

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

In the Matter of:

December 19, 2019 )  
OSH Standards Board )  
Meeting Minutes )  
\_\_\_\_\_ )

STATE OF CALIFORNIA

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Rancho Cordova City Hall  
Council Chambers  
2729 Prospect Park Drive  
Rancho Cordova, CA 95670

THURSDAY, DECEMBER 19, 2019

10:00 A.M.

Reported by:  
Gigi Lastra

APPEARANCES

BOARD MEMBERS

Dave 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

Christina Shupe, Executive Officer

Michael Manieri, Principal Safety Engineer

Peter Healy, Legal Counsel

Sarah Money, Executive Assistant

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH STAFF

Chris Kirkham, Principal Safety Engineer, Cal/OSHA  
Research and Standards Health Unit

PUBLIC COMMENT

Elizabeth Treanor, Phylmar Regulatory Roundtable

Nicole Marquez-Baker, Worksafe

Eddie Moreno, California Environmental Justice  
Alliance and the Central Coast Alliance United  
for a Sustainable Economy

Bryan Little, California Farm Bureau Federation

Karin Umfrey, Worksafe

PUBLIC COMMENT (CONTINUED)

Anne Katten, California Rural Legal Assistance  
Foundation

Michelle LeBlanc, Free Speech Coalition

Bruce Wick, CALPASC, Specialty Contractors  
Association

Steve Johnson, Walters and Wolf

Gail Blanchard-Saiger, California Hospital  
Association

Dan Leacox, Leacox & Associates

Mitch Steiger, California Labor Federation

Kevin Bland, representing the California Framing  
Contractors Association, the Residential  
Contractors Association, and the Western Steel  
Council

Veronica Ponce de Leon, UCLA Labor Occupational  
Safety & Health



1 Mr. David Kernazitskas, Senior Safety Engineer;  
2 and Ms. Sarah Money, Executive Assistant.

3 Present today from the Division of  
4 Occupational Safety and Health is Chris Kirkham,  
5 Principal Safety Engineer, Cal/OSHA Research and  
6 Standards Health Unit.

7 Present today from the Department of  
8 Industrial Relations Communications Office is  
9 Erika Monterroza, Deputy Director of DIR  
10 Communications.

11 If you've not already done so, we invite  
12 you to sign the attendance roster which is  
13 located on the table at the entrance to the room.  
14 It will become part of the official record of  
15 today's proceedings. When you sign the  
16 attendance roster, please be sure to write  
17 legibly so that we have your correct contact name  
18 and information for the record. Copies of  
19 today's agenda and other materials related to  
20 today's proceedings are also available on the  
21 table next to the attendance roster.

22 As reflected on the agenda, today's  
23 meeting will consist of two parts. First we will  
24 hold a public meeting to receive public comment  
25 or proposals on occupational safety and health

1 matters. Anyone who would like to address any  
2 occupational safety and health issues should come  
3 to the microphone during public meeting -- during  
4 the public meeting when I invite public comment.

5           After the public meeting, we will conduct  
6 the second part of our meeting which is the  
7 business meeting to act on those items listed on  
8 the business meeting agenda. The Board does not  
9 accept public comment during its business meeting  
10 unless a member of the board specifically  
11 requests public input.

12           We will proceed to the public meeting.  
13 Anyone who wishes to address the Board regarding  
14 matters pertaining to occupational safety and  
15 health is invited to comment, except, however,  
16 the Board does not entertain comments regarding  
17 variance decisions. The Board's variance  
18 hearings are administrative hearings where  
19 procedural due process rights are carefully  
20 preserved. Therefore, we will not grant requests  
21 to address the Board on variance matters.

22           Is there anyone who would like to comment  
23 on any matters concerning occupational safety and  
24 health at this time? If you would, please come  
25 up to the microphone, state your name and

1 affiliation for the record.

2 Thank you.

3 MS. TREANOR: Good morning. Seasons  
4 greetings, Mr. Chairman, Board Members, Board  
5 staff, Division staff.

6 THE COURT REPORTER: Sorry. Excuse me.  
7 Could you put your mic, please.

8 MS. TREANOR: Pardon?

9 THE COURT REPORTER: Your mic.

10 CHAIR THOMAS: It's on.

11 MS. TREANOR: I thought it was on.

12 THE COURT REPORTER: I can't hear you.

13 MS. TREANOR: Wow, that's unusual. Good  
14 morning, my name is Elizabeth Treanor. Seasons  
15 greetings, Mr. Chairman, members of the Board, --

16 CHAIR THOMAS: Merry Christmas. Merry  
17 Christmas.

18 MS. TREANOR: -- Board staff and Division  
19 staff.

20 My name is Elizabeth Treanor, I'm  
21 director of the Phylmar Regulatory Roundtable for  
22 the occupational safety and health forum.

23 And I'm here to -- to mention to the  
24 Board Members that PRR members have significant  
25 ongoing concerns with the emergency regulation

1 for wildfire smoke that the Board is going to  
2 adopt, readopt today.

3           We have provided these concerns,  
4 recommended language and details on what the  
5 rationale is for these recommended changes to the  
6 Board verbally, which you've heard, and in  
7 written comments that we filed with you last  
8 July. We've also provided comments to the  
9 Division and participated actively in the  
10 advisory committee meetings.

11           I'm not going to repeat them here because  
12 you've heard them before, and in the interest of  
13 moving forward, but we just wanted to say that we  
14 really look forward to the Board and the Division  
15 giving careful consideration to the comments that  
16 we have provided and the recommended language and  
17 encourage a dialogue so that we can understand  
18 what the concerns are with any of the proposed  
19 language that we have and why it does not work.

20           We hope that these - (computer sound)

21           CHAIR THOMAS: Time's up.

22           MS. TREANOR: I knew that it was going to  
23 come soon. But we hope that we can have this  
24 dialogue prior to the adoption of the permanent  
25 regulation which we know needs to take effect in



1 July.

2 Thank you.

3 CHAIR THOMAS: Thank you.

4 MS. MARQUEZ-BAKER: Good morning,  
5 Chairman Thomas, members of the Board, DIR staff.

6 CHAIR THOMAS: Good morning.

7 MS. MARQUEZ-BAKER: My name is Nicole  
8 Marquez-Baker, I'm senior staff attorney with  
9 Worksafe. And I'm here to strongly encourage the  
10 Board to readopt the temporary emergency  
11 standard.

12 We have a couple of issues with respect  
13 to the implementation of the temporary emergency  
14 standard which some of my colleagues will speak  
15 about later. I wanted to just highlight some of  
16 them for you which include access to information,  
17 concern about having real time information,  
18 especially when there is an evacuation alert or  
19 access to fact sheets in different languages  
20 which we've been working with Cal/OSHA on to  
21 address accessibility around that.

22 Another issue is folks working in  
23 mandatory evacuation zones. That's an issue to  
24 flag. The type of training that workers were  
25 receiving, kind of the - the accessibility and

1 the type of training that folks were receiving.  
2 We, kind of, are curious to hear from our  
3 colleagues in terms of, kind of, the level of  
4 training folks were receiving and how helpful  
5 that training was.

6           And ultimately we would like to see some  
7 very important changes made in the permanent  
8 standard when that is on its way, changing the  
9 trigger application from PM AQI for PM2.5, 151  
10 changing it to 101. And then lowering the  
11 threshold for when workers must have a fit test  
12 and medical evaluation done, and when they're  
13 using a respirator, from five -- over 500 to  
14 changing -- lowering it to 301 and requiring in-  
15 person training.

16           I'm also going to read some comments that  
17 were shared with me from the California Domestic  
18 Workers Coalition, so this is on behalf of the  
19 California Domestic Workers Coalition. In the  
20 face of the new reality of wildfire climate  
21 disasters, the California Domestic Workers  
22 Coalition is committed to lifting the voices and  
23 experiences of domestic workers, the majority of  
24 whom are immigrant women and primary breadwinners  
25 for their families.

1           Because of the nature of our industry,  
2 domestic workers are distinctly and acutely  
3 impacted by the recent and frequent wildfires  
4 that have devastated our state. We recognize the  
5 critical efforts that have been made to protect  
6 workers from harm through the emergency  
7 regulations and we strongly encourage the Board  
8 to readopt the emergency standard and make them  
9 permanent before the next fire season begins.

10           We commend the efforts to extend these  
11 protections so that vulnerable workforces remain  
12 protected in the face of hazardous work  
13 conditions. While we support these efforts, we  
14 also know that domestic workers continue to be  
15 excluded from many of these protections, and the  
16 impact of these exclusions have only been  
17 exacerbated and made visible by the frequency of  
18 climate disasters.

19           We have heard from our base affected by  
20 the fires in both southern California and in  
21 Sonoma County about the egregious health and  
22 safety conditions that these wildfires have  
23 uncovered. The lack of communication about  
24 evacuations and hazards, and the appropriate  
25 languages via culturally competent means, or from

1 their employers, the requests from employers to  
2 put domestic workers' lives at risk and continue  
3 to go to work in evacuated zones, workers have  
4 reported being asked to act as fire -- engage in  
5 fire suppression with a mere garden hose in order  
6 to protect employers' property, or even their  
7 horse stables while their employers have  
8 evacuated themselves.

9           The health risks of performing work and  
10 physical tasks in smoky conditions within homes,  
11 and of cleaning up toxins and ash post-fire,  
12 especially without appropriate protective gear or  
13 training, the health and safety risks that  
14 workers are subjected to because of economic  
15 insecurity and the overwhelming impact of lost  
16 wages and the inability to access FEMA.

17           We look forward to working more closely  
18 with Cal/OSHA to find solutions to better protect  
19 the health and safety of more than 300,000  
20 housecleaners, caregivers, and nannies who do the  
21 work inside the home that make all work in  
22 California possible.

23           And again just wanted to echo that we  
24 strongly support the Board's decision. We urge  
25 the Board to readopt the temporary emergency

1 standard today. Also wanted to strongly support  
2 the comments made, which will be made, by Anne  
3 Katten with respect to the night operations  
4 during night work in the agricultural settings.

5 Thank you.

6 CHAIR THOMAS: Thank you.

7 MR. MORENO: Good morning, Chair Thomas  
8 and members of the Board. My name is Eddie  
9 Moreno, I'm here on behalf of the California  
10 Environmental Justice Alliance and the Central  
11 Coast Alliance United for a Sustainable Economy.

12 I'd like to thank you, thank the Division  
13 for its thoughtful development and implementation  
14 of the temporary standards. After going into  
15 effect, two wildfires broke out in Ventura  
16 County. However, unlike during previous fires,  
17 it was a rapid distribution of the 9 -- the N95  
18 respirators to these vulnerable farmworkers. So  
19 for that, we are thankful.

20 Although we've seen some level of  
21 alleviation in these communities, I am here to  
22 strongly urge that the Board readopt the  
23 temporary emergency standards. We also urge that  
24 the agencies to have a permanent standard in  
25 place before the next wildfire season, and before

1 temporary standards, the current temporary  
2 standards expire. Specifically the standards,  
3 the permanent standards need to include important  
4 changes like lowering the trigger for application  
5 of this standard for AQI for PM2.5 of 101.  
6 Improving the community requirements between  
7 employers and workers lowering the threshold for  
8 its -- for fit testing and medical evaluation  
9 when using respirators to AQI 301 and requiring  
10 in-person training.

11           And it is a lot of work. Workplace  
12 protection need to be expanded. Current Cal/OSHA  
13 standards require workplace protections when air  
14 quality is listed as unhealthy or hazardous.  
15 However, no workplace protections are required  
16 when the air quality is listed as unhealthy for  
17 sensitive groups. Farmworkers are a population  
18 with extremely low rates of access to healthcare,  
19 high rates of preexisting respiratory issues due  
20 to pesticides exposure and dangerous working  
21 conditions, so farmworkers are a uniquely  
22 sensitive group to air pollution exposure and  
23 need greater protection.

24           Number 2, profit. Company profit should  
25 not be placed above worker health. Agricultural

1 companies often initiate a surge in work in the  
2 outbreak of fires due to concerns that crops  
3 could be damaged by ash or smoke. Although crop  
4 insurance may provide coverage for losses, many  
5 companies increase workload -- workloads during  
6 the most dangerous days of the fire rather than  
7 decrease them.

8           And lastly, there's a lack of education  
9 among agricultural company owners, field  
10 managers, supervisors, and farmworkers about the  
11 importance of effective use of the N95 masks.  
12 That needs to be addressed. For example, there's  
13 a lack of cultural competency training, limited  
14 literacy among many workers, and language  
15 barriers, particularly for indigenous workers,  
16 contribute to the challenges of safety education,  
17 and the protection and equipment must match the  
18 work demands. Farmers may have difficulty  
19 continuing to use the masks when the quantity and  
20 quality provide -- provided do not meet the needs  
21 of their work.

22           So we hope the Division treats this  
23 rulemaking for the permanent standard as a  
24 priority and with urgency, and we urge the Board  
25 to extend the temporary emergency wildfire smoke

1 standards for another 90 days.

2 Thank you for the opportunity to speak  
3 and happy holidays.

4 MS. MONEY: I'm sorry. Can you say your  
5 name affiliation one more time.

6 MR. MORENO: Sure can. My name is Eddie  
7 Moreno and I'm here on behalf of the California  
8 Environmental Justice Alliance as well as the  
9 Central Coast Alliance United for a Sustainable  
10 Economy.

11 MS. MONEY: Thank you.

12 MR. MORENO: Uh-huh.

13 CHAIR THOMAS: Thank you.

14 MR. LITTLE: Good morning Chair Thomas,  
15 Board members, Cal/OSHA Standards Board staff and  
16 Cal/OSHA staff.

17 I'm Bryan Little. I represent the  
18 California Farm Bureau Federation and I  
19 appreciate the opportunity to talk to you for a  
20 few minutes.

21 I don't have a written statement to read  
22 or anything like that, just wanted to offer you a  
23 few comments about a couple of things that you're  
24 working on right now.

25 First, I believe later today you're going



1 to readopt the emergency wildfire smoke  
2 regulation. I just wanted to offer a compliment  
3 again to you and the Board staff and to the  
4 petitioners for that regulation for recognizing  
5 the structure of that regulation makes sense in  
6 the real world. To try to preemptively medically  
7 evaluate and fit test hundreds of thousands of  
8 farmworkers on the possibility that a fire might  
9 occur, that you don't know where it is or that it  
10 even is going to occur, was going to be an  
11 impossibility.

12           Trying to simply impose the respiratory  
13 protection standard in that situation would have  
14 created chaos in our industry. And we're pleased  
15 to see that you selected that option for how to  
16 structure the regulation. And it's good to hear  
17 from the prior representative from CAUSE that  
18 apparently, the implementation of the regulation  
19 has made masks more readily available in places  
20 where fires are occurring. That's great.

21           I suspect that during some of the fires a  
22 couple of years ago, before the emergency  
23 regulation was effective, that there may have  
24 been some wink, wink and nod, nod violations of  
25 the respiratory protection standard where farm

1 employers provided N95 respirators outside the  
2 restrictions of the respiratory protection  
3 standard because they recognized that their  
4 workers needed them in order to be able to work  
5 in places they were working. It's good to hear  
6 that people are able to actually use the  
7 regulation, provide masks when masks were needed  
8 and be able to protect workers when work needs to  
9 be done outdoors.

10           With respect to the night work regulation  
11 that you all are going to be considering later  
12 today, the -- we have ongoing concerns -- well,  
13 first of all, when we say that the revised  
14 version of the regulation that came out a few  
15 days ago that's under 15-day comment, that  
16 expires tomorrow, is a vast improvement over the  
17 original standard. It makes it a lot easier for  
18 someone like me who has to explain to our members  
19 what they need to do in order to be in  
20 compliance. It's going to make it a lot easier  
21 for me to be able to do that, to explain to them  
22 in a language that they can understand and  
23 implement on an everyday basis.

24           The regulation still requires some  
25 clarification, I think, with respect to how you

1 measure area light and its adequacy as opposed to  
2 task light and our -- our letter to you is going  
3 to have some suggestions with respect to  
4 addressing that.

5           We still have concerns about the cost  
6 analysis associated with it. I continue to  
7 wonder how it could be that the Board believes  
8 that the standard applies to only 1,600 farms for  
9 only two months out of the year. There are  
10 thousands and thousands of farms that do some  
11 kind of night work at some point during the year,  
12 and not just during harvest periods, so the  
13 notion that it's only 1,600 farms for only two  
14 months out of the year is striking and something  
15 that is - I would urge the Board to review that  
16 again and to consider submitting this regulation  
17 for standard regulatory impact analysis because  
18 it's pretty clear that the scope and impact of  
19 the regulation is going to be considerably larger  
20 than I think what the Board and the Board staff  
21 believe it's going to be.

22           Thanks for your time.

23           CHAIR THOMAS: Thank you.

24           MR. MIILLER: Good morning and happy  
25 holidays. My name is Michael Miiller, I'm with

1 the California Association of Winegrape Growers.

2 I want to associate myself with Mr.  
3 Little's prior comments relative to the outdoor  
4 ag lighting regulation. It is greatly improved,  
5 and we appreciate the Board's efforts in its  
6 recent modifications. We will be submitting a  
7 letter raising some of the concerns that Mr.  
8 Little mentioned.

9 For winegrape growers alone, there are  
10 almost 6,000 winegrape growers who'll be affected  
11 by this regulation, and the work that they do at  
12 night is far above and beyond just harvest work.  
13 Beyond harvest work, they do irrigation work at  
14 night. They do cultivation. If it's a frost  
15 issue, they have to go out and monitor for cold  
16 and put up the fans. They do all kinds of work  
17 beyond just the harvest, so it's more than just  
18 two months of the year as well.

19 So I think the economic impact assessment  
20 needs to be done because it is far, far greater  
21 than 1,640 employers in two months of the year.  
22 And I think it can also be clarified relative to  
23 area lighting and task lighting -- I think this  
24 is a minor clarification, but we greatly  
25 appreciate the work on that.

1 Relative to the wildfire smoke regulation, I  
2 want to share with you just real quickly. When  
3 that reg -- emergency regulation was adopted, we  
4 immediately engaged as an association and we had  
5 a webinar for our growers, we talked with them  
6 about what the new regulation is, what they need  
7 to do to comply, and we've been working with them  
8 ongoing to make sure we have compliance with the  
9 regulation and that everybody understands what is  
10 required of them.

11           During the Kincaid fire, I received some  
12 phone calls from growers who had a real concern  
13 because they couldn't get AQI information, and  
14 they couldn't get the information because of the  
15 power outages. When you have the wildfire  
16 smokes, the situation going on, you have that  
17 threat, PG&E is cutting off the power. That  
18 power is needed for many of the monitors, and in  
19 many cases, when you looked up the AQI online, it  
20 just said unavailable and a question mark for  
21 what the AQI was because either the office was  
22 evacuated or the monitor itself didn't have a  
23 power -- wasn't functional.

24           So we just advise them, you know, if you  
25 think you're over 150, get out there and give

1 your workers the mask, make it available to them.  
2 But there has to be, you know, some recognition  
3 of that because if growers don't know what to do,  
4 they have a hard time complying. It's just, you  
5 know, yeah, that's fine.

6 So anyway, thank you again. I really  
7 appreciate all the work and happy holidays.

8 CHAIR THOMAS: Thank you.

9 MS. UMFREY: Good morning, my name is  
10 Karin Umfrey and I'm here on behalf of Worksafe,  
11 however, I will be reading a statement from Nancy  
12 Zuniga.

13 She says, Chairman Thomas and members of  
14 the Board, my name is Nancy Zuniga and I am the  
15 Workers' Health Program Manager at IDEPSCA, the  
16 Institute of Popular Education of Southern  
17 California, a worker center in Los Angeles that  
18 operates five day laborer sites. Our health  
19 program has focused on outreach, education, and  
20 relief for low-wage workers that were impacted by  
21 the Woolsey Fires, and now more recently, the  
22 Getty Fires.

23 On behalf of IDEPSCA, I'd like to thank  
24 the Division for its thoughtful and important  
25 work in creating and implementing the temporary

1 emergency standard. IDEPSCA has brought day  
2 laborers and domestic workers, who were exposed  
3 to wildfire smoke, to witness the process to  
4 adopt the temporary emergency standard. Since as  
5 immigrant low-wage workers, they have been  
6 experiencing firsthand the brunt of these  
7 disasters.

8           We have now supported workers through two  
9 wildfire seasons and the areas of Malibu and  
10 Calabasas, and this fall, also stayed in contact  
11 with workers that were impacted by wildfires in  
12 similar areas. For that reason, we want to  
13 encourage the Board to readopt the temporary  
14 emergency standard, as well as share some of our  
15 concerns.

16           In addition, we believe that the agency  
17 must work quickly to have a permanent standard in  
18 place before the next fire season and before the  
19 temporary standard expires.

20           This past fall, wildfires hit southern  
21 California from Sylmar to the Getty area. All  
22 areas where we know there is a large population  
23 of low-wage workers, particularly day laborers,  
24 which include workers doing construction,  
25 landscaping, and gardening, as well as domestic

1 workers, which are nannies, housecleaners, and  
2 caregivers.

3           This October, an LA Times article with  
4 the headline, "Getty Fire, Housekeepers and  
5 Gardeners go to Work Despite the Flames," confirm  
6 what workers had been telling us two years ago.  
7 Workers were not being properly informed about  
8 the wildfires in real time or being provided any  
9 access to fact sheets or resources about the  
10 temporary emergency wildfire smoke standard.

11           We mass texted over 300 workers whose  
12 contact information we had gathered in the last  
13 two years during our wildfire outreach to provide  
14 them with general information about their rights.  
15 But this massive responsibility shouldn't fall  
16 completely on advocacy organizations like ours.  
17 This is why the permanent standard must have  
18 clear guidance on the employer's responsibility  
19 to communicate to workers things such as an  
20 evacuation plan.

21           We also encourage the Division to think  
22 about an educational campaign, multimedia --  
23 multimedia campaign similar to the heat illness  
24 campaign to get the word out. Unfortunately, we  
25 also know about how workers have been exposed to



1 wildfire smoke by working in mandatory evacuation  
2 zones. Eladio Rosario (phonetic), a day laborer  
3 that we met during our outreach efforts in  
4 Malibu, and who also has been interviewed by  
5 multiple news outlets now, was hired by a private  
6 homeowner to help prevent his and other nearby  
7 homes from catching on fire in an evacuated zone.  
8 It is extremely concerning to us as advocates  
9 that immigrant workers are risking their lives by  
10 working in highly hazardous zones because of  
11 their great financial need.

12           Our hope is that the permanent standard  
13 takes into account the power differences between  
14 employer and worker, and provides better  
15 guidelines around where the air quality is so  
16 bad, like in an evacuated zone, that it is simply  
17 unsafe to work other than by firefighters and  
18 trained staff.

19           For the temporary standard, we have also  
20 shared our experience in talking to over 500  
21 workers exposed to the Woolsey wildfire and  
22 training about half -- with hands on training on  
23 how to correctly use the N95 mask and provided  
24 them free masks. We focus on doing this outreach  
25 because workers shared that they had been exposed

1 from 1 to 30 days to wildfire smoke without any  
2 protection or training provided by their  
3 employer.

4           This past fall, workers that said they  
5 were working in areas hit by wildfires having to  
6 purchase their own mask in areas where local  
7 stores were already sold out and never being  
8 offered training by their employer.

9           We want to reiterate how important this  
10 temporary standard is for IDEPSCA who has been  
11 focusing on outreach, education, and relief of  
12 immigrant workers as it has given us, as  
13 advocates, more tools to help protect the health  
14 and well-being of all workers. We have heard at  
15 least three cases of workers from the most recent  
16 fires this fall that had health complications due  
17 to being exposed to wildfire smoke.

18           So we know that there is still plenty of  
19 education and advocacy that still needs to happen  
20 with homeowners that are employers. Workers  
21 cannot afford to lose this emergency standard to  
22 protect their health and safety in their  
23 workplaces.

24           We are also hopeful that the permanent  
25 standard will include important changes like

1 lowering the trigger for application of this  
2 standard to AQI for PM2.5 of 101, improving the  
3 communication requirements between employers and  
4 workers, lowering the threshold for fit testing  
5 and medical evaluation when using a respirator to  
6 AQI of 301, and requiring in-person training.

7           We hope that the Division treats this  
8 rulemaking for the permanent standard as a  
9 priority and with urgency. We need a time frame  
10 for when the permanent standard will be in place  
11 so that we have a strong permanent standard in  
12 place before the temporary standard expires.

13           Having interacted with workers throughout  
14 three fires has also taught us that wildfire  
15 recovery is a long cycle and that air quality can  
16 remain unsafe even after areas impacted are  
17 deemed safe. For this reason, we also urge that  
18 the permanent standard needs to include a piece  
19 that includes, and takes into account, poor  
20 outdoor air quality post-wildfires, like during  
21 cleanup, where we continue to see more employers  
22 hiring workers and more workers exposed to  
23 dangerous particles. This would only strengthen  
24 the standard and acknowledge the climate  
25 accelerated disasters workers are facing.

1           In closing, I strongly urge the Board to  
2 extend the temporary emergency wildfire smoke  
3 standard for another 90 days because day  
4 laborers, domestic workers, and many other low-  
5 wage workers cannot afford any gap in protecting  
6 their health and safety in a time when wildfires  
7 have become the norm and recovery takes so long.

8           Thank you.

9           CHAIR THOMAS: Thank you.

10           MS. KATTEN: Good morning, Chairman  
11 Thomas and Board members, Board staff, and  
12 Division staff.

13           I'm Anne Katten from California Rural  
14 Legal Assistance Foundation, and we also urge the  
15 Board to readopt the emergency wildfire smoke  
16 protection standard and join Worksafe and  
17 (indiscernible) in calling for improved  
18 protections in a permanent standard.

19           I also agree with Mr. Miiller that the --  
20 that problem -- we were also very concerned about  
21 the -- when the air monitors went offline during  
22 the Kincaid Fire, and something needs to be done  
23 to make sure that there is adequate notification  
24 when the air is considered unsafe in those areas  
25 or some reasonable estimation about that in the

1 future.

2           We also thank the Board and staff for  
3 their work developing a proposed regulation for  
4 outdoor agricultural operations during hours of  
5 darkness, and we urge the Board to adopt the  
6 regulation when it comes to a vote so that  
7 workers who work at night can see and be seen.  
8 Adequate lighting in night agriculture work is  
9 critical for preventing injuries from collisions,  
10 slips, falls, cuts, and bites from venomous  
11 animals, as well as for reducing eyestrain and  
12 fatigue and workplace violence risks.

13           We are, however, disappointed with the  
14 recent revisions that were made to the proposed  
15 regulation at the request of some employers  
16 because these will reduce the protection for  
17 workers. The most significant changes are the  
18 elimination of the hierarchy requiring  
19 consideration of area lighting options over  
20 personal hands-free lighting and reduction of  
21 lighting requirements for work that does not  
22 involve sharp tools such as short -- sorting  
23 tomatoes or sorting and wrapping lettuce on a  
24 production line.

25           Hierarchy of controls requiring use of

1 area lighting when feasible should have been  
2 retained because headlamps and other hands-free  
3 lighting illuminate just a narrow beam of light.  
4 It makes it hard enough for workers to see far  
5 enough in front of them and on the sides and it  
6 makes it harder for them to be seen in the  
7 absence of also having area lighting.

8           Also, headlamps sometimes fall off when  
9 workers are working at a rapid pace, as one of  
10 our declarations documented. That said, as  
11 revised, the regulation will still greatly  
12 improve safety of nighttime agricultural work.  
13 And since a proposed regulation must be voted on  
14 by February, I believe there isn't any time to  
15 make additional changes, so we urge you to  
16 support the regulation.

17           We also think that the economic analysis  
18 was fair and complete, and while there are some  
19 jobs not involving harvesting that are at night,  
20 most of those involve many fewer workers than a  
21 harvest operations, and we look forward to  
22 monitoring the impact of this regulation and  
23 think it will reduce injuries to agricultural  
24 workers during night work.

25           Thank you.

1 CHAIR THOMAS: Thank you.

2 MS. LEBLANC: Good morning, my name is  
3 Michelle Leblanc. I'm the Executive Director of  
4 the Free Speech Coalition.

5 FSC has its roots in the first amendment  
6 fights of the 1960s and incorporated as a trade  
7 association in the 1990s. We represent all  
8 segments of the adult industry in North America  
9 and we are headquartered in Los Angeles, which is  
10 one of the major hubs of adult entertainment  
11 production.

12 As the central representative of the  
13 adult industry, I respectfully request that you  
14 appoint me to the advisory committee that you'll  
15 be convening to look at workplace violence  
16 prevention in the adult industry.

17 FSC is at the forefront of this work  
18 already, and we welcome the opportunity to stay  
19 involved at this level. We work externally with  
20 regulators and lawmakers to defend the legality  
21 of the adult industry and to promote its growth  
22 and contribution to the California economy.

23 We work internally to develop policies  
24 and procedures that ensure ethical business  
25 practices and safe workplaces. We are committed

1 advocates for the rights and protections of  
2 everyone involved in the adult industry.

3           Our members include producers,  
4 performers, production crew, streamers and  
5 content creators, talent agents, platform  
6 providers and business service providers,  
7 manufacturers, distributors, and retailers.

8           Members of FSC agree to abide by a code  
9 of ethics. Some members have additional codes of  
10 conduct, production standards, and consent  
11 checklists that ensure that all participants in a  
12 production adhere to practices that provide for  
13 the safety of everyone on set.

14           One of the most tangible and effective  
15 ways that FSC promotes a safe and healthy work  
16 environment is with the Performer Availability  
17 Screening Service, or PASS. The FSC PASS program  
18 was developed by industry stakeholders including  
19 performers, compliance experts, industrial  
20 hygienists, doctors, and attorneys to create  
21 industry standard testing protocols as part of a  
22 system of self-regulation.

23           We use a network of nationwide testing  
24 sites and CLIA certified labs and a standard STI  
25 panel that tests for seven different pathogens



1 every 14 days. FSC PASS is a highly sensitive  
2 infection surveillance system with protocols to  
3 trigger industrywide production shutdowns should  
4 we detect a potential increased risk of STI  
5 exposure.

6 Since the inception of PASS, there has  
7 not been a single onset transmission of HIV on a  
8 PASS set. Because the nature of the work product  
9 in the adult industry is unique when compared to  
10 other industries, we use a more detailed and  
11 descriptive definition of consent, and we  
12 document that consent in multiple ways.

13 FSC welcomes the opportunity to represent  
14 the adult industry to Cal/OSHA, and I ask again  
15 that you appoint me to the advisory committee on  
16 workplace violence prevention in our industry.

17 Thank you for your time and your  
18 consideration.

19 CHAIR THOMAS: Thank you.

20 MR. WICK: Chairman Thomas.

21 CHAIR THOMAS: Morning.

22 MR. WICK: Staff, Board Members,  
23 everyone, happy holidays. Bruce Wick, CALPASC,  
24 Specialty Contractors Association.

25 Just want to thank everyone for their

1 work all year, Division, staff, and all of you  
2 for walking through all the issues that come  
3 before you.

4 I do want to make just a couple quick  
5 comments on the wildfire smoke regs. I do  
6 understand you'll be adopting today to keep those  
7 regs continuing on an emergency basis. And looks  
8 like Erica and our team has like a really cool  
9 video to show and you'll be talking about version  
10 1, 2, and 3, and I think there's still confusion  
11 from all the information that's being said.

12 It looks like version 2 is going to look  
13 amazingly like version 1 just because of the  
14 regulatory constraints, but version 3.0 needs to  
15 -- that will be someday a permanent reg. I hope  
16 you strongly encourage the Division to keep  
17 moving forward on version 3.0 in having a truly  
18 collaborative advisory committee meeting. We  
19 really need that because of what you're hearing.  
20 And -- because again, it was very sad for me as I  
21 trained the trainers on this regulation that at  
22 some parts of it, I had to say you as employers  
23 are going to have to choose between compliance,  
24 risking the citation, or doing the safest thing  
25 for your employee. And I know you'll do the

1 safest thing for your employee and risk getting a  
2 citation for it.

3           But even more than that is what Elizabeth  
4 Treanor brought up about the utility workers who  
5 do a really important job, they have to do it.  
6 They go into these areas and she made a very  
7 clear point over and over about the exposure the  
8 way the regulation was written. And her members'  
9 employees are still subject to that where someone  
10 has to say I will not comply with this reg to not  
11 risk my employees and actually a potential fatal  
12 accident.

13           So we really need that part corrected as  
14 soon as we can. And if that has to be under  
15 version 3.0, then we need to move there as fast  
16 as we can.

17           Thank you.

18           MR. JOHNSON: Good morning, Chairman  
19 Thomas, members of the Board, Division staff,  
20 Standards Board staff. Happy holidays everybody.

21           My name's Steve Johnson. I represent  
22 just a single employer, Walters and Wolf. And I  
23 support everything that -- that Bruce has to say  
24 and with emphasis on making it simple for  
25 employers to provide training, making it simple

1 for employers to provide protection for their  
2 employees.

3 I don't think we need to do an extensive  
4 amount of training on an N95 filtering face mask.  
5 I think everybody has a basic idea of how to put  
6 that on. I don't think we need a fit test for an  
7 N95 filtering face piece. I think we need to  
8 protect our employees.

9 So when I have employees that go to a job  
10 site, they can only work four hours because the  
11 job site shut down, they take their N95 filtering  
12 face piece and they throw it in the trash as  
13 they're walking to their car and they're still  
14 breathing the same dirty air filled breathing on  
15 the job site, and they only get four hours of  
16 work that day because the job site shut down.

17 As a subcontractor, we are signator, we  
18 sign on with general contractors. And if a  
19 general contractor shuts down a job, then our  
20 employees don't get paid for four hours that day.  
21 So thus the concern I have as far as like  
22 adjusting trigger heights and adjusting -- or  
23 trigger -- trigger -- triggers for requiring the  
24 N95. And I support, you know, I support  
25 protecting our employees. I think every good

1 employer wants to protect their employees.

2           Some of the challenges that we've had  
3 last -- last summer, we -- our suppliers ran out  
4 of N95 filter face pieces. So we were in a  
5 position of having to do some quarterbacking and  
6 scrambling and trying to go to different  
7 suppliers to get the N95 filtering face pieces.  
8 And some -- some job sites we just, we weren't  
9 able to get enough distributed to the employees  
10 to protect everybody that wanted to wear one on a  
11 voluntary basis. And this was above the trigger  
12 temperature. So -- below the trigger  
13 temperature.

14           So I think the thing that, you know, as a  
15 single individual employer, we're just -- we're  
16 just looking for simple guidance that we can do,  
17 simple training, provide protection, and not --  
18 and employees don't respond to complicated  
19 training. Employees respond to simple training.  
20 Employers want simple guidance on how to -- to  
21 move forward.

22           So that's what I wanted to just really  
23 emphasize. And I appreciate the work that's been  
24 done on -- it's never easy to start from scratch  
25 on a regulation like wildfire smoke. And

1 California, once again, is, you know, out in  
2 front of the rest of the country. And I  
3 appreciate all the work that's gone into it and,  
4 you know, would like to be involved in the  
5 process going forward.

6 But those are just a few of my thoughts.  
7 Thank you.

8 CHAIR THOMAS: Thank you.

9 MS. BLANCHARD-SAIGER: Good morning.  
10 Gail Blanchard-Saiger with the California  
11 Hospital Association. I do want to speak on the  
12 wildfire regulations. I think you've heard from  
13 me before but never hurts to be a little  
14 reminder.

15 California hospitals are very concerned  
16 about the health of everybody in their  
17 communities and particularly, obviously, their  
18 employees. And so we do support oversight of  
19 outdoor worker exposure to wildfire smoke. And I  
20 think some folks here raised some additional  
21 concerns from the worker perspective. And for  
22 those agricultural workers or day laborers, you  
23 know, definitely those issues should be  
24 addressed.

25 But I do want to highlight the special

1 circumstances that hospitals and their employees  
2 are facing during a wildfire event. You know, as  
3 you might imagine, we're not really generally  
4 considered outdoor workers. Most of us are  
5 working inside the hospital. But during a  
6 wildfire, there are situations where we do have  
7 to evacuate. And this actually occurred at two  
8 hospitals during the most recent Kincaid fire.

9           And so I called the hospitals afterwards  
10 and I said, okay, how did it go? And, you know,  
11 we have N95s. They're part of our normal  
12 stockpile for direct patient care employees.  
13 They're fit tested so that's not really our  
14 concern. Our concern continues to be, if we're  
15 evacuating a hospital and this is life and death,  
16 we've got to get people who are on ventilators  
17 or, you know, unable to walk out of a hospital  
18 and the fire's rolling down, the obligation to  
19 monitor air quality and determine when it hits  
20 whatever the threshold ends up being from  
21 voluntary to mandatory, that's a concern. You  
22 know, do we want to make sure our patients and  
23 our employees are out safe, or is somebody going  
24 to be tasked with monitoring the air quality and  
25 kind of that tipping point? So we continue to be

1 concerned about that.

2           There was also some concern about how  
3 this was working with respect to the ventilation  
4 requirements. I will get you more information  
5 about that. That is not my area of expertise but  
6 those are related to the things that I heard from  
7 the hospitals.

8           So we do support adoption later today of  
9 the regulation to continue for particularly for  
10 protection of those who are regularly working  
11 outside. But as the Division moves to look at a  
12 permanent regulation, we also echo the request to  
13 really have a more nuanced evaluation of the  
14 different worksites and some special  
15 circumstances.

16           So with that, thank you, and happy  
17 holidays.

18           CHAIR THOMAS: Thank you.

19           MR. LEACOX: Good morning, Board and  
20 staff. Dan Leacox of Leacox and Associates, on  
21 behalf of number of clients in one way or  
22 another.

23           Not here this morning to talk about  
24 wildfire smoke. Can't make me. Actually --  
25 actually here for -- actually here for what's



1 become a traditional December message from me  
2 about the variance process and -- which is really  
3 just a thanks to the staff. And that I want the  
4 Board to know that both Division staff and Board  
5 staff, I know my clients who do the bulk of those  
6 variances move them through the process really do  
7 appreciate what the staff do to get that done.

8 Thank you, Mr. Healy.

9           And so, but I want the Board to know, I  
10 don't know if you know about that. And it's been  
11 particularly trying circumstances, I believe, for  
12 Board staff recently with the staff shortage and  
13 so forth and that's just very, very much  
14 appreciated.

15           The other message I have for you is just  
16 looking forward to the next year. I think a lot  
17 is going to be asked of Board Members this year  
18 as we get rulemakings that are more and more and  
19 ever more invasive into the lives of employers  
20 and employees. And employees, we're seeing this  
21 more and more. It falls on you to make some wise  
22 and well-informed decisions. You know, you're  
23 the one who signs the bottom line on these rules.  
24 It's kind of your legacy and I think a lot is  
25 going to be asked of you to look at these things

1 very closely.

2           One of the things I'm going to be coming  
3 back and talking to you about a little bit, as  
4 I've done occasionally on some topics, is  
5 economic analysis. I think the Board needs to  
6 take a hard and careful look and understand what  
7 they're looking at in these economic analyses.  
8 For example, there are some new trends in these.  
9 We're seeing economic analyses that say to the  
10 workers being protected, they say some of you are  
11 going to lose your job. But that's okay, that  
12 money will go to give somebody else a job and  
13 therefore it's a wash. These are whole people  
14 who have lots of interest and one needs to  
15 understand, you know, that level impact of these  
16 rulemakings.

17           You're the policymakers, you've got to  
18 think about whole people. And good luck in the  
19 coming year, I think you've got a number of  
20 challenges. But look forward to walking them  
21 through them with you and appreciate your ear  
22 this morning.

23           Thank you.

24           CHAIR THOMAS: Thank you.

25           MR. STEIGER: Thank you, Chair Thomas,

1 Members and staff. Mitch Steiger with California  
2 Labor Federation.

3 Thank you for the opportunity to testify  
4 here today. Just wanted to speak briefly in  
5 support of the proposed readoption of the  
6 emergency wildfire regulations.

7 I think if you listen to the comments  
8 from both the worker and employer sides, it does  
9 seem like there actually is some degree of  
10 consensus on this issue in that what we've got  
11 now today is better than what we had. It was a  
12 step forward. Still needs some work. We would  
13 definitely after the comments of Worksafe and  
14 CRLA that in a few different ways, this could be  
15 strengthened in favor of workers, could also  
16 probably also be clarified for the benefit of  
17 employers. But overall, what we have now is  
18 something that is feasible.

19 This is a very tough issue, this is not  
20 going to be an easy one to solve, but we did the  
21 best we could with the time that we had. And  
22 just think back to where we were a year ago, I  
23 know there were a lot of doubts about whether or  
24 not this could be done in time for the fire  
25 season, and it was. So definitely hats off, we

1 commend the work for everyone involved for making  
2 it happen that fast.

3           And just as a point of personal  
4 privilege, the longer this meeting goes, the more  
5 likely it is that I get to skip our office  
6 holiday party. I encourage commenters and Board  
7 Members to be as thorough as possible. If Bruce  
8 and Kevin have to miss their flights, so be it.  
9 Don't take any shortcuts today.

10           Thank you.

11           MR. BLAND: How do you follow that?  
12 Right? I was going to -- I was going to try to  
13 be funny about how long this was going and say  
14 that, you know, I'm not sure if we're doing the  
15 Christmas 2020 or 2019 but after Mitch's comment,  
16 that just falls flat.

17           Kevin Bland representing the California  
18 Framing Contractors Association, the Residential  
19 Contractors Association, and the Western Steel  
20 Council here this morning.

21           Good morning, Chairman Thomas, Board  
22 Members, Division staff, Board staff.

23           I'm not going to comment on the wildfires  
24 either, even though we're part of the coalition,  
25 the letter. I just wanted to come up and take

1 this opportunity to thank you for your service  
2 for the year. And wish you all happy holidays,  
3 season greetings, Merry Christmas, whatever it is  
4 you individually celebrate. I hope it's a safe  
5 one and an enjoyable one. And wish you a  
6 prosperous 2020.

7           And as my colleague, Mr. Leacox, said, we  
8 need to roll our sleeves up, next year's going to  
9 be a big one. So buckle up and we're going to  
10 have some work to do. And we appreciate it and  
11 we look forward to the continued effort to work  
12 together with management and labor and Division  
13 and the Board staff on resolving a lot of these  
14 issues that affect men and women working in  
15 California.

16           So thank you very much.

17           CHAIR THOMAS: Thank you.

18           MS. MARQUEZ-BAKER: Sorry to keep you  
19 from all of your respective holiday parties.

20           Mitch, I know you really want to go to  
21 that one.

22           This is on behave of Veronica Ponce de  
23 Leon from UCLA Labor Occupational Safety and  
24 Health Program.

25           My name is Veronica Ponce de Leon. I am

1 the health and safety educator at the UCLA Labor  
2 Occupational Safety and Health Program. UCLA  
3 LOSH is a nationally recognized program that  
4 promotes safe workplaces through training and  
5 education, research and policy advocacy.

6           For over 40 years, we have served as a  
7 resource for underserved workers in southern  
8 California, particularly minority, immigrant, and  
9 non-English speaking workers in low-wage jobs.  
10 On behalf of UCLA LOSH, I'd like to thank the  
11 Division for its important work in creating and  
12 implementing the wildfire smoke temporary  
13 emergency standard. We appreciate the  
14 opportunity to provide comments to the Board on  
15 the readoption of the standard.

16           This standard is important given the  
17 occupational environmental health and safety  
18 impacts of wildfires on workers and the  
19 community, as well as the broader social and  
20 public health impact in the southern California  
21 region and the state. In addition, a standard  
22 that strengthens California's capacity to protect  
23 workers from wildfire smoke can serve as a model  
24 nationwide for natural disasters.

25           First, I'd like to share a few areas of

1 concern regarding the recent wildfires in  
2 southern California. Since the adoption of the  
3 temporary standard in late July, California has  
4 experienced number -- numerous wildfires. Just  
5 from October to November, we have -- there have  
6 been at least 14 wildfires in the state, 10 of  
7 which were in the southern California area. The  
8 largest of these was the Saddle Ridge fire in Los  
9 Angeles San Fernando Valley, burning over 8,799  
10 acres, displacing 100,000 community members, and  
11 taking the life of one person.

12           In the midst of this growing threat, we  
13 are -- we were particularly concerned about  
14 workers continuing to work in mandatory  
15 evacuation zones. During the Palisades fire on  
16 October 21st, 2019, not too far from the UCLA  
17 campus, we found evidence of workers in  
18 evacuation zones. Live news footage from KTLA 5  
19 clearly shows workers next to a construction site  
20 trying to fight the flames with hoses instead of  
21 evacuating.

22           We know that wildfires in southern  
23 California will continue to be a threat and need  
24 to be better equipped to protect workers. LOSH  
25 has trained day laborers, domestic workers, and

1 employees from schools and community colleges  
2 about the temporary standard. Most training  
3 participants were learning of the standard for  
4 the very first time and showed a deep interest in  
5 understanding how the standard applies to them.

6           From these training experiences, we know  
7 there is a real need for outreach in education  
8 for workers and employers regarding this  
9 standard. We recognize that this standard is new  
10 and questions remain about its implementation.  
11 The southern California fires have provided a  
12 challenge and opportunity for employers to  
13 implement the standard. For example, UCLA, in  
14 partnership with other UC campuses, evaluated  
15 their program and is focusing on improvements  
16 needed to convey clear direction to both students  
17 and staff. They are attempting to further clarify  
18 sufficient warnings for workers and students on  
19 campus as stated in the September 2019 Wildfire  
20 Smoke and Air Quality Report they made public.

21           In the past, LOSH has partnered with LOHP  
22 and Cal/OSHA to help with education around other  
23 standards such as the heat illness prevention  
24 standard, safe patient handling, ATD, and the PM  
25 -- PSM standards. There was a lot of work



1 involved to ensure that workers and employers  
2 know what rights and responsibilities they have  
3 under these standards. For example, Cal/OSHA  
4 contributed to a media campaign to ensure that  
5 workers and employers knew about the heat illness  
6 prevention standard. The campaign included  
7 billboards, informational fact sheets and  
8 posters, radio announcements, and more. UCLA  
9 LOSH would like to support the agency in efforts  
10 to protect workers just as we have had -- have --  
11 just as we have with past Cal/OSHA standards.

12           We know from past experiences that  
13 workers and employers become knowledgeable of the  
14 standard when Cal/OSHA contributes resources to  
15 outreach and education, as well as compliance.  
16 It would helpful to know what Cal/OSHA's efforts  
17 have been to date. This information could help  
18 inform next steps to effectively protect workers  
19 from wildfires in the next -- in the near future.

20           The Labor Occupational Health Program,  
21 LOHP at U.C. Berkeley, and LOSH, as well as other  
22 partnered organizations, such IDEPSCA, have  
23 worked on reaching employers and workers to  
24 inform them about the new standard. However, six  
25 months is not enough time to connect and

1 effectively outreach and educate workers about  
2 the issues.

3           The -- the readoption is a -- should be  
4 consistent -- is consistent with our long-term  
5 goal of protecting workers from worsening fire  
6 conditions in California. As a permanent  
7 standard is being developed, the emergency  
8 standard allows for workers and employers to  
9 become familiar with the standard and its  
10 expectations. With that being said, we  
11 understand the endless amount of work involved in  
12 developing the standards, so we applaud the  
13 Division for taking this bold step to addressing  
14 this climate-related issue and strongly encourage  
15 the Board to readopt the standard.

16           Thank you for your time.

17           CHAIR THOMAS: Thank you. Any other  
18 comments at this time?

19           The Board appreciates your testimonies.  
20 And the public meeting is adjourned and the  
21 record is closed.

22           We will now proceed with the business  
23 meeting. Purpose of the business meeting is to  
24 allow the Board to vote on the matters before it  
25 and to receive briefings from staff regarding the

1 issues listed on the business meeting agenda.

2           The Board does not accept public comment  
3 during this business meeting unless a member of  
4 the Board specifically requests public input.

5           Proposed safety orders for adoption.  
6 General Industry Safety Order, Sections 3420 and  
7 3425, Tree Work, Maintenance or Removal - Use of  
8 Portable Power Saws.

9           Mr. Manieri, will you please brief the  
10 Board?

11           MR. MANIERI: Mr. Chairman, Chairman  
12 Thomas, and Board Members, as you'll recall with  
13 the adoption of the electric power generation  
14 transmission and distribution, electrical  
15 protective equipment, federal final rule on  
16 December 17th, 2017, the Board staff realized  
17 that amendments to Sections 3425(a)(2) and (5)  
18 were necessary to clarify standards relating to  
19 the drop starting and starting power saws at  
20 elevation, a common work practice, as you now  
21 know in the tree care industry.

22           The proposal defines drop starting, a  
23 practice not permitted by federal standards, as  
24 the action of starting power saws, primarily  
25 gasoline type, by simultaneously pushing the saw

1 away with one hand while pulling starter cord and  
2 handle the opposite direction with the other  
3 hard. They may be started -- power saws may be  
4 started at elevation where they are firmly  
5 supported. An example of a tree branch or other  
6 tree branch or limb and there are no personnel  
7 below the saw when it is being started. This was  
8 described to you last month.

9           The proposal include some minor  
10 relocation of existing regulatory text pertaining  
11 to the correct way the power saws in excess of 15  
12 pounds ought to be supported from existing  
13 paragraph 6 to a number 3 in Section 3425(a).  
14 And at the same time, streamlining the  
15 requirement so that now it's completely  
16 consistent with federal OSHA standards for both  
17 starting and supporting this type of saw.  
18 Federal OSHA has already well determined that the  
19 proposal is commensurate with its comparable  
20 standards that are contained in 1910.269,  
21 1910.266, and .269(R)(5)(4).

22           There were no oral and written comments  
23 received. There was a wide support for the  
24 proposal, at least we're not aware of any  
25 opposition or concerns expressed. So at this

1 time, the staff recommends the Board adopt this  
2 proposal.

3 Thank you.

4 CHAIR THOMAS: Thank you, Mr. Manieri.

5 Are there any questions for Mr. Manieri?

6 A motion would be in order.

7 MR. HARRISON: Motion to adopt.

8 MS. LASZCZ-DAVIS: Second.

9 CHAIR THOMAS: I have a motion and  
10 second.

11 Anything else on the question?

12 Hearing none, Ms. Money, will be please  
13 call the roll?

14 MS. MONEY: Ms. Burgel.

15 MS. BURGEL: Aye.

16 MS. MONEY: Mr. Harrison.

17 MR. HARRISON: Aye.

18 MS. MONEY: Ms. Kennedy.

19 MS. KENNEDY: Aye.

20 MS. MONEY: Ms. Laszcz-Davis.

21 MS. LASZCZ-DAVIS: Aye.

22 MS. MONEY: Ms. Stock.

23 MS. STOOCK: Aye.

24 MS. MONEY: Chairman Thomas.

25 CHAIR THOMAS: Aye. And the motion

1 passes.

2 Proposed emergency safety order for  
3 readoption. Government Code Section 11346.1.  
4 General Industry -- General Industry Safety  
5 Orders, Chapter 4, Subchapter 7, New Section  
6 5141.1, Protection from Wildfire Smoke.

7 Ms. Shupe, will you please brief the  
8 Board?

9 MS. SHUPE: The proposed emergency safety  
10 orders before you today were originally adopted  
11 by the Board as an emergency regulation for  
12 protection from wildfire smoke on July 18th,  
13 2019, and subsequently became effective on July  
14 29th, 2019.

15 The emergency regulation created a new  
16 section, 5141.1, under the California Code of  
17 Regulations, Title 8, Division 1, Chapter 4 of  
18 the General Industry Safety Orders with the  
19 objective of significantly reducing employee  
20 exposure to the harmful effects of wildfire  
21 smoke, specifically fine particulate matter or  
22 PM2.5.

23 In the months following the Board's July  
24 18th vote to adopt the protection from wildfire  
25 smoke emergency regulations, Cal Fire reported

1 over 177 wildfire incidents in California. Of  
2 those, 23 fires exceeded more than 1,000 acres in  
3 size. Two of those were significantly larger and  
4 exceeded 50,000 acres in size. The Walker fire  
5 burned 54,612 acres in September of this year,  
6 and in October, the Kincaid fire burned 77,758  
7 acres, each effecting air quality over a  
8 significant portion of the state.

9           Absent further action by the Board, the  
10 original emergency regulation is set to expire on  
11 July 25th, 2020. In accordance with the  
12 Administrative Procedure Act requirements for the  
13 readoption of emergency rulemakings, substantial  
14 progress has been made, and efforts are  
15 proceeding with diligence, to comply with  
16 Government Code Section 11346.1, Section E.

17           The Division of Occupation Safety and  
18 Health has prioritized the permanent rulemaking  
19 development work, holding a public advisory  
20 meeting, releasing draft language for public  
21 comment, and performing research and analysis to  
22 ensure that fiscal and economic impact  
23 disclosures will meet Department of Finance  
24 requirements.

25           The readoption before you today will

1 extend the emergency regulations for an  
2 additional 90 days while work on a permanent  
3 regulation continues. Board staff recommends the  
4 Board readopt the emergency regulation as  
5 proposed.

6 CHAIR THOMAS: Thank you, Ms. Shupe.

7 Are there any questions for Ms. Shupe?

8 MS. LASZCZ-DAVIS: Can we -- can we talk?

9 CHAIR THOMAS: Yes, you can.

10 MS. LASZCZ-DAVIS: Can I talk?

11 CHAIR THOMAS: You may talk.

12 MS. LASZCZ-DAVIS: I've got to get here  
13 closer to Nola here.

14 CHAIR THOMAS: Would you like to leave  
15 the room?

16 MS. LASZCZ-DAVIS: No. You know, just --  
17 just to -- behave yourselves.

18 But anyways, just -- just a couple of  
19 comments, maybe -- maybe a question or two.

20 The wildfire safety regulation, you know,  
21 I think everybody endorses it and I think all  
22 groups concerned, you know, want the right thing  
23 to happen. But the theme I keep on hearing --  
24 I'm hearing several things -- some concern that  
25 the emergency regulation will end up morphing



1 into being the permanent standard without many  
2 changes.

3           The other thing I'm hearing is that there  
4 are concerns about the AQI triggers and whether  
5 or not underserved populations will be addressed.

6           Another concern I hear is -- is the fact  
7 that -- simplicity, operationally, is this a  
8 doable standard when we finally get to it? So  
9 that brings me to the comment about the rules of  
10 engagement. I know that there've been  
11 discussions between stakeholders and Division  
12 staff and standard -- Standards Board staff. But  
13 the truth is, are we really sitting around the  
14 table and hammering this out? That's my concern.  
15 Is the engagement what it should be to make sure  
16 that the final permanent regulation reflects what  
17 needs to be done? It's a question.

18           MS. SHUPE: Chris, are you prepared to  
19 answer that question? Because I have to say in  
20 this moment, I would normally refer to Eric Berg.  
21 The Division is charge -- in charge of the  
22 advisory committee meetings for these, and we  
23 have talked about adjusting the format for those,  
24 but ultimately, that authority lies with the  
25 Division.

1           MR. KIRKHAM: I was going to speak on  
2 this a little later when it came to my section,  
3 so I don't know if you want to wait till then  
4 or --

5           CHAIR THOMAS: It's there now.

6           MS. SHUPE: It's there now.

7           MR. KIRKHAM: Sure. Yeah. I mean, we've  
8 held meetings with various stakeholders outside  
9 of the advisory meeting process. I can't give  
10 you a count off the top of my head. Certainly,  
11 we're evaluating all of the many written comments  
12 that we've received. We're open to ideas about  
13 changing the advisory meeting process. We're  
14 still evaluating exactly what we're going to do  
15 for the future, and that's about all I can give  
16 you right now about where that'll go.

17           CHAIR THOMAS: My advice would be -- I  
18 know when we have an advisory committee with the  
19 Standards Board, that there's give and take. And  
20 I don't know that that happens with the Division.  
21 I think that somebody just makes a comment and  
22 it's acknowledged and that's pretty much it. I  
23 would strongly urge the Division to have more of  
24 an open format. Everybody wants to get to the  
25 same place. I know everybody here wants to get

1 to the best rule, the most easiest to proceed  
2 with and understand, and keep people safe.  
3 That's what this is about.

4           And I think if that can be managed by the  
5 Division, which I -- I'm sure it can, that they  
6 have an open dialogue with the stakeholders, that  
7 that would be the best route to go. I -- I think  
8 that makes all the sense in the world. I hope  
9 that's what happens, and I would urge that you  
10 take that back to the Division. And when you  
11 have that stakeholders meeting, that there is a  
12 give and take so everybody really understands  
13 where everybody is coming from, and not just, you  
14 know -- we sit here and listen to everybody come  
15 up to the mic and talk to us and we don't make  
16 any comments. That isn't how it should be in a -  
17 - in an advisory committee. It should be a give  
18 and take, and if I have a question, I'll ask it.  
19 Or if anybody has a question. And -- and  
20 hopefully get an answer or at least discuss an  
21 idea. And I think what Chris says is true.  
22 Those items that she listed are the ones that  
23 seem to be on everybody's mind and seems to me  
24 that we can get to that point.

25           Any other comments? Yeah.

1 MS. STOCK: Yeah, I mean, as long as  
2 we're discussing basic criteria for that process,  
3 I just want to throw in, you know, the critical  
4 importance of having equal access, having  
5 everyone's voice be heard. I mean, there's a lot  
6 of people representing different kinds of  
7 organizations. For some organizations, it's  
8 easier than others to get people there to speak  
9 up. They represent different, you know, kinds of  
10 populations and so, you know, if there is more  
11 give and take, which is a positive thing, just to  
12 be sure that there's conscious effort to ensure  
13 access and balance, et cetera, in terms of whose  
14 voices are heard.

15 CHAIR THOMAS: Thank you.

16 Any other questions?

17 MR. HARRISON: Yeah, I'd just like to  
18 recognize the new norm that we see specifically  
19 in Northern California with PG&E. We heard some  
20 comments about losing power so there's no --  
21 there's no avenue to check the AQI nor a tool  
22 that's actually measuring the current AQI,  
23 whatever that issue is and if that can be  
24 recognized through the rulemaking process as  
25 well.

1           And I don't know what an answer there is.  
2 I don't think southern California has it, I don't  
3 think So. Cal Edison is having the rolling  
4 blackouts like PG&E is but it's definitely a  
5 problem with PG&E.

6           CHAIR THOMAS: True. Any other questions  
7 or comments?

8           MS. KENNEDY: Well I have -- I guess  
9 maybe I have a request, which is, I guess, a  
10 question. With the -- with respect to the AQI, I  
11 think I would like, as a Board Member, to see an  
12 analysis of how the AQI is used as a proxy for  
13 exposure. The AQI is a regional measurement  
14 representing a 24-hour exposure, which is  
15 different than what we usually consider in  
16 occupational exposures. So I'd like to know how  
17 useful it is or how good it is as a measure for  
18 (indiscernible) exposure.

19           CHAIR THOMAS: So you want me to answer  
20 right now or --

21           MS. KENNEDY: No. And this is really  
22 looking more toward for the permanent standard  
23 and not for this consideration today as both.

24           CHAIR THOMAS: Thank you.

25           Any other comments or questions?

1           Hearing none, a motion would be in order.

2           MS. STOCK:    So moved.

3           MR. HARRISON:   Second.

4           CHAIR THOMAS:  I have a motion and second  
5 that the Board readopt the emergency safety  
6 orders as proposed.

7           Ms. Money would you please call the roll.

8           MS. MONEY:    Ms. Burgel.

9           MS. BURGEL:    Aye.

10          MS. MONEY:    Mr. Harrison.

11          MR. HARRISON:  Aye.

12          MS. MONEY:    Ms. Kennedy.

13          MS. KENNEDY:  Aye.

14          MS. MONEY:    Ms. Laszcz-Davis.

15          MS. LASZCZ-DAVIS:  Aye.

16          MS. MONEY:    Ms. Stock.

17          MS. STOCK:    Aye.

18          MS. MONEY:    Chairman Thomas.

19          CHAIR THOMAS:  Aye.

20          The motion passes.

21          Proposed variance decision for adoption.

22          Mr. Healy, will you please brief the  
23 Board.

24          MR. HEALY:    Thank you -- thank you, Chair  
25 Thomas and Board Members.

1           About your consent calendar, Item B in  
2 File 19-V-028 is not quite ready for your  
3 consideration, leaving Item A in Permanent  
4 Variance File Number 18-V-335 to be taken up for  
5 a vote today.

6           So regarding Item A on your consent  
7 calendar, I'm aware of no unresolved procedural  
8 issues and believe Item A is ready for your  
9 decision on question of adoption.

10           CHAIR THOMAS: Thank you, Mr. Healy.

11           Do I have a motion to adopt Item A?

12           MS. LASZCZ-DAVIS: So moved.

13           MR. HARRISON: Second.

14           CHAIR THOMAS: I have a motion and a  
15 second. Is there anything on here questioned?

16           Hearing none, Ms. Money will you please  
17 call the roll.

18           MS. MONEY: Ms. Burgel.

19           MS. BURGEL: Aye.

20           MS. MONEY: Mr. Harrison.

21           MR. HARRISON: Aye.

22           MS. MONEY: Ms. Kennedy.

23           MS. KENNEDY: Aye.

24           MS. MONEY: Ms. Laszcz-Davis.

25           MS. BLANCHARD-DAVIS: Aye.

1 MS. MONEY: Ms. Stock.

2 MS. STOCK: Aye.

3 MS. MONEY: Chairman Thomas.

4 CHAIR THOMAS: Aye.

5 The motion passes.

6 DIR communications update.

7 Ms. Monterroza, will you please brief the Board.

8 Good morning.

9 MS. MONTERROZA: Good morning and thank  
10 you, Chairman Thomas, Board Members, and  
11 Executive Officer Shupe for having me here today.  
12 Bear with me one moment while I ask technology  
13 gods to bear -- to assist us.

14 Do you know how to turn the screen on?  
15 There we go. Very good.

16 Okay. So I was asked here today to  
17 provide information on the Department of  
18 Industrial Relations' outreach efforts related to  
19 the emergency regulation to protect workers from  
20 wildfire smoke. And in order to do that, first,  
21 I'd like to discuss just how our department, and  
22 specifically the communications office within our  
23 department, works to get the word out and  
24 leverage opportunities so that we can provide  
25 information for workers on their rights and



1 protections, and for employers on their  
2 responsibilities. You know, and when we do this,  
3 it's important to note that we emphasize all  
4 workers in California have labor rights  
5 regardless of their immigration status.

6           We do our utmost to get the word out on  
7 radio and on TV stations so that we can put a  
8 face and a voice, in this case to Cal/OSHA, to  
9 encourage trust and communication with our  
10 agency. And part of that is that we make every  
11 effort to ensure that the information on our  
12 website is in plain language in English and  
13 Spanish and can be understood and easily accessed  
14 by those who most need it.

15           For example, as you can see in the  
16 handouts -- this is Handout 1. This is a webpage  
17 screenshot from 2017, and what this depicts is a  
18 portal that, together with Cal/OSHA subject  
19 experts, we put on our website on wildfire safety  
20 to explain exactly what was required at the time.  
21 We used these webpages to post information from  
22 other agencies as well.

23           For example, regarding the location of  
24 N95 mask distribution points during wildfire  
25 emergencies, we make an effort to provide clarity

1 and guidance. For example, by helping to produce  
2 a video demonstration which I was trying to get  
3 to work, so let's see if that will work. This  
4 video demonstration actually is from November of  
5 2018, and this is Cal/OSHA's David Hornung  
6 discussing proper use of N95 masks when smoke  
7 began to affect indoor and outdoor workplaces.

8 Can you hear it?

9 [VIDEO PLAYED]

10 MS. MONTERROZA: Here, let me start that  
11 over.

12 [VIDEO PLAYED]

13 MS. MONTERROZA: When the smoke from  
14 wildfires affects workplaces, the Department of  
15 Industrial Relations -- Oh, now we've got a  
16 commercial running. Bear with me. All right.

17 CHAIR THOMAS: Cal/OSHA Standards Board  
18 does not endorse -

19 MS. MONTERROZA: Nor do I, and actually,  
20 I'm going to drop out of that page so we no  
21 longer get disturbed by that one.

22 Okay. So when the smoke from wildfires  
23 affects workplaces, the Department of Industrial  
24 Communications makes an effort to work in concert  
25 with all of its divisions to get information out

1 on what's required to keep workplaces safe. And  
2 so what you see here is a press release that was  
3 sending an advisory out to employers and workers,  
4 worker advocate groups, and others in regards to  
5 worker safety in wildfire regions. We not only  
6 post these press releases and send them out to  
7 our ListServ, which has over 9,000 subscribers,  
8 we also engage the media. Of course, a press  
9 release -- the goal of a press release is to get  
10 media coverage, and so part of what we do is not  
11 only send out the information to all stakeholders  
12 on the ListServ, but then we reach out to members  
13 of the press. We follow up to get coverage on  
14 radio, network news, local television stations as  
15 well, and local and national print papers --  
16 online or otherwise. We use these opportunities  
17 as a time for public education, and we get great  
18 coverage, especially from ethnic media outlets,  
19 such as Univision and Telemundo.

20           We also get our voice out there on radio  
21 stations and radio networks such as Radio  
22 Bilingue. For those of you who do not know,  
23 Radio Bilingue is a network of multiple stations  
24 in California, as well as Mexico and Arizona, and  
25 they transmit information in Spanish and Mixteco.

1 We also had coverage on KBBF on the central coast  
2 that also transmits in Spanish and Mixteco, and  
3 other radio stations with long call-in interview  
4 shows where we get opportunities to hold forums  
5 with public on worker safety requirements.

6           So we'll try again here. This -- I just  
7 want to preface this by saying this is a three-  
8 minute video clip in Spanish with Univision. And  
9 I apologize in advance for the person who gave  
10 this interview. This was from October 2017, and,  
11 actually, it's yours truly. I explain what is  
12 required to protect workers, and for those of you  
13 that don't speak Spanish, it's important to note  
14 that the concern was, back in October 2017, that  
15 many farmworkers were being required to work in  
16 Napa and other areas, even after evacuations were  
17 in place. And so what you're going to see here,  
18 if you do not speak Spanish, you're going to see  
19 coverage by the station that's giving information  
20 about farmworkers that are required to work, and  
21 then they're also just as concerned to get  
22 information out similar to what you said -- saw  
23 in Sacramento Bee. So my colleague, Luke Brown,  
24 is actually demonstrating how to properly fit --  
25 put on a mask and that's part of our interview.

1 And then part of what I'm explaining is that all  
2 workers should be protected, especially if  
3 they're required to work during wildfires. When  
4 they're exposed to wildfire smoke -- that they  
5 should have masks at the very -- at the very  
6 least. So here we go. October 2017. Let's see,  
7 let's -- I'm scared to make it --

8 [VIDEO PLAYED IN SPANISH]

9 MS. MONTERROZA: Okay. And just -- just  
10 to emphasize, that telephone number that was  
11 given at the end is to the Department of  
12 Industrial Relations' call center, as well as to  
13 Cal/OSHA so that anyone that had concerns could  
14 call directly and get their questions answered  
15 and also file reports of safety hazards if so  
16 needed. And this is showing that the advisories  
17 are both in English and in Spanish.

18 Okay. We also post information on our  
19 social media accounts, with over 5,000  
20 subscribers across all of our platforms, and we  
21 adapt our news releases to employer advisories  
22 which you see here. We send those to over a  
23 hundred subscribers of the Heat Illness  
24 Prevention Network, which includes folks from  
25 California Farm Bureau, Cal Chamber, worker

1 advocate groups, associations, and employers  
2 across the state, and also to thousands of public  
3 or stakeholders and registered farm labor  
4 contractors.

5           We also made an effort to inform the  
6 public about the emergency rulemaking and all of  
7 the public meetings and comment periods. And so  
8 this is a screenshot, which hopefully you can see  
9 better in your handouts, that provides  
10 information in regards to some of those meetings,  
11 in fact, I believe all of the meetings. We make  
12 an effort to get appropriate subject experts on  
13 air as well. And such as when in August, we  
14 worked with Executive Officer Christina Shupe to  
15 provide an update to KFI radio in Los Angeles,  
16 once the regulation was approved.

17 [VIDEO PLAYED]

18           MS. MONTERROZA: With the emergency  
19 regulation in effect, we updated our webpages in  
20 English and Spanish to provide guidance on the  
21 new requirements, and you can see that in  
22 Handout 5. Also during wildfires this year,  
23 there was a need to provide information on safety  
24 during power outages and in evacuation zones, so  
25 we added information on those topics and helped

1 produce and share resource videos from the Labor  
2 Agency, including videos recorded in English,  
3 Spanish, Chinese, and Korean by the labor  
4 secretary or Labor Agency staff.

5           To get the word out during the Kincaid  
6 and other recent fires, we issued advisories to  
7 thousands of subscribers, to employer and  
8 advocate lists, posted news releases on October  
9 25 and 27, and then personally reached out to  
10 dozens of media outlets, including network news  
11 statewide, local papers, and the radio. And you  
12 can see a selection of that, and just information  
13 in terms of the numbers of folks that we sent the  
14 notices out to, on Handout 6.

15           We had a Cal OSHA representative  
16 interviewed on Telemundo in Los Angeles for a  
17 primetime segment in Spanish on protecting  
18 workers from wildfire smoke, and also conducted  
19 interviews with KQED, Santa Rosa Press Democrat,  
20 Los Angeles Times, and others. Additionally, we  
21 coordinated an interview with Cal OSHA's chief,  
22 Douglas Parker, on KPCC So. Cal public radio.  
23 And I'm going to play the clip.

24   [VIDEO PLAYED]

25           MS. MONTERROZA: To conclude, our public

1 outreach efforts do not end when the smoke  
2 clears. We get information out on the hazards  
3 related to wildfire cleanup and rebuilding. We  
4 also are always looking to leverage opportunities  
5 so that we can inform the public. For example,  
6 just yesterday, one of our public information  
7 officers at the Department of Industrial  
8 Relations communications office arranged for two  
9 subject experts from our department to go on  
10 Radio Bilingue's hour-long interview in order --  
11 or interview format in order to ensure that we  
12 provided information on worker's rights and  
13 employer's responsibilities. And we ensured that  
14 the Cal/OSHA subject expert was fully prepared to  
15 discuss the emergency regulation, and what's  
16 required to protect workers from wildfire smoke.

17           We encourage you all to subscribe to  
18 our -- to receive our news releases, and also to  
19 our social media platforms. We've got Facebook,  
20 Twitter, and Instagram accounts so that you can  
21 continue to receive the latest news from our  
22 department, and also so you can help us spread  
23 the word because we certainly do not do this  
24 alone.

25           Thank you very much.



1 CHAIR THOMAS: Thank you. Any questions  
2 for Ms. Monterroza?

3 MR. HARRISON: I just have a comment.  
4 When we first adopted the rule, one of my  
5 requests was that Cal/OSHA did outreach similar  
6 to what you did with the heat illness standard.  
7 And I feel like you've done that, so I just want  
8 to commend the Division and thank you for that.

9 MS. MONTERROZA: Thank you very much, and  
10 we continue to look for ways to do that.

11 CHAIR THOMAS: Thank you. Any other  
12 questions?

13 Thank you very much. I appreciate you  
14 showing us everything you're doing, and although  
15 it's probably never enough, thank you very much,  
16 we appreciate that.

17 MS. MONTERROZA: Thank you Chairman  
18 Thomas.

19 CHAIR THOMAS: Division update.  
20 Mr. Kirkham, will you please brief the Board.

21 MR. KIRKHAM: Yes. So I'm filling in for  
22 my boss, Eric Berg. I have -- after doing some  
23 research and talking to various persons, I have  
24 some answers to many of the questions that came  
25 from the Board at the last meeting. And so

1 that's what I'd like to discuss.

2           So one of the questions and -- and an  
3 issue I heard today was workers or employers or  
4 other stakeholders not being able to access AQI  
5 websites in languages other than English. We  
6 haven't, at this point, managed to do an  
7 exhaustive search, but if you go on any web  
8 browser and put in website translator, you'll  
9 find tools, such as the tools offered for free by  
10 Google, where you can basically paste in the AQI  
11 website address and it'll translate that website  
12 into whatever language you want for free and it's  
13 fairly accurate.

14           So that -- that works on cell phones, I  
15 tried it myself. And what's neat about it is  
16 that as you click through the hyperlinks within  
17 the website, it continues to translate those  
18 hyperlinks, so it's pretty user friendly. If  
19 you're on a PC, most of the web browsers these  
20 days do have a translation function.

21           So a little more on getting our webpages  
22 in alternate languages. So since the last  
23 meeting, we've put in a request to have the  
24 Appendix B of 5141.1 translated, and this is a  
25 current version of Appendix B, translated into

1 four languages. Those would be Vietnamese,  
2 Spanish, Korean, and Chinese. So we're working  
3 on that right now.

4           And then some of the links that  
5 Ms. Monterroza put up in her earliest handout on  
6 the wildfire health and safety pages, some --  
7 many of them are available in Spanish. A couple  
8 of them aren't, so we're working on getting three  
9 of them in a Spanish version.

10           So moving to the concerns about  
11 evacuation and workers working in -- in mandatory  
12 evacuation areas. So I can provide some  
13 information on that. The enforcement unit has  
14 opened inspections on allegations coming from  
15 that. We haven't received many complaints on  
16 this issue. In fact, I think we've done more  
17 inspections as a result of media covering the  
18 issue than we've received on complaints. I can't  
19 comment too much on this because they're open  
20 inspections. You know, this again occurred  
21 around October, November of this year, mostly in  
22 Northern California. That's where the bulk of our  
23 inspections are occurring.

24           You had a question about sections that  
25 might apply to this issue. We're looking at

1 Section 3203. There is an (a)(6) subsection that  
2 concerns correction during imminent hazards, and  
3 so that's -- that's one we're considering. I  
4 know some of our people are looking at the  
5 Emergency Action Plan, Section 3220.

6 No -- again, no citations have been  
7 issued for this - this year yet. The inspections  
8 are still fairly fresh and open. They mostly  
9 involve employers and not homeowners. I'm not  
10 aware of any homeowner evacuation complaints that  
11 we're investigating. They're, you know, they're  
12 regular employers that allegedly kept their  
13 employees in a -- in an evacuation zone.

14 However, I did do some research on the issue of  
15 the household domestic service concerns that you  
16 had at the last meeting. So there's a definition  
17 of employment in the Labor Code, and it contains  
18 an exception for household domestic service.  
19 That phrase isn't defined in the Labor Code,  
20 although there are a couple of court cases that  
21 set precedent for what that is.

22 One involved a construction case and a  
23 homeowner, and another involved the trimming of a  
24 palm tree and a homeowner. And -- and the issue  
25 -- the difficult issue of whether work would

1 qualify under this domestic household service  
2 exception or not. And in the construction case,  
3 the courts found that the employee was -- the  
4 worker was an employee of the homeowner, so the  
5 homeowner was an employer. And in the other case  
6 with the palm tree, the courts did not.

7           So we don't have any case law on workers  
8 who work for homeowners to fight a fire or  
9 prevent a fire -- prevent embers from igniting  
10 roofs. And so, in fact, we don't even have any  
11 citations or inspections on that yet. So it's  
12 fairly early, and every case will have to be  
13 looked at closely because whether we cite would  
14 depend on the circumstances. We, you know, we  
15 have to look at whether the person truly was an  
16 employee. And for every case that we handle,  
17 whether it is wildfire smoke or someone falling  
18 off of a scaffold, if it involves a homeowner,  
19 the unique circumstances have to be looked at by  
20 our legal unit because, again, this household  
21 domestic service exception is tricky. So given  
22 the right circumstances, we will cite for  
23 employees who are kept in a mandatory evacuation  
24 zone.

25           Yes.

1 MS. STOCK: So yeah, this domestic  
2 workers' exemption is a bigger problem than  
3 you're going to solve here. That's a broad  
4 problem that requires remedies beyond the scope  
5 of what you're talking about, though we're  
6 hearing a lot of examples of how it's impacting  
7 here.

8 So I'm wondering, when you described  
9 those cases where you were able to show that they  
10 were not covered by the exemption, I mean that's  
11 how I inferred that you said. But in a case  
12 where it would be clearly covered by the  
13 exemption, what other remedies are there? I  
14 mean, obviously there's, you know, what -- what  
15 can be done to address that exemption legally and  
16 more broadly, but is there any other -- are there  
17 any other regulations, public health or  
18 otherwise, that could be brought to bear to  
19 address the issue where it is a housekeeper, a  
20 nanny, or somebody who might be more clearly  
21 within that exemption but how to protect them in  
22 this situation?

23 MR. KIRKHAM: You know, I'm just an  
24 industrial hygienist so I'm really not confident  
25 --

1 MS. STOCK: Okay. Ask your legal unit  
2 because I -- I know it's beyond the scope, you  
3 know, but I feel like, you know, this is a broad  
4 public health issue. This is a huge problem.  
5 We've heard stories about it as well, and whether  
6 educationally, even if it's not kind of legally  
7 required, and I think that it sounds like, Erika,  
8 some of the things you've been talking about  
9 address that, which is one great thing to at  
10 least try to use that remedy. But it would be  
11 interesting to know if there's any partnership or  
12 any other, you know, non-Cal/OSHA-related  
13 regulation around emergencies that could somehow  
14 be engaged or there be a partnership or something  
15 to address that issue. So maybe that's something  
16 you could ask about and report in the future.

17 MR. KIRKHAM: Okay.

18 CHAIR THOMAS: Thank you. Any other  
19 questions for Mr. Kirkham?

20 MS. BURGEL: I have a question regarding  
21 -- when do you anticipate the next version of the  
22 permanent standard language for the wildfire  
23 smoke?

24 MR. KIRKHAM: So --

25 MS. BURGEL: Is there a timeline for

1 that?

2 MR. KIRKHAM: Yeah, we -- I don't think  
3 we have that yet.

4 MS. BURGEL: Okay.

5 CHAIR THOMAS: Any other questions?

6 Thank you -- thank you very much. We  
7 appreciate your time under the circumstances  
8 where you should not be here. Thank you.

9 MR. BURGEL: Thank you.

10 CHAIR THOMAS: Legislative update. Mr.  
11 Healy.

12 MR. HEALY: Chair Thomas, Members. It is  
13 seasonally quiet on the state's legislative  
14 front, so little to report other than both  
15 chambers continue to be in recess, and both are  
16 scheduled to reconvene on Monday, January 6,  
17 2020.

18 CHAIR THOMAS: Thank you. Executive  
19 Officer's report. Ms. Shupe, would you please  
20 brief the Board?

21 MS. SHUPE: Thank you, Chair Thomas.

22 First, I'd like to extend a special  
23 welcome to our Executive Officer Emeritus Marley  
24 Hart. It's wonderful to have her here today.

25 And then, secondly, I'd like to thank



1 Sarah Money for her diligence in preparing our  
2 Board's 2020 meeting calendar, as well as all of  
3 the other amazing and wonderful things that she  
4 does for our Board and staff. Copies are  
5 available on the back table with our meeting  
6 handouts today, if you haven't yet picked up your  
7 calendar for 2020. I'd like to point out that we  
8 added a new location to our rotation. We'll be  
9 meeting at the Santa Clara City Council Chambers  
10 in June, and this will be our first visit to this  
11 city.

12           Moving on. To better balance our staff  
13 workloads, we've been leveraging the services of  
14 court reporters for Board Meetings over the past  
15 several months and posting those transcripts when  
16 available. We have one here today as well.  
17 We've seen several efficiencies in staff  
18 utilization manifest as a result, and for 2020,  
19 we'll be exploring expanding this program to  
20 include the Board's advisory committee meetings.  
21 Where transcripts are available for meetings, the  
22 Board and stakeholders will notice a streamlined  
23 Board Meeting minutes format that meets the  
24 requirements of Bagley-Keene and the Brown Open  
25 Meeting Act. My goal here is to speed the

1 delivery of meeting minutes and transcripts while  
2 preserving the transparency with which the Board  
3 conducts its business.

4           Looking forward to next year, in January,  
5 the Board will be considering a proposal for  
6 provisions to General Industry Safety Orders,  
7 Section 3203(a), Employee Access to Injury and  
8 Illness Prevention Program, and a proposed  
9 decision for Petition 578, which seeks to amend  
10 Construction Safety Orders, Section 1710 to  
11 clarify when the use of barrier planking is  
12 required.

13           The Commercial Diving Operations  
14 rulemaking proposal recently received an approved  
15 Secretary Action Request from Labor Agency and  
16 will be submitted to the Office of Administrative  
17 Law shortly. We expect to hold a public hearing  
18 at the Board's February meeting, as well as a  
19 public hearing for a Horcher rulemaking for  
20 Section 5189 relating to process safety  
21 management.

22           And that is what I have for today.

23           Are there any questions?

24           CHAIR THOMAS: Do any Board members have  
25 any questions regarding future agenda items for

1 staff?

2 Mr. Healy, does the Board need to go into  
3 closed session today?

4 MR. HEALY: Chair Thomas and Members,  
5 potential developments in the litigation  
6 identified on your agenda have not yet advanced  
7 to the point necessitating a closed session.  
8 Therefore, I believe the Board can go without a  
9 closed session today.

10 CHAIR THOMAS: Thank you, Mr. Healy.

11 So before we adjourn, I'd like to thank  
12 staff of the Standards Board. I'd like to thank  
13 the Board Members for a fairly productive year.  
14 It takes time for some of these things to come to  
15 fruition, as we've seen. Everything doesn't  
16 happen overnight. But I would also like to add  
17 before we adjourn, we're in a very convulsive  
18 situation in this country, and I would just urge  
19 everybody to, you know, politics is tough and  
20 nobody -- nobody has the same idea of politics  
21 but you know what's worse than talking about  
22 politics and arguing is someone not coming home  
23 from work, and then you don't even have them to  
24 talk to or argue with.

25 So let's try and focus on what's really

1 important. We live in the greatest country, in  
2 the greatest state, and I just think it's  
3 incumbent on all of us to -- during this time,  
4 it's going to go on for another couple months,  
5 that we contain ourselves and really hold tight  
6 to family and friends. This is what we need to  
7 do. This is a very tough situation for  
8 everybody.

9           So I want to thank you for coming today.  
10 Our next meeting is scheduled for January 16th,  
11 2020, in San Diego, so I hope to see you there.

12           There being no further business, this  
13 meeting is adjourned.

14           Thank you.

15           (The Board Meeting Concluded at 11:48 a.m.)

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**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of March, 2020.



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Eduwiges Lastra  
CER-915

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT\*\*367

March 2, 2020