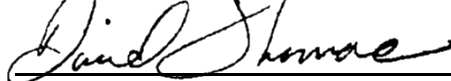


STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

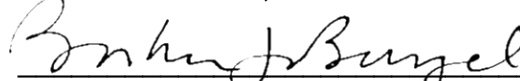
In the Matter of a Petition by:)
) PETITION FILE NO. 581
Louie Costa, Director)
Ryan K. Snow, Chairman)
SMART – Transportation Division)
9233 Twin Brooks Ln.)
Stockton, CA 95219)
)
_____) Applicant.)

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION.

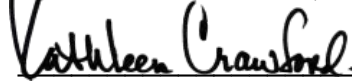
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD



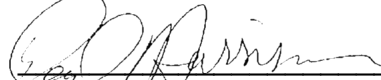
DAVID THOMAS, Chairman



BARBARA BURGEL, Member



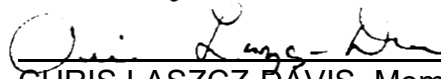
KATHLEEN CRAWFORD, Member



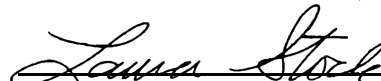
DAVE HARRISON, Member



NOLA KENNEDY, Member



CHRIS LASZCZ-DAVIS, Member



LAURA STOCK, Member

By: 
Christina Shupe, Executive Officer

DATE: February 18, 2021
Attachments

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 581)**

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on April 23, 2020, from Louie Costa, Director, California State Legislative Board for the Sheet Metal, Air, Rail, and Transportation (SMART) Transportation Division and Ryan K. Snow, Chairman, California State Legislative Board for the Brotherhood of Locomotive Engineers and Trainmen (Petitioners). The Petitioners seek emergency action to minimize the exposure of their represented employees to SARS-CoV-2, the virus that causes COVID-19, during the performance of their duties, which have been deemed essential.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and render a decision no later than six months following receipt. This period has been extended 120 days by Governor Gavin Newsom's Executive Orders N-63-20 and N-71-20, in recognition of the State of Emergency caused by COVID-19.

Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal; this timeline, running concurrently with the Board's timeline as described above, has also been extended 120 days pursuant to Executive Orders N-63-20 and N-71-20.

SUMMARY

The Petitioners request the Board promulgate an emergency regulation that incorporates various Centers for Disease Control and Prevention (CDC) cleaning and disinfecting guidelines for exposure to COVID-19 in order to protect the workforce of rail and transit carriers under the jurisdiction of the Federal Railroad Administration, Federal Transit Administration, Federal Motor Carriers Safety Administration, California Public Utilities Commission and California State Transportation Agency.

Specifically, the Petitioners request the regulation address: 1) common room sanitation; 2) employee temperature observation; and 3) employees at the "away from home" terminal.

For common rooms, which include crew rooms, locker rooms and similar rooms, the Petitioners request the rooms be “*cleaned and disinfected at least once every shift, or every eight (8) hours, whichever is sooner.*” Further, the Petitioners ask that disinfection be done in accordance with CDC guidelines, using chemicals which meet the Environmental Protection Agency’s List N criteria for use against SARS-Cov-2.

The Petitioners request that cleaning, disinfection and removal of trash only be performed by a specific group of employees that are supplied with personal protective equipment (PPE) as recommended by the CDC and are trained on properly applying and removing the PPE to avoid contamination. They ask that all crew rooms have stations for hand sanitizer (of at least 60% alcohol) marked and available for employee use. They also request that “*the practice of having crews sit idle in common rooms, while on-duty, to protect service that may arise shall be limited to the greatest extent possible.*”

Additionally, the Petitioners seek to require that crews coming on duty be scanned for fever at the beginning of their tour of duty. Employees identified as having an elevated temperature should be isolated, provided protection to prevent contamination as recommended by the CDC, “*and sent home or to a medical facility, at the employee’s discretion, for treatment and self-quarantine*”. Finally, the Petitioners seek to have carriers require contracted lodging facilities clean and sanitize rooms in accordance with the common room sanitation requirements prior to occupancy by an employee.

DIVISION’S EVALUATION

The Division’s evaluation report, dated December 11, 2020, states that on November 30, 2020, emergency COVID-19 prevention regulations (title 8 sections 3205 through 3205.4) went into effect and will reduce occupational COVID-19 hazards for transportation and other employees. As a result, the Division sees no need to adopt Petition 581 and recommends denial.

BOARD STAFF’S EVALUATION

Board staff prepared an evaluation stating that on September 17, 2020, the Board granted, in part, Petition 583 (National Lawyers Guild and Worksafe) requesting the Division develop an emergency temporary standard (ETS) addressing COVID-19 protections for all workplaces not currently covered by Section 5199 “Aerosol Transmissible Diseases.” Although the current request is not identical to Petition 583, many of the Petitioners’ requests are addressed by the adopted ETS, which became effective on November 30, 2020. If there are remaining issues that the Petitioners would like to see addressed in future iterations of the ETS or in a subsequent permanent rulemaking on the matter, the Petitioners are encouraged to provide public comment to the Board and Division as part of those rulemaking discussions.

Consistent with the foregoing discussion, Board staff does not believe that the Petitioners' emergency request is necessary and recommends that Petition File No. 581 be denied.

DISCUSSION

Both the Division and Board staff agree that the majority of safety concerns at issue in the Petitioners' request are addressed by the Board's adoption of the COVID-19 Emergency Temporary Standard (ETS), and therefore the changes requested by the Petitioners do not require a separate rulemaking action. Should the Petitioners have lingering concerns, those can be addressed more appropriately and expeditiously through engagement with the Division and Board on potential updates to the COVID-19 ETS.

The Board encourages the Petitioners to provide feedback to the Division through its planned Advisory Committee process. Direct comment to the Board via its monthly Public Meetings is also welcome and encouraged.

CONCLUSION AND ORDER

Having considered Petition 581, and evaluations of it by the Division and Board staff, the Board hereby DENIES the Petition.