

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
November 19, 2020 OSH)
Standards Board Meeting)
_____)

TELECONFERENCE

*PLEASE NOTE: In accordance with Executive Order N-29-20, and
Executive Order N-33-20, the PHYSICAL meeting location
has been cancelled for November.*

THURSDAY, NOVEMBER 19, 2020

10:00 A.M.

Reported by:
E. Hicks

APPEARANCES

BOARD MEMBERS:

David Thomas, Chair
Barbara Burgel, Occupational Health Representative
Dave Harrison, Labor Representative
Nola Kennedy, Public Member
Chris Laszcz-Davis, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT OSHSB OFFICE:

Christina Shupe, Executive Officer
Michael Nelmidia, Sr. Safety Engineer
Sarah Money, Executive Assistant

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH STAFF:

Douglas Parker, Director
Eric Berg, Deputy Chief of Health

BOARD STAFF PRESENT VIA TELECONFERENCE OR WEBEX:

Michael Manieri, Principal Safety Engineer
Lara Paskins, Staff Services Manager
David Kernazitskas, Sr. Safety Engineer
Jennifer White, Staff Services Analyst

ADDITIONAL ATTENDEES:

John Gotcher, TKO
John Roensch, TKO
Maya Morsi, TKO
Michael Howard, TKO

INTERPRETERS:

Susana Haikalis
Julie Drucker
Aimee Benavides

APPEARANCES (Cont.)

PUBLIC COMMENT: (Cont.)

Rob Moutrie, California Chamber of Commerce
Camucha King, UNITE HERE
Alma Comacho, Maintenance Cooperation Trust Fund
Carlos Almarez, Garment Worker Center Rico Tamayo, California Federation of Teachers
Keith Brown, Oakland Education Association
Patrick Cirby, UNITE HERE
Brooke Billingsley, LAANE
Morgan Craig, UNITE HERE
Joy Schnapper, Capistrano Educators Association
Bruce Wick, CALPASC
Efrain Hernandez, Garment Worker Center
Nho Le-Hinds, Sacramento City Teachers Association
Emma Allen-Landwehr, ROC the Bay
Natasha Castro, Los Angeles Alliance for a New Economy
Robert Harrison, UC San Francisco
David, ROC the Bay
Michael Miiller, California Association of Winegrape Growers
Michael Young, California Federation of Teachers
Maria Vazquez, Restaurant Opportunities Center of Los Angeles
Angelica Miklos, Folsom Cordova Education Association
Stan Santos, Fresno-Madera-Tulare-Kings Labor Council
Rachel Reyes, Los Angeles Alliance for a New Economy
Melissa Love, United for Respect
Dan Leacox, Leacox & Associates
Nicole Rice, CMTA
Zenaida Perez Fuentes, Southern California Coalition for Occupational Safety & Health
Matt Rogers, AgSocio
Virgilda Romero, Garment Worker Center
Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR) - OSH Forum
Carolyn Denise Barlage, Los Angeles Alliance for a New Economy
Anne Katten, California Rural Legal Assistance Foundation
Andrew J. Sommer, Conn Maciel Carey, representing the California Employers COVID-19 Prevention Coalition
Katie Hansen, California Restaurant Association
Pamela Murcell, California Industrial Hygiene Council
Maggie Robbins, Worksafe
Lizette Aguilar, Fight for \$15 and a Union
Mitch Steiger, California Labor Federation
Juvenal Solano, Mixteco Indigena Community Organizing Project/MICOP from Ventura County
Julia Garcia, Lideres Campesinas

APPEARANCES (Cont.)

PUBLIC COMMENT: (Cont.)

Helen Cleary, Phylmar Regulatory Roundtable (PRR)- OSH Forum
Eric Frumin, Change to Win
Michael Hall, Pacific Maritime Association

Brian Mello, Associated General Contractors of California
Mike Donlon, The Construction Employers' Association
Lucas Zucker, Central Coast Alliance United for a Sustainable Economy
Christopher Valadez, Grower-Shipper Association of Central California
Linda Kjesbu, Northern California Safety Consortium
Bryan Little, California Farm Bureau
Mirella Deniz-Zaragoza, Warehouse Worker Resource Center
Fred Walter, Self
Norma Encina, CIERTO
Carolina Hernandez Espinoza, Self
Honorata Carolina Garcia Torralba, Self
Brualio Alonzo Pacheco, Self
Sarait Martinez, Centro Binacional para el Desarrollo Indígena Oaxaqueño (CBDIO)

Kristin Hamon, San Diego Gas & Electric
Jennifer Zurita, California Rural Legal Assistance, Inc.
Matt Hart, United Food and Commercial Workers, Local 324
Claudia Reyes, Centro Binacional para el Desarrollo Indígena Oaxaqueño (CBDIO)

Irene de Barraicua, Líderes Campesinas
Steve McCarthy, CA Retailers Association
Meghan Neal, P.W. Gillibrand
Cynthia L. Rice, CA Rural Legal Assistance
Yardenna Aaron, Maintenance Cooperation Trust Fund (MCTF)
Scott Brauninger, Build Group, Inc.
Elvira Herrera, Lideres Campesinas
Yesenia Gonzalez, UFCW Local 1167
Jassy Grewal, UFCW Western States Council
Stacey Wittorff, Planned Parenthood Affiliates of California
Regina Caldwell, Sutter Behavioral health
Rachel Torres, UFCW

APPEARANCES (Cont.)

PUBLIC COMMENT: (Cont.)

Caitlin Vega, UNITE HERE Local 11 and Transport Workers Of America

Lauren Hajik, California Groceries Association

Elgin Avila, Blue Green Alliance

Ken Smith, University of California

Elizabeth Perez, Self

Gail M. Blanchard-Saiger, California Hospital Association

Marilu Gonzalez, Mixteco Indigena Community Organizing Project/MICOP from Ventura County

Rosalva, Self

Melissa Peters, Littler

AJ Rossitto, California Hotel and Lodging Association

Ramon Castellblanch, California Alliance for Retired Americans

Matthew Allen, Western Growers Association

Karen Tynan, Ogletree Deakins

Mamula Ramirez, Farm Workers Leaders

Jorge Toledano, Mixteco Indigena Community Organizing Project/MICOP from Ventura County

Luz Gallegos, TODEC

Ana Padilla, UC Merced Community and Labor Center

Lorena Martinez, California Rural Legal Assistance, Inc.

Fernando Torres, California Rural Legal Assistance, Inc.

Shane Ross, California Rural Legal Assistance, Inc.

Jen Hamelin, Public Risk Innovations, Solutions & Management (PRISM)

Andrew Gross Gaitan, SEIU United Service Workers West

Estella M. Cisneros, California Rural Legal Assistance, Inc.

Joe Duffel, United Food And Commercial Workers Union, Local 1167

Elda Brueggemann, Western Agricultural Process Association

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<p>Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).)</p>	
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1 PROCEEDINGS

2 NOVEMBER 19, 2020

10:01 a.m.

3 CHAIR THOMAS: Good morning. This meeting of the Occupational
4 Safety and Health Standards Board is now called to order. I'm Dave Thomas, Chairman.
5 And the other Board Members present today are Ms. Barbara Burgel, Occupational
6 Health Representative; Mr. David Harrison, Labor Representative; Ms. Nola Kennedy,
7 Public Member; Ms. Chris Laszcz-Davis, Management Representative; Ms. Laura Stock,
8 Occupational Safety Representative.

9 Also present from our staff for today's meeting are Ms. Christina Shupe,
10 Executive Officer; Ms. Sarah Money, Executive Assistant; and Mr. Michael Nelmidia,
11 Senior Safety Engineer who is providing technical support.

12 Supporting the meeting remotely are Mr. Michael Manieri, Principal
13 Safety Engineer; Ms. Lara Paskins, Staff Services Manager; Mr. David Kernazitskas,
14 Senior Safety Engineer and Ms. Jennifer White, Staff Services Analyst.

15 Via teleconference we are joined by Ms. Autumn Gonzalez as counsel to
16 the Board, on loan from the Occupational Safety and Health Appeals Board, and by
17 Mr. Eric Berg, Deputy Chief of Health, representing the Division of Occupational Safety
18 and Health.

19 If you have not already done so, we ask you to email oshsb@dir.ca.gov to
20 provide your name and contact information, which will become part of the official
21 record of today's proceedings.

22 Today's agenda and the other materials related to today's proceedings
23 are posted online at dir.ca.gov/oshsb/mtgsch.html.

24 In accordance with the Executive Order N-29-20, the physical meeting
25 location for today has been cancelled. Today's meeting is being held exclusively via

1 teleconference with an optional video component. This meeting is also being live
2 broadcast via video and audio stream in both English and Spanish.

3 Links to these non-interactive live broadcasts can be accessed via the
4 "What's New" section at the top of the main page of the OSHSB website at
5 dir.ca.gov/oshsb/oshsb.html.

6 Today we are going to address public comment differently than we have
7 in the past. I'm asking for everyone's patience as we navigate a new process. We have
8 limited capabilities for managing participation during public comment periods, so we're
9 asking everyone who is not speaking to place their phones on mute and wait to unmute
10 until they're called on to speak.

11 As reflected on the agenda today's meeting consists of three parts. First,
12 we will hold a public discussion on the draft COVID-19 prevention emergency
13 regulations that will be considered for adoption during our business meeting. Anyone
14 who would like to comment on the draft COVID-19 prevention emergency regulations
15 may do so at that time. Members of the public who have contacted staff either by
16 email or phone and asked to be placed in the public comment queue to comment on
17 this will be called on in turn. Additionally, those joining via WebEx may ask to join the
18 queue via the chat function. Next, we will hold a public meeting to receive public
19 comments or proposals on occupational safety and health matters. Anyone who would
20 like to address any occupational safety and health issues, including any of the items on
21 our business meeting agenda, except the draft COVID-19 prevention emergency
22 regulations, may do so at that time. Members of the public who have contacted staff
23 either by email or phone and asked to be placed in the public comment queue to discuss
24 matters other than the draft COVID-19 prevention emergency regulations will be called
25 on in turn.

1 Additionally, those joining via WebEx may ask to join the queue via the
2 chat function. During both of these portions of the meeting, the WebEx chat function
3 will be monitored exclusively by staff and is only available to send requests to join the
4 public comment queue. It is not a method for providing public comments to Board
5 Members. Board Members will not consider or respond to any messages delivered via
6 the chat function, nor will such comments become part of the official rulemaking
7 record.

8 Please listen for your name and an invitation to speak before addressing
9 the Board. And please remember to mute your phone or computer after commenting.

10 After everyone in the queue has been provided an opportunity to speak,
11 we will then open public comment to anyone on the call who was not able to enter the
12 queue. If you wish to speak more than once during either the discussion or the public
13 meeting, please contact staff and have your name placed back in the queue. Board staff
14 can be contacted by email at oshsb@dir.ca.gov or via phone at 916-274-5721 to be
15 placed on the comment queue for either the COVID-19 discussion or the public meeting.
16 If you experience a busy signal or are routed to voicemail, please hang up and call again.

17 Just want to let you know that we have 500 participants as of right now.

18 Finally, after the public meeting has concluded, we will conduct the third
19 part of our meeting, which is the business meeting to act on those items listed on the
20 business meeting agenda. The Board does not accept public comment during its
21 business meeting unless a member of the Board specifically requests public input.

22 For our commenters who are native Spanish speakers, we are working
23 with an interpreter, Susana Haikalis, to provide a translation of their statements into
24 English for the Board. At this time, Ms. Haikalis will provide instructions to the Spanish
25 speaking commenters so that they are aware of the public comment process for today's

1 meeting.

2 Ms. Haikalis, go right ahead. And remember to unmute yourself. Hello?

3 MS. HAIKALIS: Yes, can you hear me, Chairman?

4 CHAIR THOMAS: Yeah, I can hear you now.

5 MS. HAIKALIS: Hello?

6 CHAIR THOMAS: Go right ahead.

7 MS. HAIKALIS: Thank you.

8 CHAIR THOMAS: Can you hear me?

9 MS. HAIKALIS: Yes sir. (interpreting in Spanish).

10 CHAIR THOMAS: Go ahead.

11 MS. HAIKALIS: Should I go ahead? Thank you. (interpreting in Spanish).

12 CHAIRMAN THOMAS: Thank you, Ms. Haikalis.

13 We will now proceed with the public discussion regarding the
14 COVID-19 Prevention emergency regulations. A copy of the proposed
15 text is posted on the Board's website. Presentation of draft proposed
16 text. Ms. Shupe, will you please brief the Board?

17 MS. SHUPE: Good morning Board Members. The proposed
18 text and Finding of Emergency for the COVID-19 Prevention emergency
19 temporary standard are posted on the OSHSB website at
20 dir.ca.gov/oshsb/covid-19-prevention-emergency.html, and have been
21 since November 12th, 2020. A link for the text can also be found on the
22 OSHSB home page under the "What's New" header. In addition to
23 posting, these documents were sent to OSHSB's entire mailing list.

24 Today's agenda item has been noticed so that the Board
25 Members may fully engage in discussion on the subject of the COVID-19

1 Prevention ETS proposal, both with our public stakeholders and each
2 other. As we proceed through the public comment on this topic, Board
3 Members are free to engage and ask questions as they desire.

4 CHAIR THOMAS: Thank you, Ms. Shupe.

5 We will now proceed with public discussion of the draft
6 COVID-19 Prevention emergency regulations. Anyone who wishes to
7 address the Board regarding the draft COVID-19 Prevention emergency
8 regulations is invited to comment at this time.

9 Mr. Gotcher, do we have any commenters in the queue? Are
10 you there, Mr. Gotcher?

11 MS. HAIKALIS: (translating in Spanish)

12 CHAIR THOMAS: Are you there John?

13 MS. HAIKALIS: We have Ms. Camacho (indiscernible).

14 MR. GOTCHER: Sorry, can you hear me?

15 CHAIR THOMAS: Now we can. Who is the commenter, John?

16 As always, we seem to have a couple technical difficulties
17 here so.

18 MR. GOTCHER: Yes. Can you hear me okay still?

19 CHAIR THOMAS: Yes.

20 MR. GOTCHER: Okay. Just to announce again our first
21 commenter is Alma Camacho, a janitorial worker with Maintenance
22 Cooperation Trust Fund.

23 MS. CAMACHO: (Through Interpreter Haikalis.) Good
24 morning. My name is Alma Camacho and I have worked in the county of
25 Alameda for 15 years for a maintenance company. The company does not

1 provide any gloves or masks and they haven't trained us at work to
2 protect against COVID. We have requested training and equipment, but
3 they have had retaliation against us. And they had actually terminated
4 some of the employees because of complaints.

5 I'm afraid to go home. I don't know if I'm safe at work. I
6 don't know if I can get sick and if I do, if I can make my family sick. So
7 we need regulations so that we're not afraid for the essential workers in
8 California. Thank you.

9 CHAIR THOMAS: Thank you.

10 Before we continue with our next speaker, because of the
11 amount of speakers that we have today -- I think we're approaching
12 probably 80 or 90 -- I would have you try and get your point across in
13 two to three minutes if possible. I know a lot of it may get redundant
14 toward the end, but if you could make your comments two or three
15 minutes, that would be nice.

16 John, can you introduce the next speaker?

17 MS. SHUPE: John, you appear to be having audio issues.
18 We're unable to hear you.

19 CHAIR THOMAS: John, are you there?

20 MR. GOTCHER: Sorry, I do appear to be having audio issues.
21 Can you hear me now?

22 CHAIR THOMAS: We can. Just leave that on. Go right ahead.

23 MR. GOTCHER: Okay. So our next speaker is Elizabeth
24 Treanor, and she's from the Phylmar Regulatory Roundtable, OSH Forum.

25 CHAIR THOMAS: Thank you. Good morning Elizabeth. I can

1 see you Elizabeth, are you going to talk?

2 (Audio difficulties.)

3 CHAIR THOMAS: I can't hear you. You're muted now. Now
4 you're not.

5 MS. SHUPE: Ms. Treanor appears to be having some
6 bandwidth issues.

7 CHAIR THOMAS: John, let's go to the next and we'll go back
8 to Elizabeth after that. John, who's our next speaker?

9 MR. GOTCHER: And he's from the Garment Workers Center.

10 CHAIR THOMAS: Who was it John?

11 MR. GOTCHER: Carlos Almarez.

12 MR. ALMAREZ: (Through Interpreter Haikalis.)

13 Do you want me to give my testimony? Should I speak now?

14 CHAIR THOMAS: Go right ahead, speaker.

15 INTERPRETER HAIKALIS: (Interprets Chair Thomas's response
16 to Mr. Almarez.)

17 MR. ALMAREZ: (Through Interpreter Haikalis.)

18 Okay. Yes, I have been working for the garment industry for
19 the past 15 years. And I am very happy with this new law that you are
20 promoting for work.

21 Especially, we have problems with bathrooms. So the
22 problem, the main problem at factories is with a bathroom, with a
23 kitchen, with the eating areas. This is in all factories. They have
24 problems with rats and cockroaches.

25 And now with this virus, with this pandemic COVID-19, social

1 distancing is nonexistent. And there's no soap, there's no distancing.
2 So I was infected with COVID-19 at the factory and I infected people. I
3 was hospitalized. I had to go to the hospital and it was an emergency.
4 And I got two more members of my family sick and I almost died. So now
5 I am very happy with this. So as I said I was very seriously sick and I
6 almost died. I made eight members of my family sick, so I'm very
7 thankful to the doctors and the nurses.

8 I am very happy about this law. That it has to pass, so that it
9 keeps families and workers safe.

10 CHAIR THOMAS: Thank you. I'm going to have to cut it here,
11 I think we got the idea.

12 And I was wondering Ms. Haikalis, could you get this man's
13 employer's information from him, please?

14 INTERPRETER HAIKALIS: Yes, certainly. (Interprets Chair
15 Thomas's response to Mr. Almaraz.)

16 CHAIR THOMAS: If you could do that offline that would be
17 great.

18 MS. HAIKALIS: Oh, yes sir. Thank you.

19 CHAIR THOMAS: Thank you.

20 Thank you, speaker.

21 Mr. Gotcher, do we have another speaker in the queue?

22 MS. SHUPE: (Overlapping colloquy.) At this time, with the
23 Chair's lead --

24 CHAIR THOMAS: Yes.

25 MS. SHUPE: -- at this time I'd like to make a request that

1 anyone who has joined our WebEx, I'd like to let you know that we have
2 over 555 participants, which is about 4 times what we normally have.
3 And so at this time anyone who is not speaking, except for the Board
4 Members, if you wouldn't mind turning off your video that would be very
5 much appreciated. And we'll see if we can't resolve some of these
6 bandwidth issues that we are having. Thank you.

7 CHAIR THOMAS: John, are you there? And do we have our
8 next speaker?

9 MR. GOTCHER: Yes, I'm here. Can you hear me okay?

10 CHAIR THOMAS: Yes.

11 MR. GOTCHER: Great. Our next speaker is Rob Moutrie of
12 the California Chamber of Commerce.

13 CHAIR THOMAS: Go ahead, Rob. (No audible response.) I'm
14 not hearing anybody. Are you there, Rob? Can you unmute yourself? I
15 see your -- there you go Rob, go right ahead.

16 MR. MOUTRIE: How about now, does that work?

17 CHAIR THOMAS: Yeah.

18 MR. MOUTRIE: Sorry, I was hoping to avoid my sportscaster headset. I
19 hope (Overlapping colloquy.)

20 CHAIR THOMAS: That's all right. It looks good, looks good.

21 MR. MOUTRIE: So good morning Chair Thomas and Board Members.

22 CHAIR THOMAS: Good morning.

23 MR. MOUTRIE: So I speak to you on behalf of a broad
24 coalition of California's employers today: Businesses large, small, rural,
25 urban, across all sectors including public employers, schools and cities

1 who have a host of concerns with this regulation.

2 And before I get into it, I want to start by thanking the Board
3 staff and the Division staff for your hard work. I know you've worked
4 incredibly hard the last couple of weeks and months to work on this.

5 Briefly, I want to be very clear that we take this seriously.
6 I've spoken to hundreds -- well, spoken -- communicated with hundreds
7 of employers in the last five days. Not a one has said that COVID-19 isn't
8 serious and that we don't want to try to address it. The concerns have
9 all been about the feasibility and clarity of this reg. So I'll do my best to
10 move quickly through them and still be audible, but (indiscernible) have
11 questions afterward if that's necessary.

12 So first the concern is of course about the procedure.
13 Looking at this regulation I know the Board had had concerns about the
14 process at last month's meeting about moving to this regulation and
15 putting up this text five days before the vote without any advisory
16 committee process and a lack of stakeholder input.

17 CHAIR THOMAS: You might want to slow down just a little
18 bit. We have a -- thank you.

19 MR. MOUTRIE: Yes, yes of course. I know the Board
20 expressed those concerns last month, and simply put, I think those
21 concerns were well founded. We have here a regulation that despite the
22 Division's best efforts, has a lot of confusing and contradictory,
23 potentially infeasible provisions that input from stakeholders could have
24 fixed by just one meeting, maybe two. With just one month more time
25 this could be so much better and could be much more workable and

1 actually provide better benefits. So to that concern, as we go through
2 these issues I hope the Board will keep in mind the trade-off that was
3 made based on the Board's vote to have speed over the text.

4 Going to the substantive points I'll first want to focus on the
5 authority concern. There are a couple of provisions in this regulation,
6 which we have outstanding concerns that these provisions would exceed
7 Cal/OSHA's statutory authority. Most notable amongst these is provision
8 section 3204(c)(10) that requires employers to "continue and maintain
9 employee earnings as if they had not been removed from their job." We do not believe
10 that such wage issues and paid-time-off issues frankly, fall under Cal/OSHA's jurisdiction.

11 And putting that issue aside this provision has huge textual
12 problems. If the Board and staff recall AB 1867 legislation last year,
13 which created additional COVID-19 leave, that bill spent a lot of detail
14 going through the things you need to work out paid leave. Who does it
15 cover? How many hours are they guaranteed? Which employers does it
16 cover? And how do we calculate those amounts for part-time workers or
17 for workers in non-salaried positions? None of those details are here.

18 So if this regulation is passed today and OAL approves it,
19 avoiding the authority issue, employers are not going to know exactly
20 how to guarantee this. Except to make guesses about what these
21 earnings are and about how long such leave is guaranteed. And that
22 shouldn't be the place we are in for something as important as this.

23 We also have authority concerns about the transportation,
24 employer-provided transportation and employer-provided housing
25 provisions that come at the end of the draft text. I believe others will

1 speak on those in great detail who are closer to the ag community on
2 that front, so I'll leave the detailed comments to them on those points.

3 Next, turning to feasibility. I think another macro issue that
4 we have to consider in this time period is this is an emergency regulation
5 that will apply incredibly broadly to almost every employer in the state,
6 right, the non-ATD covered; of all sizes, from one employee to
7 thousands. Applying that in an emergency regulation timeline means
8 that as you look at all of these provisions we can't just say, " A) do we
9 think (indiscernible) more helpful? Would we like them?" We have to
10 say, "Will employers be able to do this in ten days?", right? That's when
11 this goes into enforcement as you're looking at it.

12 And so that's a separate question, and I'll get to how we
13 propose solving that in a bit, but I hope you'll keep that in mind as you
14 look at these provisions and consider the complexity that we are talking
15 about.

16 It also appears this draft in terms of feasibility doesn't take
17 into account the differences in those workplaces, from really large to
18 really small. One example, the outbreak and major outbreak provisions,
19 3205.1 and .2. have thresholds to trigger a host of new kinds of
20 precautions that would be triggered by either three cases in 14 days, or I
21 believe it's 20 cases in 30 days, and then require two weeks with no new
22 cases in a workplace for their outbreak to technically end and those
23 provisions to be ended.

24 If you are an employer with 100 or 200 employees in a
25 workplace you could easily see three cases, nothing to do with

1 workplace, due to social spread. Now you're in an outbreak. Now the
2 question is will you be able to have a two-week period over the holidays
3 as families are getting together, people are traveling, Thanksgiving and
4 Christmas, will you be able to have a two-week period with no new cases
5 due to social spread?

6 And I think that the obvious answer for a lot of large
7 employers and large workplaces is no. These provisions are going to
8 mean that we're going to be in perpetual outbreak status due to social
9 spread even if we never have a traced case of workplace spread. And
10 that requires some reallocation and consideration to find a balance
11 where an outbreak is properly identified as a workplace situation.

12 For larger employers that might mean incorporating a
13 percentage trigger (indiscernible) and some of the legislation this year
14 and detailed in our letter. But I want to flag that as one example where
15 the provisions don't seem to analyze the differences that would apply to
16 very large and very small employers.

17 A second feasibility element, the regulations provide that
18 employers will, "provide testing." Regulations aren't clear on exactly
19 what will --

20 MR. MOUTRIE: I'm hearing someone else's echo.

21 CHAIR THOMAS: Yeah, can we please get everybody to mute
22 who is not on?

23 MR. MOUTRIE: I think it's coming through (indiscernible due
24 to overlapping colloquy). Whoever's having a conversation about Cal CPA
25 advisors, we'd appreciate a mute.

1 MR. THOMAS: Who is?

2 MS. SHUPE: Hang on.

3 MR. THOMAS: You know what, I'm going to say this one time.
4 No crosstalk. If you're on this meeting, stay on this meeting. If you've
5 got other business, get out of the room and get on another phone,
6 alright? We don't have time for this. Go ahead, Rob.

7 MR. MOUTRIE: Thank you, Chairman. The provisions
8 regarding providing testing are another feasibility issue, right?
9 Employers are supposed to provide testing in these outbreak scenarios
10 and in a couple of others. But if you look at potentially smaller
11 employers and potentially more remote locations right, in the Bay Area
12 we have Project Baseline and others. When you talk about more rural
13 locations where Project Baseline may not be where medical
14 infrastructure may not be. And then you talk about compelling these
15 tests to be provided there's a real feasibility problem that may confront
16 employers that I don't think the reg takes into account.

17 There are host of issues regarding clarity as well and I will
18 touch on a few briefly, but again these are examples not --

19 CHAIR THOMAS: Briefly.

20 MR. MOUTRIE: -- yes. We have inconsistency as to who
21 qualifies as a COVID-19 case versus the return-to-work deadlines. We
22 have ambiguities that when employers may use engineering controls to
23 address spacing and when they have to maintain six feet distances.
24 Those kind of issues can be fixed if we just have time to work on them.

25 And the last big substantive point I will make is privacy. We

1 have a number of concerns about privacy implications for employers
2 gathering this data. One notable point is that the employers are
3 required to verify COVID-19 case status according to 3205(c)(3)(a).

4 Employers don't want to be in position of grilling or quizzing
5 an employee on their status or seeking records from health companies
6 that we necessarily can't get. Those provisions need to be fixed to avoid
7 privacy issues.

8 So turning to that, and I'll end with these, so what would we
9 ask out of all of these issues? The first and foremost I would ask for,
10 some time. The Board has the option here of making amendments. I
11 would ask that the implementation of this be delayed beyond the 10-day
12 threshold that's been flagged to a 30-day period. This would allow
13 plenty of time that employers need to change their training, to change
14 their internal policies, to adjust and figure out the definitions here.
15 Specifically, also for the notice obligations where this differs from 685.
16 That will take time for employers to adapt to, given that they have been
17 preparing for 685's terms. And this has different terms for similar issues.

18 And if this cannot be delayed or in addition, the last thing
19 we would ask is that the advisory committee please set -- excuse me, the
20 advisory committee be set as soon as possible. The first week of
21 December let's start having those conversations, so that these issues and
22 the host of other issues I haven't discussed can be brought to the Board
23 and addressed as soon as possible, not waiting for a March meeting.
24 Because in that timeline employers (indiscernible) California will have to
25 be guessing at compliance when we don't want that to persist.

1 So I'll stop there. Thank you.

2 CHAIR THOMAS: Thank you, Rob.

3 Mr. Gotcher, who do we have on the line next?

4 MR. GOTCHER: Our next speaker is Camucha King from
5 UNITE HERE.

6 CHAIR THOMAS: Hello, are you there?

7 MS. KING: Hello?

8 CHAIR THOMAS: Yeah, go right ahead.

9 MS. KING: Yes, (indiscernible). Yes, my name is Camucha
10 King and I have been working in room service for the (indiscernible) San
11 Francisco Hotel for around 15 years. I was brought back from being laid
12 off in October, and I am very concerned about the coronavirus safety. I
13 live with my 75-year-old mother and my daughter who has asthma and I
14 am worried about bringing the virus home with me. They did not train
15 me about the new coronavirus safety protocols for several days. When I
16 came back to work, that made me nervous, because I didn't know what I
17 was supposed to be doing to protect myself.

18 Another problem is that sometimes when I deliver food to a
19 guest room they just open the door without a mask on. Usually they put
20 one on when I ask them to, but there are other things that make me
21 worried too. We are a five-star hotel but we do not always clean and
22 disinfect the areas that the guests cannot see. The hotel is not
23 scheduling enough people, and I have so many (indiscernible) deliveries
24 to make that I do not have a single permanent sanitized delivery cart.

25 Also, when a guest checks out, a lot of times management

1 leaves the room service carts in the guest rooms overnight and very
2 often I find them with (indiscernible).

3 And the employees' break room is not always cleaned or
4 sanitized. On my first day back to work I tried three times to take my
5 break in there, but it wasn't clean. I complained to my manager and for
6 a few days they put someone on the schedule to clean it, but then they
7 stopped it. And I don't take my breaks in that room anymore, because it
8 makes me nervous. It doesn't matter how much they clean the guest
9 areas if they don't clean the worker areas. The virus doesn't care if you
10 are a guest or you are a worker, we need more protection from
11 coronavirus at work.

12 Please pass these new emergency temporary standards to
13 protect workers from these outbreaks. Thank you for listening.

14 CHAIR THOMAS: Thank you.

15 Mr. Gotcher, who do we have next on the queue?

16 MR. GOTCHER: Our next commenter is Rico Tamayo of the
17 California Federation of Teachers.

18 CHAIR THOMAS: Good morning.

19 MR. TAMAYO: Good morning.

20 CHAIR THOMAS: Go right ahead.

21 MR. TAMAYO: Yes. Good morning, my name is Rico Tamayo
22 and I'm president of the EC/TK-12 Council for the California Federation of
23 Teachers. But I'm also a former teacher from El Rancho Unified School
24 District, which is in Pico Rivera, California. I'm here today to speak on
25 behalf of the members of the California Federation of Teachers, but also

1 for my former students and their families to urge you to adopt the
2 COVID-19 Prevention emergency temporary standard.

3 Our community in Pico Rivera is a working-class community.
4 Many low-income people of color who are at greater risk for COVID-19,
5 and as of right now Pico Rivera is one of the worst COVID hot spots in the
6 state. We need these emergency standards to help in the fight against
7 COVID and we need these standards to keep our people safe.

8 Please adopt the emergency standard today. It's the right
9 thing to do, and it will mean a lot to teachers, classified staff, and
10 workers throughout the state. Thank you very much.

11 CHAIR THOMAS: Thank you.

12 Mr. Gotcher, who do we have next in the queue?

13 MR. GOTCHER: Our next commenter is Keith Brown from
14 Oakland Education Association.

15 CHAIR THOMAS: Hello, Keith. Are you with us?

16 MR. BROWN: Yes, can you hear me?

17 CHAIR THOMAS: Yes, we can. Go right ahead, thank you.

18 MR. BROWN: Thank you. Board and staff, my name is Keith
19 Brown and I represent the 3,000 educators of the Oakland Education
20 Association, a chapter of the California Teachers Association. The COVID
21 pandemic has been a public health disaster for the black and brown
22 working families of Oakland. These proposed emergency regulations are
23 urgent and necessary to keep employees safe and help curb the spread of
24 COVID-19.

25 As you know, schools are a central hub for communities

1 across the state. And if there are not appropriate guidelines and
2 precautions that are required then employers will continue to place
3 expediency and convenience above workers' safety.

4 In Oakland Unified we have eight different labor unions plus
5 nonunion contract workers resulting in a patchwork of safety
6 requirements in our school buildings.

7 Our District Health Service Coordinator position has been
8 vacant since 2018, depriving us of science-informed leadership to keep
9 employees safe during an infectious disease pandemic.

10 Establishing clear enforceable regulations will protect the
11 working parents of our students, which then indirectly reduces our risk of
12 exposure when working with students. The emergency regulations are
13 especially important in calling out the requirements for contact tracing,
14 accommodating employees and distancing. And this will allow for a
15 common set of expectations that can and should be enforced.

16 I strongly urge the Standards Board to approve the proposed
17 standard. Thank you.

18 CHAIR THOMAS: Thank you, Keith, appreciate your
19 comments.

20 Mr. Gotcher, who's next up?

21 MR GOTCHER: Our next speaker is Patrick Cirby of UNITE
22 HERE.

23 CHAIR THOMAS: Patrick, are you with us?

24 MR. CIRBY: Yes, I'm here. Good morning.

25 CHAIR THOMAS: Good morning. Go right ahead.

1 MR. CIRBY: All right, my name is Patrick Cirby and I have
2 worked as an overnight janitor for 28 years at the Westin St. Francis
3 Hotel in San Francisco. At home, I care for my 92-year-old mother who
4 worries about me constantly at work, and she wants to know if I'm being
5 careful not to bring home the coronavirus to her. Well of course I'm
6 always careful, but I think we need more protections from this
7 coronavirus. And that's why I'm here to speak to you about passing the
8 new emergency temporary standard today.

9 Some of the reasons that I believe we need more protections
10 are like recently at our hotel, some workers were notified they were
11 exposed to coronavirus when they worked a guest party. And other
12 people who worked the same party were not informed that they were
13 exposed. I don't understand that and I don't think it's right.

14 Another major reason is that since I returned to work I've
15 never been formally trained in any of the new cleaning protocols for
16 coronavirus. I know there's a program, but I haven't been exposed to it.
17 I know the chemicals that we need to use. And I know they need to stay
18 wet on certain surfaces for a certain amount of time to be effective. And
19 I really hope that the way I'm using them works.

20 We also have one of those new electrostatic disinfection
21 machines to spray disinfectants. Again, I've never been trained how to
22 use it. I was also never trained on what I'm supposed to do should I start
23 to feel sick at work. I think that's pretty important.

24 In general, I don't believe they have enough people
25 scheduled to clean properly at my hotel, especially in the areas for

1 workers only. I am a janitor and my eyes are trained to see dirt. I can
2 see others are not always mopping the employee break room or cleaning
3 properly in the toilet rooms or the lockers. In our break room, bottles of
4 sanitizer are left out and each employee is asked to clean before and
5 after themselves, but it doesn't look like that's always happening. So I
6 don't take breaks in the employee break room because of that cleanliness
7 issue.

8 I'm also exposed to guests around the property. Most of our
9 guests are kind and wear their mask like they're supposed to, but not all
10 of them. At work at night I see guests go outside for smoke breaks,
11 because we are a non-smoking property, and when they return they don't
12 always have them on. And we don't always have somebody at the door
13 to check on them to see if they are wearing them.

14 So things like this, these are just a few of my concerns that
15 maybe the business could be doing more to protect us. And so today
16 please, I would ask you, we need more protections at work. I encourage
17 you to please pass this emergency temporary standard bill and I thank
18 you for listening.

19 CHAIR THOMAS: Thank you very much, we appreciate your
20 comments.

21 John, who do we have next in the queue?

22 MR GOTCHER: Next in the queue is Brooke Billingsley from
23 LAANE.

24 CHAIR THOMAS: Brooke, are you there?

25 MS. BILLINGSLEY: Hi, yes I'm here.

1 CHAIR THOMAS: Go ahead, Brooke.

2 MS. BILLINGSLEY: Can you hear me? Ah perfect.

3 CHAIR THOMAS: Yes.

4 MS. BILLINGSLEY: My name is Brooke and I live in Los
5 Angeles. And until a few weeks ago I worked at a small specialty clothing
6 retailer in Los Angeles. My store reopened in late May when clothing
7 retail stores were allowed to open here in L.A. County. In that time I've
8 seen the store I work at, and most of the other stores on the block I work
9 at, fail to comply with local health orders and make necessary changes to
10 keep workers safe.

11 In my store the dressing rooms are open to full capacity.
12 The dressing rooms are very small with low ceilings, full doors and no
13 ventilation inside of them and are therefore an ideal environment for
14 aerosol clouds to linger. Workers can attest that most people take their
15 masks off inside the dressing rooms even when they're told they have to
16 keep them on. This is a huge risk to workers as we are required to enter
17 the dressing room to wipe down surfaces between every customer.
18 Meaning we are all repeatedly going into these small not-ventilated
19 spaces that have had many unmasked people in them briefly enough that
20 aerosolized COVID would still be in the air if an infected person had gone
21 in.

22 Our break room is also in the back office where I was
23 expected to do hours of work a week while sitting within a few feet of
24 people hanging out and eating unmasked while they were on their
25 breaks. I made suggestions to my employer with solutions to fix these

1 safety issues such as improving ventilation, more PPE and relocating the
2 break area, but was repeatedly dismissed.

3 Furthermore, speaking up about these issues caused me to
4 be threatened with losing my job, because my employer did not agree
5 that these were risks. I have higher risk factors for severe illness and
6 COVID, and between my employer removing many of the safety
7 precautions they implemented in May and the increasing COVID threat in
8 Los Angeles, and the retaliation I was facing, I felt my only option was to
9 leave my job.

10 We need this temporary emergency standard to add greater
11 protection to workers in more industries. And we need it immediately,
12 because I can attest that not enough is being done right now and workers
13 are dying as a result. Thank you for your time.

14 CHAIR THOMAS: Thank you, Brooke.

15 Who do we have next up, John?

16 MR. GOTCHER: Our next commenter is Morgan Craig from
17 UNITE HERE.

18 CHAIR THOMAS: Morgan, are you with us?

19 MS. CRAIG: Yes, I am.

20 CHAIR THOMAS: Go ahead.

21 MS. CRAIG: All right, thank you. My name is Morgan Craig
22 and I've been a cocktail server at the San Diego Mission Bay Resort for
23 six years. Since they put me back on the schedule at work I've been very
24 worried about COVID, and I hope you pass the emergency temporary
25 standard to keep us safe.

1 I lost my health insurance because I hadn't gotten enough
2 hours at work. If I catch the virus I am worried about what will happen
3 to me. There has been a serious lack of communication from
4 management about what we are supposed to be doing to clean the
5 restaurant and we have been short-staffed. It's not clear who is
6 supposed to be sanitizing the tables between guests and it doesn't
7 always happen. I pitch in when I can, but I've never been trained in the
8 right way to do it. We don't even have a greeter out all the time. It's
9 open seating, so sometimes guests just walk in and sit there at a dirty
10 table. Or if a guest walks right up to the bar, the bartender clears the
11 table for the guest, but they don't have time to sanitize it.

12 The guests don't wear masks once they are seated and
13 nobody is keeping an eye on how many people we can safely seat in the
14 restaurant. Some of the tables are very close together. The music is
15 really loud, and I have to bend over and really get face-to-face with the
16 guests to take their order. Since they are not wearing masks that makes
17 me really uncomfortable. Even in places where people are supposed to
18 be wearing masks, they don't always or they don't wear them correctly.
19 Management never says anything about it.

20 I really need more protection at work. And I am asking the
21 Standards Board to please pass the emergency temporary standards.
22 Thank you for listening.

23 CHAIR THOMAS: Thank you.

24 John, who do we have next in the queue?

25 MR. GOTCHER: Our next commenter is Joy Schnapper of

1 Capistrano Educators Association.

2 CHAIR THOMAS: Joy, can you hear us?

3 MS. SCHNAPPER: Yes. Thank you so much, appreciate that.

4 Good morning.

5 CHAIR THOMAS: Good morning.

6 MS. SCHNAPPER: Thank you for this opportunity to speak to
7 you today. My name is Joy Schnapper and I am the president of the
8 Capistrano Unified Education Association. We are made up of over 2,000
9 members in a district that is the second largest school district in Orange
10 County. It is also the eighth largest district in the state. As you can see,
11 I have an enormous responsibility to the staff and students in our area
12 and I believe you do too.

13 When the petition was submitted earlier this year, my
14 district was closed at the time, but we worked closely with district
15 personnel to put protections in place so that we could move forward with
16 opening. Unfortunately, try as we might, COVID numbers are on the rise
17 at an alarming rate. Some might say this is due to the hasty decisions to
18 open schools and that the emergency procedures put in place need to be
19 reassessed and tightened up to further protect our students and staff.

20 A specific example I can share is the language from our most
21 recent MOU with the district. It reads, "All meetings will be available
22 virtually when all students are 100 percent online. All meetings will
23 meet current CDPH and Orange County Health Care Agency guidelines
24 when held in person." Translated, this means that now while we have
25 students on campuses, staff must be available to meet in-person. This

1 means we will have more people meeting in-person and we will need
2 strong standards that are enforceable by law to keep everyone safe.

3 Furthermore, in our district's reopening and safety plan it
4 clearly states that a student can return to school after 24 hours without
5 a fever and symptoms, improving without a record of a COVID test. This
6 is frightening. I fear for the lives of our teachers, students and all of
7 their families. We need school-centered testing for students and staff to
8 keep everyone safe and to know when it is safe to return.

9 It behooves us to promote more reporting and transparency
10 in data collection. What about a viewable document for faculty and staff
11 to ensure that accurate reporting is being done? The most up-to-date
12 data has yet to make it to district dashboards. We have a stricter policy
13 for lice. And COVID is a pandemic that kills people.

14 Please consider approving the proposed standards you have
15 before you today. Just while writing this we have two new confirmed
16 cases in our district. And this week in the cities within the boundaries of
17 my district there has been an increase of 137 cases. We can't allow our
18 valuable teachers and students to remain pawns in the game of COVID.
19 Thank you very much for your time today.

20 CHAIR THOMAS: Thank you, Joy.

21 John, who do we have next in the queue?

22 MR. GOTCHER: Our next commenter is Bruce Wick from
23 CALPASC.

24 CHAIR THOMAS: Bruce, how are you doing?

25 MR. WICK: Good, Chair Thomas. How are you?

1 CHAIR THOMAS: Good, good. Go right ahead.

2 MR. WICK: Thank you. I'm representing Specialty
3 Contractors Association. I want to bring a few data points to hear, and
4 also talk about construction. The seriousness of COVID was readily
5 embraced by the construction industry, both management and labor. We
6 have worked very hard over the last few months, and I am glad to report
7 that of the total number of workers, less than 2/10ths of one percent of
8 construction workers have filed a workers' comp claim for COVID; less
9 than 2/10ths of a percent.

10 There's information from the California Workers' Comp
11 Institute through November 16th. There is WCIRB information, EDD
12 information.

13 I want to just bring a few more data points too. We know
14 that our heroes in fighting COVID are healthcare workers and our first
15 responders. I mean, just bless them, and they have a serious thing to do,
16 taking care of all of our people. They are 52 percent of all workers' comp
17 claims filed for COVID. They have a remarkable presumption
18 (indiscernible).

19 Just for other industries, some of those who people are
20 calling in about today, represent another 26 percent. So, COVID-19
21 claims for workers' comp are five percent of the total for the state of all
22 positive tests. When you look at the numbers then, one percent are
23 those other industries like construction. So we've done a really good job
24 in many industries, and to then turn around and say, "Well, we need to
25 do more," this new reg will cause people to (indiscernible) COVID-19

1 response plan.

2 They're going to have to make, by my calculation 16
3 additions, three changes and four more navigations with other bills,
4 other guidance. You know, we've had very thorough guidance from
5 Cal/OSHA for every industry since early in this process.

6 So I do want to say a great majority of employers have done
7 the right thing, done very well. I'm sorry to hear from some commenting
8 today that their employers haven't.

9 But just last week Nevada, 99 percent of employers were
10 compliant on a split. So I do think it's best if we delayed this. There are
11 1.4 million small employers in California with less than 20 employees.
12 And to hand them a 21-page regulation and say, "Be in compliance in less
13 than 10 days," is just not going to work.

14 We should delay this so that the Division -- and I appreciate
15 Chief Parker, Eric Berg, they worked extremely, extremely hard trying to
16 get this done. But we need to delay it so that we get a model program
17 out, guidance that helps people navigate the differences, the
18 contradictions between this and AB 685. So when we say, "Here is a
19 reg," we implement it.

20 Every employer has had clear guidance and knowledge of the
21 IIPP. Cal/OSHA's been seriously enforcing seven citations in the last 14
22 days averaging \$39,000 per employer. Cal/OSHA is pursuing it very hard.
23 I appreciate those efforts.

24 Delaying this would be a valuable thing if we really want
25 employers to be able to comply with the law instead of having something

1 on the books that small employers, especially, are not going to be able
2 to incorporate anywhere near in the timeframe. So thank you for your
3 time.

4 CHAIR THOMAS: Thank you.

5 John, who is next up in the queue?

6 MR. GOTCHER: Next in the queue is Efrain Hernandez from
7 the Garment Worker Center.

8 CHAIR THOMAS: Efrain, are you with us? Hello Efrain?

9 MR. HERNANDEZ: Hola? (Overlapping colloquy.)

10 CHAIR THOMAS: Do you have this, Julie?

11 MR. HERNANDEZ: (Through Interpreter Haikalis.) Should I
12 begin? Good morning, my name is Efrain Hernandez and I work for the
13 Garment Worker Center. I have been working also as a (indiscernible) for
14 20 years. I'm hoping to provide my statements about the bad conditions
15 we have in our workplace.

16 There are rats, cockroaches, the bathrooms don't clean and
17 the water filters are dirty and the bathrooms are not mopped quickly.
18 And there is no soap at the --

19 (Audio difficulties.)

20 CHAIR THOMAS: You know, Julie, at this time we are going
21 to move to our -- because we're not getting this. I can't hear. So we are
22 going to go to the next speaker.

23 John, who do we have on the queue?

24 MR. GOTCHER: Our next commenter is Nho Le-Hinds, Sac
25 City Teachers Association.

1 CHAIR THOMAS: Good morning, are you with us?

2 MS. HINDS: Yes, good morning. Can you hear me?

3 CHAIR THOMAS: Yes, we can. Go right ahead.

4 DR. HINDS: Thank you so much. My name is Dr. Le-Hinds
5 and I'm a school nurse at Sacramento City Unified School District. I am
6 also a Professor of Public Health at CSU Sacramento. And this summer I
7 led a team of case investigators and contact tracers at Sacramento
8 County Public Health, and collectively we investigated over 500 positive
9 COVID cases.

10 I represent the 3,000 number of educators, school nurses,
11 psychologists, social workers, speech therapists and program specialists
12 on behalf of SCTA, which is a local chapter of the California Teachers
13 Association.

14 As you know, schools are seen as a central hub for our
15 communities across our state. And if there are not appropriate
16 guidelines and precautions that are required, then employers will
17 continue to place expediency and convenience above worker safety.

18 In my district there have been three deaths and over 30
19 positive COVID cases. This is with minimal staff on our campuses.
20 Contact tracing and case investigation procedures have not been
21 transparent and oftentimes lacking. Staff who are on campus have felt
22 there is a lack of communication regarding possible exposure and feel
23 unsafe. The emergency regulations are especially important in calling
24 out the requirements for contact tracing, addressing outbreaks, face
25 coverings and distancing. And that this will allow for a common set of

1 expectations that can and should be enforced.

2 We strongly urge the Standards Board to approve the
3 proposed standard. After the passage of this emergency standard, we
4 look forward to (indiscernible) with the Division and other stakeholders
5 to support safety for school nurses and COVID prevention in our schools.
6 Thank you.

7 CHAIR THOMAS: Thank you.

8 John, who do we have next up in the queue?

9 MR. GOTCHER: Our next commenter is Emma Allen-
10 Landwehr, from ROC the Bay worker member.

11 CHAIR THOMAS: Emma, can you hear us?

12 MS. ALLEN-LANDWEHR: Yes, can you hear me?

13 CHAIR THOMAS: I can. Go right ahead.

14 MS. ALLEN-LANDWEHR: All right. Hold on one second here,
15 pulling up my document. Okay. So my name is Emma Allen-Landwehr.
16 I'm a restaurant worker in the East Bay and I worked at a Berkeley
17 restaurant for the last eight years. Upon my rehiring in July 2020, I've
18 observed a lack of clear protocol surrounding work safety under COVID-
19 19. There was a failure on the part of management to require accurate
20 training of cleaning procedures. Cleaning tasks were not prioritized
21 throughout shifts, even as management cut all janitorial staff. I observed
22 confusion amongst the staff regarding cleaning expectation and
23 protocols. Upon bringing up my safety concerns to management in the
24 middle of August, I was informed that my concerns had no basis and I
25 was dismissed for my shift without explanation. I observed the following

1 week that my shifts had been garnered as a result of my complaint.

2 Shortly after this I stopped receiving work schedules. A
3 coworker of mine who also voiced concerns relating to work safety under
4 COVID similarly received employer backlash, and eventually also stopped
5 receiving the annual work schedule.

6 Her mother, who had worked in this restaurant for over a
7 decade brought up concerns relating to work safety. And her inability to
8 adequately perform her job due to decreased staff and increased
9 workload. She was informed that if she did not do what was asked of her
10 she no longer had a job, and consequently ended her employment.

11 Following my separation from my long-time employer I was
12 informed by fellow coworkers, several of my coworkers in the back of
13 (indiscernible) had tested positive for COVID-19. There are at least four
14 cases that I currently know about. One of the employees was
15 hospitalized as a result of his infection, and members of his family also
16 contracted COVID-19. Management neglected to notify staff of positive
17 cases or to investigate potential exposure to other workers.

18 In response and out of concern for the safety of our
19 community, I and several other employees at this restaurant submitted
20 OSHA workplace safety complaints. Some these complaints
21 (indiscernible) invalidated one of which was regarding failure to report
22 positive COVID cases to the City of Berkeley. However, the business
23 remains open and people are at risk. Those of us who have spoken out
24 have been retaliated against.

25 We need decisive action on the part of OSHA to advocate for

1 the safety of restaurant workers. We need access to clear,
2 (indiscernible) and adequate training. We must have mechanisms of
3 accountability when protocols are violated. We must have assurances
4 that current COVID cases will be reported and then investigated, and that
5 contact tracing (indiscernible) will be conducted.

6 We must have access to clear information around paid sick
7 leave in the event of contracting COVID. We need to know that our
8 personal safety as laborers is valued and prioritized over profits.
9 Currently this isn't with me and my restaurant worker community. We
10 need decisive action now from OSHA. We cannot afford delays in issuing
11 of updated temporary emergency standards under COVID. The physical
12 safety of workers is in jeopardy. Thank you for hearing me today.

13 CHAIR THOMAS: Thank you, Emma. I think she was done.
14 Thank you for your comments.

15 John, who do we have next in the queue?

16 MR. GOTCHER: Our next commenter is Natasha Castro of Los
17 Angeles Alliance for a New Economy.

18 CHAIR THOMAS: Natasha, are you with us?

19 MS. CASTRO: I am, hi.

20 CHAIR THOMAS: Hi.

21 MS. CASTRO: Good morning, my name is Natasha Castro and
22 I'm a worker and community organizer with the Los Angeles Alliance for a
23 New Economy on our Fair Work Week L.A. campaign.

24 I'm speaking today on behalf of our entire coalition, which is
25 made up of over 70 organizations in support of Petition 583. We are a

1 coalition of laborers, community groups, health advocates and retail
2 workers who, since the start of the pandemic, have been advocating for
3 the health and safety of retail workers to curb the spread of COVID-19 at
4 the workplace.

5 As for my workers, many of them have dealt with employers
6 who are not enforcing public health orders and thus have experienced
7 outbreaks at their jobs. Several of our retail worker members have
8 shared that their employers are not regulating the number of customers
9 that come in the store and so there is no social distancing.

10 Many workers also do not have access to the basic cleaning
11 supplies that they need to disinfect the areas that they work in.

12 Unfortunately there have been outbreaks at some of these
13 workplaces and employers have failed to adequately clean the stores or
14 do anything to prevent further outbreaks. When these outbreaks
15 occurred, it was very concerning to hear that cleaning was limited to
16 shopping carts and registers for customers to feel safe while disregarding
17 the health and safety of workers.

18 Many workers are also worried because they know the
19 pandemic is far from being over and their employers are not doing
20 enough to keep them safe.

21 We support the emergency temporary standard because all
22 workers in California need to be protected from COVID-19 as well as any
23 other future situations of this magnitude. Employers who are failing to
24 comply with local health orders need to be held accountable. Thank you.

25 CHAIR THOMAS: Thank you.

1 John, who do we have next in the queue?

2 MR. GOTCHER: Our next commenter is Robert Harrison MD,
3 MPH from UC San Francisco.

4 CHAIR THOMAS: Robert, are you with us?

5 MR. HARRISON: I am. Are you able to hear me?

6 CHAIR THOMAS: Yes, go right ahead.

7 DR. HARRISON: Thank you. I am Bob Harrison, clinical
8 professor at the University of California San Francisco, faculty in
9 occupational and environmental medicine. I'm talking to you not
10 obviously on behalf of the entire University of California or San
11 Francisco, but as someone who's been doing a lot of research and
12 consulting and also as a former member of this esteemed Occupational
13 Safety and Health Standards Board. I sat where you are for about three
14 years as the Occupational Safety and Health Representative, so in
15 Barbara Burgel's seat.

16 And I just really wanted to make very brief comments in
17 support of the emergency temporary standard for COVID. My reading of
18 that proposal is that it's balanced, accurate and clear. And that would be
19 extremely beneficial on three counts. First, for those employers who
20 already are largely complying with good worker protection programs for
21 COVID, I think they have little to be concerned about. I think the
22 emergency temporary standard has covered all the essential elements
23 that employers need to follow based on local, state and federal public
24 health guidance and best practice and best science. Employers who are
25 already doing a good job I think are not going to have much concern over

1 that emergency standard.

2 Second, the employers who are searching for best practices
3 and guidance and consultation I think are also going to find the elements
4 of the ETS clear and beneficial for them. And I would assume that an
5 ETS, if and when it's passed, becomes in effect that it would be
6 accompanied by that kind of guidance so employers can be clear about
7 what they need to do. And I think that that when we have a standard,
8 California is extremely beneficial.

9 And the third group are employers who either because
10 there's a complaint or they are subject to targeted inspection efforts by
11 DOSH, I think they will also have clarity about what they are expected to
12 do. And the compliance officers for DOSH will also have the tools that
13 they need to be clear what is enforceable. And I think that that's also
14 benefit to that third group of employers.

15 And so I applaud DOSH for really, in a very rapid period of
16 time, crafting what I think is a science based, very clear standard.

17 I sat in your seats when we considered the emergency
18 temporary standard for heat illness in California. And I recall that I had a
19 question, while this was done pretty quickly, should we take more time?
20 Do we need more time to debate, to get this absolutely perfect? And I
21 would say with COVID moving so quickly, so rapidly that I don't think that
22 we should make the perfect be the enemy of the good. And this standard
23 is about 90 percent spot on. So I want to thank the Division and the staff
24 who wrote and reviewed this. And thank you for all of your efforts and
25 consideration.

1 CHAIR THOMAS: Thank you.

2 John, who do we have next in the queue?

3 MR. GOTCHER: Our next commenter is David, and we don't
4 have a last name for him from ROC the Bay worker member.

5 CHAIR THOMAS: David, are you with us? (Translator
6 speaking in Spanish to David.)

7 DAVID: David.

8 CHAIR THOMAS: Go right ahead.

9 (Translator and David talk back and forth.)

10 CHAIR THOMAS: Please tell him to go ahead and make his
11 comments.

12 DAVID: (Through Interpreter Haikalis) My name is David. I
13 work in the restaurant industry. And because of this COVID situation
14 (indiscernible) don't have the equipment to work like this.

15 CHAIR THOMAS: Any other comments?

16 DAVID: (Through Interpreter Haikalis) They need to check, to
17 inspect the restaurants more often to make sure that they are compliant
18 with the standard. And that the employees have the protection that they
19 require.

20 CHAIR THOMAS: Thank you. Thank you for your comments.

21 John, who do we have next in the queue?

22 MR. GOTCHER: So we got a Spanish-speaking commenter a
23 few commenters ago. And I was wondering, Susana, if you remember – if
24 we could get a clear message from Efrain Hernandez -- if you spoke with
25 him before or knew what he wanted to comment?

1 INTERPRETER HAIKALIS: Yes, you would like me to ask him
2 what? I'm sorry.

3 MR. GOTCHER: Well, if you remember. So we couldn't
4 totally understand what he was saying. And we were hoping that you
5 would remember some of your conversation with him.

6 INTERPRETER HAIKALIS: Oh, hold on. Let me look at my
7 notes here.

8 CHAIR THOMAS: (Overlapping colloquy.) Go ahead.

9 INTERPRETER HAIKALIS: He said that he was giving us
10 information about his workplace. That the employers were not cleaning
11 the workplace. That they had rats and cockroaches. They had problems
12 with the water filters and the bathrooms were not cleaned. And then
13 there was a lot of (indiscernible) and I wasn't able to hear more.

14 CHAIR THOMAS: You know, I'm going to stop those
15 comments. We get the picture, but we don't have time to do this today.
16 So John, would you move on to the next commenter please?

17 MR. GOTCHER: Our next commenter is Michael Miiller from
18 the California Association of Winegrape Growers.

19 CHAIR THOMAS: Michael, are you there?

20 MR. MIILLER: Yes, I am. Good morning.

21 CHAIR THOMAS: Go right ahead.

22 MR. MIILLER: Good morning. Thank you Chair and Members,
23 appreciate your discussion this morning. My name is Michael Miiller.

24 I'm representing the California Association of Winegrape Growers.

25 Today, you're considering adoption of the COVID-19 safety

1 emergency standard. It would apply to each and every California
2 industry, each and every California employee, and each and every person
3 in California, whether they are employed or not.

4 There is no question that COVID is a crisis and emergency
5 (indiscernible) in California. But when considering an emergency
6 regulation like this, eight months after the declaration of a pandemic, it
7 begs the question of what took so long and why didn't the state act
8 earlier?

9 Well, we all know the answer, the state did indeed act.
10 Governor Newsom issued several executive orders. Agencies including
11 the California Department of Public Health issued several guidance
12 documents. Cal/OSHA participated and took the lead in developing and
13 enforcing many of these guidelines. Additionally, several counties and
14 cities went further and issued even more stringent local guidelines.

15 Every issue in this regulation is already addressed through
16 existing guidelines. And all guidelines have been strictly enforced
17 including substantial fines for noncompliance. We all know this.

18 There's no question that this regulation is far beyond the
19 Board's statutory authority. For example, the Board has no authority to
20 dictate compensation while an employee is away from work. To do so
21 would (indiscernible) interests of the public good, which have been a
22 form of a broad emergency regulation. Such a regulation would be under
23 the Department of Public Health.

24 By and large, we all, as a community, are trying to defeat
25 COVID-19. It makes no sense to make employers responsible as a public

1 safety net for COVID-19, which is exactly what this regulation does.

2 A prior speaker asked that you not let the perfect be the
3 enemy of the good. I agree with that intent. However, please consider
4 another approach of first do no harm. As this regulation is being rushed
5 through, we all know that there will be unintended consequences, and
6 those consequences are harmful.

7 For example, this regulation would reduce safe housing for
8 essential workers. The regulation eliminates an employer's option
9 through (indiscernible) housing provided under Governor Newsom's
10 Housing for the Harvest Program. You see, because under this regulation
11 the employer would have arranged for housing that does not comply with
12 the regulation. This regulation treats all housing alike: hotel rooms,
13 apartments, single-family dwelling, etc. Therefore, this regulation
14 unintentionally requires a hotel room to be cleaned daily (indiscernible)
15 accommodations separate from others. Consequently, no employer
16 would ever refer an employee to Housing for the Harvest under this
17 regulation. This means less housing for those who need it most.

18 Additionally, if an employer provides housing for its
19 employees, spaces for beds, or the heads of the beds in the corners of
20 the room, are ordered 10 feet apart. And then with these partitions
21 between the beds, that housing does not comply with this regulation
22 either. That is because the foot of the beds are less than six feet apart.
23 However, this kind of spacing is allowed under some county guidelines,
24 which are already in place.

25 Relative to transportation, please keep in mind that many

1 employers provide bus passes for employees, a contract with the bus
2 company to provide transportation for those employees if they so desire
3 to use it. However, this regulation makes the employer of those bus
4 passengers responsible for all kinds of actions by the transit company,
5 including when the bus driver wipes down the steering wheel. Those are
6 beyond the control of the employer.

7 I appreciate that you all understand that this regulation is
8 riddled with problems. I would appreciate your intention to continue
9 working on this through an advisory committee and I volunteer to serve
10 on that committee if the Board so desires. However, while the advisory
11 committee is reviewing options, this regulation will be law that must be
12 enforced and complied with.

13 As an advocate for an industry association, I must advise our
14 employer members to comply with the regulation as written and
15 approved by this Board immediately when it becomes effective.
16 Consequently, an advisory committee after the fact is probably like
17 drying your shoes when you could have just avoided stepping in the
18 water puddle in the first place.

19 I allow myself (indiscernible) these comments, and I ask that
20 this be delayed for a month to identify and resolve the unintended
21 consequences which are harmful. And I will make myself available to
22 assist in that effort. Thank you so much for your time and your
23 commitment to this issue. I appreciate it.

24 CHAIR THOMAS: Thank you.

25 John, who do we have next in the queue?

1 MR. GOTCHER: Our next commenter is Michael Young of the
2 California Federation of Teachers.

3 MR. YOUNG: Hi, this is Michael Young with the California
4 Federation of Teachers, and we're in strong support of the emergency
5 standard, understanding that this is a general workplace standard.

6 I want to focus a little bit on why this is important for
7 schools. We've seen studies showing that there have been an increased
8 number of children being diagnosed with COVID-19. For example, a
9 recent study released by the American Academy of Pediatrics show that
10 as of November 12th over one million children in the U.S. have tested
11 positive for COVID-19 since the pandemic began. The number of new
12 COVID child cases for COVID-19 reported last week was approximately
13 112,000. It was by far the highest weekly increase since the pandemic
14 began.

15 Now, lastly I want to go over a recent Center for Disease
16 Control Prevention study about the children between the ages of 10 and
17 19 spread the virus at the same rate as adults do.

18 This is all important, because schools are a unique type of
19 workplace that carry unique types of risks. Schools are, number one,
20 compulsory for children, right? We require them to -- we mandate and
21 require their attendance. In addition to classroom education there are
22 unique recreation and food (indiscernible) environment. And classified
23 employees are dealing with minors that may struggle to deal with social
24 distancing and mask-wearing and issues like that.

25 I've also mentioned this before, but I think it bears

1 repeating, that some California school districts are asking the school
2 employees to sign assumption-of-risk letters. Literally, there are
3 districts that are asking employees to sign letters that state, "I hereby
4 acknowledge the risk of exposure to the coronavirus and I acknowledge
5 the risk that I may contract the coronavirus by coming on to the school
6 district premises and interacting with employees, students and other
7 people."

8 Additionally, the state guidance regarding reopening schools
9 allows for some schools in known COVID hotspots, in those purple-tier
10 areas, to reopen for in-person instruction. In this environment I think
11 it's important to understand the risk to students, to parents, to staff,
12 really, to any family that has school-aged kids or has school employees.
13 It's imperative that we have clear enforcement, clear rules, clear
14 compliance on workplace safety, things like mandating social distancing,
15 (indiscernible) taking steps to maximize air quality, providing information
16 to reduce the spread of infection and inform workers of their rights and
17 benefits if they are exposed or test positive. And also, clear testing
18 requirements during an outbreak.

19 I do wish that the language included in the standard had -- I
20 do wish there was some language around anti-discrimination and anti-
21 retaliation protections for workers to ensure that workers are treated
22 fairly and aren't intimidated from coming forward when employers fail
23 to meet their obligations to protect workers.

24 Lastly, I just want to say it makes no sense for employers to
25 say they should be allowed to have workers in unsafe workplaces now

1 and give them weeks or months before COVID-specific workplace
2 regulations apply to them. Workers are being exposed at record numbers
3 now, workers are at risk now, workers are dying now.

4 There was millions allocated in the last budget; significant
5 resources for outreach and education for employers. Cal/OSHA has
6 numerous resources to help employers comply. We can't drag our feet in
7 terms of making sure that workers and our worksites are protected
8 immediately. And I strongly urge passing this emergency standard.
9 Thank you.

10 CHAIR THOMAS: Thank you, Michael.

11 John, who do we have next in the queue?

12 MR. GOTCHER: Our next commenter is Maria Vasquez of the
13 Restaurant Opportunity Center of Los Angeles.

14 CHAIR THOMAS: Maria, are you with us? Hello?

15 (Maria speaking in Spanish.)

16 CHAIR THOMAS: Go right ahead.

17 MS. VAZQUEZ: (Through Interpreter Haikalis) I am a worker
18 of (indiscernible), it's a restaurant. And my employer has only provided
19 us a mask since this began. And they told us that we have to be careful
20 and we have to be responsible for doing this.

21 So we understand with this that they care more about the
22 job than they care about the employees. They have given us no
23 instructions, no instruction and no orders or anything to be able to take
24 care of ourselves and our families.

25 So we have learned through some coworkers that some of

1 the people here have become sick, but they have not informed us about
2 it. We have to be exposed to all this and plus take care of our jobs.

3 So we request from the employers to let us work in safe
4 areas and for them to provide us the necessary equipment. Thank you
5 for your time and for listening to us.

6 CHAIR THOMAS: Thank you very much.

7 John, who do we have next up in the queue?

8 MR. GOTCHER: Our next commenter is Angelica Miklos from
9 Folsom Cordova Education Association.

10 CHAIR THOMAS: Angelica, are you with us?

11 MS. MIKLOS: Yes, I am.

12 CHAIR THOMAS: Go right ahead.

13 MS. MIKLOS: Good morning. My name is Angelica Miklos
14 and I represent 1,100 educators as President of the Folsom Cordova
15 Education Association, which is a local chapter of the California Teachers
16 Association.

17 We appreciate the urgency in which the proposed emergency
18 regulations were developed and moved forward. As you know, the
19 COVID-19 pandemic --

20 CHAIR THOMAS: Angelica, can I interrupt?

21 MS. MIKLOS: Yes?

22 CHAIR THOMAS: Can you slow down just a little bit?

23 MS. MIKLOS: Yes, absolutely. I'm sorry.

24 CHAIR THOMAS: Because we have somebody recording or
25 transcribing this, so just slow. Thank you.

1 MS. MIKLOS: That's okay. I've got to start where I left off.
2 We appreciate the urgency in which the proposed emergency regulations
3 were developed and moved forward. As you know, the COVID-19
4 pandemic is only trending worse and these emergency regulations are
5 necessary to help keep employees safe.

6 As you know, schools are seen as a central hub for
7 communities across our state and if there are not appropriate guidelines
8 and precautions that are required then employers will continue to place
9 expediency and convenience above workers safety.

10 In my area, my district opened our elementary sites in the
11 hybrid model last Thursday. Social distancing is a big concern for us.
12 Many classrooms do not allow for strict six-foot distancing between
13 students. While PPE such as masks and gloves are being provided, it's
14 done by request. It has not been made clear to all staff how to request
15 the needed supplies, and when they do they're usually only allotted five
16 masks or five sets of gloves per class, which is often not sufficient to get
17 through the week.

18 It's very concerning that we've already had half a dozen
19 positive cases since opening just last Thursday and that's just with a
20 portion of our overall population, just elementary, no secondary
21 students.

22 The emergency regulations are especially important in calling
23 out the requirements for contact tracing, addressing outbreaks, face
24 coverings and distancing. And this will allow for a common set of
25 expectations that can and should be enforced.

1 We strongly encourage -- I'm sorry, we strongly urge the
2 Standards Board to approve the proposed standard. Thank you so much
3 for your time.

4 CHAIR THOMAS: Thank you.

5 John, who do we have next up in the queue?

6 MR. GOTCHER: Our next commenter is Stan Santos from
7 Fresno-Madera-Tulare-Kings Labor Council.

8 CHAIR THOMAS: Stan, go right ahead.

9 MR. SANTOS: Good morning. Thank you very much for giving
10 me this opportunity.

11 CHAIR THOMAS: Good morning.

12 MR. SANTOS: I have a colleague by the name of Dr. Salvador
13 Sandoval who is the head of the Merced Public Health Department that
14 had the investigation of Livingston. And I was going to read off the
15 chronology of events that took place per his statement, but I have to
16 kind of deviate from that plan. But if you were to please read that
17 statement. I sent it to be entered into the record. And it's almost like a
18 march of death.

19 And it's a march of death of unwilling workers who had no
20 opportunity to make any choices. And it starts in April when they
21 become aware of the first illness. You go through May and June and
22 somewhere in there was the first fatality, which was actually reported on
23 July 21st through relatives, not the company.

24 And then all of a sudden in quick succession, listen to this,
25 on August 23rd, you know, "We saw that the 29 recommendations had

1 not been followed. Then we warned the company. And that same day
2 we realized another death. The next day the fourth death, the fifth,
3 another death."

4 I can't believe that we are debating this in such a manner. By
5 the time it was done, it was 400 or so people infected and nine deaths.
6 None of the reporting was done by the company, very minimum
7 standards were enforced. It was done after they were brought in kicking
8 and screaming and after an intervention by the, I believe, the Federal
9 Health Administrator, or Deputy Administrator.

10 The only other thing I have to say is that the statements by
11 the Chamber of Commerce individual, and some of that are so self-
12 serving. We live in Fresno County and I've worked out in those fields.
13 And I work for a telephone company now, but I've seen the work and the
14 way the dynamic unfolds there. Hispanics are 54 or 55 percent of the
15 population. We're 60 percent of the fatalities. You know, it may not
16 matter to a lot of people, but it certainly matters to us.

17 So I would ask that you implement these standards and sort
18 out the methodology and the rules for implementation in a way that is
19 not, almost like you said, of false choices where they say, "If you
20 implement this now it's going to kill our industry." Well, you're killing
21 people right now. We don't have time to wait. The pandemic is going to
22 reach its peak soon. And then long before the medicinal applications
23 kick in it will be too late for those people.

24 So please consider this and I appreciate the time that you
25 have afforded me. Thank you very much.

1 CHAIR THOMAS: Thank you, Stan.

2 John, who do we have next up in the queue?

3 MR. GOTCHER: Our next commenter is Pamela Murcell of the
4 California Industrial Hygiene Council.

5 CHAIR THOMAS: Pamela, are you with us? Pamela? I think
6 we need to turn up your mic or -- hello?

7 John, I don't think she's there. Why don't we go on to the
8 next?

9 MR. GOTCHER: Okay. Our next commenter is Rachel Reyes
10 of LAANE.

11 CHAIR THOMAS: Rachel, are you with us?

12 MS. REYES: Hi, yes. Can you hear me?

13 CHAIR THOMAS: Yes, go right ahead.

14 MS. REYES: Awesome. Hello, my name is Rachel Reyes and I
15 am a worker/organizer with the Los Angeles Alliance for a New Economy
16 on the Fair Work Week L.A. Campaign.

17 I worked in retail for six years. And up until this March I was
18 working during the beginning of this pandemic at a mall in Santa Monica,
19 a nexus of travel and tourism. What my team and I experienced at the
20 lead-up to the eventual lockdown in March was an abdication of duty
21 from every single level. Mall management put the onus to protect
22 workers on the brands, and my company's corporate offices said that
23 they were deferring to mall management. No one wanted to make any
24 courageous decisions regarding our health and safety. We were left with
25 no answers or any guidance. Many workers are still in this position

1 today.

2 Of course, I understand that the COVID-19 pandemic is
3 unprecedented, but my issues rest solely on how little mall management
4 and corporate management cared to curb the spread of the virus. We did
5 not know how the virus was spreading at the time. Was it airborne or
6 was it through touching surfaces? But neither the mall nor my former
7 employer felt a need to make any kind of intervention. Nobody took any
8 precaution. I had to make up my own health and safety standards,
9 because there was no direction for me to reference.

10 In addition to our standard daily cleaning procedures that we
11 always implemented I asked my staff to wash their hands after every
12 interaction with a guest. I told my team to stop accepting cash. I asked
13 my staff to keep an arms-length distance between every customer. I did
14 all of this against my company's advice which was, "business as usual." It
15 was more important for me as a leader in-store to exhibit the health and
16 safety protocol that my team deserved, especially knowing that only full-
17 time staff like myself were given healthcare.

18 I started stocking up on necessary supplies that I saw flying
19 off of the shelves starting in February. I over-ordered and bulk ordered
20 on cleaning supplies, hand sanitizer and toilet paper. I began portioning
21 out these items to my team in March before the lockdown. Each
22 employee received hand sanitizer, toilet paper and disinfectant that I
23 ordered the month before. I knew that taking these items paid for by the
24 company out of the store would put my job at risk, but as a manager it
25 was my job to take care of my team.

1 There are tens of thousands of people just like my former
2 staff who were asked to go back to work in shopping malls this summer.
3 They are not deemed essential, but are essential in so far as if malls
4 aren't open, our entire economy tanks. We have asked tens of thousands
5 of workers to go back to work during a health crisis. We have asked
6 workers to smile at customers under their masks and sell them shoes,
7 jackets and pretzels without providing strong Cal/OSHA standards for
8 employers to follow during this unprecedented time. We will continue to
9 lose workers lives without clear direction or guidance in place for
10 management to follow.

11 The little guidance that people have now, they are not
12 following or implementing. We know that for a fact. So I urge you to
13 please pass the emergency temporary standard so that employers that
14 don't comply with the COVID-19 guidelines are held accountable in order
15 to protect the health and safety of workers. Thank you.

16 CHAIR THOMAS: Thank you.

17 John, who do we have next up in the queue?

18 MR. GOTCHER: Our next commenter is Melissa Love of
19 United for Respect.

20 CHAIR THOMAS: Melissa, are you with us?

21 MS. LOVE: Yes.

22 CHAIR THOMAS: Go right ahead.

23 MS. LOVE: Hi, good morning. And thank you for having me
24 today. My name is Melissa Love and I am current Walmart associate at
25 store 4101 in the City of Long Beach. I've worked at Walmart for five

1 years now. I've worked for myself and live with my father who has been
2 out of work since the start of the pandemic.

3 These last nine months have taken a toll on all of us. And we
4 cannot deny that this pandemic has been devastating to some
5 communities over the year or over others. Working at Walmart
6 throughout this pandemic has been stressful, unpredictable and resulted
7 in (indiscernible) by employers. That is why I'm in support of passing the
8 emergency temporary standards for COVID-19.

9 All of California went on a lockdown at the beginning of
10 March. Walmart did not (indiscernible) any real policies until April 17th.
11 These policies were ever only required workers to wear a mask and not
12 customers. We were still required to have to serve anyone that came
13 into the store without a mask. It wasn't until July 20th that Walmart
14 required both associates and customers to wear masks. (indiscernible)
15 They were still allowing customers to come into their stores without
16 masks to avoid physical confrontations.

17 My coworkers and I have already experienced customers who
18 did not properly wear masks or did not want to wear them at all. On top
19 of that, management was not helping us to enforce mask wearing or
20 social distancing. Due to Walmart's negligence, dozens of Walmart
21 stores across the country have had outbreaks leading to associates'
22 deaths.

23 In my store, we have had two confirmed cases, but
24 management did not have the decency to inform us when they found out.
25 I had to alert my coworkers that there were cases days after they

1 occurred. Walmart decides what is safe for associates (indiscernible).
2 They should have not been allowed to put us at risk (indiscernible) lives.
3 I mentioned that (indiscernible) we are left to fend for ourselves and
4 possibly work alongside someone who came in contact with infected
5 coworkers.

6 Walmart is still not enforcing social distancing at any of its
7 stores and we serve 300 customers at a time.

8 Around April or May they placed flooring tiles to encourage
9 social distancing in certain aisles as well as the checkout (indiscernible).

10 Customers who ask for assistance come too close and do not
11 respect personal boundaries. Over the course of the pandemic, Walmart
12 has made over \$43 billion and still has not provided us with hazard pay.
13 It seems to me that Walmart cares more about making profits, allowing
14 customers to disrespect us, while (indiscernible) associates'
15 (indiscernible).

16 I'm calling you to pass the emergency temporary standards
17 for COVID, because people like myself cannot go another day without the
18 hazard of (indiscernible) working conditions we are being forced into. I
19 shouldn't have to put my life or my father's life at risk for a company
20 that does not care about me. Thank you.

21 CHAIR THOMAS: Thank you very much.

22 John, who do we have next in the queue?

23 MR. GOTCHER: Our next commenter is Dan Leacox of Leacox
24 and Associates.

25 CHAIR THOMAS: Dan, are you with us? Can you hear us?

1 MR. LEACOX: I am. Can you hear me fine?

2 CHAIR THOMAS: We can, go right ahead.

3 MR. LEACOX: Okay great. Great. Good morning Board
4 Members, staff and fellow stakeholders. My name is Dan Leacox. I'm
5 speaking again today simply as an individual. I'm not representing
6 anyone except those who might agree with me. And today I'm directing
7 my comments to the good people in this audience. The ones who can live
8 and work together, perhaps without more regulation. I think that is by
9 far most of us. We need to make sure that our efforts to manage the bad
10 people don't trample on our reasons for living.

11 To be brief, I will speak from a high level and hope it
12 connects well with the particulars stated by others.

13 The first thing I have to say is just in response to some of
14 what I have been hearing in the comments. And that is there needs to be
15 a separation between need for greater enforcement and need for more
16 rules. This is about what this rule adds to the existing regulatory
17 structure and what is currently enforceable and not about what already
18 exists. And I think it's a fair question to challenge what this rule adds as
19 necessary and how helpful it is.

20 I believe we have a very bright future, but this rule is not a
21 step in that direction. The usual response when one criticizes the
22 solution to a problem is to attack the messenger and claim the
23 messenger doesn't care about the problem. This is a public relations
24 tactic, but it's not the truth. The problem and the solution are not the
25 same thing. The direction one chooses in the solution of a problem

1 depends on one's ultimate destination. I'm concerned about the
2 destination contemplated by this solution and I believe you should share
3 this concern.

4 As our Attorney General kindly pointed out on Monday, this
5 is a proposal to establish an enforceable legal standard applicable to
6 workplaces to directly and comprehensively protect workers, their
7 families and the public at large. Well this sounds great, but this agenda
8 to press employers into the service of public health goals has taken this
9 rule too far.

10 Certainly, workplaces are a piece of the puzzle, the public
11 health puzzle, but the agenda evident in this rule calls for employers to
12 reach into the private affairs of their employees and for employers to
13 control things beyond their control. It creates conflict between
14 employers and employees and sets up a turkey shoot of legal action
15 against good employers.

16 The economics of this are also troubling for workers as well
17 as employers. Workers can't be insulated from the economic
18 consequences of what we do, so I'm going to talk about them, but that's
19 not an uncaring act. A direct cost in lost revenues are enormous. We
20 don't have a number for that, but I think the magnitude is obvious. And
21 I'd like to put this into context for the good workers of good employers
22 with less than 500 employees.

23 The average regulatory burden per employee rose \$8,000 in
24 2008 to \$11,700 in 2016. And again, that's the cost per employee. This
25 represents 99 percent of all businesses and 53 percent of all employees.

1 The average regulatory burden per employee is even higher
2 for the smaller companies. In 2016 the burden was \$14,000 per
3 employee in businesses with one to 49 employees. That represents over
4 25 percent of all employees. That was in 2016 before any of this was
5 brought to bear. Regulatory costs are shared by employees in the form
6 of reduced pay, employers in the form of reduced profit, and consumers
7 in the form of higher prices. Of course employees and employers are
8 also consumers, so both pay twice.

9 Also employees have a stake in the viability of their
10 employer. Taxability and advancement require business profitability, so
11 employees have a stake in all three impacts.

12 I'd really like to see this Board take a tough stand against the
13 elements of this rule that go beyond reason. For example, just one,
14 section (c)(6) requires six feet of separation except where an employer
15 can demonstrate that six feet of separation is not possible. It seems to
16 me that that is a ridiculous evidentiary burden, there for the convenience
17 of enforcement and not compliance. You are the executive branch of this
18 Cal/OSHA operation, surely you can take action to separate the wheat
19 from the chaff in this proposed rule.

20 At the present time we are living with two prevalent hazards:
21 COVID and fear. We can manage the virus, disease is not a new problem.
22 We will come out of it and breathe the same air again. I am more
23 concerned about the fear. Fear is a dark place of mistrust. People in fear
24 harm others to protect themselves. They do rash and irrational things,
25 so I worry about what will be left when the COVID story ends.

1 Among those things I hope we don't give up out of fear and
2 don't lose is respect for the law. Bad people live in contempt of the law.
3 Good people respect the law until the government itself breeds their
4 contempt. There are many ways this happens to name a few and you've
5 heard some examples today, but honestly do more harm than good. Laws
6 that do not conform to the spirit of more senior laws. Laws that pit good
7 people against each other. Laws that penalize good people for doing the
8 right thing. Laws that force people to choose between compliance and
9 their dreams. And those are true for the workers as well as the
10 employers.

11 There are other ways, that's an old story. But I hope that we
12 can keep an eye on the mountain and come out of this thing with a very
13 bright future and not compromise ideals that would compromise that
14 future. Thank you for your time and attention.

15 CHAIR THOMAS: Thank you.

16 John, who do we have next up?

17 MR. GOTCHER: Our next commenter is Aimee Thompson
18 from Livermore Education Association.

19 CHAIR THOMAS: Hello, Aimee. Can you hear us? (No audible
20 response.) Aimee? Can you hear us Aimee?

21 I think we'll have to go on to the next, John.

22 MR. GOTCHER: Okay.

23 CHAIR THOMAS: Sorry, go ahead.

24 MR. GOTCHER: Next up is Nicole Rice from California
25 Manufacturers and Technology Association.

1 CHAIR THOMAS: Nicole, are you with us?

2 MS. RICE: Yes, I am, Mr. Chair. Can you hear me?

3 CHAIR THOMAS: Yes, go right ahead.

4 MS. RICE: Perfect, thank you. Thank you Mr. Chair and

5 Board Members for allowing me to speak today. Once again my name is

6 Nicole Rice and I'm with the California Manufacturers and Technology

7 Association.

8 CHAIR THOMAS: Can I interrupt you for just a minute,

9 Nicole? You're going to come up next, we'll come back to you. We went

10 to the next, because we didn't have communication. So we have one in

11 front of you and then we will go to you next. Okay, Nicole?

12 MS. RICE: Okay, sounds good. Thank you.

13 CHAIR THOMAS: All right. All right, thank you.

14 All right, Aimee, go ahead. I think it was Aimee. (No audible

15 response.) Hello?

16 MR. GOTCHER: Aimee Thompson?

17 CHAIR THOMAS: Yeah, Aimee.

18 MR. GOTCHER: From the Livermore Education Association.

19 CHAIR THOMAS: I just saw her on the screen. John, let's go

20 back to Nicole. She was right there ready to go.

21 MR. GOTCHER: Okay, Nicole, are you ready?

22 CHAIR THOMAS: Nicole, go right ahead.

23 MS. RICE: Yes, okay. Perfect.

24 CHAIR THOMAS: Go ahead. Thank you.

25 MS. RICE: Thanks. So once again, my name is Nicole Rice.

1 I'm with the California Manufacturers and Technology Association. And
2 first I wanted to start off by saying that California manufacturers, we
3 don't disagree about the importance of keeping our workers and our
4 workplaces safe during this crisis. As an essential industry, we were
5 open in the early stages of this crisis. And before anyone had a chance to
6 act, we as other essential industries had to act in order to keep our
7 workplaces safe, our workers safe and keep essential goods flowing to
8 not only Californians but also our country and our global community.

9 So our concern today as many others have pointed out is
10 about the process. I think we have demonstrated as the industry
11 community that we are willing to come to the table and have
12 conversations, trying to achieve balance of workplace safety as well as
13 operate with integrity. Because in addition to the safety component
14 being important, we also want to make sure that we keep our businesses
15 open, so that we can keep individuals working and employed during this
16 crisis to try to mitigate all impacts that could result.

17 So many who have come before me have spoken about the
18 timing and necessity of this regulation. We too want to align ourselves
19 with those comments and agree that when we are looking in the face of
20 six weeks before many of the actions that have been taken by the
21 Legislature that will go into effect, most notably AB 685, we are
22 concerned about the timing of this regulation. We do ask for the Board
23 to take more time and consideration to allow more conversation with all
24 stakeholders at the table. And as an alternative approach to make sure
25 that the advisory committee process begins immediately if this regulation

1 does indeed go forward.

2 I also wanted to point out concerns about the inconsistency.
3 We think that the rushed nature of this conversation has created
4 inconsistencies with soon-to-be-existing laws, as well as other elements
5 that are currently in place.

6 For instance, under CDC in the critical infrastructure
7 guideline, it provides that workers in those critical infrastructure sectors
8 like manufacturing can return to work after COVID exposure in a
9 timeframe less than 14 days after the date of the exposure provided that
10 certain additional controls are taken or are in place. Like wearing
11 surgical masks during the day, implementing the appropriate safety
12 procedures, and the like.

13 The California Department of Public Health has also
14 authorized this practice in their COVID employer playbook. However,
15 this regulation does not provide that type of consideration. So that just
16 shows that the lack of coordination is creating inconsistencies and
17 arguably as others have raised, creating this layer of mandates and
18 responsibilities on employers and manufacturers.

19 You have local ordinances, you have state law that's coming
20 online. You have existing guidance that Cal/OSHA itself has put out in
21 the early days of this crisis. Now you would have this regulation, not to
22 mention all the federal rules and guidance that overlaps in this area. So
23 it's not inconceivable to be hearing the concerns from the employer
24 community, because how are we supposed to really, truly understand to
25 achieve your objectives as well as ours about what we're supposed to

1 comply with. How are we supposed to comply? And all of that done
2 under the threat of increased and continued enforcement, which I'd like
3 to point out that there has been enforcement by Cal/OSHA and the
4 Division related to the guidelines. And these unfortunate situations that
5 we are hearing today are truly that, unfortunate. But Cal/OSHA has been
6 active in this space.

7 Also want to point out the feasibility and flexibility. Again,
8 with all stakeholders at the table we can come together and find the
9 right balance between worker protections and operational integrity. But
10 as it's been said earlier, as I just said, we've demonstrated that we are
11 willing to come to the table with the same objectives for workers safety.
12 But passing regulations with unworkable and confusing provisions will
13 not produce the clarity that everyone has spoken of and will not produce
14 the very strategic and targeted action that everyone hopes.

15 Examples of infeasibility relate to, for instance, the provision
16 under 3205.4(f) related to employer-provided transportation. In some
17 circumstances, long-haul buses are used to transport employees to their
18 workplaces. In these types of buses, the windows are not designed to
19 open except in emergency situations. So a manufacturer who is
20 providing this service would not be able to do the ventilation prescribed
21 under this standard. So these vehicles would essentially be limited or
22 precluded from any future use. And so this just is an example of the
23 infeasibility that's contained.

24 In addition to that controlled manufacturing environments
25 where temperature, air quality, contamination that could adversely or

1 negatively affect operational processes is a concern. However, under
2 section 3205(c)(2)(e) we are required to maximize the quantity of
3 outdoor air and that will be infeasible in controlled environments.

4 Further, to the extent that this regulation is trying to,
5 whether either verbatim or in spirit, to codify the guidance from CDC, it's
6 important to note that this, the regulation, does not achieve that goal.
7 Because as we have seen throughout this whole crisis, the CDC guidance
8 continues to evolve through this pandemic. But the regulation makes no
9 consideration to allow what is being prescribed in its language to evolve
10 when those conditions change.

11 I'll end with the fact on testing. It's been mentioned that
12 we're concerned about the testing. We see it as being overly broad and
13 excessive, which will lead to extreme costs. Testing every one of our
14 employees, that can be interpreted by this language whether or not, and
15 not focusing on whether those individuals have been exposed, will
16 essentially require manufacturers to stockpile these scarce resources.
17 Because we would have to have them on hand in order to do the
18 excessive testing that is prescribed in the outbreak sections of this
19 policy.

20 And lastly I'll conclude by saying a more broad and more
21 time for stakeholder process would allow us to offer things like in the
22 training component of this standard. Where it requires manufacturers
23 and all employers to do training on some of the basic elements of what
24 COVID-19 is, and how it's transmitted, and how to protect yourself. But
25 the Division is creating training modules, so how does that action

1 interact with the requirements of the standard? Perhaps they could be
2 used to do the basic training by industry sector, by occupation, while the
3 companies could use that limited training time to be able to talk about
4 those specific to their workplace and their policies.

5 (Overlapping colloquy.)

6 CHAIR THOMAS: Nicole, can you wrap up please?

7 MS. RICE: Yes, I'm sorry.

8 CHAIR THOMAS: I think three minutes passed about three
9 minutes ago, but please wrap up.

10 MS. RICE: Yeah. No, so that was my concluding statement.
11 Those are our concerns. And lastly I'd just like to align myself with
12 everything that's been said by my industry colleagues prior. Thank you
13 so much for your time and indulgence.

14 CHAIR THOMAS: Thank you, Nicole.

15 John, who do we have up next?

16 MR. GOTCHER: Our next commenter is Zenaida Perez
17 Fuentes from Southern California Coalition for Occupational HUD --
18 Safety and Health, sorry.

19 CHAIR THOMAS: Zenaida, are you with us?

20 MS. PEREZ FUENTES: Yes, I am, thank you.

21 CHAIR THOMAS: Go right ahead.

22 MS. FUENTES: Hello, Board. Yeah, my name is Zenaida
23 Fuentes. I'm with SoCalCOSH. We are a nonprofit organization, it's in
24 SoCal and advocates for safe, healthy and secure workplaces for low-
25 wage, immigrant, and workers of color. We're calling in support of the

1 COVID ETS. From the very start of this pandemic, we have worked
2 closely with organizational partners and allies to best address the
3 concerns of workers and community members in our region.

4 Every day we hear personally from workers about their fears
5 of going to work, getting the virus and bringing it home to their families.
6 Workers were overworked and exploited before the virus and now are
7 hitting a breaking point. We see (indiscernible) employees ignoring
8 guidelines, failing to install protective measures in the workplace, even
9 saying local guidelines are suggestions rather than the law.

10 As we continue to live with this virus as and as the number
11 of COVID-19 cases continue to rise, it is crucial that we ensure workers
12 are safe and secure at their workplace. In Los Angeles County alone,
13 there have been over 7,000 deaths from COVID-19. Workers need
14 protection now, employers need accountability now, not tomorrow, not
15 next month, next year. Workers are looking to the Board to take action
16 today and have a common sense solution to ensure Cal/OSHA is able to
17 hold employers accountable, providing the COVID-19 guidelines. Board,
18 thank you for your time and consideration.

19 CHAIR THOMAS: Thank you.

20 John, who do we have up next?

21 MR. GOTCHER: Our next commenter is Matt Rogers from
22 AgSocio.

23 CHAIR THOMAS: Matt, can you hear us? (No audible
24 response.) Hello, Matt? I think you need to unmute. There you go.

25 MR. ROGERS: Sorry, can you hear me now?

1 CHAIR THOMAS: Yeah, go right ahead.

2 MR. ROGERS: Great. Thanks. Good morning, Matt Rogers,
3 representing AgSocio. We are an agricultural employer in the Salinas
4 Valley and Central Coast area. Thank you for taking my comments,
5 thanks for the work that you do. I'm sure it's not easy. I submitted
6 comments in writing, which I hope you will review, so I will be brief.

7 First, let me say we understand and appreciate the need to
8 protect employees from COVID-19 exposure at work. Indeed, like many
9 other essential businesses, our team has been at work in crisis mode
10 growing food and mitigating COVID-19 risks in real time every day for the
11 past nine months.

12 We wrote our comments and I am here today to express our
13 extreme concern about two specific phrases of the proposed emergency
14 standard, which can be very easily resolved. But as written these two
15 phrases threaten our ability to survive as a business literally and do not
16 meaningfully improve worker protection from COVID-19.

17 We are a small agricultural labor and service provider. We
18 employ both U.S. residents and foreign nationals with temporary work
19 authorization via H-2A guest worker visas. As an H-2A employer, we
20 provide both housing and transportation to our workforce and my
21 comments will focus on those sections of the standard.

22 We did have two COVID-19 cases in our workforce this year. Both cases
23 rode in our transportation service and one of them lived in our housing. Thanks to the
24 mitigation measures we had implemented, many of which are now included in this
25 proposed standard, we were able to identify and contain those cases and ensure that

1 those employees had access to the resources that they needed.

2 Those measures include ongoing training on symptoms, spread,
3 prevention. Education on paid leave options. Provision of and enforced use of facial
4 coverings. Multiple daily sanitations of high-touch surfaces. Multiple daily mandated
5 handwashing during breaks and meals and before and after shifts. Additional toilets and
6 handwashing facilities at all of our work sites. Professional cleaning of our housing,
7 reduced transportation density, symptom checking, staggered breaks and meal periods,
8 employer-facilitated testing, workplace contact tracing, fast-response quarantining and
9 isolation accommodations for those living in our housing.

10 All of those measures and more have been in place since April or May
11 and as an employer we are not concerned with their inclusion in this draft standard.

12 However, our concerns are with the following two sections: On employer
13 housing, specifically the section 3205.3(c)(2) where the text reads, "Ensure beds are
14 spaced at least six feet apart in all directions." The reality is that employer housing uses
15 existing housing stock. We utilize one, two or three-bedroom apartments with
16 bedrooms that are 12'x10', 12'x11', 12'x12'. But in the majority of our housing I cannot
17 physically get six feet between beds. I included a photo for you of a bedroom that's a
18 standard bedroom in our housing in my written comments. I hope you'll take a look at
19 it.

20 And the reality is these are employees who are living together in an
21 apartment, sharing a bathroom, sharing a kitchen, sharing a living room, riding
22 transportation together, working on the same crew. Considering the reality of sharing a
23 living space, and after implementing all of the other housing, transportation, and
24 workplace mitigation measures that are included in the standard; it does not add
25 meaningful additional protection to workers who are living, working and riding together

1 to require six feet of space between beds. As opposed to five or whatever the
2 maximum amount is allowed or all that is possible.

3 But it does have a massive impact on us as an employer and as a
4 business. The result of this language as written will be to literally cut in half our housing
5 capacity and therefore our workforce. Six feet of space between workers' heads is
6 easily achievable with head-to-toe staggering as is recommended in the standard. In
7 addition, engineering controls such as dividers in rooms can be possible, but they are
8 not allowed under the standard. Strictly speaking, six feet between beds is rigid and
9 seems arbitrary. And it will have a dramatic impact on our business. And I really don't
10 believe there is any difference in worker health between six feet between beds, or five,
11 when these folks are sharing a living situation.

12 Secondly, the second issue on COVID prevention in employer-provided
13 transportation, and specifically 3205.4(c)(2) where it reads, "The vehicle operator and
14 any passengers are separated by at least three feet in all directions."

15 I shared a couple of diagrams and photographs in my written report to
16 you all, or my written comments to you all that I hope you will review. The reality is
17 many of us in agriculture utilize 15-passenger vans through the CalVans program
18 or others. And the best practice that's emerged in our company thus far
19 has been to leave an open seat between employees in transportation.
20 We require face coverings, sanitize multiple times per day, maintain
21 same seats, same crew whenever possible unless there are personnel
22 changes.

23 But the way that the standard is written, "three feet
24 between all passengers," I provided a diagram with measurements of how
25 15-passenger vans are in reality. You're talking about a van with the

1 driver and three people in it, which is simply not economically viable
2 and the requirement may very well set back safe agricultural
3 transportation in this state. During the peak growing season there are
4 more than 500 -- (Audio cuts out.)

5 CHAIR THOMAS: Did we lose him? John, I didn't hear if he
6 was done or not, but I think he was. Can we move on? Do we have one
7 more before we break?

8 MR. ROGERS: Can you hear me?

9 CHAIR THOMAS: Yeah. (Silence on the line.) Was that you,
10 John?

11 MR. GOTCHER: No, that was not me.

12 CHAIR THOMAS: Okay. Well, we lost the ag guy, I think.

13 MR. ROGERS: Can you hear me?

14 CHAIR THOMAS: Yeah, I can hear you.

15 MR. ROGERS: Sorry.

16 CHAIR THOMAS: Go ahead. Conclusion please.

17 MR. ROGERS: Many of our domestic employees ride our
18 transportation service, because it is safe and free. If 3205.4(c)(2) goes
19 into effect we will not be able to offer that transportation service to any
20 employees that we don't have to. With three people per van it's simply
21 not affordable. The alternative for these employees is to pile into
22 private cars without any employer-driven COVID safety measures such as
23 capacity limits, facial coverings, sanitation, same seats, ventilation,
24 etcetera, let alone the other safety measures that employer-driven
25 transportation bring, insured vehicles, well-maintained vehicles and

1 professional drivers.

2 So my hope is that you will allow some reasonable edits to
3 those two sections, which will allow us to continuous as a viable
4 business. It is frustrating to say the least to hear this referred to as an
5 emergency standard when we have been living this in our workplace for
6 nine months.

7 It's not particularly helpful to hear (indiscernible) this week
8 that this standard may pass and lose the potential to fix it later. Our
9 commitments are made for the 2021 season. And our contracts are
10 signed. And I can't string along customers and our employees on the
11 vague hope that the standard may be edited or fixed later. If this passes
12 as-is, I'll face the immediate prospect of losing clients we've struggled to
13 get and losing employees who we've invested in and who count on us.

14 Thank you very much for your consideration. I am more than
15 happy to participate in any kind of process that might result in a slightly
16 more workable bill, excuse me, standard. And I appreciate your Board
17 taking the time.

18 CHAIR THOMAS: Thank you. We're going to have one more
19 caller before we break. John, who do we have in the queue?

20 MR. GOTCHER: Our next commenter is Virgilda Romero of
21 the Garment Workers Center.

22 CHAIR THOMAS: Virgilda, why don't you go right ahead? Try
23 and cut it to three minutes, because then we're going to break. Thank
24 you.

25 (Colloquy between Interpreter Haikalis and Ms. Romero.)

1 CHAIR THOMAS: Go ahead.

2 MS. ROMERO: (Speaking in Spanish).

3 CHAIR THOMAS: Julie, do you want to translate that before
4 she gets too far along?

5 MS. ROMERO: (Through Interpreter Haikalis.) So my name is
6 Virgilda. And I have been working for the garment industry for 15
7 (phonetic) years. I worked in the garment industry. I worked as a
8 cleaner. And in the past year I've also worked for a (indiscernible).

9 (Audio cuts in and out continuously.)

10 And I was working from 6:00 a.m. to 6:00 p.m. (indiscernible)
11 at the factory would shout at us if we went to the bathroom.

12 So I was off for three and a half weeks and then when COVID
13 began, I came back and (indiscernible) at the job site, they didn't have us
14 distancing from each other. We were two feet apart from other workers.
15 There was no sanitizer and no ventilation. We work in the basement and
16 the bathrooms aren't clean and have no soap.

17 So I worked for one-and-a-half weeks and then I began
18 having COVID symptoms. I told the employer that I was feeling sick and
19 that I couldn't work. So they said it was okay. They told me to go to rest
20 and to come back when I felt better with no pay. They demanded I do a
21 COVID test one week after I got sick. And then one week after they
22 informed me that one of the coworkers had passed away.

23 CHAIR THOMAS: Continue please.

24 MS. ROMERO: (Through Interpreter Haikalis.) After my
25 COVID, we did have a distance of six feet between workers, but I was

1 worried to get sick again, to get my family sick. When I got sick I was
2 feeling pain in my lungs like bad, I had a fever. So working was difficult.
3 I felt I was going to die. And if we had less problems at work I would feel
4 better for it to be clean, have disinfectant. So I'm requesting this OSHA
5 pass this standard for essential workers. Thanks so much.

6 CHAIR THOMAS: Thank you.

7 MS. ROMERO: Gracias.

8 CHAIR THOMAS: At this time, before we go on break, I'm
9 going to have Christina say a few words. Go ahead, Christina.

10 MS. SHUPE: Hi, thank you. I just wanted to quickly address
11 I'm seeing several questions come through the web chat about the queue
12 itself. We are at approximately Speaker 40 of 110 in the queue. And the
13 queue keeps changing as people ask to be added or people drop off. And
14 we have multiple different avenues for people to join the queue, so my
15 advice to everyone who is anxious about speaking to the Board please
16 know that the Board will be getting to everybody who is in the queue.

17 If there is a connection issue, we are putting you back into
18 the queue although it will be much later, but we will get to everyone.
19 Thank you.

20 MR. GOTCHER: If I could actually just add that really quick.
21 Elizabeth Treanor, we've been trying to get through to you. And we're
22 hoping that you contribute on WebEx when we come back, so if you could
23 just be ready for that or contact us that would be great.

24 CHAIR THOMAS: Yeah. Be ready Elizabeth, all right?

25 Okay, so we are going to break until 1:00 o'clock. We're

1 going to have a lunch break here so we will reconvene at 1:00 o'clock
2 sharp.

3 And commenters be ready. Try and be concise. I'm pretty
4 lenient, but we've got a long way to go here, so let's try and get to it in
5 two minutes and make your comments to the point. Thank you very
6 much. And we are in recess until 1:00 o'clock. Thank you.

7 (Off the record at 12:20 p.m.)

8 (On the record at 1:00 p.m.)

9 CHAIR THOMAS: All right, we are back in session, so I'll bring
10 it back in session. So John, who do we have in the queue?

11 MR. GOTCHER: The next commenter is Elizabeth Treanor
12 from Phylmar Regulatory Roundtable-OSH Forum.

13 CHAIR THOMAS: Elizabeth.

14 MS. TREANOR: Thank you so much, Mr. Chairman. I hope
15 you can hear me this time.

16 CHAIR THOMAS: We can hear you. Go right ahead.

17 CHAIR THOMAS: Thank you.

18 MS. TREANOR: Hooray. Good afternoon Mr. Chairman,
19 Board Members and Division staff. (Overlapping colloquy) I'm hearing
20 something else.

21 CHAIR THOMAS: We're trying to –

22 MS. TREANOR: Okay. Thank you. I just wanted to mention
23 that the Regulatory Roundtable members are committed to advancing
24 safety and health in the workplace and they employ about 850,000
25 people. They have been boots-on-the-ground for eight months

1 protecting workers. We thank the Division and Board staff for their
2 efforts and recognize the challenges involved in this devastating disease.

3 It is clear that Cal/OSHA made considerable effort with the
4 best of intentions to create a standard to integrate current guidance,
5 CDPH needs, and the perspective of the Governor's task force. That's a
6 tall order. We appreciate that it aligns with the IIPP somewhat,
7 incorporates current guidance that PRR members have already
8 implemented and includes some of the language from our recommended
9 alternative.

10 However, it is overly complex in language and organization.
11 We have received numerous requests for clarification from our PRR
12 members. And these are safety-experienced safety and health
13 professionals. And we worry about the over one million employers that
14 do not have resources on staff.

15 I would like to just mention a couple --

16 (Audio cuts out.)

17 CHAIR THOMAS: I think you muted yourself, Elizabeth. We
18 can't hear you now. Not yet.

19 We still can't hear you.

20 MR. GOTCHER: She is unmuted in WebEx, but maybe muted
21 on her headset?

22 CHAIR THOMAS: Yeah. Maybe you're --

23 I'm not sure what you did but you just stopped all of a
24 sudden. Can you hear us, Elizabeth?

25 Yeah, we still can't -- It must be her Wi-Fi, must be out.

1 John, I think --

2 I'm sorry, Elizabeth, we are going to have to move on. Call
3 back when you get a chance. We'll get you back in the queue. We just
4 can't hear you.

5 John?

6 (Echo, then overlapping colloquy)

7 CHAIR THOMAS: Hello?

8 MR. GOTCHER: Our next commenter is Carolyn

9 (indiscernible). (Echo)

10 CHAIR THOMAS: Carolyn? (Echo)

11 MS. BARLAGE: Yes, hello.

12 CHAIR THOMAS: Go right ahead. (Echo)

13 MS. BARLAGE: Good afternoon. Thank you for the time for
14 speaking. I'm in total support of the emergency temporary standard,
15 because my employer is failing to comply with basic public health orders
16 protections for this reason. We have experienced an outbreak at my job.
17 My employer is not regulating the number of customers that come in the
18 store, so there is no social distancing inside the store.

19 As a cashier, every day my manager rushes me to call the
20 next person in line, even when the previous customer has not left the
21 register area. I have told him numerous times that this is not okay,
22 because customers are not at least six feet apart. And customers are
23 pretty upset with this method but they still continue to have me do this.
24 I need to be able to disinfect my work area, especially as I work at the
25 register. Many of the necessities I'm supposed to have are not at need.

1 I'm also in close contact with customers.

2 Unfortunately, very recently there was an outbreak at my
3 store with six employees testing positive for COVID-19. We know the
4 pandemic is far from being over and my employer is not doing enough to
5 keep everyone safe, including customers.

6 Profits over people need to change and we need to also
7 make sure that no employee speaking on behalf of COVID-19 is not
8 retaliated against. We need the emergency temporary standard, so that
9 employers like mine are made to be held accountable for putting our
10 health and lives at risk. Thank you for letting me speak.

11 CHAIR THOMAS: Can we get your name again please before
12 you leave us? (Echo)

13 MS. BARLAGE: It's Carolyn Barlage. I'm a cashier at a very
14 large chain of grocery stores.

15 CHAIR THOMAS: Thank you very much. We appreciate it.

16 (Echo in background.) I don't know why I'm getting this
17 John, but who's our next person in the queue?

18 MR. GOTCHER: Yeah, so that was coming from her line --
19 Vasquez -- she had the WebEx open as well. She was a telephone caller.

20 Next in the queue is Juvenal Solano from Mixteco Indigena
21 Community Organizing Project/MICOP from Ventura.

22 CHAIR THOMAS: All right. Are you with us speaker? (Silence
23 on the line.) Hello? I didn't get the first name, John.

24 MR. GOTCHER: Juvenal, J-U-V-E-N-A-L.

25 CHAIR THOMAS: Juvenal, are you with us?

1 (Colloquy re: audio difficulties.)

2 INTERPRETER HAIKALIS: There's no sound to translate.

3 CHAIR THOMAS: You're on.

4 Julie, are you translating?

5 UNIDENTIFIED SPEAKER: Amy is translating.

6 CHAIR THOMAS: Go ahead.

7 SIMULCAST TRANSLATOR BENAVIDES: There is no sound to

8 translate.

9 CHAIR THOMAS: Okay we're going to move on.

10 John, can you go to the next person in the queue?

11 MR. GOTCHER: Our next commenter is Anne Katten from

12 California Rural Legal Assistance Foundation.

13 CHAIR THOMAS: Anne, go right ahead.

14 MS. KATTEN: Hi, can you hear me?

15 CHAIR THOMAS: I can. Go right ahead, Anne.

16 MS. KATTEN: Great, thank you. Good afternoon Chair

17 Thomas and members of the Board. I'm Anne Katten from California

18 Rural Legal Assistance Foundation. I strongly support the standard,

19 which is based on sound public health principles and is consistent as

20 based on my review with state guidance documents and recently adopted

21 legislation and utilizes the IIPP and other regulations as appropriate.

22 In particular, I want to draw your attention to the Finding of

23 the Emergency for the regulation that provides details on the many large

24 outbreaks of COVID-19 infections in (indiscernible) temporary

25 agricultural workers. We have also heard a frequent report of crowded

1 conditions with no masks provided in (indiscernible) of workers. And
2 they must -- they have to rely on this transportation to get to work,
3 because they don't bring cars from their countries of origin.

4 The specific requirements in the regulation for this
5 employer-provided housing and employer-provided-and-arranged
6 transportation are vital for these workers. And they are similar to
7 requirements already in place in Washington state and Oregon.

8 And I also wanted to point out they include an exception to
9 social distancing and some of the other requirements for family members
10 and other occupants who maintain the household together before
11 residing in the employer-provided housing. But I want to point out, that
12 is distinct from employees who weren't assigned to housing once they
13 came to this country. That is not a pre-existing household.

14 And I also wanted to point out that the Housing for Harvest,
15 which has been put in place for quarantined or ill workers. Either people
16 housed to have their own kitchens in their room or have food brought in
17 so they would be in compliance.

18 Other speakers will speak to other vital parts of these
19 regulations. I do want to point out that ag workers have been
20 disproportionately impacted by the pandemic in Monterey County where
21 they do keep reporting by the industry. As of the end of June, workers of
22 agriculture were at least three times as likely to have had a COVID
23 infection as other workers.

24 I urge your support of the regulation. Thank you.

25 CHAIR THOMAS: Thank you, Anne.

1 John, who do we have up next?

2 MR. GOTCHER: Our next commenter is Andrew J. Sommer of
3 California Employers COVID-19 Prevention Coalition.

4 CHAIR THOMAS: Go right ahead. Can you hear us?

5 MR. SOMMER: Yes, I can. Good afternoon Chairman Thomas
6 and members of the Board. We appreciate the opportunity for comment.
7 My name is Andrew Sommer. I'm Counsel with Conn Maciel Carey,
8 representing the California Employers COVID-19 Prevention Coalition.
9 This coalition consists of a broad array of employers from various
10 different sectors. Our employer members are all committed to ensuring
11 workplace safety. They all have COVID-19 prevention plans in the
12 workplace to prevent the spread of COVID-19.

13 We have, as a coalition, already submitted a letter request
14 for an extension to submit comments as well as detailed comments on
15 the proposed rule. There are several concerns we have and I will be
16 brief. Some of these have been articulated by prior speakers, but there
17 have been concerns expressed during this meeting as to COVID, whether
18 it's a problem in the workplace, and whether there needs to be some
19 guidance or rules. And there is a general consensus I believe that COVID
20 does need to be addressed. And in our case our employer members are
21 doing all of their -- that in their means to fight COVID.

22 But a proper focus is on the rule itself that's being proposed
23 for adoption as well as the process that we are undertaking. We do not
24 believe there can be a realistic consideration of this rule, which is 21
25 pages in length. And there have been over 100 pages submitted with this

1 rulemaking. And within a five-day period, that is just simply not enough
2 time for the Board to meaningfully consider comments. And we have
3 quite active participation today. We have over 100 speakers. I'm sorry,
4 yeah about 100 speakers and over 500 members of the public that are
5 participating.

6 And this process does not allow for sufficient consideration
7 of comments and to digest the comments that are being offered. We
8 propose, along with Mr. Moutrie, that there is a 30-day extension and
9 that we briefly postpone consideration of the draft rules so that the
10 Board can consider these comments and consider any possible
11 modification to the proposed rule as appropriate. That we are already
12 nine months into the pandemic, we have agency guidance and the DOSH
13 itself has recognize that that agency guidance has been used as
14 enforcement means through the IIPP. And having one more month to be
15 able to consider these comments and enact a more effective rule that is
16 less confusing and conflicting and feasible would just be more desirable
17 for everyone. There are numerous stakeholders with perspectives to
18 ensure that it is an effective rule and to avoid unintended consequences.

19 I wanted to briefly discuss a couple of issues. One is that
20 this rule cannot be static in nature to the extent that it addresses
21 particular hazards in the workplace and particular engineering,
22 administrative controls. Since the public health guidance has been
23 evolving, we've seen that with the definition of close contacts, we've
24 seen that with the use of face coverings, and if we adopt a static rule we
25 are going to find that's going to be obsolete very, very soon.

1 And so we propose that if the rule is adopted ultimately in
2 some form that there be a carve-out for a catchall that recognizes that
3 it's not employer liability if the employer is otherwise complying with
4 current public health guidance in that regard.

5 Also, there is a need for staggered compliance deadlines that
6 has been addressed by other speakers. And if this rule is going to take
7 effect potentially by Thanksgiving, if there is no extension and there is
8 no feasible means for employers to develop a plan that's consistent and
9 updated based on this new rule as well as train all of their employees
10 immediately upon enactment.

11 And so we request that regardless of the effective date that
12 there be a 30-day deadline following the effective date to develop a
13 written infection control plan as well as 60 days or 30 days after that
14 date to then train employees. And there are employers that have
15 thousands of employees within the state that just cannot who feasibly
16 train their employees on short order.

17 There's also questions just in terms of the confusing or
18 contradictory language is, for example, mandatory COVID testing.
19 There's language about employers having to offer this during their
20 working hours. If it's intended to be in the workplace that's certainly not
21 advisable, given COVID. If that's not the point it's really a wage-and-
22 hour burden. That's something that would be beyond Cal/OSHA's
23 jurisdiction in our mind.

24 There's also questions about language requiring respiratory
25 protection where physical distancing is not feasible. And if that is

1 requiring N95 respirators or more significant respirators, then that also
2 presents a concern as we've already seen in the wildfire smoke
3 rulemaking process given the dire shortages of N95 masks and the lack of
4 need in a non-medical or non-health care context typically.

5 Also just in terms of the definition of the workplace with an
6 exposed workplace is quite broad. And one issue that has not been
7 addressed is if you have an employer with, say it's a multi-building
8 campus with thousands of employees that do not interact. Then the
9 definition of "exposed workplace" would suggest that they need to
10 undertake certain measures under multiple COVID infections component
11 or major COVID-19 outbreaks sub-rule. And that would just not be
12 realistic given the intent of those sections and how it would affect a
13 large employer. And so we suggest that that rule to be clarified to have
14 certain thresholds recognizing that there are large and small employers
15 and there's differences in how that threshold would be affected.

16 And then there's also wage and hour issues related to a
17 mandate for excluded employees to be paid compensation. We
18 respectfully maintain that that requirement, wage and hour requirement,
19 is more properly within the advent of the Labor Commission and the
20 Legislature and is not within the jurisdiction of Cal/OSHA.

21 Moreover, there is a provision on accommodations and that
22 language is vague and ambiguous in terms of how it addresses the
23 requirement about medical or other conditions. Even with that language
24 being cleaned up, which is what we would request, there is a question
25 about the jurisdiction of Cal/OSHA to exercise authority over an area that

1 thus far has been within the (indiscernible) and the Department of Fair
2 Employment and Housing.

3 And so we request that if the Board proceeds with adopting
4 this rule that there be some serious considerations for the unintended
5 consequences, the problematic language. And that stakeholders have the
6 opportunity to provide feedback. And that at a minimum we need an
7 additional 30 days for that to occur.

8 CHAIR THOMAS: Thank you.

9 John, who do we have in the queue?

10 MR. GOTCHER: Our next commenter is Katie Hansen from
11 California Restaurant Association.

12 CHAIR THOMAS: Katie, are you with us?

13 MS. HANSEN: Yes, sir.

14 CHAIR THOMAS: Go right ahead, Katie.

15 MS. HANSEN: Can you hear me?

16 CHAIR THOMAS: Yes.

17 MS. HANSEN: Good afternoon Chair Thomas and members of
18 the Board. I am Katie Hansen with the California Restaurant Association.
19 California community restaurants were closed in March for
20 (indiscernible) employment purposes by the State of California. Today
21 restaurants in all but 11 rural counties have again largely been shuttered
22 by state order.

23 In March we had roughly 1.4 million restaurant workers in
24 California, 900,000 are now unemployed. For those remaining, the
25 continued opening and closing of dining rooms is contributing to the

1 already fragile financial, psychological and physical health conditions of
2 our workforce and small business owners. The constant oscillating of
3 their well-being tied to weekly announcements from the state is not
4 sustainable.

5 While the state has its own protocols for safe restaurant
6 operations, counties too have their own additional COVID-19 protocols
7 for restaurants. We believe we have some of the most stringent COVID-
8 19 protocols for safe operations than probably any other industry with
9 the exception being health care.

10 We are deeply concerned about the proposed COVID-19
11 emergency regulations before you today. Definitions of employer notice
12 obligations are not consistent with AB 685, governing timelines for
13 notices to employees by state and relevant county for COVID-19
14 exposures and workplace outbreaks. Restaurants need alignment
15 between this regulation and AB 685.

16 Testing obligations in the proposed rule should be
17 eliminated. The draft regulation provides that employers must offer
18 COVID-19 testing to all employees who had potential COVID-19 exposure
19 in the workplace. Local health orders and state guidance currently drives
20 restaurant procedures as it relates to potential exposure and positive
21 cases. Furthermore, restaurants can determine exactly who was in what
22 part of a restaurant and with who based on the shift log. The testing for
23 potential exposure is unnecessary and incredibly costly to the
24 restaurants.

25 Engineering controls requiring restaurants install partitions

1 and fixed work locations like a restaurant kitchen where it is not
2 possible to maintain physical distancing due to the nature of food
3 preparation are completely infeasible. Restaurant kitchens have hot
4 surfaces, a variety of appliances and preparation spaces. It is not
5 feasible to partition off parts of the kitchen. This section of the
6 regulation needs to be revised to take into account the unique nature of
7 a commercial kitchen.

8 Section 3205(c)(10)(b) and (c) are infeasible for restaurants
9 and restaurant employees. Including a restaurant employee who has
10 been exposed to COVID-19 and tested negative for the virus from work
11 for 14 days denies the employee of the opportunity to earn income and
12 requires them to use their COVID-19 paid sick leave when they are not
13 sick. This section leaves the restaurant employee without COVID-19 paid
14 sick leave to use if they were exposed to COVID-19 and get the virus in
15 the future.

16 Additionally, requiring restaurants who have been financially
17 devastated due to COVID-19 to continue to pay an employee who is
18 excluded from the workplace, and has exhausted their paid sick leave,
19 will financially crush the restaurants already clinging to the edge.

20 The current function of the EDD has been well documented
21 in the press and legislative hearings when it comes to their inability to
22 process employment benefits. We should not assume that the EDD will
23 be able to efficiently process unemployment claims, so a restaurant
24 employee can access their benefits in the 14 days they are excluded from
25 the workplace.

1 Due to the nature of the restaurant workspace, it is entirely
2 possible for all of the employees for restaurants (indiscernible) COVID-
3 19.

4 CHAIR THOMAS: (Overlapping colloquy) Katie, excuse me for
5 one second. Excuse me, can you slow down your comments? I'm sorry,
6 it's so fast I can't really understand everything. Just slow it down a little
7 bit.

8 MS. HANSEN: Yes, I will.

9 CHAIR THOMAS: Thank you.

10 MS. HANSEN: Due to the nature of a restaurant workplace, it
11 is entirely possible for all of the employees at the restaurant to have
12 been exposed to COVID-19. Please consider the potential for this section
13 to close a restaurant entirely for 14 days and the ultimate economic
14 devastation for the employee and the business.

15 While well intentioned, the proposed emergency regulations
16 is a one-size-fits-all approach that does not take into account the unique
17 nature of the restaurant workspace or the fact that we are governed by
18 state and local county health orders as it relates to COVID-19 work
19 practices.

20 We urge you to hold off on adopting the emergency
21 regulation before you as it as the science behind COVID, and what we are
22 learning continues to evolve as evidenced by the continuing changes to
23 local and state health orders governing restaurants and their operations
24 in the midst of this pandemic.

25 CHAIR THOMAS: Thank you.

1 MS. HANSEN: Thank you, Chairman.

2 CHAIR THOMAS: Oh, thank you. Thank you very much.
3 John, who do we have next in the queue?

4 MR. GOTCHER: Our next commenter is Pamela Murcell from
5 California Industrial Hygiene Council.

6 CHAIR THOMAS: Pamela, can you hear us?

7 MS. MURCELL: I can hear you fine. Can you hear me?

8 CHAIR THOMAS: Great, yes. Go right ahead.

9 MS. MURCELL: Technical problems fixed. Okay, good
10 afternoon Chair Thomas, Board Members, Board and DOSH staff. First of
11 all thank you for the opportunity to provide comments. And also, thank
12 you for all of your hard work on this very challenging issue. I am Pamela
13 Murcell, I'm the current President of the California Industrial Hygiene
14 Council, also known as the CIHC. We certainly appreciate this
15 opportunity to comment on the proposed emergency action.

16 Just briefly, the CIHC was founded in 1990 to represent the
17 industrial hygiene and occupational environmental health professions in
18 California. Plus, CIHC is affiliated with the National American Industrial
19 Hygiene Association and we are formally comprised of the members of
20 the five California AIHA local sections. And those are represented by the
21 CIHC Board of Directors. A little bit about our background to provide
22 context for our comments.

23 The CIHC opposes this proposed emergency action. We have
24 given very careful consideration and we certainly understand the
25 seriousness of the COVID-19 pandemic. But the proposed emergency

1 action with the proposed changes for title 8 are just not necessary. Our
2 state already has adequate regulations in place to address the COVID-19
3 hazards that potentially affect California workplaces. This is
4 demonstrated by the fact that the Division of Occupational Safety and
5 Health enforcement actions have resulted in citations being issued to
6 numerous and varied work environments. And presumably these
7 enforcement actions will continue.

8 Regulations currently being cited to require employers to
9 address COVID-related hazards do include, certainly are not limited to
10 but do include, the title 8 section 5199, Aerosol Transmissible Diseases,
11 which of course is applicable to the healthcare industry. Section 5203,
12 the Injury and Illness Prevention Program, also known as the IIPP.
13 Especially they are citing hazard identification and correction and
14 training requirements. Section 5144 on the Respiratory Protection
15 Program and its very extensive requirements. Section 5162, Emergency
16 Eyewash and Shower Equipment. And lastly, to highlight, section 3457,
17 which is a field sanitation set of requirements for the agricultural
18 industry.

19 Based on the provisions of the IIPP regulation, this is another
20 of the hazards of employment that an employer should recognize,
21 especially in the current active pandemic, that is potentially part of the
22 workplace. As such, a separate standard is not necessary especially this
23 proposed overly involved set of requirements that will be difficult for
24 employers with the most sophisticated health and safety programs to
25 meet, let alone the small businesses that may not have access to the

1 resources that will be needed to comply.

2 In lieu of regulatory action, CIHC recommends that DOSH
3 issue a guidance document for compliance with the assistance of a
4 stakeholder advisory panel pertinent to the title 8 sections that they are
5 already using to cite employers.

6 CIHC understands that other states such as Virginia,
7 Michigan and Oregon have already adopted emergency COVID-19
8 prevention regulations. However, it is important to note that these
9 states do not have the breadth and depth of existing regulations to cover
10 this novel hazard, as we have these regulations extensively in California.

11 The employers who are already implementing effective
12 procedures to assure that their employees have -- I'm sorry, to ensure
13 their employees have a safe work environment, that have been using
14 national, state and local guidance in large part to supplement their IIPPs,
15 and these employers do not need a new set of regulations. Employers
16 who are currently making changes to their safety procedures and work
17 environments in light of the COVID-19 hazard are probably not going to
18 address this hazard just because a new and onerous set of regulations is
19 adopted.

20 The CIHC board members have reviewed the proposed new
21 title 8 sections and we have many concerns with the prescriptive
22 requirements and potential costs for implementation. For example,
23 changes that may be needed to ventilation systems. The workplaces in
24 California are not amenable to one-size-fits-all-regulations. This
25 emergency is in fact self-limiting, with vaccinations most likely available

1 in the very near future. The basic question therefore becomes is this
2 emergency regulation necessary?

3 CIHC appreciates the ability to be involved in the regulatory
4 process. We look forward to participating in future action regarding this
5 subject such as an advisory panel. And we can certainly act as a
6 technical resource for the process. Thank you for your consideration and
7 for your time today.

8 CHAIR THOMAS: Thank you.

9 John, who do we have up next?

10 MR. GOTCHER: Our next commenter is Maggie Robbins from
11 Worksafe.

12 CHAIR THOMAS: Maggie, can you hear us?

13 MS. ROBBINS: Hi, yes.

14 CHAIR THOMAS: We can hear you. Go right ahead.

15 MS. ROBBINS: Excellent. Thank you for making time for me
16 to speak today. I almost don't know where to begin. Let me just say we
17 do need to control COVID transmission at work in order to control it
18 across our state. That's unquestionable, as a lot of people have
19 mentioned that. We're going in the wrong direction right now and we
20 think that this standard gives meaningful action to provide enforceable
21 expectations for protections that people expect to see in the workplace.
22 And this is not (indiscernible) for employers as well as for workers.

23 We've heard comment after comment today of people feeling
24 that they're still not being protected on the job with some of the most
25 basic things that they should be expecting, and to work with every day.

1 DOSH and the Board staff have put a lot of thought into the
2 recommendations in this proposed rule. They've balanced having a
3 performance standard with some more specific elements of what needs
4 to be in a preventive program that would be in place. We think it's
5 touching all the right bases in terms of current knowledge about the way
6 to prevent transmission of COVID. And we think it was well thought
7 through in trying to be balanced without being overly prescriptive.

8 I just want to point out this is an emergency situation. This
9 is an emergency temporary standard, it is not a permanent standard. It
10 is intended to last only through this crisis and not a day longer. We feel
11 it must be adopted quickly. And we cannot spend weeks and months
12 processing multiple drafts and language, quibbling over the applicable
13 ability some new law or new interpretation of the science.

14 We don't believe employers have raised any concerns that
15 should justify further delaying the adoption of this rule to respond to
16 this emergency.

17 We do support the comments that others have made that the
18 advisory committee to look at implementation of this rule and determine
19 where changes might be needed should be started as quickly as possible.
20 And we would like to be a part of that, and then to deal with any lack of
21 clarity or any questions that come up about interpretation during
22 implementation.

23 The precautions that are very familiar to us are going to have
24 to be with us for a long time even if we get a vaccine just around the
25 corner. We, like everybody else, are delighted to hear the good news

1 from preliminary testing of new vaccines. But even if those new
2 vaccines were approved next week, it's going to take months for them to
3 get out to the field and workers to have access to them. By this summer
4 we will still surely have most of our workforce not vaccinated even if we
5 have an ideal vaccine available in short, in the near future. So
6 precautions are going to need to be in place for quite a while even as we
7 roll out an effective vaccine. And this standard is the type of precautions
8 that we need.

9 So in wrapping up I'd say we strongly encourage you to vote
10 in favor of the proposed standard today, and it is only the first step. We
11 need to urge Cal/OSHA and CDPH and everybody else who is here on this
12 call today and interested in this issue to do massive outreach and
13 education. And help people who currently are meeting guidelines for
14 effective control to (indiscernible) you. We are not going to control this
15 in our communities until we also control it in our workplaces, so thank
16 you for listening.

17 CHAIR THOMAS: Thank you.

18 John, who do we have up next?

19 MR. GOTCHER: Our next commenter is Lizette Aguilar.

20 CHAIR THOMAS: Lizette, can you hear us?

21 (Colloquy in Spanish between Ms. Aguilar and Interpreter
22 Haikalis.)

23 MS. AGUILAR: (Through Interpreter Haikalis.) Good
24 afternoon. My name is Lizette Aguilar and I am a worker at the
25 McDonald's in Los Angeles, California.

1 I'm calling the Board to ask you to approve the emergency
2 standard proposition that you are talking about today. These rules are
3 very important for the fast-food industry, because the fast-food chains
4 have not complied with the rules. Not even the basic rules such as
5 wearing masks, social distancing or sick pay.

6 At the company, at the place where I work, six people were
7 sick with COVID-19 and the employer did not disclose this to us. We had
8 a strike at our store and instead of listening to our concerns they
9 terminated us.

10 And the companies do not back their workers as essential
11 workers. COVID-19 is spreading fast throughout California, especially in
12 the colored communities.

13 We definitely need these new standards for essential
14 workers just like us. We can stop the COVID-19 propagation in our
15 communities but we need the power of assistance of Cal/OSHA so that
16 our employers are responsible for this.

17 Thank you, and appreciate the time you have taken to hear
18 my voice as well as the voice of other workers. Thank you.

19 CHAIR THOMAS: Thank you.

20 John, who do we have next up in the queue?

21 MR. GOTCHER: Our next commenter is Mitch Steiger from
22 California Labor Federation.

23 CHAIR THOMAS: Mitch, can you hear us?

24 MR. STEIGER: Yes. Can you hear me?

25 CHAIR THOMAS: Oh, talk again.

1 MR. STEIGER: Can you hear me now?

2 CHAIR THOMAS: Yeah, go ahead.

3 MR. STEIGER: Great. Thank you very much Chair Thomas and
4 Board Members for the opportunity to testify today. I also want to thank
5 the workers who came today to speak. Obviously, this is something that
6 can be very scary to come and speak about your current employer and
7 talk about some hazards that are happening, so definitely want to
8 express our appreciation for them being here today and taking that risk.

9 We'd also like to thank the Board, Board staff, Cal/OSHA,
10 other (indiscernible) officials for all that's been done to make this
11 happen as quickly as it has. I know that there was a lot of work involved,
12 a lot of late nights, and we definitely do appreciate everything.

13 We strongly urge adoption of the standard today. And I
14 don't think it's an exaggeration to say that this is likely the most
15 important vote that the Standards Board has ever taken. It's probably
16 the most important vote that the Standards Board will ever take, because
17 this is likely the biggest crisis that any of us have ever faced. And you
18 know, I pray to the heavens that this is the biggest crisis that we ever do
19 face.

20 But as bad as it is, we've been in this thing for long enough
21 now, it's been eight or nine months. And for a lot of us, it's just kind of
22 become normal, it's what we're used to now. And it's this weird sort of
23 low-grade depression setting in as we sit in our quarantine offices and
24 stare at screens.

25 But as bad as that is, we are the lucky ones that this

1 standard doesn't apply to us, this standard isn't about us. This is about
2 workers who have to leave their homes, go get into crowded vans, drive
3 to a building, sit inside that building, be close to other workers. Like
4 they have to deal with members of the public, a lot of whom won't wear
5 masks and think this whole thing is a hoax. And I think we need to pause
6 on that for a second and really appreciate the fear that they have to deal
7 with.

8 And the question they have to ask every day of, "Is today the
9 day that I get sick? Is this the day that I start showing symptoms because
10 I am exposed to this at the time at work?" By now, most workers have
11 seen their coworkers -- who are in this situation -- have seen their
12 coworkers show up, start showing symptoms, they disappear. Most of
13 them come back, but some of them don't. And the answer to that
14 question of whether or not that worker gets sick that day is largely in
15 their employer's hands. And whether they are lucky enough to have an
16 employer that's taking this thing seriously and has the partitions, has the
17 masking, is enforcing the social distancing as much as possible, is doing
18 the sanitation, cleaning as much as they can.

19 Or if they're not, if they're not taking it seriously or worse
20 yet, is shaming workers who wear masks or retaliating against those who
21 report hazards or sickness. And as much as I would love to live in a world
22 that has been described by a lot of employers and our lobbyists today,
23 the reality is a lot of workers don't. And a lot of employers really do not
24 do what they need to, to keep workers safe during this pandemic. And
25 that's got a lot to do with why the spread has gotten so much worse so

1 fast.

2 And those workers who have to deal with that, those
3 employers are not doing what they need to do, they need this and they
4 need this right now. They don't need a weaker version a month from
5 now or three months from now, they needed this eight months ago. But
6 getting it now is the best we can do, and that's definitely what we need
7 to do. We think this is a very clear, very well-written, enforceable and
8 strong standard.

9 Again, we want to express our appreciation for getting it out
10 so fast and getting the version of it out so fast that we have before us.
11 But it's important to note that the basics of this are not new. They didn't
12 reinvent the wheel with any of this. There aren't a bunch of new
13 standards in here that no one has ever heard of. The basics of this like
14 six feet of social distancing and masking and partitions and cleaning the
15 air, we've known about this mostly since day one. It's almost entirely
16 stuff that employers should already be doing. This is almost all in the
17 guidance, this is not new.

18 And if an employer is not doing any of this, then clearly all of
19 the guidances at the county level, the CDC, Cal/OSHA guidances,
20 everything else that's out there isn't doing the trick. And we need
21 something stronger if we want to protect these workers and help deal
22 with that fear that they have to face every day when they go to work
23 wondering if they are going to get it.

24 Also important to note that this standard could be stronger.
25 There's a lot in here that's a compromise from the workers' safety

1 perspective. Standards like keeping everyone six feet away, there's no
2 law of nature that stops an infected droplet six feet away and sends it to
3 the floor. An infected droplet can travel eight meters if someone
4 sneezes it out. That's a whole lot farther than six feet, so just putting six
5 feet in there is really not as strong as it needs to be to totally protect
6 workers. But we recognize the need to get something out there that's a
7 compromise, get something out there quickly and so let's go with that
8 and let's adopt this.

9 The major outbreak standard of 20 cases within 30 days, let's
10 think about that for a second: 20 cases in 30 days. And the standard
11 doesn't say, "Shut the doors, let's figure out what's going on." I think
12 one can definitely argue that it should. That if any of us worked
13 someplace where there were 20 cases within a month, we'd be asking
14 some pretty hard questions about whether or not we want to set foot in
15 that building anymore. The standard doesn't say that. It requires those
16 employers to take some significant steps to better protect those workers,
17 but it allows them to stay open. And so that's another thing that is a big
18 compromise that one could definitely argue should be stronger.

19 And also the thing that we keep hearing about from our
20 members is the lack of retaliation protection. That it is illegal to retaliate
21 against workers who report health and safety hazards, but we all know
22 that it happens all the time. And thus workers make the hard decision
23 often to not report health and not report sickness so that they can keep
24 their job, knowing that they are risking their own lives, the lives of their
25 coworkers and the lives of their families as a result. That's another thing

1 that should really be stronger. Hopefully in this standard, but if not,
2 then somewhere else is something else that we really need to take a look
3 at.

4 And so with all of that in mind we do think the standard
5 should be adopted today. We are very much appreciative of how quickly
6 it was put out, how strong the language is. But we would strongly urge
7 against any delay. This is something that needs to happen now if we are
8 going to do what we need to help slow the spread, this is one of the most
9 important steps that we can take and we urge the adoption of it. Thank
10 you.

11 CHAIR THOMAS: Thank you.

12 Who do we have in the queue, John?

13 MR. GOTCHER: Our next commenter is Juvenal Solano from
14 Mixteco Indigena Community Organizing Project/MICOP from Ventura
15 County.

16 CHAIR THOMAS: Juvenal, are you with us?

17 MR. SOLANO: Yes, I need an interpreter.

18 (Through Interpreter Haikalis.) I am a community organizer
19 with the Mixteco Indigena Group. I am here from Ventura County and I
20 am here requesting to pass the emergency temporary standards for
21 COVID-19 to save lives.

22 Even at the beginning of the pandemic, a lot of workers here
23 in Ventura were calling to talk about the conditions of their job. And
24 what we were told by these people was that they were not enforcing
25 social distancing in the field, because that was not possible to do in the

1 field.

2 They give us a 10-minute break time, but I think it's unfair
3 because we need to have more time in order to be able to have that
4 social distancing. Another thing is we have a crew of 30 or 40 people. A
5 10-minute break is not enough to keep up social distancing when you're
6 washing your hands before you can go and eat your food.

7 So when I've been in the field I have seen companies that are
8 not enforcing social distancing perhaps because they don't care to
9 comply. Or perhaps because they don't care about the safety of their
10 employees. Here in the Ventura County and Central Coast, Santa Barbara
11 and Monterey, there a lot of indigenous workers who speak their own
12 language, which is Mixteco. We must consider these workers and provide
13 the information in their own language, so that we have and so that
14 workers can be better informed.

15 And so if we want to save all of our essential workers that
16 work in the field, workers, restaurant workers and other essential
17 workers who have always been essential, not just now because of the
18 pandemic, we must make sure that we have laws to protect them.

19 Please make these regulations pass legislation (indiscernible)
20 to help these workers. Thank you.

21 CHAIR THOMAS: Thank you.

22 John, who's up in the queue?

23 MR. GOTCHER: Our next commenter is Julia Garcia from
24 Lideres Campesinas.

25 CHAIR THOMAS: Hello, Julia. Can you hear us?

1 MS. GARCIA: Yes.

2 CHAIR THOMAS: Buenos tardes.

3 MS. GARCIA: (through Interpreter Haikalis) Good afternoon.

4 CHAIR THOMAS: Por favor, commence.

5 INTERPRETER HAIKALIS: (Spanish translation)

6 CHAIR THOMAS: Si. (Silence on the line.) I'm not hearing
7 any comments. Translator, can you help please?

8 (Off mic colloquy regarding testimony procedure.)

9 MS. GARCIA: (Through Interpreter Haikalis.) What do I have
10 to say?

11 MR. GOTCHER: So now is the time where you would make
12 your comment. And you're live.

13 (Colloquy between Ms. Garcia and Ms. Haikalis)

14 CHAIR THOMAS: I don't think we have a trans --

15 MS. GARCIA: (through Intepreter Haikalis) I'm not sure what I
16 --

17 CHAIR THOMAS: Do we have a translator?

18 MR. GOTCHER: Yeah, Susanna, are you translating?

19 MS. HAIKALIS: Yes, the translator is here.

20 CHAIR THOMAS: Okay, go ahead.

21 UNIDENTIFIED SPEAKER: She's translating.

22 MS. HAIKALIS: Ms. Garcia is saying she doesn't know what
23 she has to say.

24 MS. GARCIA: (through Interpreter Haikalis) I think I should
25 say my name. My name is Julia Garcia and I am affiliated with farm

1 worker leaders. And what I want to say is that we need more COVID
2 protection in the work areas.

3 CHAIR THOMAS: I'm not going to wait much longer for
4 comments here.

5 MS. GARCIA: (through Interpreter Haikalis) That is all my
6 comments.

7 MS. SHUPE: Susanna, can you please repeat your last
8 statement?

9 MS. GARCIA: (through Interpreter Haikalis) Yes, that is all
10 that I have to say. Those are all my comments.

11 CHAIR THOMAS: Okay, thank you.

12 John, who do we have up next?

13 MR. GOTCHER: Our next commenter is Helen Cleary who is
14 speaking on behalf of Elizabeth Treanor who was cut short from Phylmar
15 Regulatory Roundtable.

16 CHAIR THOMAS: Well, hello.

17 MS. CLEARY: Hi, can you hear me?

18 CHAIR THOMAS: Yes, hi for Elizabeth. No, go right ahead.

19 MS. CLEARY: Hi, Elizabeth number two.

20 My name is Helen Cleary. I am the Associate Director for the
21 Phylmar Regulatory Roundtable. Thank you for allowing me to share the
22 rest of Elizabeth Treanor's comments. As she shared, PRR agrees that
23 employers have a responsibility to protect workers from COVID-19 and
24 they're doing just that.

25 However, today we are discussing the proposed text and we

1 feel that it is overly complex in language and organization. PRR
2 members have already asked numerous questions seeking clarity and
3 these are experienced safety and health professionals. And we are
4 concerned about the over one million employers without such staff
5 resources.

6 While we were grateful for the opportunity to speak with
7 Chief Parker about the text of the proposed draft a few days prior to its
8 release, there has been no opportunity to provide stakeholder feedback
9 during its development. This is disappointing and shortsighted. The
10 normal give and take of the Cal/OSHA advisory committee process to
11 identify and resolve issues did not occur. Today's discussion may be
12 helpful for future revisions, but it definitely will not assist employers
13 now. Allowing one week to review and prepare comments is simply not
14 enough time to adequately address the multi-faceted 21-page regulation.

15 The finding of emergency claims that benefits of the new
16 standard include that it will make it "Compliance easier and more
17 straightforward and provide clear and specific requirements." With
18 respect, we disagree that the proposed draft in front of the Board today
19 will produce either of these benefits. Instead we have a complicated,
20 difficult to navigate emergency regulation that will apply to all employers
21 in the state. The FOE fails to demonstrate that this standard will actually
22 improve the situation or the current industry specific guidance at all.

23 Significantly, this standard does not allow for flexibility
24 when public health authorities revise guidance based on new scientific
25 information such as the applicability of an effective vaccine.

1 Many sections of the proposed standard need to be
2 clarified, so today we will highlight three of our specific concerns. One,
3 the testing requirements following an outbreak eliminate the employer's
4 ability to work with local health departments on a testing strategy as
5 current CDPH guidance advises. This will be a poor use of testing
6 resources.

7 Two, the definition of "exposed workplace" and the
8 requirement for the employer-provided testing to everyone regardless of
9 exposure, engineering and administrative controls is a concern.

10 And three, in the extremely short timeframe for employers
11 to a) assess the regulation and compare it to their existing programs; b)
12 implement the required modifications; and c) communicate those
13 changes to employees is just not feasible.

14 In conclusion, the finding of emergency states that following
15 the adoption of these emergency regulations at the direction of the
16 Board, the Division will convene an advisory committee.

17 We implore the Board, before you adjourn the meeting
18 today, please direct the Division to schedule an advisory committee
19 meeting for the first week in December. Multiple implementation issues
20 need to be addressed and the rule-revision process must begin as soon as
21 possible. We further recommend that the results of the Division's
22 findings and review from the feedback from the advisory committee be
23 communicated to the Board during its December Board Meeting. Thank
24 you for your time today and everyone please stay healthy.

25 CHAIR THOMAS: Thank you, Helen.

1 John, who do we have up?

2 MR. GOTCHER: Our next commenter is Eric Frumin from
3 Change to Win.

4 CHAIR THOMAS: Eric, can you hear us?

5 MR. FRUMIN: Yeah. Yes, can you hear me now?

6 CHAIR THOMAS: Yeah, go right ahead.

7 MR. FRUMIN: Okay. Thank you Chairman Thomas and the
8 members of the Board -- one second -- and certainly to the staff for the
9 Board and DOSH who did such a heroic effort to get us to this point here
10 today.

11 I want to say basically three things. First, that employers
12 who have failed to take even minimal action until now will have to do so.
13 That's a major impact that cannot be underestimated.

14 Secondly, that DOSH's efforts, their enforcement efforts,
15 however diligent and well-meaning, are far from enough to give us
16 confidence that it will be enough going forward.

17 And third, that workers still lack the rights that they could
18 use to help their employers properly comply with guidance and standards
19 and protect people.

20 Yeah, some employers will certainly have to act fast to make
21 good-faith efforts to comply with the standard. Other employers,
22 however as we have heard, have acted quickly in the last six months and
23 have achieved successful prevention outcomes. These compliant
24 employers have shown us that the managers who waited did so
25 recklessly. And these reckless employers have failed in big ways, like

1 failing to even inform their own workers about active cases.

2 The questions about implementation, however serious, by
3 employers who acted recklessly, those should be addressed as just that:
4 implementation problems.

5 What about enforcement? Well, DOSH's record for
6 intervening to help employers protect their workers has been diligent,
7 but far too small. And not only because of the state-existing staff
8 shortage. Even if DOSH were twice the size, it would have been
9 overwhelmed. The highly-limited number of DOSH enforcement actions
10 now are completely inadequate to the task of responding to the
11 thousands of worker complaints, including complaints of retaliation. And
12 the same is true for the responses from other agencies. CDPH and
13 county health department guidance are simply not enforceable, either in
14 theory or practice, as workers have sadly and repeatedly discovered
15 when they have taken their complaints to health agencies and they asked
16 them to respond.

17 We all understand that change is hard for everyone,
18 especially when it feels like it's a moving target, because our knowledge
19 is changing. Yes, our knowledge of COVID is indeed changing, but it does
20 not reassure us that current efforts are nearly enough. Even recently
21 published studies by Harvard University and other academic institutions
22 have shown us that worker complaints are extremely important to
23 predict the rise in mortality from COVID. And that people who are most
24 severely at risk of COVID are, many of them, and maybe half, are forced
25 to work and to go to work, and were not able to work at home. And

1 we've submitted these recent studies to the record.

2 So we understand that there is new information that
3 employers need to grapple with but that's a fact of life and we have to
4 use the advisory process to work on the implementation.

5 Finally, we are concerned that even with its many urgently
6 needed provisions, the draft ETS is still missing important protections for
7 workers like those who spoke today. People who want to help their
8 employers when the managers fail to design an adequate program -- they
9 have to implement it properly or skip the training that workers need.
10 Workers need an opportunity to take their concerns up the chain in the
11 company to a responsible official who can cut through the line of
12 authority and make sure that supervisors do what they are supposed to
13 do. And the standard does not give them that right. All they can do is go
14 to DOSH.

15 So to conclude we know this standard is not perfect. Yes
16 there are important gaps in the standard, but we will deal with those
17 gaps, those questions, those concerns in the advisory committee process.
18 It will indeed require a good faith, the same good-faith effort that got us
19 here thus far by workers, unions and DOSH and others.

20 We urge the Board to give us that opportunity to move
21 forward today to get there, to approve this proposal today with no
22 further extensions. Thank you very much for your work on this, we look
23 forward to your vote.

24 CHAIR THOMAS: Thank you.

25 John, who do we have up in the queue?

1 MR. GOTCHER: Our next commenter is Michael Hall from
2 Pacific Maritime Association.

3 CHAIR THOMAS: Michael, can you hear us?

4 MR. HALL: Yes, I can. How's the audio?

5 CHAIR THOMAS: Good, you can turn it up and get a little
6 closer. Turn up just a hair.

7 MR. HALL: Okay, I'll do my best. Good afternoon Chair
8 Thomas, Board Members and staff. My name is Mike Hall speaking on
9 behalf of the Pacific Maritime Association. We represent the world's
10 leading maritime companies, marine terminals and vessel lines who move
11 nearly one million tons of cargo through West Coast ports each day. Our
12 member companies directly employ tens of thousands of longshore
13 workers, a significant amount of those in California.

14 First I'd like to acknowledge and thank DIR, the Division and
15 the Governor's Office of GO-Biz for engaging us recently after the
16 publication of the ETS last Thursday. We are very appreciative of the
17 interaction earlier today.

18 We are hopeful that we continue working together to ensure
19 that workers are safe and the critical operations in the port can continue
20 (overlapping colloquy).

21 PMA submitted a written comment to the docket that
22 outlines our areas of concern with the ETS. I'm most certainly not going
23 to read that. PMA currently has in place an extensive collective
24 bargaining agreement with the International Longshore and Warehouse
25 Union, the ILWU --

1 (Colloquy from someone else interrupts testimony.)

2 CHAIR THOMAS: We have somebody that is.

3 MS. SHUPE: Sir.

4 CHAIR THOMAS: Whoever you are, you need to turn off your
5 mic. We can hear you.

6 Sorry, Michael. You still there?

7 MR. HALL: That's alright. At least other people hear the
8 voices in my head.

9 CHAIR THOMAS: He was pretty loud. I think I heard the voice
10 in your head. Go ahead.

11 MR. HALL: Let's see, I was talking about we have an
12 extensive collective bargaining agreement that's been in place for many
13 months now with the ILWU. It covers paid sick leave, contact tracing,
14 cleaning protocols, travel restrictions in between ports -- well, it actually
15 doesn't allow that -- and the use of PPE on the docks. We're currently
16 spending upwards of over \$1 million per week on sanitation and cleaning
17 and we have experienced a very low incident rate of COVID infections on
18 the docks.

19 We believe that we are in compliance with many aspects of
20 the proposed regulation. However, as applied to California marine
21 terminals, the requirement to test all employees if three or more positive
22 cases are identified is just simply not practicable.

23 For example, over a 14-day period, thousands and thousands
24 of workers pass through port facilities in Southern California working out
25 of dispatch halls on a rotational basis; basically they're day workers. If

1 there was an occurrence of three individuals with the virus, the facility
2 would have to test thousands and thousands of workers, each during the
3 working hours, every single week. This is just likely impossible simply
4 due to the magnitude of testing and the testing kit supplies that would
5 be needed. It is also unlikely that this is going to be possible in the
6 reasonable future.

7 Ports and marine terminals have been deemed critical
8 infrastructure by both the state and federal government. And our
9 workforce has been deemed essential. West Coast ports contribute to
10 nearly 10 million American jobs and 12.5 percent of the nation's GDP
11 relies upon West Coast ports to get cargo coming in.

12 We need to avoid interruption of critical supply chains that
13 are desperately needed at this time to fight the pandemic. Cargo coming
14 in such as medical supplies, sanitizers, chemicals and personal protective
15 equipment such as KN95 respirators that are being used by frontline
16 personnel. Now is not the time to take employees out of production
17 when every single worker is needed to handle unprecedented cargo
18 volumes critical to the recovery of the United States in combating COVID-
19 19.

20 With the short time that we've had to vet and consider the
21 ETS, we hope that we can work together to pursue a revision. Or a
22 clarification that ensures that marine terminals can continue to operate
23 while continuing our strong and already established COVID prevention
24 program that we've implemented with our union.

25 Thank you for your time. And have a nice Thanksgiving.

1 CHAIR THOMAS: Thank you, Michael.

2 John, who do we have in the queue?

3 MR. GOTCHER: Our next commenter is Anna Rivera from
4 Fight for \$15.

5 CHAIR THOMAS: Anna, can you hear us?

6 INTERPRETER: Yes.

7 CHAIR THOMAS: Go right ahead.

8 MS. AGUILAR: (Through Interpreter Haikalis.) (indiscernible)
9 Paz Aguilar. Good afternoon my name is Paz Aguilar. I'm a fast-food
10 worker in Oakland. So I have worked 20 years for fast-food restaurants,
11 most recently KFC, Taco Bell and Jack in the Box. I'm calling to request
12 the Board, the Standards Board to approve the emergency standards that
13 you are talking about today. These are very important standards, safety
14 standards, that could have made a difference for me.

15 My managers at the fast-food restaurants at first ignored the
16 requests for social distancing. They did not make sure that the
17 employees were wearing masks. I could not go to work. I was sick. And
18 then seven of my co-workers including me tested positive for COVID-19.
19 And it made my sister-in-law sick.

20 Because the companies where I work didn't think that my
21 health was important, they changed my life. So when I was about to take
22 quarantine I suffered a stroke. One side of my body has been paralyzed,
23 so I will be needing physical therapy for at least I do not know
24 (indiscernible) when I will be able to go back to work.

25 We need these standards. They are extremely important to

1 fast food workers (indiscernible) basic rules for the pandemic. COVID-
2 19 is spreading fast throughout California and (indiscernible) the
3 essential workers. So we can help the outbreaks stop in our community,
4 but we need the help of Cal/OSHA to stop them. So thank you so much.

5 CHAIR THOMAS: Thank you.

6 Before we go on I'm going to ask that if your comments have
7 already been made by someone else, we would appreciate if you would
8 drop off. Or let John know that you are dropping off, because if we --
9 either we go faster or we're not going to get through this. We still have
10 at least 50-some-odd commenters. If your points have already been
11 made by someone else we ask that you drop off. I'm not demanding it,
12 I'm just saying it would be appropriate.

13 So, John, who do we have next in the queue?

14 MR. GOTCHER: Our next commenter is Brian Mello from
15 Associated General Contractors of California.

16 MR. MELLO: Can you guys hear me?

17 CHAIR THOMAS: Yeah, go ahead Brian.

18 MR. MELLO: Mr. Chairman, members of the Board good
19 afternoon. My name is Brian Mello. I'm the Safety Manager for the
20 Associated General Contractors of California. AGC is a member-driven
21 organization with around a thousand companies statewide, specializing in
22 commercial construction.

23 We are asking for the California OSHA Standards Board to
24 take all comments around the emergency language regarding COVID-19
25 prevention into consideration.

1 In section 3205(a)(1)(A), employees working from home
2 does not have a clear definition as to how an employee would be
3 categorized in the instance of a hybrid model, partial home and field
4 work.

5 In section 3205(b), "exposed workplace" is defined
6 differently than that of the Labor Code 6409.6 (d)(5)and does not take
7 into account employers which may have multiple jobsites, multiple
8 companies and workers on the jobsites over the course of a project. We
9 ask that the language remain in-line with the existing Labor Code section
10 created by AB 685.

11 In regards to multiple and major outbreaks, we are asking
12 that the compliance around this section be redefined to further guide
13 employers with multiple sites, projects and employee movement amongst
14 these jobsites. As we feel as though the regulation puts employers in a
15 position that they may not be able to comply with as testing and the
16 scheduling of the tests are not always available at the times required and
17 could be even more difficult to come by with the implementation of this
18 regulation.

19 Additionally this section does not incorporate any of the CDC
20 guidelines or existing labor codes when identifying what employees and
21 workers would fall into the "close contact" category, therefore subject to
22 extensive testing policies.

23 We appreciate your time and consideration around both
24 these comments and written comments that were previously submitted.
25 Thank you Chairman.

1 CHAIR THOMAS: Thank you.

2 John, who do we have next?

3 MR. GOTCHER: Our next commenter is Mike Donlon from the
4 Construction Employers' Association.

5 CHAIR THOMAS: Michael, are you there?

6 MR. DONLON: Yes, good afternoon.

7 CHAIR THOMAS: Go right ahead.

8 MR. DONLON: Okay, so this is Mike Donlon. I'm representing
9 the Construction Employers' Association. The CEA represents most of the
10 largest (indiscernible) commercial building contractors in Northern
11 California.

12 We've read this petition or this regulation, proposed
13 regulation carefully and have many concerns with the authority of it.
14 And I'll start with our biggest concern is section 3205(c)(10)(C). It
15 requires continuation of pay and benefits to employees. This section is
16 outside of the authority of the Board to adopt, outside the authority of
17 the Division to enforce. It's not an occupational health and safety
18 regulation. It's a wage regulation, therefore it should be deleted in its
19 entirety.

20 Other regulations, we do have a problem with the definition
21 of "outbreak." It should be limited to employees of a single employer,
22 not of a place of employment, consistent with AB 685 and Senate Bill
23 1159. "Major outbreak" is just a new term that I haven't seen anywhere
24 out there, and none of us looking at this have.

25 We also believe the testing requirements, and there's three

1 sections, those are -- I won't read them -- are just overbearing. And
2 could actually hurt a community by basically gobbling up all the testing
3 supplies and overloading the labs in a community.

4 We think the definition of "exposed workplace" is unduly
5 broad and specifically walkways, hallways, aisles shouldn't be included in
6 that, because if a COVID-19 case walked down the hallway, another
7 employee walks down a week later, the probability of transmission in
8 those places is very small.

9 And I'm trying to be brief here and I'll finish real quick, one
10 of the things we've argued quite often is whether this is a necessary
11 regulation and if it is duplicative. Well, local and state health
12 departments are referenced 33 times in this 21-page regulation. Now
13 that kind of tells me you're riding on their coattails. They're already
14 doing the work and this is just tagging on to it. That is the definition of a
15 duplicative regulation -- 33 times in 21 pages.

16 Clarity issues, there's clarity issues all throughout this
17 regulation. And this is a very basic one, it's not important but it'll point
18 out what I'm talking about. One of the training requirements is
19 employers have to train methods of distancing six feet. I can just see
20 this training. Okay, You can stay six feet away. You can stay 72 inches
21 away. You can stay two yards. Six feet is a number, it's not a method.

22 Now the second sentence in that section says, "You should
23 train employees on the importance of distancing." Now that is a critical
24 thing that is kind of overshadowed by this kind of stupid statement
25 before it. That's the kind of clarity that is missing in this regulation.

1 Some of the good stuff, and there is a lot of good stuff in here, is buried
2 under well, you know what I'm going to say.

3 Another thing we're concerned with is now our members
4 have been spending exorbitant resources to try and keep their employees
5 safe from this COVID. And they've actually put together systems and
6 they've worked very well for them. Our members have seen very low
7 numbers of cases. We're worried that trying to comply with this
8 regulation, especially so quickly, is going to pull away from those
9 resources and those systems that they put into place and are working.
10 Just so we can be in technical compliance with the regulation.

11 And then the idea, well Eric Frumin earlier said yeah, well if
12 we pass this regulation employers will have to do it. That's very naive.
13 Employers that aren't complying now aren't going to comply tomorrow
14 just because you vote on this. It's just not going to happen. And in fact I
15 feel for these employees we've heard from who worked for these
16 employers, that g*****it they just don't care, and that is terrible. But a
17 poorly written regulation isn't going to fix things in those workplaces. A
18 poorly written regulation, especially with the clarity issues of this one
19 and some of the jurisdictional issues, is only going to lead to appeals and
20 litigation.

21 So strong enforcement is the key. And the Division has done
22 a good job. And as I think Eric Frumin said not enough of it, because
23 they were so short-handed. But they have done a good job with existing
24 regulations. And have a case-law track record -- we know how we can
25 cite them and how we can't -- or the Division does. There's no questions

1 on this is going to be in hearings and up for decisions by judges to figure
2 out what some of this stuff means. And that's going to be the biggest
3 problem with trying to implement any of this quickly.

4 So I urge you to take a look at this. We also supplied written
5 comments as many others have. And I just see very many flaws with this
6 regulation that are going to overshadow the good parts of it. Thank you.

7 CHAIR THOMAS: Thank you.

8 John, who do we have in the queue?

9 MR. GOTCHER: Our next commenter is Lucas Zucker from
10 Central Coast Alliance United for a Sustainable Economy.

11 CHAIR THOMAS: Can you hear us?

12 MR. ZUCKER: Good afternoon Chair Thomas and members.
13 Yeah, I can hear you. Can you hear me?

14 CHAIR THOMAS: Go right ahead, thanks.

15 MR. ZUCKER: Good afternoon Chair Thomas and members of
16 the Standards Board. My name is Lucas Zucker, I'm the Policy Director of
17 CAUSE, the Central Coast Alliance United for a Sustainable Economy, a
18 social-justice organization in Ventura and Santa Barbara counties that
19 works with farm workers and immigrants.

20 We urge you to vote to adopt the proposed standard. In our
21 region, we've seen major outbreaks among agricultural workers at some
22 of our region's largest employers, including Calavo's packing house in
23 Santa Paula, Reiter's H-2A farm worker labor camp in Oxnard and Bonipak
24 H-2A farmworker housing in Santa Maria. Those cities of Oxnard, Santa
25 Paula and Santa Maria are now driving by far the largest area of COVID

1 cases in Ventura and Santa Monica County.

2 Bonipak's labor contractor, Alco Harvesting, initially did not
3 report its outbreak to public health officials until reported by workers.
4 And then under-reported the spread, including threatening to retaliate
5 against the worker who shared information with local media. This
6 outbreak ultimately killed one worker and sickened many others. And
7 they'd have been mitigated if the labor contractor had been required to
8 take immediate action as the proposed regulation would require.

9 We've also received frequent reports from our farm worker
10 members about employers not complying with six-foot distancing
11 requirements, not providing PPE and not training workers on safety
12 including sick-leave availability, because current pandemic safety
13 guidelines are not adequately enforceable.

14 In particular, close quarters in shared housing and
15 transportation under the H-2A temporary farmworker visa program have
16 led to the largest outbreaks in our region and clearly need greater
17 oversight. The proposed regulation would address many of these issues
18 and save lives in our communities among those most impacted on the
19 frontlines of the pandemic, essential workers and their families.

20 It would also help prevent the spread of COVID-19 from
21 irresponsible employers and labor contractors to their neighbors and
22 peers in the industry who are doing their best to follow safety practices,
23 helping the sustainability and stability of all of our local economy.

24 And we urge you to adopt these urgently needed standards
25 to protect our essential workers who put their lives on the lines all the

1 time. Thank you.

2 CHAIR THOMAS: Thank you.

3 John, who do we have on the queue?

4 MR. GOTCHER: Our next commenter is Christopher Valadez
5 from the Grower-Shipper Association of Central California.

6 CHAIR THOMAS: Christopher, can you hear us?

7 MR. VALADEZ: I can. Can you hear me?

8 CHAIR THOMAS: Yeah, go right ahead.

9 MR. VALADEZ: All right. Thank you, Mr. Chair, and members
10 of the Board, staff and everybody else that's weighed in thus far. Chris
11 Valadez, Grower-Shipper Association of Central California. Our regional
12 footprint is Monterey County, Santa Cruz, San Benito and Santa Clara
13 counties. And following your advice Mr. Chair, we'll attempt to be
14 different here.

15 Our difference in our commentary is in the fact that we were
16 the creator. We were the establisher of the model for COVID-19 housing.
17 That was a program that was started by us and our association in April, a
18 program that on July 24th, based on the work that we had done to set up
19 the program, operate and help serve members of the farmworker
20 community. We'd worked with our partners, with CDPH and CDFA to
21 share our model, which ultimately became the state's model, which I
22 think is in at least a dozen counties now and referred to as Housing for
23 the Harvest.

24 And so, being the fact that not only were we the originator,
25 but we have been operating this program now for seven, eight months.

1 In addition to the fact that going back to roughly middle of June when
2 the state of California, and in particular our region here in the Salinas
3 Valley, was over-impacted by oversubscribed testing demand and, I think,
4 an overall failure to return in a timely manner test results back to
5 members of the community.

6 We created a program in conjunction with our partner,
7 Clinica De Salud, here in the region just for members of the farmworker
8 community to ensure we can guarantee both tests. And a quick turn-
9 around time, which has resulted since again going back to June an
10 average of about 30 hours or less in our ability to return results.

11 And so, based on our experiences here, one in being the
12 operator of the housing program which then became the model now
13 exported to 13 or so counties in the state of California; and our testing
14 experience specifically with the farmworker community. And again at a
15 time and continuing to present day. We think we've learned a little bit
16 with respect to who's been impacted, where the disproportional impacts
17 have come or where they're not coming within this region. And why
18 might there be some differences say, in terms of the experiences here in
19 our region where there is a high use of the H-2A program and employer-
20 provided housing, employer-provided transportation.

21 But unlike the previous commenter, in this region we have
22 not had the case clusters or the large number of cases associated directly
23 with employer-provided housing. And so what's different? I think
24 partially your regulation mentions, recognizes, but doesn't necessarily
25 connect the fact that there is an infrastructure in place today. There has

1 been one here since late March, early April that wasn't in place
2 elsewhere throughout the state. Namely where we are talking about
3 housing where employers are employing strict standards with respect to
4 dealing with those who are symptomatic. Doing testing, whether as a
5 result of protocol or a surveillance measure, our program has been there
6 to help employers. Whether it's an H-2A employer or whether it's a
7 member of the community who lives in their own personal congested or
8 crowded-living condition, be able to safely isolate or quarantine.

9 And so we have not seen any differences relating to
10 employer-provided housing or employer-provided transportation that
11 may have or is explained to be the case for other regions and other
12 areas. And I think part of the reason there -- and I can't speak to every
13 employer's practices, the aggressive nature or how strong or not that
14 they are -- but I do know that we've had here again since April an
15 infrastructure. Which throughout the duration of the pandemic and a
16 long season, which for here takes us from the spring through the fall into
17 -- excuse me, into the fall -- we haven't had the case clusters directly
18 tied back in to Salinas Valley to employer-provided housing where you
19 have a dormitory-style living condition. And in particular, in some cases,
20 use of bunk-style arrangements.

21 And so my comments here are basically one based on our
22 experience and knowledge from the fact that we've built up an
23 infrastructure, our findings and what we've seen versus what we haven't
24 seen. And our concerns. Not over a standard or a stronger, stricter
25 standard. I think we've proven and led by example that we don't have

1 time to wait. We act and react in a way to ensure we have the
2 infrastructure that's as protective as possible and in place to ensure that
3 the employee has the resources that they need and the employer is doing
4 anything and everything that they can.

5 But in our review of the standard where we see the draft
6 language utilize or allow the existence of engineering controls for a
7 fixed-site workplace, it disallows or does not allow such use of
8 engineering controls that we have provided to the Standards Board in our
9 written comment, that are in use. In some cases in employer-provided
10 transportation vehicles, whether it's a screen, where they're able,
11 maybe, aisle-to-aisle to create more than three-foot distancing between
12 passengers, but row-to-row or in-front or in-back. You know, the
13 employment of the use of a screen in addition to a face covering and
14 ventilation as measures when taken in concert to immediately lead to a
15 system that allows for a more risk-reduced environment. That, we think,
16 is not only better, preferable, but is one that should be more readily
17 employed by our sector to ensure we're doing everything possible to
18 ensure we have the greatest protections necessary to protect the
19 essential workforce.

20 And similarly, in housing. There was a reference made
21 earlier to some guidance. We've seen guidance led by L.A. County with
22 different bunk scenarios, partitions, screenings, different positions and
23 patterns. You know, we know in some cases here based on our
24 experience that that has been in place.

25 In addition we also believe that there is a room for

1 employer-provided -- or a partition, a screen, or the use of an
2 engineering control --

3 CHAIR THOMAS: I hate to cut you off, Chris, but you're going
4 have to sum up.

5 MR. VALADEZ: Sure, I will.

6 CHAIR THOMAS: Thank you.

7 MR. VALADEZ: -- to reduce the risks.

8 What we want to see is a reduced-risk environment all
9 around. We think employers are there to do just that. But we think in
10 the current language, because the engineering controls are not extended
11 to employer-provided housing and transportation, we'll run into a
12 situation where we think could be very unfortunate for our employers
13 and our employer community. Thank you.

14 CHAIR THOMAS: Thank you, Chris.

15 John, who do we have next in the queue?

16 And I'm doing strict time on this now, because we're not
17 going to make it. We've still got 50 -- more people came on to talk now,
18 but I asked you not to. But that's okay. But we're going to do like a
19 minute-and-a half and that's it. So John, go ahead.

20 MR. GOTCHER: Our next commenter is Linda Kjesbu from
21 Northern California Safety Consortium.

22 CHAIR THOMAS: Linda, go ahead.

23 MS. KJESBU: Okay, can you hear me?

24 CHAIR THOMAS: Yes, go right ahead.

25 MS. KJESBU: All righty, my name is Linda Kjesbu. Good

1 afternoon, thank you Chairman Thomas and Board for hearing us out
2 today. I'm the Director of Northern California Safety Consortium. We
3 work with local businesses. We're in Humboldt County, a rural county.
4 And a large sector of our businesses are construction and service
5 industry and (indiscernible).

6 So I'm here to represent some of those members of our
7 companies with questions that have come to me about this new standard.
8 And they were largely what I put into my written comments were related
9 to clarification. Again, that's I think what all of us have been asking for,
10 more clarification within this emergency standard.

11 And having to do with a specific set of questions that my
12 clients have are questions on return to work. Return to work is a big
13 issue. And all the guidance so far and the standard itself, the proposed
14 standard, there are things that are bound to come up especially in
15 Northern California with cold, flu, wet rain season coming up. And so
16 that is what we are seeking, at least most of my clients, is more clarity
17 on that.

18 And as I heard other people speaking a couple of other
19 things occurred to me. And that is I completely sympathize with the
20 callers and speakers that spoke about the awful conditions that they
21 were having to work within. And my concern with the regulation is that
22 somebody else mentioned, I think Mr. Donlon, of being duplicative. And
23 it seems as though in some ways it is kind of duplicative of --

24 CHAIR THOMAS: Thirty seconds.

25 MS. KJESBU: -- that point. Oh, I'm sorry.

1 So in any case I would ask that there be just some sort of an
2 extension to get more clarification on this regulation.

3 CHAIR THOMAS: Thank you.

4 MS. KJESBU: Thank you.

5 CHAIR THOMAS: John, who do we have next in the queue?

6 MR. GOTCHER: Our next commenter is Scott Govenar of
7 Governmental Advocates Incorporated on behalf of Construction
8 Employers' Association.

9 CHAIR THOMAS: Scott, you're on. Two minutes starting
10 now. Better unmute yourself.

11 Scott's not there, John, let's go to the next.

12 MR. GOTCHER: Our next commenter is Jesus Mendoza from
13 Central California Environmental Justice Network.

14 CHAIR THOMAS: Jesus, two minutes, you're on right now.
15 Jesus? Go to the next, John.

16 MR. GOTCHER: Our next commenter is Bryan Little from
17 California Farm Bureau.

18 CHAIR THOMAS: Bryan, can you hear me?

19 MR. LITTLE: Yes, I can. Can you hear me?

20 CHAIR THOMAS: Yeah, two minutes starting right now.
21 Thank you.

22 MR. LITTLE: All right. I'll try to make this fast. Mr. Chair
23 and Board Members and agency and Board staff thanks for the
24 opportunity today. I'm Bryan Little representing California Farm Bureau
25 Federation, the largest general interest ag organization in California.

1 Just a couple of points I'd like to make. This rushed ETS
2 process doesn't serve anyone's interests and has resulted in a proposed
3 rule with a lot of problems. We barely had a week to consider a 21-page
4 draft regulation explained by a 57-page document comprised of a
5 justification for emergency action and an explanation of the proposed
6 regulation.

7 The regulation will have to be understood and implemented
8 in the context of the ongoing pandemic and in conjunction with recent
9 legislative mandates like AB 685, AB 1867 and SB 1159. This truncated
10 process serves nobody, not the employer stakeholders, not employee
11 stakeholders, nor the agency that's going to be charged with trying to
12 enforce this.

13 I would mention parenthetically that earlier this year we
14 were suffering from a shortage of N95 respirators brought about by the
15 pandemic and the wildfire smoke season. The agency consulted with us
16 and they felt like they did something and accomplished something by
17 doing that. But the problem is with an ETS standard like this one you're
18 not going to have the opportunity for that kind of conversation. And
19 we're going to spend the next several months trying to fix what's in the
20 draft of the ETS that I think we're probably going to adopt today.

21 The concerns expressed by the proponents have largely
22 already been addressed by Cal/OSHA guidance, which leaves one to
23 wonder why it's necessary to do a regulation on this rushed timeframe
24 that we're on right now.

25 A couple of people have already made the point that the

1 Board lacks the actual authority to do the salary preservation provision,
2 the housing provisions and the transportation provisions. And I would
3 echo that.

4 I just want to close without using up all of my time by saying
5 in some draft ETS today (indiscernible), the ETS process itself suffers
6 from deficiencies in the process for an emergency standard required by
7 the APA. There's certain authorities the Board does not possess and will
8 result in a defective regulation that small employers like farmers and
9 ranchers will be unable to understand and implement. Leading the
10 agency to waste resources conducting enforcement against employers
11 who are trying to protect their employees and still trying to figure out
12 how to understand the regulation.

13 CHAIR THOMAS: Ten seconds, please.

14 MR. LITTLE: And then people like me who will be unable to
15 render them any assistance to doing so.

16 And I would wrap up, Mr. Chairman, by suggesting to all of
17 us who are commenting today if we could refrain from (indiscernible) of
18 other commenters we'd be able to get a lot further figuring out what to
19 do here. Thank you.

20 CHAIR THOMAS: Thank you.

21 John, who's up next?

22 MR. GOTCHER: Our next commenter is Estella Cisneros from
23 California Rural Legal Assistance Incorporated.

24 CHAIR THOMAS: Estella, can you hear me?

25 Estella? Estella, can you hear me? Apparently she can't

1 hear me. John, can you go to the next?

2 MR. GOTCHER: Our next commenter is Mirella Deniz-
3 Zaragoza from Warehouse Worker Resource Center.

4 MS. DENIZ-ZARAGOZA: Hi. Good afternoon. Can you hear
5 me?

6 CHAIR THOMAS: Yes, go right ahead, thank you. Two
7 minutes.

8 MS. DENIZ-ZARAGOZA: Great. Hi everyone, my name is
9 Mirella Deniz-Zaragoza and I'm speaking on behalf of the Warehouse
10 Worker Resource Center. Thank you Chair Thomas and Board Members
11 for the opportunity to speak today. We wanted to thank you and the
12 Division for your leadership and especially for developing an emergency
13 standard to protect general industry workers from COVID-19. We
14 support the emergency standard proposed by the Division and we urge
15 you to go forward with it today without delay.

16 Since the pandemic began, the warehouse and other
17 essential workers have suffered and faced this deadly virus with
18 inadequate protection from large employers like Amazon who have
19 turned rapidly and made record profits. Our organization has
20 continuously received reports of employers providing inadequate
21 protection against COVID, including failing to ensure proper social
22 distancing, being organized or responding properly to workplace
23 outbreaks among other issues.

24 In the words of a delivery driver in Los Angeles area who
25 states, "My employer has not done enough to protect us from COVID.

1 Social distancing was not enforced and we've had to cluster in big
2 meeting groups every morning. They did not clean our delivery vans
3 between drivers. I didn't receive enough PPE, hardly any gloves or hand
4 sanitizer. Mary, our house worker and (indiscernible) told us it's a lot
5 more prevalent in the building. Because they hired many people, it's hot.
6 We're getting pushed to work even faster now, because the volume of
7 packages did increase with COVID. So they are really pushing for us to go
8 faster and still even more. It's just really stressful."

9 The emergency standard developed by the Division addresses
10 many of the issues we have seen in the warehouse industry and will help
11 provide much-needed guidance and protection.

12 Although there are aspects we wish were stronger, such as
13 proclaim workers' rights to participate in or challenge workplace
14 prevention plans, the standard still strikes a good compromise between
15 allowing employers --

16 MS. SHUPE: That's two minutes.

17 CHAIR THOMAS: Please wrap up.

18 MS. DENIZ-ZARAGOZA: Okay -- to develop and implement a
19 plan that sets specific baselines. We urge the Board to move forward
20 with the Division's proposal on the emergency COVID-19 standard. Thank
21 you.

22 CHAIR THOMAS: Thank you.

23 I'm sorry to rush. I just want everybody who wants to
24 comment to comment, but we do have to have a time limit if we're going
25 to do that.

1 John, who's up next?

2 MR. GOTCHER: Our next commenter is Shane Ross from
3 California Rural Legal Assistance.

4 CHAIR THOMAS: Shane, can you hear us? Shane? Can you
5 unmute yourself Shane? John, go to the next if he's gone.

6 MR. GOTCHER: Our next commenter is Fred Walter from
7 Conn Maciel Carey.

8 CHAIR THOMAS: Fred, can you hear us?

9 MR. WALTER: I can, sir, thank you very much.

10 CHAIR THOMAS: Go right ahead.

11 MR. WALTER: Okay. So I am a Counsel with Conn Maciel
12 Carey, but I'm speaking for myself today. This is the first time I've
13 spoken at a Standards Board meeting despite having spent the last 35
14 years advising and representing California employers before the Appeals
15 Board.

16 Before anyone dismisses me as a callous shill for employers
17 I'd like to point out that I never knew my grandfather. He was killed in a
18 preventable industrial accident when my mother was six months old. I
19 care about workplace safety. I care as much for the rules in workplace
20 safety that are clear and realistic.

21 There can be no question that the threat of COVID-19 in the
22 workplace must be addressed, that's not the issue. The issue is whether
23 this regulation does that. Despite the quick work done by Eric Berg and
24 his staff and CDPH, I cannot think of a standard which sets up employers
25 for failure so completely as this one does. It was rushed to a vote

1 without adequate time for comment, but (indiscernible) expected to
2 comply with it. Or for that matter, for thoughtful deliberation by this
3 Board. There was time for that in Oregon and Virginia when they
4 adopted their COVID regulations, but apparently not here.

5 The wildfire smoke regulation had to be revisited, because
6 the first iteration was rushed. The heat illness standard, by comparison,
7 was subject to similar arguments of urgency. That the original
8 emergency regulation was successful, because they had adequate time
9 for DOSH and the regulated community to work together to produce
10 feasible rules.

11 It's hard to see how this regulation is going to do what 3203,
12 5104 and other regs cannot do or how it will be more enforceable than
13 those are. None of the hazards spoken of by the workers who have
14 commented today --

15 MS. SHUPE: Two minutes.

16 MR. WALTER: -- cannot be addressed through existing
17 regulations that (indiscernible) proposed reg.

18 So whether you agree with me or not we can foresee that
19 this regulation will certainly clog the Appeals Board with appeals. More
20 importantly, it is certain to close businesses and eliminate jobs
21 unnecessarily. I'm afraid this is the epitome of a feel-good exercise, and
22 nothing more. Thank you.

23 CHAIR THOMAS: Thank you.

24 John, who do we have in the queue?

25 MR. GOTCHER: Our next commenter is Sandra Aguila from

1 California Rural Legal Assistance Incorporated.

2 CHAIR THOMAS: Sandra, can you hear us? Sandra? Sandra,
3 going once, going twice, gone. John, go to the next.

4 MR. GOTCHER: Our next commenter is Norma Encina who is
5 on the WebEx under Edgar Pinto. And I believe that there's going to be
6 more than one person.

7 CHAIR THOMAS: Hello, can you hear us? Hello?

8 MS. ENCINA: Hello? Hi, can you hear me?

9 CHAIR THOMAS: Yes. Go right ahead.

10 Good afternoon my name is Norma Encina.

11 (Audio cuts in and out obscuring testimony.)

12 MS. SHUPE: Miss Encinas?

13 CHAIR THOMAS: Norma, can you speak a little slower? We
14 can't hear you, and your mic is going in and out.

15 MS. ENCINA: I think I was added under Edgar. I have my
16 own WebEx under Norma Encinas. I think that's what happened.

17 CHAIR THOMAS: Go ahead. Go ahead, you can speak. Just
18 don't talk too fast.

19 MS. ENCINA: Okay. Among the specific goals we have is to
20 advance employment and educational opportunities for farm workers. To
21 train farm workers more effectively to carry out their work (audio
22 continues to cut in and out, and distort - indiscernible.) Our work began
23 during the early stages of the COVID-19 pandemic and has continued
24 throughout the entire (audio continues to cut in and out, and distort -
25 indiscernible.) Through these measures, we were able to mitigate the

1 spread. We ask that you consider section (indiscernible) and
2 transportation. At this time, (indiscernible) and are back in Mexico
3 (indiscernible). They will briefly share their experiences. Thank you.

4 MS. SHUPE: We need to cut her off, nobody can hear her.

5 CHAIR THOMAS: Nora, we can't hear you. Your mic is going
6 in and out. We heard a lot of it, but it's getting incoherent. Sorry.

7 All right, John, who's up next?

8 MR. GOTCHER: Our next commenter is the Edgar Pinto line,
9 which looks like a group.

10 CHAIR THOMAS: Let's try that. Edgar are you there?

11 MR. PINTO: (Speaking in Spanish.) It's going to be in
12 Spanish.

13 CHAIR THOMAS: It's okay. Do you have a translator?

14 (Off mic colloquy.)

15 MR. PINTO: (Speaking in Spanish.)

16 CHAIR THOMAS: Translation please.

17 MR. PINTO: (Through Interpreter Haikalis.) So we would like
18 to talk about housing and about the program H-2A. There is no need for
19 us to have --

20 (Sound continuously cutting in and out.)

21 MS. SHUPE: We can't hear the interpreter now.

22 CHAIR THOMAS: I'm sorry, we've lost the interpreter, I think.
23 You know what, can you guys hold on the line, Edgar?

24 MR. PINTO: Sure.

25 CHAIR THOMAS: We're having some technical difficulties

1 here, so we are going to take -- we were going to take a break anyway,
2 so we're going to take it now, we'll reconvene at 3:05.

3 All right, so we're going to take a break. Thank you. We're
4 in recess.

5 (Off the record at 2:52 p.m.)

6 (On the record at 3:05 p.m.)

7 CHAIR THOMAS: And we're back. We are back in session.

8 John, I believe we left off with Edgar Pinto. And if they are
9 still there -- I see them on the screen -- would you go ahead and make
10 your comments? And I think you need to go through our translator, if
11 you're not but (overlapping colloquy).

12 MR. PINTO: (Through Interpreter Haikalis.) Good afternoon
13 my name is Edgar Pinto. And I work for the company --

14 (Audio cuts in and out - indiscernible.)

15 So they were talking basically about how safe the distancing
16 required for distancing. And if these changes do take place this could be
17 too expensive and we could not be able to afford it for the people who
18 live there.

19 These workers that you (indiscernible) under the program
20 the H-2A they're going to talk about their experiences they had this year
21 working there with their other coworkers.

22 MR. PACHECO: (Speaking in Spanish.)

23 CHAIR THOMAS: Translate please.

24 MR. PACHECO: (Through Interpreter Haikalis.) It's not very
25 easy to spell my name. It's Brualio Alonzo Pacheco. I'm talking about H-

1 2A. I want to tell you about the experiences I had here in Ventura. We
2 had to keep our distances and to do this. We did it, we did keep our
3 distance and we had to wear a mask. (indiscernible.)

4 And the interpreter wasn't able to hear the rest because it
5 was choppy.

6 MS. HERNANDEZ ESPINOZA: (Speaking in Spanish.)

7 CHAIR THOMAS: Translate please.

8 MS. HERNANDEZ ESPINOZA: (Through Interpreter Haikalis.)
9 My name is Carolina and I am also working with H-2A. I want to tell you
10 about the usage of the gloves that we had to wear, use the gel for our
11 hands. And when we went to lunch we'd wear a mask and we always
12 kept our distances.

13 MS. GARCIA TORRALBA: (Speaking in Spanish.)

14 CHAIR THOMAS: Translate please.

15 MS. GARCIA TORRALBA: (Through Interpreter Haikalis.) So
16 my name is Carolina. I am a worker with H-2A. I want to tell you about
17 the housing where we were safe. We never knew of anybody getting
18 sick, we were safe. They had inspections. They always took good care of
19 us. We kept our distances when we were requested when we went
20 shopping or to the stores and things like that.

21 MR. PINTO: Just to finish, what we want is we don't agree
22 on this six-foot business between beds. So we think that we could put
23 more people in the rooms instead of cutting the six-foot rule between
24 beds. Thank you.

25 CHAIR THOMAS: Thank you. Thank you for your comments,

1 we appreciate it.

2 John, who do we have in the queue?

3 MR. GOTCHER: Our next commenter is Sarait Martinez from
4 Centro Binacional para el Desarrollo Indígena — sorry, I'm trying my best. I know I'm
5 butchering this. Sarait Martinez would you introduce yourself please?

6 MS. MARTINEZ: Yes.

7 CHAIR THOMAS: Go ahead.

8 MS. MARTINEZ: my name is Sarait Martinez. I am the Executive
9 Director with Centro Binacional para el Desarrollo Indígena Oaxaquena. We are a
10 nonprofit organization that works in the Central Valley and Central Coast,
11 more specifically in the Fresno, Madera and Salinas Valley areas. And we
12 represent the indigenous farmworker community. We now have about
13 165,000 indigenous farmworkers.

14 Some (indiscernible) work in the fields. Many of the workers
15 have a unique language (indiscernible) in the workplace. And we've also
16 had with the pandemic there have been additional barriers that I
17 (indiscernible). And that we also know that many farm workers are
18 largely uninsured and that especially because of the different policies
19 implemented at the federal level many of them fear to seek full
20 resources. So the importance of having enforcement and to have
21 Cal/OSHA really work with employers to ensure that they get the right
22 information in critical times of this (indiscernible) crisis I think is very,
23 very important. And we have the responsibility to act now.

24 I think we started this back in March. And I think we're at a
25 point where we need to figure it out by now. We're really just having

1 this discussion of whether we implement this emergency temporary
2 standard, I think we're a little too late for that and we can't wait no
3 more.

4 We also know that as of June 2020 in the agricultural
5 industry, we're at least three times as likely to become infected. This is
6 among our farmworker population. And again we're talking already
7 about a very vulnerable population and we need to make sure that we
8 protect. So again we want to make sure that we (indiscernible) --

9 MS. SHUPE: We're at two minutes.

10 MS. MARTINEZ: So I urge you all to really adopt this
11 emergency temporary standard to protect our farmworker community
12 and to save lives. Thank you.

13 CHAIR THOMAS: Thank you.

14 John, who do we have next in the queue?

15 MR. GOTCHER: Our next commenter is Lorena Martinez from
16 California Rural Legal Assistance Incorporated.

17 CHAIR THOMAS: Hello, are you there?

18 MR. GOTCHER: Lorena Martinez.

19 CHAIR THOMAS: Lorena, can you hear us? All right,
20 apparently she can't hear us. Let's move on.

21 MR. GOTCHER: Okay. Our next commenter is Kristin Haman
22 of San Diego Gas & Electric.

23 CHAIR THOMAS: Kristin, are you there?

24 MS. HAMAN: Hi, yes I am.

25 CHAIR THOMAS: Go ahead.

1 MS. HAMAN: Good afternoon chairman Thomas and other
2 members of the Board. My name is Kristin Haman and I am representing
3 San Diego Gas & Electric.

4 I'd like to start by saying we support an ETS for prevention of
5 COVID-19 in the workplace and appreciate the opportunity to provide
6 comments.

7 That said, I'd like to highlight a few areas of concern with
8 the proposed text. First, employers will be required to install solid
9 partitions for fixed work locations where it's not possible to maintain the
10 physical distancing requirement. We have employees who work in
11 boilers, tanks and vaults where maintaining proper physical distancing
12 may not be possible. While it is possible to erect a barrier in a boiler
13 or a vault it's not feasible in most instances. So we recommend
14 modifying this section to add an exception to the barrier requirement for
15 work in these industrial structures.

16 The next area of concern is regarding the requirement for
17 ventilation systems to maximize the quantity of outside air unless the air
18 quality index for any contaminant exceeds 100. This will require
19 employers to monitor the AQI for all contaminants on a daily basis. For
20 most employers, this is a manual process of checking airnow.gov or other
21 websites. As background, Riverside has had AQI values above 100 for 80
22 days so far in 2020. As we've seen with the wildfire smoke regulation,
23 the AQI fluctuates hourly and there are discrepancies in the values
24 reported by different agencies.

25 Additionally, most of our facilities would require a manual

1 closing of dampers or economizers on rooftops to reduce the quantity of
2 outside air if the AQI exceeds 100. This is difficult to complete on that
3 day and adds the risk of working at elevation. So we recommend
4 removing the air quality index provision altogether.

5 The third section I'd like to address is the requirement to
6 wear face coverings indoors with a few exceptions, including working
7 alone in a room. The standard does not define "room." We have
8 employees who need to clearly communicate with utility customers
9 reporting emergencies --

10 MS. SHUPE: Two minutes.

11 MS. HAMAN: We do appreciate the inclusion of the
12 exception which allows masks to be removed during specific tasks.
13 However we suggest expanding the exceptions to consider other control
14 measures which have been implemented to reduce the risk of exposure.

15 Employers should be able to use the hierarchy of controls
16 when assessing all hazards, and in this case, the virus. So we believe a
17 more realistic approach would be to allow the employer to implement
18 one or more controls that are at least as effective as wearing masks such
19 as making improvements to ventilation and filtration systems, enhancing
20 disinfecting and cleaning protocols, instituting temperature and symptom
21 screenings, maintaining proper physical distance and reducing building
22 occupancy. Then supplement with face coverings when those controls
23 cannot be implemented.

24 And the final area of concern I'd like to mention is the
25 requirement, which states employers shall maintain records of the steps

1 taken to implement --.

2 MS. SHUPE: Ms. Hamon, you're at three minutes.

3 CHAIR THOMAS: Please wrap up.

4 MS. HAMAN: Okay. Sure.

5 So it's the part on taking the steps to really maintain how we
6 came to the prevention plan. But we do support establishing this plan.
7 We just urge the Board to consider these recommended modifications
8 heard in today's proceedings and over the last week in the proposed
9 emergency temporary standard before adoption. SDG&E would be glad
10 to participate in this review process as we have we done many times in
11 the past. Thanks for the opportunity.

12 CHAIR THOMAS: Thank you.

13 John, who do we have?

14 MR. GOTCHER: Our next commenter is Jennifer Zurita from
15 California Rural Legal Assistance Incorporated.

16 CHAIR THOMAS: Jennifer, can you hear us?

17 MS. ZURITA: Yes, I can hear you. Can you hear me?

18 CHAIR THOMAS: Yes. Go right ahead.

19 MS. ZURITA: Good afternoon. I'm going to be reading a
20 testimony on behalf of one of my coworkers, her name is Sandra Aquilar.

21 So good afternoon. My name is Jennifer Zurita. I am a
22 community worker for California Rural Legal Assistance in Santa Maria,
23 California, the Central Coast. I urge you to approve the proposed
24 emergency COVID-19 work protection regulation to prevent illness and
25 save the lives of workers, their families and our communities.

1 Santa Maria is surrounded by vineyards, strawberry fields
2 and several vegetable crops. Every year Santa Maria welcomes numerous
3 amounts of H-2A workers that form part of its workforce. While some
4 employers try to comply with the health and safety standards provided
5 by the CDC, there are numerous H-2A workers being infected with COVID-
6 19. In Santa Maria there were 137 known COVID cases for H-2A workers.
7 These numbers tell us that these cases are not isolated events.
8 (indiscernible) that the workers and the outbreaks and implementation
9 of protections have been haphazard at best and in many cases
10 nonexistent.

11 Under the H-2A program, the workers' visa, employment,
12 housing and transportation are all arranged and controlled by the
13 employer. As a result, many of our H-2A clients are often fearful to
14 report any illness or any workplace health or safety violations. In
15 addition, many don't know what their rights are. The proposed
16 emergency COVID-19 work protection regulation would clarify the
17 protections that employers must take.

18 During this global pandemic, our office conducted outreach
19 to current H-2A housing. In Santa Maria you often see 30 H-2A workers
20 being housed in a small 1,200-square-foot single-family home, or as many
21 as six workers housed in one motel room.

22 While conducting the outreach, we encountered several
23 notices from different employers to highlight how the pandemic has led
24 to employers increase control over H-2A workers. These notices one:
25 mandate that after work H-2A employees are to stay in their designated

1 rooms and that any unnecessary outing is prohibited;

2 MS. SHUPE: Two minutes.

3 MS. ZURITA: Two: other notices have indicated that H-2A
4 employees are not allowed to have visitors, have strict orders to be in
5 their rooms by 10:00 p.m.; Three: these notices come along with the
6 threat that any violation will result in the termination of housing
7 employee in H-2A housing.

8 Just to take no more time I'll finish there. Thank you.

9 CHAIR THOMAS: Thank you. Thank you so much.

10 John, who's up?

11 MR. GOTCHER: Our next commenter is Matt Hart from
12 United Food and Commercial Workers, Local 324.

13 CHAIR THOMAS: Matt, are you with us?

14 MR. HART: I am.

15 CHAIR THOMAS: Go right ahead.

16 MR. HART: Thank you. Good afternoon Standards Board
17 Members. My name is Matt Hart. I'm a union representative for the
18 United Food and Commercial Workers, Local 324 in Orange County. We
19 have over 21,000 members in the grocery and drug retail, warehouse
20 distribution, Disney, medical field and cannabis industry. I speak in
21 support of adopting the emergency temporary standard before you
22 today.

23 I do find ourselves discussing the important issue of health
24 and safety practices in the world of the COVID pandemic. Our unit has
25 been witnessing a significant increase of COVID infections in our

1 members, all of whom define the very meaning of the frontline workers.
2 As of today, 484 members of our local union have tested positive and
3 these numbers are climbing daily. We just received a report today of
4 nine infections from yesterday and 12 the day before.

5 In one warehouse facility in Brea, California, nearly eight
6 percent of the employees have tested positive for the virus at that
7 location. And tragically we have even lost one of our members in the
8 grocery industry due to the pandemic. In our view, that is one too many.

9 While we realize that this virus reaches into every aspect of
10 our daily lives, the plain and basic truth is that our members are most
11 vulnerable to infection in the workplace. Employees are put at risk every
12 day because of lack of PPE, the easing off of cleaning and sanitation
13 practices and social distancing practices are being completely ignored.

14 Attempts by the employers to address these concerns are
15 inconsistent and fall short of real protections for workers. To put it
16 bluntly it seems that in many cases employers are putting profit before
17 people.

18 In the grocery retail industry, if customers refuse to wear a
19 mask despite the state mandate, they're often allowed to continue to
20 shop, placing customers and our members in harm's way. Employers
21 have even threatened employees with discipline for customer complaints
22 that have arisen because they're asking customers to wear a mask.
23 We've even witnessed customers weaponize the fear of the virus by
24 coughing and even spitting on our members. Such conditions have left
25 employees feeling abandoned and sacrificed --

1 MS. SHUPE: Two minutes.

2 MR. HART: -- with no hope in sight.

3 All of this to say, as COVID-19 cases continue to surge in
4 California, we continue to take the lives of our frontline workers and
5 essential workers. California must respond to the emergency before us
6 today by voting to adopt the emergency temporary standard. Thank you
7 very much.

8 CHAIR THOMAS: Thank you, Matt.

9 John, who do we have up next?

10 MR. GOTCHER: Our next commenter is Claudia Reyes from
11 CBDIO.

12 CHAIR THOMAS: Claudia are you with us?

13 MS. REYES: (Speaking in Spanish.)

14 CHAIR THOMAS: We can hear you.

15 MS. REYES: (Through Interpreter Haikalis.) So good
16 afternoon. My name is Claudia Reyes. I work for Binacional Center for the
17 Oaxacan Indigenous Development and my first language is Mixteco. I work in the
18 fields.

19 I have been working in the fields recently and I've had a bad
20 experience there. There is not much distancing there. You cannot keep
21 much distance in the field. You work as if it was a normal day. It's sad
22 that we're in the middle of a pandemic, we have no protection, no masks.
23 This is very worrisome since if somebody gets sick they don't have them
24 go home. They just keep them working and they don't tell them to go
25 home. So they do not tell them that they should go so that we are all

1 safe, for the workers and the families to be safe.

2 The employers don't care about the employees, it's like they
3 don't care about their lives. So I'm asking you to please pass this new
4 regulation for field workers. The field workers also have families. Thank
5 you.

6 CHAIR THOMAS: Thank you. Thank you very much, I
7 appreciate it.

8 John, who do we have?

9 MR. GOTCHER: Our next commenter is Sarah Wiltfong from
10 Los Angeles County Business Federation, BizFed.

11 CHAIR THOMAS: Sarah, are you with us? Hello Sarah? I
12 don't believe Sarah is there. John can you go to the next commenter?

13 MR. GOTCHER: Our next commenter is Fernando Torres from
14 California Rural Legal Assistance.

15 CHAIR THOMAS: Fernando, are you with us? Go ahead,
16 Fernando, I can see you. You might want to unmute yourself. Oh there
17 you go. No, I can't hear you.

18 (Technical difficulties.)

19 CHAIR THOMAS: I still can't hear you. Yeah I think we have
20 a technical problem.

21 MR. GOTCHER: So Fernando you are unmuted on WebEx.
22 Maybe your headset has its own local mute?

23 CHAIR THOMAS: Yeah, we still can't hear you. I'm not sure
24 what the --

25 John, why don't we let him try and figure it out and then

1 we'll try and go back. Sorry Fernando, we can't hear you.

2 John, can you go on to the next?

3 MR. GOTCHER: Yeah. Our next commenter is Irene de
4 Barraicua from Lideres Campesinas.

5 CHAIR THOMAS: Irene, can you hear us?

6 MS. DE BARRAICUA: Hi. Yes I'm here. Thank you.

7 CHAIR THOMAS: Go ahead.

8 MS. DE BARRAICUA: So my name is Irene, I'm with Lideres
9 Campesinas, which is a statewide network of women farmworker leaders.
10 We are of course in support of this regulation being passed, that's long
11 overdue in our opinion. Many individuals we hear from and work with
12 are experts in various trades in the agricultural industry and they deliver
13 on their part no matter the physical toll it takes on their bodies and risks
14 they take as essential workers.

15 They are fearful of both getting and transmitting the virus
16 and retaliation and oftentimes not having a job the next day. Many live
17 paycheck to paycheck in order to survive and support their families. Once
18 COVID-19 impacts them or their family, they tend to not have -- they
19 don't have the safety nets that many of us can lean back on.

20 Workers deserve more protection and oversight of those
21 protections. We as community members and leaders, employers,
22 government agencies and officials are indebted to our essential workers
23 for keeping us fed, keeping business afloat and for maintaining the flow
24 of our economy. All employers need to be responsible and meet the
25 adequate standards to ensure their workers' safety, especially knowing

1 full well the dynamics that exist due to longstanding issues related to
2 immigration and other vulnerability that come with overall poverty.

3 Some employers indeed are exceptions and practice and
4 exceed these standards, but definitely are not the majority. Also, those
5 employers and associations whose infrastructure and services were, and
6 continue to be modeled after, tend to often be exclusive to members of
7 grower associations or H-2A government programs. And not as common
8 among labor contractors, which make up a huge percentage of
9 employers, and often release growers of all responsibility.

10 Safety measures and standards should not be exclusive. We
11 have heard and seen firsthand of proper protections not being practiced
12 or being practiced very loosely. Masks either not being provided or used,
13 social distancing not being neither encouraged or required, workers not
14 being told about sick coworkers --

15 MS. SHUPE: Two minutes.

16 MS. DE BARRAICUA: And we have heard of individuals with
17 symptoms being told to still come to work for the sake of finishing a
18 grape harvest nearing its end. Yesterday I spoke with a man who worked
19 in the garlic harvest in Fresno and became very sick and hospitalized
20 from COVID-19. His coworkers had been coming to work with symptoms
21 and two tested positive prior to himself. Having severe diabetes he fell
22 much harder, and strongly believes he contracted this in the workplace.
23 Now he can no longer work and he is still recovering. And was given only
24 one week of paid time.

25 More guidance, modeling, good behavior, education,

1 resource navigation, enforcement and possible on-site testing could
2 have prevented the situation he is in today. Instead he is looking to us, a
3 nonprofit community-based organization for assistance of all sorts for
4 mere survival.

5 The burden of the workplace negligence or lax standards for
6 the mere sake of profit and productivity should not fall on the
7 community nor employee. We urge you to support this proposed
8 emergency standard. Thank you very much.

9 CHAIR THOMAS: Thank you.

10 John, who do we have up?

11 MR. GOTCHER: Our next commenter is Steve McCarthy of
12 California Retailers Association.

13 CHAIR THOMAS: Steve, can you hear us?

14 MR. MCCARTHY: I can hear you.

15 CHAIR THOMAS: Go right ahead.

16 MR. MCCARTHY: Thank you for your time today Chair
17 Thomas and Board Members. Again, Steve McCarthy on behalf of the
18 California Retailers Association.

19 We have a number of concerns and questions regarding the
20 language before us, many of which are covered in our letter to the Board.
21 But because time is short and the urgency is so great I want to focus my
22 comments today specifically on the outbreak response and testing
23 requirements.

24 We are extremely concerned about this section and its
25 impact on both the state's testing capacity and the supply chain for food

1 and central goods. The proposed threshold of three COVID cases within
2 14 days does not take into account large facilities with hundreds of
3 employees or more, and the much higher likelihood that those facilities
4 reach the threshold even when there is no transmission taking place in
5 the workplace. Under this rule a large store or a distribution center with
6 hundreds of employees need only a fraction and a percent of them to
7 test positive before triggering facility-wide testing.

8 The requirement to test all employees within the workplace
9 furthers this burden substantially. Losing critical infrastructure like a
10 distribution center, even for a day while testing is underway, will have a
11 ripple effect backing up trucking and the ports and leaving our stores
12 short on essential items like food, medical supplies and PPE. Losing
13 multiple of these facilities across the state simultaneously could be
14 calamitous.

15 So is the possibility of losing capacity within other links in
16 the supply chain, like the ports, as Mr. Hall covered earlier. I don't think
17 we can begin to understand the potential consequences of such a
18 situation.

19 Furthermore, the requirement for continuous testing means
20 that this situation will repeat itself once or twice a week for many weeks
21 thereafter.

22 We believe this will also have significant impacts in the
23 states testing capacity --

24 MS. SHUPE: Two minutes.

25 MR. MCCARTHY: -- and its lab capacity. Our request is that

1 this section be revised and that the definition of "outbreak" instead
2 conform to the statutory definition provided in SB 159 from earlier this
3 year. And that testing be limited to employees exposed. Thank you very
4 much for your time, I appreciate it.

5 CHAIR THOMAS: Thank you.

6 John, what have we got?

7 MR. GOTCHER: Our next commenter is Meghan Neal, from PW
8 Gillibrand, Incorporated.

9 CHAIR THOMAS: Hello. Can you hear us?

10 MS. NEAL: Yes. Hello. Can you hear me?

11 CHAIR THOMAS: Yes. Is that Meghan?

12 MS. NEAL: Yes. Good afternoon.

13 CHAIR THOMAS: Hi, Meghan. Go ahead.

14 MS. NEAL: Thank you for your time. I have a couple of points to make.

15 First, regarding the context and the text of the regulation. The definition of "COVID
16 exposure" and the references in section 10 and 11 align, at this point in time, with the
17 current CDC guidelines, but may or may not align as time goes on. Guidance has
18 changed and should continue to change as we learn more. And that information
19 included in the regulation should defer to the CDC guidelines. All workplaces should
20 align with those of the lead agency and not risk noncompliance with the proposed
21 Cal/OSHA regulation.

22 Second, the list of items included in section (8)(c) may not be feasible for
23 all employers to adequately disinfect. Mine sites, in particular, have dozens, up to miles
24 of conveyor that are equipped with handrails. And we literally are talking about tens of
25 thousands of linear feet of handrails. Additionally, it will be impossible for employers to

1 know whether one out of a thousand hand tools have been used during any given shift
2 and whether its required to be disinfected.

3 I would propose adding "where feasible" to this particular section.

4 Employees can also wear gloves as an alternative means to directly touching handrails
5 and shovel handles. And the regulation does not include allowance for equally
6 protective measures in this regard.

7 Third, regarding section (9)(e), the employer may not be aware of
8 positive cases in the workplace in order to record them. We request that our
9 employees come forward to report this information when they have contact with
10 positive persons outside of work and whether or not they had symptoms. But the truth
11 is that not all employees will report this in earnest. This provision sets some employers
12 up for failure without the ability to comply in good faith.

13 Additionally, the timeframe that employers must begin recording cases is
14 unclear. Does it begin with the adoption of the regulation? I would like to see clarity
15 regarding this requirement so we can have a level playing field.

16 Including the location –

17 MS. SHUPE: Two minutes.

18 MS. NEAL: -- where I previously worked, it is not feasible for some work
19 groups due to the nature of the job, like supervisors and maintenance that have roving
20 locations throughout their shift.

21 And lastly, regarding testing, prohibiting employers from requiring a
22 negative test result to return to work doesn't provide assurance to concerned
23 employees and coworkers. Asymptomatic people can still be positive and spread COVID
24 to others. And the majority of employees in my industry are not able to work from
25 home as essential workers. It's been widely acknowledged by public agencies that

1 testing numbers are insufficient and that employers should not be restricted by lacking
2 test kits or materials or laboratory analyses. So I would just say in closing that if nothing
3 else, essential businesses should continue to be able to require testing prior to returning
4 to work to prevent outbreaks not for more than three persons, but one or two positive
5 people can still spread illness among their coworkers. Thank you for your time.

6 CHAIR THOMAS: Thank you. John, what have you got?

7 MR. GOTCHER: Our next commenter is Cynthia L. Rice, from California
8 Rural Legal Assistance, Incorporated.

9 CHAIR THOMAS: Cynthia. Can you hear us?

10 MS. RICE: Yes. Can you hear me?

11 CHAIR THOMAS: Yes, we can. Go right ahead.

12 MS. RICE: Thank you very much. My name is Cynthia Rice. I'm from
13 California Rural Legal Assistance. I want to thank the staff for all the hard work they put
14 in to developing this regulation, which really was a labor of science and workforce
15 policy.

16 First, let me address the repeated request for delay in issuing this
17 standard. We are in an emergency situation. Despite nine months of guidance and
18 suggestions and enforcement through IIP reg, COVID cases are on the rise and all signs
19 are that this trend will continue. Essential workers, like agricultural workers who have
20 testified today, have been disproportionately affected by COVID-19 and will continue to
21 suffer that disproportionality. Waiting for an advisory committee convening and more
22 hearings before adopting a standard that provides clarity is not good health policy.

23 Implementation by employers at this time is not unreasonable. Mr.
24 Miiller and the representative from AgSocio as well as a number of industry
25 representatives have indicated that they're already in compliance with most of the

1 provisions. The guidances and facts have been available for months. And regulations
2 largely track them.

3 The worker and advocate testimony demonstrates that compliance is far
4 from universal and in many industries and areas not even the norm. So a standard is
5 necessary and it's necessary now. The suggestion that the size of the employer should
6 be considered is inconsistent with the regulatory structure of OSHA standards, which do
7 not regularly include workforce size.

8 There are no distinctions generally with respect to large and small
9 workforces. Yet the regulation itself addresses that area of exposure. The standard
10 includes a definition of exposed workplace that limits the circumstances in worksites
11 where these testing requirements are triggered when there are multiple COVID-19
12 infections and COVID-19 outbreaks as defined in 3205.

13 MS. SHUPE: Two minutes.

14 MS. RICE: It takes into consideration that -- I hope that I'll be given a
15 little bit of latitude, because I'm responding to many of the comments made by industry
16 and testifiers. It takes into consideration --

17 (Cross talk from someone else - indiscernible.)

18 The regulation takes into consideration the circumstances and areas
19 where exposure has taken place and (indiscernible) --

20 (Interruption by people online talking.)

21 CHAIR THOMAS: Can you please mute yourself, whoever is talking about
22 "we can't allow two minutes or three minutes". Thank you.

23 MS. RICE: Thank you, Mr. Chair. The regulation takes into consideration
24 the areas and extent of exposure in the same way that contact tracing
25 recommendations are being made by health agencies, both nationally and statewide.

1 With respect to some of the specific comments about the language of
2 the regulation the use of the term "arranged or provided" in the housing and
3 transportation provisions is similar to federal law which has never been construed to
4 extend to a mere referral to a hotel or (indiscernible) --

5 CHAIR THOMAS: You've got about 20 seconds to wrap up. Thank you.

6 MS. RICE: Mr. Chairman, I really ask you for a little more latitude --

7 CHAIR THOMAS: No, I didn't give anybody else much latitude, so wrap it
8 up.

9 MS. RICE: Yes, you did. You gave Mr. Little, Ms. Walter and Ms. Hamon --

10 CHAIR THOMAS: Would you wrap it up?

11 MS. RICE: The use of the term -- the requirement that the employer
12 provide testing to employers and exposed workplaces during paid time is consistent
13 with state law requirements, as are the many other requirements that have been cited
14 as being outside the jurisdiction of the agency. In fact, they are state law now and it is
15 appropriate for the agency to require notice and compliance of those when enforcing
16 health policies.

17 The by space requirements are similar, as we have heard, to those in
18 Oregon. The ventilation requirements provide alternatives that would generally apply
19 to buses and windows that do not open, as they would generally have a cabin filter
20 triggering the exception under 3205.4(d)(4).

21 Likewise, the spacing in busing and vans are reasonable and necessary to
22 prevent the type of exposure and outbreaks that we're seeing in the Santa Maria Valley
23 and in other areas, some of which were directly related to transportation.

24 I appreciate very much the sentiment of the speakers who ended their
25 comments by asking us to please stay healthy. This regulation is critical to ensuring that

1 workers have a chance to do that. And that they provide consistency, not
2 inconsistency, when looking at the various guidelines, facts and guidances that have
3 been issued. And they provide workers with the knowledge about what they can
4 enforce--

5 CHAIR THOMAS: Thank you.

6 John, I need to move on to the next speaker please.

7 MS. RICE: And employers --

8 CHAIR THOMAS: Thank you.

9 John, who's next up in the queue?

10 MR. GOTCHER: Our next commenter is Yardenna Aaron from
11 Maintenance Cooperation Trust Fund.

12 CHAIR THOMAS: Thank you. Can you hear us?

13 MS. AARON: Absolutely. Thank you so much for the opportunity to
14 speak to the Board today. The (indiscernible) organization (indiscernible) statewide
15 launched our group in the janitorial industry whose goal is to eliminate irresponsible
16 contracting and bring contractors who are violating the law into the light and make
17 them compliant. And to signal here during this calm the urgency for adopting these
18 emergency standards has got a lot of gravity for me. On my newsfeed, I saw that 5,000
19 cases have just been brought to light. I saw that the Governor has enacted restrictions
20 on nighttime gatherings because of the surge in the numbers.

21 So the decisions that are made here today have taken on another level of
22 weight in just the time of this particular Board Meeting. And so on the issue of what's
23 happening with janitors, I have to reinforce what Alma who opened up the conversation
24 started. We conducted a survey of almost 259 new janitors in dealing with COVID and
25 even in August 20 percent were receiving no PPE. Even after the pandemic had been

1 called for four months. Even in August, 40 percent of workplaces were not enforcing
2 any social distancing for (indiscernible).

3 And Alma already talked about how a large percentage of these
4 employers are still not enacting training. So we know that standards go a long way.
5 Guidelines are one thing. The laws are another. And as an enforcement watchdog
6 group, that's how we're able to step in and help to make sure that this public health
7 crisis is stayed. By making sure that employers who are violating the law, who are trying
8 to cut corners and cut costs by not providing the PPE, by not providing the benefits that
9 workers deserve and that are now the law, are brought to light. So that there's an even
10 playing field and that we stave off this public health crisis.

11 Now I just have to say that in addition to the emergency standard, we
12 believe that for the janitorial industry essential workers who are front line workers
13 whose job is to literally stop the spread of COVID, deserve and need industry-specific
14 guidelines, stronger ones. And --

15 CHAIR THOMAS: Two minutes.

16 MS. AARON: -- they're working in our hospitals. They're cleaning our
17 grocery stores. They're everywhere. And oftentimes when they step forward, our
18 organization has a history that when non-union janitors report, they suffer retaliation.
19 We already heard much testimony across all worker classes about extensive retaliation
20 in the workplace, expected (indiscernible) help stave off a public health crisis.

21 So this is an opportunity. With the news outlets talking about the surge --

22 CHAIR THOMAS: Can you wrap it up please? I hate to rush, but can you
23 wrap it up? Thank you.

24 MS. AARON: Absolutely. And I hope that the vote goes in favor of
25 passing these emergency standards today. This is an historic time. Thank you.

1 CHAIR THOMAS: Thank you.

2 Just to be clear, I'm trying to be fair to everybody. It's not a hard, hard
3 two minutes. We're just telling you when its two minutes. Please think of other people.
4 There's still almost 300 people on listening to this. And we want your comments, but
5 make them concise. Get it done. I know you can do it. John, who's up next?

6 MR. GOTCHER: Our next commenter is Scott Brauning, from Build
7 Group Incorporated.

8 CHAIR THOMAS: Scott, can you hear us?

9 MR. BRAUNINGER: Yes. Can you hear me?

10 CHAIR THOMAS: Yes. Go right ahead.

11 MR. BRAUNINGER: My name is Scott Brauning. And I'm the Chief
12 Operating Officer of Build Group, Inc. We do about one billion dollars a year of
13 construction contracts in the state of California. Concrete, drywall, flooring, Los Angeles
14 and the Bay Area.

15 I employ about 1,000 people and I have about 2,000 subcontractor
16 employees that work on my jobsites. We have been one of the employers that have
17 taken this COVID very seriously. I personally implemented a 100 percent testing
18 program for all workers on all of my jobsites since July. I've been testing about 800
19 people a week. And I've done more than 20,000 tests. We found out that we were
20 having about a one in 800 positivity rate, but that rate has jumped significantly in the
21 last four weeks.

22 We were getting maybe one or two hits across the state a week. Now I'm
23 getting 10 on a job sometimes. So there's no doubt about that COVID is increasing on
24 construction projects.

25 Now, I don't think that your rule goes far enough, as far as requirement

1 for testing. I don't know how employers don't see how providing testing doesn't
2 increase this feeling of safety and the profitability of projects. If I wasn't doing the
3 testing on our jobs, I honestly don't know how my employees would feel safe coming to
4 work. We've tried to scale back the testing because of pressure from certain people.
5 But we've made sure that we've continued it. Each time we've talked about scaling
6 back, our employees have said, "Please keep the program. Please keep the program."

7 Now that being said, there is a lot of talk in the media about the fact that
8 testing is scarce. I haven't found that to be the case at all since July. We get 24-hour
9 results on PCR, molecular PCR tests, the ones that go up through the nose. I get test
10 results in 24 hours with a great lab that works out of Los Angeles. They come to all my
11 projects and we can test all of my projects in one day. And I'm doing one billion dollars
12 of work a year. So I have a lot of sites all over California. And they've been great. If you
13 mandate increased testing, businesses –

14 MS. SHUPE: Two minutes.

15 MR. BRAUNINGER: -- are going to figure it out, for sure.

16 There's one thing in your rule, two things in your rule that I think are
17 really a problem for businesses like mine that have been implementing testing. The first
18 one is that you don't require a negative test for an employee to come back to work.
19 There are people who refuse to test on my projects. They just have to be the jerks that
20 won't play nice with all the other workers. They've got some pro-Trump thing or
21 whatever is going on in their brain and they refuse to test. And its these guys that are
22 spoiling it for the feeling of safety for all of the other people.

23 Now if you get an outbreak on a site, you need to know and all the other
24 people need to know that everyone that comes back is clean.

25 CHAIR THOMAS: Scott, you're going to have to wrap up.

1 MR. BRAUNINGER: I understand. I have one last thing and that is that
2 mandating it as a 14-day period for someone who's been exposed that they can come
3 back to work isn't consistent with the CDC guidelines. The CDC guidelines allow people
4 who were exposed to come back to work for employers that have an active testing
5 program. And I urge the committee to consider following the CDC guidelines for
6 employers that do provide testing programs to allow people to return to work who were
7 exposed faster than the 14-day period. Thank you.

8 CHAIR THOMAS: Thank you, Scott. Appreciate it.

9 John, who do we have next up in the queue?

10 MR. GOTCHER: Our next commenter is Elvira Herrera from Lideres
11 Campesinas.

12 CHAIR THOMAS: Elvira, can you hear us?

13 MS. HERRERA: Yes, hi.

14 CHAIR THOMAS: Hi. Go ahead.

15 MS. HERRERA: Yes hi. Thank you for this space. I was just calling to
16 raise some of the concerns that we have here in the valley where I live. We have been
17 visiting many of the farm workers here where we go give out free masks to the farm
18 workers. But at the same time, they have been disclosing to us about how they've been
19 violating some of their rights about safety issues.

20 And also regarding the packinghouse when they have someone that was
21 sick. And they explained her that she had to go back to work, and that she was going to
22 lose her job. Someone else disclosed out in the field that she was feeling sick. The
23 foreman just told her to sit down and they put her back to work. And now the other
24 employees were kind of concerned if she had the virus or not.

25 But again, others rights have been violated. They're not respecting them.

1 If they will report to them, it's either just stay here or if you go home you're
2 (indecipherable). Sometimes they retaliate against them. So we were just concerned
3 and see if we could have these regulations be enforced, so they could give them the
4 training. Because we did ask those questions. We said, "Do they give you guys any type
5 of training in how to take care of yourselves?" And they said, "They don't talk to us
6 about anything like that."

7 There are these areas that they give them papers to sign that they are
8 taking the training. And I did ask, "Are they giving you the training?" They said, "No,
9 they just tell us to sign the papers."

10 So this is a lot of things that are going on here where I'm at. I have a
11 (indiscernible) company that has been cited so many times for breaking their regulations
12 for safety. But they still continue doing it and so it's a lot of going on here. And that's
13 one of our concerns that we need to have this safety issue to be taking cared of to
14 protecting the farm workers.

15 CHAIR THOMAS: Two minutes. Can you wrap it up, please? Thank you.

16 MS. HERRERA: (Indiscernible) concerned about that.

17 Okay. Yeah, so it's just a concern. The comment is that nobody cares
18 about what they're doing out in the field. So we're just asking please, you know, do
19 something about these regulations to be enforced while they're out there working, for
20 their own safety.

21 CHAIR THOMAS: Thank you.

22 We are going to take a break. It is two minutes to 4:00. We will be back
23 in session at 4:10. We're in recess. Thank you.

24 (Off the record at 3:58 p.m.)

25 (On the record at 4:12 p.m.)

1 CHAIR THOMAS: All right. We are back in session. And John, who do
2 we have in the queue?

3 MR. GOTCHER: Our next commenter is Yesenia Gonzalez, from UFCW
4 Local 1167.

5 CHAIR THOMAS: Yesenia, can you hear me?

6 MS. GONZALEZ: Yes. Can you hear me?

7 CHAIR THOMAS: Yes. Go right ahead please.

8 MS. GONZALEZ: Good afternoon Standards Board Members. My name is
9 Yesenia Gonzales. And I am with United Food and Commercial Workers Union, Local
10 1167. On behalf of 20,000 essential grocery, pharmacy, retail and meat packing
11 workers, I speak in support of adopting the emergency temporary standard before you
12 today.

13 Our union, UFCW Local 1167, represents essential workers in the
14 counties of San Bernardino, Riverside and parts of Los Angeles and Imperial. Our
15 members have shown up to work every day during this pandemic so that our
16 communities can have access to public health, food, medicine and other essential items.

17 Unfortunately, many of the workplaces that our local represents have
18 experienced outbreaks and we have unfortunately lost members to the virus. In the
19 beginning of the pandemic, we had to fight very, very hard with the employers to
20 provide workers with the proper PPE needed to do their jobs. And now, as we're seeing
21 another rise in COVID-19 cases, employers are refusing to enforce social distancing
22 requirements and other guidelines that we know will help protect workers' lives.

23 More than usual, employers under-report positive cases and
24 consequently expose other workers. We need to do everything that we can to keep
25 essential workers and the general public safe in public spaces like grocery stores and

1 pharmacy stores. We are currently in the middle of the holiday season and we know
2 that these public spaces will be filled with shoppers. And this is another reason why
3 these emergency temporary standards are so urgent.

4 As COVID-19 cases continue to surge in California and continue to take
5 the lives of our frontline essential workers, California must respond to the emergency
6 before us today by voting to adopt this emergency temporary standard. There is more
7 work to be done. But this emergency temporary standard is one step closer to
8 providing our frontline workers with the protections that they need to safely continue
9 providing for all of Californians.

10 Thank you for the opportunity to speak today.

11 CHAIR THOMAS: Thank you. Short and concise. I like that.

12 John, who do we got?

13 MR. GOTCHER: Our next commenter is Angelica Preciado, from California
14 Rural Legal Assistance, Incorporated.

15 CHAIR THOMAS: Angelica, can you hear us? Angelica? Angelica? In
16 three, two, one. No Angelica. John, let's move on.

17 MR. GOTCHER: Our next commenter is Jassy Grewal from UFCW Western
18 States Council.

19 CHAIR THOMAS: Is it Jessy? (phonetic)

20 MR. GOTCHER: It's with an "a."

21 CHAIR THOMAS: Are you there, Jessy, Jassy?

22 MS. GREWAL: I am here. Can you hear me?

23 CHAIR THOMAS: Yes. Go right ahead. Thank you.

24 MS. GREWAL: Wonderful. Well good evening, Standard Board Members.
25 My name is Jassy Grewal. And I'm a legislative advocate with the United Food and

1 Commercial Workers Western States Council or UFCW. On behalf of our 180,000
2 members in California, who work at nearly every point on the food chain and many of
3 the sectors most impacted by COVID-19, including pharmacies, grocery stores, meat
4 packing and food production, agriculture and food delivery drivers in the gig economy, I
5 speak in strong support of adopting the emergency temporary standard before you
6 today.

7 Essential workers and UFCW members are disproportionately Latino,
8 black, immigrant, women and low-wage, and have borne the brunt of workplace COVID-
9 19 outbreaks in the past eight months.

10 Our union has heard countless instances over the past eight months
11 where employers are not following Cal/OSHA guidance, not notifying workers of
12 workplace exposures. Workers are not being told about their sick leave rights.
13 Employers who do not implement (indiscernible) social distancing standards and
14 employers not providing workers with any personal protective equipment, or PPE, to
15 keep them and their families safe.

16 That is why we urge you to support and adopt the emergency temporary
17 standard before you today. There are literal lives on the line. And a failure to act will
18 result in losing more essential workers to this pandemic, something that is avoidable by
19 adopting the standard today. We need you to act and we need you to act now. As
20 COVID-19 cases continue to surge in California and continue to take the lives of our
21 frontline essential workers, California must respond to the emergency before us today
22 by voting to adopt this emergency temporary standard.

23 There's more work yet to be done, but this emergency temporary
24 standard is one step closer to providing our frontline workers with the protections they
25 need to safely continue providing for all Californians. The current standards are not

1 sufficient as we continue to have large workplace outbreaks that is demonstrated in
2 continued uptick in cases. We need to act on this standard.

3 MS. SHUPE: Two minutes.

4 MS. GREWAL: I would just like to add that I have heard several
5 individuals testify that the standard is not consistent with AB 685. As one of the main
6 sponsors and lobbyists of AB 685, the standard is consistent with the intent of the
7 legislation. And we look forward to working with the Board to work on supplemental
8 materials related to this legislation cited in the standard. Thank you for the opportunity
9 to provide public comment and for your time today.

10 CHAIR THOMAS: Thank you very much.

11 John, who do we have?

12 MR. GOTCHER: Our next commenter is Tyler Blackney from the Wine
13 Institute.

14 CHAIR THOMAS: Tyler. Can you hear us? Hello, Tyler? Tyler, can you
15 hear us? In three, two, one. All right, Tyler is gone. John, why don't we go to the next.

16 MR. GOTCHER: Our next commenter is Stacey Wittorff, from Planned
17 Parenthood Affiliates of California.

18 CHAIR THOMAS: Stacey, can you hear us?

19 MS. WITTORFF: I can hear you. Can you hear me?

20 CHAIR THOMAS: Yes. Go right ahead please.

21 MS. WITTORFF: Alright. Wonderful. Thank you. Good afternoon Chair
22 Thomas and members of the Board. I'm Stacey Wittorff on behalf of Planned
23 Parenthood Affiliates of California, representing the seven affiliates that operate more
24 than 100 health center locations.

25 Thank you for your presentation and for the work the Board and staff has

1 done to address how best to protect California workers during the COVID-19 pandemic.
2 We appreciate that the Board, in drafting these emergency regulations, has recognized
3 that healthcare providers are already subject to an extensive regulatory scheme that
4 governs how they must protect employees from aerosol transmissible diseases,
5 including COVID-19.

6 Accordingly, we would just request that the Board include in the
7 regulations the express clarification that employers -- that our healthcare providers are
8 exempt from these regulations.

9 We thank you for your time today.

10 CHAIR THOMAS: Thank you. Appreciate it.

11 John, who do we have up next?

12 MR. GOTCHER: Our next commenter is Regina Caldwell, from Sutter
13 Behavioral Health.

14 CHAIR THOMAS: Regina, are you on the line?

15 MS. CALDWELL: Yes.

16 CHAIR THOMAS: Go right ahead, please. Make your comments.

17 MS. CALDWELL: Okay. Yes. My name is Regina Caldwell and I'm joining
18 to ask you to vote yes on this emergency COVID prevention standard. This is important
19 at my workplace because I've also been asked to come into work while I'm sick and I had
20 told them that I wasn't feeling well but they asked me to come in anyway. I thought I
21 had the flu. I wasn't sure what I had at the time.

22 And I came in and I came in that Wednesday on the 11th and I tested
23 Friday. And then that Saturday, I tried to come in and I ended up, as soon as I clocked
24 in, I clocked right back out to go home, because I didn't feel well at all. My joints and
25 everything was aching. I had chills, sore throat and everything. So then I tested that

1 Friday. And then that Monday they called me and told me that I tested positive.

2 And also you know the workplace is not -- I wish we had like cleaner
3 bathrooms. At the facility, we're down to one bathroom for employees, because the
4 bathrooms, they clogged up as well as the patients' bathroom was clogged up. We have
5 the sewer being backed up in the showers. And the patients will go into the red zone,
6 any bathroom that they can find to use, that's not closed or shut down.

7 And that threatened the COVID as well, because we don't have the proper
8 bathrooms. Their bathrooms is -- the sewer is messed up really bad and so what
9 happens is that they'll lock the bathroom door --

10 MS. SHUPE: Two minutes.

11 MS. CALDWELL: -- so the patients have to go down and find other
12 bathrooms to use. So they'll go into the red zone, or whatever, to relieve themselves.
13 And there's no ventilation in that building. It's a very old building. They've got fans in
14 the hallways. There's no circulation. The nursing station, when it rains --

15 CHAIR THOMAS: Can you wrap up your position please? We're over two
16 minutes. What are you asking of the Board?

17 MS. CALDWELL: I'm asking that you guys will vote on the emergency
18 prevention standard so that -- that's why it's important for me for the vote today. And
19 thank you for your time.

20 CHAIR THOMAS: Thank you very much. I appreciate it.

21 John, who do we have up?

22 MR. GOTCHER: Our next commenter is Rachel Torres of UFCW.

23 CHAIR THOMAS: Rachel, are you on the line? Hello, Rachel? I see you.

24 MS. TORRES: Hi.

25 CHAIR THOMAS: Hi. How are you doing?

1 MS. TORRES: Hello.

2 CHAIR THOMAS: Go ahead.

3 MS. TORRES: Doing well. Thank you. Thank you so much. Good
4 afternoon, Standards Board Members. My name is Rachel Torres. I'm the Deputy
5 Political and Civil Rights Director with UFCW Local 770.

6 On behalf of the 31,000 members across the central coast and Los
7 Angeles County, I speak in strong support of adopting the emergency temporary
8 standard before you today.

9 I want to talk on two main issues that have been addressed earlier. One
10 is on the paid sick leave. The lack of full coverage of paid sick leave continues to be a
11 major problem for essential workers. Every day, grocery and retail workers must report
12 any COVID-related symptoms before entering work. If they report a cough, a headache
13 or even diarrhea, they must stay home, but they're not compensated, so thus
14 incentivizing workers to not report. If they're exposed at stores, they must quarantine,
15 but are not paid for this, once again preventing real contact tracing that will flatten the
16 curve.

17 On the lack of testing, we need on-site testing for worksites where there
18 is a COVID-19 outbreak. When low-wage workers work two to three jobs, they don't
19 have the time or the resources to get tested off site.

20 We had a case with a grocery store in Los Angeles that had 28 infections.
21 Workers pleaded with the City of L.A. and the county to provide on-site testing. We
22 eventually got two days of on-site testing, which prevented infections completely.
23 We've only had one new infection at that store in the past six months.

24 In our jurisdiction, over 1,300 workers have become infected with COVID-
25 19. Eight members have died. There's no time for delay. Our house is on fire. We've

1 had eight months to get this right. These provisions will literally save lives, lives that
2 want to see the end of this pandemic. Thank you to the Board for your commitment to
3 California.

4 CHAIR THOMAS: Thank you.

5 John, who do we have up in the queue?

6 MR. GOTCHER: Next commenter is Caitlin Vega from United Here Local
7 11 and Transport Workers of America.

8 CHAIR THOMAS: Caitlin, can you hear us? Caitlyn, I see you. Unmute
9 yourself. Can you unmute? I'm not sure who muted. Hold on one second. We'll see.
10 There you go. Can you -- go ahead. We're still not hearing you.

11 MS. VEGA: Can you hear me?

12 CHAIR THOMAS: Go ahead.

13 MS. VEGA: Are you able to hear me now?

14 CHAIR THOMAS: Yeah, there you go. Go ahead.

15 MS. VEGA: Thank you so much (indiscernible) on behalf of the Transport
16 Workers Union of America and Unite Here Local 11. We are here in strong support of
17 this emergency standard. We have heard the calls for delays from some in the
18 employer community and we are here to say workers simply cannot wait any longer. It's
19 been eight months of going to work, literally risking their lives every day and risking
20 their families and so we think it's essential that this standard be adopted.

21 We're very grateful to all of the work that went into this. The workers,
22 the worker advocates, the unions and the work of Cal/OSHA to address the incredible
23 hardship and risk that workers have faced throughout this pandemic. And we believe
24 it's long overdue and should certainly be adopted. Thank you so much.

25 CHAIR THOMAS: Thank you very much. I appreciate it.

1 John, go ahead.

2 MR. GOTCHER: Our next commenter is Lauren Hajik, from California
3 Groceries Association.

4 CHAIR THOMAS: Lauren, you are in the queue. Can you hear us?

5 MS. HAJIK: Yes, thank you Mr. Chair. Mr. Chair and members, Lauren
6 Hajik on behalf of California Grocers Association. Thank you for hearing our comments.

7 I'd first like to just align our comments with Cal Chamber early this
8 morning with concerns about consistency with existing laws, jurisdictional issues and
9 lack of stakeholder involvement in the regulatory process.

10 The Grocery Association was one of the first industries to have extensive
11 guidelines and adoption of partitions, PPE and a lot of other safety protocols that were
12 adopted by many other industries and are being enforced today. We think that we can
13 have input as to what has worked, what has not worked and where successes can be
14 found in protecting our essential workforce. Because we agree that we need to do what
15 we need to do to protect our essential workforce, but are concerned that these
16 regulations are rushed and will just create confusion and unnecessary negative impacts.

17 We ask the Board to pause today and really sit down and work with
18 stakeholders over these next couple months to identify what works best, and where
19 there are potential holes that this regulation could fill, to ensure that we're protecting
20 the workforce, but allowing business to continue as we live with COVID. Thank you.

21 CHAIR THOMAS: Thank you.

22 John, on to the next.

23 MR. GOTCHER: Our next commenter is El'gin Avila, from Blue Green
24 Alliance.

25 CHAIR THOMAS: Hello, are you there? Hello?

1 MR. GOTCHER: Elgin --

2 MR. AVILA: Can you hear me now?

3 CHAIR THOMAS: Yes. Go ahead. We can hear you.

4 MR AVILA: Can you hear me now? Sorry about that. I am the Director of
5 Occupational and Environmental Health and Equity over at Blue Green Alliance. So I just
6 want to share a few of my thoughts regarding this regarding the ETS.

7 So as someone who has worked with federal OSHA previously, I highly
8 support the ETS. A lot of the standards and a lot of the guidance that we have put out
9 is, I would say, complimentary to the ETS.

10 We all know that COVID-19 has ravaged a lot of our families, our loved
11 ones. And the ETS is again not fully comprehensive and not as robust as maybe
12 everyone would like. But it is a very strong foundation that can lead to ultimately
13 influencing a national standard, and hopefully a permanent standard, that can also be
14 applied to infectious diseases generally.

15 We at BGA, we have support for Cal ETS and we hope that you will accept
16 and obviously put it in place, and ultimately lead to a more permanent standard. We
17 wanted to keep it brief, so thank you for your time and we greatly appreciate it.

18 CHAIR THOMAS: Thank you very much. Appreciate your briefness.

19 John, who's next in the queue?

20 UNIDENTIFIED SPEAKER: Take care.

21 MR. GOTCHER: Our next commenter is Ken Smith from University of
22 California.

23 CHAIR THOMAS: Ken, can you hear us?

24 MR. SMITH: Yes, good evening, Chair Thomas. Can you hear me?

25 CHAIR THOMAS: Good evening. Go right ahead.

1 MR. SMITH: Thank you very much for the opportunity here to provide
2 comments. First, like the original petitioner in the Division, the University of California
3 recognizes the need for a specific OSHA standard aligned for COVID prevention.

4 However, we are concerned with the rushed nature of the process for two reasons.

5 One, as other commenters have provided, there was not enough time for
6 employers to fully evaluate the substance and the impact of the regulation contained in
7 the ETS.

8 Second, and most notably, the regulations, in some cases, are technically
9 inconsistent with existing law and guidance. These inconsistencies should be reconciled
10 before the regulations go into effect. As you may know, compliance with inconsistent
11 regulations always presents a significant challenge for employers like the university. To
12 illustrate that, let me just give three quick examples in the minute I have left.

13 The first is the requirement for notifications within one business day for
14 COVID exposures. The proposed regulation establishes that requirement for only
15 individuals that were within six feet of an infected individual for 15 minutes. While the
16 new Labor Code regulation that goes into effect in January 1st, from AB 685, requires
17 that that notification be provided to all employees at the worksite of that infected
18 individual.

19 The second inconsistency is with the exemption for employers that are
20 covered by the existing ATD standard. The language in the proposed ETS exempts only
21 employees covered by that standard, but not places of employment. So it's not clear
22 what the intention is. For instance, in a large hospital organization, not all employees
23 receive ATD training and fit testing requirements. Only those that are anticipated to
24 have exposure to aerosolized transmissible pathogens.

25 So for example, cooks or parking attendants or people in billing in a

1 hospital don't receive ATD. Was the intent of the Division and this Board to apply this
2 standard to those individuals that work at a hospital?

3 MS. SHUPE: Two minutes.

4 MR. SMITH: I'll be short on the other ones here. But the last one I think
5 is particular is there was an incorrect use of the term "isolation" for exposed individuals
6 and not sick individuals. The correct word would have "quarantined."

7 Now certainly here, we know that the decision of the Board coming up
8 here will have large impact. We do ask that perhaps there would be a delayed
9 implementation date or adoption date to allow some of these technical differences to
10 be corrected prior to the law taking affect. Thank you. That concludes my remarks.

11 CHAIR THOMAS: Thank you, Ken. Appreciate it.

12 John, who do we have in the queue?

13 MR. GOTCHER: Next commenter is Elizabeth Torez. There's no affiliation
14 here, but this will be an interpreted comment.

15 CHAIR THOMAS: All right. Elizabeth, are you with us?

16 MS. TOREZ: Yes.

17 CHAIR THOMAS: Go ahead and make your comments please.

18 MS. TOREZ: (Speaking in Spanish.)

19 MR. GOTCHER: Hi, sorry. If I could jump in here really quick. So it looks
20 like we have lost Susana Haikalis from the call, who's our interpreter.

21 CHAIR THOMAS: Okay.

22 MR. GOTCHER: So we'll try to reconnect her. I apologize.

23 CHAIR THOMAS: Then we'll go on to the next commenter and we'll try
24 and come back, okay?

25 MR. GOTCHER: Okay.

1 CHAIR THOMAS: Yeah, John. Go to the next commenter please.

2 MR. GOTCHER: Just need to move a few things around here. Okay, our
3 next commenter is Gail M. Blanchard-Saiger from California Hospital Association.

4 CHAIR THOMAS: Gail, can you hear us?

5 MS. BLANCHARD-SAIGER: Yes. Can you hear me?

6 CHAIR THOMAS: Yeah. Go right ahead. There you are.

7 MS. BLANCHARD-SAIGER: Oh excellent. I've been waiting six hours for
8 this. Thank you for the opportunity to speak. I will dispense with the formalities given
9 the time. I will try to speak slowly. I do have three points.

10 California hospital workers, all of them, from frontline workers, our
11 nurses, our environmental services, dietary, medical records, we're all on the front lines
12 of this COVID response. And their work is deeply impacted by the actions of state and
13 federal agencies. Our ability to care for our patients really depends on a very clear and
14 concise regulatory structure.

15 So later, I'll incorporate the comments made by others, but really, the
16 hospital-specific issue is one actually that was just identified, and I might have a little bit
17 different take on it. But it is that different language used in the emergency standard
18 that focuses on employees versus the scope of the aerosol transmissible disease
19 standard which focuses on facilities. And the aerosol transmissible disease standard is
20 very clear that it covers facilities and all work within the facility.

21 So actually, what I'm asking is for is not an exemption from this
22 regulatory standard. You don't need to change any language. I'm just requesting on the
23 record that you clarify that interpretation of the subsection and scope of the ETS that
24 refers to employees when covered by section 5199, which is the ATD standard that, that
25 means that anybody working in a facility identified by the ATD standard, that is

1 consistent. And again, hospitals are not trying to avoid any regulatory oversight. Our
2 point is that it already exists.

3 Obviously, a frontline nurse gets different ATD training than somebody in
4 the payroll department but it is without question the ATD --

5 MS. SHUPE: Two minutes.

6 MS. BLANCHARD-SAIGER: -- standard covers every single employee in the
7 hospital. And it makes no sense to interpret the ETS scope in any other fashion. So that
8 is number one.

9 With respect to our members that have entities that are not covered by
10 the aerosol transmissible disease standard, if they've got offsite corporate offices and
11 other organizations like that, I incorporate or sign on to the comments made by the Cal
12 Chamber and Nicole Rice from CMTA and Andrew Sommer.

13 And the third point I want to make is really a public health issue. We are
14 very concerned about the public health implications of this emergency standard. Those
15 were articulated by Michael Hall from the Pacific Maritime Association, supply chain
16 disruption. This is the last -- this is absolutely the (indiscernible) time to be dealing with
17 supply chain disruption. And so closing down organizations, when you've got 20 people
18 out of 300 --

19 MS. SHUPE: Three minutes.

20 MS. BLANCHARD-SAIGER: -- who maybe work in different locations, so it
21 wasn't necessarily an occupational exposure, really is very concerning to us.

22 And with respect to testing, I know there's one gentleman, a contractor,
23 who said he was able to get tests back within 24 hours. I commend him for getting that
24 level of service. I am personally aware of hospitals where that is not the case. It is
25 taking three days to get tests back. It depends on where you contract for testing. It is

1 not unlimited.

2 CHAIR THOMAS: Can you wrap it up, Gail?

3 MS. BLANCHARD-SAIGER: And you'll see increasingly from the testing task
4 force that the state has operated that there are serious concerns about the supplies. So
5 the testing requirements that are incorporated in this really raise serious public health
6 concerns. And if you haven't connected with Health and Human Services on that, I
7 strongly recommend that you do because we are very concerned about the public
8 health implications.

9 Thank you for the time, but I do want to reiterate again a real hard ask
10 just to make it clear on the record. If you do adopt this standard tonight, to make it
11 clear that it does not apply to facilities that are covered by the aerosol transmissible
12 disease standard, which would be consistent with that existing standard. Thank you.

13 CHAIR THOMAS: Thank you.

14 MR. GOTCHER: Our next commenter is Elizabeth Torez again, we have
15 her back in.

16 CHAIR THOMAS: All right. Do we have a translator? Do we have
17 everything in order here for this one?

18 MR. GOTCHER: Should be.

19 CHAIR THOMAS: Okay. Elizabeth, por favor?

20 MS. TOREZ: (Through Interpreter Haikalis.) Good afternoon, my name is
21 Elizabeth Perez and for three years I had been working in the strawberries. I work with
22 the farmer leaders and we have been helping -- I have been helping as a volunteer and
23 have been distributing masks for COVID-19.

24 So I'm worried at this time because the supervisors in the fields are not
25 giving the workers paper towels, disinfectant. So the workers are at high risk because

1 their bosses or the supervisors are not providing protection equipment.

2 So I was wondering if you can give the information to the supervisors, so
3 that they continue asking people to keep a social distance. At the beginning of this, they
4 did provide social distance, but now they do not. So if you could try to tell them to
5 continue providing this and so that they can continue asking for social distance between
6 people.

7 CHAIR THOMAS: It's been two minutes. Can you have her wrap it up
8 please?

9 MS. TOREZ: (Through Interpreter Haikalis.) That is all that I want to say.

10 CHAIR THOMAS: Well, thank you very much. We appreciate your
11 comments.

12 John, who's up next?

13 MR. GOTCHER: Our next commenter is Marilu Gonzalez, from MICOP.
14 And this is going to be a translated comment, Susana.

15 CHAIR THOMAS: Marilu, can you hear us? Por favor?

16 MS. GONZALEZ: Yes.

17 CHAIR THOMAS: Si.

18 MS. GONZALEZ: (Through Interpreter Haikalis.) Good afternoon.

19 CHAIR THOMAS: Buenos tardes.

20 MS. GONZALEZ: Good afternoon to the Members. I am Marilu Gonzalez
21 and I work with a Mixteco indigenous group in Ventura.

22 To most of us here, we know that agricultural workers were essential
23 workers. They've been working during this pandemic in California. So the essential
24 workers are hoping they could understand in their own language the standard, because
25 if they don't understand, they cannot follow the standards. And they're essential for us

1 to eat.

2 CHAIR THOMAS: Two minutes. Can you wrap it up please? Thank you.

3 MS. GONZALEZ: (Through Interpreter Haikalis.) So if the employers could
4 provide all the agricultural workers the masks because these are very expensive.

5 Because this is one of the points where we could avoid the spread of this disease.

6 That is all. Thank you very much. That is all.

7 CHAIR THOMAS: Gracias, Maria. Thank you.

8 John, who is next.

9 MR. GOTCHER: Our next commenter is Rosalva and there's no affiliation
10 recorded here. And this will be an interpreted comment, so Susana, if you would help
11 with the introduction?

12 MS. HAIKALIS: Thank you.

13 CHAIR THOMAS: Thank you. Buenos tardes. Senor. Por favor.

14 (Indiscernible) Senora, pardon.

15 ROSALVA: (Through Interpreter Haikalis.) My comment that -- I have
16 (indiscernible) the farm worker leaders. So we have noted as volunteers in the
17 community that there's a need for more health and safety resources for the smaller
18 farmers. So we have noted that they don't have the same available cash to protect us
19 the same way as the larger companies do. So we have noted that there are many
20 resources, but the farm workers are not getting these resources because they don't get
21 the information. So somehow, if they could get that information.

22 So we have seen that the cases are rising in the winter will be tough, so
23 not just to explain to them in the fields, but in the communities (indiscernible) explain to
24 them in their own language that they can understand.

25 MS. SHUPE: Two minutes.

1 ROSALVA: (Through Interpreter Haikalis.) (indiscernible) media
2 information. If there's information that we can give to the community that we are
3 working with so (indiscernible) speak Spanish.

4 CHAIR THOMAS: Can you translate it and ask her to wrap it up please?

5 ROSALVA: (Through Interpreter Haikalis.) They have the resources. If
6 they could explain directly in person, they could explain to them in their own language.
7 Thank you.

8 CHAIR THOMAS: Thank you very much. We appreciate it.

9 ROSALVA: (Through Interpreter Haikalis.) Thank you for the opportunity
10 to participate.

11 CHAIR THOMAS: You're welcome.

12 Chris has an announcement to make.

13 MS. SHUPE: Before we go to our next speaker, we have a number of
14 users that are seeking to use the web chat as a discussion forum. And while I appreciate
15 their engagement, we would like to reserve the chat for communication to staff to
16 resolve technical issues as needed. So if you could please take your discussions off the
17 web chat. Thank you.

18 CHAIR THOMAS: Thanks.

19 John, who do we have?

20 MR. GOTCHER: Our next commenter is Melissa Peters from Littler.

21 CHAIR THOMAS: Melissa, can you hear us?

22 MS. PETERS: Hello.

23 CHAIR THOMAS: Hi. How you doing?

24 MS. PETERS: Can you hear me?

25 CHAIR THOMAS: Yes.

1 MS. PETERS: Good. How are you doing?

2 CHAIR THOMAS: Go ahead.

3 MS. PETERS: Okay, great. Thank you.

4 So my name is Melissa Peters and I'm with Littler Mendelson. Prior to
5 joining Littler, I was an attorney at Cal/OSHA for over six years, so I have a unique
6 perspective in that I understand how these regulations are enforced by the Division
7 after they are effective. And I also understand how difficult it will be for employers to
8 comply with this proposed emergency standard as it's currently drafted.

9 Since COVID-19 arrived in the U.S., I have been a member of Littler's
10 COVID task force and have assisted hundreds of clients implement processes and
11 procedures to protect their workers and assist the workforce to adjust to the pandemic.
12 I think everyone present today agrees that COVID-19 is serious. I also believe that most
13 employers care about worker safety because it's in their best interest to have a healthy
14 workforce who can show up to work and perform their jobs.

15 For this reason, we need to have a standard that is clear and can be
16 implemented by all employers, big and small alike. Right now, even the largest of
17 employers with seemingly sufficient administrative resources are struggling to comply
18 with continually changing local and state orders.

19 For small and medium employers without these resources, it is near to
20 impossible to track and comply with existing regulations. If this standard is pushed
21 through without sufficient time for the Board to review comments from the business
22 community, we are going to end up with an ineffective regulation because employers
23 are going to have to guess at how to best comply with its requirements.

24 When I worked at Cal/OSHA, I learned that it doesn't matter how great a
25 written safety program is. If it's not implemented or cannot be implemented, it's

1 ineffective. And an ineffective safety program doesn't protect employees. Similarly,
2 regardless of how comprehensive a regulation appears on its face, if its requirements
3 are unclear, it's ineffective because employers will be unable to comply.

4 Ultimately, such a regulation will not improve safety and health in the
5 workplace and will not protect workers. I echo the concerns raised by others today,
6 including Rob Moutrie, Bruce Wick, Andrew Sommer, Brian Mello, Michael Donlon, Fred
7 Walter and Karen Tynan, who I believe has not yet spoken. She was skipped.

8 MS. SHUPE: Two minutes.

9 MS. PETERS: In the interest of efficiency, I won't repeat everything that
10 has been said. But it's important to highlight a few of the more concerning issues raised
11 by this regulation. The inconsistency between the requirements in the proposed
12 standards and those contained in AB 685 and SB 1159 are very concerning.

13 Further, the provisions that exceed the scope of Cal/OSHA's jurisdiction
14 are similarly concerning. These include requirements in providing benefits and
15 protective (indiscernible) for COVID positive employees, requirements that fall under
16 DLS's wheelhouse, not Cal/OSHA's. There has not been adequate discussion on how
17 implementing general requirements like social distancing, face coverings, cleaning,
18 contact tracing and notification is not currently being served by 3203.

19 Finally, it's critical that all stakeholders be heard. For this reason it may
20 be necessary to delay the vote until the December 3rd advisory committee meeting at
21 the earliest to allow all stakeholders to be able to comment. It is obvious that with the
22 number of people who are providing comments today –

23 MS. SHUPE: Three minutes.

24 MS. PETERS: -- that there is grave concern about this regulation as its
25 currently drafted. Thank you for your time.

1 CHAIR THOMAS: Thank you.

2 John, who have we got?

3 MR. GOTCHER: Our next commenter is AJ Rossitto from California Hotel
4 and Lodging Association.

5 CHAIR THOMAS: AJ, can you hear us?

6 MR. ROSSITTO: I can.

7 CHAIR THOMAS: Go right ahead.

8 MR. ROSSITTO: Thank you, Board, for the opportunity to speak today.
9 My name is AJ Rossitto. I'm here on behalf of the California Hotel and Lodging
10 Association. Employee and guest safety are critical to our industry, and our members
11 deserve effective and functional protection. However, like many of the other speakers
12 and public commenters --

13 MS. SHUPE: Sir, you're fading out.

14 CHAIR THOMAS: Yeah, we can't hear you very well. Can you talk louder?
15 Hello?

16 MR. ROSSITTO: Is this better?

17 CHAIR THOMAS: Yeah, can you talk a little louder? We're having trouble
18 with you. Hearing.

19 MR. ROSSITTO: Okay. Apologies.

20 CHAIR THOMAS: There you go.

21 MR. ROSSITTO: Employee and guest safety are critical for our industry.
22 And our members have taken effective precautions to protect both. However, like
23 many of the other speakers and public commenters, we are concerned with the
24 implementation timelines and the language used to identify several of the key
25 requirements, including employee health data collection requirements, how and when

1 testing should be provided to employees, vacations, processes, potential hazards, how
2 to determine who qualifies for testing and notice requirements.

3 We'd like to urge the Board to incorporate the clarifying suggestions
4 made in public comments and provide employers time to implement these standards. It
5 is in no one's interest to risk employee safety. And employers are working around the
6 clock to implement the latest changes. But we need to understand the full extent of the
7 changes and have enough time to implement them. Thank you.

8 CHAIR THOMAS: Thank you.

9 John, who do we have in the queue?

10 MR. GOTCHER: Our next commenter is Andrew Gross Gaitan from SEIU
11 United Service Workers West.

12 CHAIR THOMAS: Andrew. Can you hear us, Andrew? Are you there
13 Andrew? Three, two, one. Andrew is not there.

14 John, let's move on.

15 MR. GOTCHER: The next commenter is Ramon Castellblanch of California
16 Alliance for Retired Americans.

17 CHAIR THOMAS: Ramon?

18 MR. CASTELLBLANCH: Yes. Good evening, Board Members.

19 CHAIR THOMAS: Good evening.

20 MR. CASTELLBLANCH: And I commend you on all the hours you've sat
21 through. This is just great. Your commitment is really awesome. Thank you so much.

22 So I'm a public health professor, as well as representing California
23 Alliance for Retired Americans, an organization of coalitions representing over

24 (indiscernible) million people just in California.

25 If you haven't heard this point, I just want to make it. The vaccine is not

1 going to end the need for safety measures to protect us from COVID-19. The vaccine is
2 only going to -- its only being tested to make sure that the person who gets the vaccine
3 will be able to resist the bad effects of the virus. However, there's no testing, there's no
4 knowledge that it'll prevent transmission. And so transmission is going to continue to
5 be a problem even if, best case scenario, we have a vaccine for 200 million Americans by
6 May, which is the best case scenario. We still are going to need your safety rules to be
7 in place to protect the lives of Americans and Californians in particular.

8 So I commend you on your patience. I hope very much that you do go
9 forward today. A great many lives are at stake and you have the ball in your court.
10 Thank you.

11 CHAIR THOMAS: Thank you. And I just want to comment and say yeah,
12 we are amazing, the Board, we're amazing. Thanks.

13 John, who do we have in the queue?

14 MR. GOTCHER: Our next commenter is Matthew Allen of Western
15 Growers Association.

16 CHAIR THOMAS: Matthew, can you hear us?

17 MR. ALLEN: Yes, can you hear me?

18 CHAIR THOMAS: Go right ahead. We can hear you.

19 MR. ALLEN: Yeah, good evening Mr. Chair and Members of the Board.
20 I'm Matthew Allen with the Western Growers Association raising concerns about the
21 EST this evening, specifically regarding the new text and new language that's not already
22 incorporated in the previously reviewed Cal/OSHA guidance documents.

23 There is great concern within our industry about the infeasibility of the
24 provisions. And we're still evaluating that, given the very, very short turnaround time
25 on the proposal. It's unfortunate that we're in this place right now and definitely would

1 have wished that we would have done the advisory committee process prior to this,
2 versus after potential approval of the regulation.

3 I want to call specific attention to the provisions in the housing section
4 and on transportation. A great deal of effort has been given to those areas within our
5 industry when it comes to engineering controls, making sure that we are doing
6 everything we can to ensure the safety of our workforce. And we notice that
7 engineering controls are not included in either one of those sections, although they
8 have been mentioned by previous commenters that there are employers out there that
9 have developed partitions and other engineering controls to ensure workforce safety.

10 Workforce safety is an absolute priority for Western Growers. And we
11 look forward to continue having conversations with the Board on COVID-19 prevention,
12 but this language is extremely concerning. And I would be remiss if I did not mention
13 the fact that there are several instances in the proposal that seem to go very far beyond
14 the scope and authority of Cal/OSHA. That's on issues of paid leave, on issues that
15 would normally be under DLSE.

16 And then also on housing provisions. Employer provided housing is
17 actually regulated through the --

18 MS. SHUPE: Two minutes.

19 MR. ALLEN: (indiscernible) Development Department, not through
20 Cal/OSHA. And at this time, we would request that this proposal not move forward.
21 Thank you.

22 CHAIR THOMAS: Do we still have you, or have you finished your
23 comments?

24 MR. ALLEN: Yes, thank you. I finished my comments. Thank you for the
25 opportunity to comment.

1 CHAIR THOMAS: Oh, thank you very much.

2 John, who have we got?

3 MR. GOTCHER: The next commenter is Karen Tynan from Ogletree
4 Deakins.

5 CHAIR THOMAS: Karen, are you there?

6 MS. TYNAN: Yes, I'm here. I hope you can hear me.

7 CHAIR THOMAS: I can see you. How are you doing? It's getting late, 5:00
8 o'clock.

9 MR. TYNAN: I've had to turn the lights on behind me. Thank you. I will
10 truncate my comments and add to what Ms. Peters said from Littler. I'd like to focus on
11 the inconsistent definitions and difficulties with AB 685 and SB 1159 with this new
12 proposed regulation. AB 685 has a definition of "worksite." SB 1159 refers to a "specific
13 place of employment." And this new proposed regulation refers to "workplace or
14 exposed workplace," so we've got some problematic non-dovetailing there.

15 Specifically, I'd like to talk with you briefly about the need for a revision in
16 the proposed regulation. AB 685 has a different notice requirement. Yes, the
17 timeframe is the same, but the information is different and inconsistent. And also, AB
18 685 requires notification of the exclusive representative when there is the exposure.
19 And that is contrary to this proposed regulation's 3205(c)(3)(C) language about
20 protecting personal identifying information. That's very concerning to me.

21 So what I would like to specifically request is revisions prior to any
22 adoption and that these language differences and problematic conflicts in recent
23 legislation and this regulation be addressed in an advisory committee as soon as
24 possible. Thank you. Thank you everyone for your patience. It's been seven hours.

25 CHAIR THOMAS: Has it been, Karen, seven hours? All right, well now I'm

