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OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD

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PUBLIC MEETING/PUBLIC)
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HEARING/BUSINESS MEETING)
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OF THE OCCUPATIONAL SAFETY AND)
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HEALTH STANDARDS BOARD)
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PASADENA, CALIFORNIA
THURSDAY, JUNE 20, 2019

REPORTED BY:
NOELLE C. KRAWIEC
CSR NO. 14255
JOB NO.
32422

NOT AN OFFICIAL RECORD OF THE BOARD
Not approved or adopted by the Occupational Safety and Health Standards Board as a record of Board proceedings.

1 PUBLIC HEARING TAKEN AT PASADENA CITY HALL-COUNCIL
2 CHAMBERS, 100 NORTH GARFIELD AVENUE, COUNCIL
3 CHAMBERS - COMPTON CITY HALL, PASADENA, CALIFORNIA,
4 COMMENCING AT 9:57 A.M., ON THURSDAY,
5 JUNE 20, 2019, BEFORE NOELLE C. KRAWIEC, CSR
6 NO. 14255, A CERTIFIED SHORTHAND REPORTER IN AND
7 FOR THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

8

9 HELD BEFORE:

10 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (OSHSB)

11 MEMBERS:

12 DAVE THOMAS - BOARD CHAIR

13 CHRIS LASZCZ-DAVIS - MANAGEMENT REPRESENTATIVE

14 LAURA STOCK - OCCUPATIONAL SAFETY REPRESENTATIVE

15 BARBARA BURGEL - OCCUPATIONAL HEALTH REPRESENTATIVE

16 DAVID HARRISON - LABOR REPRESENTATIVE

17 NOLA J. KENNEDY - PUBLIC MEMBER

18

19 OSHSB STAFF:

20 CHRISTINA SHUPE - EXECUTIVE OFFICER

21 MICHAEL MANIERI - PRINCIPAL SAFETY ENGINEER

22 PETER HEALY - HEARING OFFICER/LEGAL COUNSEL

23 DAVID KERNAZITSKAS - SENIOR SAFETY ENGINEER/CIH

24 LARA PASKINS - STAFF SERVICES MANAGER I

25 SARAH MONEY - EXECUTIVE ASSISTANT

1 Pasadena, California; Thursday; June 20, 2019

2 9:57 a.m.

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4

5

6 (The following proceedings were held before the public.)

7

8 CHAIRMAN THOMAS: Good morning. This meeting
9 of the Occupational Safety Health Standards Board is now
10 called to order. I'm Dave Thomas, Chairman.

11 The other board members present today are
12 Ms. Barbara Burgel, Occupational Health Representative;
13 Mr. David Harrison, Labor Representative;
14 Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis,
15 Management Representative; Ms. Laura Stock, Occupational
16 Safety Representative.

17 At this time -- because I forgot -- let's stand
18 for the flag salute.

19 (All performed the flag salute.)

20 CHAIRMAN THOMAS: Thank you.

21 Also present from our staff for today's meeting
22 are Ms. Christina Shupe, Executive Officer;
23 Mr. Michael Manieri, Principal Safety Engineer;
24 Mr. Peter Healy, Legal Counsel; Ms. Lara Paskins, Safety
25 Services Manager; Mr. David Kernazitskas, Senior Safety

1 Engineer; and Ms. Sarah Money, Executive Assistant.
2 Plus, today, from the Division of Occupational Safety
3 and Health is Eric Berg, Deputy Chief of Health.

4 If you have not already done so, we invite you
5 to sign the attendance roster, which is located on the
6 table at the entrance to the room. It will become part
7 of the official record of today's proceedings. If you
8 sign the attendance roster, please be sure to write
9 legibly so that we have your correct name, contact
10 information for the record.

11 Copies of today's agenda and other materials
12 related to today's proceedings are also available on the
13 table next to the attendance roster. As reflected on
14 the agenda, today's meeting will consist of four parts:

15 First, we will hold a public discussion on the
16 protection for wild life smoke emergency regulations.
17 The Division will present the draft-proposed text that
18 will be considered for adoption at the July 18th, 2019
19 business meeting in San Diego.

20 Anyone who would like to comment on the
21 Division's presentation or has other remarks about
22 protection from wildlife smoke emergency -- I'm sorry --
23 wildfire smoke emergency regulations should come up to
24 the microphone when I invite public comment. Following
25 the public comments, the Board will discuss the draft

1 regulations.

2 Second part of the meeting will be the public
3 meeting. The public meeting is formed to receive public
4 comments or proposals on occupational safety and health
5 matters. Anyone who would like to address any
6 occupational safety and health issues, aside from the
7 protection from wildlife smoke emergency regulations,
8 including any of the items on our business meeting
9 agenda, should come up to the microphone during the
10 public meeting when I invite public comment.

11 After the public meeting, we will conduct a
12 third part of our meeting, which is the public hearing.
13 At the public hearing we will consider the proposed
14 changes to the specific occupational safety and health
15 standards that were noticed for review at today's
16 meeting.

17 Finally, after the public meeting is concluded,
18 we will hold a business meeting to act on those items
19 listed on the business meeting agenda. The Board does
20 not accept public comment during this business meeting,
21 unless a member of the Board specifically requests
22 public input.

23 So public discussion, and this is regarding
24 protection from wildlife smoke emergency regulations.
25 We will now proceed with the public discussion regarding

1 the protection from wildfire smoke emergency
2 regulations.

3 Copies of the draft-proposed text are available
4 on the table next to the entrance into the room. There
5 is also a copy posted on the Board's website. Please
6 see today's agenda for the link to the proposed text on
7 today's Board website.

8 Division presentation of draft-proposed text,
9 Mr. Berg, will you please read for the Board.

10 MR. BERG: Excuse me. Do you want to me to --

11 CHAIRMAN THOMAS: Yes. I said will you please
12 read for the Board on the vital part of the language,
13 and then we'll have comments.

14 MR. BERG: Thank you, Mr. Chairman. We are
15 proposing a regulation to protect workers from wildfire
16 smoke, so we have posted the most recent draft on that.

17 And it's triggered by the Air Quality Index,
18 when it hits 150 or unhealthy for everybody, requires
19 employers to provide training to employees, consider
20 engineering and administrative control, if feasible, and
21 also to provide respiratory protection for voluntary
22 use. And when the Air Quality Index is over 500,
23 respiratory protection is mandatory.

24 CHAIRMAN THOMAS: Thank you.

25 Yes, go ahead. Proceed. Ms. Shupe has a

1 comment.

2 MS. SHUPE: I just want to speak very briefly
3 to the timeline associated with these emergency
4 regulations and clarify that the text that you're
5 looking at today, if there are any changes to this text,
6 we will not be able to put it on the July agenda for
7 adoption.

8 However, we do encourage you to bring us any
9 issues that you may have because there will be a
10 permanent ruling-making process that will immediately
11 follow as it goes to OAL, and minor changes to the text
12 can be addressed in that.

13 We'll also be following up. Division will be
14 going forward with a comprehensive rulemaking once this
15 wildfire emergency protection becomes permanent.

16 Thank you.

17 CHAIRMAN THOMAS: Thank you, Ms. Shupe.

18 Any other comments before we -- so at this
19 time, if there are any comments on the wildfire proposed
20 text, please come to the podium, state your name and
21 affiliation for the Board, please.

22 MS. TREANOR: Good morning, Mr. Chairman,
23 Members of the Board, Board Staff, Division Staff. My
24 name is Elizabeth Treanor, and I'm the Director of the
25 Phylmar Regulatory Roundtable, a group of 40 companies

1 and utilities that employ about 850,000 workers.

2 We appreciate this opportunity to comment on
3 the proposed -- we were not aware that there -- we're
4 not going to be able to -- any changes to be made to the
5 proposal, so we're hoping that these will be considered.

6 CHAIRMAN THOMAS: They'll be considered at a
7 later time, but not for this particular --

8 Correct?

9 MS. SHUPE: Yes. They'll be considered as --
10 I'm sorry. They'll be considered as part of the
11 permanent rulemaking that follows up this temporary
12 emergency rulemaking. We have a one-year process called
13 the certificate of compliance that is mandatory to make
14 an emergency rulemaking permanent.

15 And we will notice -- we'll do a 45-day notice
16 through OAL, and comments today that are for minor
17 changes can be incorporated into that. Major changes
18 will be part of a separate comprehensive rulemaking.

19 MS. TREATOR: Hmm, okay. That's unfortunate,
20 but thank you for the information.

21 So, as we all know, that wildfires have become
22 more prevalent and devastating in recent years, and
23 they've had tragic results, as we know. Health hazards
24 of wildfire smoke should be covered under 3203, if the
25 employees are exposed, but according to the information

1 and the experience of the Division, that is not what has
2 been happening.

3 So we do support having a regulation. Several
4 of the PRR members have extensive experience for years
5 addressing and sending their personnel into wildfire
6 areas to perform a variety of issues. They de-energize
7 downed powered lines. They turn off the gas. They
8 restore water and communications to assist the
9 firefighter activities.

10 In many cases, they have to go in to remove the
11 power lines before the firefighters. These members have
12 had procedures in place for years to address that
13 hazard.

14 We have filed comments April 26th and again on
15 June 4th, and then we did respond to some questions
16 that were raised at the May 8th advisory committees
17 that we filed another -- responses to those questions on
18 May 10th.

19 We share the goal of protecting workers from
20 the health hazards of wildfire smoke. There's no
21 question about that. We do have some recommendations,
22 some concerns that we have. And one of them has to do
23 with Division -- the training provision, subsection (e),
24 the requirement for effective training.

25 Since 1991 and the Injury and Illness

1 Prevention Program that has been enforced and
2 interpreted as requiring credentials from the trainer,
3 curricula for the trainee, as well as signed attendance
4 rosters. This is what is expected when you say,
5 "effective training."

6 So to say, "effective training," it implies
7 something that we -- in the moments dealing with a
8 wildfire is not something that you have had the time to
9 do. So we've got -- some of the PRR members are going
10 to talk about what it is like as they're performing
11 these response activities.

12 The intention is that the employees, prior to
13 their exposure, are going to be fully trained in what
14 the health hazards are, what the protection will be from
15 a respirator, how to wear the respirator, why, what the
16 limitations are, and of course, their rights to request
17 medical treatment. What's most important is that the
18 employees understand how to protect themselves as
19 they're going into the firefighting operation.

20 So we further recommend that the reference to
21 3203 that is in subsection (e) be completely deleted
22 because that reinforces the need for documentation,
23 which is what people have been doing under 3203.

24 Our second point under training is that the
25 stakeholders had been informed back in March and then at

1 the May 8th advisory committee, we were told that
2 Appendix B was going to be something that they would be
3 able to distribute, and they could just use appendix --
4 the training appendix in that operation.

5 But the language of that provision says, "At a
6 minimum, it shall contain the information in
7 Appendix B." And we're concerned that this language is
8 going to result in employer confusion about: "What
9 other information are we supposed to be including? This
10 is the minimum." So our recommended change would be:
11 "Employer shall provide Appendix B or other materials
12 which include all the elements of Appendix B."

13 Regarding the issue of mandatory respirators,
14 the Respiratory Protection Standard and its federal
15 equivalent were written for situations where there's
16 regular exposure to atmospheric hazards. Wildfire
17 situations are not regular exposures. And wildfire
18 smoke above any designated trigger is not really -- is
19 not a regulated -- regular exposure, and 5144 should not
20 be used.

21 My understanding is there will be an industrial
22 hygienist who will be able to answer any of your
23 questions about this, but an N95 with an assigned
24 protection factor of 10 will provide adequate protection
25 for an Air Quality Index, AQI, of 150 as well as 500,

1 and she will discuss further about that.

2 The requirement for mandatory respirators
3 obligates employers to provide fit testing, medical
4 evaluations, which require time not available. In
5 addition, for utilities, labor management contracts
6 govern the employment situation, including who is on the
7 callout list for emergencies, which is dependent upon
8 the location of the wildfire.

9 To require that employers maintain medical
10 evaluations and fit testing for, say, 5,000 employees
11 who may be called out -- but they may not be called
12 out -- doesn't make any sense. And to require that
13 those employees be clean shaven year around in case
14 they're called out, that is going to take a lot of
15 negotiation with labor management, because that's not
16 currently part of their contracts. Again, they will
17 explain it in more detail.

18 Utilities also have mutual assistance
19 agreements. For instance, Idaho Power came in to assist
20 in a wildfire response. And those from Idaho, they do
21 not have their people in mandatory fit testing and
22 medical evaluations, and that is going to cause a delay
23 in the response at a time when delay is -- could be
24 really significant.

25 Finally -- and this may be the most

1 significant -- we're not aware of any respirator that
2 has been arc rated fla -- as fire resistant. So your
3 actually leaving this in, it's going to require --
4 forces employers to choose: "Do we protect against arc
5 flash," which is potentially lethal, "or the health
6 hazard of wildfire smoke?" And that is a choice that we
7 really urge you not to require that they make.

8 Another point, and I know we're short on time
9 so I won't -- but we're very concerned about the
10 language in the control section F4A. It says that
11 respirators should be cleaned, stored, and maintained.
12 Well, N95s and all disposable respirators should be
13 thrown away, either when they're soiled or at the end of
14 the shift. They should not be cleaned. They should not
15 be maintained. They should be gotten rid of.

16 And for -- the PRR members are aware of this --
17 but for other companies that perhaps do not have
18 advanced programs, they're going to think, "Oh. So we
19 clean and store these." And we believe that that
20 language is going to be very confusing.

21 So we recommend either deleting the language or
22 making it clear that it does not apply to any filtering
23 face piece respirator that's disposable, only to the
24 others, because that could cause significant problems.
25 So you do mention this in the appendix, Appendix B, but

1 it's not in the regulation itself, and we think it's
2 critical that it be there.

3 So, in closing, we do support the convening of
4 an advisory committee right away to begin to work on the
5 final regulation, and we were hoping that you would take
6 these comments into consideration to make some
7 adjustments to this emergency regulation. But since
8 that's not possible, we still hope that perhaps there
9 can be some enforcement guidance provided to the field
10 in this regard.

11 And we stand ready to work on the advisory
12 committee; and, again, the goal here is to protect the
13 workers from the hazards of wildfire smoke.

14 Do you -- if you have any questions?

15 Thank you.

16 CHAIRMAN THOMAS: Thank you.

17 MR. SHADIX: Good morning, Chairman Thomas,
18 Members of the Board. Tim Shadix with Worksafe. First
19 of all, as one of the petitioners for the standard, we
20 want to thank all the Board staff and the Division staff
21 for all of their work on creating this draft and this
22 timeline. At this point we do have a couple of
23 concerns. I just want to address two of them.

24 Ideally, we would want to see these addressed
25 and still have the standard be voted on in July, but if

1 for some reason that's not possible, certainly we would
2 want to see this concerns addressed, hopefully, when we
3 get to the permanent standard process.

4 So the first area of concern in the current
5 draft is the AQI threshold for the standards overall,
6 minimum application. We want to make sure that the
7 basic requirements of the standard, particularly just
8 access to voluntary use of respirators for workers who
9 need them, is available to everyone, particularly for
10 sensitive groups, for workers who -- a lot of workers
11 have asthma or allergies or maybe older workers.

12 And due to what we know from the AQI, is that
13 AQI of 101 is actually considered unsafe for sensitive
14 groups. So it would be more protective to assure that
15 those workers who are at the most risk are able to at
16 least have the bear minimum protections and the
17 voluntary access to respirator use if the overall
18 threshold for at least that part is lowered to an AQI of
19 101.

20 I also think, in general, it's better to err a
21 little on the side of protection of the AQI because AQI
22 is -- was designed to be based on protecting the general
23 public to exposure outdoors for folks who might not
24 spend a whole lot of time outdoors. And we're talking
25 here about workers who might be spending a whole

1 eight-hour shift doing heavy exertion work outdoors. So
2 they are made more vulnerable by the work they're doing
3 and their exposure level.

4 The other main concern I want to talk about
5 today is, again, the AQI threshold, and that's the
6 threshold for the mandatory respirator use. We're very
7 concerned that it's been raised from the 301 to the
8 above 500.

9 Above 500 is, quite literally, off the charts
10 of the AQI; whereas, 301 and above is considered
11 hazardous, which is the level that we think when --
12 generally, for most standards and in most rulemaking,
13 that's when you apply your protections.

14 AQI 300 or above is considered hazardous. This
15 is when it becomes dangerous and unsafe for a lot of
16 workers to be working outside without the proper
17 protection. And a respirator with adequate fit test and
18 medical evaluation is going to be the best way in those
19 very hazardous conditions to ensure that workers are
20 protected.

21 For many farm workers, construction workers,
22 landscapers, day laborers, and others who are working
23 outside all day in this condition in an AQI above 301 is
24 quite hazardous. And voluntary use of respirators is,
25 without a medical evaluation or a fit test, is probably

1 not going to be enough to protect a lot of those
2 workers.

3 Many of these workers are also workers who
4 don't have the luxury of being able to take time off
5 when the conditions are bad. And so it's just going to
6 be inevitable that when we have, unfortunately, the next
7 catastrophic wildfire, that these workers are going to
8 be outside working in these conditions.

9 It is simply not safe for them to be working in
10 those conditions when the AQI is above 301. I think any
11 of us who have lived through some of these wildfires
12 over the past couple years, and even as a resident just
13 being outside, and the air when it gets to be to the
14 hazardous level, it's common sense that that is -- it's
15 just unhealthy and unsafe at that level.

16 And, again, it just goes against all the
17 established principals of occupational safety and health
18 rulemaking to set an acceptable exposure level of
19 hazardous. Having the mandatory respirator requirements
20 kick in at above 500 at beyond hazardous is saying that
21 workers are not -- don't have access to that protection
22 even when they're exposed to conditions that, under the
23 guidelines that we're using, are designated as
24 hazardous.

25 We're also concerned that an enforcement having

1 this application threshold of above 500 might end up
2 actually being less protective than what's available
3 under current state standards and current federal
4 standards.

5 You know, currently under our current laws,
6 Cal/OSHA does sometimes do investigations and citations
7 for air quality, and we think that it's probably not the
8 case that they're waiting until it gets to be above an
9 AQI 500.

10 And, finally, just the AQI of above 500 is just
11 a little -- I think would be just a little bit
12 impractical of a benchmark because, again, it's beyond
13 the charts. There's no further gradation above there
14 with which to calibrate any further protections.

15 And if any employers are using the AQI looking
16 at a map, the color coding on an AQI map ends at
17 hazardous. There's no beyond hazardous level. So we're
18 kind of -- we're benchmarking to something that's just,
19 again, not within the framework that we are using to
20 assess risk.

21 So, you know, we would really hope that to make
22 a standard more protective that we can go back to having
23 the mandatory respirator use required at the hazardous
24 level of an AQI above 301.

25 Now, in terms of timeline, we were maybe asked

1 if we could have a little bit more of a discussion at
2 the end of this hearing to just hear a little bit more
3 about where we're at in the process and what -- if there
4 are any impediments to meeting the July deadline.

5 You know, time is really of the essence here.
6 I think we all know that wildfire season is, like, now.
7 It's upon us. We could have a big wildfire,
8 unfortunately, within the next month, in July. If we
9 wait until August or September, it might be too late to
10 adequately protect workers.

11 You know, and in light of that, you know,
12 Worksafe along with the other petitioners who filed this
13 petition six months ago, we think that that's a
14 reasonable amount of time to have -- to be ready to
15 implement an emergency standard in July.

16 So we just ask that -- to maybe -- if we can
17 confirm, if four representatives can confirm if they --
18 if we're still on track to meet that deadline in July.

19 So thank you for your time. I know we've got a
20 lot of testimony to get through. Happy to take any
21 questions; otherwise, I'll stop there.

22 Thank you for your time.

23 CHAIRMAN THOMAS: Thank you.

24 MR. WICK: Chair Thomas, Board Members, Staff,
25 thank you. Bruce Wick with CALPASC.

1 Mitch Steiger did a really good thing in asking
2 for: "Let's protect workers outdoors from wildfire
3 smoke." That was a really good thing to do. And you as
4 Board members did a really good thing in March, in my
5 opinion. Even though your staff did some valid
6 information about using AQI and so forth, you said,
7 "Let's" -- "let's do something for this fire season as
8 close as we can." And you said, "Let's do an emergency
9 reg." And that was a good thing.

10 What's happened since I'm actually very sad
11 about. I would have hoped we would be looking at maybe
12 a three-page regulation that would be more focused like
13 an emergency regulation should. We have a historical
14 problem on use of N95 dusk masks and voluntary use of
15 respirators.

16 You can still get many different opinions from
17 different people about that. We could have cut through
18 that and said, "Let's get N95 masks into the outdoor
19 workforce whenever there's wildfire smoke of a certain
20 level. Even if the AQI may have some issues, you know,
21 we can all work on that."

22 That would have been good because that we could
23 just turn around and say, "Implement, go, when this
24 emergency reg comes down." But that isn't what we have.
25 A lot of work has been done, and I appreciate it.

1 And there was -- well, I call it an informal
2 public hearing, not an advisory committee because you've
3 given input and people try to take -- not an emergency
4 regulation, a comprehensive nearly thorough regulation
5 and modify it a little bit. It is still confusing. It
6 is still contradictory in some places. And that isn't
7 helpful.

8 I am a "train the trainer." I am going to take
9 my members and tell their safety directors, "Here's the
10 new reg. I've already prepared them. Get your N95, be
11 ready, and we don't have to wait for fire season," you
12 know. "You can be ready to implement as soon as this
13 reg hits."

14 But I'm going to have to say, "The focus should
15 be N95 masks on your people when AQI hits 150." Let's
16 focus on that. Now, let's talk about compliance with an
17 11-page reg that isn't really ready.

18 I gave you all a couple of things -- I gave --
19 I tried from last Friday, with the time I had, to do a
20 few -- just talk about a few changes, and we may be
21 stuck with this reg being implemented. But I would
22 hope, if that's the case in July, you will say, as
23 Elizabeth Treanor said, "Let's put a high priority on
24 getting these things fixed."

25 So I'd like to take just a couple minutes and

1 walk through a couple of those. Again, the petition was
2 for outdoor. Your vote was for outdoor, and suddenly,
3 it includes indoor, hundreds of thousands of employers
4 who will now have to try and deal with an emergency reg.
5 My people are outdoors, and so I'll let somebody else
6 talk about the scope of indoor.

7 And, again, I believe this should be under
8 A(1)(b), when an AQMD issues a wildfire smoke alert.
9 Contractors deal with AQMDs wherever they're working
10 for, you know, dust and different regulations. They
11 know how to get to their AQMD, get an alert, and then
12 react. Someone might go five or ten years without
13 having employees exposed to this, and we want them to
14 check every day and how -- on how things are going.

15 On page 3, again, "Training and Instruction,"
16 our hope was this would be, like in 5144, we give
17 Appendix D for this voluntary use. Appendix B should be
18 like that, but we've made this reinterpreting and
19 restating some of the standards and employers having to
20 fill things out.

21 And I'm talking about small employers: Three,
22 seven, twenty-five. Those aren't my members who have
23 those many employees, but I used -- when I was safety
24 consulting, I used to deal with them, and they have a
25 part-time person trying to implement this.

1 And having them, instead of saying, "Okay. I
2 can turn around and give this to my employees and we're
3 good to go," instead they're going to have to spend some
4 time with it.

5 On page 4, item 4(a), we have a note. We have
6 all -- this debate all the time: Is the note
7 enforceable? Is the note whatever? Let's eliminate the
8 note. If there's something important to put in -- and
9 we're trying to get people to differentiate between a
10 regular 5144 and this new wildfire smoke section when we
11 have a temporary emergency.

12 Many of our construction employers will operate
13 with the emergency from their headquarters, figure out
14 what job sites need the regulation, and send their N95s
15 there. Some will want their on-site supervision to do
16 that.

17 Appendix A will not allow someone to download
18 the app from their local AQMD and monitor the air, and
19 that's not good enough under Appendix A. And I don't
20 even know how to fix that at this point.

21 Couple of items in Appendix B: Appendix B says
22 the employer has to do engineering or administrative
23 controls in construction. There's, likely, not going to
24 be that. We can't move the jobsite. We can shut down,
25 but, you know, most construction employees are hourly.

1 So we're saying, "We're taking away your
2 livelihood today," if we just take the easy route and
3 shut down. We should eliminate that part. And this is
4 where it's a concern: Because I'm going to have to tell
5 my safety directors, "Appendix B is supposed to be a
6 minimum, but there's parts of it you probably aren't
7 going to want to include. So you're going to risk being
8 not in compliance to do the right thing and tell your
9 employees the reality."

10 Again, it talks about we -- our communications
11 system. We already have to have a communications
12 system. It talks about on page 9, item F, the first
13 paragraph: Again, employers shall take action.

14 Well, the action may only be the respirator,
15 N95, because in -- most of the time, that's what we can
16 do, but that's what we want to do in great form. We're
17 supposed to -- it says we're supposed to -- this will be
18 the control system at the worksite. We may have 50
19 worksites today, and that will be a whole different set
20 of worksites in two months. "At this worksite"?

21 Just a couple other quick ones: Again, two on
22 page 10, "Read and follow the manufacturer's
23 instructions," and then it says, "Regarding fit testing
24 and shaving, should also be followed, although doing so
25 is not required." What are my foreman going to do with

1 that? "Well, you should, but it's not required." So do
2 we do it or do we not?

3 We could make that -- I put a sample sentence:
4 "Those instructions will be temporarily suspended during
5 the wildfire smoke emergency." We can be clear about
6 these things.

7 And then it talks about respirators in H. The
8 way it's worded, "To get the most protection, there must
9 be a tight seal." That's true, but Debra Gold at the
10 advisory -- excuse me -- the informal public hearing
11 that the Division held, gave us some good information.
12 She said, "Yes, an N95 has an APF of 10. If you have
13 facial hair and don't fit test, you'll drop from there,
14 but you will still get some protection." And even if it
15 drops down to three, that's better than nothing.

16 And if we say -- like, there's a sentence right
17 after that -- "A respirator will provide much less
18 protection if facial interferes," what are employees
19 going to do that have facial hair? "I don't need the
20 respirator because it's not going to do me really any
21 good."

22 Well, yeah, it will. My hope is maybe we even
23 get some people like -- with a wild man beard like
24 Kevin Bland to cut it back to a more distinguished look
25 like Chairman Thomas. See, that could happen.

1 UNIDENTIFIED SPEAKER: No, I don't think so.

2 MR. WICK: The picture on page 11 says, "Shave
3 facial hair. Shaving is not required." Well, what are
4 we going to do with that? So I couldn't crop the
5 picture very well, but let's just say shaving is not
6 required for voluntary respirator use. If you're
7 reading the manufacturer's instructions, it will say,
8 "Yes, and fit testing." But we're saying for this
9 temporary emergency, we want not to have that.

10 And then the last part -- the last sentence on
11 there -- this is, again, one where I would have to say,
12 "I'm going to encourage you as employers to not be in
13 compliance with this reg because you want to do the
14 right thing."

15 That sentence says, "If you have symptoms such
16 as difficulty breathing, dizziness, or nausea, go to an
17 area with cleaner air. Get in your car, drive
18 somewhere, and then take your mask off and seek medical
19 help." No. I don't want anybody to put that in
20 Appendix B. I want them to say, "You take your mask off
21 when you get medical help from your supervisor right
22 now."

23 So we have a lot of issues, and I would hope in
24 the future -- again, this Board has always done -- we've
25 had a great back-and-forth, and we arrive at the right

1 thing. And you have done -- you set this off the right
2 way.

3 And we may be stuck under the emergency regs,
4 but I'd like to see us fix these things as fast as we
5 possibly could because the idea is, again, from the
6 start, let's give protection the best we can for a
7 temporary situation to the most employees we can who are
8 out there.

9 Thank you.

10 CHAIRMAN THOMAS: Thank you.

11 MR. ARMSTRONG: Good morning, Board Members and
12 Staffers. My name is Robert Armstrong. I'm with the
13 Pacific Gas and Electric Company.

14 Let me first start by saying that at PG&E we
15 have a very, very robust voluntary use program
16 currently. In fact, at the end of the fire season last
17 year, we still had in excess of 70,000 respirators still
18 in our supplies across our service territory that we in
19 addition to the several thousands that we handed out
20 during the fires.

21 In fact, during the fires up in Paradise, we
22 were actively engaged in the process of not only making
23 sure that our folks were safe but any contractors that
24 work for us, any other contractors in the area, and
25 people that just happened to be in the Paradise area.

1 I do want to make a few comments reiterating
2 some of the stuff that Ms. Treanor already spoke to, and
3 the first piece goes to the training and instruction
4 piece.

5 At Paradise, for example, at our basecamp, we
6 had over 2,700 employees and contractors at that
7 particular basecamp; and if you consider the basecamps
8 that were at the Napa complex fires a year before, we
9 had three times that amount.

10 We have a very robust early morning training
11 session with every contract crew and contract employee
12 that goes out into the field, and we hold these massive
13 morning tell boards.

14 We're concerned that under the current
15 regulation, as it's written, with the current standard
16 as it's written, that with the training and instruction,
17 it connotes the -- it connotes what Ms. Treanor spoke to
18 earlier about the documentation piece.

19 Right? That it would have to be the name of
20 the trainer, the topic, the date of the training, and
21 signatures of all those folks that attended that
22 training, and we believe that that would unnecessarily
23 delay our response times out to the public in doing our
24 restoration efforts.

25 One other thing I wanted to make mention of

1 that we've talked about briefly was the fact that
2 currently there are no arc-flash rated respirators that
3 we are aware of. We checked with multiple utility
4 partners, multiple manufacturers, and nothing seems to
5 be out there.

6 So, in essence, with this regulation, we're
7 being asked to -- we're being asked to compromise a very
8 real hazard for, at present, an ill-defined hazard at
9 this point. And we're as concerned -- you know, being
10 concerned for the safety of our line crews and gas
11 crews, that that just seems to be an unrealistic ask on
12 our part.

13 All these things, in our opinion -- the
14 training, the fact that the respirators aren't arc-flash
15 rated, and then the mandatory use piece with having to
16 have fit testing and clean shaven faces -- is going to
17 delay our response.

18 We have significant -- we have a tremendous
19 working relationship with our union partners, but
20 currently if we were to create a call list -- we're
21 currently not equipped with the capacity to create a
22 call list that designates based on clean shaven versus
23 not clean shaven. You know, it's more on a seniority
24 basis. So that becomes incredibly problematic for us as
25 a company and for our IBEW partners.

1 All these things taken together jointly I think
2 have serious consequences on our response times. And
3 understand that in events like this, we're under
4 critical time periods to not only make safe, but also
5 restore some of our very, very critical customers; those
6 being hospitals, water districts, fire departments, and
7 individual medically-dependent customers that rely on
8 our services.

9 Again, given all the -- we're absolutely
10 committed to the voluntary use. We already do that.
11 We're just concerned that some of the codicils of the
12 mandatory use are going to unduly delay our response to
13 the customers that need our services the most.

14 Thank you. Any questions?

15 CHAIRMAN THOMAS: Thank you.

16 MS. ZUNIGA: Good morning. My name is
17 Nancy Zuniga. I'm here on behalf of IDEPSCA, the
18 Institute of Popular Education of Southern California.
19 We are a local worker center that works with day
20 laborers and domestic workers.

21 First of all, thank you for working on this
22 draft. It is very important for us and the members that
23 we represent. And so just wanted to share and also
24 support some of the comments that Tim Wise (sic) had
25 from Worksafe.

1 So for us some of the work that we've done has
2 been around training workers, domestic workers, and day
3 laborers that were specifically affected by the recent
4 Woolsey fires. Many of them were not provided these
5 protections, particularly the respirator, and many of
6 them were affected really negatively, not just in terms
7 of their finances and losing their jobs permanently, but
8 also their health.

9 And so that's why we are very concerned about
10 the thresholds of the -- not everything being around the
11 101 for the sensitive groups, in particular, because
12 many day laborers and domestic workers actually fall in
13 that category. Many are aging very quickly and don't
14 have the ability to move out of these types of jobs.

15 Many day laborers and domestic workers have
16 actually been the first and second responders, and we
17 know this from talking to over 500 workers in the Malibu
18 area. And so we know that they were there alongside the
19 homeowners protecting their homes. They were there for
20 the cleanup. Some of them are still there.

21 And so we want to make sure that -- you know,
22 we don't know all the repercussions to their health, and
23 we want to make sure that they are fully protected and
24 provided the respirators at a level that really takes
25 into consideration who they are as people.

1 And so we want to make sure that the -- that
2 501 is very dangerous, and we want to make sure that
3 sensitive groups -- when we think about sensitive
4 groups, we think about the most vulnerable workers, and
5 in this case, day laborers and domestic workers, which
6 are a great majority immigrant workers, probably not
7 represented that are doing this work for a long time and
8 for many hours outdoors and indoors, actually, really
9 deserve that protection.

10 And just as a reminder, when we're talking
11 about these workers, many of these workers also lack
12 health insurance. Right? So how do we make sure that
13 they aren't getting that exposure? Because they already
14 lack a lot of different access.

15 So we want to make sure -- we want to encourage
16 that we shift from that really high level to something
17 that really considers day laborers and domestic workers
18 as part of the sensitive group.

19 Thank you so much.

20 CHAIRMAN THOMAS: Thank you.

21 MS. LUBIN: Hi. My name is Christy Lubin, and
22 I'm the Executive Director of The Graton Day Labor
23 Center. We're located in West Sonoma County, and I am
24 going to piggyback on some of the comments that Nancy
25 just made about the day laborers and domestic workers.

1 My organization organizes with day laborers and
2 domestic workers, and health and safety on the job is
3 our priority with the population that we work with,
4 knowing that day laborers have one of the highest
5 accident and -- accidental death and injury rates in the
6 construction industry in this country.

7 I also want to speak from my personal
8 experience because I just recently lived through two
9 fires. I lived through the Sonoma County wildfires and
10 lived through the Paradise wildfires.

11 As Nancy mentioned, day laborers and domestic
12 workers are often first responders and so are the staff
13 of those organizations. And our organization played a
14 vital role during the fires in helping homeowners clean
15 their gutters, clean their roofs, prepare their yards,
16 cut back brush, cut back trees, shred.

17 And we're outside on the front lines. They
18 were also outside on the front lines supporting other
19 low-income families who were displaced and were living
20 outside in their cars and parking lots and sleeping on
21 the beaches during the Sonoma County wildfires.

22 When the Paradise fires burned last October,
23 those -- not only did the Bay Area experience a long
24 period of time where the air quality was very poor, but
25 so did Sonoma County. And during that time, I just

1 wanted to share with you the story of this gentleman.

2 His name is Arnulfo Juarez.

3 Arnulfo in 2004 was one of the founding Board
4 members of my organization. He was a worker-leader who
5 is from -- was from Mexico and was a very instrumental
6 part in building worker leadership at our organization.

7 Last October Arnulfo went out to work for five
8 days during the fire, during the smoke, and Arnulfo is
9 in that high risk category. By the way, this is a
10 picture of him advocating for domestic worker rights in
11 front of the State Capitol. So he was an extraordinary
12 leader.

13 But he went out to work for four days, and he
14 was 65 years old. He had previous issues,
15 hospitalization issues related to pneumonia. And
16 although he went out with his N95 mask when the air
17 quality control was in the high 200s, when he came home
18 from work Friday, he was complaining of chest pain and
19 having a hard time breathing, and he went to bed and he
20 didn't wake up in the morning.

21 Being that Arnulfo was an older man and an
22 undocumented immigrant, an autopsy was not performed.
23 And I can't come here as a scientist and say, "He died
24 because of his exposure to wildfire smoke." But I do
25 know that -- you know, has anyone here ever actually put

1 on an N95 respirator mask and tried to do work, tried to
2 do anything where you're breathing?

3 Your rate of breathing increases. Your face is
4 hot. It's sweating. It's almost you're not getting
5 enough oxygen. And I've had to wear these many times
6 and know where you just have to take that mask off
7 sometimes just to get some cold air going under that
8 mask.

9 Arnulfo did wear a mask. We trained our
10 workers. I am not OSHA certified to fit, to do fit
11 tests, but at my organization, we do anything we can to
12 protect our workers' safety, including teaching them
13 from what we know about proper use of an N95 mask.

14 And we also counsel employers. Our employers
15 are homeowners. They are not contractors. They're not
16 big agencies or companies. They're homeowners who --
17 and, you know, we actually encouraged our employers not
18 to hire, but our workers are really, really low-income
19 people. Employers are desperate in these situations.
20 They want to protect their homes. They panic.

21 And many of them are also agricultural
22 employers, you know, with potatoes, grapes, apples. And
23 they need to get those things picked before they get
24 smoke damage. So they've got to pick their crop or they
25 lose their income.

1 And our workers are so low income that they
2 can't afford not to work, and they often have to put
3 their health before their livelihood -- their livelihood
4 before their health.

5 So, anyhow, I just wanted to come here today
6 because I really wanted him to be present here and to
7 have his face here because he's no longer with us. So I
8 really encourage you to look at this, that setting the
9 Air Quality Index so high at 500 is a low bar. It's
10 just a low bar. And we need to take action -- to take
11 action before it gets to a such a hazardous level, the
12 smoke.

13 Thank you.

14 CHAIRMAN THOMAS: Thank you.

15 MR. SOTO: Good morning. My name is Cal Soto.
16 I am an attorney with the National Day Laborer
17 Organizing Network, and I'm here with workers,
18 organizers, and family members from the Pasadena
19 Community Job Center just a couple of blocks away.

20 I work closely with The Graton Day Labor
21 Center, Christy just spoke, the director there, and also
22 with IDEPSCA, where Nancy and the workers who are
23 represented here today.

24 We represent day laborers, domestic workers,
25 low-wage workers here in the State of California and

1 actually nationally in order to put forward the issues
2 that are most salient to the most vulnerable workers.

3 I appreciate greatly the great amount of work,
4 time, and effort that goes into the very complex
5 training that a lot of the industry experts and
6 representatives have come today to present to you all,
7 but I want to make sure we center this conversation
8 about an emergency floor standard around the right
9 population of people, and those are the most vulnerable
10 workers, people like Arnulfo who Christy just mentioned,
11 workers that are outside all day, whether or not they're
12 right on the jobsite or waiting for work who are
13 breathing in this unhealthy air for more than eight
14 hours a day.

15 So we're talking about a standard that,
16 hopefully, would protect those workers, those workers
17 that don't have access to union representatives, don't
18 have access to regular training, don't have access to
19 all the regular most stringent standards.

20 We're talking about the base-floor standard
21 today, which is why it's really important to consider
22 how important it is when we have a voluntary standard,
23 when we have a mandatory standard.

24 I can say from experience when there is -- it
25 is sort of up to the discretion of either the employer

1 or the employee for any work standard, that at the end
2 of day, when it comes to our workers, they are going to
3 default to not having that protection, not having that
4 protective standard, if it's not a mandatory thing that
5 is clear, that is clearly enforced.

6 And so I do agree with some of the folks who
7 are here today talking about the necessity to have
8 clarity in these standards. I think that I would echo
9 what Tim said, what Nancy said, what Christy said, is
10 that it's incredibly important to have a clear standard
11 that's easy to understand for all workers, which is why
12 we want to stress that, yes, I do believe that the Air
13 Quality Index is a good measure.

14 The original reason for the AQI being created
15 was so that people who don't have scientific expertise,
16 like myself, like most workers, can see a clear standard
17 of: "Okay. At this point it's unhealthy. At this
18 point it's hazardous. At this point I know that when
19 I'm outside breathing, I need protection."

20 If we have a standard that's above the highest
21 threshold, above 500, that actually kind of defeats the
22 purpose, I think, a little bit of having that clear
23 standard and having that clear understanding, because no
24 worker is actually going to be able to understand when
25 it's above the highest standard that already exists.

1 So would we stress that the mandatory standard
2 should be in the hazardous condition above 300. You
3 know, I also believe that the voluntary condition, we
4 agree with the voluntary standard, but that should come
5 into place at above 100, you know, at a very clear,
6 specific baseline and stress that this is an emergency
7 standard.

8 This is something that we believe if we don't
9 take action on this today or as soon as possible, that
10 when the next fire comes, we're going to have more cases
11 like Arnulfo's. We're going to have more unhealthy
12 workers. And we're talking about a huge workforce.

13 As has been presented by many of the industry
14 experts today, we're talking about a lot of workers who
15 would be affected by the standard and the health and
16 years and years of their lives that we're going to save.

17 And the final point: I do believe that any
18 type of future meeting or Advisory Board, I hope that
19 I -- I really love the congenial atmosphere here between
20 many of the representatives on the Board and many of the
21 folks who are here at every meeting. I've been to a few
22 meetings now.

23 But I hope that we can start to have that same
24 participation and rapport between the workers that are
25 the most vulnerable workers. I hope that in the future

1 we have members of the job centers, members of IDEPSCA,
2 of Santa Rosa Worker Center, of Pasadena Job Center, be
3 able to have, you know, smaller meetings and actually
4 direct discussions with you about the on-the-ground most
5 vulnerable workers' issues and problems that they're
6 facing.

7 So I hope that after this meeting we can share
8 information and have that continued participation from
9 the workers who are most affected.

10 All right. Thank you.

11 CHAIRMAN THOMAS: Thank you.

12 MS. BERLINER: Hello, Chairman Thomas and
13 Members of the Board. My name is Alice Berliner, and
14 I'm from the SoCal Coalition for Occupational Safety and
15 Health, SoCal COSH.

16 SoCal COSH advocates for improved health and
17 safety standards for low-wage workers and aims to
18 address the root cause of the workman's injuries,
19 illnesses, and fatalities. And we do this through
20 worker trainings. We'd like to provide our comments,
21 which is very much reiterating what Tim Shadix from
22 Worksafe said and Cal Soto just said.

23 And, first of all, we'd like to say that a 101
24 must be the threshold for the use of voluntary
25 respirators to trigger other aspects of the standard,

1 given the precarious nature of low-wage industries, like
2 day laborers. These workers are -- they are not
3 receiving adequate breaks, trainings, and personal
4 protective equipment.

5 And when there is significant wildfire smoke,
6 these individuals are at further risk for serious
7 long-term health ailments. At a minimum, employers must
8 be required to provide the respirators at 101, and
9 workers can choose to use respirators or not.

10 And then, secondly, the threshold for mandatory
11 respirators needs to be brought back down to 301, which
12 Cal just talked about. And having the threshold at 501
13 is irresponsible, and we know that anything after 301 is
14 hazardous.

15 We urge this Board to consider that if AQI is
16 hazardous, workers must have respirators, proceed with
17 fit tests and medical evaluations, and must wear
18 provided respirators. Time is of the essence, and we
19 want to make sure the standard is on track for the vote
20 at the July meeting and, most importantly, it's in place
21 to protect outdoor workers in our state come the next
22 fire season.

23 Thank you.

24 CHAIRMAN THOMAS: Thank you.

25 MR. LEACOX: Good morning, Board and Staff.

1 Dan Leacox commenting today on behalf of the Elevator
2 Industry and the Composite Manufacturer's Industry.
3 They have workers outdoors, indoors in treated air,
4 filtered air conditions indoors, as well as those that
5 aren't.

6 I'm not much going to comment on the
7 particulars of the rule, the substance of the rule. I
8 wanted to -- but I did want to address what is possible.
9 I think the Board, actually, is in a somewhat difficult
10 position when we were here talking about the petition
11 and whether or not to do this rulemaking.

12 The context of that discussion at the time was:
13 "Look. Let's do an emergency rule, something that's
14 doable. Let's make voluntary use possible. Let's
15 remove the barriers that employers experience to
16 voluntary use, so when this happens we can get this
17 protection out there to some extent." Not a perfect
18 solution, but a very viable one and a good one.

19 We didn't have to get what you now have before
20 us. Okay? Didn't have to be this way. But you don't
21 have what was being contemplated at that time before you
22 now. And what's before you now is highly problematic.
23 I think it's problematic for you. I know it's
24 problematic for employers. You've heard the
25 particulars. This rule didn't have to include indoor

1 workplaces. It does.

2 The definition of wildfire I notice was
3 expanded to include fires in wildlands, which everybody
4 understood at the beginning, but -- or adjacent areas.
5 So there's a house fire in an adjacent area. Are we now
6 subject to the wildfire provision? I don't know. It
7 sure seems like it.

8 And how far -- what's the boundary of adjacent
9 area? These things didn't have to be in here. Okay?
10 So now you've got a rule, that you've heard, highly
11 problematic, don't even know how to advise for
12 compliance and what can be done.

13 So, in normal circumstances, I'd be up here
14 saying, you know, "Take the time to get this right."
15 I'm not going to say that. You've heard the employers'
16 representatives so far say, "No. You know, let's get
17 this done and in place." So I'd like to address a
18 little bit, "Well, what can be done and still have this
19 thing voted on in July?"

20 So emergency declarations and all the documents
21 to get an emergency declaration so that it can go in
22 effect immediately have been done and in place. Those
23 can be adjusted, if there's a will to do it. I know
24 there's a great will to get this done. If with that
25 there was an equal will to fix the major problems of

1 this, it could be done.

2 The adjustments that were being asked for in
3 the rule would be adjustments that would reduce the cost
4 of this rule. So you go back to your assessment of
5 costs, and that's an adjustment downward. That's not
6 that hard to do.

7 These fixes could be done. It might require
8 extra work. So we're not looking here for delay to buy
9 more time, but to just buy more time with the work
10 required to organize the changes to be done so that it
11 can be -- some of these things can be fixed and voted on
12 in July. This can be done. I mean I've consulted folks
13 who have done emergency regulations, and this can be
14 done with enough effort, if the will is there to fix
15 these problems.

16 But to say it can't be done procedurally -- and
17 it may require bypass of how things are normally
18 handled -- but we are talking about emergency, which is
19 a bypass of normal routines. Right? I would just think
20 if there was a sentiment to fix these problems, that it
21 could be done on time.

22 There is also one issue -- I have not seen the
23 documents -- but to the extent that the declaration of
24 emergency is relying on declarations by this Board and
25 what might be in legislation, there's a little bit of an

1 issue because the petition, what the Board decided, the
2 potential legislation all is about outdoor work.

3 You don't have anything in place for this
4 regulation of indoor work, and I would think this is a
5 fix that would be required. I would think you would
6 have to -- I don't know how that's been dealt with in
7 the documents -- but I think you might have a real
8 problem there because if you don't have that in place
9 and you're trying to declare emergency based on a basket
10 of data versus a legislative mandate or a Board mandate,
11 that's a little different hill to climb, as I understand
12 it. So revisiting these documents may be something
13 that's necessary anyway.

14 And this is about to be launched on employers,
15 realistically, for two fire seasons. Right? This goes
16 for a year, so it's this fire season. But when is this
17 permanent rule going to come down the pike? It won't be
18 done for next fire season. So you're talking about
19 employers living with for the next two seasons and
20 living with these problems. So I think every effort
21 that can be made should be made to fix these problems
22 for the July vote.

23 Thank you.

24 CHAIRMAN THOMAS: Thank you.

25 MR. MUSSER: Good morning, Chairman Thomas,

1 Board Members, Staff, and the public. Michael Musser
2 with the California Teachers Association. You have my
3 comments from other meetings and Advisory Committee of
4 meetings.

5 And we knew we had a challenging regulation to
6 put in place, and we knew we weren't going to get
7 something perfect here or, you know, in July. And we
8 know that we want to get something really great on the
9 books in the future that's going to include more than
10 just the emergency regulation that protects the outdoor
11 worker.

12 But we do have that concern right now. It is
13 the outdoor worker. Yes, I represent education
14 employers who have workers on the outside and have
15 employees on the inside. We're going to deal with that
16 in the future with the regular regulation, but, yes, we
17 have some challenges with this current emergency
18 regulation, and we really need to just to focus on the
19 outdoor worker.

20 Because we have a lot of time, then, to talk
21 about these issues that are going come up with all the
22 other employees that are going to be affected by
23 wildfire smoke. We have a lot of work to do.

24 One of things I really appreciate when I go
25 onto our website is all the comments that others have

1 provided that I haven't seen that haven't attended these
2 meetings. I've got superintendents, public school
3 superintendents, that are providing comments that I
4 haven't heard, and it really helps me understand where
5 they're coming from and how they really want to protect
6 their employees.

7 But they're really looking for the guidance
8 from this body of what type of training they need to
9 provide or what type of monitors they need to have in
10 place because this is all new to them. And we're going
11 to have to provide all of that information for those
12 individuals, those employers, to make sure that they are
13 protecting their employees, as they want to do.

14 So I know this is going to take some time, but
15 I also know that we have to get this emergency piece
16 done. I appreciate all the work that we're doing
17 together to protect that outdoor worker. It's not
18 perfect, but I thank us for the work we are doing
19 together, and we will continue working to make the
20 permanent regulation something that will truly be
21 protective of all employees in the State of California.

22 So thank you for your time.

23 CHAIRMAN THOMAS: Thank you.

24 MS. BLANCHARD: Good morning. Gail Blanchard
25 with the California Hospital Association.

1 And I want to start off by saying I think
2 reiterating what folks on both sides or all sides have
3 said. Hospitals, we care about the health of the folks
4 in our communities. And so the people who are talking
5 today about working outdoors for long periods of time
6 without protection, you know, we think an emergency
7 regulation is absolutely appropriate for that.

8 But I am here today, so I will reiterate or
9 chime in on, and we agree with all the statements that
10 were previously made, but I do want to focus on the
11 impact of this emergency regulation on hospitals
12 specifically.

13 Probably, when you think about hospitals, you
14 think, well, we're indoor workers and so we're really
15 not impacted by this. I think we're in a unique
16 situation, in that when this regulation is triggered is
17 when the hospital is on the verge of being evacuated
18 because the fire is coming over the hill, which was --

19 I'm getting a little emotional about it,
20 because that's what happened in Feather River, and a lot
21 of folks lost their homes, and there was some pretty
22 amazing stories there.

23 So my concern is, you know, we are in health
24 care, we have respirators, we fit test many of our
25 employees. But when we're evacuating a hospital, yes,

1 we're working outside for more than an hour, but we're
2 not necessarily monitoring the air quality.

3 So when the standard goes from voluntary
4 respirator use to mandatory, you know, is that where our
5 energy should be, or should it be on -- focusing on
6 safely evacuating patients and employees?

7 So I really feel like we're in a unique
8 situation and have got serious concerns about this is
9 really setting us up for noncompliance in a very, very
10 emergency situation where people's lives are at stake,
11 and we really should be focusing on the safety of our
12 employees and our patients.

13 And, like Dan said, I'm not sure about the
14 procedural ways to kind of get around that issue, but,
15 really, any effort to really focus this on the
16 population, as one of speakers said, the right
17 population of people, those are people who are outside
18 for long periods of time and really don't have the
19 protection right now that they may need.

20 Thank you for your consideration.

21 CHAIRMAN THOMAS: Thank you.

22 MR. ALLEN: Hello. Good morning. My name is
23 Matthew Allen. I'm with Western Growers Association.
24 We're based in Irvine. We represent the growers that
25 grow fresh fruits, vegetables, and tree nuts in the

1 State of California.

2 We are concerned definitely about workplace
3 safety and employee safety. And for that reason, we're
4 viewing this regulation through the lens of clarity. We
5 want to make sure that our members understand the
6 regulation, how to implement it, and to do that in the
7 most feasible way possible.

8 So, in doing so, the first thing they are going
9 look to is the scope of the regulation. And in looking
10 at that and reviewing that, we have a concern in that
11 initial definition of the scope when it talks about PM
12 2.5, because there are many other pollutants that go
13 into PM 2.5 levels.

14 And we're concerned in the definition of the
15 scope that wildfire smoke is not directly linked in the
16 scope language. We think that's problematic for our
17 employers because they're not going to understand when
18 they need to have this protection in place, and we would
19 encourage the Board to look at that prior to taking this
20 next step in the July meeting.

21 Having said that, I fully concur with the
22 previous comments made by Mr. Leacox and Mr. Wick. We
23 would like -- we would encourage -- like to see language
24 that's much more concise and direct and clear for our
25 employers to actually implement.

1 But, again, I would definitely encourage you,
2 at least for the purpose of today's discussion, to
3 review that scope language and to make some
4 clarification that, you know, wildfire smoke should be
5 present.

6 Employers will not understand what it means
7 that they should reasonably anticipate a wildfire smoke
8 if the PM 2.5 is high. The PM 2.5 level may be high due
9 to some other factors completely unrelated to a
10 wildfire. So we would encourage you to revisit that.

11 Thank you.

12 CHAIRMAN THOMAS: Thank you.

13 MR. LITTLE: Good morning, still, for a little
14 while yet. I'm Bryan Little with California Farm Bureau
15 Federation. Farm Bureau is the largest general
16 agricultural organization in California, and we
17 represent thousands of agricultural employers who will
18 be charged with implementing this emergency regulation
19 and the permanent regulation that will follow it.

20 Part of what I do for California Farm Bureau is
21 helping those members, those agricultural employers
22 figure out how they are to implement the standards that
23 you ask them to implement, and I'm a little concerned
24 reading this draft that I'm not sure how to tell them
25 how to comply with some of what's in here.

1 One thing that comes immediately to my mind --
2 and, by the way, I think I should probably say at the
3 outset, you, I think, are to be commended for taking a
4 practical approach to this, to recognizing that just as
5 the AQI is probably not the ideal yardstick to measure
6 occupational exposures in an outdoor work environment
7 and that the use of N95 respirators is probably not the
8 ideal solution to provide protection to workers.

9 You've taken this as an approach that you don't
10 want to let the perfect be the enemy of the good; that
11 we don't want to insist on having to have medical
12 evaluation and fit testing for the workforce, like what
13 we have in agriculture, where we have nearly a half a
14 million people working in each of the peak months of
15 August, September, and October, to require our employers
16 to fit test and medically evaluate each of those workers
17 on the possibility of a fire that may never occur.

18 If it does occur, we have no idea where it's
19 going to occur. We have no idea if it's going to affect
20 the location where you may be working at any given day.
21 And the prospect of having to have to fit test and
22 medically evaluate nearly a half a million workers and
23 require them all to shave and remain shaved throughout
24 the season is not practical, and it will interfere with
25 our agricultural employers being able to provide what

1 protection they actually can in the real world for the
2 workers that work for them.

3 The scope language in the draft legislation, I
4 think, is a little problematic. I think it would be
5 better to have a tie to some kind of objective
6 authoritative declaration of a wildfire smoke emergency,
7 as opposed to requiring employers to reasonably
8 anticipate that there might be a problem with wildfire
9 smoke.

10 An example I come back to frequently when I'm
11 talking to people about this is that the San Diego Air
12 Quality Management District measures air quality at I
13 think five different locations in a very large county.

14 You can have agricultural employers having
15 workers working in the field in Temecula and have a
16 report of poor air quality at some other location in the
17 county, and depending on which way the wind is blowing,
18 you may make a judgement that he should have reasonably
19 anticipated that that wildfire at that location at a
20 different location in the county could potentially
21 affect that employer's workplace, wherever it is that
22 may be located in Temecula or some other location in
23 San Diego County.

24 So the notion of requiring people to reasonably
25 anticipate I think is problematic because "reasonably

1 anticipate" I think is going to be very much in the eye
2 of the beholder.

3 Another thing that I have a concern about is
4 the language discussing respiratory protection and the
5 conditions for respiratory protection, with a note. The
6 note is -- a note is great and a note is better than
7 nothing, but we know that there have been problems in
8 the past with the Appeals Board interpreting --
9 sometimes interpreting notes as being -- having the same
10 weight as regulatory language, sometimes not.

11 The note that's in the current draft is a
12 little bit vague, in that it says that some of
13 requirements of 5144 that would not apply when this
14 regulation is triggered on would be medical evaluation
15 and fit testing.

16 As opposed to offering that up as an example of
17 things that might not apply in that situation, why not
18 simply say, "It does not apply in this situation," and
19 rather than have it be a note integrated into the
20 regulatory language that precedes it.

21 In a similar way, there is some -- I think some
22 confusion caused by the language in Appendix B. With
23 the language in Appendix B, it tells an employer to -- I
24 think that what your intent was -- to tell the employer
25 to tell his employees that the respirator instructions

1 require them to be fit tested and medically evaluated,
2 except in the regulation you said that they don't. So
3 that, to me, is potentially problematic because you're
4 having mixed messages.

5 I think Dan Leacox's point a while ago about
6 the -- and Bruce Wick's point a while ago -- about the
7 complexity of Appendix B and its utility as an
8 educational tool for agricultural employers, I think it
9 could be significantly simplified. The Appendix D with
10 GIS of 5144 is commonly used. I think people understand
11 what it means and what it requires you to do.
12 Appendix B is a little long, a little involved, a little
13 complicated, and it probably could be refined
14 significantly.

15 So with just those couple of things, I want to
16 identify myself, of course, with the remarks that
17 Bruce Wick made, remarks that Dan Leacox made, and the
18 remarks that Elizabeth Treanor made. I have all those
19 concerns about it. I just wanted to highlight a couple
20 of things that were particularly concerning to me.

21 And I hope whatever way we can manage to make
22 some improvement to what we're working with here, I hope
23 we can take the opportunity to do that, because we're
24 going to have some significant issues, I think, helping
25 our agricultural employers and agricultural employees

1 understand what this regulation requires them to do.

2 Thank you.

3 CHAIRMAN THOMAS: Thank you.

4 MR. KOSYDAR: Good morning. My name is
5 Andrew Kosydar, and I'm the Scientist and Legislative
6 Advocate at the California Building Industry
7 Association, and CBIA would like to thank you for this
8 opportunity to provide some comments.

9 CBIA supports and applauds this laudable effort
10 in order protect our workforce from the harmful effects
11 of wildfire smoke; however, we have some concerns. We'd
12 like to echo those that were raised earlier by Mr. Wick,
13 Cal Chamber (sic), Ms. Treanor, and so forth.

14 I think the thing that's important for us is
15 that -- or what's important to remember is that many of
16 us in this room won't actually be present at the jobsite
17 when these regulations are going to be implemented.
18 Instead, you know, these regulations are going to be
19 read and carried out by those who can see this document
20 and solely this document, without the thoughtful
21 insights of each of us.

22 So what I'm trying to point out is that these
23 need to be clear, understandable, and feasible. I have
24 a PhD, and I read this document, and I didn't really
25 fully understand it. I had to go back and reread it

1 several times.

2 And I don't think I'm the smartest person in
3 this room -- I'm sure there are many who are much
4 smarter than myself -- but I also don't think I'm on the
5 bottom of the barrel either. So if I'm having problems,
6 I think other people are also going to be having
7 problems.

8 So I just want to point out a couple of things
9 that I saw when reading this for the fourth time this
10 morning is, one: There's an issue associated with
11 identification of harmful exposure.

12 In particular, the maps that are pointed out in
13 here, while helpful and I used while my newborn child
14 was resting in our house to try to make sure this last
15 fall that he wasn't going to be overly exposed to the
16 particulates from the wildfire smoke in Sacramento, they
17 lack specificity.

18 So it's really hard in order to look at those
19 maps and understand whether or not you're in or out of a
20 specific zone. You can't plug in an address. You can't
21 plug in a GPS location. So you're sort of guessing.
22 You can't zoom in and try to figure out whether or not
23 you're in or out. So that's an issue.

24 Another one that came up to my mind is the
25 training. It just seems unclear how to actually

1 practically implement a training across the workforce.
2 You know, is it enough to just provide the respirators
3 and the Appendix B, or is there more that needs to be
4 done? It's not clear to me based upon this document.

5 Under the control from harmful exposure by
6 respiratory-protective equipment, which requirements of
7 section 5144 don't apply? As it's currently worded,
8 it's not really clear. It just says that there's some
9 that don't apply. So it would be nice to know exactly
10 which ones do apply and don't apply.

11 In the Appendix B, there are number of parts
12 that were confusing. The first one states, "Health
13 Effects." Now, I represent home builders -- I'm sorry.
14 I should have mentioned that. At CBIA we represent
15 approximately 3,000 member companies here in the State
16 of California.

17 Our member companies build approximately
18 85 percent of all the homes in the State of California.
19 So our guys are home builders. They're not physicians,
20 and we don't have physicians on site normally. And so,
21 you know, how are we supposed to train employees about
22 health effects from wildfire smoke? Is it enough to
23 hand out the Appendix B or not? So some of the
24 questions of clarity I'm trying to draw out here.

25 "Two-way communication." I'm not trying to be

1 cute here, but really, what is that? Do we provide
2 walkie-talkies or -- I mean what does that mean? I
3 don't know.

4 Protecting employees with a respirator, there's
5 contradictory sentences in here, actually. It says
6 that, "You shall follow the manufacturer's
7 instructions," in one sentence. This is number two. It
8 says, "You shall follow the manufacturer's
9 instructions."

10 And then the next sentence, it says, "Although
11 not doing so is required" -- "not" -- "it's not" -- I'm
12 sorry -- "Although doing so is not required." Okay.
13 Wait. Do I follow the instructions or I don't follow
14 the instructions? I'm not sure. So that's a challenge
15 for us, as somebody who is going to be trying to
16 implement this in the field.

17 And then my last question here has to do with
18 this Section H in Appendix B about instructions on how
19 to fit the mask. And I'm not sure why that's there if
20 we're supposed to be following the manufacturer's
21 instructions. In other words, the respirator -- the
22 manufacturer's instructions from the respirator
23 manufacturer.

24 So if they already have instructions, then why
25 do we have a second set of instructions? Now I have two

1 sets of instructions that might actually work today.
2 Maybe they're both the same today. But with time, they
3 might diverge and they might not be the same. So I
4 guess what I'm just trying to say is they might not
5 always be compatible, and it's something to think about.

6 So I just want to close by saying CBIA supports
7 protecting our workforce from wildfire smoke. I think
8 it's a laudable goal. Just regulations need to be
9 clear, understandable, and feasible.

10 Thank you.

11 CHAIRMAN THOMAS: Thank you.

12 MR. CARLILE: Good morning, Chairman Thomas,
13 Board Staff, Board Members. Jamie Carlile with Southern
14 California Edison.

15 I just wanted to reiterate a couple things that
16 we've gone over here. We've sent in comments as well,
17 but there are a couple key points that we have. And if
18 they aren't able to be made here for this emergency
19 regulation, we look forward to a collaboration on,
20 obviously, a permanent regulation as well, and hopefully
21 we can collaborate and get the best fit there.

22 The first has to do with the training section,
23 Section E. As Mr. Armstrong and Ms. Treanor so
24 eloquently said, the training we've asked for, and we've
25 asked for construction to be used as opposed to training

1 to be used. The terminology is a little bit of a hangup
2 at times based on other Cal/OSHA regulations and what's
3 required in those regulations.

4 We feel that instructions, detailed
5 instructions, especially at the worksite, can provide
6 good instruction, the detail needed to keep our
7 employees safe and not delay some of the restoration or
8 some of these life-saving efforts, wildfire efforts that
9 are done with perhaps maybe a classroom setting type of
10 training.

11 The second one has to do with the scope as
12 well. In a previous version we had exemptions for
13 utility workers who were aiding firefighters in
14 emergency efforts, and that has since been excluded.
15 And we were asking or requesting to have that be put
16 back in.

17 Not that we feel we need to be excluded or
18 exempt from all activities of this respiratory
19 protection, but we provide voluntary use of N95
20 respirators. Our crews use those diligently.

21 But in order to quickly aid emergency either
22 de-energizing the lines or creating paths for wildfire
23 firefighter efforts, you know, we want to get out there
24 as quickly as possible, and some of these administrative
25 requirements would severely delay those efforts.

1 So, once again, we'd love to have those
2 included in the emergency -- emergency regulation. If
3 not, we look forward to the opportunity of putting these
4 into the permanent regulation.

5 Thank you very much.

6 CHAIRMAN THOMAS: Thank you.

7 MS. KATTEN: Good morning, Chairman Thomas and
8 the Board Members and the Board Division's Staff. I'm
9 Anne Katten from California Rural Legal Assistance
10 Foundation, and we greatly appreciate all the hard work
11 of the Division and Board staff towards rapidly
12 developing this emergency regulation for wildfire smoke
13 protection.

14 It's imperative to bring this emergency
15 regulation to a vote at the July Board meeting in order
16 to put clear protections in place so farm workers and
17 other outdoor workers won't suffer serious short and
18 long-term respiratory and cardiac impacts, including
19 increased risk of asthma, bronchitis, chronic
20 obstructive pulmonary disease, and pneumonia from
21 inhaling the fine particles in wildfire smoke that
22 penetrate deep in the lungs and can enter their
23 bloodstream.

24 As we all know, fire risk is particularly high
25 this year because of the lush spring growth, and we've

1 already had one significant fire in the Northern
2 California area.

3 A repeat of the last several years where
4 provision of respirators was at very best sporadic and
5 training was almost completely lacking of being
6 conscionable, the proposed regulation will go quite far
7 and protect outdoor workers from wildfire smoke with
8 very modest costs to employers.

9 For example, with a farmer or farm labor
10 contractor with 50 employees, they would need to spend
11 about \$100 a day for providing N95s and a nominal sum
12 for a one-time tailgate training on the content in
13 Appendix 2, which I agree could be fine-tuned in the
14 permanent regula -- when adopting the permanent
15 regulation. Sorry.

16 Training does not have to be in a classroom.
17 It doesn't have to be by a certified trainer. Some
18 groups will be, I'm sure, developing videos and things
19 that can, you know, be helpful for people to use on
20 their phones as a supplement.

21 Emergency responders really should already have
22 respiratory protection programs. Many who have
23 testified alluded that they do have them in place
24 because their exposure to wildfire smoke and other
25 respiratory hazards is anticipated.

1 And -- well, I'm not an electrical expert. If
2 there's an issue of respirators not being arc-rated, the
3 utility workers should still have them for work that
4 isn't in that zone of the arc hazard.

5 The current draft of the emergency standard
6 sets forth good basic protections from wildfire smoke
7 exposure, with the exception of a dangerously high
8 threshold for mandatory respirator use. Setting this
9 threshold at an AQI of 501, which is literally off the
10 scale for hazardous air levels, is a very dangerous
11 precedent.

12 And the appropriate threshold is the AQI of 301
13 for PM 2.5, the lower limit for hazardous air levels and
14 the level that was in the first discussion draft. So it
15 has been part of the discussion already.

16 And as I already mentioned -- well, I didn't
17 actually -- employers who want to avoid having a
18 respirator protection program can postpone non-emergency
19 work when smoke reaches hazardous levels; and, as I
20 already mentioned, emergency responders really should
21 have these programs in place already.

22 We think that there is time before the July
23 meeting, and we really urge the Division to make this
24 one change in the -- to the proposed regulation before
25 the July vote that changing the threshold for mandatory

1 use, and we urge the Board to bring the proposed
2 regulation to a vote at the July meeting so outdoor
3 workers can have this much-needed protection from
4 wildfire smoke.

5 We also share the concerns expressed by
6 Worksafe and others of some additional changes that are
7 needed in the permanent regulation, including lowering
8 the threshold to the level to protect sensitive groups
9 and also making some tweaks to Appendix B to make it
10 more accessible for employees and employers too.

11 Thank you.

12 CHAIRMAN THOMAS: Thank you.

13 MR. BLAND: Good morning, Chairman Thomas --

14 CHAIRMAN THOMAS: Good morning.

15 MR. BLAND: -- Board Members, Board Staff,
16 Division Staff. Kevin Bland representing the California
17 Framing Contractors Association and the Residential
18 Contractors Association this morning.

19 I'm not going to repeat everything that's been
20 said, but I'll incorporate by reference Mr. Bryan
21 Taylor's (sic) comments, Mr. Bruce Wick's comments,
22 Mr. Dan Leacox's comments, and Ms. Elizabeth Taylor's
23 (sic) comments, and we're also a member of the Cal
24 Chamber Coalition.

25 What's that? Did I miss somebody?

1 UNIDENTIFIED SPEAKER: You said,
2 "Bryan Taylor."

3 MR. BLAND: Oh, Bryan Taylor. I'm sorry. Did
4 I miss Bryan? I'm trying to save time here, and it
5 didn't work. Yeah, it's not working.

6 After listening to this, reading this several
7 times, litigating regulations like this, the
8 complexities of this, we had -- we started out -- and I
9 think that's point that's been the theme today. We
10 started out with a very simple complex: An emergency
11 regulation about an emergency that allows an employer to
12 comply with a reasonable opportunity to protect their
13 employees in that emergency situation.

14 This became much more than that. I've almost
15 decided it would be easier just to ban wildfires in
16 California than to be able to comply with what this
17 thing says right now.

18 So I hope that we can take the suggestions that
19 were made by Bruce Wick. I think he produced some -- a
20 redline version to you guys. If we could do that before
21 the vote, that would be very highly beneficial. This
22 has to be simplified.

23 It seems it went from the easy -- the easy
24 compliance, which when there's easy compliance that's
25 effective compliance, and that's effective protection --

1 to something that when it's this complex, it doesn't
2 accomplish the goal.

3 We said earlier we want to make sure that in
4 these situations the employees are protected. We want
5 that, but we want to be able to comply with what
6 protects the employees in these emergencies. We don't
7 have all the time to do this.

8 And then the other point that was mentioned is
9 this started as an outdoor regulation for outdoor
10 employers and drifted into the indoor. I was just
11 noticing the door, you know, the whole meeting, if there
12 was a wildfire in this area, we would be out of
13 compliance, the way this reads because it says we have
14 to keep the doors closed at all times, and that's been
15 open the whole time we've been sitting here. No one
16 noticed. I'm sure no one cared. And you think that's
17 an absurd example. Right?

18 Well, you'll probably hear some testimony later
19 about how we can have some pretty absurd examples of
20 decisions after reconsideration that come down the pipe,
21 different administrative law judge interpretations,
22 inspector's interpretations of things.

23 I have an example -- I won't mention the
24 case -- but yesterday, we got a client that went to
25 hearing. Had four serious and three general. They all

1 got thrown out because it was an observed
2 interpretation, and so that happens.

3 And that's taking away time. That took out of
4 the field because it was an absurd interpretation of
5 language, two safety guys from our end, two safety
6 inspectors from the Division, plus a DM.

7 And so it's very, very, very important for us
8 as employers, for employees who have -- and for this
9 Board to get language that is easy to understand, easy
10 to apply by the inspectors, and easy to understand by
11 the workforce that's out there.

12 When I -- I mean I can't explain exactly what
13 to my employers that I represent whenever they ask me
14 about compliance and what to do with this, the way it
15 reads right now. And I think Bruce Wick had mentioned,
16 you know, we were excited about having an opportunity to
17 make something that would work, and we're also sad that
18 this was the result.

19 I've been doing this a lot of years, and this
20 outcome, it's disappointing to me personally that we
21 ended up in this spot today. Anyway, I do recognize a
22 lot of effort went into this. I guess it's thankful it
23 doesn't have a byline on it, so no one actually has to
24 accept the fact that they wrote this.

25 But I want to make sure that we take serious

1 the comments that were made earlier today and take
2 serious the fact that the reason we're up here -- both
3 sides -- the reason we're up here is we want to protect
4 the employees. I don't care whether it's the employer,
5 rep, a union rep, or an association, but this I don't
6 think is going accomplish that goal the way it's
7 written.

8 Thank you.

9 CHAIRMAN THOMAS: Thank you.

10 MR. STEIGER: Thank you, Chair Thomas and
11 Members. Mitch Steiger with the California Labor
12 Federation. Mainly just want to thank the Board staff
13 and Division staff and everyone else who's work on this
14 standard. I know you're probably feeling a little bit
15 beat up right on now after hearing all this testimony.

16 As someone who's pretty involved in drafting
17 Assembly Bill 1124, I know what it's like to sit in a
18 room of people criticizing your work and talking about
19 all the problems with it, and I know it's not fun. So
20 we feel your pain.

21 I know that's not anyone's intent. Everyone's
22 just trying to make sure the standard works as well as
23 it possibly can, and I think it might help to take a
24 step back and remember sort of what brought us here;
25 that we're not here because there are no standards.

1 We're here because there are some, and they're just not
2 working.

3 And they really exposed their inadequacy last
4 year when the air got really, really bad and workers
5 were outside with nothing. And they were out there, you
6 saw most workers had nothing, some had bandanas on, as
7 we all know, do very little, if anything.

8 And no one really knew what to do. People were
9 looking online, like, "What? Should I go to work?
10 Should I go buy a mask at the store? Do I wear a
11 surgical mask?" And everyone is just kind of
12 floundering around. And so there's a real need for
13 something because we all know that these fires are going
14 to keep happening, and they're going to keep getting
15 worse.

16 And so though there are certainly things with
17 this standard that could be made to work better, we've
18 got plenty of time to do that in the permanent
19 rulemaking. I know that's always been the intent; that
20 we knew we weren't going to get everything right,
21 especially with this hazard. This one really stands out
22 even among some of the really messy ones we've been
23 working on recently, like heat and lead.

24 You know, this isn't a guard that you put on a
25 saw, and it then slows you down a little bit, but now

1 you won't lose your fingers. This is way more
2 complicated than that, and there aren't any good
3 solutions. N95's have their issues. The AQI has its
4 issues.

5 But all of these present by far a less bad
6 option than what we're dealing with right now where
7 workers are just out there with nothing; and we think
8 the draft, as it stands right now, is a giant step
9 forward. It does give, we think, far greater clarity,
10 despite some of the issues for employers and, by
11 extension, to employees that they'll have a much better
12 idea of what to do when the air does get bad.

13 We know it's going to. We know it's going to
14 happen, and we'll be in a much better position in that
15 temporary stretch of time when we're working out the
16 permanent standard. We'll have something much better to
17 work with, and workers won't feel quite so lost out
18 there, and employers won't feel quite so lost. And so
19 we think we'll be a lot better off.

20 We would also point out, after looking at some
21 of the comments on the new draft online, particularly
22 from public sector employers assessing some of the costs
23 and coming up with some pretty stunning figures in the,
24 you know, tens of millions of dollars, as far as
25 complying with this.

1 Getting back to where we are now, we would just
2 emphasize that, you know, this isn't -- we're not coming
3 from nothing. We're coming from regulations that exist,
4 but they're largely just, you know, being ignored for
5 various reasons, one of which is they're very hard to
6 comply with.

7 But that under current law, this is a harmful
8 exposure that you, as an employer, are supposed to be
9 protecting your workers from, whether it's through an
10 N95 mask or some sort of administrative control.
11 Something is supposed to already be happening.

12 So a lot of these costs that seem to be -- the
13 starting place is zero dollars, where we are now, going
14 up to 76 million or whatever it was, we have very strong
15 objections to that way of assessing these figures. We
16 just don't think that's accurate.

17 If anything, this saves employers money over
18 what we're doing right now. At least that's the intent;
19 that what we're trying to do is a temporary limited
20 exemption from the fit testing and medical evaluation,
21 as sensible as those things are, as much sense as they
22 make, that they have -- they have played a large role in
23 why employers just aren't complying with the current
24 standards. So we need to take some time in the
25 permanent rulemaking process to figure out what we do

1 with those; and in the meantime, give workers at least
2 something beyond what they've got right now.

3 So hopefully, as this process is working in the
4 next month, that we don't rely too heavily on this idea
5 that this is something that's this gigantic financial
6 burden for employers beyond what they have right now;
7 that, hopefully, we keep in mind that that burden, if
8 you want to call it that, is there right now, and that
9 what we're trying to do is actually lessen it, make it a
10 little bit more clear and make it a little bit easier
11 for employers so that employees can benefit from the
12 intent of it.

13 And we would also really urge the Board to do
14 whatever is necessary to make sure that this still stays
15 on the July 18th agenda. We looked a little bit into
16 the frequency of fires and what we would be looking at
17 if we are to delay this another month.

18 I don't know exactly when it would go into
19 effect, but, for example, last July, there were 136
20 fires, and that was an especially bad month in a pretty
21 bad year. The month after, it only had half as many,
22 only 75 fires.

23 And when you look at this year, which was, you
24 know, supposedly a great year -- there's been a lot of
25 rain, it took at long time for the rain to stop, all the

1 reservoirs were full, everything is good -- we've
2 already had 1,600 fires that have burned 15,430 acres,
3 which is significantly less than last year.

4 But even in this historically wet year, we've
5 still got, you know, thousands of fires already halfway
6 through the year. And so every month we wait, that's,
7 you know, potentially a hundred or more fires that are
8 going to be out there.

9 And any one of those could be another big one
10 that throws thousands and thousands of outdoor workers
11 into the situation that this regulation is envisioned to
12 deal with. And if we were to delay even another month,
13 that's thousands and thousands of workers that might
14 have to be outside breathing this air that's in the, you
15 know, 300's or 400's or literally off the charts, as was
16 mentioned.

17 And we just don't think that that's worth
18 doing, considering that, you know, this isn't the end of
19 world. We've still got a permanent reg out there on the
20 horizon; and pretty short-term, you know, in the next
21 year or two, we'll be able to finish that and work out
22 all of these details or as many as we can.

23 And just one specific issue with the regulation
24 itself: On the way here when I got in the rental car,
25 as I always do, I asked the guy that handed me the --

1 you know, the rental agreement if he was union. And he
2 said, "No, but I wish I was." And I said, "Oh. What's
3 going on?"

4 And I've been in labor more than two decades,
5 and I've had a million of these conversations, and every
6 time it's the same thing. It's a long list of things
7 that are very clearly unfair and a long list of things
8 that are very clearly illegal. But workers know that in
9 many cases if you've got an employer that's doing things
10 like that, it's probably not a good idea to go straight
11 to them with those concerns; that the risk retaliation
12 is very real.

13 And even when the employer isn't going to
14 retaliate, that worry about doing that is always going
15 to be there. It's just a very, very uncomfortable thing
16 for workers to stand up to any kind of pressure from
17 their employers to do something or to break a law or to
18 ignore something that should be happening.

19 And so with respect to this change in the new
20 draft where masks are now optional up to 500 AQI, it's
21 very easy to imagine a world where an employer makes
22 comments about how, you know, "Well, maybe you shouldn't
23 need this mask" or "This thing is going to slow you
24 down."

25 Or even when the employer hasn't made comments,

1 that if something is optional, there -- it's not like a
2 worker is just sitting at home in the privacy of their
3 home deciding whether or not to do something. Their
4 employer is there. Their coworkers are there.

5 They are a whole lot more likely to decide,
6 "Oh, you know, this AQI thing looks really high. It
7 sure smells like smoke out here, but I don't want to be
8 the only one wearing a mask" or "I don't want my
9 employer to, you know, think I'm weak or think that I
10 need help that everyone else doesn't," and we would
11 argue drastically increases the likelihood that workers
12 aren't going to take advantage of the masks, even if
13 they're provided.

14 And given what was mentioned by some previous
15 witnesses -- particularly from Tim from Worksafe about
16 the hazard that we know is there -- no one is up here
17 saying, "350 AQI is super healthy air, and you should
18 just be breathing it," that the science is unclear. The
19 science is very clear: That you should not be breathing
20 air like that even for a short period of time.

21 That we could very possibly wind up in a
22 situation where we're not only less effective than the
23 federal standard, but that we're putting workers in
24 harm's way by setting it up that way and by not making
25 it mandatory.

1 And figuring out a way in the permanent
2 rulemaking to deal with, you know, facial hair and all
3 these other questions around that, but that there is a
4 world of difference between something that's optional
5 and something that's required in terms of the likelihood
6 that a worker does it. It's not as simple as just:
7 "Oh. The worker has their own choice."

8 There are a lot of factors that are affecting
9 that worker's choice that they think might be affecting
10 their ability to keep their job. And that's something
11 that we hope is very much kept in mind as we move
12 forward into permanent rulemaking, that a lot of
13 workers, maybe even most workers need that backstop of
14 something being required and need it being in the law
15 for it to actually happen.

16 You know, that's why the, you know, overtime
17 and eight-hour days and minimum wages and all these
18 standards out there are required. That, you know, we
19 need to make sure that workers don't have to fight for
20 these. This needs to be something where the employer
21 says, "There's a penalty. Something is going happen to
22 me if I don't do this. So I'm not going to make that
23 comment about needing masks" or "I'm not going to
24 discourage this." Like, "I'm going to make sure
25 everyone does this" so that workers can benefit from it.

1 Because, you know, as we know, these fires are
2 going to keep happening. This problem is not going to
3 get better. It's only going to get worse. It could get
4 a whole lot worse. This year might have been an
5 anomaly. Most of the years in the future might look
6 more like last year than this year.

7 And so we need to prepare for that. We need to
8 come up with a standard that reflects the reality of
9 life for a lot of workers out there, and that they need
10 strong protections. When the air is that bad, it should
11 be required. And, hopefully, we can deal with that in
12 the permanent rulemaking.

13 But, overall, we think this is a major step
14 forward, and we very much applaud the work of the Board
15 and Board staff and Division staff and all the work in
16 putting it together.

17 Thank you.

18 CHAIRMAN THOMAS: Thank you.

19 How many more commenters do we have on the
20 issue?

21 Okay. So we're going to take a break for ten
22 minutes, then we'll come back to this. So we're
23 adjourned for 15 minutes.

24 (Recess.)

25 CHAIRMAN THOMAS: Thank you. We are back in

1 order. So I think we had three commenters left on the
2 wildfire issues. So whoever is first, go ahead. Thank
3 you.

4 MR. SMITH: Thank you, Mr. Chair, Members
5 of the Board. Jeremy Smith here on behalf of the
6 State Building & Construction Trades Council. I'd like
7 to thank the hard work of the Board members, Board
8 staff, and the Division staff on this proposal. It's
9 come together very quickly, and we're all in the labor
10 movement happy about that.

11 I'd like to associate my comments with those of
12 Mr. Steiger from the California Labor Federation and
13 just add a couple more points.

14 First, to the extent you guys are feeling
15 pressure on this, know that you're not alone. The
16 legislature is also weighing in on AB 1124. There have
17 been four -- only four no votes on this bill moving
18 forward through the process.

19 So they are hearing from their constituents
20 that this is a problem up and down the state. It's one
21 of the few times as a lobbyist I've seen the same story
22 from all the different legislatures' offices. They've
23 all got somebody they know who's dealing with a wildfire
24 exposure, and they think this is a serious issue as
25 well.

1 So, you know, that bill is where it is. We
2 urge you to continue moving forward with having this
3 finalized at the July meeting. As Mr. Steiger said, we
4 are in the fire season. It's only a matter of time
5 before more fires break out, and we need these
6 regulations in place so that workers who have to work
7 outside are protected.

8 Thankfully, in the unionized construction
9 industry, a lot of our employers do make a decision on
10 these terrible, terrible days to not go to work, but not
11 everybody has a union. Not everybody has the
12 protections that a union provides. So we urge this
13 Board to continue moving forward so the regulation is
14 finished in July.

15 Thank you.

16 THE COURT: Thank you.

17 MS. HAMON: Good afternoon. My name is
18 Kristin Hamon. I'm from San Diego Gas and Electric. We
19 appreciate the opportunity to comment on this proposed
20 emergency standard.

21 First, I want to say SDG&E, like many other
22 utilities, we have a very comprehensive voluntary
23 respiratory protection program, and we'll continue to
24 provide respiratory protection to all employees who
25 request one.

1 But for today, I'd like to focus on one
2 specific element which will directly impact our ability
3 to quickly respond to critical events and restore power
4 and gas, and that element is the mandatory respirator
5 use requirement when the AQI exceeds 500.

6 As you all know, mandatory respirator use
7 requires all respirator wearers to be clean shaven. Our
8 workforce responding to wildfire events are typically
9 not clean shaven and resistant to this requirement.

10 While this may seem like a simple fix, some of
11 them have made life choices to grow facial hair; and in
12 some cases, it's part of their identity, not to mention
13 the union negotiations would have to incorporate medical
14 evaluation fit tests components which could affect job
15 callout priorities and delay of response times even
16 further.

17 So from an impact standpoint, our employees
18 would be required to take extra time to remove facial
19 hair. That's delaying those critical response and
20 restoration efforts when talking about power and gas.

21 Additionally, there might be some instances
22 where we rely on mutual aid from out-of-state utilities,
23 and requiring mandatory use of respirators, including
24 the fit test and medical evaluation components, will
25 delay restoration efforts even further for those mutual

1 aid situations.

2 So it's for these reasons that we urge you to
3 consider removing that mandatory respirator protection
4 requirement when the AQI exceeds 500.

5 Thank you.

6 CHAIRMAN THOMAS: Thank you.

7 MS. MURCELL: Good morning -- well, no. Good
8 afternoon. So Chairman Thomas and Board Members and
9 Board Staff, Division Staff, I appreciate the
10 opportunity to talk with you again. My name is
11 Pamela Murcell. I'm with the California Industrial
12 Hygienist -- California Industrial Hygiene Council. We
13 are a professional association. We are not a labor or
14 management representative type organization.

15 I do first and foremost want to echo what
16 everyone has said today, which is worker protection is
17 first and foremost. That should go without saying,
18 especially before all of the folks assembled here today.
19 But we have got to do it in a way that is reasonable and
20 cost effective and has a usefulness to it that can be
21 easily implemented.

22 So I'll cut to the chase. The CIHC has already
23 provided comments on several occasions, including
24 participation with the discussion meeting back on May 8.
25 One thing I did want to do, though, is to reiterate some

1 comments that we provided back at -- after the meeting
2 was held.

3 And those comments basically were to encourage
4 taking a much more simplified approach to this emergency
5 regulation, including with calling it emergency
6 procedures for the protection of outdoor workers from
7 wildfire smoke.

8 We also provided a strike-out, underline
9 suggestion as to some changes that could be made; and
10 the letter that we provided with that I have summarized
11 here, I just want to read into the record.

12 So the suggested changes to the discussion
13 draft regulation were basically to help to afford for
14 the protection of employees in a quick, responsive,
15 uncomplicated manner, to provide regulation that is easy
16 to interpret by affected employers, to provide prompt
17 implementation in an emergency situation, and to allow
18 for adoption of an emergency regulation within the
19 required time constraints.

20 Our comments can be summarized as follows:
21 "Our view of the regulation is that the intent is to
22 define emergency procedures for the protection of
23 outdoor workers from wildfire smoke," hence, the
24 suggestion for the title.

25 "Employers would fall under the scope of the

1 regulation whenever there is a wildfire smoke advisory
2 issued by a local, regional, state, or federal
3 government agency and there's the possibility that their
4 outdoor employees will be exposed to wildfire smoke
5 affecting their work locations."

6 "When the employer falls within the scope, then
7 the procedures must be implemented. These procedures
8 would include employee training using the current
9 Appendix B, or some aspect that gives at least some
10 uniformity to the training, and the provision of N95
11 respirators for voluntary use by all outdoor employees."

12 We reiterated that in your consideration AQI is
13 not a factor that should be included in this regulation,
14 and we provided extensive comments on that previously.
15 I do want to reiterate just one -- a couple of things on
16 the AQI, though. It is a public health criterion.

17 AQI is not a worker health and safety
18 criterion, and it unfortunately could set some
19 precedence that could have some unintended consequences.
20 When you start looking at what the AQI for the PM 2.5
21 represents in terms of micrograms per cubic meter or
22 milligrams per cubic meter, depending on which measure
23 you'd like to use, it sets some standards without the
24 formal standard of rulemaking process. And to us, as a
25 professional association, that's extremely problematic.

1 Also, you've heard before about the AQI
2 monitoring locations. That's also potentially
3 problematic, depending on where the employer's work
4 locations are relative to the AQI monitoring stations.
5 There are a number of employers that are very remote
6 that would not have the benefit of something in close
7 proximity and would be then relying on the air
8 monitoring requirement -- or not the air monitoring
9 requirement -- but the air monitoring option that is
10 currently -- that is in the current draft regulation,
11 and then that raises its own issues.

12 Air monitoring using direct reading instruments
13 provides a necessity to have folks who are qualified to
14 do that air monitoring and to interpret it and to make
15 sure that it is useful for the folks out in the field,
16 if you would.

17 There's also potentially a problem with even
18 access to the resources that would be needed if one were
19 to rely on the direct reading monitoring approach, both
20 in terms of the instrument's availability as well as the
21 personnel to help with the monitoring.

22 So just a couple of additional comments related
23 to the AQI, but just again, to the thank you for the
24 time and consideration; and, hopefully, we'll hear what
25 the story is after this.

1 Thank you.

2 CHAIRMAN THOMAS: Thank you.

3 MR. VLBOVICH: Chairman Thomas, if I could. I
4 appreciate allowing one extra comment. After listening
5 to -- Roy Vlbovich, Pacific Gas and Electric, part of
6 the utility contingent here today. I appreciate the
7 opportunity to address the Board.

8 After listening to all of the comments made
9 specifically around AQIs, the lower limits and the upper
10 limits, let me say that from a utility perspective, I
11 believe that the Board did a very good job in terms of a
12 delicate balance between all of the constituency that
13 needed to be protected.

14 And by that I mean I think it's good -- and
15 good I mean enforceable, mandating at the lower level --
16 that we have a level at which we set the expectation for
17 employers to provide protection at 150; that an OSHA
18 inspector or an employer with due diligence goes out,
19 they know where the level is at with which they need to
20 provide for their employees' protection.

21 The upper limit, however, sets a little bit of
22 a precarious scenario for all workers. And that is even
23 on the most diligent employers, such as Pacific Gas and
24 Electric and some of the other utilities that are
25 presented here, setting the AQI at the top level too

1 low, is -- once you move the standard into a mandatory
2 requirement, there are a lot of issues that were brought
3 up here in terms of facial hair and medical testing and
4 fit testing and the all things that come into play when
5 you establish a mandatory threshold too low, that
6 employers will make the decision to stop work. And
7 that's been mentioned here a couple of times.

8 If you do it at 300, all of those people in the
9 daywork scenarios and the people that are migrant
10 workers are going to be dramatically impacted. And I
11 don't know that we've addressed it here, but
12 dramatically impacted.

13 If the threshold was set at 300, that they're
14 going to be out of work or unemployed or waiting for the
15 AQI to be lower than 300 for them to go back to work,
16 because most employers, and especially bad employers,
17 will say, "If I'm at risk of being cited, I'll just stop
18 work. We'll wait a day. We'll wait a half a day,
19 whatever it looks like" to put their employees to work.

20 But at the upper end -- where PG&E is at -- and
21 we think that 500 is right because it suggests that if
22 you can't bear the burden that comes with the law, with
23 the regulation, that you should make the decision to
24 stop work; that it is dangerous for employees.

25 It's off the charts, as people have described

1 here today very eloquently. It is a point at which you
2 need to make a decision that you're either going to put
3 them in an appropriate respirator protection or stop
4 work because it's extremely unhealthy. It is off the
5 charts.

6 We're in the process now of trying to preclear
7 4,000 employees to respond in emergency restoration
8 efforts, knowing that we're probably going to end up
9 with a list of a thousand. And of those, about
10 20 percent are not going to be able to participate
11 because they have facial hair.

12 And we get back to the scenario, then, that was
13 described earlier, and that is: Now we can't meet our
14 obligation to restore gas and electricity to our owners
15 or customers, and that creates a very real problem. How
16 long do we wait?

17 The additional issue there is that utilities
18 for many of us -- and PG&E for a very long time -- are
19 running our own independent samples and testing, and our
20 obligation to our employees and the agreements that
21 we're making with our unions is that we stop work when
22 our AQIs are reached at whatever the level is set.

23 So I would appreciate, and I'm sure that the
24 utility industry would appreciate either a caveat or the
25 standard as it is. Set the lower limit at 150, require

1 employers to actually provide protection for their
2 employees like you're currently doing, and then allow
3 the upper limit to be a true upper limit. If you can't
4 bear the burden of the law, stop work, because it's not
5 in the interest of the employees.

6 Thank you for your time.

7 CHAIRMAN THOMAS: Thank you.

8 Any other comments at this time?

9 We're going to go to that. Thank you for your
10 testimony. We appreciate everything that's been said
11 today. So we're going to continue with more discussion.
12 So if Board members would like to add anything, this is
13 the time to do it.

14 BOARD MEMBER BURGEL: I wondered if we could
15 talk about the July meeting and why this regulatory
16 draft language from June 14th can't be edited. I know
17 it's a public notice issue, but I mean --

18 EXECUTIVE OFFICER SHUPE: It is, but it also
19 goes beyond the public notice. So the draft language is
20 actually the first piece. Once the draft language is
21 set, then we draw up a finding of emergency, the 399,
22 and the attachments. Those are all drawn directly from
23 the regulatory language.

24 Any change to the regulatory language requires
25 an update of the finding of emergency or update of the

1 399 and an update of the attachments. At this point, we
2 are already in the fiscal approval process. If we pull
3 it back from the fiscal approval process at this time,
4 redraw all of those documents, we have to start over and
5 resubmit.

6 BOARD MEMBER BURGEL: And then I also have
7 another question or comment from an emergency -- the
8 emergency use of a respirator. Is there any OSHA
9 federal guidance on what happens in emergencies
10 vis-a-vis the fit testing, medical evaluation, and
11 shaving requirements associated with 5144?

12 MR. BERG: Not in 5144 that I'm aware. I could
13 look through it and get back to you, though.

14 BOARD MEMBER BURGEL: Okay. I think that would
15 be an interesting question because, really, we're
16 talking about the emergency use of an N95 for AQIs over
17 300.

18 MR. BERG: Yeah. As far as I'm aware of,
19 there's no exception for fit testing and medical
20 evaluations for emergencies in 5144.

21 BOARD MEMBER BURGEL: All right. I personally
22 find the current proposal, the one dated June 14th,
23 problematic from that AQI of 300. I would support
24 mandatory use of respirators. I realize it's an
25 employer burden, but I also think that employers, all of

1 us need to integrate respiratory protection preparedness
2 in our emergency preparedness plans.

3 In our -- you know, I think every home should
4 have a case of N95s in anticipation of hazardous air
5 quality conditions. And so I think that it's -- I
6 really love Petition 573 in its intent. I think it's
7 important for employers to provide N95 respirators to
8 their workforce. I think it's going to be tough for
9 employers to comply, but I also think it's going to be
10 problematic for me, ethically, to support not -- I mean
11 not mandating respirators when the AQIs are over 300.

12 The Public Health Department is going to be
13 closing schools, sending children home, but we are going
14 to be requiring workers to be out there, you know,
15 optionally using respiratory protection. It just
16 doesn't make sense to me as a public health
17 professional. So --

18 CHAIRMAN THOMAS: Any comment?

19 Yes, Laura.

20 BOARD MEMBER STOCK: Okay. So like many people
21 here, we're all, you know, disappointed that we -- we're
22 at a point where we're evidently facing a choice between
23 being able to vote on something in July or make some
24 changes that some people have suggested and Board
25 members also. You know, I have a couple of my own,

1 which I'll mention in a minute. So that is
2 disappointing to hear.

3 But I would -- I guess what I would say is:
4 I'm really hoping we can vote on something in July
5 because of the urgency of the situation, as many people
6 have already described. And I do think there is a
7 history of voting in emergency standards, including the
8 original PETE standard, which got modified many times.

9 So I think it's true that there's an intent.
10 You put something in place because there is an emergency
11 and something is better than nothing, but you
12 immediately begin work on modifying it and improving it.
13 And that is, in fact, what's happened in past situations
14 where emergency standards were passed.

15 So, you know, somebody said, "Perfect not being
16 the enemy of the good." I think that, you know, my
17 personal opinion is I hope we'll be able to go forward
18 in July, but I feel like we should, you know, start now.
19 I have no idea what the procedures are, but immediately
20 begin the process, even though we do have a year until
21 something -- you know, that there's a timeframe with the
22 emergency standard, but I think there's a lot of things
23 that need to be fixed, and we should start that process
24 right now, or whatever is practicable, given the
25 required procedures.

1 And in specific, just two areas of my concern:
2 One is I agree. I'm very concerned about setting an
3 upper limit of 501, which is not even on the chart. I
4 actually just from a purely practical point of view, I
5 don't understand how somebody would actually even
6 determine that it's over that level because it doesn't
7 go over that level.

8 So I'm not sure where that particular proposal
9 came from, but to me, it's a little mystifying because
10 it doesn't seem actually able to be complied with. So
11 that's point number one.

12 And point number two is I agree that as a
13 matter of public health precedent, just to be
14 consciously saying that workers are going to be in
15 conditions that are defined as hazardous but not
16 requiring protection seems counter to what our
17 responsibility is and potentially counter to, you know,
18 federal requirements and other respiratory requirements.

19 So I feel like that are things -- but I hear
20 all the challenges of how to make that work. So I just
21 think I look forward to the fact that there'll be an
22 Advisory Committee or whatever the process is to really
23 grapple with those things and hope we can get them
24 going, you know, fairly immediately as we can.

25 I'll just make one comment on one other

1 provision just because I heard a lot of people
2 testifying about it, which is the Appendix B and the
3 instruction and the training, et cetera. I want to add
4 my support to the language as it exists. I feel like it
5 is really -- I don't know -- I'm not -- my own
6 interpretation wouldn't be that it's mandating certified
7 curriculum and instructors, but that's a question for
8 people to resolve.

9 But I definitely feel like it's very important
10 that we have effective training and instruction there
11 because simply handing people Appendix B, people of any
12 literacy or language level, is not going to be effective
13 training for any of us. It's complicated. It needs to
14 have people there to be explaining what it is.

15 So that's just a very principal -- I think it's
16 really important in the standards where we have
17 effective training that sets some criteria to be sure
18 that the goal of training is being accomplished. So
19 I'll just put my support for maintaining a requirement
20 that will require actual training, not just handing out
21 Appendix B.

22 And, otherwise, I recognize all the other
23 changes that have to be made and hope they can be --
24 people can begin to work on those as soon as possible,
25 but that we can still put something in place in July.

1 CHAIRMAN THOMAS: Yes, Chris.

2 BOARD MEMBER LASZCZ-DAVIS: Just a few
3 thoughts, and to Barbara and Laura's comments. You
4 know, I think we need to go back and remember, this is a
5 stopgap measure. I don't think any of us expected this
6 to be flawless at this point in time. And yet I
7 appreciate the sentiment that what we put in place might
8 begin to set a precedent, but that's up to us to ensure
9 that it doesn't.

10 And the truth is the other thing that we need
11 the remember, this should not -- this regulation should
12 not have been the start of a company's emergency
13 procedures. We're not starting at ground zero. So just
14 another thought.

15 But one thing I heard in the comments, kind of
16 the overarching comments, they were really related to
17 two issues, primary issues: One was training, the
18 clarity and the simplicity. Even if there's some issues
19 about effective training, I think this was meant to be
20 an instruction which is a little different beast, quite
21 frankly.

22 But I think eleven pages is a long -- it's a
23 long document. And I don't know whether or not we have
24 the ability to modify that between now and July, but I
25 appreciate the concerns about this being lengthy and

1 effective training. Every time what you really want is
2 instruction for employees to move quickly in situations
3 that are not regular operating procedure situations.

4 The other issue that was the overarching
5 concern was the AQI, 300 versus 500, that's a tough one,
6 and I don't think it's going to be resolvable by July.
7 But I understand the arguments both ways.

8 I think the reality is -- and I think Barbara
9 said it -- you know, the reality is there'll probably be
10 some noncompliance. I think employers will try to do
11 the right thing. Will they meet every intent of
12 whatever regulation we propose? Maybe not.

13 But, remember, this is a stopgap measure with
14 the intent to make sure that as soon as we move into a
15 permanent rulemaking process, we're really refining this
16 very quickly and beginning to share information that
17 employers can embrace and incorporate.

18 I think the goal is the same for everybody.
19 You know, we want to protect the workers. I think we
20 need to do something by July. I would hate to see it
21 move up, that July timeframe. We're already in the fire
22 season. And I think we need to remember that what we
23 end up with is not going to be perfect. It's far better
24 than nothing at all, but I think we will have come 80,
25 85 percent of the way. And what we have is an

1 opportunity to refine it. So just let's get on with it.

2 CHAIRMAN THOMAS: Any other comments?

3 I guess my only comment would be that this is
4 an emergency rulemaking. If this was easy, it would
5 have already been done at some point. But taking all
6 things into consideration, I don't want to hold up the
7 July date because we're going to go past this anyway.
8 We're going to come up with a rulemaking after that that
9 will address all of the concerns that we've heard today.

10 But that's why some of these things are put
11 into effect in an emergency basis. It's a stopgap
12 measure to try and do something effective that isn't
13 perfect. We know that when we walk in here, it's not
14 going to be perfect. And the other thing, too, is
15 that's why all these things take time.

16 I know how much heat I took over the violence
17 in the workplace and the hotel housekeeping. "I mean
18 five, seven years? Come on, Dave. Get this done." And
19 but it's never that easy. This is: You're weighing
20 everything. You know, you're weighing the workers, the
21 companies, everything in between. And that's what we're
22 trying to do here, but this is a very short time that we
23 have had just to put this together.

24 And I agree with -- pretty much with what
25 everybody said here. The 300, 500 AQI, to me, that's

1 the difficult -- that's the really difficult one. But
2 the training, the instruction, I think we'll make that
3 simpler in the end, hopefully. I'm saying that I think
4 we will do that.

5 But I urge that we pass this in July so that we
6 have something that's decent and good. It's not
7 perfect. We know that, but it's better than nothing,
8 and it's a lot better than nothing. You know, and
9 that's the thing --

10 UNIDENTIFIED SPEAKER: A lot better.

11 CHAIRMAN THOMAS: -- is that I've lived in
12 California my whole life. I've never seen fires like
13 this. People were not prepared. But I think now public
14 awareness is great. Employer awareness is great. I've
15 never seen so many people wearing masks, even when there
16 was no fire.

17 But people are really conscious and aware of
18 it, and I think this is going to help a great deal, and
19 then when we get into the regular rulemaking, we will --
20 and still, even then, I know some of you are going to
21 complain. When it's all said and done, two years from
22 now or whenever it is, we'll still hear complaints.

23 But that's all right. You know, everybody's
24 doing what they think is the right thing, and I don't
25 fault anybody in any of this. We're just trying to get

1 to something that is as close to perfect as we can, and
2 it does take time. And that's it.

3 Any other comments from the Board?

4 Thank you. Thank you. We're going to move on
5 to the public meeting.

6 Anyone who wishes to address the Board
7 regarding matters pertaining to occupational safety and
8 health is invited to comment; however, the Board does
9 not entertain comments regarding various decisions. The
10 Board's various hearings are administrative hearings
11 where procedural due process rights are carefully
12 preserved; therefore, will not grant requests to address
13 the Board on various matters.

14 Is there anyone who would like to comment on
15 any matters concerning occupational safety and health?
16 If you would, please step to the podium and state your
17 name and affiliation for the record.

18 MR. WICK: Chair Thomas, Board Members, Staff,
19 Bruce Wick, CALPASC. I just want to make a couple of
20 quick comments because it may be moving quickly. You
21 know, we're kind of in this long-term thing where we're
22 in the regulatory process about lowering the trigger
23 height for residential fall protection.

24 The SRIA was issued end of last month, and it's
25 sadly quite off. It said the net cost in 2020 would be

1 \$190,000 across the state. The number is actually about
2 \$108,000,000. That's a lot of percentages off. I don't
3 even know how many.

4 But that's only part of the discussion. The
5 real part of the discussion is I want to make sure, as
6 we re-engage on this issue, this was driven mainly by
7 one person at Federal OSHA who never was willing to sit
8 down and talk with us, because we said we worked hard on
9 our residential fall protection regulations here.

10 The Feds still allow a fall protection plan,
11 which is a piece of paper, not protection. And we
12 specifically crafted our regulations so that no employer
13 could claim they can use a fall protection plan.

14 They talk about tieing off on framing
15 construction for first story or one story. There's
16 nothing to tie off to that will effectively protect an
17 employee. So how do people get around it at the federal
18 level? They use fall protection plans, and they do work
19 off of ladders.

20 Ladders are intended to get you from one level
21 to another. They're not intended to be a work platform.
22 But people say, "Well, I'll just do work off of a
23 ladder, and then the fall protection regs won't apply to
24 me." And those are all, we think, wrong.

25 That's why we believe our fall protection regs

1 are better than the Fed's; and if we are going to go
2 down that road at all, I would really appreciate us
3 having the opportunity to talk with Federal OSHA about
4 the realities of the protection we afford versus what
5 they have said.

6 Thank you.

7 CHAIRMAN THOMAS: Thank you.

8 MR. MILLER: Hi, everybody. How are we doing?
9 Are you doing okay?

10 It's a stenographer, and they are trained for
11 220 words per minute, technically, in yes-no format, so
12 I applaud what you're doing today. I will try to keep
13 it under 220 words per minute.

14 Chairman Thomas and Board Members, thank you
15 for taking my comments. I'm here to comment today on
16 Petition 577 --

17 UNIDENTIFIED SPEAK: What is your name?

18 MR. MILLER: Oh, I'm sorry. I'll get to that.

19 -- and the need for an emergency regulation for
20 section 1630(a) and the construction safety orders.

21 My name is Brian Miller. I'm the Safety
22 Director for Rudolph and Sletten. I am also here
23 representing the Construction Employers Association,
24 CEA. CEA represents about 100 union contractors
25 throughout California.

1 Rudolph and Sletten ourselves has been in
2 business for 58 years. We've been union since the day
3 we opened our doors. Currently we are signatory with
4 the Cement Masons, the Laborers, the Carpenters, and
5 Operating Engineers Local 3.

6 So we support safety. Safety is never a goal
7 at our company, it is a priority. I mean it's never a
8 priority, it's never a goal. It is a core value with
9 our company. The day Ken Sletten joined the firm, he
10 pronounced it that you cannot do construction without
11 being safe, so keep that in mind.

12 Petition 577 is asking for an emergency
13 amendment to section A of 1630 to clarify the need for a
14 personal hoist when a building or structure that's going
15 to have a construction personnel elevator at 60 feet to
16 require it at 36 feet.

17 We're not opposed to the language being
18 changed. What we are opposed to is the need for this to
19 be an emergency. We do not believe this rose to the
20 level of emergency between May 31st, when the DAR was
21 announced, and June 7th, when the petition was filed.

22 We also don't believe that the petitioners have
23 really given substantial evidence to prove the need for
24 an emergency rulemaking session for this section. We
25 would like to stick with a regular rulemaking procedure.

1 We understand -- so the petitioners understand -- that
2 the form 9 was filed and has been accepted. We're just
3 waiting to hear for a date that will have our Advisory
4 Committees and we can go through the rulemaking process.

5 There are several sections in 1630 that need
6 work; and as we sat with the impact group about a month
7 ago during our safety council meeting, we all committed
8 to meeting and going over those standards and making
9 that standard as clear as we can make it.

10 We all agree that that standard did have room
11 for interpretation, which as of the DAR's decision the
12 31st of May went one way, you know previously it had
13 gone a different way, and now it's gone the other way.

14 We'd like to get to that advisory committee so
15 we can make that clear, concise language, so the GCs who
16 are installing CPEs and uses the CPEs all know when they
17 can get installed, what elevation they have to be
18 installed, what elevations they have to stop, and when
19 we can then take the temporary CPE out after the
20 construction progresses.

21 Thank you for your time, and there's my
22 comments.

23 CHAIRMAN THOMAS: Thank you.

24 MS. SAMIEC: Good afternoon. My name is
25 Ryan Samiec. I'm a Program manager, Safety and Health

1 for the Associated General Contractors of California.

2 I'm here today to speak to you about Petition 577.

3 AGC of California is a member-driven
4 organization consisting of large and small construction
5 firms and industry-related companies committed to
6 principle, skill, integrity, and responsibility. AGC
7 represents hundreds of contractors, tens of thousands of
8 employees, and tens of million union man hours in
9 California.

10 The safety of the workers employed by our
11 member companies and every person in the construction
12 industry is the driving force behind our commitment to
13 actively pursue -- I'm sorry -- actively pursue
14 regulations that are compliable for everyone around.

15 After careful review of Petition 577, AGC
16 respectfully recommends that the Board deny this
17 petition. This request is currently being addressed in
18 form 9 discussions. As the advisory committee is
19 actively engaged in reviewing the policies referenced
20 here by allowing all of the parties to be represented
21 and work together through the advisory process, industry
22 can create a policy that is of the highest safety
23 standard with assurance that companies and employers are
24 able to fully comply with the regulation.

25 The member companies within AGC of California's

1 Safety and Health Council would appreciate the
2 opportunity to engage in public discussion with the
3 Advisory Committee and the Board around the expanded use
4 of CPEs. With the Board's denial of this petition, the
5 decision not to implement an emergency ruling, we're
6 confident a stronger solution will be reached.

7 We appreciate the opportunity to engage further
8 in this issue and thank you for your time and
9 consideration of AGC's opposition.

10 Thank you.

11 CHAIRMAN THOMAS: Thank you.

12 MR. McCRARY: Good afternoon. My name is
13 Russell McCrary, and I'm the Safety Director for the
14 California Ironworkers Employers Council for the
15 District Council of Ironworkers.

16 And I'd like to thank the Board and the Staff
17 and the Division for taking my comments. And I'm
18 actually pretty impressed that we put in a petition, and
19 we're here talking about it just a few days later, so --

20 And I know this CPH issue has been a problem
21 for years, and I've been on both ends of it where --
22 when you only had -- have it up and running at 60 feet,
23 you dealt with it. And if somebody got hurt, you used
24 the crane, you walked them down the stairs, or you did
25 whatever you had to do to get them down.

1 But when it changed to 36 feet, hey, it got
2 better. There's no way around it that it isn't the
3 better way of going. If somebody needs to get to the
4 CPH, and you've got to do CPR on them -- which we've had
5 to do twice since I was a superintendent -- and that's
6 what saved their life: Be able to do it, get them to
7 the manlift, and get them down to the ground. They
8 wouldn't have made it if you had to lower them down some
9 ladders somehow or some stairs. And taking a gurney and
10 people downstairs isn't an easy thing to do.

11 So the first responders, and unfortunately, if
12 everybody's seeing what they have to carry up to get to
13 somebody, not only to get that person back down. So
14 that's the biggest thing, is the emergency side of it is
15 getting somebody down if somebody is hurt.

16 And also the emergencies that have been saved
17 by having the CPH up and running at 36 feet. Before
18 that -- and we were up on top, so we were always looking
19 down -- people were sticking stuff into the sides of the
20 building because there wasn't a CPH to put equipment or
21 personnel in to get them up on the floors to go to work.

22 And once that started that way, a lot of
23 problems disappeared. People could put what they needed
24 in the CPHs and got them up on the floors that they had
25 to use to go to work. So I'm saying it kept emergencies

1 from happening, where people didn't get hurt trying to
2 get whatever they needed to have up on the floor to work
3 with.

4 So worked on both ends of it. 36 feet is just
5 better. It's better for everybody, just not for
6 ironworkers. You hear a lot from ironworkers today, but
7 all the other trades that are behind us. They benefit
8 it from it too. It's not just us. So --

9 And on some projects -- and I got to say that
10 timeline between up and running at 36 feet to 60 feet
11 might only be a couple weeks, depending on how you build
12 the building. But on some projects it might be a month
13 or more. And we don't need to not have a CPH for a
14 month or more on a job because of some height that
15 doesn't work. 36 feet works, and it always has.

16 When it first started -- and it's been a fight
17 for over 15 years to get that going and get it in
18 people's heads. And to go backwards -- it's going
19 backwards. I haven't been able to tell one person out
20 there, who this is all for, why it's changed back to 60
21 feet.

22 And "Why are we making it worse for me? What's
23 a DAR? What's a" -- "What's a law judge have to do with
24 me having to carry something up a ladder, some stairs,
25 or do whatever now," because, you know, they just don't

1 understand.

2 So the emergency, the biggest one almost, is
3 what the people think of why we're not taking care of
4 them now that we've decided to change it. And they
5 blame us. I don't know what to say to them, you know,
6 of why it did change. And you just tell them, and then
7 you go on.

8 So it's a big deal. It is an emergency. And
9 we need to get it back to 36 feet. And the language, to
10 me, it's pretty simple. Just change it. Make it to
11 where we don't have to go to court over and over again
12 or have somebody come out and go, "Oh. We don't agree
13 with this clarification letter. We don't agree with
14 this DAR."

15 Let's just clear -- let's get it fixed. An
16 emergency; let's get it done in a week or two weeks, not
17 two years from now, where I'm going to say people are
18 going to get hurt and maybe die because there's no way
19 of getting them off the building.

20 Yeah, you've got cranes sometimes, and you've
21 got the fire department shows up, and there are ways of
22 getting people down. But why not do it the easy way?
23 And having the CPH up and running is a smart way of
24 doing work anyway. There's just no way around it.

25 So, yep, there's no winners if don't install

1 the CPH at 36 feet. It's been working. We've been
2 fighting for it for over 15 years now. So let's get it
3 back to where it makes sense, to us and the people who
4 it's for.

5 And that's it. Anybody have any questions?

6 Thank you.

7 CHAIRMAN THOMAS: Thank you very much.

8 MR. McCLELLAND: Good afternoon,

9 Chairman Thomas and the Board Staff.

10 Gosh, let me get my eyeballs on. Wow, it is
11 already the afternoon. My name is Greg McClelland. I'm
12 the Executive Director at the Western Steel Council.
13 I'm one of the originators of the petition, myself and
14 president Zampa, who you will hear from later.

15 You know, we filed this petition not as a way
16 to cut out any of our partners or general contractors or
17 any of the folks that we work with in the field. It was
18 based on an immediate outcry from the folks that we
19 represent and the danger that they felt they had been
20 placed in by this decision, this DAR.

21 You know, the Western Steel Council and
22 President Zampa represent over 20 million man hours just
23 in our craft alone. We're one of a dozen trades that
24 rely on the access and egress of the building with this
25 standard that we've lived with for many years. As you

1 heard from Mr. McCrary, it works. It has worked. It's
2 confusing it and it has caused significant disruption.

3 We're here today with Labor, with Building
4 Trades, Management. We know that there's been several
5 controlling contractors submitted letters of support,
6 have reached out to us to ask you to consider our
7 request.

8 Quite simply, the recent decision to delay the
9 installation of a construction personnel hoist -- a CPH,
10 CPE, whatever you would like to call it -- puts our
11 employees in harm's way, period. It's been a
12 longstanding practice, an enforcement of the hoists
13 being installed at 36 feet whenever the building is
14 going to be over 60 feet or greater in height.

15 The first responders have been referenced. If
16 you've ever seen an individual with a grave injury be
17 placed in a Stokes litter and then brought down a stairs
18 gaffle or by ladders or by ropes, it's a sobering
19 experience. I don't recommend it.

20 The last several decades, the practice of our
21 CPHs being installed at 36 feet have definitely saved
22 lives. They've made a more efficient job. They've made
23 it a faster, cleaner job. We support and we appreciate
24 the Division's form 9. That was not the reason for this
25 petition.

1 We have met with our partners, our controlling
2 contractors, and there is an agreement that there is
3 some cleanup that needs to be done. That's different
4 than what we're talking about today. We're not trying
5 the cut anyone out of the equation or the discussion
6 here.

7 However, in speaking with Board staff, we would
8 support an expedited rulemaking with the assurances of
9 the presented timelines. Construction is not going to
10 stop. The hazard isn't going to go away. But we
11 support the fastest way possible to rectify and
12 reinstate the previous practice of the CPH trigger
13 height requirements.

14 Each day we work in a current state of
15 disruption; we put our men and women in the trades at
16 risk. I appreciate your attention, and I'd be glad to
17 answer any questions.

18 Thank you.

19 CHAIRMAN THOMAS: Thank you very much.

20 MR. ZAMPA: Good afternoon. Chairman Thomas,
21 Ladies and Gentlemen of the Board Staff. Thank you very
22 much for your time. Appreciate the opportunity to speak
23 with you today. I appreciate the time that you spend
24 looking out for the lives of working people in
25 California. That's exactly why I'm here. I sincerely

1 believe that this concern is an emergency.

2 As some of my coworkers, my management
3 coworkers, our safety expert has stated time and again
4 of we've seen what happens when we don't have access to
5 a CPH manlift, in my terminology, all my 40 years of
6 ironwork.

7 UNIDENTIFIED SPEAKER: What is your name?

8 MR. ZAMPA: Oh, I apologize. I'm Don Zampa.
9 I'm President of the District Council of Ironworkers,
10 State of California vicinity. Got a little carried away
11 there.

12 CHAIRMAN THOMAS: Thanks, Dottie.

13 I would have said something. I know you, so I
14 didn't.

15 MR. ZAMPA: I apologize.

16 So as Russ McCrary was articulating, when we
17 don't have a CPH, not only moving the men and women up
18 the building, but also all the materials as well. And
19 when that doesn't exist, that means people are on the
20 side of the building, oftentimes got to drop the
21 perimeter cables to hoist in conduit, plumbing, rebar,
22 mesh, everything -- anything and everything that goes
23 into the building. So it creates additional hazards and
24 dangers.

25 So, as I said, I represent ironworkers

1 specifically, personally, about 20,000 in the State of
2 California. As Greg mentioned, we're talking over 20
3 million man-hours just in our craft alone.

4 But we also have spoken to and received the
5 support of firefighters, SMACNA, the Sheet Metal
6 Employers Association, and numerous others you should
7 have received letters from.

8 So, in addition to the trade, I personally
9 represent and I'm speaking on behalf of many tradesmen
10 and women that are up on those buildings working above
11 36 feet, 60 feet, maybe over a thousand feet. I worked
12 on a build over a thousand feet in Las Vegas, the
13 Stratosphere. It had a manlift. Had no problem.

14 Over the last few years, we have met with staff
15 from DOSH a number of times relative to challenges that
16 we've seen. And numerous times, easily a half a dozen
17 times, we've run across contractors that said, "It can't
18 be done. We can't do this. We can't put the manlift in
19 here."

20 And not yet, not once have they proven that
21 they couldn't. It was difficult. Might have been more
22 expensive. Might have taken more time, but it was
23 possible every single time. I'm not saying it will
24 never -- we will never find an incident where you
25 couldn't, but that's what we face every day.

1 We had an employers association speak earlier
2 that wants to engage in discussions. I want to too. I
3 want to engage in a discussion where he's representing a
4 contractor that's up above 60 feet and still doesn't
5 have a manlift on it and doesn't even have the permit
6 listed. When our representative visited the jobsite,
7 they asked for the permit. They said, "Well, we can't
8 find it."

9 When DOSH went out the following day -- thank
10 you very much -- they found their permit, and they got
11 the manlift -- they stopped work until they got the
12 manlift up. That's the correct way. It shouldn't take
13 our representatives and DOSH's representatives to do
14 that.

15 I want to mention that I'm in agreement with
16 Chief -- Deputy Chief Bird's language right here. It's
17 short and simple. Cal/OSHA agrees with the petitioner
18 that access to a structure via CPE should be required
19 when the height or depth of the structure initially
20 reaches 36 feet for any structure whose final height
21 will be 60 feet or greater or whose final depth will be
22 48 feet or greater. Short, simple. I greatly
23 appreciate it.

24 I came down here to speak specifically about
25 emergency ruling, but after talking to staff and my

1 coworkers and labor management, we are -- I will
2 support, hesitantly concerned, the expedited process,
3 and I look forward to working with you.

4 Thank you very much.

5 CHAIRMAN THOMAS: Thank you.

6 MR. WICK: Bruce Wick, CALPASC. I just want to
7 support Western Steel Council, the ironworkers. And
8 you're going to hear from Jeremy, I think in a moment.

9 This situation I believe absolutely qualifies
10 as an emergency problem. Rescue operations are huge on
11 construction sites. Lives are in the balance. So
12 absolutely this qualifies for an expedited process to
13 get this very focused issue resolved as fast as
14 possible.

15 Thank you.

16 CHAIRMAN THOMAS: Thank you.

17 MR. SMITH: Chairman Thomas, Members of the
18 Board, Staff, Jeremy Smith here again on behalf of the
19 State Building Construction Trades Council.

20 I'm glad I let Bruce go ahead of me because he
21 put a very fine point on it. This is a very vital
22 health and safety issue. And the reason OAL probably
23 wouldn't view this as an emergency is because,
24 thankfully, there are no dead construction workers
25 because of this issue. But, make no mistake, that could

1 definitely, definitely happen.

2 My boss, Robbie Hunter, the president of the
3 State Building and Trades, an ironworker, told me a few
4 stories last week about workers having to be lowered off
5 of a building via crane because there was no hoist
6 attached to the building, or a worker falling down,
7 bleeding from his ears, having to be put onto a gurney
8 head first down the stair cases, probably causing
9 further jury to that worker.

10 So we believe this is an emergency. We believe
11 that having an emergency regulation in place while the
12 staff does the regulation -- permanent regulation
13 process is the best way to go. We agree with the
14 Division's assessment of that, but we understand that we
15 are up against OAL. And so we are, like Mr. Zampa,
16 reluctantly supporting the process moving forward as
17 outlined in the Board's response.

18 But we want to be very clear that the trigger
19 height of when this goes into effect must be part of the
20 language that comes from staff, the 36 feet requirement.
21 The status quo as it is and out in the field now, we
22 believe that needs to be included in any language that
23 is proposed to be voted by you all.

24 We want to thank the Division. I should have
25 done this in the beginning. Thank the Division Staff

1 and the Board Staff for the quick turnaround on this.
2 We were very pleased to have this on this month's
3 agenda. We know that took a lot of work, a lot of
4 effort, so we appreciate that. We thank you for that.

5 And moving forward, I just want to reiterate
6 that we believe that any language that comes out of this
7 discussion needs to mirror as much as possible the
8 language that was in the joint petition by the Western
9 Steel Council and the District Council of ironworkers.
10 The 36-foot trigger height is vital to ensure that these
11 are put on buildings when they should be as early as
12 possible so the worker health and safety does not suffer
13 because of a lack of a hoist.

14 Thank you.

15 CHAIRMAN THOMAS: Thank you.

16 MR. BLAND: Hello. Good afternoon,
17 Chairman Thomas --

18 CHAIRMAN THOMAS: Good afternoon.

19 MR. BLAND: -- Board Members, Board Staff,
20 Division Staff. I'm still Kevin Bland. I represent
21 this time Western Steel Council as well as the
22 Residential Contractors Association and the California
23 Framing Contractors Association.

24 I won't reiterate everything that's been said
25 thus far, other than that we feel that this is a very

1 important petition. We're talking about the petition,
2 the joint petition between the Ironworkers and Western
3 Steel Council. So everyone -- well, not everyone -- may
4 know I was an ironworker for many years before I got a
5 lazy job being an attorney.

6 But the manlift -- I always called it a
7 manlift, now the CPH, so they have different words for
8 it -- was always a vital part of the structure. The
9 sooner you got it in, the safer it was, the better it
10 was. The clarity that we need from this rulemaking and
11 the expediency we need from this rulemaking is vital.

12 I do want to put on the record that we
13 appreciate the timeliness and the Division's efforts and
14 the Board staff's effort. But, you know, we started out
15 wanting an emergency regulation, and we have moved to
16 the expedited -- that's a new term of art we've created
17 here for this -- the expedited regular rulemaking
18 proposal that was on the table.

19 And I just want to make sure that the
20 assurances and the discussions and the promises
21 regarding that timeline are held because we're relying
22 on that. The Management's relying on that, Industry's
23 relying on that, the Union's relying on that, the
24 Division's relying on that. And so there's a lot of
25 weight on the shoulders because I've been down this

1 road. I think you used some examples: Seven years, ten
2 years on things.

3 We're looking at seven months, so we're going
4 to have to really blow and go and get through this. But
5 I also think that if we keep that simple as to what the
6 goal is of this particular petition, we can do that. I
7 also want to -- well, while I'm up here -- support
8 moving forward on the other petition dealing with the
9 same subject matter but different issues. There's
10 broader issues that need to be handled, but that's not
11 for the emergency, but support 574 moving forward as
12 well.

13 So with that being said, I thank you. And I
14 don't know if there's anybody else to speak on this
15 topic. If there is, I'll come back up. I've got one
16 more topic today.

17 CHAIRMAN THOMAS: You can speak on as many as
18 you want.

19 MR. BLAND: You don't want me to really do
20 that.

21 CHAIRMAN THOMAS: I'm just being nice.

22 MR. BLAND: I've just got to consult with
23 Elizabeth Taylor again.

24 MR. TATE: Good afternoon, Mr. Chairman,
25 Members of the Board, Staff. My name is Greg Tate. I'm

1 Regional H&S Manager with Swinerton here in California.
2 We're also active members of the CEA with Mr. Miller
3 from R&S And AGC.

4 A couple of items that I'd like to point out,
5 and CEA submitted a letter to you all discussing this
6 petition and noted that there was a lack of substantial
7 evidence justifying an emergency. They commented that,
8 basically, "We're looking at speculation." Comments in
9 the petition that talked about -- sorry. I've got my
10 notes here -- "widespread confusion and disruption in
11 the industry."

12 I'm on jobsites. I'm on high-rises in
13 San Francisco and throughout the state. I've yet to see
14 any confusion or disruption to our operations. As
15 general contractors, we want the CPH in as soon as we
16 can possibly get it in. They've made comment earlier
17 that it's good business. It is good business. It makes
18 the job safer. There are practical challenges of
19 getting in at 36 feet. There always have been.

20 Comments earlier saying that 36 feet works. It
21 doesn't necessarily work, and there are significant
22 challenges to make sure we get in at that height. Okay?
23 We are also VPPC contractors. We've been partners with
24 the Division since the program began. We continue to
25 partner with the Division, and we plan on doing so in

1 the near future also.

2 But an expedient Advisory Committee process we
3 think is much more appropriate to address these issues.
4 Because we agree, 1630 is challenging. There's lots of
5 things in there that we would like to see adjusted. We
6 agree, there's a lot of confusion. An Advisory
7 Committee process we think is the most appropriate
8 there.

9 The other part I hear with the petition, we
10 notice, that there seem to be lacking facts throughout
11 the entire petition. So I went ahead and I pulled some
12 facts from not only ourselves but some of our
13 competitors who are in the room here today, including
14 Rudolph and Sletten, Webcor, and McCarthy Builders.

15 Between the four of us -- we looked at this --
16 and, in total, we've been in business in California for
17 over 300 years, when you combine all of our experience.
18 We currently employ, as of yesterday, almost 3,500 craft
19 workers, at our company. This doesn't include all of
20 our subcontractors.

21 In 2017, between our four firms, four of the
22 largest contractors in the State of California, we put
23 in over nearly 8 billion dollars' worth of work in the
24 state. And when you combine our EMR's, which we don't
25 usually do, but when you combine our EMR's, we're at

1 .53.

2 Swinerton alone has a safety department of
3 nearly 50 credentialed safety professionals dedicating
4 our lives and our profession to making sure that all the
5 workers on our sites go home. Every worker on the
6 jobsite are members of different unions, but they're our
7 family. We work with them every single day. That's why
8 we can stand with our competitors. When it comes to
9 safety, we're all one. We're one team.

10 And that's critical to make sure that everybody
11 goes home to their families at the end of the day.
12 That's what we're doing. We're on the frontlines.
13 We're on our jobs every day with all of the different
14 tradespeople. We want to see them go home. But we want
15 to make sure that there's regulations that actually make
16 sense, that are practical, and we can actually comply
17 with them.

18 So, again, we request that this Board denies
19 the petition and allows us to move forward with the
20 Advisory Committee so that we can come up with a
21 regulation that actually does make sense and is capable
22 of being put into place.

23 In the event that you do approve the petition,
24 in the petition they've made the comment that: "We want
25 to preserve the status quo." In our experience -- and

1 I've checked with CEA representatives, about 115 general
2 contractors throughout the State of California -- those
3 who I have spoken with, those who I have talked to,
4 nobody is changing our standard operating procedure.
5 Nobody is changing it. It goes back to the lack of
6 confusion in the industry.

7 I've also asked those -- some of us do quite a
8 bit of work in large excavations in the big cities. One
9 recently would get down as low as 67 feet. The question
10 I asked was: "Have we ever been required to have it end
11 at 36 feet?"

12 The Division has always held that 48 is
13 trigger, and we can get it in now. It's hard to put a
14 manlift or a CPH in when you're digging because it has
15 to have something to land on. Not impossible, but it's
16 very challenging.

17 And then we get that pad in there at 48 feet,
18 and we continue to dig beneath it. There's significant
19 challenges to making that happen. 36 feet going down
20 has never been the status quo. So if you do approve it,
21 we at least would like to have that stricken, so we can
22 go through the Advisory Committee and try and fix the
23 rest of it.

24 Thank you very much.

25 CHAIRMAN THOMAS: Thank you.

1 MR. SHADIX: Good afternoon, Chairman Thomas,
2 Members of Board. Tim Shadix, again, with Worksafe.

3 We agree with the Ironworkers and the Western
4 Steel Council that there needs to be a fix to the CPH
5 issue and a fix that is timely. Makes the most sense to
6 make sure that workers are protected before there are
7 any incidents of harm.

8 We appreciate the Division's analysis that an
9 emergency rulemaking would have been appropriate. We're
10 not opposed to the idea of an expedited rulemaking, but
11 we're not aware of any real statutory requirements or
12 definitions around that term, so we might just ask if
13 there could be some kind of discussion on the record
14 just to clarify exactly what that means, what the
15 precedent is for that, and any -- what the assurances
16 are that that process will follow the timeline that is
17 being proposed to be shorter than an emergency
18 rulemaking process.

19 Thank you.

20 CHAIRMAN THOMAS: Thank you.

21 MS. VERT: Good afternoon. My name is Verta,
22 and I'm here on behalf of Workers of the Adult Film
23 Industry. Primarily, I would like to apologize for
24 being so emotionally reactive at last month's meeting.

25 The feedback that I have received from

1 performers has been very positive, but a lot of them are
2 afraid of retaliation if they come before the Board.
3 There is a performer here with me who is going to
4 address the Board.

5 I would like to thank Eric Berg for his
6 diligence in evaluating the petition. I know that there
7 is a lot there to investigate. And I would like to
8 thank the Board for being so patient with me. And,
9 also, good luck with the emergency wildfire regulations.

10 Thank you.

11 CHAIRMAN THOMAS: Thank you.

12 MR. ALEX: Good afternoon. My name is Alex. I
13 am, like she said, an adult performer or commonly known
14 as a porn star. We get paid to have sex for money. And
15 what she is petitioning for is an outline to protect
16 those of us who have sex for money.

17 Now, it's typically a very unspoken network and
18 side of culture, this sort of aspect of legalized,
19 escorting prostitution. And it's something that I think
20 it's certain that we can all agree isn't going to go
21 away any time soon.

22 And in as much, I think it's amusing to listen
23 to all this talk about wildfires, when we have all grown
24 up in a state that's had wildfires every year, and all
25 of a sudden now it's such a great time to do something

1 about it. So in the same vein, this is something that
2 we know has been going on for a long time.

3 We've raised our children expecting them to be
4 safe when they go out into the world, and we provide
5 them with all sorts of precautionary pamphlets for now
6 panicked events in schools, panicked events in
7 workplaces with gunmen. We train them for wildfires.

8 And we laugh at sexual education, and we think
9 that they are not going to go out into the world and do
10 what everybody else has been doing age after age, which
11 is selling their body as much as they have been selling
12 their mind.

13 So all this is looking for is safety. That's
14 it. That's all you guys are here for. That's all these
15 people are coming here for is the safety of others. So
16 I'm talking about safety of children that go from the
17 age of 17 to 18, jump into a workforce filled with men
18 who do not care about them, filled with women solely
19 rising to the top in the same industry adjacent to the
20 MeToo Movement, where there is a lot of bullshit that
21 just isn't going to play anymore. So I think that it's
22 about time for something.

23 There are a lot of aspects to what she is
24 proposing that the adult performers aren't going to be
25 happy with, that the directors that the people

1 controlling money aren't going to be happy with. And
2 there's even more about it that they're going to laugh
3 at. I laugh at it. I think it's really funny.

4 Because a lot of things that you could even
5 potentially propose for us to do on set we're just not
6 going to do, and that's an aspect that a lot of people
7 have mentioned requires oversight. There has to be
8 somewhere -- someone there making sure that these safety
9 precautions are being upheld. And that's laughable in
10 regards to the situation we're talking about. You
11 cannot police generations of people filming themselves
12 in private acts. It's silly.

13 But when you get into aspect of the businesses
14 that go beyond hiring these people, then you get into
15 the aspects of a Labor Board. These are businesses and
16 companies that hire people, and they should be held to a
17 higher standards.

18 Thank you.

19 CHAIRMAN THOMAS: Thank you.

20 MS. VLAMING: Good afternoon. I'm
21 Paula Vlaming. I represent the Construction Elevator
22 Contractors Association, which is in support of the
23 petition that was filed, 577. So I wanted the Board to
24 know that the contractors do support that petition and
25 the Board's decision in terms of going forward in an

1 expedited manner.

2 I'm also here to speak on behalf of SICA for
3 Petition 574. So is this the appropriate time to do
4 that?

5 CHAIRMAN THOMAS: Go ahead.

6 MS. VLAMING: Very good. So Chairman of the
7 Board and Staff and Division, I appreciate the time that
8 went into reviewing our petition. Your request for
9 additional information from us was helpful. I've taken
10 the time to review both the staff evaluation and the
11 Division evaluation.

12 I just wanted to go through some of those
13 points because I know that time went into you coming up
14 with those evaluations and recommendations to deny the
15 petition, and I'd like the opportunity to just address
16 some of those concerns and, hopefully, have you see that
17 the changes don't create some of concerns that were
18 raised in the evaluations.

19 So the first -- in the staff evaluation, the
20 concern was that the manufacturer specifications would
21 vary and create ambiguity. It wouldn't create clarity
22 by which inspections could take place. But, in fact,
23 the subsection 3 uses manufacturer specifications as the
24 exact measure by which you're measuring the times for
25 CPHs to be anchored.

1 So while I understand that manufacturer
2 specifications may seem vague and may create ambiguity
3 on each jobsite, it's already a standard that's being
4 used, according to 1604.583. And that's the reason why
5 we included that language in our petition, which I
6 understand created some confusion as well.

7 There's -- one of the concerns is that section
8 2 and section 3 are in conflict and that they actually
9 talk about different apparatuses being used; one being
10 an anchor and one being a tie-in. We recognize that;
11 that subsection (a) is -- (a)(2) is talking about
12 anchors, and (a)(3) is talking about tie-ins.

13 The reason we used both of those in our
14 petition is to demonstrate that the regulations already
15 refer to the use of manufacturer specifications as a
16 measuring tool and use as it refers to tie-ins. So you
17 already have measures in place to do the inspections
18 upon that requirement, and we're just asking that that
19 be used for the anchoring intervals as well.

20 One of the other concerns was that the 30-foot
21 interval has been in place for a long time. And I'd
22 like to point out, as you know, the standard that is in
23 place right now was based on the industry standards at
24 the time, ANSI and ASSE.

25 It does not comply exactly with the federal

1 regulations, but it's going with the industry consensus
2 standards. That standard has changed. That's why we
3 have requested that Cal/OSHA change the regulation to
4 include language that is consistent with the industry
5 standards, and that's what California regulation had
6 done in the past.

7 In 2016, ANSI changed the recommendation to say
8 manufacturer specifications, rather than 30-foot
9 intervals. And so we're just requesting that you
10 update, as California has been progressive and
11 consistent in using the expertise of the industry
12 standards to go ahead and make that change here as well.
13 That, really, was the main impetus behind the petition.

14 The other issue was that there was some
15 confusion in the field as to using the industry standard
16 for the tie-ins versus the 30-foot standard for the
17 anchoring. So that created some confusion in the field.
18 This would make both standards the same.

19 You'd be measuring the anchors by manufacturer
20 specs and the tie-ins by manufacturer specs. So it
21 actually would create more clarity. You're going to
22 have to have the manufacturer specs there anyway.
23 That's what they're using in the field. So we're just
24 asking that you use them for the anchoring intervals as
25 well.

1 So that kind of goes to the ease of use and how
2 the regulation is implemented. In terms of safety,
3 which is the primary concern here -- and we have an
4 engineer who will be speaking to this more specifically
5 because he understands the ins and outs of the many
6 calculations -- he's actually a calculation engineer --
7 that go into how they determine what the manufacturer
8 specifications are.

9 And the problem with the 30-foot interval is it
10 only takes one factor into control -- or into effect.
11 And, really, what we're looking at is many factors.
12 He'll explain the buckling. He'll explain external
13 factors, such as wind. He'll explain the load factors
14 and how that creates additional things that they need to
15 take into consideration.

16 So by saying 30 feet, it seems simple and
17 straightforward. You put up a measuring tape, and
18 you're done, but it's not really the safest thing in the
19 field. These pieces of equipment are essential, as
20 we've heard from the prior petition, but they're also
21 very complicated and requires complicated engineering,
22 and the engineer will be able to demonstrate that to
23 you.

24 So saying 30 feet might seem simple and it
25 might seem safe, but he'll actually explain to you that

1 shorter distances can, in some instances, create more
2 danger because there's more torque, depending on what
3 material you're using, what you're attaching to, and
4 what you're putting in the hoist.

5 So by using the manufacturer specifications,
6 you're using a standard that is specific to that piece
7 of equipment at that time, and it's probably going to be
8 the best standard that we can use in the field to ensure
9 that these devices are attached securely to the building
10 that they're being used for.

11 And that is -- the industry standard has gone
12 that way as well. Rather than using a rote number,
13 they've decided, "Let's go with the manufacturer's
14 specifications." We're just asking that the California
15 Board continue in aligning themselves with themselves
16 that industry standard.

17 One of the other issues is that the 30-foot
18 standard does not align with the federal standard -- or
19 that the new standard would not align with the federal
20 standard. Well, the federal standard is 25 feet.

21 So California already has been a leader in
22 creating what they believe is the safest and most
23 effective standard, and that has been following the ANSI
24 standards. That's what the 30-foot standard was based
25 on. It's now evolved to be manufacturer specs. We're

1 just asking that you continue and go with manufacturer
2 specs. You're not consistent right now with the Feds
3 and you're not consistent with the industry standard.

4 So rather than being a standalone outlier, the
5 recommendation is to go with the manufacturer
6 specifications. And that would give the security of the
7 manufacturer, when they're putting something in the
8 field, knowing that it's going to be used in the way
9 that they've designed the calculations for it to be
10 used.

11 According to the engineer and the people who
12 use these in the field, they're going to the
13 specifications that are given to them by the
14 manufacturers no matter what. They don't want these
15 things to fail. So by requiring some outlier 30-foot
16 standard is requiring something that they're not
17 designed to do.

18 So we're creating and imposing a restriction
19 that isn't considered in the calculations of the
20 equipment when it's being designed. And as I said, the
21 standard that you already are using for the tie-ins
22 requires that you use the manufacturer specifications.

23 So any concerns about being able to use that as
24 a standard, it not being practical, not being on the
25 jobsite, I think can be allayed by the fact that that is

1 already being used, and we're just asking that it be now
2 applied to the anchorage intervals.

3 Any questions? If not, I was going to
4 introduce Dennis Johansson, who is the calculation
5 engineer. He flew in from Sweden to speak a little bit
6 more specifically about the actual safety implications
7 of the calculations that are made and how the
8 manufacturer specifications are used.

9 CHAIRMAN THOMAS: Thank you.

10 Before I have you speak, we have some flights
11 that we're going to have to change. So we're going to
12 take a small break, a five-minute break, and then you
13 can speak after that. Okay?

14 MR. JOHANSSON: Okay. Yep.

15 CHAIRMAN THOMAS: Okay. Thank you very much.

16 MR. JOHANSSON: Thank you.

17 CHAIRMAN THOMAS: We're going to take a
18 five-minute break. Thank you.

19 (Recess.)

20 CHAIRMAN THOMAS: Take your seats, please.

21 Thank you. We will come back to order, and we will
22 proceed with the comments.

23 So you may proceed.

24 MR. JOHANSSON: Yes.

25 CHAIRMAN THOMAS: Can you introduce yourself

1 again.

2 MR. JOHANSSON: Yeah. My name is
3 Dennis Johansson. I'm from Alimak in Sweden. So I'm
4 the Calculation Engineer in the R&D Department at that
5 company. We're manufacturing construction homes.

6 And from our point of view, the 30-foot
7 regulation does not improve the work safety. There's
8 quite a lot of different reasons. I'll try to explain
9 them.

10 One thing is that you only have a 30-foot rule,
11 which doesn't really take into account anything of
12 the -- how the mast actually is built up. A more
13 slender mast -- for instance, we have two different
14 product range, one 650 and one 450, where the 650 has a
15 dimension of 650 millimeters, and the smaller one has
16 450 millimeters in the width of the mast.

17 And this will highly influence the tie distance
18 you should have. And just having a 30-foot regulation
19 doesn't really take into account all of the other
20 aspects of that structure.

21 Second, the tie distance is actually a part of
22 our product design. We are designing it to have a
23 specific range for having the best performance. And
24 there is, as I said before, not really possible to say
25 that just shortening the tie distance will increase the

1 safety.

2 And it's because often when you shorten the tie
3 distance, you will actually increase the forces onto the
4 ties and into the walls. And this is often quite
5 contradicting to what you would think happen. If you're
6 thinking of a wind blowing on the mast, then it's better
7 to have a lot of ties because it's pushing the whole
8 mast towards the side.

9 But when you're actually having a hoist hanging
10 onto the side, you're introducing a torque onto the
11 mast. And by having longer distance between the ties,
12 you're actually getting more lever, and hence, reducing
13 the tie force. So reducing -- sometimes our
14 recommendation is actually when a company is having
15 trouble with high tie forces is to increase the tie
16 distance. But if then you have a rule against it, it's
17 going to be difficult to do that.

18 And, also, when you're decreasing the tie
19 distance, you actually -- if you look at the ratio
20 between the mast stiffness to the tie stiffness --
21 because this is a system that interacts with each
22 other -- you also then increase that ratio, which
23 actually increases the influence the tie has onto the
24 system.

25 And with that shorter tie distance, you would

1 get a more conservative force most often, on the
2 conservative side for the forces into the tie, but the
3 buckling will be un-conservative. And buckling is -- I
4 don't know if all of you is familiar with what buckling
5 is. It's if you have a long, slender stick and you push
6 on top of it, it will hold the force, and then all of a
7 sudden just collapse. That is buckling.

8 And it's going to be -- there's a risk that
9 it's going to be un-conservative because the high tie
10 force might actually make the mast buckle over several
11 tie intervals, which then isn't maybe what it's
12 intended, if you're going below what's recommended.

13 And also, finally, I want to say that when we
14 are actually designing this kind of technical product,
15 we do so with a understanding that the product that we
16 have engineered and calculated and getting the specs for
17 will be followed when you're installing it. That's our
18 intention when we make it. So -- and that's how it's
19 working in most -- most other countries.

20 I've been doing calculations since I started at
21 Alimak in 2012 for multiple countries. I never come
22 across another place where you have a limitation on tie
23 distance. You can have recommendations on how to
24 perform calculations, but for United States, we always
25 follow the AISC, the structural -- steel structural

1 standards, so you make sure that you're making correct
2 buckling calculations and so on.

3 But just having a set limitation, I never come
4 across. And I made calculations for Middle East, China,
5 Australia, Europe. I made calculation for Israel, and
6 everybody is basically running with the manufacturer's
7 specs.

8 And, yeah, that's basically it. I think I
9 have -- if you have any questions, I am happy to answer
10 them.

11 CHAIRMAN THOMAS: Thank you very much. We
12 appreciate it.

13 MR. JOHANSSON: Okay.

14 MS. GADIENT: Good afternoon. Maureen Gadiant,
15 and I am the Regional EHS Manager for Webcor Builders.
16 We're in San Francisco, and we do have a smaller
17 division but growing here in the L.A. region as well.

18 I kind of struggled with my notes here, if I
19 seem to, if I go by them, repeat what Brian Miller and
20 Greg Tate have already stated so well.

21 We are not opposed to having substantive,
22 meaningful, and collaborative conversations regarding
23 Petition 577, but we don't see anything that backs it
24 being an emergency.

25 It was -- I think was it Kevin that said --

1 stated, you know, one instance of a contractor that was
2 well over 60 feet without a lift.

3 MR. BLAND: For the record, that wasn't me.

4 MS. GADIENT: Okay. I'm sorry. I can't
5 remember. I didn't write it down who stated that, but I
6 find that to be the exception rather than the rule.

7 If we remove safety from this aspect
8 altogether, it makes perfect, good sense business-wise
9 to install these lifts as soon as we're physically able
10 to per the design of the building and able to get these
11 erected. Time is money. We're moving personnel. We're
12 moving materials as fast as possible.

13 So, again, I'm not seeing statistics that show
14 where this constitutes the emergency and would request
15 that it be dismissed on that, and rather, go through the
16 regular channels and process to have these conversations
17 and clarify how we want the language to be, which we've
18 already, you know, begun as a group of contractors.

19 Thank you.

20 CHAIRMAN THOMAS: Thank you.

21 Any other commenters?

22 Yes. Come on up.

23 MR. BLAND: Yeah.

24 UNIDENTIFIED SPEAKER: Are you still
25 Kevin Bland?

1 MR. BLAND: I am still Kevin Bland. I am still
2 on the clock, representing California Framing
3 Contractors Association and the Residential Contractors
4 Association for this first segment, and I won't go sit
5 down and come back for my next segment.

6 So the -- as everyone -- or not everyone here
7 knows -- there's 1716.2, the financial analysis that was
8 conducted that we heard Bruce Wick go through in detail.
9 I joined Bruce on the letter. I did speak with the
10 gentleman there. I won't reiterate all the inaccuracies
11 that are in there. That's all laid in the letter, but I
12 wanted to make sure it was clear that I agree with those
13 inadequacies and inaccuracies, and I think it's very
14 important those get addressed in that analysis.

15 I also want to give just a quick update on
16 what's going on with the Residential Fall Protection
17 Standard somewhat from a national basis, so to speak,
18 because this all -- being we had a great regulation
19 started back in 2001 discussions, Advisory Committee
20 1716.2.

21 Everything had been working smooth, and then
22 the Feds came in under the previous administration and
23 decided that what we had wasn't as good as what they
24 had, for whatever reason, without going through the
25 whole story.

1 Now we have a new administration in. We are
2 talking and working with the Federal OSHA folks and the
3 National Carpenters. I spent a whole day -- so two
4 weeks ago -- touring their apprenticeship facility. I
5 don't know if anyone has been there. It's the Las Vegas
6 facility. It's millions of square feet, beautiful
7 facility, training facility for the union carpenters.

8 I spent time with their train -- their folks,
9 and they're in support of moving forward with trying to
10 have a rule that's similar to what we have, if not
11 identical to 1716.2.

12 So it's our hopes that the reins get pulled
13 back a little bit of the pressure that's been given you
14 guys to what I feel lessens our standard for the, quote,
15 unquote, six-foot rule. Because, really, what the
16 six-foot rule at the federal level is is a
17 controlled-access zone license, and we got away from
18 that 12 years ago. And I want to make sure that we
19 don't end up going back there with our regulation and
20 changes that the Feds have been -- had been pushing and
21 pressuring us for.

22 So two points that come out of all that spiel:
23 One is the numbers aren't right, that we need to get
24 that corrected as far as the cost analysis go.

25 Number two is we are going -- we are starting

1 to work on a meeting in July with some of the Federal
2 OSHA folks on the point with the union management and
3 trade contractors and builders across the country. The
4 meeting is going to be held at my office. So I know for
5 sure it's going to happen.

6 Then switching back now to Western Steel
7 Council, California Framing Contractors, and Residential
8 Contractors, I wanted to make sure I was clear on my
9 point regarding Petition 574. When I said I support
10 that, I support the petition, but not the outcome the
11 Division -- I mean the staff had come to. So my request
12 would be to oppose or deny the analysis and
13 recommendation of the staff and move forward with the
14 rulemaking on Petition 574. I don't know if I was clear
15 in my first comment about that.

16 We feel like that's important. It's all in the
17 same vein of what we were talking about all morning, and
18 I believe there's a form 9 somewhere out there too on
19 this very issue, and I think there's a lot of work that
20 needs to be done on that.

21 And just one last point: I can't help myself.
22 We have talked -- we heard some numbers in here of -- I
23 don't know -- 300 years of experience. Just between the
24 Ironworkers Employers that Don Zampa represents and the
25 Employers of Western Steel Council, if everybody is in

1 business for only one year, we have 640 years.

2 We know they've been in business longer than
3 that because we have 640 companies that we're
4 representing here. So there was a lot of time and
5 experience that went into our thought process for that
6 petition as well.

7 And with that, I'm hoping we're going to have
8 lunch pretty soon. Thank you.

9 CHAIRMAN THOMAS: Thank you.

10 Question: Were you speaking at the end about
11 577 or 574?

12 MR. BLAND: 577 would be --

13 CHAIRMAN THOMAS: Wait --

14 UNIDENTIFIED SPEAKER: 574.

15 MR. BLAND: Let me clarify: I spoke about
16 three different things.

17 UNIDENTIFIED SPEAKER: We understand that your
18 last comments were about 574.

19 MR. BLAND: The very last comment about how
20 many Western Steel Council has, that was about 577.
21 Okay?

22 UNIDENTIFIED SPEAKER: Oh. But 574 was for the
23 petition, but not --

24 MR. BLAND: I just tried to make things more
25 clear, and I just confused you. I apologize.

1 CHAIRMAN THOMAS: I think we got it.

2 MR. BLAND: In summation, 574, which is the one
3 from the -- that the engineer was speaking of.

4 CHAIRMAN THOMAS: Right.

5 MR. BLAND: That one, deny what's been
6 recommended and go to rulemaking. Ours, Western Steel
7 Council, which is 577, I'm saying we need to go to the
8 expedited rulemaking based on that timeline. That's my
9 whole point to this whole conversation.

10 CHAIRMAN THOMAS: Thank you.

11 MR. BLAND: Yeah. And fill the numbers out
12 they were giving you on the framing contractor stuff.

13 CHAIRMAN THOMAS: All right. Any other
14 comments?

15 Thank you. We appreciate all the testimony
16 given today, and this public meeting is adjourned, and
17 the record is closed.

18 We will now proceed with the public hearing.
19 During the hearing, we will consider proposed changes to
20 the Occupational Safety and Health Standards that were
21 noticed for review today, the Occupational Safety and
22 Health Standards Board, about standards in our judgement
23 will provide such freedom from danger as the nature of
24 the employment reasonably permits and that are
25 enforceable, reasonable, understandable, and contribute

1 directly to the safety and health of California
2 employees.

3 The Board is interested in your testimony on
4 the matter before us. Your recommendations are
5 appreciated and will be considered before final decision
6 is made.

7 If you have written comments, you may read them
8 into the record, but it's not necessary to do so, as
9 long as you submit them to Sarah Money, our Executive
10 Assistant, who will ensure that they are included in the
11 record. Ms. Money will also forward copies of your
12 comments to each Board member, and I assure you that
13 your comments will be given every consideration. Please
14 include your name and address on any written materials
15 that you submit.

16 I would also like to remind the audience that
17 the public hearing is a forum for receiving comments on
18 the proposed regulations, not to hold public debates.
19 Though rebuttal comments may be appropriate to clarify a
20 point, it's not appropriate to engage in arguments
21 regarding each other's credibility.

22 If you would like to comment orally today,
23 please come forward to the podium when I ask for public
24 testimony, please state your name and affiliation, if
25 any, and identify what portion of the regulation you

1 intend to address each time you speak. If you have a
2 business card, please present it to Ms. Money so we have
3 your correct name and contact information for the
4 record.

5 After all testimony has been received on the
6 record and the record is closed, I will prepare a
7 recommendation for the Board to consider for the future
8 business meeting.

9 We will turn to the first proposal schedule for
10 today's public hearing: Title 8, Construction Safety
11 Orders, subchapter 4, Article 15, "Cranes and Derricks
12 in Construction." Section 1618.1 and 1618.4, "Cranes
13 and Derricks in Construction, Operator Qualification."
14 This is a HORCHER matter.

15 Mr. Manieri, will you please brief the Board.

16 MR. MANIERI: Chairman Thomas, Board Members,
17 the Occupational Safety and Health Standards Board
18 intends to adopt the proposed rulemaking action pursuant
19 to the Labor Code, which mandates that the Board adopt
20 regulations at least as effective as federal regulations
21 addressing occupational safety and health issues.

22 The U.S. Department of Labor Occupational
23 Safety and Health Administration promulgated regulations
24 addressing qualifications for operators of cranes and
25 derricks in construction back on November 9th, 2018.

1 The Board is relying on the explanation of the
2 provisions of the federal regulations in the Federal
3 Register as the justification for the Board's proposed
4 rulemaking action. We propose to adopt regulations
5 which are the same as the federal regulations, except
6 for a few editorial and format differences, which are
7 non-substantive.

8 The proposed amendments includes a new federal
9 requirement for the evaluation of trainees and operators
10 prior to operating any equipment covered by Article 15,
11 cranes and derricks, which are the existing State
12 requirements for training, are also proposed to be
13 clarified by adding the term "operator in training" to
14 assure consistency with the federal standards.

15 This proposal also introduces a new term. The
16 term is "licensure," since operators employed by non
17 military government entities who only operate equipment
18 within that entity may be licensed by that entity in
19 accordance with specified criteria in lieu of being
20 certified by an credited crane operator certifying
21 entity.

22 Other issues addressed -- to be addressed in
23 the proposal, but are not limited to, training and
24 qualification of trainers, their demonstration of their
25 skills, reevaluation of training and skill and

1 qualifications specific criteria for the evaluation to
2 meet and be deemed qualified to train.

3 As stated in a 2019 letter from Federal OSHA
4 Region 9, received recently, Region 9 to the Board, it's
5 stated that proposal was deemed, quite obviously, be
6 commensurate with the federal standards for these
7 issues. I think there's been at least one written
8 comment to that effect regarding the proposal.

9 Now, I want to bring out three points that are
10 very important. This is my own public -- or public
11 instruction to the Board members and to the public who
12 are attending the meeting today:

13 Per the so-called HORCHER process, comments
14 from the public on these types of rulemakings are
15 restricted to three areas, which you should all be aware
16 of: One, the effective date; two, why California should
17 deviate from the federal final rule due to unique
18 differences of something going on in California that is
19 not going on in the rest of the country; and, three,
20 additional issues that should be addressed in the future
21 related to this rulemaking proposal that are outside the
22 scope of the present proposal, but which stay close if
23 you wish for the Board and staff to address in the
24 future.

25 So keeping that in mind and the comment letter

1 that we did receive, the staff believes the proposal is
2 ready for the Board's consideration and the public's
3 comment.

4 CHAIRMAN THOMAS: Thank you, Mr. Manieri.

5 At this time, we will accept public testimony.

6 MR. BADGER: Good afternoon.

7 CHAIRMAN THOMAS: Good afternoon.

8 MR. BADGER: My name is Chris Badger. I'm with
9 the City of Santa Rosa. I'm in the Water Department
10 with Santa Rosa. I hope I stay in the three things that
11 you listed. I'm not sure.

12 Just stop me, if I'm getting out of that scope.
13 But I do have a lot of concerns with this standard. As
14 far as adopting a standard that's as effective as the
15 federal standard, I think that should be pretty easy
16 because there's a lot of confusion with this standard.

17 Throughout the industry, I'm a safety training
18 coordinator; I've been doing that since '97 for the City
19 Water Department. I train operators, commercial
20 drivers, forklift operators. I used to train boom truck
21 operators before the standard changed and they had to be
22 certified. Backhoe operators, and I think I mentioned
23 forklift drivers already.

24 So that's my background. And in reading this
25 standard, there's been a lot of confusion. The first

1 confusion was, like, who does it even apply to? And
2 when I look for interpretation of construction versus
3 maintenance, I get letters from Federal OSHA, letters of
4 interpretation.

5 And in those letters it states that if you have
6 a system of telephone poles with a hundred poles, and
7 you are going to replace one with the identical pole,
8 that that is considered maintenance. However, if you
9 replace that with a upgraded pole, that would be
10 construction.

11 To me, that doesn't make sense. And the reason
12 it doesn't make sense, you're replacing it with the same
13 piece of equipment, and the same physical hazards are
14 there. And one I have to be certified to do that job,
15 the other I don't.

16 The new pole that's the upgraded pole may be
17 lighter, it may be less hazardous to place; and yet, I
18 would have to be certified to put that one in but not
19 certified to put another one in.

20 So there's a lot of confusion throughout our
21 industry what's construction, what's maintenance. We
22 maintain a city -- a potable water system, we maintain a
23 sewer collection system, and we maintain a treatment
24 plant.

25 That's what we do, we maintain. All of our

1 supervisors feel that we do maintenance work, but under
2 these interpretation letters it looks like we're -- some
3 of the stuff we're doing is construction work. And
4 there's just that argument back and forth. What's
5 construction? What's maintenance?

6 So I know from talking with other people in the
7 industry -- even that are here today -- there is a lot
8 of confusion over that, and I think that that makes the
9 standard fairly ineffective, because some people are
10 just going to say, "We're maintenance. We're not going
11 to" -- "We don't have to do that. We don't have to
12 certify our operators."

13 When I look at what drove this standard for the
14 Federal OSHA, it's based on two crane studies, one done
15 by Cal/OSHA in '97 to '99 on crane accidents, and one in
16 2006 from the Bureau of Labor Statistics. All of those
17 studies, most of the accidents that occurred, were
18 done -- the accidents, they were using mobile cranes.

19 Mobile cranes can lift up to -- you know, the
20 heaviest ones -- can lift up to 700 tons. I was
21 surprised to read that in doing this research. I didn't
22 even know they made equipment with that capability.

23 What we typically use and what I'd really like
24 to address today are service truck cranes. Service
25 truck cranes are generally rated from 2,000 pounds to

1 6,000 pounds. They're used in maintenance a lot. But
2 in these definitions, it looks like they're used in
3 construction too.

4 Now, these vehicles, none of them are
5 mentioned, you know, in those two crane studies. They
6 don't say the size of the crane involved in any of the
7 accidents. They don't give lifting capacities. They
8 don't give boom lengths. None of them mention service
9 truck cranes. They mention mobile cranes being involved
10 in most of the accidents.

11 So, in looking at this -- and I'm looking at
12 how do I safely train our employees to operate these
13 cranes? Which we've been doing for years. You know, I
14 have been with the City 37 years. We have never had an
15 injury accident in using a service truck crane. Not
16 once. And we use them every day.

17 So, in looking at this, you know, other things
18 that I think are difficult for us to comply with, with
19 the bigger cranes, bigger mobile cranes, you need a big
20 platform for that truck to operate. A lot of times it's
21 not the capability of the crane itself. It's what it's
22 sitting on. Can it take that load?

23 And those bigger trucks require commercial
24 driver's license. Commercial driver's license requires
25 random drug testing and a physical every two years. So

1 that meets the regulation for a mobile -- for this crane
2 operator training.

3 It's easy for us. When we had to start
4 training and certifying our boom truck operators, we
5 didn't have to put them in a random drug testing. They
6 were already in it. We didn't have to do extra
7 physicals. They were already in it.

8 But there's a lot of smaller agencies, smaller
9 towns that don't have commercial drivers, but they do
10 have service truck cranes. They'll have to implement a
11 random drug testing program and have to do these every
12 two-year physicals.

13 And that's going to require going to their
14 union reps and negotiating for that because because
15 now what the employee does on the outside affects what
16 they -- their life at work. And one issue right now,
17 legalization of marijuana. Well, it's not legal to be a
18 commercial driver and do marijuana. What about mobile
19 cranes? After work how do you deal with that?

20 So a lot of challenges there. Another place
21 were it's confusing: You mentioned that a government --
22 a non military government agency can license the
23 operators. In all the reading that I did, when the
24 federal standard came out, that, to me, in reading their
25 interpretation, apparently there's other states where

1 there's counties, cities, and the state itself that may
2 require a specialized crane operator license, the same
3 way you have to have a driver's license given by a
4 government agency like the DMV.

5 So are we talking that kind of government
6 agency? Are we talking -- I'm the City of Santa Rosa.
7 I'm a government agency. Cal Trans is a state --
8 they're a government agency. Can they license their
9 operators? We're not even sure if we can do that. So
10 we don't know what they mean by a non military
11 government agency. It's just not clear. We would like
12 to do that.

13 What I think would be more effective than this
14 entered as is, is when it comes to service truck
15 cranes -- which I said are generally -- typically,
16 they're 2,000 to 6,000 pounds, smaller booms. The
17 reason they're 6,000 pounds, because electric motors
18 can't lift more than 6,000 pounds. You've got to have
19 the hydraulics to lift more than 6,000 pounds.

20 For those cranes, if we had a standard that
21 modeled -- was modeled after 3668, the Powered
22 Industrial Truck Training, where it specifies
23 truck-related topics we have to address and
24 workplace-related topics for these service truck cranes,
25 that would be more effective and easier for us to

1 implement than the standard as is.

2 And I would propose that the Board consider
3 doing that. That would allow us to train in-house.
4 That would save us certification test fees, and people
5 would do it.

6 There's a lot of people I've talked to, and
7 they're, like, "No. We're not doing that. It's
8 maintenance work, and we're not doing it."

9 And they're wrong if they read the definition.
10 So I would just really like the Board to consider
11 another standard for -- specifically for service truck
12 crane operators that is modeled after that 3668.

13 Thank you.

14 CHAIRMAN THOMAS: Thank you.

15 MR. THOMPSON: Chairman Thomas, Members of the
16 Board, I'm Richard Thompson. I'm with the National
17 Commission for the Certification of Crane Operators.
18 We'll call it CCO, because I know the other is too long.

19 With regard to proposed state standard 1618.1,
20 NCCO or CCO supports proposed paragraph 1618.1(a) with
21 regards to training -- or excuse me -- certification and
22 evaluation. However, CCO recommends the sentence be
23 modified to read, "The employer shall insure that each
24 operator is qualified by virtue of being trained,
25 certified/licensed, and evaluated in accordance with

1 this section."

2 "CCO believes that since the standard makes
3 numerous references to and throughout to qualification
4 and qualified that this is an important term to set at
5 the" -- "make at the outset." Stop. Okay.

6 Okay. "CCO supports proposed paragraph
7 1618.1(b)(4)(3) that requires training" -- "trainers to
8 have knowledge, training, and experience necessary to
9 direct an operator in training on the equipment in use
10 and provides a valid certificate of competency for the
11 type of crane operated by the trainee."

12 Okay. "CCO also realizes that proposed
13 paragraph 1618.1(d)(1)(a) includes requirements for
14 operators to be certified for type or type and capacity
15 of equipment or higher capacity equipment of that type."

16 CCO recommends that this language be
17 substituted with the phrase "that type of equipment,"
18 thereby deleting references to type and capacity. That
19 was a struggle that Fed OSHA had with regards to the
20 federal regulation regarding type and capacity, and it
21 becomes a little bit of an issue for certifying
22 entities, where certifying by type alone really clears
23 up the issue. Okay?

24 Okay. "Proposed paragraph 1618.1(d)(3) states
25 that crane operators shall recertify every five years."

1 CCO recommends amending the language to read, "Crane
2 operators shall recertify at least every five years."

3 The reason is that certification bodies already
4 have a window that allows for recertification. CCO's
5 window is 12 months prior to the end of your
6 certification cycle. And we believe that the
7 recommended language would more accurately reflect what
8 actually happens in real practice.

9 Okay. "Proposed paragraph 1618.1(d)(3)
10 provides, in part, that operators with at least
11 1,000 hours of documented experience shall not be
12 required to take hands-on examination specified in
13 subsection (g)(4) of this section to recertify."

14 CCO recommends that that be deleted in its
15 entirety. We believe that should be left up to the
16 certifying entities to determine appropriate pathways
17 for recertification. We also believe that there's a
18 risk of disenfranchising thousands of certified
19 operators if this prescriptive requirement is adopted.

20 All right. Now some fun stuff.

21 "Proposed paragraph 1618.1(g)(1) and
22 1618.1(g)(2) would require accredited certifying
23 entities to issue certificates to operators who have
24 passed a physical examination and a substance abuse
25 test."

1 CCO recommends that this requirement be moved
2 to 1618.1(f), which is evaluation. There are no
3 standardized physical examinations or drug tests for
4 crane operators. This responsibility is more properly
5 and effectively borne by the employer.

6 All right. One of my favorite ones here, in
7 the exceptions. Exceptions to 1618.1, with regards to
8 exception proposed -- excuse me -- the proposed
9 exception number two in 1618.1 pertaining to the
10 operation of articulating boom cranes or knuckle boom
11 cranes when used to deliver material to a construction
12 site, CCO recommends deleting this reference entirely.

13 Okay? Much like the digger derrick exception,
14 it's already in 5006.1 and 1618.1, putting what is
15 basically a general industry reference into the
16 construction industry standard is going to create
17 additional confusion. And it has for years with the
18 digger derrick regulation.

19 You get guys who read only as far as the word
20 "digger derrick," see the word exception, and believe
21 that that digger derrick is exempt from operator
22 certification, just about everything, although we know
23 it's not. But it creates an additional layer of
24 confusion that has been prevalent since 2005, when that
25 exception was put in there.

1 So that's all I have. Any questions?

2 CHAIRMAN THOMAS: Thank you.

3 MR. SICKLESTEEL: Good afternoon,
4 Chairman Thomas, the Board Staff. My name is
5 Tom Sicklesteel. I'm the CEO elect of NCCCO, National
6 Commission for the Certification of Crane Operators.
7 We're one of four accredited -- national accredited
8 testing agencies for crane operator certification. We
9 have over 100,000 crane operators that we certify, and
10 so we wanted to make a few comments.

11 We submitted in writing, but I wanted to
12 comment a little bit on areas where Cal -- the
13 California rule is a little bit beyond OSHA, and address
14 some issues that that has happened -- or that that
15 creates.

16 What OSHA did is they changed up the rules on
17 qualification of an operator. They went from a concept
18 where the operator was certified -- and that was the
19 exclusive end of it -- to a qualification of
20 certification plus evaluation with the employer.

21 And so that qualification truly changes the
22 game a little bit. The reason OSHA did that was because
23 there were so many configurations of cranes and so many
24 different alternatives that there was no way to have a
25 standardized national exam to handle that. So that's

1 why OSHA made that change.

2 Within that, the standards that California has
3 proposed, there's those trees of those different
4 branches. So training is one branch, certification is
5 another, and employer evaluation is not clearly
6 expressed in all cases.

7 And so there's a few situations where the
8 qualification or words are used, and what happens is
9 where it says, "The employer shall deem the employer
10 qualified," that language is unclear.

11 So, specifically, we think that it would be
12 great to start the standard off with what does qualified
13 mean? Qualified means that they are, by virtues of the
14 certification -- the training, certification, and the
15 evaluation. That should be right up on the front end.
16 We're all clear what that means. So that should be in
17 1618.1(a).

18 In 1618.1(d)(1)(a) it talks about deem
19 qualified, and it doesn't reference which part of the
20 tree we're talking about. That section is actually
21 talking about certification. So the language that
22 should actually say, "is deemed to meet the
23 certification requirement" because we don't mean that by
24 simply doing that action they meet all of the
25 requirements. So we think it's really important to be

1 specific.

2 There are a few areas, four specific areas,
3 where the proposed language is more prescriptive. And
4 we feel like some of those areas get the -- roll into
5 either an issue with current language or current
6 practices or sets it up so it has to be revised on a
7 pretty consistent basis and a frequent basis.

8 So 1618.1 paragraph D.2 talks about
9 accreditation, and it references some acts and some
10 things behind that on the accreditation. It just simply
11 needs to say that the NCCA or ANSI, those are the two
12 main accrediting bodies. And if you meet those
13 requirements, then it's an accredited agency.

14 On D.3 it gives a waiver of exams for
15 recertification. The waiver element has been changed by
16 ANSI as time goes on. They keep changing the rules a
17 little bit on accreditation. Sometimes they make it
18 more stringent, most of the time they make it more
19 stringent.

20 And so I don't think a list of how we're going
21 to waiver out of a practical exam is a very good
22 approach, especially when ANSI may be in disagreement
23 with that. You would force accrediting agencies like --
24 or certified agencies like us to choose between their
25 accreditation and compliance with the rule, and that

1 wouldn't make sense. So we think striking that language
2 would make more sense. We could reference industry best
3 practices, if you want to, but that would make more
4 sense.

5 In the development exams in paragraph G.3, that
6 talks about, again, a different prescriptive method and
7 a specific dated item, and it would be better to have
8 industry best practices there.

9 The last item on the prescriptive nature is in
10 item G.3(a)(7), and it came really from the OSHA
11 language, and then it flipped it right at the end to
12 include California. And what it says is that the
13 national exam should have a California-based element in
14 it, that they understand the California language.

15 And we think that that's a little too
16 prescriptive; that that would actually fit better under
17 an employer evaluation element, instead of a nationally
18 accredited exam element.

19 My last point on this, regarding the
20 evaluations -- the evaluation section of the tree, as
21 Dick Thompson just talked about. The physical
22 qualifications and substance abuse made more sense to
23 fit under the employer evaluation because they are
24 really customized.

25 When you have a physical qualification for a

1 crane, it changes not only based on crane type, but the
2 actual type of job that it's doing. And that could
3 really change what the physical demands are.

4 And so having a standardized physical
5 requirement on a national level just isn't practical.
6 And a substance abuse exam is even -- has a little bit
7 harder of an avenue to accomplish that because it's not
8 transferable. It's not portable from employer to
9 employer. And so that should be moved as well down to
10 the employer evaluation section.

11 The last part of that is there's a waiver at
12 the end, which is a great waiver. Employers can use
13 this waiver to say, "I don't have to do an evaluation on
14 every single type of crane and every single
15 configuration of crane. I can say that this crane is
16 really similar. It's similar in type, it's similar in
17 function, and that sort of thing. And that relieves me
18 of the responsibility as an employer to have to do
19 reevaluations in every other scenario.

20 The problem is in the section 1618.1(f)(4),
21 it's not really clear if that applies only to the
22 evaluation, or if that could be deemed to also go to the
23 certification as well. And so we would ask that that
24 language be clarified. That concludes my comments.
25 Thank you.

1 CHAIRMAN THOMAS: Thank you.

2 Any other comments?

3 Yes.

4 BOARD MEMBER BURGEL: Can I make a comment?

5 I would like to comment on section
6 1618.1(g)(1), where it talks about passing a physical
7 examination conducted by a physician, which at a
8 minimum, shall include the, you know, criteria specified
9 either by the American Society of Mechanical Engineers
10 or the U.S. Department of Transportation criteria.

11 I'm a nurse practitioner, and I just wanted to
12 put it out there that nurse practitioners and physician
13 assistants often can perform these exams, and
14 surveillance exams, are quite capable of doing these
15 exams.

16 And so this language, as it's currently
17 written, is very limited and restricts opportunities for
18 a variety of providers. The Fed standard often uses a
19 physician or other licensed health care professional.

20 But I also wanted to comment that the DOT, the
21 Department of Transportation, uses certified medical
22 examiners. And certified medical examiners, nurse
23 practitioners and physician assistants can do and can
24 conduct and frequently conduct DOT exams.

25 And so I just wanted to highlight that for

1 future opportunities, that we can include more inclusive
2 language of individuals that are health care providers
3 that do these exams all over the country.

4 Thank you.

5 CHAIRMAN THOMAS: Comment?

6 MR. HARRISON: I just want to say that I
7 generally agree with both Mr. Thompson and
8 Mr. Sicklesteel's comments. There was a lot to follow
9 there, and so I'll try to follow the roadmap there.

10 But the one comment that I agree with
11 specifically was the removal of exception number 2 in
12 confusing general industry and construction. I know
13 there's a rulemaking going on right now where we're
14 trying to bring the two back into one standard here in
15 California, which leads me to my final comment requiring
16 specific recognition of the California standard.

17 I don't know that deleting that would
18 necessarily be appropriate, with the idea that we're
19 moving from two standards back into one as much as
20 possible. So but I did want to thank you for your
21 comments as -- that there are very productive.

22 CHAIRMAN THOMAS: Thank you.

23 Anyone other comments?

24 Seeing none, the public hearing is closed.

25 Written comments will be received until 5:00 p.m.

1 today. Thank you.

2 We'll now proceed with the business meeting.
3 The purpose of the business meeting is to allow the
4 Board to vote on matters before it, receive briefings
5 from staff regarding the issues listed.

6 The business meeting agenda. On the business
7 meeting agenda, the Board does not accept public comment
8 during its business meeting, unless a member of the
9 Board specifically requests public input.

10 First one is proposed safety orders and
11 adoptions, Construction Safety Order section 1504, 1526;
12 General Industry Safety Orders sections 3361 3364, 3437,
13 3457, and 5192, single user toilet facilities.

14 Mr. Manieri, will you please brief the Board.

15 MR. MANIERI: Yes. Chairman Thomas, Members of
16 the Board, briefly, again, on September 28th and
17 September 29th, 2016, as many know, the California
18 Assembly Bill 1732 was signed by the Governor and became
19 effective in March of 2017.

20 It amended the Health and Safety Code to
21 require that single user toilet facilities be identified
22 as all gender facilities with signage compliant with
23 Title 24 of the California Code of Regulations.

24 On July 25, 2017, the Division submitted a
25 form 9 request for a newer change in existing safety

1 orders to the Occupational Safety and Health Standards
2 Board to request changing Title 8 to remove potential
3 conflicts with the Health and Safety Code section 11860
4 concerning all gender designation of single user toilet
5 facilities.

6 The proposal that was developed by Board staff
7 serves the purpose of allowing more employers to meet
8 Title 8 toilet facility requirements by means of a
9 single user toilet facility that is also compliant with
10 the Health and Safety Code, which is a gender neutral
11 designation requirement.

12 It was previously deemed commensurate with
13 federal standards, and at this time Board staff
14 recommends -- staff recommends the Board adopt the
15 proposed amendments to the general industry and
16 construction safety orders as proposed herein. Thank
17 you.

18 CHAIRMAN THOMAS: Thank you, Mr. Manieri.

19 Are there any questions for Mr. Manieri?

20 Do I have a motion to --

21 BOARD MEMBER STOCK: So moved.

22 CHAIRMAN THOMAS: Do I have a second?

23 BOARD MEMBER LASZCZ-DAVIS: Second.

24 CHAIRMAN THOMAS: I have a motion to second.

25 Is there anything on the question? Hearing none,

1 Ms. Money, will you please call the roll.

2 MS. MONEY: Ms. Burgel?

3 BOARD MEMBER BURGEL: Aye.

4 MS. MONEY: Mr. Harrison?

5 BOARD MEMBER HARRISON: Aye.

6 MS. MONEY: Ms.Laszcz-Davis?

7 BOARD MEMBER LASZCZ-DAVIS: Aye.

8 MS. MONEY: Ms. Stock?

9 BOARD MEMBER STOCK: Aye.

10 MS. MONEY: Ms. Kennedy?

11 BOARD MEMBER KENNEDY: Aye.

12 MS. MONEY: Chairman?

13 CHAIRMAN THOMAS: Aye.

14 Motion is passed.

15 Low voltage electrical safety order section
16 2300 and 2305.2, high voltage electrical safety orders,
17 sections 2940.2 and Appendix A to Article 36, electrical
18 power generation, transmission, and distribution,
19 electrical protective equipment, final rule corrections.

20 Mr. Manieri, will you please brief the Board.

21 MR. MANIERI: Yes. Chairman Thomas, Board
22 Members, this rulemaking proposes technical and
23 editorial corrections for clarity and consistency to the
24 electric power generation, transmission, and
25 distribution, electrical protective equipment final

1 rule, which is a vast overhaul of the federal standards,
2 which was promulgated by the Feds back in April of 2014.

3 It's been a long project, which was heard by
4 the Board on March of 2017, with an extended comment
5 period to March 31st, 2017, to make sure that all the
6 comments we received from our state pollers were
7 received and considered.

8 It later became effective in California on
9 April 1st, I believe, of 2018, following adoption by the
10 Board. These proposed amendments will correct technical
11 and editorial errors to the existing state regulations
12 to be consistent with 29 CFR 1910, 2269, all of the
13 tables for alternating current, AC systems, and
14 Appendix B.

15 The proposal will avoid, we believe, confusion
16 by making technical and editorial corrections to
17 existing state regulations to be consistent with those
18 federal standards, the tables, the Appendix B, et
19 cetera.

20 These proposed amendments to section 2940.2
21 will correct -- make very important corrections to very
22 important formulas contained in table 2940.2-1 with
23 face-to-face exposures to voltages 630KV or more. These
24 equations calculate the minimum approach distances,
25 which is the closest distance a qualified person which

1 include qualified electrical workers, qualified tree
2 workers, qualified line clearance tree trimmers may
3 approach and energize or ground an object.

4 Obviously, if those formulas are wrong, the
5 calculations will too be wrong; and heaven forbid, a
6 worker could be exposed or approach to a distance which
7 could result in a serious injury or electrocution. So
8 these are very important corrections.

9 In the April 2nd, 2019, letter from Federal
10 OSHA Region 9 to the Board stated that the proposal that
11 we developed was determined to be commensurate for
12 federal standards for these issues. Therefore, the
13 staff recommends this proposal be adopted. Thank you.

14 CHAIRMAN THOMAS: Thank you, Mr. Manieri.

15 Are there any questions for Mr. Manieri?

16 Hearing none, do I have a motion to adopt the
17 revision as proposed?

18 BOARD MEMBER LASZCZ-DAVIS: I so move.

19 BOARD MEMBER STOCK: I second.

20 CHAIRMAN THOMAS: I have a motion and second.

21 Is there anything on the question?

22 Hearing none, Ms. Money, will you please call
23 the roll.

24 MS. MONEY: Ms. Burgel?

25 BOARD MEMBER STOCK: Aye.

1 MS. MONEY: Mr. Harrison?

2 BOARD MEMBER HARRISON: Aye.

3 MS. MONEY: Ms. Laszcz-Davis?

4 BOARD MEMBER LASZCZ-DAVIS: Aye.

5 MS. MONEY: Ms. Stock?

6 BOARD MEMBER STOCK: Aye.

7 MS. MONEY: Ms. Kennedy?

8 BOARD MEMBER KENNEDY: Aye.

9 MS. MONEY: Chairman Thomas?

10 CHAIRMAN THOMAS: Aye.

11 Motion passes.

12 Petition -- proposed petition decisions for
13 adoption. Michael Vlaming, Construction Elevator
14 Contractors Association, petition file number 574.
15 Petitioner requests amendment to the construction safety
16 orders section 1604.5(d)(2), regarding construction of
17 towers, mast, and hoistway enclosures.

18 Ms. Shupe, would you please brief the Board.

19 MS. SHUPE: Thank you, Chair Thomas.

20 The petitioner requests the Board amend section
21 1604.5 (d)(2) to remove the specific requirement the
22 construction elevator hoist structures be anchored to a
23 building or other structure at intervals not exceeding
24 30 feet, and instead rely on manufacturer's
25 specifications for compliance.

1 The petitioner contends the proposed amendment
2 is necessary due to inconsistent enforcement of section
3 1604.5 (d) (2) due to possible conflicting requirements,
4 and section 1604.3 (d) (3), which sets requirements for
5 tie-ins. Petitioner also argues that the current
6 regulation deviates from consensus standards on which
7 the requirements were originally based.

8 The petition has been thoroughly evaluated by
9 both the Division and Board staff. The Division
10 recommends denying the petition and disagrees with
11 sections 1604.5 (d). Subsection 2 and subsection three
12 are in conflict, as they address two separate
13 requirements that refer to different components.

14 Subsection 2 refers to the locations at which
15 an elevator tower must be anchored by tie-ins, while
16 subsection 3 requires tie-ins themselves should be in
17 conformance with or equal to manufacturer
18 specifications.

19 Board staff also recommends denying the
20 petition, finding that the petitioner's proposal would
21 reduce the safety of the regulation and reduce its
22 clarity and specificity, pointing out that there are
23 many CPHs built prior to the most recent addition of
24 ASNI consensus code that are still in operation, some
25 for more than a year. Also each success of addition of

1 a consensus code does not necessarily provide greater
2 protections than the superseding code.

3 While not exactly mirroring Fed OSHA, current
4 regulations have been determined to be at least as
5 effective as Fed OSHA standards. Both Division and
6 Board staff know that the petitioner's proposal would
7 not meet the Board's duty under Labor Code section
8 142.3, which requires Title 8 regulations to be at least
9 as effective as the Federal OSHA standards.

10 Manufacturer specifications do not have the
11 same restriction as evidenced by those that are
12 specifications that are more than double the federal
13 requirement. For these reasons, the decision before you
14 today proposes denying the petition. The decision is
15 now ready for your consideration.

16 CHAIRMAN THOMAS: Thank you, Ms. Shupe.

17 Any questions for Ms. Shupe?

18 Yes.

19 BOARD MEMBER HARRISON: I would like to make a
20 comment. As much as I would like to speak to this
21 petition, I do have a conflict. And upon advice from
22 counsel, I'm going to abstain from voting.

23 CHAIRMAN THOMAS: Okay. Any other questions?

24 Do I have a motion to adopt the petition
25 decision to deny --

1 MR. MANIERI: Could I just clarify? I believe,
2 to clarify what you were saying, is that you didn't
3 believe that you had an actual conflict, but in an
4 abundance of caution, because you do some business with
5 at least one of the petitioner entities, out of that
6 abundance of caution -- although you don't believe you
7 have a conflict -- you are going to abstain. Is that
8 more correctly stating your position?

9 BOARD MEMBER HARRISON: I appreciate your
10 caution. Yes.

11 CHAIRMAN THOMAS: Thank you. Thank you.
12 Okay. Any other questions?

13 BOARD MEMBER STOCK: Oh. No. I was waiting to
14 move.

15 CHAIRMAN THOMAS: Okay. So do I have a motion
16 to adopt the petition decision, which is to deny the
17 petition?

18 BOARD MEMBER STOCK: So moved.

19 BOARD MEMBER LASZCZ-DAVIS: Second.

20 CHAIRMAN THOMAS: I have a motion and second.
21 Is there anything on the question? Hearing
22 none, Ms. Money, will you please call the roll.

23 MS. MONEY: Ms. Burgel?

24 BOARD MEMBER BURGEL: Aye.

25 MS. MONEY: Mr. Harrison abstained.

1 Ms. Laszcz-Davis?

2 BOARD MEMBER LASZCZ-DAVIS: Aye.

3 MS. MONEY: Ms. Stock?

4 BOARD MEMBER STOCK: Aye.

5 MS. MONEY: Ms. Kennedy?

6 BOARD MEMBER KENNEDY: Aye.

7 MS. MONEY: Chairman Thomas?

8 CHAIRMAN THOMAS: Aye.

9 Motion passed.

10 Petition -- I'm sorry. Donald A. Zampa,
11 President District Council of Ironworkers,
12 Greg McClelland, Executive Director Western Steel
13 Council, petition file number 577. Petitioner requests
14 emergency rulemaking to amend construction safety order
15 section 6030(a) elevators and hoisting -- for hoisting
16 workers. Ms. Shupe, will you please brief the Board.

17 MS. SHUPE: Thank you, Chair Thomas.

18 The petitioner requests the Board amends
19 section 1630(a) to address an exceptional situation
20 created by a recent Cal/OSHA Appeals Board decision
21 after review, also known as a DAR, on May 29th, that
22 changed the interpretation of when to install
23 construction personnel hoists and elevators, a conflict
24 of longstanding industry practice and Division
25 enforcement.

1 The petition has been evaluated by both the
2 Division and Board staff. The Division recommends
3 approving the petition as submitted, with minor
4 grammatical corrections.

5 Board staff acknowledge the exceptional
6 situation and the need for expedited action; however, as
7 experts in rulemaking advise the petition be granted to
8 the extent that a definition for height be added to
9 section 1630 and highly expedited regular rulemaking be
10 pursued.

11 The triggering DAR on plain language
12 interpretation of section 1630, subdivision (a), leading
13 to the conclusion that a building must reach 60 feet in
14 height before a construction passenger elevator will be
15 required.

16 In contrast, for many years industry practice
17 and Division enforcement have understood that section
18 1630, subdivision (a) should be harmonized with
19 subdivision (d), requiring installation of a
20 construction passenger elevator on a building planned to
21 be in excess of 60 feet in height once the building
22 reaches 36 feet in height.

23 The petitioner's proposed emergency language,
24 while aligned in intent with Board staff recommendation,
25 goes beyond the scope of the triggering DAR and will

1 require significant substantiation to meet the APA
2 requirements for emergency rulemaking.

3 However, the narrowly defined definition for
4 height for section 1630 that remediates the issue
5 identified by the DAR, and is proposed as a highly
6 expedited regular rulemaking, provide a permanent
7 clarification of when a construction personnel elevator
8 must be installed and a similar timeframe to emergency
9 rulemaking.

10 A supporting timeline has been prepared for you
11 in today's Board packet and provided to the public. For
12 that reason, the decision before you today proposes
13 granting the petition to the extent that Board staff be
14 directed to promptly develop a highly expedited regular
15 rulemaking that is limited in scope to address the
16 definition of height as it pertains to section 1630.
17 Additional changes to 1630, as proposed in the Division
18 form 9, are to be considered only as a separate
19 rulemaking process.

20 CHAIRMAN THOMAS: Thank you, Ms. Shupe.

21 Are there any questions?

22 BOARD MEMBER STOCK: Yeah. So I have some
23 questions about expedited versus emergency, but I
24 understand that most of the stakeholders in the room
25 seem satisfied with the expedited process, in which

1 case -- you know, with the assurance that everybody's
2 asked for it that it will happen quickly, you know,
3 that -- I have no question about that.

4 I am wanting to just -- I'm a little -- I'm not
5 sure I completely understand all of the legal
6 ramifications that you've described, but I just want to
7 say for the record that my hope and expectation if we
8 were to go along with this Board proposal, is that it
9 would, in fact, address the very specific issue that has
10 been raised by many, many stakeholders, that this be
11 provided at 36 feet.

12 And so I just -- I was a little confused by the
13 last part of what you said, and I may just be
14 misunderstanding you. That it would cover height, but
15 other matters would have to be regular rulemaking. I
16 want to be sure that if we vote for this expedited
17 rulemaking versus the Division proposal to accept the
18 petition, that expedited rulemaking could and would
19 result in a regulation that would address both of those
20 issues, or would be definitely addressing the 36 height.

21 MS. SHUPE: So the Division Board staff and the
22 stakeholders all agree that the issue that the DAR has
23 created is the understanding of when to install a
24 construction personnel hoist, and our desire is aligned
25 on all cases to keep the -- what has been the

1 understanding that it goes in at 36 feet for buildings
2 that are planned to be over 60 feet in height.

3 BOARD MEMBER STOCK: Okay.

4 CHAIRMAN THOMAS: Questions?

5 BOARD MEMBER BURGEL: So, just to clarify,
6 Laura, were you asking that 36 feet be included in the
7 motion? Because right now it doesn't state 36 feet.

8 BOARD MEMBER STOCK: I know. And I -- that is
9 one option. I'm wondering what the impact of making
10 that suggestion would be on the process that you're
11 describing.

12 MS. SHUPE: So my request is that you adopt the
13 conclusion in the order as written because it was
14 written specifically to allow our engineers to work to
15 develop something that is very narrow and focused and
16 will address the issue.

17 The more specific you put requirements into the
18 conclusion and order, the more you will tie our hands.
19 And you may wish to, but I'm asking you to trust that we
20 are all on the same page here to get to the same
21 destination.

22 BOARD MEMBER BURGEL: Does that help or not
23 help?

24 BOARD MEMBER STOCK: I'm not sure why I know in
25 past rulemaking we've been able to make those kinds of

1 modifications. So I understand that there may be
2 something about this specific process that limits that,
3 you know.

4 So I don't know whether -- Peter looks like he
5 has an explanation. And if that is, in fact, the case,
6 going on the record here, from what I have said and what
7 you have said, that the intent is to have the outcome
8 reflect that -- the same outcome that everybody has been
9 advocating for, that that's what I want to confirm.

10 If what you're saying accomplishes that goal,
11 then I understand that I may not understand something
12 specific about this process, but I just want to be sure
13 that the outcome is the same.

14 MR. HEALY: It's not so much -- it's not as
15 much the process as it is the technical nature of the
16 Appeals Board decision. It's, dare I say, somewhat
17 legalistic, in that it does an analysis of statutory
18 construction or regulatory construction, the
19 relationship of subparts of the -- of 1630 and how the
20 (a) subpart really addresses when the rest of the
21 requirements of 1630 come into play.

22 And so it really all comes down to that
23 definition of height. And you're also contemplating a
24 wider rulemaking to address other concerns raised by the
25 Division in their form 9.

1 BOARD MEMBER STOCK: Right then -- yeah.

2 MR. HEALY: So that distinction for purposes of
3 the expediting I think is important, and one of the
4 dynamics of an expedited rulemaking is to put that
5 forward and argue that the minimum impact, and
6 essentially, by having the wording of the decision the
7 way it is, allows us to focus on a very narrow
8 rulemaking that is consistent with saying that we're
9 basically correcting -- we're carrying forward the
10 status quo.

11 So it gets a little technical as to the
12 construction of the subparts of that section, but the
13 objective is to correct and reestablish the intent of
14 the Board as the status quo that it's not just talking
15 about existing height when they're doing an inspection,
16 it's planned height upon completion.

17 So when they go out and they're looking at a
18 40-foot structure, this requirement and all the rest of
19 the requirements in 1630 will come into play if it's a
20 building that's headed towards 60 feet or above.

21 So this allows us to deal with those technical
22 delicacies and specifics of this situation by giving us
23 that ability to address it this way.

24 BOARD MEMBER STOCK: So I understand that there
25 are two issues. One is to be clarified that it is

1 reflecting the design. It's not whether it's already at
2 60 feet, but whether the intent is that it's going to be
3 at 60 feet, and that seems clear.

4 And the other issue is that it would trigger
5 that at 36 feet that construction hoist would be
6 attached. Those are two issues, both of which are very,
7 very important; and there's a lot of stakeholders who
8 want -- seem to be in alignment with wanting those two
9 issues to clarify that it is the intent to be 60 feet,
10 and the trigger for attaching the construction hoist,
11 that is the direction that I would want to vote for
12 through whatever process you're now recommending as the
13 fastest. I would want that process to be addressing
14 both of those issues.

15 So assuming that they will be, then it sounds
16 like there's not that much of a difference between the
17 expedited and the emergency. Because, obviously, the
18 Division is recommending -- was recommending the
19 emergency and seemed to believe that they could have a
20 statement that would say it could also address the
21 trigger height, just to clarify my question.

22 MR. HEALY: To summarize how the Appeals Board
23 looked at the petition of the Division, it was that you
24 needed to understand sections A -- subparts A and D
25 together; that if you understood them together, then you

1 understood that once the building was at 36 foot level,
2 if it was headed to 60 or above, that these requirements
3 would come into play.

4 So that decision, that's our decision from
5 interpreting the position of the Division, was that if
6 they had that definition of height the way they wanted
7 it, which was existing or planned height upon
8 completion, the rest of the section functioned properly.

9 BOARD MEMBER STOCK: Okay.

10 MR. HEALY: That was their position. Now,
11 there are degrees of clarity. They could also be of the
12 position, "You know, though? We could make it even
13 clearer."

14 So one way of interpreting it is that their
15 position during the DAR was: "It's clear enough, if you
16 understand them, how they work together." At the same
17 time, it could be their position that: "You know what?
18 We could make it even clearer."

19 And that would be part of the regular
20 rulemaking where they're trying to do other things --
21 larger things as well. But as far as the core position
22 of what we have on our hands and how they function
23 together in their existing form, the pivot point and the
24 problem point was with what height means.

25 So they could -- it's consistent with them

1 going forward with regular rulemaking and making it
2 additionally clear, doing all sorts of other
3 clarifications and adjustments. At the same time for
4 the core issue before the Board of the -- what the
5 decision after reconsideration caused, letting us focus
6 in on that for this bifurcated, simplified portion of it
7 allows us to do that most effectively.

8 BOARD MEMBER STOCK: You go ahead.

9 BOARD MEMBER KENNEDY: That's begs the
10 question. Am I to understand that there really is --
11 that there are two different timelines for those two
12 issues, or are they one timeline?

13 MS. SHUPE: I'd like to step in and address the
14 timeline. Because there are two timelines, but there is
15 one for this petition that addresses this issue, and
16 that's the timeline that I sent out to everybody and I
17 made public.

18 The only other timeline is for the
19 comprehensive rulemaking that addresses 1630 as the form
20 9 proposes. So as far as we're talking timelines, we
21 are sticking specifically to this petition, resolving it
22 to address the issue created by the DAR and addressing
23 the concerns as we all understand them, and all want to
24 be on the same page for.

25 CHAIRMAN THOMAS: I've got one question: It's

1 going to be at 36 feet; right?

2 MS. SHUPE: Yes.

3 CHAIRMAN THOMAS: I don't know why nobody wants
4 to say that, but that's what it's going to be; right?

5 MS. SHUPE: Uh-huh.

6 CHAIRMAN THOMAS: Okay.

7 BOARD MEMBER STOCK: That's within the
8 expedited timeframe.

9 CHAIRMAN THOMAS: Yes. Absolutely.

10 MS. SHUPE: Yes.

11 CHAIRMAN THOMAS: Question. Not really a
12 question, just some comments. I just wanted to speak to
13 some of speakers today because I had a few concerns, and
14 the first one is around just the idea of an emergency
15 petition, and I don't want to dilute the emergency
16 petition process. I think it's there for a reason.

17 And I've been on the Board with Laura now for
18 what? Seven years? I think I've seen two in that time,
19 and now all of a sudden we've got two in the last few
20 months here. And so I don't want to -- I'm not
21 minimizing the issue at hand, but I did want to, you
22 know, point that out because I don't want to make the
23 emergency process for granted and start using it because
24 we're not happy with the timeliness of things.

25 I also wanted to say we have a very competent

1 Board staff, and I think they brought a very good
2 proposal to us and an explanation and a proposed
3 decision that I feel confident in because I want to see
4 this expedited along as well.

5 There were some comments that this isn't as big
6 an issue as what it's being blown up to be, and I think
7 this rule's been in place for a long time, and after one
8 DAR, which I was pretty sad to see, now here we are.
9 And we haven't had this much public comment in a while.
10 So, with that said, I believe I'm going to be supportive
11 of the -- of both decisions.

12 I also wanted to say that I do think this is an
13 emergency, but whether it is or not, timeliness is at
14 hand. And the quickest way to get this through is an
15 expedited version, which you would think it wouldn't be
16 that way, but that's the way it is. And I think this
17 timeline lays it out pretty plainly. And not to dismiss
18 the emergency value. I certainly think it is, but we're
19 going to go the quickest way we can.

20 BOARD MEMBER HARRISON: I would like to
21 emphasize highly. Highly expedited.

22 CHAIRMAN THOMAS: Thank you.

23 Any other comments?

24 All right. Any other questions for Ms. Shupe?

25 Hearing none, do I have a motion to adopt the

1 petition decision, which is the expedited -- highly
2 expedited regular rulemaking process?

3 BOARD MEMBER HARRISON: So moved.

4 CHAIRMAN THOMAS: Thank you.

5 Do I have a second?

6 BOARD MEMBER KENNEDY: Second.

7 CHAIRMAN THOMAS: I have a motion to second.

8 Is there anything on the question?

9 Hearing none, Ms. Money, would you please call
10 the roll.

11 MS. MONEY: Ms. Burgel?

12 BOARD MEMBER BURGEL: Aye.

13 MS. MONEY: Mr. Harrison?

14 BOARD MEMBER HARRISON: Aye.

15 MS. MONEY: Ms. Laszcz-Davis?

16 BOARD MEMBER LASZCZ-DAVIS: Aye.

17 MS. MONEY: Ms. Stock?

18 BOARD MEMBER STOCK: Aye.

19 MS. MONEY: Ms. Kennedy?

20 BOARD MEMBER KENNEDY: Aye.

21 MS. MONEY: Chairman Thomas?

22 CHAIRMAN THOMAS: Aye.

23 And the motion passes.

24 Let's see. Proposed variance decisions for
25 adoption. It's kind of anti-climatic, right?

1 But, anyway, proposed variance decisions for
2 adoption. This sounds like consent calendar.

3 Mr. Healy, will you please brief the Board.

4 MR. HEALY: Yes, Chair Thomas and Board
5 Members, regarding proposed variance decisions on your
6 consent calendar, items A through W, I'm aware of no
7 resulting procedural issue. I believe with A through W,
8 we are ready for the motion for adoption.

9 CHAIRMAN THOMAS: Thank you, Mr. Healy.

10 Are there any questions for Mr. Healy?

11 Hearing none, then, do I have a motion to adopt
12 the consent calendar A through W?

13 BOARD MEMBER LASZCZ-DAVIS: I so move.

14 BOARD MEMBER HARRISON: Second.

15 CHAIRMAN THOMAS: I have a motion and a second.

16 Is there anything on the question?

17 Hearing none, Ms. Money, would you please call
18 the roll.

19 MS. MONEY: Who was second?

20 BOARD MEMBER STOCK: Chris.

21 CHAIRMAN THOMAS: Chris.

22 BOARD MEMBER HARRISON: No. I was the second.

23 BOARD MEMBER STOCK: Oh.

24 BOARD MEMBER HARRISON: Chris made the motion.

25 BOARD MEMBER STOCK: We are getting tired.

1 MS. MONEY: Ms. Burgel?

2 BOARD MEMBER BURGEL: Aye.

3 MS. MONEY: Mr. Harrison?

4 BOARD MEMBER HARRISON: 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: Ms. Kennedy?

10 BOARD MEMBER KENNEDY: Aye.

11 MS. MONEY: Chairman Thomas?

12 CHAIRMAN THOMAS: Aye.

13 The motion passes.

14 Let's see. Mr. Berg, do you want to brief the
15 Board on the proposed upcoming decisions or --

16 MR. BERG: Oh, rulemaking? And some health
17 rulemaking or --

18 CHAIRMAN THOMAS: Please.

19 MR. BERG: Sure. So last time I mentioned for
20 the indoor heat rulemaking we had a threshold analysis
21 which was being done, and that's been completed and
22 determined that it will be a standard -- standardized
23 regulatory impact assessment needed.

24 So it's over 50 million cost. And so we've
25 gotten started with a consultant to do the three, as

1 that is a long process. So that -- and equally requires
2 assessment and will take some time, but they started on
3 that already.

4 BOARD MEMBER BURGEL: How long, Eric?

5 MR. BERG: The one for lead took over a year.
6 So I'm not sure. I'll try to give you updates as soon
7 as I hear anything back from the consultant. It's
8 called the Berkeley Economic Advising and Research, I
9 believe it's called. But they are the consultants that
10 do the SRIAs for us. I'll check the progress records as
11 we hear back from them.

12 And they did one for lead as well, and they
13 completed that one, and that was sent to the Department
14 of Finance. And then the Department of Finance got back
15 to us on some, I guess, agreements we have with them.

16 So we're working with Department of Finance to
17 work through the SRIA for the lead one, and we're also
18 working on the -- finalizing on the rulemaking documents
19 for that. But once that's smoothed out with the
20 Department of Finance, we'll then go to rulemaking.

21 BOARD MEMBER BURGEL: So how long do you think
22 that would take? Same time?

23 MR. BERG: I don't know. I haven't heard back
24 from the Department of Finance. We submitted our
25 comments on their comments. So we have to wait to hear

1 back from them.

2 BOARD MEMBER BURGEL: Okay.

3 MR. BERG: Yeah. There's several agencies
4 involved. Workplace violence, they're supposed to
5 update a draft. They're still updating the draft
6 proposal, and it should be done by this fall, an updated
7 draft proposal for that too.

8 BOARD MEMBER STOCK: Do you have any particular
9 target date for that? Month or something? Do you have
10 a guess.

11 MR. BERG: I could guess October, beginning of
12 October.

13 BOARD MEMBER BURGEL: Okay.

14 MR. BERG: I could be wrong. Let's see. PELS.
15 We have four PELS that we should be in rulemaking on
16 this year for cyclohexane, and propanol,
17 tetrabromoethane and trimellitic anhydride. So we're
18 planning on that, kind of obscure chemicals that can be
19 very dangerous, that we plan to do when we get those
20 this year, before the end of this calendar year.

21 And we're working on eight others as well for
22 PEL. And we continue to have advisor committees about
23 four times a year on PELs. So they are generating more
24 recommendations, and we can -- we'll make it on --
25 that's what we're planning on right now.

1 First aid, we sent that to agency. They were
2 sent to agency last year, so we're still waiting to hear
3 back on that one. And the other ones, there's no
4 change. Antonio Plastic, no change on that. We're
5 still developing the rulemaking documents.

6 There's also Surgical Plume, which we had
7 Advisory Committee last year. So once we have some time
8 I'll update a draft proposal on that and have comments
9 on that.

10 And then there's nationally-occurring asbestos.
11 We're developing a draft proposal that we can post and
12 get comments on, and we'll advise you of any. And,
13 hopefully, that is before the interview. And that's all
14 my major rulemakings we're working on right now.

15 CHAIRMAN THOMAS: Thank you. Thank you,
16 Mr. Berg.

17 Proposed wildlife smoke emergency regulations,
18 I think we've reviewed those today. Legislative
19 updates, Mr. Healy, will you please brief the Board.

20 MR. HEALY: Sure. Chair Thomas and Board
21 Members, I'll update you on at least the bills that have
22 moved between chambers since we last got an update.

23 MS. MONEY: Can you turn on your mike, the
24 bottom of the mike?

25 MR. HEALY: Oh. Is it louder now?

1 BOARD MEMBER BURGEL: That's a little better.

2 MR. HEALY: I think David has control of the
3 volume. He turned it down.

4 Yes. AB 35 concerned a worker blood lead
5 level, and AB 35 would require the State Department of
6 Public Health to consider a report from a laboratory of
7 an employee's blood level at or above 20 micrograms per
8 deciliter to be injurious to the health and to report it
9 within five days of receiving the information,
10 forwarding that to Cal/OSHA as a complaint, charging a
11 serious violation of Division-enforced safety orders.

12 Such complaint would be subject -- subject the
13 workplace to Division investigation and would require
14 the Division to publish these tours on an annual basis
15 and any resultant citations or fines.

16 And on May 28th, that passed the Assembly and
17 moved on to the Senate. AB 203, concerning the valley
18 fever issue, AB 203 would require construction employers
19 engaged in specific work activities or vehicle
20 operations in counties where valley fever is endemic, to
21 provide effective aware training of valley fever to all
22 potentially exposed employees annually and before an
23 employee begins work, that it's reasonably anticipated
24 to cause substantial dust disturbance.

25 As currently draft AB 203 does not specifically

1 call for the standard Board to regulate in this subject
2 area, but instead sets out the training requirements
3 directly in the statute, and that on May 23rd, passed
4 the Assembly and moved on to the Senate.

5 AB 1158 concerns conveyance permitting
6 authority restrictions, and AB 1158 relates to the
7 existing law authorizing the Division to issue a
8 preliminary order for repairs and alterations of an
9 existing conveyance that upon inspection -- they knew
10 that if upon inspection determined the situation to be
11 unsafe. The Division also may prohibit the operation of
12 a conveyance until the unsafe conditions are corrected.

13 This bill would authorize temporary suspension
14 of even the work in progress under a permit to install
15 or modify a conveyance if a Building and Safety or
16 Cal/OSHA inspector finds that the work does not comply
17 with applicable building or elevator safety standard
18 requirements. The bill also would provide for an
19 opportunity to prevent suspension of hearing, and that's
20 moved from the Assembly to the Senate on May 23rd as
21 well.

22 AB 1805, it relates to reporting of serious
23 injury or illness. Existing law defines serious injury
24 or illness, serious exposure for purposes of reporting
25 serious occupational injury or illness to the Division

1 for purposes of establishing the divisions of duty to
2 investigate such employment accidents and exposures.

3 This bill would recast the definition of
4 serious jury or illness, removing the 24-hour time
5 requirement for qualifying hospitalizations and expand
6 the scope of what falls within the scope of serious
7 injury or illness and serious exposures, necessitating
8 reporting to the Division.

9 Existing law also establishes the standard for
10 what constitutes a serious violation requiring faster
11 response from the Division, within 3 days, rather than
12 14. Mainly, that there is a substantial probability,
13 substantial probability that death or serious injury
14 could result from the condition alleged in the
15 complaint.

16 This bill may be an indication -- instead
17 establishes serious violations exists when the Division
18 determines that there is a realistic possibility of
19 death or serious injury. So moving from substantial
20 probability to realistic possibility. That would
21 result -- that would cause the member to do the
22 reporting more promptly.

23 And that moved -- I'm sorry -- that passed the
24 Assembly and went to the Senate on May 16th.

25 SB 1, it would require specific agencies to

1 take prescribed actions regarding certain federal
2 requirements and standards pertaining to air, water,
3 protected species, labor standards, and occupational
4 safety and health standards.

5 It would establish a protective baseline.
6 Federal regulations update says that as of January 19th,
7 2017, and would call for the agencies including a
8 Standard and Poor's published at least quarterly a list
9 assessing what any ensuing changes to the Fed OSHA
10 regulations were less stringent than those on -- that
11 existed on January 19, 2017, which would be considered
12 the baseline.

13 If reduction in federal standards were found to
14 have occurred, the agencies then would be called upon to
15 consider emergency rulemaking to preserve California
16 protections. Though, as the Board understands,
17 regardless of the bill's provisions, tight regulations
18 remain in place when -- with their existing protections
19 even if federal standards in our area of regulation are
20 relaxed. And that passed the Senate on May 29th and
21 moved to the Assembly.

22 The last one is SB 363 concerning workplace
23 safety in hospitals of California State Hospitals.
24 SB 363, it has been amended to now no longer mandate
25 that violence protection in health care standards apply

1 without exemption to three types of state hospital
2 facilities; department of state hospitals, developmental
3 -- those of developmental services, and those in
4 corrections and rehabilitation.

5 The bill now more narrowly requires that these
6 facilities confidentially report the total number of
7 assaults against employees on a monthly basis,
8 bargaining union representatives of those affected
9 employees and annually to the legislature. And that
10 passed the Senate on May 23rd, and that concludes the
11 legislative update.

12 CHAIRMAN THOMAS: Thank you, Mr. Healy.

13 Executive Offices report, Ms. Shupe, will you
14 please read it.

15 MS. SHUPE: Well, I was going to thank -- but I
16 notice Dan Leacox is no longer here, so I'll address
17 that at the next meeting.

18 I just want to make this opportunity to thank
19 the Division and everybody who worked, all of our staff.
20 We had a couple of all-nighters to turn Petition 577
21 around, and the work is not done yet to meet that very
22 ambitious timeline, but we will get it done. And I want
23 to say you have a very great and dedicated staff, and
24 the cooperation from Eric over here was just incredible.
25 And thank you.

1 CHAIRMAN THOMAS: Thank you, Ms. Shupe.

2 I think we've just covered future agenda items.
3 So at this time I think we're going to adjourn this
4 meeting. Our next meeting will be July 18th, 2019 in
5 San Diego. And I would like to announce the birth of my
6 first granddaughter on June 8th at 12:30 in the morning.
7 And, wow, they are great. Grandkids are awesome, man.
8 So, anyway, at this time we'll see you next month in
9 San Diego. We're adjourned.

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(End time: 2:46 p.m.)

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June 20, 2019, Meetings of the Occupational Safety and Health Standards Board

Transcript Errata

NOTE: This transcript may contain unintended errors, examples of which are noted below.		
PAGE	LINE	SHOULD READ
13	10	language in the control section f(4)(a). It says that
80	16	CHAIRMAN THOMAS: Thank you.
90	4	withdraw all of those documents, we have to start over and
92	8	original heat standard, which got modified many times.
116	9	further injury to that worker.
171	21	1604.5 (d)(2) to remove the specific requirement that
172	11	sections 1604.5 (d) subsection 2 and subsection three
172	24	ANSI consensus code that are still in operation, some
172	25	for more than a year. Also each successive addition of
173	6	Board staff note that the petitioner's proposal would
174	1	MR. HEALY: Could I just clarify? I believe,
175	23	construction personnel hoists and elevators, in conflict
176	11	The triggering DAR finds for a plain language
178	21	MS SHUPE: So the Division, Board staff and the
182	23	looked at the position of the Division, it was that you
183	4	So that decision, the DAR decision
185	11	BOARD MEMBER HARRISON: Question – not really a