

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of: )  
December 17, 2020 OSH )  
Standards Board Meeting )  
\_\_\_\_\_ )

TELECONFERENCE

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

THURSDAY, DECEMBER 17, 2020

10:00 A.M.

Reported by:  
E. Hicks

## APPEARANCES

### BOARD MEMBERS:

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

### BOARD STAFF PRESENT AT OSHSB OFFICE:

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

### BOARD STAFF PRESENT VIA TELECONFERENCE OR WEBEX:

Michael Manieri, Principal Safety Engineer  
Autumn Gonzales, Counsel (on loan to the Standards Board  
from the Occupational Safety and Health Appeals Board)  
Lara Paskins, Staff Services Manager  
David Kernazitskas, Sr. Safety Engineer  
Jennifer White, Associate Governmental Program Analyst

### DIVISION STAFF:

Eric Berg, Deputy Chief of Health

### ADDITIONAL ATTENDEES:

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

### INTERPRETERS:

Susana Haikalis  
Julie Drucker  
Aimee Benavides

PUBLIC COMMENT:

Elizabeth Treanor, Phylmar Regulatory Roundtable - OSH Forum  
Helen Cleary, Phylmar Regulatory Roundtable - OSH Forum  
Amalia Zimmerman-Lommel, GoodFarms, LLC  
Karin Umfrey, Worksafe

APPEARANCES (Cont.)

PUBLIC COMMENT: (Cont.)

Mishaal Gill, California Immigrant Policy Center  
Sasha Feldstein, California Immigrant Policy Center  
Kevin Bland, Ogletree Deakins  
Dennis Pocekay, Petaluma City Council  
Gabriel Machabanski, Graton Day Labor Center  
Constance Barker, SEIU 2015  
Nancy Zuniga, Instituto de Educacion Popular del Sur de California (IDEPSCA)  
Rob Moutrie, California Chamber of Commerce

# INDEX

	Page
CALL TO ORDER AND INTRODUCTIONS	6
I. PUBLIC MEETING (Open for Public Comment)	8
II. BUSINESS MEETING– All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.	8
A. PROPOSED SAFETY ORDERS FOR ADOPTION	31
TITLE 8: GENERAL INDUSTRY SAFETY ORDERS	
NEW SECTION 5141.1	
PROTECTION FROM WILDFIRE SMOKE	
B. PROPOSED PETITION DECISIONS FOR ADOPTION	41
1. SCOTT SWAALEY, CEO	
PETITION FILE NO. 580	
Petitioner requests to amend Title 8, Section 2530.43 to clarify the existing anti-restart standard as well as add current Federal OSHA language to Title 8, Section 4001 to better align with Federal OSHA requirement (1910.213(b)(3)).	
C. PROPOSED VARIANCE DECISIONS FOR ADOPTION	44
D. REPORTS	
1. Division Update	45
2. Executive Officer’s Report	46
E. NEW BUSINESS	--
1. Future Agenda Items	

I N D E X (Cont.)

Page

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

H. ADJOURNMENT OF THE BUSINESS MEETING 53

Next Meeting: January 21, 2021  
Teleconference and Video-conference  
(In accordance with Executive Orders N-29-20 and  
N-33-20)  
10:00 a.m.

Reporter's Certificate 54  
Transcriber's Certificate 55

1 PROCEEDINGS

2 DECEMBER 17, 2021

10:00 a.m.

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

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

14 Support for the meeting remotely are Mr. Michael Manieri,  
15 Principal Safety Engineer; Ms. Lara Paskins, Staff Services Manager; Mr.  
16 David Kernazitkas, Senior Safety Engineer; and Ms. Jennifer White,  
17 Regulatory Analyst.

18 I have double-sided paper this time. Also, Mr. Eric Berg,  
19 Deputy Chief of Health, representing the Division of Occupational Safety  
20 and Health is here with us.

21 If you have not already done so, we ask that you email  
22 [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov) to provide your name and contact information, which  
23 will become part of the official record of today's proceedings. Today's  
24 agenda and other materials related to today's proceedings are posted  
25 online at [dir.ca.gov/oshsb/mtgsch.html](http://dir.ca.gov/oshsb/mtgsch.html).

1           In accordance with Executive Order N-29-20 and the  
2 statewide stay-at-home order, the physical meeting location for today  
3 has been canceled. Today's meeting is being held exclusively via  
4 teleconference with an optional video component.

5           This meeting is also being live broadcast via video and audio  
6 stream in both English and Spanish. Links to these non-interactive live  
7 broadcasts can be accessed via the "What's New" section at the top of  
8 the main page of the OSHSB website at [dir.ca.gov/oshsb/oshsb.html](http://dir.ca.gov/oshsb/oshsb.html).

9           We have limited capabilities for managing participation  
10 during public comment periods, so we're asking everyone who is not  
11 speaking to place their phones on mute so that we will -- so that we  
12 won't have any crosstalk, and then we'll ask you to unmute when you call  
13 in to speak.

14           As reflected on the agenda, today's meeting consists of two  
15 parts. First, we will hold a public meeting to receive public comments or  
16 proposals on occupational safety and health matters. Anyone who would  
17 like to address any occupational safety and health issues, including any  
18 of the items on the business meeting agenda may do so at that time.

19           Members of the public who have contacted staff either by  
20 mail, email or phone and asked to be placed in the public comment  
21 queue will be called on in turn. Additionally, those joining via WebEx  
22 may ask to join the queue via the chat function.

23           The WebEx chat function is monitored exclusively by staff  
24 and is only available to send requests to join the public comment queue.  
25 It is not a method for providing public comments to the Board Members.

1 Board Members will not consider or respond to any messages delivered  
2 via the chat function, nor will such comments become part of the official  
3 rulemaking record.

4 Please listen for your name and an invitation to speak before  
5 addressing the Board and please remember to mute your phone or  
6 computer after commenting.

7 After everyone in the queue has been provided an  
8 opportunity to speak, we will then open public comment to anyone on  
9 the call who has not been able to speak -- who has not been able to enter  
10 the queue. If you wish to speak more than once, please contact staff and  
11 have your name placed back in the queue. Board staff can be contacted  
12 by email at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov) or via phone at 916-274-5721.

13 To be placed in the comment queue, if you have --  
14 experience a busy signal or are routed to voice mail, please hang up and  
15 call again.

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

21 We will now proceed with the public meeting. Anyone who  
22 wishes to address the Board regarding matters pertaining to occupational  
23 safety and health is invited to comment. Except, however, the Board  
24 does not entertain comments regarding variance decisions. The Board's  
25 variance hearings are administrative hearings where procedural due



1 process rights are carefully preserved. Therefore, we will not grant  
2 requests to address the board on variance matters.

3 At this time, anyone who would like to comment on any  
4 matters concerning occupational safety and health will have an  
5 opportunity to speak.

6 For our commenters who are native Spanish speakers, we are  
7 working with an interpreter, Susana Haikalis, to provide a translation of  
8 their statements into English for the Board. At this time, Ms. Haikalis  
9 will provide instructions to the Spanish speaking commenters so they are  
10 aware of the public comment process for today's meeting. Ms. Haikalis,  
11 go ahead.

12 INTERPRETER HAIKALIS:

13 [READS THE FOLLOWING IN SPANISH]

14 "Good morning, and thank you for participating in today's Occupational  
15 Safety and Health Standards Board public meeting. Board Members present are Mr.  
16 Dave Thomas, Labor Representative and Chairman; Ms. Barbara Burgel, Occupational  
17 Health Representative; Mr. Dave Harrison, Labor Representative; Ms. Nola Kennedy,  
18 Public Member; Ms. Chris Laszcz-Davis, Management Representative and Ms. Laura  
19 Stock, Occupational Safety Representative.

20 "As reflected on the agenda, today's meeting consists of two parts. First,  
21 we will hold a public meeting to receive public comments or proposals on occupational  
22 safety and health matters. Second, after the public meeting has concluded, we will  
23 conduct a business meeting to act on those items listed on the business meeting  
24 agenda.

25 "We have limited capabilities for managing participation during the

1 public comment period. We are asking everyone to keep their phones and WebEx  
2 audio on mute until your name is called to address the Board. Please remember to  
3 mute again after you have finished commenting.

4 “Please note that the WebEx chat function is not a method for providing  
5 public comments to Board Members. Board Members will not consider or respond to  
6 any messages delivered via the chat function, nor will such comments become part of  
7 the official rulemaking record.

8 “This meeting is also being live broadcast via video and audio stream in  
9 both English and Spanish. Links to these non-interactive live broadcasts can be accessed  
10 via the “What’s New” section at the top of the main page of the OSHSB website at  
11 [dir.ca.gov/oshsb/oshsb.html](http://dir.ca.gov/oshsb/oshsb.html).

12 “Please listen for your name to be called for comment. If you have not  
13 provided a written statement, please allow natural breaks after every two sentences so  
14 that we may follow each statement with an English translation.”

15 CHAIR THOMAS: Thank you, Ms. Haikalis.

16 Mr. Gotcher, do we have any commenters in the queue at  
17 this time?

18 MR. GOTCHER: Our first commenter is Elizabeth Treanor  
19 from Phylmar Regulatory Roundtable - OSH Forum.

20 CHAIR THOMAS: Elizabeth.

21 MS. TREANOR: Good morning.

22 CHAIR THOMAS: Go right ahead.

23 MS. TREANOR: Good morning Mr. Chairman, members of the  
24 Board, Board staff, and Division staff. I’m Elizabeth Treanor. It’s been a  
25 privilege for me to serve in the capacity as Director of the Phylmar

1 Regulatory Roundtable for the past 18 years.

2 My first appearance before the Board was in 1989, in my  
3 previous capacity with ORC. Today is my final appearance before you.

4 In a normal year, I would take time to speak with each  
5 individual Board Member and each staff person to express my gratitude  
6 for their service and for the specific contributions that they have made  
7 to workplace safety and health. I do not need to tell you this is not a  
8 normal year.

9 Public policy has been a passion of mine. It's been my desire  
10 to help the Board and Division staff achieve their goals of protecting  
11 workers in the most effective manner that does not disrupt existing  
12 successful practices. I'm fortunate to have been able to work directly on  
13 some of Cal/OSHA's most significant regulations, including the Injury and  
14 Illness Prevention Program, ergonomics, sharps injury log for blood borne  
15 pathogens, outdoor heat illness prevention, aerosol transmissible  
16 diseases, wildfire smoke and now COVID-19.

17 I'm proud to work with PRR members who are dedicated  
18 safety and health professionals. One recent example is a member  
19 company recognizing six months ago that healthcare workers needed the  
20 supply of NIOSH N95s. This member designed and tested its own N95s  
21 for use during wildfire events, so as not to take them from the  
22 healthcare.

23 I have long admired the commitment to worker safety and  
24 health demonstrated by Board Members, Board staff, Division staff, as  
25 well as all the stakeholders. The Standards Board has always been a

1 place where we can respectfully disagree on what is the best means to  
2 achieve the outcome that we all strive for, a safe and healthful  
3 workforce.

4 I would like to introduce my successor, Helen Cleary, who  
5 has the skills and the heart to thrive in this position.

6 I hope our paths cross again. It's been an honor. Blessing to  
7 all of you for 2021 and please take good care.

8 CHAIR THOMAS: And Elizabeth, before you leave, yeah let's  
9 give Elizabeth a hand. She is such a nice person. And always talked to  
10 every one of us before every meeting when we were having regular  
11 meetings. So, thank you so much, Elizabeth.

12 (Applause)

13 MS. TREANOR: Thank you.

14 CHAIR THOMAS: And you're welcome back any time,  
15 absolutely for sure. Thank you.

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

17 MR. GOTCHER: Our next commenter is Helen Cleary from  
18 Phylmar Regulatory Roundtable - OSH Forum.

19 CHAIR THOMAS: Hi Helen.

20 MS. CLEARY: Hi. Hi, thank you Chair Thomas, Board and  
21 staff for the opportunity to introduce myself. And thank you to Elizabeth  
22 Treanor for the kind words.

23 My name is Helen Cleary, and as Elizabeth shared, I'll be  
24 taking over as the Director of the Phylmar Regulatory Roundtable,  
25 officially starting in January. I'm committed to continuing the important

1 work that PRR does for occupational safety and health for their workers  
2 and their companies and maintaining the reputation that Elizabeth has  
3 dedicated her career to.

4 I know I have huge shoes to fill and I am committed to doing  
5 that. I'm passionate about safety, compliance and public policy and I  
6 look forward to working with all of you to achieve that. I also look  
7 forward to meeting you all in person. So, happy holidays, and until then,  
8 we'll talk next year. Thank you.

9 CHAIR THOMAS: Thank you. And I hope -- I hope within the  
10 next year we do see everybody in person again. We'll see how that goes,  
11 but I think we're getting closer. So, thank you and welcome.

12 MS. CLEARY: Thank you.

13 CHAIR THOMAS: John, who's next in the queue?

14 MR. GOTCHER: Our next commenter is Amalia Zimmerman-  
15 Lommel from GoodFarms, LLC.

16 CHAIR THOMAS: Amalia.

17 MS. ZIMMERMAN-LOMMEL: There we go. Can you hear me  
18 now?

19 CHAIR THOMAS: We can. Go right ahead.

20 MS. ZIMMERMAN-LOMMEL: Sorry about that. Good  
21 morning, thank you for having me.

22 CHAIR THOMAS: Good morning.

23 MS. ZIMMERMAN-LOMMEL: The Cal/OSHA emergency  
24 regulation is a good tool that brings most of the different guidance and  
25 rules that the state, federal and local governments issued during the past

1 ten months to safeguard the health of our team members and families.  
2 By following COVID-19 guidance, our company successfully protected  
3 over 2,200 plus farmworkers with less than 1.7 percent becoming  
4 infected with the virus. And from our H2A farmworker groups, less than  
5 one percent became infected.

6 We took special care in hygiene, checking for symptoms,  
7 hand washing, hand sanitizers, daily temperature checks, social  
8 distancing, wearing masks and educating our entire workforce on how to  
9 protect themselves and their families.

10 We ensured the wellbeing of our guest H2A workers by  
11 grouping them into family groups. For clarification, these groups were  
12 not related by DNA, but were treated as a family for all purposes. They  
13 were transported together, housed together and worked in their same  
14 family groups in the field.

15 Before they came to the United States, they were housed  
16 together in their family groups, isolated, monitored for any symptoms,  
17 checked by doctors and given a green light to make the journey to  
18 California.

19 Once they arrived to California, they were isolated for a  
20 period of time and after isolation they were encouraged to go out to the  
21 community as little as possible.

22 Our company assigned people to do their shopping and  
23 laundry, if they wished to take advantage of this free service.

24 Once they returned to Mexico, they isolated an additional  
25 ten days to assure their health before returning to work in Mexico.

1                   While we do believe that the Cal/OSHA emergency  
2 regulation is a very good tool, we also believe that employers that have  
3 taken all precautions and followed the rules and guidance carefully and  
4 successfully, may be offered an opportunity to continue to operate in a  
5 manner that is sustainable to keep producing and harvesting the fresh  
6 fruits and vegetables needed to keep grocery store shelves stocked, and  
7 food on the table of all Americans.

8                   The items that we wish to contribute to, or to review, are  
9 the housing section 3205.3(c)(2) in regard to the new bunk bed policy, as  
10 well as the six-foot bed spacing. And section 3205.4 (c)(2), the  
11 transportation distance of three feet between people.

12                   We kept everyone in family groups while still using bunk  
13 beds with heads at six feet apart in distance between people,  
14 transporting the family groups together, wearing masks, sanitizing vans,  
15 use of hand sanitizer, checking temperatures, symptoms, windows open  
16 and vans at half capacity.

17                   We were very successful using the measures. And the  
18 emergency regulation changes in these areas would not have given us  
19 much more success than what we did experience. These new regulations  
20 will hinder our ability to invite H2A guest workers to harvest our crops,  
21 therefore not being able to get fresh fruits and vegetables to market.

22                   And also for your consideration would be an exception for  
23 farmworkers that do get vaccinated against COVID-19. Farmworkers are  
24 part of the essential workforce and in the next group in line to be  
25 vaccinated.

1 Thank you for your consideration.

2 CHAIR THOMAS: Thank you, Amalia.

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

4 MR. GOTCHER: Our next commenter is Karin Umfrey from  
5 Worksafe.

6 CHAIR THOMAS: Karin.

7 MS. UMFREY: Hi, this is -- good morning Chairman Thomas  
8 and members of the Board. My name is Karin Umfrey and I'm a staff  
9 attorney at Worksafe, which advocates for low-income and immigrant  
10 workers to ensure that they have a safe and healthy workplace.

11 I'd like to thank the Division for its thoughtful and important  
12 work in developing the permanent wildfire smoke standard, and that we  
13 strongly encourage the Board to adopt that standard.

14 We do want to note that the permanent standard falls short  
15 of protecting vulnerable workers. This year was the worst wildfire  
16 season California has seen, and these sorts of seasons are only expected  
17 to continue with climate change.

18 So, we support that the permanent standard passes, but I do  
19 want to address some issues we'd like to see revised in the future  
20 because, as it stands, it is not effective enough, but I will keep this brief.

21 The trigger application for both sections should be lowered  
22 because the AQI is based on protecting the general public, who spend  
23 little time outdoors, and not workers who are performing strenuous  
24 outdoor work for eight hours or more a day. For control of respiratory  
25 protection section, the AQI trigger of 151 should be lowered to 101. And



1 for the required respirator use, the AQI trigger of 500 should be lowered  
2 to 300.

3 Without the wildfire smoke standard in place, there also  
4 cannot be effective enforcement. While there was a temporary standard  
5 in place this past wildfire season, we are not aware that there were any  
6 sweeps done, or any enforcement, despite the immense media coverage  
7 showing how workers were working in the worst wildfire season the state  
8 has ever experienced. It's vitally important that Cal/OSHA pass the  
9 standard, or the Standards Board pass the standard so that Cal/OSHA has  
10 every single reason in the upcoming wildfire season of 2021 to do these  
11 sweeps and enforcement of the permanent wildfire smoke standard.

12 In sum, I urge the Board to pass the permanent wildfire  
13 smoke standard today. Thank you.

14 CHAIR THOMAS: Thank you, Karin. Sorry about that.

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

16 MR. GOTCHER: Our next commenter is Mishaal Gill from  
17 California Immigrant Policy Center.

18 CHAIR THOMAS: Mishaal.

19 MS. GILL: Good morning Board Members. My name is  
20 Mishaal Gill and I am here on behalf of the California Immigrant Policy  
21 Center.

22 We are a statewide immigrant rights and policy advocacy  
23 organization committed to advancing immigrant worker and racial justice  
24 in California.

25 We are here to strongly support adopting a permanent

1 standard to protect workers from the severe hazards that come from  
2 working amidst California’s wildfires which, unfortunately, we know will  
3 come year after year.

4           However, the permanent standard falls short of protecting  
5 vulnerable workers in several ways. In each of the examples I lay out, I’d  
6 ask you to think about what you or your loved one would do if you were  
7 in a similar situation.

8           First, there is no clear requirement that employers inform  
9 workers about the wildfire evacuation alert or the wildfire smoke  
10 standard itself.

11           Additionally, as you know, many agricultural workers have  
12 diverse language needs. So, placing the burden on workers to find any of  
13 this information on their own is inherently inequitable.

14           The permanent standard must have clear guidance on the  
15 employers’ responsibility to communicate to workers in real time, and  
16 there must be resources allocated to doing education and outreach,  
17 similar to the heat illness campaign, to make sure people know about  
18 their rights in the workplace. This includes ensuring that workers know  
19 what protections employers are supposed to provide while wildfires are  
20 raging and workers are working.

21           How can you feel empowered to ask for a mask or a  
22 respirator when you don’t even know the employers are supposed to  
23 provide them?

24           Second, you know that rules and regulations are only as good  
25 as the extent to which people know about them and to which they’re

1 enforced. Media coverage is not enforcement, neither are letters to  
2 employers. Even if one was aware of the standard, it's hard to imagine  
3 how it would actually help if Cal/OSHA isn't coming to the workplace or  
4 otherwise ensuring that your employer is complying with you.

5 We need a permanent standard passed today and we need  
6 real systems put in place to ensure that Cal/OSHA has every tool at its  
7 disposal to enforce the standard, including sweeps of worksites.

8 Finally, we all have seen how the COVID-19 pandemic has not  
9 created, but exacerbated long-lasting inequalities in our state and has  
10 disproportionately impacted immigrant workers and workers of color  
11 precisely because of occupational segregation in our economy, where  
12 immigrants and workers of color are disproportionately working in jobs  
13 where working outside, and in hazardous conditions, is tragically a  
14 feature, not a (indiscernible).

15 The dire need of a permanent enforced standard is about so  
16 much more than wildfires. It's about recognizing essential workers as  
17 our own neighbors, family and friends. That is to say, as human beings  
18 with real lives at stake, if we don't act today.

19 I'd like to thank the Board staff and Division for all the work  
20 that has gone into development of the permanent standard and I  
21 respectfully urge the Board to pass the permanent wildfire smoke  
22 standards today. Thank you so much.

23 CHAIR THOMAS: Thank you.

24 John, who do we have in the queue?

25 MR. GOTCHER: Our next commenter is Sasha Feldstein from

1 California Immigrant Policy Center.

2 CHAIR THOMAS: Good morning Sasha.

3 MS. FELDSTEIN: Good morning. Thank you for having me.  
4 Again, my name is Sasha Feldstein with the California Immigrant Policy  
5 Center. I just want to echo Mishaal's statement in support of adopting  
6 the permanent standard. Thank you so much.

7 CHAIR THOMAS: Thank you.

8 Yeah, John, we're going to hold off. I'm going to call Kevin  
9 Bland. If you can hear me, Kevin, why don't you go ahead because we  
10 know you have another appointment. Go ahead. Unmute yourself,  
11 please. Go ahead, Kevin.

12 MR. BLAND: Thank you, Chairman. I just wanted to take a  
13 quick, brief moment to thank you Chairman, and Board, and Board staff,  
14 and Division for the hard work for the 2020 year, and wish you all happy  
15 holidays. I can't believe we're a week away from Christmas, or at least  
16 of Christmas Eve as of today. So, it's been one heck of a year and we'll  
17 be glad to get this year behind us. I'm sure we're all kind of in that same  
18 boat.

19 But I wanted to take this moment and opportunity, and I  
20 appreciate you taking me out of order. And, you know, 2021 hopefully  
21 will be a better year than 2020. And you guys can use your imagination  
22 of what the "1" in 2021 may look like facing backwards to 2020.

23 (Laughter)

24 MR. BLAND: If the "1" were a finger.

25 (Laughter)

1 MR. BLAND: So, happy holidays everyone.

2 CHAIR THOMAS: This is a family show, just yeah, just --

3 MR. BLAND: If you think that way, then you got it. If you  
4 don't, then you're pure.

5 (Laughter)

6 MR. BLAND: All right. Well, thanks everyone. Happy  
7 holidays and we'll talk to you next year.

8 CHAIR THOMAS: Thanks Kevin, appreciate it.

9 John, can you continue with the queue?

10 MR. GOTCHER: Our next commenter is Dennis Pocekay from  
11 -- a semi-retired specialist in occupational and environmental medicine in  
12 Petaluma City.

13 CHAIR THOMAS: Dennis, good morning.

14 MR. POCEKAY: Good morning. Can you hear me okay?

15 CHAIR THOMAS: Yes, we can.

16 MR. POCEKAY: Okay, first Chairman Thomas and members of  
17 the Board, I don't think I've spoken to you before. My name is Dennis  
18 Pocekay. I'm a semi-retired physician and specialist in occupational and  
19 environmental medicine. I advocate for some local groups here in terms  
20 of workers, such as the North Bay Jobs with Justice organization.

21 But my testimony today is really (audio loss) --

22 CHAIR THOMAS: Oh, I think we lost you a little bit there,  
23 Dennis. I think he went off screen. Something happened, he's having a  
24 technical difficulty. Dennis -- oh, there you are. Can you hear me?  
25 Unmute.

1 MR. POCEKAY: Can you hear me?

2 CHAIR THOMAS: There you go.

3 MR. POCEKAY: I'm sorry, I don't know what's happening.

4 CHAIR THOMAS: Yeah, don't touch anything because you  
5 never know.

6 MR. POCEKAY: I'll stop the video and see if that helps.

7 CHAIR THOMAS: Go ahead.

8 MR. POCEKAY: Okay?

9 CHAIR THOMAS: Yeah, go ahead.

10 MR. POCEKAY: Oh. Well, I want to thank the Division for its  
11 work in developing the permanent standard and also to encourage the  
12 Board to adopt the permanent standard. I think that there's no doubt  
13 that exposure to wildfire smoke aggravates asthma, as well as other  
14 respiratory and cardiovascular diseases. There's also increasing evidence  
15 that chronic or repeated prolonged exposures are associated with  
16 chronic bronchitis. These particles we're talking about are small enough  
17 to penetrate the deepest portions of the lungs.

18 And if we're asking folks in the general population to move  
19 their activities indoors or to reduce the intensity, or the duration of their  
20 activity, I think we must accept that most outdoor workers are doing  
21 work that's more physical than indoor work. And, therefore, we need to  
22 require that outdoor workers need protection, specifically in the form of  
23 N95 respirators, and we must require the employers to notify them of  
24 this standard.

25 In addition, I think we need to be seeking equity in every

1 phase of government. And finally, without a standard in place, as others  
2 have mentioned, there can't be enforcement.

3 So, based on all this, I urge the Board to pass the permanent  
4 wildfire smoke standard today and thank them for their consideration.

5 CHAIR THOMAS: Thank you, Dennis.

6 John, who do we have next?

7 MR. GOTCHER: Our next commenter is Gabriel Machabanski  
8 from Graton Day Labor Center.

9 CHAIR THOMAS: Gabriel, can you hear us?

10 MR. MACHABANSKI: Yeah, can you hear me?

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

12 MR. MACHABANSKI: Great, thank you. Good morning  
13 Chairman Thomas and members of the Board. My name is Gabriel  
14 Machabanski. I'm the Associate Director at the Graton Day Labor Center  
15 in Sonoma County.

16 Our organization's members are day laborers and domestic  
17 workers, many of whom also work seasonally in agriculture. As frontline  
18 workers, Sonoma County's immigrant workforce has been decimated by  
19 wildfires, performing those essential jobs with often minimal access to  
20 basic health and safety protections.

21 I'm here today representing all of these workers, who are  
22 obviously just a small fraction of the hundreds of thousands of low wage,  
23 undocumented, essential outdoor workers throughout the state.

24 I want to thank you for taking on the temporary wildfire  
25 safety standard and working so diligently to transform this into a

1 permanent wildfire safety standard for outdoor workers. This  
2 deliberative and participatory discussion that you all have been having  
3 over the course of the last year is exactly what this process deserves.

4           However, as a community advocate that works with the  
5 laborers that these standard are meant to protect, I recognize that the  
6 standards must go further to protect workers.

7           In the midst of a public health and economic crisis, where  
8 immigrant workers without a safety net are hurting immensely, day  
9 laborers, domestic workers and farm workers need a strong wildfire  
10 smoke standard more than ever. They are essential workers. They're not  
11 expendable and need to see this from you through bold actions in the  
12 form of protections to their health and their lives.

13           These last three, four months alone, we saw workers being  
14 asked to work long and hard to salvage crops from smoke damage,  
15 sacrificing their health for that of the harvest. Workers have shared  
16 stories with me of having to work full shifts without lunch or rest breaks,  
17 having to recycle masks for days, buy their own N95s, use surgical or  
18 cloth masks with the AQI well over 150.

19           This is a community of workers that are the backbone of our  
20 local economy and many others, yet are disproportionately exposed to  
21 COVID-19 and all of the health impacts, particularly on their respiratory  
22 and cardiovascular systems.

23           These same uninsured and highly vulnerable populations are  
24 the ones we're asking to protect so as to avoid exacerbating health  
25 inequities in our community.



1                   Workers like day laborers and seasonal ag workers who  
2 cycle in and out of relationship with employers are particularly  
3 uninformed as to their rights, and do not feel empowered to exert  
4 workplace occupational health and safety standards, especially in those  
5 informal, short-term and low-wage employment arrangements. People  
6 who already carry the weight of rent debt, who don't have access to  
7 unemployment insurance, healthcare or other benefits, are forced to  
8 work in conditions that they know are unsafe. They overwhelmingly  
9 share that they choose to keep working without adequate PPE, that  
10 they'd rather keep working in thick smoke than push back against an  
11 employer about their right to new N95 respirators every day, with a fire  
12 blazing three or four miles down the road, because they need the income  
13 now more than ever during this crisis.

14                   This is why an accompaniment of the passage of permanent  
15 standards, an educational campaign for workers, must be broad reaching  
16 and culturally and linguistically relevant so that workers know their  
17 rights and know that their rights will be protected.

18                   However, workers are ultimately unlikely to exert those  
19 rights if they don't feel that employers are being held accountable to  
20 observe wildfire safety standards.

21                   It's critical that the Division make a commitment to clear  
22 guidance for employers, but more important, a commitment to conduct  
23 more investigations and sweeps. If any permanent standard is to gain  
24 the trust of an already skeptical workforce, it must have enforcement  
25 teeth.

1           The request for a strong and sound set of wildfire standards  
2 for outdoor workers is straight forward. As you're hearing from the  
3 advocates that place front and center the actual health and wellbeing of  
4 working Californians, I'm asking for the current standard to be made  
5 permanent and for you to strongly consider the following, if not today,  
6 after the permanent standard is in place.

7           To reduce the threshold for this standard from 151 AQI to  
8 101. To protect sensitive populations such as workers who already have  
9 asthma or other occupational illness. And to reduce the threshold for  
10 respiratory protection with fit test and medical evaluation from 501 to  
11 301 to protect workers before the levels rise to beyond hazardous.

12           For many years to come, wildfires in our state will continue  
13 at their current alarming rates and likely worsen. The decision to set  
14 strong standards is an ethical one, not a question of viability or cost for  
15 industry.

16           I want to thank you all, the Board and the Division for all the  
17 work that has gone into the development of the permanent standard.  
18 And I urge the Board to adopt a strong, permanent wildfire smoke  
19 standard today. Thank you.

20           CHAIR THOMAS: Thank you, Gabriel.

21           John?

22           MR. GOTCHER: Our next commenter is Constance Barker  
23 from IHSS Homecare Provider, with SEIU 2015.

24           CHAIR THOMAS: Constance, can you hear us?

25           MS. BARKER: I can hear you. Can you hear me?

1 CHAIR THOMAS: Yeah, we can. Go right ahead.

2 MS. BARKER: Thank you so much. And thank you to the  
3 entire Board for your work on this standard. We are here in support of  
4 the standard and we are also wanting to support our brothers and sisters  
5 in and out of the labor movement, who are speaking to you about the  
6 need to further strengthen it in order to protect vulnerable populations.

7 Many of our members, who are low income, essential  
8 workers in homecare, as others have mentioned, work multiple jobs,  
9 often work seasonal jobs, and often have family members who do. So,  
10 this is something that we feel is vitally important to our members, also,  
11 particularly on the matters of better education about the standards,  
12 better enforcement, so that workers know that they have rights. And as  
13 several others have mentioned, reducing the standard for protection for  
14 vulnerable populations. We feel that particularly because we are the  
15 people who see the results when people develop these chronic illnesses  
16 and then have to be taken care of.

17 Thank you so much for the work that has gone into this and,  
18 again, we support passage of the standard today.

19 CHAIR THOMAS: Thank you, Constance.

20 Who's up next, John?

21 MR. GOTCHER: Our next commenter is Nancy Zuniga from  
22 IDEPSCA, Institute of Popular Education of Southern California.

23 CHAIR THOMAS: Nancy, are you with us?

24 MS. ZUNIGA: Can you hear me?

25 CHAIR THOMAS: We can. Go right ahead.

1 MS. ZUNIGA: Okay, thank you. Good morning Chairman  
2 Thomas and members of the Board, my name is Nancy Zuniga. I have  
3 talked about this before. I work at IDEPSCA, a workers' center in L.A.,  
4 focused on supporting day laborers and domestic workers through  
5 education and advocacy.

6 Of course, I want to thank the Division for all its work on  
7 developing the wildfire permanent standard and the temporary one as  
8 well.

9 But I'm here to just talk a little bit about, unfortunately,  
10 some of the shortcomings of that and just some stories that I'd like to  
11 share on why I think it's important to strengthen it and, of course, adopt  
12 it.

13 We have been doing work in the last three years since the  
14 Thomas fire, and the Wolsey fire, and now the Bobcat fire with working  
15 with supporting workers on the ground, of course prior to COVID, and  
16 collecting those stories, and providing relief for workers that are often  
17 not considered outdoor workers, right, day laborers and domestic  
18 workers because they work in private homes.

19 Two workers whose stories I think stand out are that of  
20 Sandra and Olga, two domestic workers who were working in Malibu  
21 during the Wolsey 2018 fires. Both women passed, or are closer to their  
22 60s, cleaning homes, private homes in those areas.

23 In Sandra's case, she has developed respiratory problems  
24 over the years cleaning homes with toxic cleaning products. So, when  
25 the fires hit, her employer had her cleaning wildfire debris outside and

1 inside the home. She wasn't offered an N95. But after the fires, she  
2 developed a cough that wouldn't go away. Something that we've heard  
3 from many other domestic workers that did similar work, because they  
4 were in those homes when the wildfires hit.

5           Unfortunately, we are unaware of what the compound  
6 effects are of toxic chemicals and wildfire ash and debris.

7           Olga had a similar situation, but she was hospitalized directly  
8 after the fires due to wildfire smoke exposure, after she helped her  
9 employers evacuate during the fires without any protection. And then,  
10 she was let go because, unfortunately, those homes burned down.

11           I wish I could say this year was different. Unfortunately, it  
12 wasn't. We had similar conversations with domestic workers, working in  
13 homes in the areas of the Bobcat fires, which you might have heard were  
14 pretty devastating as well.

15           We heard of nannies who were still being asked to walk dogs,  
16 take children to the park without masks, while there was a fire ongoing  
17 and, of course, also the pandemic.

18           And while we're aware that Cal/OSHA doesn't protect  
19 workers like domestic workers and day laborers in private homes, this  
20 standard still sets the bare minimum about workers' health in relation to  
21 the fires.

22           And so, we really support a lot of what other advocates have  
23 said in terms of making sure that this standard is adopted, but also that  
24 it's strengthened. Thank you so much.

25           CHAIR THOMAS: Thank you, Nancy.

1 John?

2 MR. GOTCHER: Our next commenter is Rob Moutrie from the  
3 California Chamber of Commerce.

4 CHAIR THOMAS: Rob, are you with us?

5 MR. MOUTRIE: Happy holidays. Hopefully, you all can hear  
6 me?

7 CHAIR THOMAS: We can hear you, Rob. Go right ahead.

8 MR. MOUTRIE: Perfect. First, I'd like to thank the Division  
9 staff for their work on this. In the midst of everything else they're doing  
10 right now, we all know from the COVID regulation we just spoke about  
11 recently, and the amount of work they're doing there. So, a hearty  
12 thanks there to do that during this year.

13 As many of you will recall, right, the Chamber of Commerce  
14 and this committee had concerns about the wildfire smoke reg around  
15 feasibility and some details.

16 But putting those aside, I think those are discussions for the  
17 3.0 reg, and we're glad to see this moving forward towards that  
18 direction.

19 I'd like to also acknowledge, I heard a point earlier about a  
20 lack of education, and I may have misunderstood the commenter.  
21 Forgive me if so. But, you know, to briefly defend the Division's work, I  
22 believe the reg already includes some educational requirements which,  
23 you know, I think will be helpful. Right, a reg isn't helpful if there's not  
24 education around it. So, and so, I'd like to thank the Division for that  
25 work.

1                   And on a personal note, I'd just like to briefly give a shout  
2 out to Elizabeth Treanor and say that I also will be sad to see her go and  
3 appreciated her wise comments at these meetings.

4                   So, with that I'll end quickly. Thank you for your time.

5                   CHAIR THOMAS: Thank you Rob, well said.

6                   John, who do we have next?

7                   MR. GOTCHER: There are no further commenters in the  
8 queue at this time.

9                   CHAIR THOMAS: Do we have anybody who has called in?

10                  MS. SHUPE: At this time we'd like to just see if there's  
11 anyone who is participating in the WebEx, who has called in, who has not  
12 yet had an opportunity to join the queue, but would like to make public  
13 comments to address the Board.

14                  CHAIR THOMAS: Anyone?

15                  MS. SHUPE: Hearing none, I think we're ready to move on.

16                  CHAIR THOMAS: All right. So, we thank you. The Board  
17 appreciates your testimony. The public meeting is adjourned and the  
18 record is closed.

19                  We'll now proceed with the business meeting. The purpose  
20 of the business meeting is to allow the Board to vote on matters before it  
21 and to receive briefings from staff regarding the issues listed on the  
22 business meeting agenda.

23                  Title 8, General Industry Safety Orders new section 5141.1  
24 Protection From Wildfire Smoke.

25                  Mr. Berg, will you please brief the Board?

1 MR. BERG: Thank you Chairman Thomas.

2 CHAIR THOMAS: Good morning, Eric.

3 MR. BERG: Good morning. Good morning everyone. And I  
4 want to also say how much I appreciate Elizabeth Treanor's work and will  
5 miss you very much. Thank you for everything, Elizabeth.

6 Okay, so this proposal is title 8, section 5141.1, Protection  
7 from Wildfire Smoke.

8 Wildfire smoke is toxic and harmful. Exposure to wildfire  
9 smoke can cause serious adverse health effects. The microscopic  
10 particles in wildfire smoke called PM2.5 can penetrate deep into lungs  
11 and into the blood stream, leading to and exacerbating respiratory and  
12 cardiovascular diseases and conditions.

13 Outdoor workers and workers exposed to unfiltered outside  
14 air have much higher exposures to contaminated air during wildfire  
15 events than the general public. And these workers have the right to be  
16 protected from such contaminated air and the Labor Code requires that  
17 we protect these workers from contaminated air.

18 Section 5141.1 was designed to be as practical and easy to  
19 implement for employers as possible. It does not require employers to  
20 use instruments to measure air contamination, like many of our other  
21 regulations, although it does allow employers to do so if they choose.  
22 The employers can use easily obtainable air quality information, you  
23 know, available on their phones, computers or other internet-connected  
24 devices.

25 This is the air quality index from the United States



1 Environmental Protection Agency. It is also posted by the California Air  
2 Resources Board, local air pollution control districts and many other  
3 websites and applications.

4 It does not require employers to fit test employees for  
5 respirators unless the air quality index is over 500 and that AQI of 500 is  
6 extremely rare. This may not be as protective as we would like, but we  
7 believe it is an important first step in getting a wildfire smoke regulation  
8 established.

9 Cal/OSHA has done much to assist employers. We did  
10 extensive research during N95 shortages. We found vendors that had  
11 N95s during the shortage and we published the list of these vendors on  
12 our webpage. And we still have that list published where N95s are easily  
13 obtainable.

14 We also published guidelines during shortages to provide  
15 more flexibility to employers. The Cal/OSHA wildfire website was  
16 enhanced with resources, such as frequently asked questions for both  
17 employers and employees and a list of additional relevant resources.

18 Also, Cal/OSHA's working on providing additional on-demand  
19 educational materials that will be made available through the newly  
20 released Cal/OSHA Training Academy, available on our website.

21 Also, the Air Now system that reports air quality indexes has  
22 been substantially and significantly upgraded since the 2018 wildfires.  
23 It's much more robust now. Despite massive traffic to the Air Now  
24 website, it never crashed in 2020. Where there was problems back in  
25 2018, those have been solved.

1                   It's much more accurate and has more detailed air quality  
2 data now and also, updated their apps for mobile phones and other smart  
3 devices.

4                   And also, Air Now also includes data from the private  
5 monitoring networks, such as Purple Air and others. So, those are now in  
6 the Air Now system. So, it has many more data points available  
7 throughout the state.

8                   The private monitoring stations are incorporated into this Air  
9 Now system by using sophisticated mathematical modeling to correct  
10 errors in any data that's presented by those private sites. And those are  
11 used along with existing and increasing numbers of monitors from EPA,  
12 the California Air Resources Board and the U.S. Forest Service and local  
13 air quality management districts.

14                   Air Now also now provides air quality index forecasts for the  
15 day of fire, they make an estimate of what the air quality will be for the  
16 next day.

17                   So, I'll go into a brief summary of the proposal. This section  
18 would apply when the AQI, or the air quality index, is 151 or greater for  
19 PM2.5 from wildfire smoke. It does not apply to the other air  
20 contaminants from EPA.

21                   There are several exemptions to this regulation. Indoors or  
22 inside vehicles, where the air is filtered, employees exposed to an AQI of  
23 150 for less than one hour during a shift, and firefighters engaged in  
24 wildland firefighting.

25                   When the wildfire event and in the proposal is in effect -- or,

1 during a wildfire event when the proposal is in effect, requirements  
2 include firstly identifying harmful exposure, which is determining the  
3 PM2.5 at the start of each shift, and periodically thereafter by checking  
4 the air quality index. And many different sources can be used, such as  
5 Air Now, which I discussed earlier, from USEPA. The website of the  
6 International Wildland Fire Air Quality Response Program, the U.S.  
7 Forest Service, California Air Resources Board, local air pollution control  
8 districts, local air quality management districts. So, any of those, the  
9 websites, or phone apps, or texting services can be used.

10 The next requirement is to communicate wildfire smoke  
11 hazards to employees, such as what is the AQI and what protective  
12 measures are available to employees. It also encourages employees to  
13 report worsening air quality or any adverse health effects they may have  
14 to the employer.

15 The next requirement is to provide training and instruction  
16 to employees in a language that the employees understand.

17 The next requirement is to control harmful exposures from  
18 wildfire smoke using engineering and administrative controls when these  
19 are feasible. When those are not feasible, to lower the AQI below 150,  
20 then providing respirators for employees for voluntary use when the AQI  
21 is between 150 and 500.

22 And then, when the AQI is over 500, providing respirators to  
23 employees for mandatory use. And 500 AQI is a very rare condition,  
24 which is extremely hazardous and harmful to people. So, it's only  
25 mandatory in the most extreme circumstances, when the air is incredibly

1 harmful.

2 For emergency operations and other support of these  
3 emergency operations, engineering and administrative controls do not  
4 need to be considered and respirator use is always voluntary and never  
5 mandatory.

6 Then, there's a couple of appendixes to the standard.  
7 Appendix A allows employers to do their own air monitoring if they  
8 prefer not to use the air quality index. This is included to provide  
9 maximum flexibility to employers.

10 And there's Appendix B, which provides training information  
11 for employers to use to make training simpler and easier for employers.

12 And that is my briefing. Thank you very much. I urge the  
13 Board to approve this standard. Thank you.

14 CHAIR THOMAS: Thank you, Mr. Berg.

15 Do the Board Members have any questions for Mr. Berg?

16 BOARD MEMBER STOCK: Dave, this is Laura. I did have one  
17 question.

18 CHAIR THOMAS: Go ahead, Laura.

19 BOARD MEMBER STOCK: There was some testimony about  
20 the provision of education and training, and I wonder if you could just  
21 clarify, and I think I saw on some of the comment letters, also, a concern  
22 about when that communication and training needs to be provided. Is it  
23 in advance of a wildfire event or in the middle of it? Can you just clarify  
24 what the requirements are there?

25 MR. BERG: Well, the regulation only takes effect when the

1 PM2.5, the AQI for PM2.5 is 151 or greater.

2 BOARD MEMBER STOCK: Got it.

3 MR. BERG: And there's a reasonable anticipation that that's  
4 from wildfire smoke, so this regulation does not take effect if that  
5 doesn't occur. So, there would be no training or communication  
6 requirements until the AQI hits that level.

7 BOARD MEMBER STOCK: Okay, so --

8 MR. BERG: Under this standard, yeah. I mean there might  
9 be other requirements in others, like --

10 BOARD MEMBER STOCK: Yeah, but --

11 MR. BERG: -- or something else. But under this standard it  
12 does not go into effect until that happens.

13 BOARD MEMBER STOCK: Right.

14 CHAIR THOMAS: Barbara, have you got a question? You  
15 need to unmute yourself, Barbara. Sorry.

16 BOARD MEMBER BURGEL: Hi.

17 CHAIR THOMAS: There you go.

18 BOARD MEMBER BURGEL: I just wanted to hear the  
19 Cal/OSHA rationale for not lowering the trigger to 101 for sensitive  
20 groups, number one. And then, number two, the considerations and the  
21 pros and cons around lowering mandatory respirator use at an AQI of  
22 300.

23 MR. BERG: Yeah. I mean, we chose 151, trying to balance  
24 practicality with protecting the health of employees. One hundred would  
25 be preferred for employee protection, but it's -- we're trying to balance

1 practicality with protecting employees' health. Obviously, we'd prefer a  
2 lower AQI to protect as many people as possible. And it's something  
3 we'll discuss in the revisions going forward.

4 BOARD MEMBER BURGEL: And also, that hooks into, I think,  
5 the commenter today and also Laura's question around the sensitive  
6 groups not getting education until the trigger of 151. So, it's a missed  
7 opportunity to protect that vulnerable population.

8 MR. BERG: Yeah, there's things we could definitely improve  
9 on this to better protect employees. We understand that and we'll be  
10 working towards that. This was done, you know, in an emergency  
11 situation. And when you make the emergency regulation permanent, you  
12 can't make too drastic changes. So, we were under those constraints and  
13 also there's time constraints. If you don't complete the permanent  
14 regulation in a certain amount of time, the whole project is lost. So, we  
15 really didn't want to have this lost and have to start from scratch.

16 BOARD MEMBER BURGEL: Yeah, I hear you. Yeah.

17 BOARD MEMBER STOCK: Yeah, Eric, this is Laura again. And  
18 I just wanted to second. So, I'm glad to hear you reference the fact that  
19 once this gets passed, and I understand the constraints about what need  
20 to be voted on today. So, then it sounds like there is going to be a  
21 process that is instituted to look at these kinds of comments. I would  
22 second the concerns that Barbara raised about the triggers, and I also  
23 would just emphasize the issue of waiting to provide education about the  
24 workers' rights under this standard until the event is happening seems  
25 not optimal. But it would be great to look at ways to make that part of

1 regular training that people have, for people who would be likely to be  
2 exposed in the event of a wildfire.

3           And then, the other thing I just want to mention and, again, I  
4 know this is sort of beyond -- this is clearly beyond the scope of the  
5 Standards Board, but I just want to express my concern about the  
6 exclusion from this of domestic workers, day laborers, who are working  
7 in private homes.

8           And I know that there was an effort to try to expand labor  
9 protections to those groups that was vetoed by the Governor. But I know  
10 that -- so, I'm hoping that in the discussions going forward that there will  
11 be some thought to how to address that problem. Because I think the  
12 stories that we've heard today and that we've heard in the past are  
13 really important, and it would be great to think about if there's certain  
14 policies that can be put in place that might help address their lack of  
15 protection. Thank you.

16           CHAIR THOMAS: Thank you, Laura.

17           Go ahead, Nola. There you go.

18           BOARD MEMBER KENNEDY: Yeah. I basically want to just  
19 sort of thank the Division and Eric for their hard work on this. And I  
20 think from, you know, my napkin calculations that the triggers that they  
21 have selected are in line with occupational limits for other worker  
22 categories who are also exposed to particulates in their work  
23 environments.

24           I'm not saying I necessarily think those are the most  
25 protective standards, but I do think the Division has done a good job of

1 trying to align these with what already exists for other workers with  
2 similar exposures.

3 And maybe we can use wildfire smoke as a driver for  
4 improving occupational exposure limits for all workers.

5 CHAIR THOMAS: Thank you, Nola.

6 MR. BERG: Okay, thank you. Thank you for that. Yeah, we  
7 have PELs that are not protective enough that we need to work on as  
8 well.

9 CHAIR THOMAS: Thank you. Yes, Chris.

10 BOARD MEMBER LASZCZ-DAVIS: Yeah, just real quickly. And  
11 I'd like to echo what Nola and the others have said, as well. This has  
12 been a challenging year. Lots of new issues to look at, with staff that is  
13 certainly overworked. So, thank you very much to the Division for all  
14 their hard work, and the willingness to listen when there appeared to be  
15 a lot of conflict on the front end. So, thank you.

16 MR. BERG: Yeah, thank you very much for that. Yeah, we  
17 know people don't think this is protective enough, but we think it's a  
18 great start in getting protection for people.

19 CHAIR THOMAS: I concur.

20 And do we have any other comments or questions for Eric?  
21 Dave.

22 BOARD MEMBER HARRISON: Well, I feel like I have to say  
23 something now, since everyone else spoke. I'll just echo Chris's  
24 comments. I'd like to thank the Division as well.

25 MR. BERG: Thank you.



1 CHAIR THOMAS: Thank you, Dave.

2 There being no further questions, I'll entertain a motion to  
3 accept the revisions as proposed.

4 BOARD MEMBER STOCK: So moved.

5 CHAIR THOMAS: Do I have a second?

6 BOARD MEMBER LASZCZ-DAVIS: Second.

7 CHAIR THOMAS: So, I have a motion and a second. I think  
8 we've had all the questions answered, so Ms. Money will you please call  
9 the roll?

10 MS. MONEY: Ms. Burgel?

11 BOARD MEMBER BURGEL: Aye.

12 MS. MONEY: Mr. Harrison?

13 BOARD MEMBER HARRISON: Aye.

14 MS. MONEY: Ms. Kennedy?

15 BOARD MEMBER KENNEDY: Aye.

16 MS. MONEY: Ms. Laszcz-Davis?

17 BOARD MEMBER LASZCZ-DAVIS: Aye.

18 MS. MONEY: Ms. Stock?

19 BOARD MEMBER STOCK: Aye.

20 MS. MONEY: Chairman Thomas?

21 CHAIR THOMAS: Aye.

22 And the motion passes.

23 Moving on, this is Scott Swaaley, CEO, Petition File No. 580.  
24 Petitioner requests to amend title 8, section 2530.43 to clarify the  
25 existing anti-restart standard as well as add current Federal OSHA

1 language to title 8 -- sorry about that -- who's commenting on this. I'm  
2 sorry, I lost my page.

3 MS. SHUPE: It's me. You're right there.

4 CHAIR THOMAS: Well, Christina, can you please address the  
5 Board?

6 MS. SHUPE: I can. Thank you Chair Thomas.

7 The petitioner requests the Board amend title 8, section  
8 2330.43 to clarify the existing anti-restart standard, as well as to add  
9 current Federal OSHA language to tTitle 8, section 4001 to better align  
10 with Federal OSHA requirement 1910.213(B)(3).

11 Both the Division and Board staff agree that the safety  
12 concerns at issue in the petitioner's request are addressed elsewhere in  
13 title 8 and are, therefore, unnecessary or concern matters that are  
14 outside Cal/OSHA's jurisdiction, and the jurisdiction of the Board's  
15 authority.

16 Petitioner's request that the Board direct Cal/OSHA to work  
17 with NRTLs to withdraw consensus standards, publish notices and require  
18 explicit statements in product literature and labeling are outside the  
19 jurisdiction of this Board.

20 Further, petitioner's request to better align title 8 with  
21 Federal OSHA regulations is unnecessary as title 8, subsection 4296(q) is  
22 identical to Federal 29 CFR, subsection 1910.21383.

23 The safety concern the petitioner raises related to automatic  
24 restart after power failure is already addressed by sections 4002, moving  
25 parts with machinery or equipment, and 3314, lockout tagout.

1 Consistent with the analysis and recommendations of both  
2 Division and Board staff, the decision before you today proposes denying  
3 the petition. The decision is now ready for your consideration.

4 CHAIR THOMAS: Thank you, Ms. Shupe.

5 Do we have any questions for Ms. Shupe?

6 I don't see any, so a motion would be in order to deny the  
7 petition. Do I have a motion?

8 BOARD MEMBER HARRISON: So moved.

9 BOARD MEMBER STOCK: Second.

10 CHAIR THOMAS: I have a motion and second that the  
11 petition be denied. Any further questions?

12 Hearing none, Ms. Money, will you please call the role?

13 MS. MONEY: Ms. Burgel?

14 BOARD MEMBER BURGEL: Aye.

15 MS. MONEY: Mr. Harrison?

16 BOARD MEMBER HARRISON: Aye.

17 MS. MONEY: Ms. Kennedy?

18 CHAIR THOMAS: I think we lost Nola. There she is. Unmute.

19 BOARD MEMBER KENNEDY: Aye.

20 CHAIR THOMAS: There you go.

21 MS. MONEY: Ms. Laszcz-Davis?

22 BOARD MEMBER LASZCZ-DAVIS: Aye.

23 MS. MONEY: Ms. Stock?

24 BOARD MEMBER STOCK: Aye.

25 MS. MONEY: Chairman Thomas?

1 CHAIR THOMAS: Aye.

2 And the motion passes.

3 Proposed variance decisions for adoption. Ms. Shupe, will  
4 you please brief the Board?

5 MS. SHUPE: Just one moment. A little technical difficulty  
6 there.

7 On your consent calendar today are 19 proposed variance  
8 decisions, Items A through S. I'm aware of no unresolved procedural  
9 matters regarding the proposed decisions for Items A through S, and  
10 believe they are ready for your consideration and vote.

11 CHAIR THOMAS: I'll entertain a motion.

12 BOARD MEMBER LASZCZ-DAVIS: I so move.

13 BOARD MEMBER HARRISON: Second.

14 CHAIR THOMAS: I have a motion and second. Is there  
15 anything on the question? Hearing none, Ms. Money will you please call  
16 the roll?

17 MS. MONEY: Ms. Burgel?

18 BOARD MEMBER BURGEL: Aye.

19 MS. MONEY: Mr. Harrison?

20 BOARD MEMBER HARRISON: Aye.

21 MS. MONEY: Ms. Kennedy?

22 BOARD MEMBER KENNEDY: Aye.

23 MS. MONEY: Ms. Laszcz-Davis?

24 BOARD MEMBER LASZCZ-DAVIS: Aye.

25 MS. MONEY: Ms. Stock?

1 BOARD MEMBER STOCK: Aye.

2 MS. MONEY: Chairman Thomas?

3 CHAIR THOMAS: Aye.

4 And the motion passes.

5 Division update. Mr. Berg, can you please brief the Board?

6 MR. BERG: Sorry about that, I'm getting reconnected. Can  
7 you hear me?

8 CHAIR THOMAS: Go ahead.

9 MR. BERG: My camera's not working, something's wrong.

10 Yeah, the Division continues to work. We'll have a  
11 stakeholder meeting tomorrow on the COVID-19 emergency regulation to  
12 get input for a future advisory meeting to make improvements and  
13 clarifications to the emergency standard. So, that's posted on our  
14 website. So, that will take place virtually tomorrow at noon.

15 Other than COVID-19 and wildfire smoke, we have several  
16 other regulations we're working on and hope to do a rulemaking on those  
17 next year, including lead in construction, lead in general industry, indoor  
18 heat, antineoplastic drugs, workplace violence and several other  
19 projects. But that's it for me, thank you.

20 CHAIR THOMAS: Thank you, Eric.

21 Any questions for Eric before I let him go?

22 BOARD MEMBER LASZCZ-DAVIS: I've just got a real quick  
23 one, Eric, if I might. And I know this, but an awful lot of work has been  
24 done already. I was impressed by the fact that we were able to move so  
25 quickly in having a stakeholder meeting tomorrow.

1                   As you move forward in further refinement of the standard,  
2 of the regulation in 2021, will there be an opportunity to have meetings  
3 and gatherings that are more interactive versus input only? Does that  
4 make sense, Eric?

5                   MR. BERG: Yeah. Yeah, tomorrow we're getting input,  
6 mostly just input. But the future advisory meeting could be more  
7 interactive, yes.

8                   BOARD MEMBER LASZCZ-DAVIS: All right, thank you.

9                   CHAIR THOMAS: Thank you, Eric. Thank you, Chris.  
10                  Any other questions of Eric?

11                  Hearing none, Executive Officer's Report. Ms. Shupe, will  
12 you please brief the Board?

13                  MS. SHUPE: Thank you, Chair Thomas.

14                  On December 14th, in response to updated guidance from  
15 the Center for Disease Control, and under the authority of Government  
16 Code 8571, and in alliance with California Department of Public Health  
17 guidance, the Governor signed Executive Order N-84-20. This order  
18 provides for the suspension of section 3205(c)(10) and (c)(11) only to the  
19 extent that they exceed the longer of any applicable quarantine or  
20 isolation period recommended by the CDPH or a local health officer who  
21 has jurisdiction over the workplace.

22                  As this is a limited suspension under Government Code 8571,  
23 it does not impact the rest of the Board's rulemaking, nor does it impact  
24 the Board's ability to readopt the ETS as allowed for in the  
25 Administrative Procedure Act.

1                   Looking forward, the Board will welcome its new Chief  
2 Counsel, Ms. Autumn Gonzales, as a full time permanent staff member  
3 starting on December 18th. We're very pleased to have her joining our  
4 team. As the Board is aware, Ms. Gonzales has been a tremendous  
5 resource over the past several months and her hire is a blessing for our  
6 organization.

7                   The Legislature will reconvene on January 4th, 2021 and  
8 legislative briefings will resume at the January Board Meeting.

9                   Are there any questions from the Board Members?

10                  BOARD MEMBER STOCK: Yes, Christina, I had a question  
11 about your first comment. Could you explain a little bit more about what  
12 that's going to mean for the ETS that those current guidelines have  
13 changed? So, does that mean that that's going to be among the revisions  
14 that are going to be considered, or could you just explain a little bit more  
15 about the impact of that on the ETS?

16                  MS. SHUPE: So, as far as the existing ETS, all that currently  
17 is taking place is that in those cases where CDPH guidance requires 10  
18 days, for instance, instead of 14, those sections of the ETS are  
19 suspended, and so 10 days would be the norm.

20                  If a local health authority chooses a longer term, such as 12  
21 to 14 days, then 12 to 14 days would be in effect.

22                  And as far as readoption, this would absolutely be -- you  
23 know, it's always been the intent to consider the changing nature of the  
24 novel coronavirus as we move forward with this ETS. And so, this will be  
25 one of the items, the changing CDC guidance and CDPH guidance will be

1 one of the items that will be considered when the ETS comes up for  
2 readoption.

3 BOARD MEMBER STOCK: Thank you. So, just to clarify, so  
4 when you say those will be suspended, so the only thing that would be  
5 suspended and I guess another way to look at it is sort of replaced, you  
6 know, where it says 14 days quarantine, the language that requires that  
7 will now, in effect what would be enforced is the 10 days. So, I just  
8 wanted to -- it's just that very -- the language that's specific to that.  
9 Everything else associated with quarantine in terms of the pay support  
10 and all the other things that are around there are untouched. It's just  
11 the aspect that it relates to the time of the quarantine.

12 MS. SHUPE: Correct. The Executive Order is limited to  
13 (c)(10) and (c)(11) of section 3205.

14 BOARD MEMBER STOCK: All right, thank you for that  
15 clarification.

16 CHAIR THOMAS: Any other questions? Barbara. You need to  
17 unmute.

18 BOARD MEMBER BURGEL: I would -- yes. I would echo this is  
19 a big issue that will, I'm sure, come up tomorrow because organizations  
20 are struggling now with -- especially under the ATD standard they can  
21 lower it from 14 to 10. Or, you know, but if they're not under the ATD  
22 standard, under the emergency temporary COVID standard, they have to  
23 continue to require 14 days of quarantine. So, it would be great to move  
24 forward with adjusting it.

25 MR. BERG: No, 14 days is not required under the ETS now.



1 Sorry, 14 days is not required anymore?

2 BOARD MEMBER BURGEL: No, I know.

3 MR. BERG: Yeah.

4 BOARD MEMBER BURGEL: No. I mean the ATD, basically, if  
5 you're covered under the ATD standard you can apply and use the CDC  
6 guidance and the local health department guidance. But if you're  
7 covered, if you have employees covered under the -- my interpretation,  
8 the California ETS, our emergency standard, you're still stuck with 14  
9 days. So, it's not uniform within the same organization. I think that's  
10 what --

11 MR. BERG: That's not correct, sorry.

12 BOARD MEMBER BURGEL: Maybe I'm misunderstanding.

13 MR. BERG: Yeah, that's not correct.

14 BOARD MEMBER BURGEL: It's not correct, okay.

15 MR. BERG: The emergency standard was changed to 10 days  
16 by the Governor's Executive Order that Christina just described.

17 BOARD MEMBER BURGEL: Oh, okay.

18 MR. BERG: So, it is 10 days now in the emergency standard.

19 BOARD MEMBER BURGEL: Oh, thank you for clarifying. I  
20 thought this was an adjustment that had to happen in the future.

21 CHAIR THOMAS: Any other questions?

22 I think that's just a credit to I want to say our foresight as a  
23 Board, but somewhat that we could see that there was going to be  
24 different things happening with this virus as we continued forward. And  
25 not -- you know, I don't know that it's good or bad, but it's what the

1 Governor ordered it, so we will comply.

2 But any other questions regarding that?

3 All right, do any of the Board Members have any other  
4 questions of Eric or Christina? Dave?

5 BOARD MEMBER HARRISON: Well, just a general comment.  
6 Is it time for general comments?

7 CHAIR THOMAS: Go right ahead.

8 BOARD MEMBER HARRISON: So, I just wanted to take the  
9 opportunity to recognize Elizabeth Treanor in her career. In my time on  
10 the Board, I've got to say Elizabeth was always very respectful, very  
11 sincere and was always grateful for the work the Board and Division did  
12 on behalf of the general public and workers in California.

13 And I want to say that I'm very grateful for her and like I say  
14 that she has -- she has represented industry as well as anybody that I've  
15 seen as my time here on the Board.

16 So, I thank you, Elizabeth and, you know, best, well wishes  
17 for you in your future (indiscernible) retirement.

18 CHAIR THOMAS: Yeah, and if Board Members  
19 -- sorry, if Board Members have any comments they want to make  
20 regarding, since we're almost at adjournment, regarding the holidays, we  
21 can do that.

22 BOARD MEMBER STOCK: Yeah.

23 CHAIR THOMAS: Laura.

24 BOARD MEMBER STOCK: Well, I'd like to do both, actually.  
25 I'd like to second what Dave said about Elizabeth Treanor and just to say

1 to Elizabeth I second what Dave said and I just have very much  
2 appreciated the conversations that we've had before and after meetings.  
3 It's been really a pleasure to work with you and I wish you the best in  
4 your retirement.

5           And then just to say, also, to Board and Division staff, thank  
6 you all. This has been a really, really challenging year. And, you know,  
7 to have to turn our Board Meetings into remote sessions, and all the  
8 complications that that involved to use that as an opportunity, instead of  
9 being something that is negative, use that to make  
10 -- to greatly expand access to our meetings in a way that I think has been  
11 really positive both by allowing participation from all over the state, by  
12 providing translation. So, I really want to thank you for all your efforts  
13 to make it work, and all the work you do behind the scenes. And so, I  
14 want to thank you and wish you happy holidays.

15           And also to the Division staff who's been working incredibly,  
16 incredibly hard.

17           And also to our fellow Board Members, who I'm sorry we  
18 can't celebrate together this year. But I wish you -- I hope you have a  
19 happy holiday and a safe holiday break.

20           CHAIR THOMAS: Thank you, Laura.

21           Nola? Oh, unmute.

22           BOARD MEMBER KENNEDY: Yeah, I don't have anything to  
23 say. I was just basically seconding Laura.

24           CHAIR THOMAS: It was like a high five.

25           BOARD MEMBER KENNEDY: Yeah, exactly.

1 CHAIR THOMAS: There we go. Chris?

2 BOARD MEMBER LASZCZ-DAVIS: Yeah, this is beginning to  
3 feel like a group hug here, but let me chime in with the rest of everybody  
4 else. It dates me, but I first started working with Elizabeth Treanor back  
5 in Washington, D.C., with the ORC. And I can tell you through all the  
6 years she's always been the consummate professional. She's just a class  
7 act. So, thank you very much, Elizabeth. I know you're departing, but I  
8 hope we do get a chance to see you from time to time.

9 And, you know, to everybody on this call, to all the  
10 stakeholders, we couldn't do it unless we did it as a team. So, Merry  
11 Christmas to everybody and hope that your holidays do bring you joy,  
12 even if we are separated. So, see you in 2021.

13 MS. TREANOR: Thank you all so much for your kind words  
14 and I will miss you. Blessings all.

15 CHAIR THOMAS: Any other Board Members' comments?

16 I'm going to just make a few here. I want to thank Christina  
17 and staff here for all their hard work. Ms. Money, also, who has always  
18 got everything in order, and got us all prepared.

19 And I want to thank the Board Members. This has been a  
20 difficult year. But just look at this meeting today, this is just like we  
21 were all in a room and it just went as smooth as you can get. And, you  
22 know, that just shows that we're -- we may be doing a lot more of this in  
23 the future, who knows, or we'll have it incorporated into our regular  
24 meetings, so we'll see.

25 But I want to wish the Board Members, the staff here, the

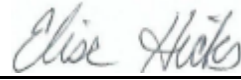


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IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 2021.

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