

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING AND BUSINESS MEETING
May 21, 2020
Teleconference in Sacramento, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., May 21, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726 and via Webex at www.webex.com.

ATTENDANCE

Board Members Present at OSHSB Office

Dave Thomas

Board Members Absent

NONE

Board Members Present via Teleconference
and/or Webex

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

Board Staff Present at OSHSB Office

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

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

Doug Parker, Chief of Cal/OSHA
Eric Berg, Deputy Chief of Health

Board Staff Present via Teleconference
and/or Webex

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

Occupational Safety and Health Appeals
Board Staff Present via Teleconference
and/or Webex

Autumn Gonzalez, Legal Counsel

Others Present via Teleconference and/or Webex

Anne Katten, CA Rural Legal Assistance
Foundation
Eric McClaskey, Elevator Industry Work
Preservation Fund
Megan Shaked, Conn Maciel Carey
Andrew Sommer, Conn Maciel Carey

Jessica Early, National Union of Healthcare
Workers
Bryan Little, CA Farm Bureau Federation
Mike Donlon
Katherine Hughes, Service Employees
International Union Nurse Alliance of CA

Tim Shadix, Warehouse Worker Resource Center	Fran Schreiber, National Lawyers Guild Labor and Employment Committee
Elizabeth Treanor, Phylmar Regulatory Roundtable	Michael Miiller, CA Association of Winegrape Growers
Mitch Steiger, CA Labor Federation	Robert Moutrie, CA Chamber of Commerce
Christopher Iwobi, Department of State Hospitals	Kevin Bland, Ogletree Deakins
Alice Berliner, Southern California Coalition on Occupational Safety and Health	Cassie Hilaski, Nibbi Brothers
	Gail Blanchard-Saiger, CA Hospital Association
	Cynthia Rice, CA Rural Legal Assistance Foundation
Bruce Wick, CALPASC	
Taylor Jackson, CA Nurses Association	Aryan Kamali, Southern CA Edison
Pamela Murcell, CA Industrial Hygiene Council	Erin Guerrero, CA Attractions and Parks Association
Katie Hansen, CA Restaurant Association	Nancy Zuniga, Instituto de Educacion Popular del Sur de California (IDEPSCA)
Nicole Marquez-Baker, Worksafe	Christy Lubin, Graton Day Labor Center
Dan Leacox, Leacox and Associates	

Mr. Thomas indicated that this portion of the Board’s meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that it is completely unacceptable that some employers are not providing protection for their workers against COVID-19. Per the request of Ms. Stock, PRR has provided recommendations on how to address the gaps in worker protection. Her organization cautions the Board against undertaking rulemaking to address COVID-19 for the following reasons:

- Employers with employees that are at risk for COVID-19 should’ve already recognized this hazard and taken appropriate measures to address it, as required by the ATD standard for healthcare workers and the injury and illness prevention plan (IIPP) standard for other workers. The fastest way to address employers who are not compliant is for the Division to do vigorous enforcement of these standards and target industries where employees have not been provided protection and training. Issuing another regulation will not force these employers to comply.
- Relevant, helpful information is needed immediately. The Division needs to develop guidance materials immediately for the industries identified at last month’s meeting, including janitorial services.
- The Governor has issued guidance for employers to follow as the state moves into Stage 2 of the resilience roadmap, and it includes many elements that are already included in the IIPP standard. Since we are in the middle of a public health crisis, the Governor and public agencies have the lead to determine which businesses may open and under what circumstances. The Division should be assisting county authorities in developing consistent messaging, as well as public health departments as they develop

public health orders and implement public health orders.

- A new regulation will not address the fact that there is a shortage of N95 masks.
- Because the rate of change in collective understanding of this virus is very swift, any new regulation will not be able to keep up with the evolution of knowledge. The Board should request a report from the Division regarding the 1,500+ complaints it has received regarding employee exposure to COVID-19 and make that report available to the public. The report would be helpful to inform employers and employees about the hazards and effective protections, as well as help the Board to consider its options.
- In addition to its website, the Department of Industrial Relations (DIR) should consider other means of communication to spread consistent messaging that workers must be protected, just like it did for the heat illness prevention standard. DIR should consider working with public health authorities to consolidate the information to those that are specifically relevant to employers.

Cassie Hilaski, Nibbi Brothers, Michael Müller, CA Association of Winegrape Growers, and Bryan Little, CA Farm Bureau Federation, echoed Ms. Treanor's comments.

Jessica Early, National Union of Healthcare Workers, commented in support of the petition that was recently submitted by Worksafe and the National Lawyers Guild Labor and Employment Committee requesting that an emergency temporary regulation be developed to protect workers from exposure to COVID-19 on the job followed by a permanent infectious disease standard. She also stated that healthcare workers need their employers to follow the ATD standard in order to receive the full protection of the ATD standard, especially since there are going to be more cases of COVID-19 in the next few months and years as reopening continues, social distancing rules are relaxed, and elective surgical procedures are allowed to resume.

Fran Schreiber, National Lawyers Guild - Labor and Employment Committee (NLG L&EC), stated that her organization and Worksafe submitted a petition requesting that an emergency temporary regulation be developed to protect workers from exposure to COVID-19 on the job followed by a permanent infectious disease standard. She said that there are gaps in the current regulations and Division guidance, and this petition addresses those gaps. It provides specific guidelines for workers, including when N95 masks are required, and covers workers that are not currently covered by the ATD standard.

Tim Shadix, Warehouse Worker Resource Center, stated that his organization supports the petition submitted by Worksafe and the NLG L&EC to protect workers from exposure to COVID-19. He said that many workers are reporting that employers are not taking the necessary precautions to protect their workers from exposure. The Division is able to cite employers under the existing IIPP standard and has issued guidance to employers on how to protect their workers, but this is not enough. A temporary emergency standard is needed to protect workers in the interim, especially those workers not covered by the ATD standard, followed by a strong, clear permanent standard that protects workers.

Taylor Jackson, CA Nurses Association, stated that healthcare workers are continuing to be exposed to COVID-19 without adequate protection, and as a result, many have contracted COVID-19 and died. Some have had to use alternative means of protection that violate the Division's regulations and guidance, and for those who do have the correct personal protective equipment, it is often kept locked up and unavailable to workers when they need it. Personal protective equipment (PPE) should be available on demand to workers, and the Division needs to use its full authority to make sure that healthcare workers have the protection that they need when they need it.

Mitch Steiger, CA Labor Federation, stated that no matter which route the Division decides to take to protect workers from COVID-19, it should do whatever provides the strongest protections for workers with the least amount of delay. There are regulations and guidance that the Division can cite employers for, and nothing should be done that may weaken the Division's existing authority to cite for those. It is important to preserve the Division's existing enforcement authority and guidance where it is working, but also leave the door open to future action to address areas where it is not working. **Robert Moutrie, CA Chamber of Commerce**, echoed Mr. Steiger's comments.

Robert Moutrie, CA Chamber of Commerce, stated that the Division is conducting enforcement of existing regulations that provide protection for workers against exposure to COVID-19, and it is necessary to improve and expand publication and distribution of the Division's guidance documents as much as possible. It is important to keep in mind what has happened with the emergency rulemaking and expedited process regarding wildfire smoke and consider that when deciding what to do regarding the petition for an emergency regulation to address COVID-19.

Christopher Iwobi, Department of State Hospitals, stated that some hospital staff members have refused to shave their beards for non-medical and non-religious reasons, and without shaving their beards, the respirator will not have the tight fit that the Division requires. He asked if an employer is required to provide an alternative respirator in those cases, even though the alternative is much more expensive. Mr. Iwobi was referred to Mr. Berg for further assistance.

Kevin Bland, Ogletree Deakins, stated that a majority of employers are complying with the existing regulations requiring them to protect their employees from exposure to COVID-19. He asked the Board staff to make the COVID-19 petition available to the public as soon as possible. He also advised that going the route of putting together an emergency regulation does not always result in a regulation that best addresses the issue or is enforceable.

Maggie Robbins, Worksafe, stated that the petition filed by Worksafe and the National Lawyers Guild Labor and Employment Committee seeks to put a temporary standard in place to bridge the gaps in enforcement and guidance until the permanent regulation can be put into place. She also stated that more funding is needed so that the Division can provide the necessary amount of consultation and enforcement that is needed to get employers to comply.

Alice Berliner, Southern CA Coalition on Occupational Safety and Health (SoCalCOSH), stated that the current ATD standard and the Division's guidance documents are a great first step toward protecting workers from exposure to COVID-19, but many workers are still left unprotected. She said that a permanent ATD standard is needed that

covers workers across all industries and clarifies the responsibilities of the employer and employee.

Gail Blanchard-Saiger, CA Hospital Association, stated that hospitals understand their responsibilities under the ATD standard, so her organization feels that additional rulemaking is not necessary. Hospitals are implementing the ATD standard, but there is a shortage of PPE, and in cases of shortage, hospitals are allowed to have their staff use face masks for routine care of COVID-19 patients in order to preserve the limited supply of N95's for high risk procedures. Hospitals are working to keep PPE in stock, but they are competing with other industries who are also buying them. Her organization is also working with the author of AB 2537, which is a bill that would require hospitals to maintain a year's supply of PPE at all times.

Katherine Hughes, SEIU Nurse Alliance of CA, stated that the ATD standard is woefully inadequate for protecting healthcare workers against COVID-19, employers are still locking up and rationing out PPE, and N95's are not being issued to employees when performing aerosol generating procedures. Her organization also has concerns about disinfection and reusing donated equipment without clear policies and procedures in place to train the staff that will be doing the disinfection of the equipment. She also stated that her organization supports the petition submitted by SEIU.¹

Bruce Wick, CALPASC, stated that the Division has enough resources that it could allocate some to focus specifically on COVID-19. He said that there has not been very much transparency from the Division regarding the investigations being done and what types of industries are not complying. It is important for the Division to focus on getting employers to comply and communicating with the public regarding where the problems are and what is happening with investigations into bad actors.

Michael Miiller, CA Association of Winegrape Growers, stated that his organization is supporting AB 2043, which is legislation that will require the Board to adopt an emergency regulation that provides guidance for agricultural employers on how to protect their employees from exposure to COVID-19. He said that many guidance documents have been issued by many different agencies, creating confusion for employers and potential safety issues for employees. This bill will supersede county orders and create a uniform, consistent standard that everyone can comply with.

Cassie Hilaski, Nibbi Brothers, stated that it is important to educate the public about the current shortage of N95 masks and encourage them to save those masks for the medical community. She recommended that the healthcare workers and government officials put together a campaign to inform the public about the mask shortage.

Cynthia Rice, CA Rural Legal Assistance Foundation, stated that there is no uniformity or consistency in the guidance that has been issued to agricultural employers when it comes to preventing employee exposure to COVID-19. This has created a lot of confusion, especially when it comes to employee safety. It is important that immediate action is taken that provides

¹ As of August 17, 2020, SEIU Nurse Alliance of CA has not submitted a petition for consideration by the Board for 2020.

uniform, consistent guidance for employers, and clearly lays out what the enforcement procedures are.

Bryan Little, CA Farm Bureau Federation, stated that he has been working with many agricultural employers to help them sort out the various guidance documents that have been issued by various agencies regarding COVID-19, and all of those documents have created a lot of confusion for employers regarding their responsibilities for protecting their workers. He said that he is looking forward to reviewing the petition submitted by Worksafe and the NLG L&EC to see if it may help clear up the confusion.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 11:22 a.m.

Mr. Thomas called for a break at 11:22 a.m. and reconvened the meeting at 11:36 a.m.

II. **PUBLIC HEARING**

Mr. Thomas called the Public Hearing of the Board to order at 11:36 a.m., May 21, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726, and via Webex at www.webex.com.

Mr. Thomas opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
New Section 5141.1
Protection from Wildfire Smoke [Version 2.0]

Ms. Shupe summarized the history and purpose of the proposal, as set out in the Informative Digest Notice, and indicated that the proposal is ready for the Board's consideration and the public's comment.

Aryan Kamali, Southern CA Edison, stated that his organization would like to see the language in the proposal changed to require employers to provide respirators in accordance with Section 5144 when the AQI exceeds 500. It should also state that those respirators shall have an assigned protection factor as listed in Section 5144 because they will reduce exposure to an AQI below 500 for PM 2.5.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that her organization supports the intent and purpose of the proposal, but they have some concerns regarding the scope of the proposal:

- There is a discrepancy between how local air districts and the US EPA report AQI values for PM 2.5. Her organization is concerned about employers possibly using a source for AQI that is different from that being used by a compliance officer, and could therefore result in the employer being cited.

- Requiring an employer to reasonably anticipate when employees may be exposed to wildfire smoke is not a practical trigger. Employers should rely on local, federal, or state announcements that a wildfire emergency.
- Her organization supports the revised clarifying language in Sections (a)(2)(A) and (a)(2)(B) regarding employees entering or exiting structures or vehicles. They also support the revised language addressing utility and communication emergency operations.
- Employers cannot use the AQI as a metric in respiratory factor calculations.
- The cost estimate numbers that her organization provided were not used to determine the cost estimate of this proposal. There are no N95 masks for \$0.75 each, and her organization feels that the cost of \$9.69 per employee for required training is way off. **Robert Moutrie, CA Chamber of Commerce**, echoed this comment.

She asked the Board staff and Division to make additional revisions to the proposal that will provide more clarity and make it easier for employers to comply with.

Andrew Sommer, Conn Maciel Carey, representing the Wildfire Smoke Rule Industry Coalition, stated that the proposal goes beyond the intent of Petition 573 because it applies to more than just outdoor workplaces, and his organization has several concerns:

- The proximity of the forecasted or current AQI is not factored into the proposal, and there is no recognition of a minimum reading.
- Wildfire conditions can change rapidly based on different factors, such as the wind.
- There are no temporal restrictions listed in the proposal for when an employer should reasonably anticipate that employees will be exposed to wildfire smoke. This may lead to misunderstanding and unnecessary enforcement action being taken against the employer.
- Further clarification is needed regarding building exemptions and when they apply. It is also important to consider circumstances where doors or windows are opened for purposes other than entering or exiting a building, such as loading bays.
- The proposal requires employers to determine exposures at the start of each shift. This seems to be based on employers who only have 1-3 different work shifts in a day and does not recognize that some employers have overlapping or staggered work shifts, and it is unclear whether the employer with staggered or overlapping shifts will be required to test throughout the day as a result.
- There are many workforces that go to third party worksites that are not owned or operated by the employer, and if the worksite is in a building, it is unclear whether the proposal requires the employer to verify that the building exception applies and that the building has the proper air filtration systems in place. If the employer is required to do that, it places an undue burden on employers in that situation.

- There are employers who have employees who travel to multiple worksites in the same geographic location in a single day, and according to the proposal, the employer will be required to test in all the areas where the employee will go in a single day. This needs to be narrowed down further.
- Regarding respiratory protection, there needs to be some built-in flexibility that is consistent with federal OSHA guidelines, and alternative protections that provide equivalent safety, including reusable respirators, should be considered.
- The engineering hierarchy of controls is too rigid and needs better flexibility, including the ability to relocate the workforce to a better area.
- There is ambiguity in Appendix B that needs to be clarified regarding an employer's obligation to provide respirators for individuals with facial hair. The proposal stated that in this case, the employer must provide air purifying respirators, which are much more costly and not required.

Bruce Wick, CALPASC, stated that this proposal is an 11-page rule that will be difficult for small employers to comply with. He said that his organization feels that the Division needs to provide guidance for this to small employers and begin the advisory committee process for version 3.0 right away that allows labor and management stakeholders to work with the Division to come to a consensus on a permanent standard. He also said that some job sites are very fluid, and for those employers, the hierarchy of controls is problematic and has been since the beginning. He stated that the cost of compliance is greatly understated and should be corrected to show employers the true cost. It should also specify to employers what they should do when they are unable to obtain N95's and other respiratory protections for their employees, especially when there is a shortage.

Pamela Murcell, CA Industrial Hygiene Council, stated that this version of the wildfire smoke regulation is very similar to the emergency standard that the Board adopted in July of 2019. Her organization supports the current version, but they have some questions:

- How will COVID-19 respiratory protection measures impact an employer's ability to implement the respiratory protection portion of this regulation?
- Will the Division provide guidance on acceptable alternatives to N95 masks and be lenient on enforcement of the requirement to provide N95's when they are not available?
- How will the Division handle comments on this version of the regulation as the permanent standard is developed given that it is substantially similar to the emergency regulation?
- Will the Division hold an advisory committee meeting to discuss language for the permanent standard? If yes, what is the timeframe for that?

Her organization is concerned that once this proposal is adopted, there will no longer be deadlines that need to be met, and as a result, development of the permanent standard will be placed on the back burner.

Erin Guerrero, CA Attractions and Parks Association, stated that her organization has ongoing concerns about this regulation, especially regarding the requirement for N95 masks, which are in short supply due to COVID-19. She said that there are fewer N95 masks available now than there were before COVID-19, and the shortage will greatly affect the ability of employers to comply.

Nicole Marquez-Baker, Worksafe, stated that it is important to not relax any of the protections in this regulation, and to not delay the progress of the permanent standard, for any reason. She said that exposure to wildfire smoke can increase an individual's susceptibility to COVID-19 and other illnesses. As the permanent standard is developed, her organization would like to see the following things implemented into the permanent standard to make it stronger:

- Reduce the AQI trigger from 151 to 101.
- Require employers to identify hazards before the work shift starts so that they can be prepared with the appropriate controls, protections, and training.
- Require employers to clearly explain the evacuation plan to employees and how to access prompt medical care, as required in Appendix B.
- Lower the AQI trigger for requiring the use of respiratory equipment and medical evaluation from 501 to 301 for PM 2.5.

Nancy Zuniga, Instituto de Educacion Popular del Sur de California (IDEPSCA), Mitch Steiger, CA Labor Federation, and Anne Katten, CA Rural Legal Assistance Foundation, echoed Ms. Marquez-Baker's comments.

Katie Hansen, CA Restaurant Association, stated that her organization would like to see drive-thru windows included in Section (a)(2)(A) and the 1-hour minimum threshold raised at which the regulation applies so that it will not apply to employees who spend a majority of their workday indoors and occasionally have to go outdoors during their shift. The proposal also needs some overall clarity so that restaurants know when the regulation applies to them, and it needs to address the varying AQI readings throughout the workday.

Mitch Steiger, CA Labor Federation, stated that this standard isn't perfect, but it is a step in the right direction and can always be modified later on if needed. He said that the emergency regulation has been in effect since July of 2019, so employers should be stocked up on PPE and prepared. **Robert Moutrie, CA Chamber of Commerce**, echoed this comment. Mr. Steiger asked the Division to not weaken the standard, or limit enforcement of it, because as work continues on the permanent regulation, the Division and stakeholders can discuss what to do regarding the shortage of masks. **Anne Katten, CA Rural Legal Assistance Foundation**, echoed this comment.

Robert Moutrie, CA Chamber of Commerce, stated that his organization appreciates the recent modifications that were made to this proposal that provide clarity, such as the information provided regarding shaving beards. However, his organization still has concerns regarding the feasibility and understandability of the regulation.

- Having a two-part trigger for the regulation makes it difficult for employers to know when they must implement it. Also, if the AQI hits the trigger level, how do employers know that it did so because of the smoke from a wildfire?
- It is unclear how much PPE employers should have on hand, especially when they don't know when a wildfire will occur or how long it will last.
- The enclosed building exemption needs to be further tweaked to address businesses who use doors and windows for things other than entering or exiting a building.
- In order for vehicles to qualify for the enclosed building exemption, employers are required to make sure that the doors and windows on the vehicle remain closed at all times. This is impossible because there is no way for an employer to control the doors and windows on the vehicle all the time.
- Businesses should be able to use the AQI data from the air quality monitor that is closest to them, rather than that of a website or monitor that may not be close by. This will provide them with better AQI data that is easier for them to access.

Cassie Hilaski, Nibbi Brothers, echoed Mr. Moutrie's comments.

Anne Katten, CA Rural Legal Assistance Foundation, stated that her organization supports the proposal with some changes. It is important to have a regulation in place to protect workers from exposure to wildfire smoke because exposure to wildfire smoke increases a worker's susceptibility to COVID-19 and can worsen preexisting respiratory and cardiovascular diseases.

Dan Leacox, Leacox and Associates, representing National Elevator Industry, Inc., stated that the economic impact analysis needs to be accurate so it can provide a model of the proposal's true impact. In the cost estimates for training and respirators, it appears that the Board staff and Division went with the lowest cost respirator available on the market at the time. This is not the correct approach. The market has a range of prices that can be impacted by increasing demand.

The analysis also appears to say that employers will not incur any cost until a wildfire event occurs, which is not correct. Employers need to prepare ahead of time by buying respirators and training their employees, which is a readiness cost for employers. If they don't prepare ahead of time, they may have to shut down and will lose revenue. This is not accounted for in the economic impact analysis.

The analysis also indicates that many of the things required by this proposal are preexisting obligations from other regulations, and as a result, there is no extra cost to the employer. This approach could dismiss the real costs that exist. The costs could be marginal and provide marginal advancements in safety.

Bryan Little, CA Farm Bureau Federation, stated that there are currently no N95 masks available at any price, and if there are, they are sold at a very high cost. He said that it is important to start planning now in case the respirator shortage continues into wildfire season. **Michael Müller, CA Association of Winegrape Growers**, echoed Mr. Little's comments.

Michael Müller, CA Association of Winegrape Growers, stated that his organization is concerned about how employers will be able to get AQI data when the power is shut off during wildfires. Without power to run the AQI monitors, it will be impossible for employers to know what the AQI is. He also said that the cost to employers, especially the cost for masks, is much higher than what is mentioned in the proposal. He stated that if masks are unavailable and employers are unable to use alternatives, this will lead to a work stoppage that will result in workers being sent home without pay. He encouraged the Board staff and Division to explore safe alternatives to N95 masks, such as origami masks.

Christy Lubin, Graton Day Labor Center, stated that her organization would like to see the temporary wildfire smoke standard made permanent. Her organization would also like to see the AQI trigger lowered to 101 and an increase in education and outreach regarding this standard to employers and employees. It is also important to require employers to explain evacuation plans to employees as well as how to obtain medical care.

A. ADJOURNMENT

Mr. Thomas adjourned the Public Meeting at 1:02 p.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 1:02 p.m., May 21, 2020, in Suite 350 of the Occupational Safety and Health Standards Board Office, Sacramento, California, via teleconference at 844-992-4726, and via Webex at www.webex.com.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Shupe stated that she is aware of no unresolved procedural issues regarding the items on the consent calendar, and she believes that those items are ready for the Board's decision on the question of adoption.

MOTION

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

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

B. OTHER

1. DOSH Update

b. Wildfire Smoke Exposure (handled out of order from what was listed on the agenda)

Mr. Berg gave an update on the status of the wildfire smoke regulation. He said that work on version 3.0 will begin as soon as version 2.0 (heard at today's public hearing) has been made permanent and the COVID-19 pandemic is over. He stated that the Division expects that the shortage of masks and PPE will resolve itself before version 3.0 is adopted because manufacturers are increasing production of N95 masks, as well as respirators for healthcare workers. The Division is preparing guidance information for employers informing them of what to do to comply during the current respirator shortage. Manufacturers are also working on ways to control the costs of masks, and the Division is exploring additional alternatives to N95 masks, such as KN95's and converting scuba masks to particulate respirators. He asked the Board and stakeholders to submit ideas for alternatives to the Division so that they can consider them. Once the shortage of N95's and PPE is over, the state and federal governments will increase their stockpiles again.

Ms. Stock asked Mr. Berg if the Division will mention anything in its upcoming guidance for employers about using administrative, engineering, and workplace practice controls to help employers during the shortage of masks. **Mr. Berg** stated that the Division will mention those in the guidance information, and that using those controls will help avoid the need for masks and respirators to begin with. **Ms. Stock** also asked Mr. Berg when these guidance documents will be available. **Mr. Berg** stated that he was unsure.

Ms. Laszcz-Davis stated that it appears that the current wildfire smoke regulation is not very feasible and understandable, so it would be a good idea to have an advisory committee process to develop version 3.0 that engages both employers and employees. She asked Mr. Berg what the advisory committee process for version 3.0 will look like and how it will differ from what has been done so far so that a regulation is developed that is understandable and implementable. She also said that it appears that the cost of the regulation is a concern. She asked Mr. Berg if the Division will consider revisiting the cost estimate for the proposal. **Mr. Berg** stated that the Division plans to use a more direct advisory committee process similar to what the Board staff uses for their advisory committees. He also stated that the prices for masks and PPE are expected to come down sometime in December, but that depends on how the current situation plays out.

Mr. Thomas stated that he believes the cost won't go down very much because more pandemics and wildfires may be coming, so it would be a good idea for the Division to revisit the cost analysis.

a. COVID-19

Mr. Parker stated that the Division has received approximately 2,307 complaints related to COVID-19 exposure, and the Division is working on a triage plan called the "better inspection process" by which to triage them and engage with employers. This plan is needed to reach as many employers as possible because just doing inspections has not been good enough. This is because inspections are quite complex and can take months to do, especially for complaints pertaining to ATD standard compliance. Through the better inspection process, the Division has been able to gather evidence from an employer and work remotely with them or via consultation to address issues with the employer so that the Division can focus its inspection

resources on the most serious violations.

Mr. Parker stated that 1,900 complaints received have been responded to, and of those, 912 have been resolved through the better inspection process. The Division follows up with random on-site inspections to check to see if the process is working. The Division is also offering consultation assistance to employers in developing their IIPP to address COVID-19, and 1,859 requests have been made for this service. There have been 86 illnesses and 17 fatalities related to COVID-19, and the Division is conducting investigations into those.

Mr. Parker stated that the Division has been working with the California Department of Public Health (CDPH) to put together guidance documents for essential employers and those that are just reopening. They have developed 30 documents thus far for multiple industries and have posted them on the Division's website and the state's COVID-19 website. The Division is also working on videos regarding worker protection and getting them translated into other languages.

In response to some of the comments made today regarding unsafe PPE practices in healthcare, Mr. Parker stated that the Division is finishing an alert that will be put out to clarify that respirators need to be readily available on demand to employees conducting high risk procedures. If PPE is not provided, it is considered an imminent hazard. The Division is also working to raise public awareness about N95 masks and the fact that they shouldn't be used by the general public or in general industry. They are doing that by amplifying that message in the guidance documents issued to employers. Also, as the Division is conducting inspections, it is gathering data regarding compliance with the ATD standard with respect to respirators. The guidance documents address the global shortage of respirators, but the amendment mentioned in the guidance documents is based on shortages. The Division expects employers, especially hospitals to get back into compliance by stocking up on respirators as soon as the shortage ends. The Division is monitoring the levels of PPE along with the California Office of Emergency Services (CalOES) and hopes to see the stockpile restored in the coming months.

Ms. Stock asked Mr. Parker the following questions:

- How are workers and their representatives involved in the process of doing inspections by letter? **Mr. Parker** stated that it is part of the Division's policy to contact the complainant and verify that everything in the Division's letter is accurate. However, this is difficult to do when the complainant is anonymous. The Division is working on developing ways to address this issue in the next few days. If the complainant is a union or labor organization, the Division will engage completely and comprehensively in citing multiple employers. The best way to address issues raised in complaints is to bring management and labor together to address them.
- Under what regulations is the Division citing employers for COVID-19? **Mr. Parker** said that it is still early in the investigative process, so no citation patters have developed, but he believes that a majority of citations will probably be issued under the IIPP and ATD standards for hazard assessment and training, as well as the respiratory protection standard. **Mr. Berg** stated that there might be citations issued under the regulations for high hazard procedures, as well as for issues not covered by Sections 5141 or 5199.

- What are the requirements for informing workers when a COVID-19 case has occurred? What regulations cover that? What are the reporting requirements? **Mr. Parker** stated that the Division is working with CDPH to clarify guidance documents regarding what to do when a COVID-19 outbreak occurs. The guidance currently states that there should be ongoing communications between workers and/or their representatives and the employer about risks to their health.

Ms. Laszcz-Davis asked Mr. Parker if the Division is using any non-traditional methods of communication to inform employers about these guidance documents to ensure that they get the information that they need. **Mr. Parker** stated that the Division has worked with the Governor's office to get the word out about these guidance documents and is working to consolidate them into one place and make them easy to use. The Division has also sent detailed guidance to skilled nursing facilities to inform them of their responsibilities regarding the ATD standard and respirator shortage, as well as met with key stakeholders from management and labor prior to releasing the guidance documents. The Division has also encouraged unions and associations to reach out to their contacts.

Ms. Burgel asked Mr. Parker if the Division has enough resources on both the health side and safety side to address COVID-19 and wildfire smoke. **Mr. Parker** stated that there is a skills gap in industrial hygiene and health related enforcement, as well as in employer assistance in consultation, but the Division is working on reviving the dormant industrial hygiene job classification and converting several vacant Associate Engineer positions to industrial hygiene positions. However, the budget scenario is unknown at this time, and the Division must be realistic regarding that. The Division is looking at what resources might make sense during this pandemic and consider those options, but it will also depend on the competing priorities of the state's overall COVID-19 response.

Ms. Burgel asked if the state's supply of N95's with exhalation valves can be used to protect workers from wildfire smoke exposure, since they can't be used in healthcare. **Mr. Berg** stated that N95's with exhalation valves can be used in healthcare settings except for when a sterile field is required, such as during surgery.

Ms. Stock asked Mr. Parker if a suspected case of COVID-19 in the workplace is required to be reported on the 300 log. **Mr. Parker** stated that in order for a case of COVID-19 to be reportable, it must meet the reporting requirements. He said that if an illness meets the criteria and is work-related or involves a hospitalization, it needs to be reported. **Ms. Stock** stated that the Governor issued an executive order that says if someone is ill with COVID-19, it is presumed to be a work-related or workplace exposure. She asked Mr. Parker if someone is reasonably exposed to a coworker with COVID-19, is that reportable? **Mr. Parker** stated that he did not know, but the Division is working to finalize better guidance on reporting and recording of COVID-19 incidents and clarifying how that relates to the Governor's executive order. **Ms. Stock** also stated that she supports the Division's efforts to consolidate the abundance of guidance available into a central location.

Ms. Burgel stated that federal OSHA relaxed its fit testing requirements, but she was not able to find any information on the Division's website indicating whether or not the Division had also relaxed its fit testing requirements. **Mr. Parker** stated that the Division has relaxed its annual fit testing requirement, but did not relax the requirement for initial fit testing.

Ms. Laszcz-Davis stated that while the Division is in the process of consolidating information and outreach documents, it would be a good idea to consider the return to work documents developed by national organizations such as the Centers for Disease Control, the American Industrial Hygiene Council, the National Safety Council, and the American Society of Safety Professionals. **Mr. Parker and Mr. Berg** stated that they will discuss that.

2. Legislative Update

Ms. Shupe provided updates on the following bills:

- SB 1257
- AB 2043
- AB 2092
- AB 2162
- AB 2966
- AB 2028
- AB 2537

The following executive orders previously issued by the Governor continue to remain in effect:

- N-29-20
- N-33-20
- N-40-20

The Governor recently issued a new executive order, N-63-20, which provide a 60 extension of the statutory deadlines listed in Labor Code Sections 142.2 and 147. These sections set the timelines for delivery of Division evaluations for petitions to Board staff and the Board's 6-month response time for all petitions. The Board staff has continued to adhere to important statutes and deadlines as much as possible during this challenging time.

3. Executive Officer's Report

Ms. Shupe stated that Renee Vincent-Finch has joined the Board staff as a retired annuitant. She has experience as a hiring specialist and program analyst and will be assisting with filling Board staff vacancies, as well as identifying efficiencies as COVID-19 office procedures are developed.

Ms. Shupe stated that the Board staff has received 2 petitions in the last few days, including the petition that has been mentioned today pertaining to COVID-19. The Board staff also has 3 petitions that are currently being evaluated and prepared for consideration by the Board.

Ms. Shupe stated that beginning July 1, the Board staff will be receiving a 10% reduction in compensation each month for the duration of the 2020-2021 fiscal year. In response to the possible budget shortfalls, the Board staff is working to identify cost saving measures while continuing to support the Board's mission and provide exceptional service to stakeholders.

Ms. Shupe stated that with executive order N-63-20 giving the Division and Board staff an additional 60 days to complete their evaluations, this means that the Board staff now has 8 months to evaluate petitions. This includes the Division's evaluation period, which is normally 60 days, but with the executive order, is now 120 days. This new series of timelines will be applied to Petition 579 that was received in January.

4. Board Member Comments and Future Agenda Items

Ms. Stock asked how the time extensions in the Governor's executive order will affect the process for the emergency petition that has been submitted by Worksafe and the NLG L&EC. She said that there is an extreme urgency to act on this petition that must also be taken into account. **Ms. Shupe** stated that the Board staff just received the petition yesterday, so it has not been evaluated yet and it is too early to tell what the timeline for the petition will look like. She said that the Board staff and Division recognize the urgency and will make every effort to keep the timeframe within reasonable expectations, but the Board staff and Division are very strained at the moment, so the exact timeframe is unknown at this time. **Ms. Stock** stated that she would like to get an update on the timeline at next month's meeting.

Mr. Harrison thanked Mr. Parker and Mr. Berg for the information that they provided regarding the Division's efforts to address COVID-19. He said that the information Ms. Treanor provided was also helpful regarding the ATD and IIPP standards, as well as the fact that Ms. Hilaski pointed out that bad actors will continue to be bad actors, even if a new regulation is adopted to address COVID-19. He said that there are some very good standards already on the books that address this situation and need to be enforced.

C. CLOSED SESSION

Pursuant to Government Code Sections 11126(e)(1) and 11126(a)(1), the Board conferred with counsel regarding the pending litigation matters listed on the agenda and consideration of personnel matters. Closed Session began at 2:24 p.m.

D. RETURN TO OPEN SESSION

1. Report on any Closed Session Action

Closed session ended at 2:54 p.m. No action was taken during the Closed Session.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 2:55 p.m.