of my coworkers and I went on
11 strike for 48 days. The purpose was unsafe working
12 conditions at our McDonald's store. Working at this
13 restaurant is very risky for us, so we walked off the job.
14 We were getting flimsy gloves that would often break by the
15 end of the day. We were told to wear disposable masks for
16 days at a time. And when there were no masks available, the
17 managers told us or gave us masks out of doggie diapers. The
18 managers did not enforce social distancing. And the
19 thermometers they use to test their temperatures don't work
20 properly.

21 THE INTERPRETER: (Briefly speaking Spanish.)

22 MS. TOMAS: (Speaking Spanish at length.)

23 MS. TOMAS (through the Interpreter): So the
24 temperature readings sometimes are less than 90 degrees, and
25 obviously it's not working. Even with that, I contracted
26 COVID-19 when I returned to work. I tested positive just

1 last week. My daughter Juanita could not be here today
2 because she's really sick with symptoms as well.

3 We desperately need more protection to stop the
4 spread of the disease and can protect our families, while we,
5 the essential workers are at work, so does everybody else.
6 We had to go to court in Oakland to stop the boss from
7 forcing us to work in very dangerous COVID-19 conditions and
8 situations, and the judge agreed. Just last week the judge
9 in our case issued a six nine order requiring the company to
10 fully protect us because it was the only way to make sure we
11 got protection.

12 And now they send workers home when they aren't
13 feeling well or when told of possible exposure, then
14 McDonald's would have to be responsive. We need strict
15 regulations not just for our state but to do more to stop the
16 spread of the virus in our community. That is all. Thank
17 you.

18 CHAIRMAN THOMAS: Thank you.

19 MS. SHUPE: Thank you.

20 CHAIRMAN THOMAS: Who is our next speaker?

21 MS. SHUPE: The next speaker in our queue is Kevin
22 Bland.

23 Mr. Bland, if you would unmute yourself and address
24 the Board, please.

25 MR. BLAND: How's that, can you hear me?

26 CHAIRMAN THOMAS: Go ahead.

1 MR. BLAND: Thank you. Good morning. Kevin Bland,
2 of Ogletree Deakins, representing the California Framing
3 Contractors Association, the Western Steel Council, and the
4 Residential Contractors Association this morning. Good
5 morning, Chair Thomas, Board Members, Board staff, and the
6 Division, and members of the public this morning.

7 I'm not going to cover everything that's been said
8 this morning, but I do concur with speakers Mr. Leacox, Ms.
9 Treanor, and Mr. Donlon. But I do want to focus in on this
10 issue with my comments this morning of necessity. I know
11 we've heard quite a bit about necessity this morning, but I
12 think it can't go without mention that it's interesting that
13 there's this idea that there is nothing for the Division to
14 use until there is a need for this regulation. We've heard -
15 - I won't reiterate all of the section numbers that apply,
16 but I do want to put a fine point on information that was
17 provided by Mr. Parker during the advisory committee a couple
18 of weeks ago.

19 They have at least 71 serious citation notices out,
20 known as the Form 1BY notices. So in order for there to be
21 notices of central violation means that there is a regulation
22 or regulations that are citable and cited to for the issues
23 that have been raised in the pandemic. The need for a
24 specific, with everything evolving, is really not plausible.

25 We have an IIPP here in California. We have a
26 whole host of other regulations. The IIPP, you know, is

1 interesting. We've heard about other states. And throughout
2 the last couple weeks or few weeks, we've heard of Virginia
3 having a regulation and we heard of Oregon's proposing a
4 regulation, we've heard things about Nevada. But,
5 interestingly enough, I'm surprised that Cal/OSHA and the
6 Division and the Standards Board isn't touting the idea that,
7 hey, California was ahead of this. We already have
8 regulations in place that work to help protect employees in
9 California. We have injury and illness prevention plans. We
10 have an aerosol transmittable disease plan that has been in
11 effect before the pandemic and applies now, so I would be
12 arguing that we were ahead of the game with this until there
13 is no necessity to jump out and put something in place, when
14 we already have things that are in place.

15 And we're going to spend a lot of resources and a
16 lot of time on this when we could be focused on compliance
17 with the current standards that are in place. I mean there's
18 been 538 inspections. You know the idea I think we heard at
19 the last meeting, why hasn't there been citations issued.
20 Well, there's two reasons that citations may not be issued.
21 One is the inspections are finding compliance and providing a
22 safe workplace or the other which is why there's 71 Form 1BY
23 notices out is that it takes a little bit of time to do the
24 inspection, to gather the evidence, and to issue the
25 citation. So it's a little bit naive to think that there
26 would be a whole host of citations issued now whether there

1 was in compliance or not.

2 The other thing is the fact that this is -- and
3 we've heard this, a lot of public health issue employees are
4 at work, you know, eight hours in a day, 30 percent of the
5 time, and away from work. And this is something that is
6 spread in the community. It's spread in all different areas.
7 Employment is only one facet of the areas.

8 Another thing that I find interesting is that the
9 pandemic and the spread of this, the things that are in place
10 and the things that are being recommended by the CDC and the
11 guidance document, this is a mitigator to the spread. It is
12 to reduce the spread. It is to provide the safety that we
13 have based on the science, technology, and means of what we
14 have known. As we've heard, it's been talked about how it
15 changes.

16 Just I think two weeks ago we had a change on the
17 idea of face coverings that have the little filter on the
18 outside. Well, those became something that they said, hey,
19 these aren't working because they have the filter on the
20 outside, so when you exhale, the air goes out and instead of
21 in. That was a change.

22 Now if we have a regulation that talks about face
23 coverings without that change because it changes -- you are
24 able to on a dime know, okay, this is -- this is the latest.
25 Now that can be used in the guidance documents. That can be
26 used in the application of the IIPP at workplaces. And it is

1 a means to comply. This is not a permanent situation, and we
2 have all the tools, and the tools continually change in the
3 toolboxes, as it evolves.

4 We heard people mention the CDC cleaning guidelines
5 that came out. That was a change. And employers are
6 following those changes. We heard someone earlier, I think,
7 talking about the fatalities in California and percentages.
8 Well, the real number that at least from Doug Parker was
9 there were 93 fatalities investigations, of a total of 176 in
10 the state. And so using that number, if you look at the 2018
11 numbers, the total fatalities in California was 422. 2018,
12 which was the last data source we had, for that, we're
13 already tracking 50 percent -- or less than 50 percent of
14 what they were in 2018, even given the COVID, so.

15 And the idea that we have these numbers that are
16 thrown out without any real basis, these are real numbers
17 we're talking about. These are actual numbers that have been
18 provided by the Division and provided to data sources from
19 2018.

20 So it also goes to show that there is -- and I've
21 heard the number of deaths in California -- that goes to show
22 that this is a community of public health issue, not just an
23 employer issue. And given that the fact that we have the
24 tools in the quiver now, currently, to address the hazards
25 that are associated with COVID-19 today. And when they
26 change tomorrow, we'll have those tools. These tools haven't

1 changed since the pandemic or before the pandemic. What's
2 changed is the guidance that goes with how do we comply with
3 those tools and what do we need to do. And that changes and
4 we evolve. And it's been continually addressed by employers.

5 And I think it's important too to recognize -- I
6 mean if you boil it down, the employees, it's a team effort
7 between employers and employees -- employees here. You have
8 to do what you -- you're supposed to do when you're away from
9 work and to do what you need to do at work following these
10 guidelines, and the employer helping assist that during the
11 times that they're here, which is that's what the IIPP does
12 and what's the guidance documents do.

13 The great thing about the guidance documents too is
14 there's a host of them that applies to different industries
15 because there's different needs for different industries and
16 different tasks and different activities that may occur in
17 different workplaces. And that flexibility that comes from
18 the two guidance documents and IIPP and the hand-washing
19 requirements and the ATD standard. And to consider that if
20 someone contracts COVID whether at work or at home means that
21 there was a vast failure, I think that's a little naive. Not
22 to put too fine a point on it that there is never going to be
23 -- if that was the case, if there was never one we wouldn't
24 be in this situation because we're doing everything we can
25 scientifically that's available to us, and everyone needs to
26 do that.

1 But a new regulation in place and the time and
2 effort that needs to go into that is a lot of wasted
3 resources where it can go into ensuring that we're in
4 compliance with the current standards that apply to this
5 situation. So I -- clearly I'm opposed to Petition 583.

6 And I feel like, you know, one of the big things is
7 the necessity argument here along with some of the other
8 things in the APA that were pointed out earlier, I thought
9 the list that Mr. Donlon gave was very accurate in the points
10 that some of the other folks talked about here.

11 So I appreciate your time. I urge that you would
12 strongly consider the recommendation of your Board staff. I
13 think they did a great job. And just to not too fine a point
14 on it, but even the Division's recommendation failed to say
15 they really needed it. They identified all the things that
16 they have right now in their toolbox to enforce a regulation
17 and compliance on the regulated community today. So I really
18 urge you to consider these comments and these issues when
19 you're deliberating at some point on Petition 583.

20 I appreciate your time. Thanks for everyone
21 listening to me drone on a little bit today, something that I
22 feel is important to us and California and the regulated
23 community as this moves forward. Thank you.

24 CHAIRMAN THOMAS: Thank you.

25 Our next commenter is...

26 MS. SHUPE: Our next speaker is Johanna Bernal from

1 SEIU. One moment, please, while I bring the translator and
2 the speaker on line.

3 Are you ready? Go ahead.

4 THE INTERPRETER: (Briefly speaking Spanish.)

5 MS. BERNAL (through the Interpreter): Hello. My
6 name is Johanna Bernal. I have worked in the janitorial
7 industry for 20 years.

8 We are very worried at this time because there is
9 not enough necessary protection for the workers in the
10 janitorial industry. So many of us workers -- (sounds of a
11 child in background) -- have even lost their lives. We need
12 to have industry standards so that they protect our right to
13 work safely in the janitorial industry without worrying to
14 bring this virus to our homes and to our communities.

15 We urgently need help from the government of
16 California to make sure that the workers, essential workers
17 like us, can continue working safely and with no fear to
18 become infected by COVID-19. I appreciate you hearing the
19 needs we have and am very grateful. And hopefully you will
20 be able to help us resolve these issues. Thank you so much
21 and have a good day.

22 CHAIRMAN THOMAS: Thank you.

23 MS. SHUPE: Thank you.

24 Our next speaker in the queue is Ramon
25 Castellblanch from the California Alliance for Retired
26 Americans.

1 Mr. Castellblanch, if you could unmute yourself and
2 please address the Board. Thank you.

3 MR. CASTELLBLANCH: Thank you very much, Board
4 Members. My name is Ramon Castellblanch. I'm with the
5 California Alliance for Retired Americans, and I wanted to
6 comment -- can you hear me okay?

7 CHAIRMAN THOMAS: Yes.

8 MR. CASTELLBLANCH: Great. Thank you so much.

9 -- comment on Petition 583. We have heard a lot
10 about the difficulties employers say they would have and some
11 very touching stories from workers. I simply want to provide
12 some data on how many California workers we know about have
13 gotten infected with COVID-19 already.

14 We have data from the California Workers Comp
15 Institute. What it shows that the rate of claims that they
16 have been getting on COVID-19 has gone from 4,000 a month
17 roughly in the months of April and May to 10,000 a month in
18 the last two months. That is the rate at which workers
19 appear to be getting infected by COVID-19 is rising sharply
20 in the state of California, adding urgency to the situation.

21 I also want to point out based on the data that
22 particular industries are seeing a rise in their share of
23 infections, in particular, we know about healthcare and we
24 know about government workers getting infected, but what
25 we're also seeing now is that the number of the portion of
26 people who are infected coming out of retail is going up, and

1 the portion of workers who are infected coming out of
2 manufacturing is going up. So the standards are clearly not
3 working for a lot of California workplaces and we need to up
4 our game.

5 I also could add that food service workers, who
6 we've heard from today, are also showing substantial numbers
7 of claims. Four percent of all the claims that have been
8 filed in the last few months have come from the food services
9 industry. And, as you could probably guess from some of the
10 testimony, these are probably underreported numbers.

11 So it is urgent that the Board take action on an
12 emergency temporary standard for COVID-19 as soon as
13 possible. California workers' lives depend on it. And I
14 want to thank the Board for your patience in listening to all
15 of us. I realize it is tough to sit there all morning, but
16 you've got a very important responsibility, and I commend you
17 on your spirit in handling it. Thank you so much.

18 CHAIRMAN THOMAS: Thank you.

19 MS. SHUPE: Thank you.

20 The next speaker in our queue will be Mirella
21 Deniz-Zaragoza from the Warehouse Worker Resource Center.

22 Ms. Deniz-Zaragoza, if you could unmute yourself
23 and address the Board, please. Thank you.

24 MS. DENIZ-ZARAGOZA: Great. Can you hear me?

25 CHAIRMAN THOMAS: We can.

26 MS. DENIZ-ZARAGOZA: Awesome. Thank you, Chair

1 Thomas and Board Members, for the opportunity to speak today.
2 My name is Mirella Deniz-Zaragoza, and I'm speaking on behalf
3 of the Warehouse Worker Resource Center.

4 The Warehouse Worker Resource Center is an
5 organization dedicated to improving working conditions for
6 warehouse workers and their families across Southern
7 California. We'd like to address the urgent need for an
8 emergency standard to protect all workers from COVID-19
9 hazards. We support Petition 583 and we're glad to see the
10 Division recommended in its analysis that the Board grant the
11 petition and promulgate an emergency regulation to protect
12 workers from COVID-19.

13 We urge the Board to move swiftly in taking up the
14 petition and implementing an emergency regulation as time is
15 of the essence. We continue to see growing COVID-19
16 outbreaks in warehouses across the region and continued
17 reports of employers taking inadequate measures to prevent
18 COVID-19 transmissions in the workplace.

19 It's clear that stronger protects are needed.
20 Although the aerosol transmissible disease standard provides
21 protections for novel diseases like COVID-19, it does not
22 protect all workers, including many essential workers in
23 industries such as warehousing. Warehouse and other
24 essential workers in the hard-hit industries such as food
25 processing, farm and agriculture, need a mandatory regulation
26 that clearly outlines compliance measures and enforcement for

1 historically-excluded employers and industries.

2 We know that COVID-19 is disproportionately
3 impacting and taking the lives of working class people of
4 color who work in essential workplaces in California. We
5 have lost more than 11,000 lives from COVID-19. We urge the
6 Board to not delay in taking up the petition for an emergency
7 standard and to move to promulgate as quickly as possible
8 before even more lives are lost. Thank you for your time.

9 CHAIRMAN THOMAS: Thank you.

10 Our next speaker will be?

11 MS. SHUPE: The next speaker in the queue will be
12 Dr. Robert Blink, former OSHSB Board member, representing the
13 Western Occupational and Environmental Medical Association.

14 Good morning.

15 DR. BLINK: Good morning. Can you hear me okay?

16 CHAIRMAN THOMAS: You're a little muffled, but go
17 ahead.

18 DR. BLINK: I will move it closer. How is that?

19 CHAIRMAN THOMAS: Go ahead.

20 DR. BLINK: All right. Good morning and greetings
21 to the Board and Mr. Chairman. Thank you for taking the time
22 today.

23 I'm actually -- although I am very active in the
24 Western Occupational and Environmental Medicine Association,
25 including our legislative committee, I don't have
26 authorization to speak on their behalf today, so I'm actually

1 representing myself.

2 The -- I'm an occupational and environmental
3 medicine physician practicing in California, and I consult to
4 employers, government, and employee groups in various ways.
5 And this is an unprecedented situation. And I really
6 appreciate Cal/OSHA's involvement and efforts to address
7 these issues.

8 One of the -- I have been conferring with various
9 colleagues on the petition that's before the Board for 583.
10 And, in summary, much of what's in this petition I think is
11 admirable, primarily because the 3203 does not apply to many
12 industries. But there are some industries in the state, as
13 you've heard many times, where there simply is inadequate
14 control. Workers are not being protected as anticipated by
15 the OSHA regulations, and I think it's very appropriate that
16 something be done promptly.

17 A couple of things that -- and so basically my
18 reason for being here today is simply to let you know that
19 there will be additional commentary coming at the next
20 meeting, but I thought it was important to at least put it
21 out there that others that are working on this.

22 One thing that's important is to have flexibility.
23 This is an unprecedented situation. In general, the
24 regulations have been contemplated for decades as addressing
25 things that happen in the workplace, period. But health
26 activities generally are targeted. I think this happens in

1 the public arena and are less concerned with workplaces.
2 This problem addresses both. You've got problems that mostly
3 transmitted in the general public and then arrive at the
4 workplace, spread like wildfire, bounce back to outside of
5 the workplace, and then can reenter ad infinitum. And it
6 really does require an additional approach.

7 As several speakers have mentioned, there is new
8 information coming about very frequently. And whatever
9 regulation is promulgated, probably doesn't have the luxury
10 in the firm, unchanging territory of most OSHA regulations
11 that we have dealt with for all the years and probably should
12 have more flexibility built into it.

13 Finally, the local health officer of the -- in
14 whatever jurisdiction we're talking about has been
15 unfortunately ignored in many circumstances. And he or she
16 often has a very significant role to play, and would strongly
17 suggest that something be built into whatever regulation is
18 promulgated for contact and shared authority of some sort
19 between OSHA and local health officers.

20 So this is urgent, it really does need to be done.
21 And, for the most part, I am supportive of this. However, I
22 think that addressing some of those concerns such as those
23 raised by Elizabeth Treanor earlier, so that employers who
24 are not adversely affected and who are in fact availing
25 themselves are not needlessly burdened because -- (brief
26 audio distortion) -- may not be commonly handled by these

1 OSHA regulations.

2 So, anyway, thank you, Board and the staff, for all
3 the work they have put into this. And I just wanted to let
4 you know that there are others working on this and we plan on
5 making a more detailed proposal in September. Thank you very
6 much.

7 CHAIRMAN THOMAS: Thank you.

8 MS. SHUPE: Thank you.

9 The next speaker in our queue is Len Welsh with the
10 Western Steel Council.

11 Mr. Welsh, if you can unmute yourself and join the
12 call?

13 Mr. Welsh doesn't appear to be available right now.
14 So we'll go ahead and add him to our call queue later on.

15 Our next speaker is Bryan Little, with the
16 California Farm Bureau Federation.

17 MR. LITTLE: Good morning. Can you hear me?

18 CHAIRMAN THOMAS: We can.

19 MR. LITTLE: Very good. Good morning. This is
20 Bryan Little calling -- I'm sorry -- Bryan Little,
21 representing the California Farm Bureau Federation. I
22 appreciate the opportunity to address the Standards Board.
23 Good morning. Got some issues that are of great concern to
24 us right now.

25 I'd like to echo some of the comments offered by
26 Dan Leacox and Elizabeth Treanor and Kevin Bland before me.

1 We have - I share their concerns about Petition 583 and how
2 that's going to actually work in the real world, and
3 agricultural employers will have to try to figure out how to
4 implement that. Apparently, a lot of the market won't have
5 the expertise to be able to administer that - that's going to
6 be something that's going to be challenging to try to
7 overcome.

8 I think I would also like to mention, before I get
9 into what I intended to talk about, is that someone
10 previously said that the injury and illness prevention
11 program regulation does not apply to all employers. I
12 believe that's not accurate. I believe it applies to all
13 employers. And, in fact, the first line, 3203(a), says every
14 employer shall establish, implement, and maintain an
15 effective IIPP. So, as far as I understand, it applies to
16 everyone.

17 The principal thing I wanted to comment on this
18 morning is the situation that our industry and all -- and all
19 outdoor employers are facing right now, which is we, as you
20 probably know, have a lot of wildfires burning all around
21 California right now. The air quality where I am at and my
22 office in Sacramento is 164. And a lot of areas around are
23 at similar air quality levels. That means that for a lot of
24 outdoor employers, the wildfire smoke regulation, General
25 Industry Safety Orders 5141.1 has been -- has been -- would
26 be invoked as a result of that AQI level. But as some of you

1 probably are aware, the N95 respirators that would be
2 required to be offered by employers on a voluntary-use basis
3 in that situation are being used by healthcare employees,
4 appropriately so, as a result of the COVID-19 pandemic and
5 our need to be able to protect people who are delivering
6 healthcare to people who are ill or people who are being
7 tested, or for whatever other purpose they might need them.

8 But the result of that is that we have put outdoor
9 employers in a situation where they can under 5141.1 you can
10 elect to try to implement engineering solutions, if they're
11 feasible; administrative solutions if they're practicable;
12 and then rely on the provision of N95 respirators.

13 Perhaps for some outdoor employers, there may be
14 feasible engineering solutions or practicable administrative
15 solutions. I don't believe those exist for most agricultural
16 employers, in fact for almost none. That leaves us in a
17 position of having to provide N95 respirators that are simply
18 unavailable. And that puts agricultural employers in a
19 difficult position of having to choose between ceasing
20 operations; operating knowingly out of compliance with the
21 regulation, which none of us would advocate for; or trying to
22 provide some other means of respiratory protection, which as
23 far as we know don't exist.

24 The agency has looked at the use of KN95
25 respirators and found them to not be adequate. In the
26 absence of some substitute for N95 respirators, I hope that

1 we all recognize the need to do something. We have been
2 talking to the agency about our concerns and will continue to
3 do so.

4 I think that what we're experiencing right now with
5 5141.1 illustrates a point that Dan Leacox made in his
6 comments earlier. That is, that sometimes when we do
7 emergency regulations and view them precipitously, in
8 acknowledgement of the emergency situation, we can't always
9 anticipate all the possible unintended consequences. I think
10 that's a potential lesson when we are looking at what to do
11 about Petition 538.

12 So I will stop there and thank you for your time
13 and for listening to me. Thank you very much.

14 CHAIRMAN THOMAS: Thank you.

15 MS. SHUPE: Thank you.

16 Our next speaker in the queue is Len Welsh.

17 Len, go ahead.

18 MR. WELSH: Hello?

19 CHAIRMAN THOMAS: Yes.

20 MR. WELSH: (Shrill audio:) Len Welsh,
21 representing the Western Steel Council and also myself,
22 frankly, as a member of the general public. I appreciate the
23 opportunity to speak this morning.

24 And I just want to thank you --

25 CHAIRMAN THOMAS: I think we lost --

26 MS. SHUPE: Len, we just lost you. Are you still

1 there?

2 CHAIRMAN THOMAS: Have him call back.

3 MS. SHUPE: We'll have Mr. Welsh call us back.

4 In the meantime, the next speaker in our queue is
5 Lisa Prince with The Prince Firm.

6 MS. PRINCE: Good morning. Can you hear me?

7 CHAIRMAN THOMAS: Yes, go right ahead.

8 MS. PRINCE: (Hollow-sounding audio:) Thank you.
9 My name is Lisa Prince and I am with The Prince Firm. I work
10 with employers on Cal/OSHA issues, but really I'm here to
11 speak as a member of the public. Hello, everyone involved
12 here, and doing the best that we can to protect employees
13 and members of the public in these unprecedented times.

14 I won't repeat everything. I do certainly agree
15 with some of the points made earlier with Dan Leacox, Mike
16 Donlon, Elizabeth Treanor, Kevin Bland. But, again, I don't
17 want to repeat all that, but I do want to provide a couple of
18 comments for what I think is happening here. There is some I
19 think talk about not seeing citations on this issue yet, not
20 being enough data yet. And I think maybe the conversation on
21 that is premature.

22 My read of an interview given by people at Cal/OSHA
23 recently is they made a decision at some point that they
24 needed to use their resources to educate employers. And they
25 have been out on inspections and (inaudible) you know, almost
26 8,000 compliance inspections, and I actually applaud that,

1 because there did need to be some education about this, all
2 employers and certainly a lot of small employers who may not
3 have -- haven't had that much contact with Cal/OSHA before,
4 you know, retail, the grocery stores, small employers in
5 different areas need this information. I think that is -- I
6 applaud that. This is great news.

7 Again, almost 8,000 inspections with inspectors
8 working on weekends and working overtime to get that done.
9 It's my understanding that they have now shifted, that they
10 are looking at enforcement, to enforce this integrated with
11 (inaudible) I'm sure that they will be split. But now we
12 have the (inaudible) issues, and thanks to no one, to my
13 knowledge, is that we don't have the tools to issue citations
14 as are as appropriate. And I think we will do that as is
15 appropriate going forward. 3203 does apply to all employers
16 in California, and I have not heard that the tools are not
17 available. And I do see where our resources are stressed.
18 So I would have concern with anything that we do going
19 forward that would put further stress on agencies in this
20 state that are working very hard to get people into
21 compliance, to educate them, and to force the regulations
22 that we now have in place. That is kind of where my comments
23 are. I think that data, if it's not currently available,
24 should be available pretty soon, and we will know more about
25 this.

26 As far as the petition goes, I have some concerns

1 about, and bear in mind really what I want to focus on is
2 getting compliance and getting protection for employees. So
3 a couple things, you know, requiring a competent person and
4 requiring updated, written program, we have to kind of
5 recognize the fact that, that some of that activity may keep
6 away from what needs to be happening, focus on safety in
7 workplaces. That needs to be happening on the ground, in the
8 field, and not in somebody's office working on programs all
9 the time.

10 One thing I wanted to touch on is the reporting
11 requirement of the proposed regulation. When you have
12 employers recording COVID cases whether or not they were
13 occupational to both the Division and public health. My
14 understanding, there is a system in place wherein we have
15 positive tests and those are reported to public health.
16 Again, a recent article that public local health departments
17 have a contact tracing department, again another agency under
18 stress, and they are working very hard to trace both contacts
19 and getting that additional information out. And having an
20 additional point of contact does not necessarily give them
21 better information. It gives them more information and
22 probably almost 100-percent duplicative information, wherein
23 they would have to decide do I now as a small department,
24 struggling with our job, devote resources for looking at this
25 duplicative information and seeing how we're going to need to
26 handle that. And I think the same would be true for the

1 Division.

2 Again just speaking as a member of the public,
3 we're now asking an agency that is working very hard to
4 educate and enforce regulations on this point, to take in all
5 of this data whether it's occupational or not and do
6 something with it. Does that further our goal? And I have a
7 few concerns that it does not.

8 And the privacy issues we have touched upon and we
9 get into those very formally about that. And also what I'm
10 reading is that employees who are contacted, that one of the
11 barriers for contact tracing is fear. And if we're now going
12 to create a system where we have employers who are reporting
13 their employees not just to public health but to the
14 Division, the state agencies, because they have a positive
15 test, what is that going to do to the relationship, beyond
16 the privacy issue, which I think is a big one? It is going
17 to create more fear and less communication. I don't see that
18 that is furthering our success.

19 That is my couple points again. I think we're all
20 focused on the same goal and we have to really think about
21 how we get there. And we do have an interesting regulation
22 tied to all workplaces in California that has given Cal/OSHA
23 -- given the Division tools to do what they need to do, and I
24 think they're out there doing it. It looks like 25 percent
25 of their accident totals is related. That's a significant
26 amount of their resources, a problem that jobs -- (audio

1 fading) -- to maintain compliance in the workplace. All
2 right. Thank you.

3 CHAIRMAN THOMAS: Thank you.

4 MS. SHUPE: Our next -- our next speaker on the
5 phone is Len Welsh.

6 Len, go ahead.

7 MR. WELSH: (Shrill audio:) Hi, folks. Sorry
8 about that. Len Welsh, representing Western Steel Council
9 and also frankly myself as a member of the general public.
10 Thanks for the opportunity to speak. And thank you all on
11 the Standards Board for your work. It is really appreciated.

12 So I have to say at the outset, you know, one big
13 and perhaps the most important issue I see for DOSH in my
14 service for over 25 years was the constant struggle DOSH had
15 to focus its resource where they can do the most to protect
16 workers from serious hazards and get them the most bang for
17 the buck possible. Of course DOSH doesn't have a whole bunch
18 of bucks to focus, so concentrating DOSH resources where they
19 will do the most to protect workers and with maximum
20 efficiency is really critical.

21 So I've been really gratified to see that DOSH has
22 been in a compliance-assistance mode with COVID and has been
23 covering a whole lot of ground and reaching far more
24 employers in this mode than it could ever expect to do in
25 compliance mode. And, you know, I think there's still more
26 to do in terms of targeting. It's always been about

1 targeting. And that can be a different kind of inquiry which
2 -- as we're looking at.

3 So I think, you know, we heard a little bit about
4 outbreaks here and there. And, frankly, I want to say, yes,
5 there have been outbreaks in various industrial settings, but
6 there have been outbreaks all over the state, and it's not
7 just in workers. So I don't know that what we've heard about
8 outbreaks in places of employment is of any kind of failure
9 on the part of DOSH to be getting the maximum bang for the
10 buck that it can in its current compliance-assistance mode.

11 The support I've heard for the reg is based on a
12 huge assumption that enforcement and having a reg in place is
13 going to produce compliance. And although that seems like
14 common sense to a lot of people, there really has been almost
15 no data collected to actually determine what effect DOSH has.
16 That's in part because federal OSHA has never cared. We used
17 to keep -- have battles all the time doing heat illness
18 protection. Look at the rates going down, look at the effect
19 we're actually having. Federal OSHA doesn't care about that.
20 They care about how many serious citations you issue, and
21 that kind of thing. They care about production, not the
22 ultimate effect of production. And so DOSH has been in the
23 mode of pleasing federal OSHA because it has to.

24 But here -- as we did in heat, here now the focus
25 is on COVID-19 and coming up with a solution, and DOSH is
26 doing an excellent job. There's nothing broken that needs to

1 be fixing. What DOSH can do more and more is target, so
2 they're going to the places where the outbreaks are most
3 likely to happen, and they can cover a whole lot of ground.
4 They can reach employers.

5 And employers don't need a reg. All employers have
6 an incentive to be protecting their employees from COVID
7 because if they don't they lose their employees. And not
8 only do lose employees who may be -- who are actually sick
9 but, you know, they wind up being quarantined, everybody who
10 was exposed winds up being quarantined, the employer is out
11 of luck. So they have a tremendous incentive to listen to
12 DOSH's advice, but what they need to be doing as they listen
13 to DOSH's advice is believe that it's credible and it will
14 have an effect.

15 Being in compliance-assistance mode where DOSH can
16 actually have a conversation with employers, it can explain
17 why they need to do what DOSH is recommending, it's going to
18 do more to get -- get credibility for DOSH and compliance on
19 the part of employers who get it.

20 In enforcement mode, the attorneys at DOSH instruct
21 compliance people not to give advice. You're -- your
22 position is to go out and issue a citation if there is a
23 violation, not to give advice. Giving advice is the most
24 crucial thing these people can do right now.

25 And, you know, for the stuff we heard about
26 McDonald's, fine, go complain to DOSH. DOSH can go over

1 there and whack them if they need to be whacked. DOSH has
2 plenty of tools to do that. The IIPP does work, especially
3 for a defined hazard that actually has CDC guidance. We
4 enforced tuberculosis protections all during the nineties and
5 before we the aerosol transmissible disease standard, by
6 citing IIPP and a couple other regs like 5141, and saying
7 what they need to do is comply with CDC guidance. And that
8 was all the credibility that was needed to sustain those
9 violations. They could do the same thing now. They have
10 solid CDC and public health advice. And they shouldn't be
11 mitigating. They should be going for the stuff that matters.

12 So here's what we get from compliance assistance
13 and the occasional enforcement action when that's needed, we
14 get flexibility. Other speakers have mentioned it. The CDC
15 guidance can change as more data comes in, and we're
16 crucially lacking in data now in a lot of issues, so you
17 don't have to go through the APA, you don't have to go
18 through rulemaking to change your advice. You can change it
19 and move on a dime, and that's really important right now.

20 And with enforcement, the more DOSH relies on
21 enforcement the more we're going to see appeals. And appeals
22 consume a tremendous amount of resources. They take
23 compliance officers out of the field where they need to be.
24 So you cover more ground, you get to give advice.

25 And, frankly, DOSH doesn't have a great
26 relationship with a lot of employers. Most right now, I'd

1 say it's fair to say still don't trust Cal/OSHA consultation
2 because they don't believe consultation won't turn them over
3 to enforcement at consultations, it's a violation. This is a
4 chance for DOSH to show employers what value it has and to
5 gain a little bit of badly-needed trust. As I mentioned
6 before, employers have a tremendous incentive to listen to
7 what DOSH has to say.

8 So what I'm saying is we don't need to experiment
9 with an emergency reg right now. We shouldn't be shooting in
10 the dark. Doing so will diminish the old presence. It will
11 reduce flexibility to change with new data. And, frankly,
12 you know, there is -- I understand there is a lot of
13 political pressure on the agency to respond with, you know,
14 the hammer, right. I experienced that myself when I was
15 running it, but that urge has to be resisted. What DOSH
16 needs to focus on with crystal clarity is what is going to
17 produce the most compliance, where they can best target the
18 resources, and how can they get the most bang for the buck.
19 And adding a bunch of administrative burdens with no really
20 proven effectiveness is not going to help. It's just going
21 to drain resources.

22 So that's my advice to the Board. I think the
23 staff report you got from the Standards Board staff, from
24 your staff, is excellent, and you should follow it. Thank
25 you very much.

26 CHAIRMAN THOMAS: Thank you.

1 MS. SHUPE: Thank you.

2 The next speaker in our queue is Alice Berliner
3 from the Southern California Coalition for Occupational
4 Safety and Health.

5 MS. BERLINER: Hi. Thanks for having me. My name
6 is Alice Berliner, from SoCal COSH. We're based in the
7 Southern California area, and we advocate for safe, healthy
8 and secure workplaces for low-wage, immigrant, and workers of
9 color.

10 And we're here in support of the Petition 583 for
11 the COVID emergency temporary standard. And I want to first
12 thank the Board for considering our comments today.

13 So, as we know, this virus is not going away any
14 time soon. Workers continue to become ill and die from
15 COVID-19. And as more workplaces open, we see more people
16 getting exposed to the virus. We know workers are not
17 getting trained, are not getting adequate personal protective
18 equipment, and do not have social distancing in their
19 workplaces, all of which is resulting in exposure to the
20 virus for thousands of people, some of which you have heard
21 from today.

22 And these are real people, families, community
23 members, who do not see action from this body, from the
24 Standards Board, are getting the message that their lives do
25 not matter. We have standards for heat, for wildfire, for
26 workplace violence. COVID-19 is not any different. And

1 nearly everyone weighing in against a COVID-19 emergency
2 temporary standard is working from home. You just don't know
3 or represent the realities of this pandemic, the fear of
4 going to work in person and experiencing retaliation from
5 employers when speaking up about workplace issues.

6 There are employers who clearly are following the
7 law, but there are numerous other businesses who continue to
8 fail to protect their employees. And under the current
9 guidance, putting workers at risk for COVID-19 exposure
10 produces little accountability. And IIPP violation is just
11 not enough, especially for companies like McDonald's, Amazon,
12 companies we know that where an IIPP violation is really
13 pocket change for them. So we need a standard with teeth and
14 that can hold employers accountable to protect Californians
15 both now and in the long term.

16 And this is clearly both a public health matter and
17 a workplace health and safety issue. Individuals who are
18 contracting the virus at work, we know that they are
19 contracting it at work, and they are passing it to family
20 members, community members, and who just need an emergency
21 temporary standard right now to hold bad actors accountable
22 to protecting workers and community members in the state.

23 And I also have a comment from Alexis Perez Nava,
24 who is an organizer at the Koreatown Immigrant Workers
25 Alliance. Can I -- can I just quickly share? It's just like
26 a couple sentences.

1 CHAIRMAN THOMAS: Go right ahead.

2 MS. BERLINER: Okay. So he says: Immigrant
3 workers need government agencies to have a COVID-19 emergency
4 temporary standard. Businesses, especially those who still
5 continue to commit wage theft, are not implementing measures
6 to prevent the spread of COVID-19 in the workplace and to
7 keep workers safe. Think about the cook who prepares meals
8 and still has their wages stolen. They need the agency to
9 hold their bad employers accountable to provide necessary
10 leadership in order to keep workers safe and workers' rights
11 respected. We need an emergency temporary standard for
12 COVID-19 immediately.

13 And I thank everyone for listening.

14 CHAIRMAN THOMAS: Thank you.

15 MS. SHUPE: Thank you, Ms. Berliner. If you could
16 send the name of the comment that you wrote, commenter whose
17 comment you read into the record?

18 MS. BERLINER: Yes. Yes.

19 MS. SHUPE: We'd appreciate it. Thank you.
20 Our next speaker in the queue is Bruce Wick.

21 MR. WICK: Good morning, Chair Thomas, Board
22 Members, --

23 CHAIRMAN THOMAS: Good morning.

24 MR. WICK: -- the 97 other people who are on the
25 call.

26 CHAIRMAN THOMAS: It's 86 right now. We're losing

1 them.

2 MR. WICK: Okay. Well, it's gone down. I can't
3 imagine why anybody would leave.

4 I do want to speak on Petition 583. I appreciate,
5 you know, the comments all around this. Obviously COVID is a
6 serious issue that we need to address as, you know, a
7 community. And the employer community is part of that
8 operation.

9 There are more statistics that I would like to
10 throw out that I think are really important. The Worker's
11 Comp Rating Bureau is the state statistical agent to advise
12 Insurance Commissioner Lara what worker's comp rates should
13 be and taking care of any claims filed from an occupational
14 injury or illness, including COVID. In their original
15 estimates, they thought we would have 22,000 claims per
16 month. So to be at 10,000, we're actually 50 percent below
17 their initial estimates.

18 As they have analyzed the first 23,000 claims that
19 were filed for worker's comp under COVID, they have
20 promulgated and are presenting to the Commissioner what their
21 rates for 2021, the claims rates should be. And amongst all
22 other issues that can create a worker's comp issue, COVID
23 will be 3.8 percent across all industries. A 3.8-percent
24 increase in worker's comp costs to cover COVID-19 starting in
25 2021, but obviously that's a similar timeframe if there was
26 an emergency regulation promulgated. And even there, of the

1 first claims 63 percent were healthcare workers and first
2 responders.

3 So for us in construction, we are looking at likely
4 an increase in rates of less than two percent to cover
5 contractors and, you know, employees for COVID in 2021. As
6 we have all said, you've heard from Cassie Hilaski, there is
7 great cooperation in construction between general contractors
8 and subcontractors, and we're doing really well.

9 And so I think it's important, you know, the
10 Worker's Comp Rating Bureau identify -- breaks employers into
11 20 industry sectors, including public employers. And every
12 one of those has a very clear set of guidance by Cal/OSHA,
13 and the construction guidance has changed three times. It's
14 been revised three times from its original, but we don't have
15 to change everything over. By the time it's revised, we make
16 that incremental change to our guidance.

17 And one thing we haven't heard that I think would
18 be really important, that is the IIPP. We understand someone
19 would say how did -- that you as an employer, you have
20 industry-specific guidance for you, how have you assessed it
21 in taking care of your people?

22 And are most of the violations in that person not
23 following their industry guidance, again I think the
24 statistics out of Nevada and Oregon are strong. Ninety-
25 three, 94-percent compliance, you know, once Cal/OSHA has
26 either visited or instructed or, again, the Cal/OSHA guidance

1 has been widely disseminated. So I think that's a really
2 important thing for us to think about, that, you know, -- and
3 as Len Welsh said, we target. We've always talked about
4 that.

5 You have an ever shrinking net focusing on the high
6 exposure. And, you know, it's very sad to hear about the
7 employees not being protected at a McDonald's, or wherever it
8 is. Employers fund DOSH, 90 percent of its funding comes
9 from employers' worker's comp surcharges. The Labor
10 Commissioner, if there is wage theft, we fund that too.

11 So why are -- you know we have the resources to
12 enforce and that's what we really need to focus on. My
13 concern is if you told people, wow, a reg is coming down the
14 line, and that's going to help workers, well, if an employer
15 is not following the guidance, both local health orders and
16 regulations, Cal/OSHA guidance, why are they going to follow
17 a new regulation without enforcement, you know, forcing them?
18 And we always have that small percentage employers that
19 require significant enforcement. Let's focus on them, and we
20 can -- we are doing that now, I think.

21 And as I appreciate Chief Parker and all the work
22 they've done on the -- you know, we talked about the
23 compliance assistance, you know when we were all learning
24 about COVID. And then Cal/OSHA has put out all these
25 detailed guidance by industry and sometimes by subparts of an
26 industry and for us to know and follow. We have the CDC

1 guidance, and so forth. And then they had to train their
2 employees how to basically conduct a COVID inspection. And
3 you know they have been enforcing more and more. And we have
4 the resources. Let's get after the bad employers, and we can
5 do that now, and not wait for the hope that a regulation and
6 someone will follow it, that's always been, you know, an
7 agreement over will a new regulation -- or, you know, have an
8 employer who doesn't want to follow the rules will impact
9 them, normally not. We have to enforce.

10 So I appreciate your time. Thank you for the
11 opportunity.

12 CHAIRMAN THOMAS: Thank you.

13 At this time we're going to take a 15-minute break
14 and then we'll reconvene at 12:15. Thank you.

15 (Recess taken from 11:59 a.m. to 12:16 p.m.)

16 CHAIRMAN THOMAS: Good afternoon. We are back in
17 order and I believe we are still on comments.

18 MS. SHUPE: We are. Thank you.

19 CHAIRMAN THOMAS: So our next commenter will be?

20 MS. SHUPE: The next commenter in the queue is Rosa
21 Trevizo from the Associated General Contractors of
22 California.

23 Ms. Trevizo, if you could --

24 MS. TREVIZO: Hello. Good afternoon. Can you hear
25 me?

26 MS. SHUPE: Yes.

1 CHAIRMAN THOMAS: Yeah, we can hear you. Go ahead.

2 MS. TREVIZO: Wonderful. Hi. My name is Rosa
3 Trevizo and I am here on behalf of the Associated General
4 Contractors of California. Here at AGC we represent over
5 1,000 contractor members throughout the state, and I'm here
6 to provide comment on Petition 583.

7 AGC would like to position ourselves and ask that
8 Petition 583 not go through the emergency process. We
9 believe there is no necessity for an emergency rule. As
10 noted in its evaluation, the agency has many standards it can
11 enforce and is doing so. The employers who are going to
12 follow the rules are already following the existing rules and
13 compliance advices as evidence that is given by data
14 collected in both Oregon and Nevada. There is no evidence
15 that the existing regs are not sufficient and suitable for
16 the situation. So again we are here to ask that this
17 petition not go through the emergency process and rather the
18 standard process.

19 So on behalf of AGC and our members, we thank you
20 for your time today.

21 CHAIRMAN THOMAS: Thank you very much.

22 The next commenter?

23 MS. SHUPE: Thank you.

24 The next commenter in our queue is Anne Katten from
25 CRLA.

26 MS. KATTEN: Yes. Hello. Can...

1 CHAIRMAN THOMAS: We can hear you, Anne.

2 MS. KATTEN: Oh, sorry. Okay. Good morning. I'm
3 Anne Katten from California Rural Legal Assistance
4 Foundation, and I want to -- I support the previous comments
5 by Maggie Robbins, Alice Berliner, and others in support of
6 Petition 583 for an emergency COVID-19 regulation.

7 A more specific regulation is needed for adequate
8 worker protection and effective enforcement, as summarized in
9 the Cal/OSHA -- in the Cal/OSHA analysis of the petition. I
10 also wanted to point out that the language in the petition is
11 a starting point for developing an emergency regulation, not
12 final text of the regulation. So there will be changes.

13 And then to switch topics, with respect to the
14 emergency wildfire smoke protection regulation, we certainly
15 recognize that there's a severe shortage of N95 respirators.
16 But we don't think the wildfire smoke protection regulation
17 should be faulted for this unforeseen shortage.

18 To address the shortage, it's critical for the
19 state to continue to try to identify and circulate available
20 KN95's of reasonable quality if they're found; valved N95's
21 for use in social-distanced outdoor work; or usable, expired
22 N95's that would be adequate for smoke protection but not for
23 healthcare work.

24 We also think it's critical for employers to comply
25 with the other requirements of the regulation, including
26 training and symptoms recognition and response, and limiting

1 exposure through relocation and rescheduling of outdoor work
2 wherever possible and other means when the N95 respirators
3 aren't available.

4 In this time, prevention of heavy exposure to
5 wildfire smoke is especially important because exposure to
6 heavy levels of smoke can increase risk of severe COVID-19
7 infection.

8 Thank you for your time.

9 CHAIRMAN THOMAS: Thank you.

10 MS. SHUPE: Thank you.

11 The next speaker in our queue is Stephen Knight
12 with Worksafe.

13 MR. KNIGHT: Yes. Good afternoon, Board Members.
14 Thank you for all your patient attention today.

15 I just wanted to briefly note that the necessity
16 for our petition is clear from the existence of the ATD
17 standard itself, which has covered the same topic since 2009
18 in California but limited in scope to just healthcare
19 workplaces.

20 And, secondly, as several employer representatives
21 have referred to DOSH's recommendation in a general way and
22 one specifically claimed it supports their position, I want
23 to -- here is DOSH's clear and direct conclusion: "Cal/OSHA
24 recommends the adoption of an emergency regulation which
25 would complement and augment the existing rules, and provide
26 clear guidance to employers and workers. Given the

1 unprecedented nature of the current pandemic, it is essential
2 that Cal/OSHA have all available tools to protect workers
3 from COVID-19 illness and death. Pursuant to Labor Code
4 Section 147.1, Cal/OSHA has determined there is a necessity
5 for an emergency regulation to protect all non-5199 workers
6 from COVID-19. Due to the current COVID-19 pandemic, it is
7 important that a regulation be promulgated as soon as
8 possible to protect employees from exposure to the virus."

9 So there have been many references to IIPP rules
10 today. I recently spoke with a transit operator who called a
11 Cal/OSHA district office and was flatly told we have no COVID
12 rules that we can enforce. So that needs to change.

13 Thank you again for your time today.

14 CHAIRMAN THOMAS: Thank you.

15 Next commenter?

16 MS. SHUPE: Thank you.

17 The next commenter in our queue is Robert Moutrie
18 from the California Chamber of Commerce.

19 CHAIRMAN THOMAS: Robert, can you hear us?

20 MR. MOUTRIE: Yes, I can. And I will assume that
21 you can hear me and save you the process of saying yes.

22 CHAIRMAN THOMAS: Yes.

23 MR. MOUTRIE: So, first, thank you all for the
24 opportunity to comment, and I will do my best to keep my
25 comments brief. There is much to discuss.

26 First I'd like to touch on the wildfire status and

1 then I'll turn to the COVID-19 position.

2 So as well stated by Bryan Little and Mr. Donlon,
3 the availability of N95's is a huge problem for businesses
4 across the state right now, large and small. I'm getting
5 questions from members daily, you know, what should we do,
6 how should we comply? You know, if we can't buy N95's, what
7 can we do?

8 And I -- I would like to thank the gentlewoman from
9 CRLA -- I'm sorry, your name is eluding me -- for the comment
10 that alternative compliance is needed. We would agree, some
11 alternative compliance is needed. And it is not our, you
12 know, our desire to avoid the regulation or to erase it, but
13 merely to have a manner to comply which doesn't result in
14 statewide shutdowns, which seems to be the only logical and
15 legal requirement presently.

16 And to give a sense of the scale, yesterday, and I
17 haven't checked today's yet, but yesterday the regulation as
18 written would have shut down all outdoor business or, you
19 know, in and out of non-sealed businesses in Sacramento,
20 Oakland, Fremont, Bakersfield, San Luis Obispo, San Fernando,
21 and many other cities across the state.

22 You know, I had a census man come to the door
23 yesterday, a kind older gentleman. The census has to get
24 done. Certain things have to get done right now. As Bryan
25 Little noted, agriculture, the harvest must get done. So
26 given that situation, the present requirement to shut down,

1 given a shortage of N95's, just isn't feasible.

2 And, second, I think this is particularly
3 problematic to something that hasn't been mentioned during
4 COVID-19. As we all know, COVID-19 has pushed a lot more
5 business outside in order to allow for proper ventilation,
6 and that's been something that many businesses are doing so
7 that they can continue to function, and are glad to do. But
8 now we combine these two standards and so you can't go
9 outside. Without N95's, you must shut down. Whereas with
10 COVID-19, that's the only way you can operate.

11 Okay. So from turning from there to the COVID-19,
12 I'd like to echo many of the comments that have been made on
13 this. Of course Ms. Treanor, Mr. Leacox, Mr. Bland, Mr.
14 Welsh, Mr. Little, Ms. Prince, Mr. Donlon, Ms. Trevizo, AGC
15 and others, and I'd like to echo even portions of the
16 comments made by some labor groups that I'll go through. I
17 think the parallels between the wildfire smoke regulation and
18 the COVID-19 situation are actually quite telling. As noted
19 by Mr. Little, you have a split recommendation between the
20 staff and Division, and, interestingly, moving as quickly as
21 possible. And our concern in that situation is always the
22 feasibility of the resulting regulation.

23 Turning to -- I'll try to move away from the
24 comments that have already been made. I'd like to comment to
25 the comment made by Ms. Robbins from Worksafe. I'd like to
26 agree that the lack of data, we always need better data. And

1 the lack of data does in itself suggest a conclusion.
2 However, to that point, anecdotal assertions of individual
3 workplace cases, while, you know, certainly genuine and
4 certainly troubling -- troubling, do not indicate that we
5 need this regulation. You know the question that the Board
6 has to ask is what would this regulation add that existing
7 guidance and enforcement do not do? And why would a
8 regulation be better suited than the existing guidance, which
9 can be adjusted? The points on, I think, on that question
10 have been mentioned already, right. Would a change in
11 enforcement? No, we already have enforcement, as Cal/OSHA
12 has repeatedly acknowledged -- excuse me -- Division has
13 repeatedly acknowledged. And we have changing science, which
14 would make certain standards outdated quickly. I think as
15 noted in the Board staff's analysis, Virginia's standard
16 already has this problem.

17 And to one of the comments I believe from the
18 gentleman from the group of retirees -- again I'm sorry, I
19 did not catch your name quickly enough. I think we need to
20 isolate in terms of looking at that data what increase is due
21 to workplace and what is due to COVID-19 increase socially
22 statewide. As Mr. Welsh noted, statewide numbers are up,
23 which will doubtless make cases appear in workplaces. But
24 that isn't an indication that DOSH is failing or an
25 indication that the present guidance is insufficient. It's
26 an indication that social spread is occurring in the state.

1 And we must try to draw at least the conclusions we can and
2 not overstep with that information.

3 There is also mention of worker's comp data. I'd
4 just like to note one point which I don't think has been
5 raised. Worker's comp has included a presumption towards
6 work-relatedness for COVID-19, making reliance on worker's
7 comp data in this case not necessarily accurate, because it
8 is presumed to be that case whether it was caught at home or
9 not. So, just to clarify, if we're looking at that data we
10 have to exclude worker's comp data as a benchmark.

11 With that, I will step back. Thank you for your
12 time, and good luck weighing the considerations in front of
13 you.

14 CHAIRMAN THOMAS: Thank you very much.

15 Next commenter?

16 MS. SHUPE: Thank you.

17 Our next commenter in the queue is Cassie Hilaski,
18 from Nibbi Brothers.

19 CHAIRMAN THOMAS: Can you hear us?

20 MS. HILASKI: Yes, I can hear you. And me?

21 CHAIRMAN THOMAS: Yeah, we can -- yes, we can. Go
22 right ahead.

23 MS. HILASKI: All right. So I'm Cassie Hilaski,
24 the Safety Director for Nibbi Brothers General Contractors,
25 in San Francisco. First of all, of course thank you to the
26 Board for your attention, the public comments, and your

1 service to our communities. It is much appreciate, as
2 always.

3 I agree with the comments presented by Dan Leacox,
4 Elizabeth Treanor, Mike Donlon, Kevin Bland, Lisa Prince,
5 Robert Moutrie -- who just had some similar comments to what
6 I was going to share, and some others. So I don't need to
7 repeat everything they said, but a few comments that came to
8 mind.

9 So Mr. Leacox shared very astute insights about the
10 pitfalls of proceeding with an emergency regulation for
11 COVID-19 and bypassing a critical process, vetting process,
12 which is very important. As others have noted, the
13 petition's requirement to share personal information, such as
14 social security numbers, is of particular concern to me as
15 identity theft is a common and very real threat.

16 Someone pointed out that because we need clarity we
17 need a regulation, and I would obviously argue that needing
18 clarity doesn't mean needing regulation. I'm sure everyone
19 would agree that even if we have a new regulation, there will
20 still be the need for clarity on compliance. And, as we've
21 heard is particularly the case with emergency regulations,
22 generally requiring even more clarity when regulations are
23 rushed through the process and not thoroughly vetted.

24 Definitely feel for the McDonald's workers who have
25 called in. I certainly hope that Cal/OSHA pays those
26 locations a visit. But I did note that one of them made the

1 comment that even before the pandemic there were reprisals
2 for calling in sick, and this seems to me to be kind of a
3 sick corporate culture that continues in direct violation of
4 current shelter-in-place orders. And I really don't think
5 that making another regulation is going to make McDonald's
6 comply, right? I think we all know that is not the case.
7 Again I hate to sound like a broken record, you've heard it
8 before from me, but bad actors are bad actors, and it's not
9 the rules that don't work, it's a lack of enforcement.

10 I'm really happy to have heard that Cal/OSHA has
11 been taking much action in the past few months to
12 significantly -- significantly increase enforcement efforts,
13 as Ms. Treanor pointed out. These efforts, which I
14 definitely applaud and I think all of us on this call
15 probably applaud, and this is really where Cal/OSHA's efforts
16 need to continue, not in diverting resources to creating a
17 new regulation that will most likely be outdated by the time
18 it's published. Okay, I'm sorry.

19 Also as Mr. Moutrie referenced, Mr. Castellblanch
20 had referenced the worker's comp cases, those statistics.
21 And, again, please remember that the Executive Order that
22 came out of the Governor's Office mandates a presumption of
23 cases. And so in my own company's experience, the vast
24 majority of our cases have originated outside the workplace.
25 Yet we are required to report them as worker's comp claims
26 even when there is clear evidence, supported by the workers

1 themselves, that they did not contract the virus at work. In
2 fact, to that end, as we see in a rise in community
3 transition.

4 At our company we have started to message to our
5 employees and remind them that during this pandemic what they
6 do at home affects what they -- what happens at work. In
7 fact, I currently have an employee who is in quarantine not
8 because of exposure at work but because, thank goodness he
9 was honest, when a friend of his became positive, that he
10 called me and said, 'Hey, I was hanging out with him, I tried
11 to maintain social distancing, but did not succeed, so what
12 should I do?' He is in quarantine, right? Again outside of
13 the workplace.

14 Ms. Berliner, I totally respect her speaking up for
15 immigrant workers and workers of color. I'm sure she
16 represents employees who work for employers who, quite
17 frankly, probably don't care to comply with the current
18 shelter-in-place orders, unfortunately. But, as I've said
19 before, a new regulation will not fix those in noncompliance.

20 Also, with all due respect, while I maximize
21 working from home, as mandated by the shelter-in-place order,
22 I do visit our 18 construction jobsites and talk to many of
23 our workers who express their appreciation of all the efforts
24 we are taking to keep them working and to keep them working
25 safely.

26 As a safety director it's not often I get a trades

1 person who will take the time to call me personally and thank
2 me for helping our company keep him or her safe at work.
3 This is because I work for a company who pays attention to
4 the current guidance and wants to keep our workers safe.
5 Unfortunately, that's not true of all employers. And
6 creating a new regulation is not going to change their
7 behavior. But Cal/OSHA's continued targeting of those bad
8 actors and targeting the industries who are showing an
9 increase or are recognized as a higher hazard situation,
10 that's where Cal/OSHA's resources really need to be focused.

11 And then, finally, Ms. Robbins made the comment
12 that we're not in a typical situation, and I totally agree
13 with her. We are in a unique situation with COVID-19, a
14 global pandemic, that's still changing constantly as we
15 continue to learn the best methods to take to protect
16 workers. Therefore, it seems inappropriate to me to make an
17 across-the-board regulation for our unique situation that's
18 so dynamic that the proposed petition wording in front of you
19 now is already outdated to CDC guidelines.

20 Thank you very much for taking the time to listen
21 to my comments.

22 CHAIRMAN THOMAS: Thank you.

23 MS. SHUPE: Our next -- our next speaker in the
24 queue is Michael Miiller with the California Association of
25 Winegrape Growers.

26 CHAIRMAN THOMAS: Can you hear us, Mr. Miiller?

1 MR. MIILLER: Yes, I can. Thank you. Can you hear
2 me?

3 CHAIRMAN THOMAS: Yes, go right ahead.

4 MR. MIILLER: Thank you. Hi. I'm Michael Miiller
5 with the California Association of Winegrape Growers. I
6 guess good afternoon, and thank you for your time and public
7 service. I really appreciate the Board Members and the Board
8 staff for your diligence in these challenging times. This
9 morning I want to just briefly comment on three issues:
10 COVID-19, wildfire smoke, and the fiscal analysis of pending
11 regulations.

12 Relative to COVID-19, I want to reiterate Cassie
13 Hilaski's and Bruce Wick's comments. Our association, and I
14 believe every industry association, has advised employers to
15 comply with every federal, state, and local health order and
16 guidance. If there is ever a question of what is needed, out
17 of an abundance of caution I also advise employers to do more
18 than what is required. If employers are intentionally
19 violating these regulations, enforcement action should be
20 taken. We will never defend bad actors. Go after them.
21 However, changing requirements does nothing to increase
22 compliance.

23 I also want to add on to some of the previous
24 comments, especially those made by Kevin Bland. This is an
25 evolving world where we learn new information daily. For
26 example, I saw a report this morning about the efficacy of

1 face covering. A recent study by Duke University looked at
2 the use of face coverings and determined that the use of
3 gaiters is worse than no face covering at all. That's
4 because the fabric in these kinds of gaiters breaks bigger
5 particles into smaller particles that remain airborne longer.
6 Because those tiny droplets linger in the air longer, this
7 creates an opportunity for increased transmission. An
8 additional study of the CDC reports that six feet of distance
9 may not be enough. Maybe it's eight or 10 feet that may be
10 more appropriate.

11 Employers want to keep employees safe, but we all
12 need to realize and we are continuing to learn what actions
13 are needed to keep everyone safe. A rigid COVID-19 standard
14 may actually cause more harm than good as we continue to
15 learn more about the transmission of the virus.

16 Relative to the wildfire smoke, as you all know,
17 the AQI map is bright red in California and in some places
18 it's purple. When you look at the map more closely, you will
19 see the many wine grape growing areas are seeing AQI over
20 150. Our growers are going to miss the harvest, and this is
21 a huge problem.

22 The supply of the N95 masks is scarce and in some
23 cases not at all. Growers gave masks to help healthcare
24 workers earlier this year, now they are faced with the
25 reality that they cannot comply with this requirement through
26 no fault of their own.

1 I also want to point out that the use of N95 masks
2 is entirely voluntary. This means that the real world
3 application of this regulation in this pandemic goes
4 something like this: If the employer is able to find the
5 mask, the employer will make those masks available to the
6 employees and recommend use of that mask. However, the
7 employee may nonetheless say, 'No, I don't want to use it.'
8 This means that the N95 masks are being taken away from
9 frontline healthcare workers for no public benefit.

10 Most realistically, the employer doesn't have N95
11 masks at all. Therefore, the regulation requires the
12 employer to shut down and send the workers home. This would
13 be the case even if the employee doesn't want to use the
14 mask. The employees will still be exposed to the smoke and
15 will lose wages. At this time of historic unemployment,
16 record business closures and a recession, a work stoppage is
17 the last thing we all need.

18 Consequently, I really -- do not know how to advise
19 our growers when they come to me with questions, I just don't
20 know what to say because the law is the law, and I'm never
21 going to recommend noncompliance with the law.

22 Obviously, with this pandemic a short supply was
23 never anticipated when the Board adopted this regulation.
24 Nonetheless, here we are. Consequently, may ask is this:
25 I'd like to see the Board engage on this and coordinate with
26 other state agencies as soon as possible to develop a

1 solution to this problem. It is an immediate problem needing
2 an immediate solution.

3 Finally, I want to briefly discuss the process for
4 examining the costs of pending regulations. SB-617 in 2011
5 established additional regulatory impact assessment standards
6 for major regulations. A state agency must conduct a SRIA
7 when it estimates a proposed regulation has an economic
8 impact exceeding \$50 million. I thoroughly appreciate in
9 some cases time is running out to get the version through the
10 process, and they figured out, oh, we have met that
11 threshold. But this does not negate the requirement for the
12 completion of a SRIA. Whenever the Board staff determines,
13 based on the facts, that the costs exceeds the threshold, a
14 SRIA must be completed.

15 In February, when you met in Rancho Cordova, one of
16 the Board Members said that there will always be disputes on
17 the cost of compliance. That is very true. There will
18 always be those disputes. However, when the facts are the
19 facts, and there is no disputing the data, the fiscal
20 analysis must reflect those facts and data. And if a SRIA
21 must be completed at the time and you have to start over,
22 that's what the law requires.

23 So, consequently, I ask that the Board look down
24 the road, look at your pending regulations and please make
25 sure that the fiscal analyses are thorough and complete.
26 And, again, I can't thank you enough for your time. I think

1 this is difficult and I greatly appreciate all of your
2 Members' public service and your efforts. Thank you.

3 CHAIRMAN THOMAS: Thank you.

4 Our next caller?

5 MS. SHUPE: Thank you.

6 The next speaker in our queue is Kathy Hughes with
7 the Nurse Alliance of SEIU California.

8 CHAIRMAN THOMAS: Kathy, can you hear us?

9 MS. HUGHES: I can. Can you hear me?

10 CHAIRMAN THOMAS: We can. Go right ahead.

11 MS. HUGHES: Great. So I wanted to address a few
12 things that have come up from the employer representatives,
13 one of them regarding privacy and HIPAA in particular.

14 We have been battling employers who claim HIPAA
15 violations that prevent them from sharing any kind of injury
16 or exposure incidents to employees. And the reality is, is
17 there's language in HIPAA that talks about being required to
18 comply with disclosures per requirements of state or federal
19 laws and regulations.

20 So there is no language in HIPAA that says during a
21 work-related incident or exposure, they are not allowed to
22 share that information, and especially when you're looking at
23 OSHA logs and the fact that that information is available
24 through OSHA logs. So I just wanted to point that out, that
25 you can't really claim HIPAA protections or violations when
26 you're talking about sharing incidents of exposure with

1 employees that need that information.

2 Also talking about occupational exposure versus
3 community exposure, when the Governor issued his Executive
4 Order that established the presumption of occupational
5 exposure of COVID-19 to essential workers, he did not mention
6 his stay-at-home order or the fact that that is why he was
7 saying that it made sense for essential workers to have
8 presumed occupational exposure.

9 What he did do in his letter, which I reviewed
10 during our 15-minute break, was make it retroactive prior to
11 his stay-at-home order, so he was very much acknowledging the
12 fact that our essential workers are being exposed at work,
13 not all of them obviously. If -- that is why there is
14 contract tracing and why we are trying -- why we figure out
15 was it something at work or was it something that you
16 received out in the community? And, yes, there are both.
17 But there is still -- if it was a presumed occupational
18 exposure prior to June 30th, when his Executive Order
19 expired, why it's different today does not make sense to me.

20 And I also wanted to point out regulations putting
21 pressure on employers to comply. Back in the day before
22 bloodborne pathogen and safety needle legislation, our
23 employers pointed out that it was not needed. And it took a
24 while to get our employers to comply, but now, for the most
25 part, except for a very few exceptions, all employers comply
26 with bloodborne pathogens. In fact, you see now our dentists

1 who were not wearing PPE that they did not do prior to
2 bloodborne pathogen legislation.

3 So I do want to say that our employers, given time
4 and given the fact that they are going to face citations,
5 will eventually comply. And I -- in pointing out that
6 employers care about employees, we had a nurse that died as a
7 result of responding to a code blue. She did not have an N95
8 respirator because they were locked up in the manager's
9 office. The employers are still refusing to admit any
10 wrongdoing and not having the proper PPE provided. As a
11 matter of fact, they were having their dirty isolation gowns
12 hanging up in the hallways outside of their patients' rooms
13 as recently as last week, until the CDC showed up, and they
14 ran around the hospital gathering up their PPE that was dirty
15 in the hallway that they were requiring their nurses and
16 healthcare workers to reuse.

17 So it's just mind boggling to me when we see/hear
18 employers saying, 'We don't need it,' they said that during
19 bloodborne pathogens. I don't work in construction, but I'm
20 assuming that the building trades and construction employers
21 also said, 'We don't need slip and fall regs. We don't need
22 these rails here. We don't need this, we don't need that,'
23 and now it is a given that all of those things are, in fact,
24 needed. Everything changes. The industry and construction
25 changes. The fact that you have to change where slips and
26 falls occur change every day, and yet our employers still

1 manage to do that. So to say that this thing changes and so
2 we can't have regulations that don't change with it, just
3 does not make sense to me.

4 So I appreciate your time in listening, but I just
5 wanted to point out a few of the inconsistencies in the
6 things that I have heard, and do a little fact checking.
7 Thank you.

8 CHAIRMAN THOMAS: Thank you.

9 Our next caller will be, commenter will be?

10 MS. SHUPE: The next speaker in the queue is
11 Michael Young with the California Federation of Teachers.

12 CHAIRMAN THOMAS: Can you hear us, Michael?
13 Here he is.

14 MS. SHUPE: Mr. Young, if you could unmute
15 yourself.

16 CHAIRMAN THOMAS: Are you there, Mr. Young?

17 MS. SHUPE: Mr. Young, can you hear us?

18 MR. YOUNG: Yes, I can hear you.

19 MS. SHUPE: We can hear you now.

20 CHAIRMAN THOMAS: Yeah, go right ahead. Go right
21 ahead.

22 MR. YOUNG: Oh, perfect. Okay. Thank you.

23 Hi again. I'm Michael Young with the California
24 Federation of Teachers. I want to align my comments with
25 those of Worksafe, SEIU, and the other worker advocates that
26 are -- and workers that have spoken in support of the

1 petition. I just wanted to provide a little -- provide some
2 comments regarding the importance of this petition as related
3 to ensuring the health and safety of students, parents, and
4 teachers, and all school employees really as we get closer to
5 some schools reopening for in-person instruction.

6 We have seen numerous studies that show -- that
7 have shown increased numbers of children being diagnosed with
8 COVID-19. For example, there was a recent study that was
9 released by the American Academy of Pediatrics and the Jewish
10 Hospital Association that showed about 100,000 children
11 across the country that were diagnosed with the virus over a
12 two-week period in July. That was a 40-percent increase.
13 And I want to keep in mind that that was during a period
14 where the vast majority of schools were closed. And also the
15 recent studies from the CDC that clearly show that children
16 between the ages of 10 and 19 spread the virus at the same
17 rate as adults.

18 So I think we have to prepare for a reality that
19 schools reopening can create a danger to not just the workers
20 but to the students and the community, and we need to provide
21 state regulators with every tool possible to make sure that
22 our schools are safe. And in that vein, I also want to note
23 that we have seen several examples of California school
24 districts asking school employees to sign assumption-at-risk
25 letters. Some of these letters from districts literally
26 state that: I hereby acknowledge the risk of exposure to the

1 coronavirus and I acknowledge that the risks that I may
2 contract the coronavirus by coming on to the school district
3 premises, interacting with employees, students, and other
4 people.

5 So the districts themselves clearly understand the
6 risk and the danger that's there, and I think it's going to
7 come down to state regulators to provide guidance and to have
8 the tools necessary to ensure enforcement and compliance with
9 these rules to make sure that all students, parents, and
10 teachers are safe.

11 In addition to supporting this petition, I think it
12 can go hand in hand with enforcement of the guidances that
13 are out there for specific industries, specifically school
14 reopening, but for all the district guidances out there in
15 terms of how we reopen and how we can do it safely. So those
16 are my comments. Thank you.

17 CHAIRMAN THOMAS: Thank you.

18 MS. SHUPE: Thank you.

19 CHAIRMAN THOMAS: Do we have another commenter?

20 MS. SHUPE: At this time we have no more commenters
21 in the queue. We did have four Spanish speaking commenters
22 who we were unable to reach: Abigail Cisneros, Rosa Lopez,
23 and Maria Ramirez and Nina Santos. We have reached out to
24 their coordinator to see if we can get those comments and we
25 will look for them in writing.

26 Also I'd like to acknowledge for the record that

1 there was a delay in restarting the recording after the
2 break. And it's unfortunate that Anne Katten and Stephen
3 Knight's comments were not caught for the WebEx recording.
4 We do, however, have a court reporter who's monitoring the
5 meeting, and the comments were recorded for the record.
6 Thank you.

7 CHAIRMAN THOMAS: Very good. Very good.

8 So we thank all the commenters for their testimony.

9 MS. SHUPE: At this time do we have anyone who was
10 unable to join the queue who wanted to address the Board?
11 Please send a message in chat.

12 We're seeing no additional commenters.

13 CHAIRMAN THOMAS: All right. Thank you, and the
14 Board appreciates your testimony. The public meeting is
15 adjourned and the record is closed.

16 (Whereupon, the Public Meeting was adjourned at 12:50
17 o'clock p.m.)

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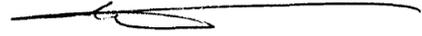
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REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of December, 2020.



PETER PETTY
CER**D-493
Notary Public

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of December, 2020.

A handwritten signature in black ink, appearing to be "Myra Severtson", written over a horizontal line.

Myra Severtson
Certified Transcriber
AAERT No. CET**D-852

STATE OF CALIFORNIA
DEPARTMENT of INDUSTRIAL RELATIONS

Business Meeting of the OCCUPATIONAL SAFETY and
HEALTH STANDARDS BOARD

TRANSCRIPT OF PROCEEDINGS

August 20, 2020

In accordance with Executive Order N-29-20 and Executive Order N-33-20, the physical location was canceled and the meeting was held via WebEx video/audio internet and via teleconference platforms.

Reported by:

Peter Petty

California Reporting, LLC
229 Napa St.
Rodeo, CA 94572

APPEARANCES

OSHSB Board Members Present:

David Thomas, Chair
Barbara Burgel
David Harrison
Nola J. Kennedy
Chris Laszcz-Davis
Laura Stock

OSHSB Staff Present:

Christina Shupe, Executive Director
Sarah Money, Executive Assistant
Michael Nelmda, Senior Safety Engineer
Michael Manieri, Principal Safety Engineer
Lara Paskins, Staff Services Manager
David Kernazitskas, Senior Safety Engineer
Jennifer White, Staff Services Analyst

Also present:

Eric Berg, Deputy Chief of Health, Division of
Occupational Safety and Health (DOSH)

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Thursday, August 20, 2020 12:50 o'clock p.m.

CHAIRMAN THOMAS: We will now proceed with the Business Meeting.

The purpose of the Business Meeting is to allow the Board to vote on matters before it and to receive briefings from staff regarding the issues listed on the Business Meeting agenda. The proposed variance decisions for adoption are listed on the Consent Calendar.

Ms. Shupe, will you please brief the Board?

MS. SHUPE: One moment, please.

Thank you, Chair Thomas.

On your consent calendar today are 16 proposed variance decisions, Items A through P. Regarding the proposed decisions for Items A through P, I am aware of no unresolved procedural matters and believe they are ready for your consideration and vote.

CHAIRMAN THOMAS: Thank you, Ms. Shupe.

Do I have a motion to adopt the consent calendar?

BOARD MEMBER LASZEZ-DAVIS: I so vote.

BOARD MEMBER HARRISON: I'll second it.

CHAIRMAN THOMAS: We have a motion and second. Is there anything on the question?

1 COURT REPORTER: Excuse me, I'm sorry, this is the
2 court reporter. I did not catch who moved and seconded.

3 Dave Harrison, I believe.

4 MS. MONEY: It was Chris Laszcz-Davis was first.

5 CHAIRMAN THOMAS: The motion.

6 MS. MONEY: Dave Harrison was second.

7 CHAIRMAN THOMAS: Did you get that?

8 MS. SHUPE: Can we get confirmation from Chris and
9 from Dave Harrison on who motioned and who seconded?

10 BOARD MEMBER HARRISON: Yeah, you got it right.

11 CHAIRMAN THOMAS: We got it right, yeah.

12 BOARD MEMBER LASZCZ-DAVIS: I moved.

13 CHAIRMAN THOMAS: Yeah.

14 BOARD MEMBER HARRISON: I said --

15 CHAIRMAN THOMAS: Chris made the motion and Dave
16 seconded the motion.

17 COURT REPORTER: Thank you from the court reporter.

18 You are welcome.

19 Will you please call the roll?

20 MS. MONEY: This is Ms. Money.

21 CHAIRMAN THOMAS: Ms. Money, will you please call
22 the roll? Sorry.

23 MS. MONEY: Ms. Burgel?

24 BOARD MEMBER BURGEL: Aye.

1 MS. MONEY: Mr. Harrison?

2 BOARD MEMBER HARRISON: Aye.

3 MS. MONEY: Ms. Kennedy?

4 BOARD MEMBER KENNEDY: Aye.

5 MS. MONEY: Ms. Laszcz-Davis?

6 BOARD MEMBER LASZCZ-DAVIS: Aye.

7 MS. MONEY: Ms. Stock?

8 BOARD MEMBER STOCK: Aye.

9 MS. MONEY: Chairman Thomas?

10 CHAIRMAN THOMAS: Aye. And the motion passes.

11 Legislative update. Ms. Shupe, will you please
12 brief the Board?

13 MS. SHUPE: Thank you, Chair Thomas.

14 The report included your Board packet was prepared
15 on August 7th, 2020. Legislative policy committees concluded
16 on August 14th and fiscal committees will conclude tomorrow
17 on August 21st. Overall there has been a tremendous amount
18 of movement as bills have made their way through this
19 legislative session. And we continue to monitor those that
20 will impact the Standards Board with support from the
21 legislative team at DIR.

22 The Legislature will conclude its work prior to our
23 September Board Meeting, at which point we'll report on
24 outcomes. Our current focus is on the following bills:

25 AB 685, related to notification of COVID-19

1 exposures;

2 AB 2092, which is included in your Board packet,
3 related to emergency ambulance employee safety devices and
4 safeguards;

5 AB 2537, regarding PPE for healthcare employees;

6 SB 275, which is summarized in your Board packet;

7 and

8 SB 1257, related to household domestic services and
9 in-home childcare services.

10 Are there any questions?

11 CHAIRMAN THOMAS: There being no questions, then we
12 will proceed to Executive Officer's Report.

13 Ms. Shupe, will you please brief the Board?

14 MS. SHUPE: Thank you, Chair Thomas.

15 As the Board is aware, staff are currently working
16 with legal support to draw up the proposed decision for
17 Petition 583, which will be ready for the September 17th
18 Board Meeting. The proposed decision is informed by the
19 evaluations prepared by the Division and the Board staff
20 engineer and takes into consideration the legal
21 responsibilities and obligations of the Board. The draft
22 will be available for review by the Board preferably with the
23 agenda on September 4th, but in no case later than seven days
24 prior to the September 17th meeting, allowing time for
25 thorough consideration prior to a final decision. The

1 proposed decision will be posted on the OSHSB website with
2 our meeting handouts.

3 Are there any questions from the Board?

4 BOARD MEMBER STOCK: Yes. This is Laura and I have
5 a question and maybe a comment. And at first I wondered, I
6 heard you say that Eric Berg is on the line. I'm wondering
7 if it's possible to ask a question of him?

8 MS. SHUPE: Is this something related to the
9 Executive Officer's Report or something that we can address
10 during the DOSH Update?

11 BOARD MEMBER STOCK: Oh, do we have the DOSH Update
12 on our agenda? I didn't see it. I can -- I can --

13 MS. SHUPE: If it's not on our agenda, we would --
14 and it doesn't appear as though it is, we would then address
15 it under new business.

16 BOARD MEMBER STOCK: Okay. So I guess I can wait
17 till new business. It's a question about some of the
18 comments that we heard this morning, a question I have for
19 DOSH, but I can wait for new business.

20 MS. SHUPE: Do we have any questions related to the
21 Executive Officer's Report?

22 CHAIRMAN THOMAS: There being no questions, we
23 don't have -- there will be no closed session.

24 BOARD MEMBER STOCK: Okay. So is this -- is this
25 the time to --

1 CHAIRMAN THOMAS: I guess this would be the time.
2 It's not really -- we don't have new business, so to speak,
3 but --

4 MS. SHUPE: But we should always have agendized an
5 opportunity for Board Members to raise new business.

6 CHAIRMAN THOMAS: I don't know if he's still on the
7 line. You can ask any questions you want. They'll get --

8 BOARD MEMBER STOCK: I thought I'd ask --

9 CHAIRMAN THOMAS: He'll get -- he'll get them.

10 BOARD MEMBER STOCK: He will get them, okay.

11 CHAIRMAN THOMAS: Yeah.

12 BOARD MEMBER STOCK: So I just wanted to make a
13 general comment. We have obviously heard quite a bit of
14 testimony about the lack of necessity and a lot of comments
15 about one reason that people are saying there is a lack of
16 necessity is the existence of other standards, including and
17 most specifically IIPP.

18 And I was not on the Board when the ATD standard
19 was passed. I don't know if anybody on the Board was. I am
20 suspecting that at the time that that standard came in front
21 of the Board, there was very likely many people who were
22 saying that there was no need for that specific standard
23 because of the existence of the IIPP. And in spite of that,
24 the Board unanimously passed the ATD standard because the
25 Board at that point was convinced that there was a need for a

1 more specific standard to cover infectious disease in
2 healthcare.

3 I was also not on the Board when the heat standard
4 was passed. I suspect that the same concerns were raised. I
5 have been on the Board during some recent regulations, such
6 as the hotel housekeeping standard, the workplace violence in
7 healthcare, and I can just say that that has been a fairly
8 common concern. Many of the comments we've heard today
9 seemed very similar to what we've heard each time we have
10 considered a specific regulation. So the fact that there is
11 existing general standards, and also the fact that it's not
12 new regulations that we need, it's greater enforcement. And
13 of course I completely agree that greater enforcement is
14 needed.

15 And I think we've also heard that there -- while
16 there have been many, many visits, there has been as of yet
17 no citations. And so that leads to the question that I have,
18 and that if Eric is here, he can answer it. And if not, it
19 would be great to get this information for next time. So I -
20 -

21 MS. SHUPE: He is not --

22 BOARD MEMBER STOCK: I'm sorry? That --

23 CHAIRMAN THOMAS: No, no, go ahead. We were seeing
24 if he was here.

25 BOARD MEMBER STOCK: Oh, okay. So I -- my question

1 was relative to the ATD standard, where he could comment on
2 the value that the specific ATD standard provided over -- at
3 the time that it was promulgated, because again the exact
4 same issues. It seems very, very similar, that situation
5 where there was a concern about infectious disease. There
6 was a concern that there needed to be a specific standard
7 that the IIPP was not enough. And that was, as I said, voted
8 on unanimously upon -- so I'd be interested in having any
9 comments on -- on the value that that specific standard has
10 provided in that setting, if he is on the line.

11 MR. BERG: Yes. This is Eric. I'm on the line.

12 Yes, the ATD standard is enormously valuable in
13 implementing protections against aerosol transmissible
14 diseases for those employers covered by the standard. It
15 contains many specifics, that would be very difficult through
16 IIPP, to universally apply to all employers.

17 BOARD MEMBER BURGEL: I have a question as well
18 that relates to Laura's question for Eric.

19 In the ATD standard, what I think is particularly a
20 strength of that standard is the notification requirements,
21 that individuals are notified if they have been exposed.
22 And, to my knowledge, that's not explicitly stated in a
23 general industry safety order or in IIPP. Is that correct?

24 MR. BERG: I mean like for chemical exposure, like
25 hazard communication --

1 BOARD MEMBER BURGEL: Oh, hazardous communication,
2 that's true. But in reference to infectious disease.

3 MR. BERG: Infectious disease, outside of 5199 and
4 5199.1, yeah, I'm not aware of any --

5 BOARD MEMBER BURGEL: Okay. Thank you. Thank you.

6 BOARD MEMBER STOCK: Okay. Were you, Barbara, --

7 CHAIRMAN THOMAS: Go ahead, Laura.

8 BOARD MEMBER STOCK: -- I just -- okay. And so I
9 wanted to just make one other comment and see what Eric had.
10 And obviously I think that your answer to my question is
11 consistent with the Cal/OSHA analysis, in which I assume that
12 that is behind the fact that they -- that Cal/OSHA has
13 recommended that an additional, more specific standard is
14 needed and would be useful in enforcement.

15 I wanted to also just comment on the issue of
16 community transmission. And I just want to -- I mean this
17 perhaps goes without saying, but clearly I don't think
18 anybody is -- is claiming or could claim that COVID is only
19 being transmitted in the workplace. I mean obviously it's a
20 great community spread.

21 It seems what we're considering here is a
22 regulation that's dealing with what happens when somebody
23 with COVID is in the workplace. And you could imagine that
24 somebody gets it outside of the workplace, at -- through a
25 community spread. But then if that person enters into the

1 workplace, particularly a workplace that does not have
2 sufficient protections and social distancing, access to
3 handwashing, et cetera, then I think what we're going to be
4 considering is what are the regulations that address whether
5 that infection is going to spread to other workers? So I
6 just want to confirm that I don't think that discussing a
7 workplace regulation is in any way implying that community
8 spread isn't an enormous issue.

9 Our responsibility is to deal with what's happening
10 in the workplace and being sure that there are conditions in
11 the workplace that are going to minimize the opportunity to
12 spread. So I just wanted to make that comment. So I think
13 that's it for now. Thank you.

14 CHAIRMAN THOMAS: Thank you.

15 Well, I think, Dave Harrison, you have some
16 comments?

17 BOARD MEMBER HARRISON: Yeah, thanks Dave. I just
18 want to make a few comments. You know, we have a lot of
19 testimony from the public, both sides of the fence for and
20 against Petition 583. And, you know, I'm a statistics guy.
21 I look at statistics and I have picked up what we have seen.
22 There was an article in the *Cal/OSHA Reporter* that said as of
23 August 12th there were 199 statewide workplace fatalities.

24 When I looked in the *Insurance Journal*, it said as
25 of August 10th there were 31,612 COVID-related worker's comp

1 claims in California and 140 of those were fatalities.

2 CHAIRMAN THOMAS: How many was that again, Dave?

3 BOARD MEMBER HARRISON: A hundred and forty
4 fatalities through August 10th, and this is according to the
5 *Insurance Journal*. And these are just worker's comp claims.
6 So it doesn't cover a hundred percent, I think. I think
7 there's probably several cases that go unreported. Just
8 going by what we know what has been reported, I think the --
9 the issue is dire enough.

10 It used to be statistically that construction and
11 ag dominated workplace fatalities in California. And by
12 these numbers, the COVID-related deaths in the workplace more
13 than doubled construction and ag combined. And so I think
14 based on that we've got to do something. We've got to move
15 forward with Petition 583.

16 I want to add a story to this as well. I spoke
17 with an LVN recently who works in a healthcare facility. And
18 she said to me that the facility she works in had known COVID
19 cases. And she said 'my employer has N95 respirators, but
20 they won't issue them to us because there was no requirement
21 to.' And this is a very reputable healthcare facility. Now
22 that's shocking to me. So the folks that argue that we don't
23 need a regulation because there are existing standards in
24 place, I would beg to differ.

25 According to this employer, this healthcare

1 employer, they thought they were doing what they needed to.
2 They made enough provisions for their employees to be
3 protected from the coronavirus. And so I would beg to differ
4 and say I think that a standard, a COVID-specific standard is
5 appropriate. I have asked -- I know other Board Members have
6 asked, excuse me, for workplace visits from the Division.
7 How many job sites visits have there been, how many citations
8 have been issued, what part of the standard are we citing in
9 these citations, and haven't got a whole lot of really clear
10 answers around that. So until we get answers around that,
11 I've got to go by the statistics that I've seen. And I would
12 really, really like to encourage Board staff to move forward
13 with -- with an emergency temporary standard around Petition
14 583. Those are my comments.

15 CHAIRMAN THOMAS: Thank you for the statement.

16 Chris, do you have any comments?

17 BOARD MEMBER LASZCZ-DAVIS: I -- I do. Just to
18 kind of -- actually, the comments made today fell on both
19 sides of the fence, if you will, and -- which is as would be
20 expected. And the question that I think we have to ask
21 ourselves is what needs to be done to make the biggest
22 impact. And, you know, there are several answers to that.

23 If you look at the issue -- will a regulation, an
24 emergency standard in fact move the needle such that it will
25 make a difference in the COVID precautions that are taken in

1 the workplace? These are just rhetorical questions.

2 I also don't think that rulemaking necessarily
3 equates to compliance. So there's got to be some tension
4 between the rulemaking and compliance to ensure that if we do
5 go the route of rulemaking it in fact does make a difference.

6 I thought what was telling, what was really telling
7 for me was that Cal/OSHA itself had recommended that we move
8 forward with an emergency standard. So what gap do they
9 determine that exists that we need to bridge with a
10 regulation? I found that interesting, and I don't know why
11 their recommendation.

12 And then finally I think the implicit fear that I
13 hear that's kind of the undercurrent through all this, as we
14 went down the path of wildfire safety, there have been a lot
15 of concerns cited that perhaps we didn't move through that
16 process as interactively and engage with all the appropriate
17 stakeholders. So what we have today doesn't reflect what
18 could be an optimal set of clarified behaviors, actions, and
19 requirements. And I think the fear is if we initiate an
20 emergency standard on COVID, are we going to end up with the
21 same set of questions unanswered, unreasonable requirements?

22 And I think the process, if we move this path --
23 down this path, the process for developing an emergency
24 standard has got to be real different than what we did for
25 wildfire safety, so that when we come out of it most

1 everybody is aligned with it. It's simple, clear,
2 understandable, and implementable. Just some thoughts.

3 CHAIRMAN THOMAS: Thank you, Chris.

4 Any other comments?

5 BOARD MEMBER STOCK: I had some -- excuse me -- I
6 had something else to say, but I wanted to be sure if anybody
7 who hasn't spoken yet wants to say anything I would defer to
8 them. If not --

9 CHAIRMAN THOMAS: Go ahead, go ahead.

10 BOARD MEMBER STOCK: I just wanted to -- I wanted
11 to acknowledge, Chris, what you just said. You know I want
12 to acknowledge the importance of trying to do the best that
13 we can. I mean it's always a tension when we're dealing with
14 an emergency situation, and this has happened, you know there
15 may be more, but I know it happened with heat and it happened
16 with wildfires. And it needed to go quickly precisely
17 because of the emergency nature of the hazard. And we also
18 know that some other regulations have taken multiple years,
19 hotel housekeeping was six years, maybe more. So -- so there
20 needs to be found something that can allow that kind of input
21 but addresses the emergency nature of it.

22 And, you know, I think that -- and, you know,
23 correct me if I'm wrong about the process, but I mean it
24 feels like there have been cases where -- and I think
25 wildfire is an example of this -- something has passed on an

1 emergency basis because of the urgent need, and then there
2 has immediately begun a process to address and provide input
3 to -- to refine it. So I think we could be looking for
4 structures like that.

5 I know one of the commenters made the -- you know,
6 said the language in the petition is a starting point. And
7 so I think, you know, I would hope that if we end up moving
8 forward and accepting the petition that there is going to be
9 some opportunity to make some adjustments to address changes
10 that have happened, to build in the ability to respond to
11 scientific -- obviously the big thing that happened is an
12 increased awareness of the fact that it's airborne. You know
13 early on in the pandemic there was less -- less evidence or
14 less conviction about that, more focused on fomite
15 transmission. Now we know that it's airborne. So I think
16 things do come up.

17 And so, you know, I assume that would be part of
18 the process, to be able to figure out a way of holding
19 something that allows changes to be made while also
20 recognizing the immediate and urgent nature of the crisis
21 that we're facing. So I am hoping that next week -- next
22 month when we can discuss further where we're going to go
23 forward, that we can be looking at opportunities like that or
24 a process like that that will address some of your concerns.

25 CHAIRMAN THOMAS: Thank you, Laura.

1 Any other comments from Board Members?

2 Hearing none, Christina, do you have any other
3 information to provide or are we -- is your stuff done?

4 MS. SHUPE: I have no additional comments for the
5 Board at this time.

6 CHAIRMAN THOMAS: Okay.

7 MS. SHUPE: Just to note that a need has not arised
8 for closed session, so we can strike that from the agenda.

9 CHAIRMAN THOMAS: All right. There being no
10 further comments, the next Standards Board regular meeting
11 and hearing will be on September 17th, 2020. It will be done
12 the same way this meeting is done, by WebEx. And at this
13 time, there being no further business, this meeting is
14 adjourned. Thank you for attending.

15 (Whereupon, the meeting was adjourned at 2:53
16 o'clock p.m.)

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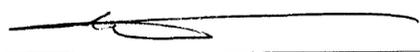
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IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of December, 2020.



PETER PETTY
CER**D-493
Notary Public

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IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of December, 2020.



Myra Severtson
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