

OCCUPATIONAL SAFETY AND HEALTH
STANDARD BOARD
(OSHSB)

PETITION FILE NO. 581

BOARD STAFF EVALUATION

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INTRODUCTION

Petition File No. 581 (Petition) was submitted by the Transportation Division of the International Association of Sheet Metal, Air, Rail, and Transportation (SMART) California State Legislative Board and the Brotherhood of Locomotive Engineers and Trainmen (BLET) California State legislative Board (Petitioners) on April 23, 2020. The Petition seeks 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.

REQUESTED ACTION

The Petitioner requests the Board promulgate an emergency regulation to incorporate cleaning and disinfecting guidelines for exposure to COVID-19 from the Centers for Disease Control and Prevention (CDC) to protect employees working “for all rail and transit carriers under jurisdiction of the Federal Railroad Administration (FRA), Federal Transit Administration (FTA), the Federal Motor Carriers Safety Administration (FMCSA), the California Public Utilities Commission (CPUC) and the California State Transportation Agency (CalSTA).”

PETITIONER’S ASSERTIONS

The Petitioner asserts:

- “President Trump has declared a national emergency due to the virus.”
- The represented employees “are essential to the health, safety, and security of the nation, and have been designated as critical to its infrastructure by the [CDC].”
- “Immediate and appropriate precautions [are necessary] to mitigate against the spread of the virus amongst [workforces] and to minimize the exposure of [employees] to the virus during the performance of their duties.”
- “A need [exists] for protocols to define and standardize the sanitation of facilities across the rail industry in this State.”

STAFF EVALUATION

To protect workers in the rail and transit industry in California, the Petitioners request the Board promulgate an emergency regulation, which incorporates various guidelines from the CDC for cleaning workplaces where there is potential exposure to COVID-19. Specifically, the Petitioners request that 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, they request that the rooms be “cleaned and disinfected at least once every shift, or every eight (8) hours, whichever is sooner.” Further, the Petition asks that cleaning and disinfection be done in accordance with CDC guidelines, using chemicals which meet the Environmental Protection Agency’s criteria for use against SARS-Cov-2.

They request that cleaning, disinfection, and removal of trash be performed only by a specific group of employees, and that those employees be supplied with personal protective equipment

(PPE) as recommended by the CDC. Such employees must also be trained on properly applying and removing the PPE so as 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 [be] limited to the greatest extent possible.”

Additionally, the Petition seeks to require that crews coming on duty be scanned for fever at the beginning of their shift. 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 their respective carriers require contracted lodging facilities to clean and sanitize their rooms in accordance with the above requirements.

Relevant Standards

Federal Standards

Federal OSHA regulations do not specifically address SARS-CoV-2. Generally applicable standards that apply to controlling employee exposures to the virus include OSHA’s PPE standards (29 CFR 1910 Subpart I), which require gloves, eye and face protection, and respiratory protection. The General Duty Clause, which requires employers to furnish employees a workplace free from recognized hazards that cause or are likely to cause death or serious physical harm, applies to the presence of SARS-CoV-2 in the workplace. Finally, OSHA’s Bloodborne Pathogens standard (29 CFR 1910.1030) may be helpful in providing a framework for controlling potential virus exposure from bodily fluids expressed via respiratory secretions¹.

The document “Guidance on Preparing Workplaces for COVID-19” classifies employee exposure into lower, medium, high, and very high risk categories. The document defines medium exposure risk as those jobs which require frequent and/or close contact with people who may be infected with SARS-Cov-2, but who are not known or suspected COVID-19 patients. Lower exposure risk (Caution) is defined as those jobs which do not require frequent close contact with the general public. High and very high risk categories are reserved for jobs with high potential for exposure to known or suspected sources of COVID-19, including healthcare, medical transport, and mortuary workers.

The document recommends steps for all employers to take to reduce the risk of exposure to SARS-Cov-2, including developing an infectious disease preparedness and response plan (i.e. identifying potential sources of exposure to SARS-Cov-2 both in and out of the workplace, identifying individual employee risk factors, and implementing controls to address those risks), implementing basic infection prevention measures (i.e. frequent hand washing, encouraging workers to stay home if sick, cough etiquette, flexible worksites and schedules, housekeeping,

¹ “Guidance on Preparing Workplaces for COVID-19.” U.S. Department of Labor, Occupational Safety and Health Administration. <https://www.osha.gov/Publications/OSHA3990.pdf>. Accessed 4/29/20.

etc.), and developing policies and procedures to identify and isolate sick people. The document also provides recommendations for engineering and administrative controls and PPE.

California Standards

Cal/OSHA's Aerosol Transmissible Diseases (ATD) standard (Title 8, Section 5199) directly applies to novel viruses such as SARS-Cov-2, but the scope of the standard is limited mostly to medical offices, certain laboratories, correctional facilities, homeless shelters, drug treatment programs, and any other employer that Cal/OSHA informs in writing that they must comply with the ATD standard. Employers not included in the scope of the ATD standard have generally applicable requirements, which include the Injury and Illness Prevention Program (IIPP, Section 3203), Washing facilities (Sections 1527, 3366, 3457, and 8397.4), PPE (Section 3380), and Control of Harmful Exposures (Section 5141).

On November 19, 2020, the OSHSB adopted an emergency temporary standard for COVID-19 protections, which became effective on November 30, 2020. The regulation requires employers to provide employee protections against COVID-19, based upon current guidance from the CDC and the California Department of Public Health, similar to what is requested in the current petition.

Additionally, Cal/OSHA recommends that employers not covered by the ATD standard comply with the recommendations from the CDC "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)." Cal/OSHA provides a number of documents with guidance for specific industry sectors, as well as model ATD plans and programs².

Consensus Standards

A variety of sources exist, which provide information on reducing potential employee exposure to SARS-CoV-2. In general, the sources provide information on reducing transmission among employees, maintaining healthy business operations, and maintaining a healthy work environment. The CDC, the World Health Organization (WHO), the American Industrial Hygiene Association, and the California Department of Public Health are examples of the many organizations that provide such information.

Position of Division

The Division evaluation, dated December 11, 2020, states that because of the emergency COVID-19 prevention regulations (Title 8 Sections 3205 – 3205.4), which went into effect on November 30, 2020, there is no need to adopt Petition 581.

² "Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus." State of California, Department of Industrial Relations. <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>. Accessed 4/29/2020.

Analysis

On September 17, 2020, the Board granted in part Petition 583 (National Lawyers Guild and Worksafe) requesting the Division of Occupational Safety and Health 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 Petitioner's requests are addressed by the 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 can provide public comment to the Board and Division as part of those rulemaking discussions.

STAFF RECOMMENDATION

Consistent with the foregoing discussion, Board staff does not believe that the Petitioner's emergency request is necessary and recommends that Petition File No. 581 be DENIED as such. The Petitioners are encouraged to follow and participate in the development of the ETS and any future rulemaking arising from Petition 583.