OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD

PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PASADENA, CALIFORNIA
THURSDAY, JUNE 20, 2019

REPORTED BY:
NOELLE C. KRAWIEC
CSR NO. 14255
JOB NO. 32422

NOT AN OFFICIAL RECORD OF THE BOARD
Not approved or adopted by the Occupational Safety and Health Standards Board as a record of Board proceedings.
PUBLIC HEARING TAKEN AT PASADENA CITY HALL–COUNCIL CHAMBERS, 100 NORTH GARFIELD AVENUE, COUNCIL CHAMBERS – COMPTON CITY HALL, PASADENA, CALIFORNIA, COMMENCING AT 9:57 A.M., ON THURSDAY, JUNE 20, 2019, BEFORE NOELLE C. KRAWIEC, CSR NO. 14255, A CERTIFIED SHORTHAND REPORTER IN AND FOR THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

HELD BEFORE:

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (OHSB)

MEMBERS:

DAVE THOMAS – BOARD CHAIR

CHRIS LASZCZ–DAVIS – MANAGEMENT REPRESENTATIVE

LAURA STOCK – OCCUPATIONAL SAFETY REPRESENTATIVE

BARBARA BURGEL – OCCUPATIONAL HEALTH REPRESENTATIVE

DAVID HARRISON – LABOR REPRESENTATIVE

NOLA J. KENNEDY – PUBLIC MEMBER

OHSB STAFF:

CHRISTINA SHUPE – EXECUTIVE OFFICER

MICHAEL MANIERI – PRINCIPAL SAFETY ENGINEER

PETER HEALY – HEARING OFFICER/LEGAL COUNSEL

DAVID KERNAZITSKAS – SENIOR SAFETY ENGINEER/CIH

LARA PASKINS – STAFF SERVICES MANAGER I

SARAH MONEY – EXECUTIVE ASSISTANT
Pasadena, California; Thursday; June 20, 2019

9:57 a.m.

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(The following proceedings were held before the public.)

CHAIRMAN THOMAS: Good morning. This meeting of the Occupational Safety Health Standards Board is now called to order. I'm Dave Thomas, Chairman.

The other board members present today are

Ms. Barbara Burgel, Occupational Health Representative;
Mr. David Harrison, Labor Representative;
Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management Representative; Ms. Laura Stock, Occupational Safety Representative.

At this time -- because I forgot -- let's stand for the flag salute.

(All performed the flag salute.)

CHAIRMAN THOMAS: Thank you.

Also present from our staff for today's meeting are Ms. Christina Shupe, Executive Officer;
Mr. Michael Manieri, Principal Safety Engineer;
Mr. Peter Healy, Legal Counsel; Ms. Lara Paskins, Safety Services Manager; Mr. David Kernazitskas, Senior Safety
Engineer; and Ms. Sarah Money, Executive Assistant.

Plus, today, from the Division of Occupational Safety and Health is Eric Berg, Deputy Chief of Health.

If you have not already done so, we invite you to sign the attendance roster, which is located on the table at the entrance to the room. It will become part of the official record of today's proceedings. If you sign the attendance roster, please be sure to write legibly so that we have your correct name, contact information for the record.

Copies of today's agenda and other materials related to today's proceedings are also available on the table next to the attendance roster. As reflected on the agenda, today's meeting will consist of four parts:

First, we will hold a public discussion on the protection for wild life smoke emergency regulations. The Division will present the draft-proposed text that will be considered for adoption at the July 18th, 2019 business meeting in San Diego.

Anyone who would like to comment on the Division's presentation or has other remarks about protection from wildlife smoke emergency -- I'm sorry -- wildfire smoke emergency regulations should come up to the microphone when I invite public comment. Following the public comments, the Board will discuss the draft
Second part of the meeting will be the public meeting. The public meeting is formed to receive public comments or proposals on occupational safety and health matters. Anyone who would like to address any occupational safety and health issues, aside from the protection from wildlife smoke emergency regulations, including any of the items on our business meeting agenda, should come up to the microphone during the public meeting when I invite public comment.

After the public meeting, we will conduct a third part of our meeting, which is the public hearing. At the public hearing we will consider the proposed changes to the specific occupational safety and health standards that were noticed for review at today's meeting.

Finally, after the public meeting is concluded, we will hold a business meeting to act on those items listed on the business meeting agenda. The Board does not accept public comment during this business meeting, unless a member of the Board specifically requests public input.

So public discussion, and this is regarding protection from wildlife smoke emergency regulations. We will now proceed with the public discussion regarding
the protection from wildfire smoke emergency regulations.

Copies of the draft-proposed text are available on the table next to the entrance into the room. There is also a copy posted on the Board's website. Please see today's agenda for the link to the proposed text on today's Board website.

Division presentation of draft-proposed text, Mr. Berg, will you please read for the Board.

MR. BERG: Excuse me. Do you want to me to --

CHAIRMAN THOMAS: Yes. I said will you please read for the Board on the vital part of the language, and then we'll have comments.

MR. BERG: Thank you, Mr. Chairman. We are proposing a regulation to protect workers from wildfire smoke, so we have posted the most recent draft on that. And it's triggered by the Air Quality Index, when it hits 150 or unhealthy for everybody, requires employers to provide training to employees, consider engineering and administrative control, if feasible, and also to provide respiratory protection for voluntary use. And when the Air Quality Index is over 500, respiratory protection is mandatory.

CHAIRMAN THOMAS: Thank you.

Yes, go ahead. Proceed. Ms. Shupe has a
MS. SHUPE: I just want to speak very briefly to the timeline associated with these emergency regulations and clarify that the text that you're looking at today, if there are any changes to this text, we will not be able to put it on the July agenda for adoption.

However, we do encourage you to bring us any issues that you may have because there will be a permanent ruling-making process that will immediately follow as it goes to OAL, and minor changes to the text can be addressed in that.

We'll also be following up. Division will be going forward with a comprehensive rulemaking once this wildfire emergency protection becomes permanent.

Thank you.

CHAIRMAN THOMAS: Thank you, Ms. Shupe.

Any other comments before we -- so at this time, if there are any comments on the wildfire proposed text, please come to the podium, state your name and affiliation for the Board, please.

MS. TREANOR: Good morning, Mr. Chairman, Members of the Board, Board Staff, Division Staff. My name is Elizabeth Treanor, and I'm the Director of the Phylmar Regulatory Roundtable, a group of 40 companies
and utilities that employ about 850,000 workers.

We appreciate this opportunity to comment on
the proposed -- we were not aware that there -- we're
not going to be able to -- any changes to be made to the
proposal, so we're hoping that these will be considered.

CHAIRMAN THOMAS: They'll be considered at a
later time, but not for this particular --
Correct?

MS. SHUPE: Yes. They'll be considered as --
I'm sorry. They'll be considered as part of the
permanent rulemaking that follows up this temporary
emergency rulemaking. We have a one-year process called
the certificate of compliance that is mandatory to make
an emergency rulemaking permanent.

And we will notice -- we'll do a 45-day notice
through OAL, and comments today that are for minor
changes can be incorporated into that. Major changes
will be part of a separate comprehensive rulemaking.

MS. TREANOR: Hmm, okay. That's unfortunate,
but thank you for the information.

So, as we all know, that wildfires have become
more prevalent and devastating in recent years, and
they've had tragic results, as we know. Health hazards
of wildfire smoke should be covered under 3203, if the
employees are exposed, but according to the information
and the experience of the Division, that is not what has been happening.

So we do support having a regulation. Several of the PRR members have extensive experience for years addressing and sending their personnel into wildfire areas to perform a variety of issues. They de-energize downed powered lines. They turn off the gas. They restore water and communications to assist the firefighter activities.

In many cases, they have to go in to remove the power lines before the firefighters. These members have had procedures in place for years to address that hazard.

We have filed comments April 26th and again on June 4th, and then we did respond to some questions that were raised at the May 8th advisory committees that we filed another -- responses to those questions on May 10th.

We share the goal of protecting workers from the health hazards of wildfire smoke. There's no question about that. We do have some recommendations, some concerns that we have. And one of them has to do with Division -- the training provision, subsection (e), the requirement for effective training.

Since 1991 and the Injury and Illness
Prevention Program that has been enforced and interpreted as requiring credentials from the trainer, curricula for the trainee, as well as signed attendance rosters. This is what is expected when you say, "effective training."

So to say, "effective training," it implies something that we -- in the moments dealing with a wildfire is not something that you have had the time to do. So we've got -- some of the PRR members are going to talk about what it is like as they're performing these response activities.

The intention is that the employees, prior to their exposure, are going to be fully trained in what the health hazards are, what the protection will be from a respirator, how to wear the respirator, why, what the limitations are, and of course, their rights to request medical treatment. What's most important is that the employees understand how to protect themselves as they're going into the firefighting operation.

So we further recommend that the reference to 3203 that is in subsection (e) be completely deleted because that reinforces the need for documentation, which is what people have been doing under 3203.

Our second point under training is that the stakeholders had been informed back in March and then at
the May 8th advisory committee, we were told that Appendix B was going to be something that they would be able to distribute, and they could just use appendix -- the training appendix in that operation.

But the language of that provision says, "At a minimum, it shall contain the information in Appendix B." And we're concerned that this language is going to result in employer confusion about: "What other information are we supposed to be including? This is the minimum." So our recommended change would be: "Employer shall provide Appendix B or other materials which include all the elements of Appendix B."

Regarding the issue of mandatory respirators, the Respiratory Protection Standard and its federal equivalent were written for situations where there's regular exposure to atmospheric hazards. Wildfire situations are not regular exposures. And wildfire smoke above any designated trigger is not really -- is not a regulated -- regular exposure, and 5144 should not be used.

My understanding is there will be an industrial hygienist who will be able to answer any of your questions about this, but an N95 with an assigned protection factor of 10 will provide adequate protection for an Air Quality Index, AQI, of 150 as well as 500,
and she will discuss further about that.

The requirement for mandatory respirators obligates employers to provide fit testing, medical evaluations, which require time not available. In addition, for utilities, labor management contracts govern the employment situation, including who is on the callout list for emergencies, which is dependent upon the location of the wildfire.

To require that employers maintain medical evaluations and fit testing for, say, 5,000 employees who may be called out -- but they may not be called out -- doesn't make any sense. And to require that those employees be clean shaven year around in case they're called out, that is going to take a lot of negotiation with labor management, because that's not currently part of their contracts. Again, they will explain it in more detail.

Utilities also have mutual assistance agreements. For instance, Idaho Power came in to assist in a wildfire response. And those from Idaho, they do not have their people in mandatory fit testing and medical evaluations, and that is going to cause a delay in the response at a time when delay is -- could be really significant.

Finally -- and this may be the most
significant -- we're not aware of any respirator that has been arc rated fla -- as fire resistant. So your actually leaving this in, it's going to require -- forces employers to choose: "Do we protect against arc flash," which is potentially lethal, "or the health hazard of wildfire smoke?" And that is a choice that we really urge you not to require that they make.

Another point, and I know we're short on time so I won't -- but we're very concerned about the language in the control section F4A. It says that respirators should be cleaned, stored, and maintained. Well, N95s and all disposable respirators should be thrown away, either when they're soiled or at the end of the shift. They should not be cleaned. They should not be maintained. They should be gotten rid of.

And for -- the PRR members are aware of this -- but for other companies that perhaps do not have advanced programs, they're going to think, "Oh. So we clean and store these." And we believe that that language is going to be very confusing.

So we recommend either deleting the language or making it clear that it does not apply to any filtering face piece respirator that's disposable, only to the others, because that could cause significant problems. So you do mention this in the appendix, Appendix B, but
it's not in the regulation itself, and we think it's critical that it be there.

So, in closing, we do support the convening of an advisory committee right away to begin to work on the final regulation, and we were hoping that you would take these comments into consideration to make some adjustments to this emergency regulation. But since that's not possible, we still hope that perhaps there can be some enforcement guidance provided to the field in this regard.

And we stand ready to work on the advisory committee; and, again, the goal here is to protect the workers from the hazards of wildfire smoke.

Do you -- if you have any questions?

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. SHADIX: Good morning, Chairman Thomas, Members of the Board. Tim Shadix with Worksafe. First of all, as one of the petitioners for the standard, we want to thank all the Board staff and the Division staff for all of their work on creating this draft and this timeline. At this point we do have a couple of concerns. I just want to address two of them.

Ideally, we would want to see these addressed and still have the standard be voted on in July, but if
for some reason that's not possible, certainly we would want to see this concerns addressed, hopefully, when we get to the permanent standard process.

So the first area of concern in the current draft is the AQI threshold for the standards overall, minimum application. We want to make sure that the basic requirements of the standard, particularly just access to voluntary use of respirators for workers who need them, is available to everyone, particularly for sensitive groups, for workers who -- a lot of workers have asthma or allergies or maybe older workers.

And due to what we know from the AQI, is that AQI of 101 is actually considered unsafe for sensitive groups. So it would be more protective to assure that those workers who are at the most risk are able to at least have the bear minimum protections and the voluntary access to respirator use if the overall threshold for at least that part is lowered to an AQI of 101.

I also think, in general, it's better to err a little on the side of protection of the AQI because AQI is -- was designed to be based on protecting the general public to exposure outdoors for folks who might not spend a whole lot of time outdoors. And we're talking here about workers who might be spending a whole
eight-hour shift doing heavy exertion work outdoors. So they are made more vulnerable by the work they're doing and their exposure level.

The other main concern I want to talk about today is, again, the AQI threshold, and that's the threshold for the mandatory respirator use. We're very concerned that it's been raised from the 301 to the above 500.

Above 500 is, quite literally, off the charts of the AQI; whereas, 301 and above is considered hazardous, which is the level that we think when -- generally, for most standards and in most rulemaking, that's when you apply your protections.

AQI 300 or above is considered hazardous. This is when it becomes dangerous and unsafe for a lot of workers to be working outside without the proper protection. And a respirator with adequate fit test and medical evaluation is going to be the best way in those very hazardous conditions to ensure that workers are protected.

For many farm workers, construction workers, landscapers, day laborers, and others who are working outside all day in this condition in an AQI above 301 is quite hazardous. And voluntary use of respirators is, without a medical evaluation or a fit test, is probably
not going to be enough to protect a lot of those workers.

Many of these workers are also workers who don't have the luxury of being able to take time off when the conditions are bad. And so it's just going to be inevitable that when we have, unfortunately, the next catastrophic wildfire, that these workers are going to be outside working in these conditions.

It is simply not safe for them to be working in those conditions when the AQI is above 301. I think any of us who have lived through some of these wildfires over the past couple years, and even as a resident just being outside, and the air when it gets to be to the hazardous level, it's common sense that that is -- it's just unhealthy and unsafe at that level.

And, again, it just goes against all the established principals of occupational safety and health rulemaking to set an acceptable exposure level of hazardous. Having the mandatory respirator requirements kick in at above 500 at beyond hazardous is saying that workers are not -- don't have access to that protection even when they're exposed to conditions that, under the guidelines that we're using, are designated as hazardous.

We're also concerned that an enforcement having
this application threshold of above 500 might end up actually being less protective than what's available under current state standards and current federal standards.

You know, currently under our current laws, Cal/OSHA does sometimes do investigations and citations for air quality, and we think that it's probably not the case that they're waiting until it gets to be above an AQI 500.

And, finally, just the AQI of above 500 is just a little -- I think would be just a little bit impractical of a benchmark because, again, it's beyond the charts. There's no further gradation above there with which to calibrate any further protections.

And if any employers are using the AQI looking at a map, the color coding on an AQI map ends at hazardous. There's no beyond hazardous level. So we're kind of -- we're benchmarking to something that's just, again, not within the framework that we are using to assess risk.

So, you know, we would really hope that to make a standard more protective that we can go back to having the mandatory respirator use required at the hazardous level of an AQI above 301.

Now, in terms of timeline, we were maybe asked
if we could have a little bit more of a discussion at
the end of this hearing to just hear a little bit more
about where we're at in the process and what -- if there
are any impediments to meeting the July deadline.

You know, time is really of the essence here.
I think we all know that wildfire season is, like, now.
It's upon us. We could have a big wildfire,
unfortunately, within the next month, in July. If we
wait until August or September, it might be too late to
adequately protect workers.

You know, and in light of that, you know,
Worksafe along with the other petitioners who filed this
petition six months ago, we think that that's a
reasonable amount of time to have -- to be ready to
implement an emergency standard in July.

So we just ask that -- to maybe -- if we can
confirm, if four representatives can confirm if they --
if we're still on track to meet that deadline in July.

So thank you for your time. I know we've got a
lot of testimony to get through. Happy to take any
questions; otherwise, I'll stop there.

Thank you for your time.

CHAIRMAN THOMAS: Thank you.

MR. WICK: Chair Thomas, Board Members, Staff,
thank you. Bruce Wick with CALPASC.
Mitch Steiger did a really good thing in asking for: "Let's protect workers outdoors from wildfire smoke." That was a really good thing to do. And you as Board members did a really good thing in March, in my opinion. Even though your staff did some valid information about using AQI and so forth, you said, "Let's" -- "let's do something for this fire season as close as we can." And you said, "Let's do an emergency reg." And that was a good thing.

What's happened since I'm actually very sad about. I would have hoped we would be looking at maybe a three-page regulation that would be more focused like an emergency regulation should. We have a historical problem on use of N95 dusk masks and voluntary use of respirators.

You can still get many different opinions from different people about that. We could have cut through that and said, "Let's get N95 masks into the outdoor workforce whenever there's wildfire smoke of a certain level. Even if the AQI may have some issues, you know, we can all work on that."

That would have been good because that we could just turn around and say, "Implement, go, when this emergency reg comes down." But that isn't what we have. A lot of work has been done, and I appreciate it.
And there was -- well, I call it an informal public hearing, not an advisory committee because you've given input and people try to take -- not an emergency regulation, a comprehensive nearly thorough regulation and modify it a little bit. It is still confusing. It is still contradictory in some places. And that isn't helpful.

I am a "train the trainer." I am going to take my members and tell their safety directors, "Here's the new reg. I've already prepared them. Get your N95, be ready, and we don't have to wait for fire season," you know. "You can be ready to implement as soon as this reg hits."

But I'm going to have to say, "The focus should be N95 masks on your people when AQI hits 150." Let's focus on that. Now, let's talk about compliance with an 11-page reg that isn't really ready.

I gave you all a couple of things -- I gave -- I tried from last Friday, with the time I had, to do a few -- just talk about a few changes, and we may be stuck with this reg being implemented. But I would hope, if that's the case in July, you will say, as Elizabeth Treanor said, "Let's put a high priority on getting these things fixed."

So I'd like to take just a couple minutes and
walk through a couple of those. Again, the petition was for outdoor. Your vote was for outdoor, and suddenly, it includes indoor, hundreds of thousands of employers who will now have to try and deal with an emergency reg. My people are outdoors, and so I'll let somebody else talk about the scope of indoor.

And, again, I believe this should be under A(1)(b), when an AQMD issues a wildfire smoke alert. Contractors deal with AQMDs wherever they're working for, you know, dust and different regulations. They know how to get to their AQMD, get an alert, and then react. Someone might go five or ten years without having employees exposed to this, and we want them to check every day and how -- on how things are going.

On page 3, again, "Training and Instruction," our hope was this would be, like in 5144, we give Appendix D for this voluntary use. Appendix B should be like that, but we've made this reinterpreting and restating some of the standards and employers having to fill things out.

And I'm talking about small employers: Three, seven, twenty-five. Those aren't my members who have those many employees, but I used -- when I was safety consulting, I used to deal with them, and they have a part-time person trying to implement this.
And having them, instead of saying, "Okay. I can turn around and give this to my employees and we're good to go," instead they're going to have to spend some time with it.

On page 4, item 4(a), we have a note. We have all -- this debate all the time: Is the note enforceable? Is the note whatever? Let's eliminate the note. If there's something important to put in -- and we're trying to get people to differentiate between a regular 5144 and this new wildfire smoke section when we have a temporary emergency.

Many of our construction employers will operate with the emergency from their headquarters, figure out what job sites need the regulation, and send their N95s there. Some will want their on-site supervision to do that.

Appendix A will not allow someone to download the app from their local AQMD and monitor the air, and that's not good enough under Appendix A. And I don't even know how to fix that at this point.

Couple of items in Appendix B: Appendix B says the employer has to do engineering or administrative controls in construction. There's, likely, not going to be that. We can't move the jobsite. We can shut down, but, you know, most construction employees are hourly.
So we're saying, "We're taking away your livelihood today," if we just take the easy route and shut down. We should eliminate that part. And this is where it's a concern: Because I'm going to have to tell my safety directors, "Appendix B is supposed to be a minimum, but there's parts of it you probably aren't going to want to include. So you're going to risk being not in compliance to do the right thing and tell your employees the reality."

Again, it talks about we -- our communications system. We already have to have a communications system. It talks about on page 9, item F, the first paragraph: Again, employers shall take action.

Well, the action may only be the respirator, N95, because in -- most of the time, that's what we can do, but that's what we want to do in great form. We're supposed to -- it says we're supposed to -- this will be the control system at the worksite. We may have 50 worksites today, and that will be a whole different set of worksites in two months. "At this worksite"?

Just a couple other quick ones: Again, two on page 10, "Read and follow the manufacturer's instructions," and then it says, "Regarding fit testing and shaving, should also be followed, although doing so is not required." What are my foreman going to do with
that? "Well, you should, but it's not required." So do we do it or do we not?

We could make that -- I put a sample sentence: "Those instructions will be temporarily suspended during the wildfire smoke emergency." We can be clear about these things.

And then it talks about respirators in H. The way it's worded, "To get the most protection, there must be a tight seal." That's true, but Debra Gold at the advisory -- excuse me -- the informal public hearing that the Division held, gave us some good information. She said, "Yes, an N95 has an APF of 10. If you have facial hair and don't fit test, you'll drop from there, but you will still get some protection." And even if it drops down to three, that's better than nothing.

And if we say -- like, there's a sentence right after that -- "A respirator will provide much less protection if facial interferes," what are employees going to do that have facial hair? "I don't need the respirator because it's not going to do me really any good."

Well, yeah, it will. My hope is maybe we even get some people like -- with a wild man beard like Kevin Bland to cut it back to a more distinguished look like Chairman Thomas. See, that could happen.
UNIDENTIFIED SPEAKER: No, I don't think so.

MR. WICK: The picture on page 11 says, "Shave facial hair. Shaving is not required." Well, what are we going to do with that? So I couldn't crop the picture very well, but let's just say shaving is not required for voluntary respirator use. If you're reading the manufacturer's instructions, it will say, "Yes, and fit testing." But we're saying for this temporary emergency, we want not to have that.

And then the last part -- the last sentence on there -- this is, again, one where I would have to say, "I'm going to encourage you as employers to not be in compliance with this reg because you want to do the right thing."

That sentence says, "If you have symptoms such as difficulty breathing, dizziness, or nausea, go to an area with cleaner air. Get in your car, drive somewhere, and then take your mask off and seek medical help." No. I don't want anybody to put that in Appendix B. I want them to say, "You take your mask off when you get medical help from your supervisor right now."

So we have a lot of issues, and I would hope in the future -- again, this Board has always done -- we've had a great back-and-forth, and we arrive at the right
thing. And you have done -- you set this off the right way.

And we may be stuck under the emergency regs, but I'd like to see us fix these things as fast as we possibly could because the idea is, again, from the start, let's give protection the best we can for a temporary situation to the most employees we can who are out there.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. ARMSTRONG: Good morning, Board Members and Staffers. My name is Robert Armstrong. I'm with the Pacific Gas and Electric Company.

Let me first start by saying that at PG&E we have a very, very robust voluntary use program currently. In fact, at the end of the fire season last year, we still had in excess of 70,000 respirators still in our supplies across our service territory that we in addition to the several thousands that we handed out during the fires.

In fact, during the fires up in Paradise, we were actively engaged in the process of not only making sure that our folks were safe but any contractors that work for us, any other contractors in the area, and people that just happened to be in the Paradise area.
I do want to make a few comments reiterating some of the stuff that Ms. Treanor already spoke to, and the first piece goes to the training and instruction piece.

At Paradise, for example, at our basecamp, we had over 2,700 employees and contractors at that particular basecamp; and if you consider the basecamps that were at the Napa complex fires a year before, we had three times that amount.

We have a very robust early morning training session with every contract crew and contract employee that goes out into the field, and we hold these massive morning tell boards.

We're concerned that under the current regulation, as it's written, with the current standard as it's written, that with the training and instruction, it connotes the -- it connotes what Ms. Treanor spoke to earlier about the documentation piece.

Right? That it would have to be the name of the trainer, the topic, the date of the training, and signatures of all those folks that attended that training, and we believe that that would unnecessarily delay our response times out to the public in doing our restoration efforts.

One other thing I wanted to make mention of
that we've talked about briefly was the fact that currently there are no arc-flash rated respirators that we are aware of. We checked with multiple utility partners, multiple manufacturers, and nothing seems to be out there.

So, in essence, with this regulation, we're being asked to -- we're being asked to compromise a very real hazard for, at present, an ill-defined hazard at this point. And we're as concerned -- you know, being concerned for the safety of our line crews and gas crews, that that just seems to be an unrealistic ask on our part.

All these things, in our opinion -- the training, the fact that the respirators aren't arc-flash rated, and then the mandatory use piece with having to have fit testing and clean shaven faces -- is going to delay our response.

We have significant -- we have a tremendous working relationship with our union partners, but currently if we were to create a call list -- we're currently not equipped with the capacity to create a call list that designates based on clean shaven versus not clean shaven. You know, it's more on a seniority basis. So that becomes incredibly problematic for us as a company and for our IBEW partners.
All these things taken together jointly I think have serious consequences on our response times. And understand that in events like this, we're under critical time periods to not only make safe, but also restore some of our very, very critical customers; those being hospitals, water districts, fire departments, and individual medically-dependent customers that rely on our services.

Again, given all the -- we're absolutely committed to the voluntary use. We already do that. We're just concerned that some of the codicils of the mandatory use are going to unduly delay our response to the customers that need our services the most.

Thank you. Any questions?

CHAIRMAN THOMAS: Thank you.

MS. ZUNIGA: Good morning. My name is Nancy Zuniga. I'm here on behalf of IDEPSCA, the Institute of Popular Education of Southern California. We are a local worker center that works with day laborers and domestic workers.

First of all, thank you for working on this draft. It is very important for us and the members that we represent. And so just wanted to share and also support some of the comments that Tim Wise (sic) had from Worksafe.
So for us some of the work that we've done has been around training workers, domestic workers, and day laborers that were specifically affected by the recent Woolsey fires. Many of them were not provided these protections, particularly the respirator, and many of them were affected really negatively, not just in terms of their finances and losing their jobs permanently, but also their health.

And so that's why we are very concerned about the thresholds of the -- not everything being around the 101 for the sensitive groups, in particular, because many day laborers and domestic workers actually fall in that category. Many are aging very quickly and don't have the ability to move out of these types of jobs.

Many day laborers and domestic workers have actually been the first and second responders, and we know this from talking to over 500 workers in the Malibu area. And so we know that they were there alongside the homeowners protecting their homes. They were there for the cleanup. Some of them are still there.

And so we want to make sure that -- you know, we don't know all the repercussions to their health, and we want to make sure that they are fully protected and provided the respirators at a level that really takes into consideration who they are as people.
And so we want to make sure that the -- that 501 is very dangerous, and we want to make sure that sensitive groups -- when we think about sensitive groups, we think about the most vulnerable workers, and in this case, day laborers and domestic workers, which are a great majority immigrant workers, probably not represented that are doing this work for a long time and for many hours outdoors and indoors, actually, really deserve that protection.

And just as a reminder, when we're talking about these workers, many of these workers also lack health insurance. Right? So how do we make sure that they aren't getting that exposure? Because they already lack a lot of different access.

So we want to make sure -- we want to encourage that we shift from that really high level to something that really considers day laborers and domestic workers as part of the sensitive group.

Thank you so much.

CHAIRMAN THOMAS: Thank you.

MS. LUBIN: Hi. My name is Christy Lubin, and I'm the Executive Director of The Graton Day Labor Center. We're located in West Sonoma County, and I am going to piggyback on some of the comments that Nancy just made about the day laborers and domestic workers.
My organization organizes with day laborers and domestic workers, and health and safety on the job is our priority with the population that we work with, knowing that day laborers have one of the highest accident and -- accidental death and injury rates in the construction industry in this country.

I also want to speak from my personal experience because I just recently lived through two fires. I lived through the Sonoma County wildfires and lived through the Paradise wildfires.

As Nancy mentioned, day laborers and domestic workers are often first responders and so are the staff of those organizations. And our organization played a vital role during the fires in helping homeowners clean their gutters, clean their roofs, prepare their yards, cut back brush, cut back trees, shred.

And we're outside on the front lines. They were also outside on the front lines supporting other low-income families who were displaced and were living outside in their cars and parking lots and sleeping on the beaches during the Sonoma County wildfires.

When the Paradise fires burned last October, those -- not only did the Bay Area experience a long period of time where the air quality was very poor, but so did Sonoma County. And during that time, I just
wanted to share with you the story of this gentleman.
His name is Arnulfo Juárez.

Arnulfo in 2004 was one of the founding Board
members of my organization. He was a worker-leader who
is from —— was from Mexico and was a very instrumental
part in building worker leadership at our organization.

Last October Arnulfo went out to work for five
days during the fire, during the smoke, and Arnulfo is
in that high risk category. By the way, this is a
picture of him advocating for domestic worker rights in
front of the State Capitol. So he was an extraordinary
leader.

But he went out to work for four days, and he
was 65 years old. He had previous issues,
hospitalization issues related to pneumonia. And
although he went out with his N95 mask when the air
quality control was in the high 200s, when he came home
from work Friday, he was complaining of chest pain and
having a hard time breathing, and he went to bed and he
didn't wake up in the morning.

Being that Arnulfo was an older man and an
undocumented immigrant, an autopsy was not performed.
And I can't come here as a scientist and say, "He died
because of his exposure to wildfire smoke." But I do
know that —— you know, has anyone here ever actually put
on an N95 respirator mask and tried to do work, tried to do anything where you're breathing?

Your rate of breathing increases. Your face is hot. It's sweating. It's almost you're not getting enough oxygen. And I've had to wear these many times and know where you just have to take that mask off sometimes just to get some cold air going under that mask.

Arnulfo did wear a mask. We trained our workers. I am not OSHA certified to fit, to do fit tests, but at my organization, we do anything we can to protect our workers' safety, including teaching them from what we know about proper use of an N95 mask.

And we also counsel employers. Our employers are homeowners. They are not contractors. They're not big agencies or companies. They're homeowners who -- and, you know, we actually encouraged our employers not to hire, but our workers are really, really low-income people. Employers are desperate in these situations. They want to protect their homes. They panic.

And many of them are also agricultural employers, you know, with potatoes, grapes, apples. And they need to get those things picked before they get smoke damage. So they've got to pick their crop or they lose their income.
And our workers are so low income that they can't afford not to work, and they often have to put their health before their livelihood -- their livelihood before their health.

So, anyhow, I just wanted to come here today because I really wanted him to be present here and to have his face here because he's no longer with us. So I really encourage you to look at this, that setting the Air Quality Index so high at 500 is a low bar. It's just a low bar. And we need to take action -- to take action before it gets to a such a hazardous level, the smoke.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. SOTO: Good morning. My name is Cal Soto. I am an attorney with the National Day Laborer Organizing Network, and I'm here with workers, organizers, and family members from the Pasadena Community Job Center just a couple of blocks away.

I work closely with The Graton Day Labor Center, Christy just spoke, the director there, and also with IDEPSCA, where Nancy and the workers who are represented here today.

We represent day laborers, domestic workers, low-wage workers here in the State of California and
actually nationally in order to put forward the issues
that are most salient to the most vulnerable workers.

I appreciate greatly the great amount of work,
time, and effort that goes into the very complex
training that a lot of the industry experts and
representatives have come today to present to you all,
but I want to make sure we center this conversation
about an emergency floor standard around the right
population of people, and those are the most vulnerable
workers, people like Arnulfo who Christy just mentioned,
workers that are outside all day, whether or not they're
right on the jobsite or waiting for work who are
breathing in this unhealthy air for more than eight
hours a day.

So we're talking about a standard that,
hopefully, would protect those workers, those workers
that don't have access to union representatives, don't
have access to regular training, don't have access to
all the regular most stringent standards.

We're talking about the base-floor standard
today, which is why it's really important to consider
how important it is when we have a voluntary standard,
when we have a mandatory standard.

I can say from experience when there is -- it
is sort of up to the discretion of either the employer
or the employee for any work standard, that at the end of day, when it comes to our workers, they are going to default to not having that protection, not having that protective standard, if it's not a mandatory thing that is clear, that is clearly enforced.

And so I do agree with some of the folks who are here today talking about the necessity to have clarity in these standards. I think that I would echo what Tim said, what Nancy said, what Christy said, is that it's incredibly important to have a clear standard that's easy to understand for all workers, which is why we want to stress that, yes, I do believe that the Air Quality Index is a good measure.

The original reason for the AQI being created was so that people who don't have scientific expertise, like myself, like most workers, can see a clear standard of: "Okay. At this point it's unhealthy. At this point it's hazardous. At this point I know that when I'm outside breathing, I need protection."

If we have a standard that's above the highest threshold, above 500, that actually kind of defeats the purpose, I think, a little bit of having that clear standard and having that clear understanding, because no worker is actually going to be able to understand when it's above the highest standard that already exists.
So would we stress that the mandatory standard should be in the hazardous condition above 300. You know, I also believe that the voluntary condition, we agree with the voluntary standard, but that should come into place at above 100, you know, at a very clear, specific baseline and stress that this is an emergency standard.

This is something that we believe if we don't take action on this today or as soon as possible, that when the next fire comes, we're going to have more cases like Arnulfo's. We're going to have more unhealthy workers. And we're talking about a huge workforce.

As has been presented by many of the industry experts today, we're talking about a lot of workers who would be affected by the standard and the health and years and years of their lives that we're going to save.

And the final point: I do believe that any type of future meeting or Advisory Board, I hope that I -- I really love the congenial atmosphere here between many of the representatives on the Board and many of the folks who are here at every meeting. I've been to a few meetings now.

But I hope that we can start to have that same participation and rapport between the workers that are the most vulnerable workers. I hope that in the future
we have members of the job centers, members of IDEPSCA, of Santa Rosa Worker Center, of Pasadena Job Center, be able to have, you know, smaller meetings and actually direct discussions with you about the on-the-ground most vulnerable workers' issues and problems that they're facing.

So I hope that after this meeting we can share information and have that continued participation from the workers who are most affected.

All right. Thank you.

CHAIRMAN THOMAS: Thank you.

MS. BERLINER: Hello, Chairman Thomas and Members of the Board. My name is Alice Berliner, and I'm from the SoCal Coalition for Occupational Safety and Health, SoCal COSH.

SoCal COSH advocates for improved health and safety standards for low-wage workers and aims to address the root cause of the workman's injuries, illnesses, and fatalities. And we do this through worker trainings. We'd like to provide our comments, which is very much reiterating what Tim Shadix from Worksafe said and Cal Soto just said.

And, first of all, we'd like to say that a 101 must be the threshold for the use of voluntary respirators to trigger other aspects of the standard,
given the precarious nature of low-wage industries, like day laborers. These workers are -- they are not receiving adequate breaks, trainings, and personal protective equipment.

And when there is significant wildfire smoke, these individuals are at further risk for serious long-term health ailments. At a minimum, employers must be required to provide the respirators at 101, and workers can choose to use respirators or not.

And then, secondly, the threshold for mandatory respirators needs to be brought back down to 301, which Cal just talked about. And having the threshold at 501 is irresponsible, and we know that anything after 301 is hazardous.

We urge this Board to consider that if AQI is hazardous, workers must have respirators, proceed with fit tests and medical evaluations, and must wear provided respirators. Time is of the essence, and we want to make sure the standard is on track for the vote at the July meeting and, most importantly, it's in place to protect outdoor workers in our state come the next fire season.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. LEACOX: Good morning, Board and Staff.
Dan Leacox commenting today on behalf of the Elevator Industry and the Composite Manufacturer's Industry. They have workers outdoors, indoors in treated air, filtered air conditions indoors, as well as those that aren't.

I'm not much going to comment on the particulars of the rule, the substance of the rule. I wanted to -- but I did want to address what is possible. I think the Board, actually, is in a somewhat difficult position when we were here talking about the petition and whether or not to do this rulemaking.

The context of that discussion at the time was: "Look. Let's do an emergency rule, something that's doable. Let's make voluntary use possible. Let's remove the barriers that employers experience to voluntary use, so when this happens we can get this protection out there to some extent." Not a perfect solution, but a very viable one and a good one.

We didn't have to get what you now have before us. Okay? Didn't have to be this way. But you don't have what was being contemplated at that time before you now. And what's before you now is highly problematic. I think it's problematic for you. I know it's problematic for employers. You've heard the particulars. This rule didn't have to include indoor
workplaces. It does.

The definition of wildfire I notice was expanded to include fires in wildlands, which everybody understood at the beginning, but -- or adjacent areas. So there's a house fire in an adjacent area. Are we now subject to the wildfire provision? I don't know. It sure seems like it.

And how far -- what's the boundary of adjacent area? These things didn't have to be in here. Okay? So now you've got a rule, that you've heard, highly problematic, don't even know how to advise for compliance and what can be done.

So, in normal circumstances, I'd be up here saying, you know, "Take the time to get this right." I'm not going to say that. You've heard the employers' representatives so far say, "No. You know, let's get this done and in place." So I'd like to address a little bit, "Well, what can be done and still have this thing voted on in July?"

So emergency declarations and all the documents to get an emergency declaration so that it can go in effect immediately have been done and in place. Those can be adjusted, if there's a will to do it. I know there's a great will to get this done. If with that there was an equal will to fix the major problems of
1 this, it could be done.

2 The adjustments that were being asked for in
the rule would be adjustments that would reduce the cost
of this rule. So you go back to your assessment of
costs, and that's an adjustment downward. That's not
that hard to do.

3 These fixes could be done. It might require
extra work. So we're not looking here for delay to buy
more time, but to just buy more time with the work
required to organize the changes to be done so that it
can be -- some of these things can be fixed and voted on
in July. This can be done. I mean I've consulted folks
who have done emergency regulations, and this can be
done with enough effort, if the will is there to fix
these problems.

4 But to say it can't be done procedurally -- and
it may require bypass of how things are normally
handled -- but we are talking about emergency, which is
a bypass of normal routines. Right? I would just think
if there was a sentiment to fix these problems, that it
could be done on time.

5 There is also one issue -- I have not seen the
documents -- but to the extent that the declaration of
emergency is relying on declarations by this Board and
what might be in legislation, there's a little bit of an
issue because the petition, what the Board decided, the
potential legislation all is about outdoor work.

You don't have anything in place for this
regulation of indoor work, and I would think this is a
fix that would be required. I would think you would
have to -- I don't know how that's been dealt with in
the documents -- but I think you might have a real
problem there because if you don't have that in place
and you're trying to declare emergency based on a basket
of data versus a legislative mandate or a Board mandate,
that's a little different hill to climb, as I understand
it. So revisiting these documents may be something
that's necessary anyway.

And this is about to be launched on employers,
realistically, for two fire seasons. Right? This goes
for a year, so it's this fire season. But when is this
permanent rule going to come down the pike? It won't be
done for next fire season. So you're talking about
employers living with for the next two seasons and
living with these problems. So I think every effort
that can be made should be made to fix these problems
for the July vote.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. MUSSER: Good morning, Chairman Thomas,
Board Members, Staff, and the public. Michael Musser with the California Teachers Association. You have my comments from other meetings and Advisory Committee of meetings.

And we knew we had a challenging regulation to put in place, and we knew we weren't going to get something perfect here or, you know, in July. And we know that we want to get something really great on the books in the future that's going to include more than just the emergency regulation that protects the outdoor worker.

But we do have that concern right now. It is the outdoor worker. Yes, I represent education employers who have workers on the outside and have employees on the inside. We're going to deal with that in the future with the regular regulation, but, yes, we have some challenges with this current emergency regulation, and we really need to just to focus on the outdoor worker.

Because we have a lot of time, then, to talk about these issues that are going come up with all the other employees that are going to be affected by wildfire smoke. We have a lot of work to do.

One of things I really appreciate when I go onto our website is all the comments that others have
provided that I haven't seen that haven't attended these meetings. I've got superintendents, public school superintendents, that are providing comments that I haven't heard, and it really helps me understand where they're coming from and how they really want to protect their employees.

But they're really looking for the guidance from this body of what type of training they need to provide or what type of monitors they need to have in place because this is all new to them. And we're going to have to provide all of that information for those individuals, those employers, to make sure that they are protecting their employees, as they want to do.

So I know this is going to take some time, but I also know that we have to get this emergency piece done. I appreciate all the work that we're doing together to protect that outdoor worker. It's not perfect, but I thank us for the work we are doing together, and we will continue working to make the permanent regulation something that will truly be protective of all employees in the State of California.

So thank you for your time.

CHAIRMAN THOMAS: Thank you.

MS. BLANCHARD: Good morning. Gail Blanchard with the California Hospital Association.
And I want to start off by saying I think reiterating what folks on both sides or all sides have said. Hospitals, we care about the health of the folks in our communities. And so the people who are talking today about working outdoors for long periods of time without protection, you know, we think an emergency regulation is absolutely appropriate for that.

But I am here today, so I will reiterate or chime in on, and we agree with all the statements that were previously made, but I do want to focus on the impact of this emergency regulation on hospitals specifically.

Probably, when you think about hospitals, you think, well, we're indoor workers and so we're really not impacted by this. I think we're in a unique situation, in that when this regulation is triggered is when the hospital is on the verge of being evacuated because the fire is coming over the hill, which was -- I'm getting a little emotional about it, because that's what happened in Feather River, and a lot of folks lost their homes, and there was some pretty amazing stories there.

So my concern is, you know, we are in health care, we have respirators, we fit test many of our employees. But when we're evacuating a hospital, yes,
we're working outside for more than an hour, but we're not necessarily monitoring the air quality.

So when the standard goes from voluntary respirator use to mandatory, you know, is that where our energy should be, or should it be on -- focusing on safely evacuating patients and employees?

So I really feel like we're in a unique situation and have got serious concerns about this is really setting us up for noncompliance in a very, very emergency situation where people's lives are at stake, and we really should be focusing on the safety of our employees and our patients.

And, like Dan said, I'm not sure about the procedural ways to kind of get around that issue, but, really, any effort to really focus this on the population, as one of speakers said, the right population of people, those are people who are outside for long periods of time and really don't have the protection right now that they may need.

Thank you for your consideration.

CHAIRMAN THOMAS: Thank you.

MR. ALLEN: Hello. Good morning. My name is Matthew Allen. I'm with Western Growers Association. We're based in Irvine. We represent the growers that grow fresh fruits, vegetables, and tree nuts in the
State of California.

We are concerned definitely about workplace safety and employee safety. And for that reason, we're viewing this regulation through the lens of clarity. We want to make sure that our members understand the regulation, how to implement it, and to do that in the most feasible way possible.

So, in doing so, the first thing they are going to look to is the scope of the regulation. And in looking at that and reviewing that, we have a concern in that initial definition of the scope when it talks about PM 2.5, because there are many other pollutants that go into PM 2.5 levels.

And we're concerned in the definition of the scope that wildfire smoke is not directly linked in the scope language. We think that's problematic for our employers because they're not going to understand when they need to have this protection in place, and we would encourage the Board to look at that prior to taking this next step in the July meeting.

Having said that, I fully concur with the previous comments made by Mr. Leacox and Mr. Wick. We would like -- we would encourage -- like to see language that's much more concise and direct and clear for our employers to actually implement.
But, again, I would definitely encourage you, at least for the purpose of today's discussion, to review that scope language and to make some clarification that, you know, wildfire smoke should be present.

Employers will not understand what it means that they should reasonably anticipate a wildfire smoke if the PM 2.5 is high. The PM 2.5 level may be high due to some other factors completely unrelated to a wildfire. So we would encourage you to revisit that.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. LITTLE: Good morning, still, for a little while yet. I'm Bryan Little with California Farm Bureau Federation. Farm Bureau is the largest general agricultural organization in California, and we represent thousands of agricultural employers who will be charged with implementing this emergency regulation and the permanent regulation that will follow it.

Part of what I do for California Farm Bureau is helping those members, those agricultural employers figure out how they are to implement the standards that you ask them to implement, and I'm a little concerned reading this draft that I'm not sure how to tell them how to comply with some of what's in here.
One thing that comes immediately to my mind --
and, by the way, I think I should probably say at the
outset, you, I think, are to be commended for taking a
practical approach to this, to recognizing that just as
the AQI is probably not the ideal yardstick to measure
occupational exposures in an outdoor work environment
and that the use of N95 respirators is probably not the
ideal solution to provide protection to workers.

You've taken this as an approach that you don't
want to let the perfect be the enemy of the good; that
we don't want to insist on having to have medical
evaluation and fit testing for the workforce, like what
we have in agriculture, where we have nearly a half a
million people working in each of the peak months of
August, September, and October, to require our employers
to fit test and medically evaluate each of those workers
on the possibility of a fire that may never occur.

If it does occur, we have no idea where it's
going to occur. We have no idea if it's going to affect
the location where you may be working at any given day.
And the prospect of having to have to fit test and
medically evaluate nearly a half a million workers and
require them all to shave and remain shaved throughout
the season is not practical, and it will interfere with
our agricultural employers being able to provide what
protection they actually can in the real world for the
workers that work for them.

The scope language in the draft legislation, I
think, is a little problematic. I think it would be
better to have a tie to some kind of objective
authoritative declaration of a wildfire smoke emergency,
as opposed to requiring employers to reasonably
anticipate that there might be a problem with wildfire
smoke.

An example I come back to frequently when I'm
talking to people about this is that the San Diego Air
Quality Management District measures air quality at I
think five different locations in a very large county.

You can have agricultural employers having
workers working in the field in Temecula and have a
report of poor air quality at some other location in the
county, and depending on which way the wind is blowing,
you may make a judgement that he should have reasonably
anticipated that that wildfire at that location at a
different location in the county could potentially
affect that employer's workplace, wherever it is that
may be located in Temecula or some other location in
San Diego County.

So the notion of requiring people to reasonably
anticipate I think is problematic because "reasonably
I anticipate" I think is going to be very much in the eye of the beholder.

Another thing that I have a concern about is the language discussing respiratory protection and the conditions for respiratory protection, with a note. The note is -- a note is great and a note is better than nothing, but we know that there have been problems in the past with the Appeals Board interpreting -- sometimes interpreting notes as being -- having the same weight as regulatory language, sometimes not.

The note that's in the current draft is a little bit vague, in that it says that some of requirements of 5144 that would not apply when this regulation is triggered on would be medical evaluation and fit testing.

As opposed to offering that up as an example of things that might not apply in that situation, why not simply say, "It does not apply in this situation," and rather than have it be a note integrated into the regulatory language that precedes it.

In a similar way, there is some -- I think some confusion caused by the language in Appendix B. With the language in Appendix B, it tells an employer to -- I think that what your intent was -- to tell the employer to tell his employees that the respirator instructions
require them to be fit tested and medically evaluated, except in the regulation you said that they don't. So that, to me, is potentially problematic because you're having mixed messages.

I think Dan Leacox's point a while ago about the -- and Bruce Wick's point a while ago -- about the complexity of Appendix B and its utility as an educational tool for agricultural employers, I think it could be significantly simplified. The Appendix D with GIS of 5144 is commonly used. I think people understand what it means and what it requires you to do. Appendix B is a little long, a little involved, a little complicated, and it probably could be refined significantly.

So with just those couple of things, I want to identify myself, of course, with the remarks that Bruce Wick made, remarks that Dan Leacox made, and the remarks that Elizabeth Treanor made. I have all those concerns about it. I just wanted to highlight a couple of things that were particularly concerning to me.

And I hope whatever way we can manage to make some improvement to what we're working with here, I hope we can take the opportunity to do that, because we're going to have some significant issues, I think, helping our agricultural employers and agricultural employees
understand what this regulation requires them to do.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. KOSYDAR: Good morning. My name is Andrew Kosydar, and I'm the Scientist and Legislative Advocate at the California Building Industry Association, and CBIA would like to thank you for this opportunity to provide some comments.

CBIA supports and applauds this laudable effort in order protect our workforce from the harmful effects of wildfire smoke; however, we have some concerns. We'd like to echo those that were raised earlier by Mr. Wick, Cal Chamber (sic), Ms. Treanor, and so forth.

I think the thing that's important for us is that -- or what's important to remember is that many of us in this room won't actually be present at the jobsite when these regulations are going to be implemented. Instead, you know, these regulations are going to be read and carried out by those who can see this document and solely this document, without the thoughtful insights of each of us.

So what I'm trying to point out is that these need to be clear, understandable, and feasible. I have a PhD, and I read this document, and I didn't really fully understand it. I had to go back and reread it
several times.

And I don't think I'm the smartest person in this room -- I'm sure there are many who are much smarter than myself -- but I also don't think I'm on the bottom of the barrel either. So if I'm having problems, I think other people are also going to be having problems.

So I just want to point out a couple of things that I saw when reading this for the fourth time this morning is, one: There's an issue associated with identification of harmful exposure.

In particular, the maps that are pointed out in here, while helpful and I used while my newborn child was resting in our house to try to make sure this last fall that he wasn't going to be overly exposed to the particulates from the wildfire smoke in Sacramento, they lack specificity.

So it's really hard in order to look at those maps and understand whether or not you're in or out of a specific zone. You can't plug in an address. You can't plug in a GPS location. So you're sort of guessing. You can't zoom in and try to figure out whether or not you're in or out. So that's an issue.

Another one that came up to my mind is the training. It just seems unclear how to actually
practically implement a training across the workforce. You know, is it enough to just provide the respirators and the Appendix B, or is there more that needs to be done? It's not clear to me based upon this document. Under the control from harmful exposure by respiratory-protective equipment, which requirements of section 5144 don't apply? As it's currently worded, it's not really clear. It just says that there's some that don't apply. So it would be nice to know exactly which ones do apply and don't apply.

In the Appendix B, there are number of parts that were confusing. The first one states, "Health Effects." Now, I represent home builders -- I'm sorry. I should have mentioned that. At CBIA we represent approximately 3,000 member companies here in the State of California.

Our member companies build approximately 85 percent of all the homes in the State of California. So our guys are home builders. They're not physicians, and we don't have physicians on site normally. And so, you know, how are we supposed to train employees about health effects from wildfire smoke? Is it enough to hand out the Appendix B or not? So some of the questions of clarity I'm trying to draw out here. "Two-way communication." I'm not trying to be
cute here, but really, what is that? Do we provide walkie-talkies or -- I mean what does that mean? I don't know.

Protecting employees with a respirator, there's contradictory sentences in here, actually. It says that, "You shall follow the manufacturer's instructions," in one sentence. This is number two. It says, "You shall follow the manufacturer's instructions."

And then the next sentence, it says, "Although not doing so is required" -- "not" -- "it's not" -- I'm sorry -- "Although doing so is not required." Okay. Wait. Do I follow the instructions or I don't follow the instructions? I'm not sure. So that's a challenge for us, as somebody who is going to be trying to implement this in the field.

And then my last question here has to do with this Section H in Appendix B about instructions on how to fit the mask. And I'm not sure why that's there if we're supposed to be following the manufacturer's instructions. In other words, the respirator -- the manufacturer's instructions from the respirator manufacturer.

So if they already have instructions, then why do we have a second set of instructions? Now I have two
sets of instructions that might actually work today. Maybe they're both the same today. But with time, they might diverge and they might not be the same. So I guess what I'm just trying to say is they might not always be compatible, and it's something to think about.

So I just want to close by saying CBIA supports protecting our workforce from wildfire smoke. I think it's a laudable goal. Just regulations need to be clear, understandable, and feasible.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. CARLILE: Good morning, Chairman Thomas, Board Staff, Board Members. Jamie Carlile with Southern California Edison.

I just wanted to reiterate a couple things that we've gone over here. We've sent in comments as well, but there are a couple key points that we have. And if they aren't able to be made here for this emergency regulation, we look forward to a collaboration on, obviously, a permanent regulation as well, and hopefully we can collaborate and get the best fit there.

The first has to do with the training section, Section E. As Mr. Armstrong and Ms. Treanor so eloquently said, the training we've asked for, and we've asked for construction to be used as opposed to training
to be used. The terminology is a little bit of a hangup
at times based on other Cal/OSHA regulations and what's
required in those regulations.

   We feel that instructions, detailed
instructions, especially at the worksite, can provide
good instruction, the detail needed to keep our
employees safe and not delay some of the restoration or
some of these life-saving efforts, wildfire efforts that
are done with perhaps maybe a classroom setting type of
training.

   The second one has to do with the scope as
well. In a previous version we had exemptions for
utility workers who were aiding firefighters in
emergency efforts, and that has since been excluded.
And we were asking or requesting to have that be put
back in.

   Not that we feel we need to be excluded or
exempt from all activities of this respiratory
protection, but we provide voluntary use of N95
respirators. Our crews use those diligently.

   But in order to quickly aid emergency either
de-energizing the lines or creating paths for wildfire
firefighter efforts, you know, we want to get out there
as quickly as possible, and some of these administrative
requirements would severely delay those efforts.
So, once again, we'd love to have those included in the emergency -- emergency regulation. If not, we look forward to the opportunity of putting these into the permanent regulation.

Thank you very much.

CHAIRMAN THOMAS: Thank you.

MS. KATTEN: Good morning, Chairman Thomas and the Board Members and the Board Division's Staff. I'm Anne Katten from California Rural Legal Assistance Foundation, and we greatly appreciate all the hard work of the Division and Board staff towards rapidly developing this emergency regulation for wildfire smoke protection.

It's imperative to bring this emergency regulation to a vote at the July Board meeting in order to put clear protections in place so farm workers and other outdoor workers won't suffer serious short and long-term respiratory and cardiac impacts, including increased risk of asthma, bronchitis, chronic obstructive pulmonary disease, and pneumonia from inhaling the fine particles in wildfire smoke that penetrate deep in the lungs and can enter their bloodstream.

As we all know, fire risk is particularly high this year because of the lush spring growth, and we've
already had one significant fire in the Northern California area.

A repeat of the last several years where provision of respirators was at very best sporadic and training was almost completely lacking of being conscionable, the proposed regulation will go quite far and protect outdoor workers from wildfire smoke with very modest costs to employers.

For example, with a farmer or farm labor contractor with 50 employees, they would need to spend about $100 a day for providing N95s and a nominal sum for a one-time tailgate training on the content in Appendix 2, which I agree could be fine-tuned in the permanent regula -- when adopting the permanent regulation. Sorry.

Training does not have to be in a classroom. It doesn't have to be by a certified trainer. Some groups will be, I'm sure, developing videos and things that can, you know, be helpful for people to use on their phones as a supplement.

Emergency responders really should already have respiratory protection programs. Many who have testified alluded that they do have them in place because their exposure to wildfire smoke and other respiratory hazards is anticipated.
And -- well, I'm not an electrical expert. If there's an issue of respirators not being arc-rated, the utility workers should still have them for work that isn't in that zone of the arc hazard.

The current draft of the emergency standard sets forth good basic protections from wildfire smoke exposure, with the exception of a dangerously high threshold for mandatory respirator use. Setting this threshold at an AQI of 501, which is literally off the scale for hazardous air levels, is a very dangerous precedent.

And the appropriate threshold is the AQI of 301 for PM 2.5, the lower limit for hazardous air levels and the level that was in the first discussion draft. So it has been part of the discussion already.

And as I already mentioned -- well, I didn't actually -- employers who want to avoid having a respirator protection program can postpone non-emergency work when smoke reaches hazardous levels; and, as I already mentioned, emergency responders really should have these programs in place already.

We think that there is time before the July meeting, and we really urge the Division to make this one change in the -- to the proposed regulation before the July vote that changing the threshold for mandatory
use, and we urge the Board to bring the proposed
regulation to a vote at the July meeting so outdoor
workers can have this much-needed protection from
wildfire smoke.

We also share the concerns expressed by
Worksafe and others of some additional changes that are
needed in the permanent regulation, including lowering
the threshold to the level to protect sensitive groups
and also making some tweaks to Appendix B to make it
more accessible for employees and employers too.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. BLAND: Good morning, Chairman Thomas --

CHAIRMAN THOMAS: Good morning.

MR. BLAND: -- Board Members, Board Staff,
Division Staff. Kevin Bland representing the California
Framing Contractors Association and the Residential
Contractors Association this morning.

I'm not going to repeat everything that's been
said, but I'll incorporate by reference Mr. Bryan
Taylor's (sic) comments, Mr. Bruce Wick's comments,
Mr. Dan Leacox's comments, and Ms. Elizabeth Taylor's
(sic) comments, and we're also a member of the Cal
Chamber Coalition.

What's that? Did I miss somebody?
UNIDENTIFIED SPEAKER: You said, "Bryan Taylor."

MR. BLAND: Oh, Bryan Taylor. I'm sorry. Did I miss Bryan? I'm trying to save time here, and it didn't work. Yeah, it's not working.

After listening to this, reading this several times, litigating regulations like this, the complexities of this, we had -- we started out -- and I think that's point that's been the theme today. We started out with a very simple complex: An emergency regulation about an emergency that allows an employer to comply with a reasonable opportunity to protect their employees in that emergency situation.

This became much more than that. I've almost decided it would be easier just to ban wildfires in California than to be able to comply with what this thing says right now.

So I hope that we can take the suggestions that were made by Bruce Wick. I think he produced some -- a redline version to you guys. If we could do that before the vote, that would be very highly beneficial. This has to be simplified.

It seems it went from the easy -- the easy compliance, which when there's easy compliance that's effective compliance, and that's effective protection --
to something that when it's this complex, it doesn't
accomplish the goal.

We said earlier we want to make sure that in
these situations the employees are protected. We want
that, but we want to be able to comply with what
protects the employees in these emergencies. We don't
have all the time to do this.

And then the other point that was mentioned is
this started as an outdoor regulation for outdoor
employers and drifted into the indoor. I was just
noticing the door, you know, the whole meeting, if there
was a wildfire in this area, we would be out of
compliance, the way this reads because it says we have
to keep the doors closed at all times, and that's been
open the whole time we've been sitting here. No one
noticed. I'm sure no one cared. And you think that's
an absurd example. Right?

Well, you'll probably hear some testimony later
about how we can have some pretty absurd examples of
decisions after reconsideration that come down the pipe,
different administrative law judge interpretations,
inspector's interpretations of things.

I have an example -- I won't mention the
case -- but yesterday, we got a client that went to
hearing. Had four serious and three general. They all
got thrown out because it was an observed interpretation, and so that happens.

And that's taking away time. That took out of the field because it was an absurd interpretation of language, two safety guys from our end, two safety inspectors from the Division, plus a DM.

And so it's very, very, very important for us as employers, for employees who have -- and for this Board to get language that is easy to understand, easy to apply by the inspectors, and easy to understand by the workforce that's out there.

When I -- I mean I can't explain exactly what to my employers that I represent whenever they ask me about compliance and what to do with this, the way it reads right now. And I think Bruce Wick had mentioned, you know, we were excited about having an opportunity to make something that would work, and we're also sad that this was the result.

I've been doing this a lot of years, and this outcome, it's disappointing to me personally that we ended up in this spot today. Anyway, I do recognize a lot of effort went into this. I guess it's thankful it doesn't have a byline on it, so no one actually has to accept the fact that they wrote this.

But I want to make sure that we take serious
the comments that were made earlier today and take
serious the fact that the reason we're up here -- both
sides -- the reason we're up here is we want to protect
the employees. I don't care whether it's the employer,
rep, a union rep, or an association, but this I don't
think is going accomplish that goal the way it's
written.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. STEIGER: Thank you, Chair Thomas and
Members. Mitch Steiger with the California Labor
Federation. Mainly just want to thank the Board staff
and Division staff and everyone else who's work on this
standard. I know you're probably feeling a little bit
beat up right on now after hearing all this testimony.

As someone who's pretty involved in drafting
Assembly Bill 1124, I know what it's like to sit in a
room of people criticizing your work and talking about
all the problems with it, and I know it's not fun. So
we feel your pain.

I know that's not anyone's intent. Everyone's
just trying to make sure the standard works as well as
it possibly can, and I think it might help to take a
step back and remember sort of what brought us here;
that we're not here because there are no standards.
We're here because there are some, and they're just not working.

And they really exposed their inadequacy last year when the air got really, really bad and workers were outside with nothing. And they were out there, you saw most workers had nothing, some had bandanas on, as we all know, do very little, if anything.

And no one really knew what to do. People were looking online, like, "What? Should I go to work? Should I go buy a mask at the store? Do I wear a surgical mask?" And everyone is just kind of floundering around. And so there's a real need for something because we all know that these fires are going to keep happening, and they're going to keep getting worse.

And so though there are certainly things with this standard that could be made to work better, we've got plenty of time to do that in the permanent rulemaking. I know that's always been the intent; that we knew we weren't going to get everything right, especially with this hazard. This one really stands out even among some of the really messy ones we've been working on recently, like heat and lead.

You know, this isn't a guard that you put on a saw, and it then slows you down a little bit, but now
you won't lose your fingers. This is way more complicated than that, and there aren't any good solutions. N95's have their issues. The AQI has its issues.

But all of these present by far a less bad option than what we're dealing with right now where workers are just out there with nothing; and we think the draft, as it stands right now, is a giant step forward. It does give, we think, far greater clarity, despite some of the issues for employers and, by extension, to employees that they'll have a much better idea of what to do when the air does get bad.

We know it's going to. We know it's going to happen, and we'll be in a much better position in that temporary stretch of time when we're working out the permanent standard. We'll have something much better to work with, and workers won't feel quite so lost out there, and employers won't feel quite so lost. And so we think we'll be a lot better off.

We would also point out, after looking at some of the comments on the new draft online, particularly from public sector employers assessing some of the costs and coming up with some pretty stunning figures in the, you know, tens of millions of dollars, as far as complying with this.
Getting back to where we are now, we would just emphasize that, you know, this isn't -- we're not coming from nothing. We're coming from regulations that exist, but they're largely just, you know, being ignored for various reasons, one of which is they're very hard to comply with.

But that under current law, this is a harmful exposure that you, as an employer, are supposed to be protecting your workers from, whether it's through an N95 mask or some sort of administrative control. Something is supposed to already be happening.

So a lot of these costs that seem to be -- the starting place is zero dollars, where we are now, going up to 76 million or whatever it was, we have very strong objections to that way of assessing these figures. We just don't think that's accurate.

If anything, this saves employers money over what we're doing right now. At least that's the intent; that what we're trying to do is a temporary limited exemption from the fit testing and medical evaluation, as sensible as those things are, as much sense as they make, that they have -- they have played a large role in why employers just aren't complying with the current standards. So we need to take some time in the permanent rulemaking process to figure out what we do
with those; and in the meantime, give workers at least
something beyond what they've got right now.

So hopefully, as this process is working in the
next month, that we don't rely too heavily on this idea
that this is something that's this gigantic financial
burden for employers beyond what they have right now;
that, hopefully, we keep in mind that that burden, if
you want to call it that, is there right now, and that
what we're trying to do is actually lessen it, make it a
little bit more clear and make it a little bit easier
for employers so that employees can benefit from the
intent of it.

And we would also really urge the Board to do
whatever is necessary to make sure that this still stays
on the July 18th agenda. We looked a little bit into
the frequency of fires and what we would be looking at
if we are to delay this another month.

I don't know exactly when it would go into
effect, but, for example, last July, there were 136
fires, and that was an especially bad month in a pretty
bad year. The month after, it only had half as many,
only 75 fires.

And when you look at this year, which was, you
know, supposedly a great year -- there's been a lot of
rain, it took at long time for the rain to stop, all the
reservoirs were full, everything is good -- we've
already had 1,600 fires that have burned 15,430 acres,
which is significantly less than last year.

But even in this historically wet year, we've
still got, you know, thousands of fires already halfway
through the year. And so every month we wait, that's,
you know, potentially a hundred or more fires that are
going to be out there.

And any one of those could be another big one
that throws thousands and thousands of outdoor workers
into the situation that this regulation is envisioned to
deal with. And if we were to delay even another month,
that's thousands and thousands of workers that might
have to be outside breathing this air that's in the, you
know, 300's or 400's or literally off the charts, as was
mentioned.

And we just don't think that that's worth
doing, considering that, you know, this isn't the end of
world. We've still got a permanent reg out there on the
horizon; and pretty short-term, you know, in the next
year or two, we'll be able to finish that and work out
all of these details or as many as we can.

And just one specific issue with the regulation
itself: On the way here when I got in the rental car,
as I always do, I asked the guy that handed me the --
you know, the rental agreement if he was union. And he said, "No, but I wish I was." And I said, "Oh. What's going on?"

And I've been in labor more than two decades, and I've had a million of these conversations, and every time it's the same thing. It's a long list of things that are very clearly unfair and a long list of things that are very clearly illegal. But workers know that in many cases if you've got an employer that's doing things like that, it's probably not a good idea to go straight to them with those concerns; that the risk retaliation is very real.

And even when the employer isn't going to retaliate, that worry about doing that is always going to be there. It's just a very, very uncomfortable thing for workers to stand up to any kind of pressure from their employers to do something or to break a law or to ignore something that should be happening.

And so with respect to this change in the new draft where masks are now optional up to 500 AQI, it's very easy to imagine a world where an employer makes comments about how, you know, "Well, maybe you shouldn't need this mask" or "This thing is going to slow you down."

Or even when the employer hasn't made comments,
that if something is optional, there -- it's not like a
worker is just sitting at home in the privacy of their
home deciding whether or not to do something. Their
employer is there. Their coworkers are there.

They are a whole lot more likely to decide,
"Oh, you know, this AQI thing looks really high. It
sure smells like smoke out here, but I don't want to be
the only one wearing a mask" or "I don't want my
employer to, you know, think I'm weak or think that I
need help that everyone else doesn't," and we would
argue drastically increases the likelihood that workers
aren't going to take advantage of the masks, even if
they're provided.

And given what was mentioned by some previous
witnesses -- particularly from Tim from Worksafe about
the hazard that we know is there -- no one is up here
saying, "350 AQI is super healthy air, and you should
just be breathing it," that the science is unclear. The
science is very clear: That you should not be breathing
air like that even for a short period of time.

That we could very possibly wind up in a
situation where we're not only less effective than the
federal standard, but that we're putting workers in
harm's way by setting it up that way and by not making
it mandatory.
And figuring out a way in the permanent rulemaking to deal with, you know, facial hair and all these other questions around that, but that there is a world of difference between something that's optional and something that's required in terms of the likelihood that a worker does it. It's not as simple as just: "Oh. The worker has their own choice."

There are a lot of factors that are affecting that worker's choice that they think might be affecting their ability to keep their job. And that's something that we hope is very much kept in mind as we move forward into permanent rulemaking, that a lot of workers, maybe even most workers need that backstop of something being required and need it being in the law for it to actually happen.

You know, that's why the, you know, overtime and eight-hour days and minimum wages and all these standards out there are required. That, you know, we need to make sure that workers don't have to fight for these. This needs to be something where the employer says, "There's a penalty. Something is going happen to me if I don't do this. So I'm not going to make that comment about needing masks" or "I'm not going to discourage this." Like, "I'm going to make sure everyone does this" so that workers can benefit from it.
Because, you know, as we know, these fires are going to keep happening. This problem is not going to get better. It's only going to get worse. It could get a whole lot worse. This year might have been an anomaly. Most of the years in the future might look more like last year than this year.

And so we need to prepare for that. We need to come up with a standard that reflects the reality of life for a lot of workers out there, and that they need strong protections. When the air is that bad, it should be required. And, hopefully, we can deal with that in the permanent rulemaking.

But, overall, we think this is a major step forward, and we very much applaud the work of the Board and Board staff and Division staff and all the work in putting it together.

Thank you.

CHAIRMAN THOMAS: Thank you.

How many more commenters do we have on the issue?

Okay. So we're going to take a break for ten minutes, then we'll come back to this. So we're adjourned for 15 minutes.

(Recess.)

CHAIRMAN THOMAS: Thank you. We are back in
order. So I think we had three commenters left on the wildfire issues. So whoever is first, go ahead. Thank you.

MR. SMITH: Thank you, Mr. Chair, Members of the Board. Jeremy Smith here on behalf of the State Building & Construction Trades Council. I'd like to thank the hard work of the Board members, Board staff, and the Division staff on this proposal. It's come together very quickly, and we're all in the labor movement happy about that.

I'd like to associate my comments with those of Mr. Steiger from the California Labor Federation and just add a couple more points.

First, to the extent you guys are feeling pressure on this, know that you're not alone. The legislature is also weighing in on AB 1124. There have been four -- only four no votes on this bill moving forward through the process.

So they are hearing from their constituents that this is a problem up and down the state. It's one of the few times as a lobbyist I've seen the same story from all the different legislatures' offices. They've all got somebody they know who's dealing with a wildfire exposure, and they think this is a serious issue as well.
So, you know, that bill is where it is. We urge you to continue moving forward with having this finalized at the July meeting. As Mr. Steiger said, we are in the fire season. It's only a matter of time before more fires break out, and we need these regulations in place so that workers who have to work outside are protected.

Thankfully, in the unionized construction industry, a lot of our employers do make a decision on these terrible, terrible days to not go to work, but not everybody has a union. Not everybody has the protections that a union provides. So we urge this Board to continue moving forward so the regulation is finished in July.

Thank you.

THE COURT: Thank you.

MS. HAMON: Good afternoon. My name is Kristin Hamon. I'm from San Diego Gas and Electric. We appreciate the opportunity to comment on this proposed emergency standard.

First, I want to say SDG&E, like many other utilities, we have a very comprehensive voluntary respiratory protection program, and we'll continue to provide respiratory protection to all employees who request one.
But for today, I'd like to focus on one specific element which will directly impact our ability to quickly respond to critical events and restore power and gas, and that element is the mandatory respirator use requirement when the AQI exceeds 500.

As you all know, mandatory respirator use requires all respirator wearers to be clean shaven. Our workforce responding to wildfire events are typically not clean shaven and resistant to this requirement.

While this may seem like a simple fix, some of them have made life choices to grow facial hair; and in some cases, it's part of their identity, not to mention the union negotiations would have to incorporate medical evaluation fit tests components which could affect job callout priorities and delay of response times even further.

So from an impact standpoint, our employees would be required to take extra time to remove facial hair. That's delaying those critical response and restoration efforts when talking about power and gas.

Additionally, there might be some instances where we rely on mutual aid from out-of-state utilities, and requiring mandatory use of respirators, including the fit test and medical evaluation components, will delay restoration efforts even further for those mutual
aid situations.

So it's for these reasons that we urge you to consider removing that mandatory respirator protection requirement when the AQI exceeds 500.

Thank you.

CHAIRMAN THOMAS: Thank you.

MS. MURCELL: Good morning -- well, no. Good afternoon. So Chairman Thomas and Board Members and Board Staff, Division Staff, I appreciate the opportunity to talk with you again. My name in Pamela Murcell. I'm with the California Industrial Hygienist -- California Industrial Hygiene Council. We are a professional association. We are not a labor or management representative type organization.

I do first and foremost want to echo what everyone has said today, which is worker protection is first and foremost. That should go without saying, especially before all of the folks assembled here today. But we have got to do it in a way that is reasonable and cost effective and has a usefulness to it that can be easily implemented.

So I'll cut to the chase. The CIHC has already provided comments on several occasions, including participation with the discussion meeting back on May 8. One thing I did want to do, though, is to reiterate some
comments that we provided back at -- after the meeting was held.

And those comments basically were to encourage taking a much more simplified approach to this emergency regulation, including with calling it emergency procedures for the protection of outdoor workers from wildfire smoke.

We also provided a strike-out, underline suggestion as to some changes that could be made; and the letter that we provided with that I have summarized here, I just want to read into the record.

So the suggested changes to the discussion draft regulation were basically to help to afford for the protection of employees in a quick, responsive, uncomplicated manner, to provide regulation that is easy to interpret by affected employers, to provide prompt implementation in an emergency situation, and to allow for adoption of an emergency regulation within the required time constraints.

Our comments can be summarized as follows:

"Our view of the regulation is that the intent is to define emergency procedures for the protection of outdoor workers from wildfire smoke," hence, the suggestion for the title.

"Employers would fall under the scope of the
regulation whenever there is a wildfire smoke advisory issued by a local, regional, state, or federal government agency and there's the possibility that their outdoor employees will be exposed to wildfire smoke affecting their work locations."

"When the employer falls within the scope, then the procedures must be implemented. These procedures would include employee training using the current Appendix B, or some aspect that gives at least some uniformity to the training, and the provision of N95 respirators for voluntary use by all outdoor employees."

We reiterated that in your consideration AQI is not a factor that should be included in this regulation, and we provided extensive comments on that previously. I do want to reiterate just one -- a couple of things on the AQI, though. It is a public health criterion.

AQI is not a worker health and safety criterion, and it unfortunately could set some precedence that could have some unintended consequences. When you start looking at what the AQI for the PM 2.5 represents in terms of micrograms per cubic meter or milligrams per cubic meter, depending on which measure you'd like to use, it sets some standards without the formal standard of rulemaking process. And to us, as a professional association, that's extremely problematic.
Also, you've heard before about the AQI monitoring locations. That's also potentially problematic, depending on where the employer's work locations are relative to the AQI monitoring stations. There are a number of employers that are very remote that would not have the benefit of something in close proximity and would be then relying on the air monitoring requirement -- or not the air monitoring requirement -- but the air monitoring option that is currently -- that is in the current draft regulation, and then that raises its own issues.

Air monitoring using direct reading instruments provides a necessity to have folks who are qualified to do that air monitoring and to interpret it and to make sure that it is useful for the folks out in the field, if you would.

There's also potentially a problem with even access to the resources that would be needed if one were to rely on the direct reading monitoring approach, both in terms of the instrument's availability as well as the personnel to help with the monitoring.

So just a couple of additional comments related to the AQI, but just again, to the thank you for the time and consideration; and, hopefully, we'll hear what the story is after this.
Thank you.

CHAIRMAN THOMAS: Thank you.

MR. VLBOVICH: Chairman Thomas, if I could. I appreciate allowing one extra comment. After listening to -- Roy Vlbovich, Pacific Gas and Electric, part of the utility contingent here today. I appreciate the opportunity to address the Board.

After listening to all of the comments made specifically around AQIs, the lower limits and the upper limits, let me say that from a utility perspective, I believe that the Board did a very good job in terms of a delicate balance between all of the constituency that needed to be protected.

And by that I mean I think it's good -- and good I mean enforceable, mandating at the lower level -- that we have a level at which we set the expectation for employers to provide protection at 150; that an OSHA inspector or an employer with due diligence goes out, they know where the level is at with which they need to provide for their employees' protection.

The upper limit, however, sets a little bit of a precarious scenario for all workers. And that is even on the most diligent employers, such as Pacific Gas and Electric and some of the other utilities that are presented here, setting the AQI at the top level too.
low, is -- once you move the standard into a mandatory requirement, there are a lot of issues that were brought up here in terms of facial hair and medical testing and fit testing and the all things that come into play when you establish a mandatory threshold too low, that employers will make the decision to stop work. And that's been mentioned here a couple of times.

If you do it at 300, all of those people in the daywork scenarios and the people that are migrant workers are going to be dramatically impacted. And I don't know that we've addressed it here, but dramatically impacted.

If the threshold was set at 300, that they're going to be out of work or unemployed or waiting for the AQI to be lower than 300 for them to go back to work, because most employers, and especially bad employers, will say, "If I'm at risk of being cited, I'll just stop work. We'll wait a day. We'll wait a half a day, whatever it looks like" to put their employees to work.

But at the upper end -- where PG&E is at -- and we think that 500 is right because it suggests that if you can't bear the burden that comes with the law, with the regulation, that you should make the decision to stop work; that it is dangerous for employees.

It's off the charts, as people have described
here today very eloquently. It is a point at which you
need to make a decision that you're either going to put
them in an appropriate respirator protection or stop
work because it's extremely unhealthy. It is off the
charts.

We're in the process now of trying to preclear
4,000 employees to respond in emergency restoration
efforts, knowing that we're probably going to end up
with a list of a thousand. And of those, about
20 percent are not going to be able to participate
because they have facial hair.

And we get back to the scenario, then, that was
described earlier, and that is: Now we can't meet our
obligation to restore gas and electricity to our owners
or customers, and that creates a very real problem. How
long do we wait?

The additional issue there is that utilities
for many of us -- and PG&E for a very long time -- are
running our own independent samples and testing, and our
obligation to our employees and the agreements that
we're making with our unions is that we stop work when
our AQIs are reached at whatever the level is set.

So I would appreciate, and I'm sure that the
utility industry would appreciate either a caveat or the
standard as it is. Set the lower limit at 150, require
employers to actually provide protection for their employees like you're currently doing, and then allow the upper limit to be a true upper limit. If you can't bear the burden of the law, stop work, because it's not in the interest of the employees.

Thank you for your time.

CHAIRMAN THOMAS: Thank you.

Any other comments at this time?

We're going to go to that. Thank you for your testimony. We appreciate everything that's been said today. So we're going to continue with more discussion. So if Board members would like to add anything, this is the time to do it.

BOARD MEMBER BURGEL: I wondered if we could talk about the July meeting and why this regulatory draft language from June 14th can't be edited. I know it's a public notice issue, but I mean --

EXECUTIVE OFFICER SHUPE: It is, but it also goes beyond the public notice. So the draft language is actually the first piece. Once the draft language is set, then we draw up a finding of emergency, the 399, and the attachments. Those are all drawn directly from the regulatory language.

Any change to the regulatory language requires an update of the finding of emergency or update of the
399 and an update of the attachments. At this point, we are already in the fiscal approval process. If we pull it back from the fiscal approval process at this time, redraw all of those documents, we have to start over and resubmit.

BOARD MEMBER BURGEL: And then I also have another question or comment from an emergency -- the emergency use of a respirator. Is there any OSHA federal guidance on what happens in emergencies vis-a-vis the fit testing, medical evaluation, and shaving requirements associated with 5144?

MR. BERG: Not in 5144 that I'm aware. I could look through it and get back to you, though.

BOARD MEMBER BURGEL: Okay. I think that would be an interesting question because, really, we're talking about the emergency use of an N95 for AQIs over 300.

MR. BERG: Yeah. As far as I'm aware of, there's no exception for fit testing and medical evaluations for emergencies in 5144.

BOARD MEMBER BURGEL: All right. I personally find the current proposal, the one dated June 14th, problematic from that AQI of 300. I would support mandatory use of respirators. I realize it's an employer burden, but I also think that employers, all of
us need to integrate respiratory protection preparedness
in our emergency preparedness plans.

In our -- you know, I think every home should
have a case of N95s in anticipation of hazardous air
quality conditions. And so I think that it's -- I
really love Petition 573 in its intent. I think it's
important for employers to provide N95 respirators to
their workforce. I think it's going to be tough for
employers to comply, but I also think it's going to be
problematic for me, ethically, to support not -- I mean
not mandating respirators when the AQIs are over 300.
The Public Health Department is going to be
closing schools, sending children home, but we are going
to be requiring workers to be out there, you know,
optionally using respiratory protection. It just
doesn't make sense to me as a public health
professional. So --

CHAIRMAN THOMAS: Any comment?
Yes, Laura.
BOARD MEMBER STOCK: Okay. So like many people
here, we're all, you know, disappointed that we -- we're
at a point where we're evidently facing a choice between
being able to vote on something in July or make some
changes that some people have suggested and Board
members also. You know, I have a couple of my own,
which I'll mention in a minute. So that is disappointing to hear.

But I would -- I guess what I would say is:

I'm really hoping we can vote on something in July because of the urgency of the situation, as many people have already described. And I do think there is a history of voting in emergency standards, including the original PETE standard, which got modified many times.

So I think it's true that there's an intent.

You put something in place because there is an emergency and something is better than nothing, but you immediately begin work on modifying it and improving it. And that is, in fact, what's happened in past situations where emergency standards were passed.

So, you know, somebody said, "Perfect not being the enemy of the good." I think that, you know, my personal opinion is I hope we'll be able to go forward in July, but I feel like we should, you know, start now. I have no idea what the procedures are, but immediately begin the process, even though we do have a year until something -- you know, that there's a timeframe with the emergency standard, but I think there's a lot of things that need to be fixed, and we should start that process right now, or whatever is practicable, given the required procedures.
And in specific, just two areas of my concern:

One is I agree. I'm very concerned about setting an upper limit of 501, which is not even on the chart. I actually just from a purely practical point of view, I don't understand how somebody would actually even determine that it's over that level because it doesn't go over that level.

So I'm not sure where that particular proposal came from, but to me, it's a little mystifying because it doesn't seem actually able to be complied with. So that's point number one.

And point number two is I agree that as a matter of public health precedent, just to be consciously saying that workers are going to be in conditions that are defined as hazardous but not requiring protection seems counter to what our responsibility is and potentially counter to, you know, federal requirements and other respiratory requirements.

So I feel like that are things -- but I hear all the challenges of how to make that work. So I just think I look forward to the fact that there'll be an Advisory Committee or whatever the process is to really grapple with those things and hope we can get them going, you know, fairly immediately as we can.

I'll just make one comment on one other
provision just because I heard a lot of people
testifying about it, which is the Appendix B and the
instruction and the training, et cetera. I want to add
my support to the language as it exists. I feel like it
is really -- I don't know -- I'm not -- my own
interpretation wouldn't be that it's mandating certified
curriculum and instructors, but that's a question for
people to resolve.

But I definitely feel like it's very important
that we have effective training and instruction there
because simply handing people Appendix B, people of any
literacy or language level, is not going to be effective
training for any of us. It's complicated. It needs to
have people there to be explaining what it is.

So that's just a very principal -- I think it's
really important in the standards where we have
effective training that sets some criteria to be sure
that the goal of training is being accomplished. So
I'll just put my support for maintaining a requirement
that will require actual training, not just handing out
Appendix B.

And, otherwise, I recognize all the other
changes that have to be made and hope they can be --
people can begin to work on those as soon as possible,
but that we can still put something in place in July.
CHAIRMAN THOMAS: Yes, Chris.

BOARD MEMBER LASZCZ-DAVIS: Just a few thoughts, and to Barbara and Laura's comments. You know, I think we need to go back and remember, this is a stopgap measure. I don't think any of us expected this to be flawless at this point in time. And yet I appreciate the sentiment that what we put in place might begin to set a precedent, but that's up to us to ensure that it doesn't.

And the truth is the other thing that we need to remember, this should not -- this regulation should not have been the start of a company's emergency procedures. We're not starting at ground zero. So just another thought.

But one thing I heard in the comments, kind of the overarching comments, they were really related to two issues, primary issues: One was training, the clarity and the simplicity. Even if there's some issues about effective training, I think this was meant to be an instruction which is a little different beast, quite frankly.

But I think eleven pages is a long -- it's a long document. And I don't know whether or not we have the ability to modify that between now and July, but I appreciate the concerns about this being lengthy and
effective training. Every time what you really want is instruction for employees to move quickly in situations that are not regular operating procedure situations.

The other issue that was the overarching concern was the AQI, 300 versus 500, that's a tough one, and I don't think it's going to be resolvable by July. But I understand the arguments both ways.

I think the reality is -- and I think Barbara said it -- you know, the reality is there'll probably be some noncompliance. I think employers will try to do the right thing. Will they meet every intent of whatever regulation we propose? Maybe not.

But, remember, this is a stopgap measure with the intent to make sure that as soon as we move into a permanent rulemaking process, we're really refining this very quickly and beginning to share information that employers can embrace and incorporate.

I think the goal is the same for everybody. You know, we want to protect the workers. I think we need to do something by July. I would hate to see it move up, that July timeframe. We're already in the fire season. And I think we need to remember that what we end up with is not going to be perfect. It's far better than nothing at all, but I think we will have come 80, 85 percent of the way. And what we have is an
opportunity to refine it. So just let's get on with it.

CHAIRMAN THOMAS: Any other comments?

I guess my only comment would be that this is an emergency rulemaking. If this was easy, it would have already been done at some point. But taking all things into consideration, I don't want to hold up the July date because we're going to go past this anyway. We're going to come up with a rulemaking after that that will address all of the concerns that we've heard today.

But that's why some of these things are put into effect in an emergency basis. It's a stopgap measure to try and do something effective that isn't perfect. We know that when we walk in here, it's not going to be perfect. And the other thing, too, is that's why all these things take time.

I know how much heat I took over the violence in the workplace and the hotel housekeeping. "I mean five, seven years? Come on, Dave. Get this done." And but it's never that easy. This is: You're weighing everything. You know, you're weighing the workers, the companies, everything in between. And that's what we're trying to do here, but this is a very short time that we have had just to put this together.

And I agree with -- pretty much with what everybody said here. The 300, 500 AQI, to me, that's
the difficult -- that's the really difficult one. But the training, the instruction, I think we'll make that simpler in the end, hopefully. I'm saying that I think we will do that.

But I urge that we pass this in July so that we have something that's decent and good. It's not perfect. We know that, but it's better than nothing, and it's a lot better than nothing. You know, and that's the thing --

UNIDENTIFIED SPEAKER: A lot better.

CHAIRMAN THOMAS: -- is that I've lived in California my whole life. I've never seen fires like this. People were not prepared. But I think now public awareness is great. Employer awareness is great. I've never seen so many people wearing masks, even when there was no fire.

But people are really conscious and aware of it, and I think this is going to help a great deal, and then when we get into the regular rulemaking, we will -- and still, even then, I know some of you are going to complain. When it's all said and done, two years from now or whenever it is, we'll still hear complaints.

But that's all right. You know, everybody's doing what they think is the right thing, and I don't fault anybody in any of this. We're just trying to get
to something that is as close to perfect as we can, and it does take time. And that's it.

Any other comments from the Board?

Thank you. Thank you. We're going to move on to the public meeting.

Anyone who wishes to address the Board regarding matters pertaining to occupational safety and health is invited to comment; however, the Board does not entertain comments regarding various decisions. The Board's various hearings are administrative hearings where procedural due process rights are carefully preserved; therefore, will not grant requests to address the Board on various matters.

Is there anyone who would like to comment on any matters concerning occupational safety and health? If you would, please step to the podium and state your name and affiliation for the record.

MR. WICK: Chair Thomas, Board Members, Staff, Bruce Wick, CALPASC. I just want to make a couple of quick comments because it may be moving quickly. You know, we're kind of in this long-term thing where we're in the regulatory process about lowering the trigger height for residential fall protection.

The SRIA was issued end of last month, and it's sadly quite off. It said the net cost in 2020 would be
$190,000 across the state. The number is actually about $108,000,000. That's a lot of percentages off. I don't even know how many. But that's only part of the discussion. The real part of the discussion is I want to make sure, as we re-engage on this issue, this was driven mainly by one person at Federal OSHA who never was willing to sit down and talk with us, because we said we worked hard on our residential fall protection regulations here. The Feds still allow a fall protection plan, which is a piece of paper, not protection. And we specifically crafted our regulations so that no employer could claim they can use a fall protection plan. They talk about tieing off on framing construction for first story or one story. There's nothing to tie off to that will effectively protect an employee. So how do people get around it at the federal level? They use fall protection plans, and they do work off of ladders. Ladders are intended to get you from one level to another. They're not intended to be a work platform. But people say, "Well, I'll just do work off of a ladder, and then the fall protection regs won't apply to me." And those are all, we think, wrong. That's why we believe our fall protection regs
are better than the Fed's; and if we are going to go
down that road at all, I would really appreciate us
having the opportunity to talk with Federal OSHA about
the realities of the protection we afford versus what
they have said.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. MILLER: Hi, everybody. How are we doing?

Are you doing okay?

It's a stenographer, and they are trained for
220 words per minute, technically, in yes-no format, so
I applaud what you're doing today. I will try to keep
it under 220 words per minute.

Chairman Thomas and Board Members, thank you
for taking my comments. I'm here to comment today on
Petition 577 --

UNIDENTIFIED SPEAK: What is your name?

MR. MILLER: Oh, I'm sorry. I'll get to that.

-- and the need for an emergency regulation for
section 1630(a) and the construction safety orders.

My name is Brian Miller. I'm the Safety
Director for Rudolph and Sletten. I am also here
representing the Construction Employers Association,
CEA. CEA represents about 100 union contractors
throughout California.
Rudolph and Sletten ourselves has been in business for 58 years. We've been union since the day we opened our doors. Currently we are signatory with the Cement Masons, the Laborers, the Carpenters, and Operating Engineers Local 3.

So we support safety. Safety is never a goal at our company, it is a priority. I mean it's never a priority, it's never a goal. It is a core value with our company. The day Ken Sletten joined the firm, he pronounced it that you cannot do construction without being safe, so keep that in mind.

Petition 577 is asking for an emergency amendment to section A of 1630 to clarify the need for a personal hoist when a building or structure that's going to have a construction personnel elevator at 60 feet to require it at 36 feet.

We're not opposed to the language being changed. What we are opposed to is the need for this to be an emergency. We do not believe this rose to the level of emergency between May 31st, when the DAR was announced, and June 7th, when the petition was filed.

We also don't believe that the petitioners have really given substantial evidence to prove the need for an emergency rulemaking session for this section. We would like to stick with a regular rulemaking procedure.
We understand -- so the petitioners understand -- that the form 9 was filed and has been accepted. We're just waiting to hear for a date that will have our Advisory Committees and we can go through the rulemaking process.

There are several sections in 1630 that need work; and as we sat with the impact group about a month ago during our safety council meeting, we all committed to meeting and going over those standards and making that standard as clear as we can make it.

We all agree that that standard did have room for interpretation, which as of the DAR's decision the 31st of May went one way, you know previously it had gone a different way, and now it's gone the other way.

We'd like to get to that advisory committee so we can make that clear, concise language, so the GCs who are installing CPEs and uses the CPEs all know when they can get installed, what elevation they have to be installed, what elevations they have to stop, and when we can then take the temporary CPE out after the construction progresses.

Thank you for your time, and there's my comments.

CHAIRMAN THOMAS: Thank you.

MS. SAMIEC: Good afternoon. My name is Ryan Samiec. I'm a Program manager, Safety and Health
for the Associated General Contractors of California.

I'm here today to speak to you about Petition 577.

AGC of California is a member-driven organization consisting of large and small construction firms and industry-related companies committed to principle, skill, integrity, and responsibility. AGC represents hundreds of contractors, tens of thousands of employees, and tens of million union man hours in California.

The safety of the workers employed by our member companies and every person in the construction industry is the driving force behind our commitment to actively pursue -- I'm sorry -- actively pursue regulations that are compliable for everyone around.

After careful review of Petition 577, AGC respectfully recommends that the Board deny this petition. This request is currently being addressed in form 9 discussions. As the advisory committee is actively engaged in reviewing the policies referenced here by allowing all of the parties to be represented and work together through the advisory process, industry can create a policy that is of the highest safety standard with assurance that companies and employers are able to fully comply with the regulation.

The member companies within AGC of California's
Safety and Health Council would appreciate the opportunity to engage in public discussion with the Advisory Committee and the Board around the expanded use of CPEs. With the Board's denial of this petition, the decision not to implement an emergency ruling, we're confident a stronger solution will be reached.

We appreciate the opportunity to engage further in this issue and thank you for your time and consideration of AGC's opposition.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. McCRARY: Good afternoon. My name is Russell McCrary, and I'm the Safety Director for the California Ironworkers Employers Council for the District Council of Ironworkers.

And I'd like to thank the Board and the Staff and the Division for taking my comments. And I'm actually pretty impressed that we put in a petition, and we're here talking about it just a few days later, so --

And I know this CPH issue has been a problem for years, and I've been on both ends of it where -- when you only had -- have it up and running at 60 feet, you dealt with it. And if somebody got hurt, you used the crane, you walked them down the stairs, or you did whatever you had to do to get them down.
But when it changed to 36 feet, hey, it got better. There's no way around it that it isn't the better way of going. If somebody needs to get to the CPH, and you've got to do CPR on them -- which we've had to do twice since I was a superintendent -- and that's what saved their life: Be able to do it, get them to the manlift, and get them down to the ground. They wouldn't have made it if you had to lower them down some ladders somehow or some stairs. And taking a gurney and people downstairs isn't an easy thing to do.

So the first responders, and unfortunately, if everybody's seeing what they have to carry up to get to somebody, not only to get that person back down. So that's the biggest thing, is the emergency side of it is getting somebody down if somebody is hurt.

And also the emergencies that have been saved by having the CPH up and running at 36 feet. Before that -- and we were up on top, so we were always looking down -- people were sticking stuff into the sides of the building because there wasn't a CPH to put equipment or personnel in to get them up on the floors to go to work. And once that started that way, a lot of problems disappeared. People could put what they needed in the CPHs and got them up on the floors that they had to use to go to work. So I'm saying it kept emergencies
from happening, where people didn't get hurt trying to
get whatever they needed to have up on the floor to work
with.

So worked on both ends of it. 36 feet is just
better. It's better for everybody, just not for
ironworkers. You hear a lot from ironworkers today, but
all the other trades that are behind us. They benefit
it from it too. It's not just us. So --

And on some projects -- and I got to say that
timeline between up and running at 36 feet to 60 feet
might only be a couple weeks, depending on how you build
the building. But on some projects it might be a month
or more. And we don't need to not have a CPH for a
month or more on a job because of some height that
doesn't work. 36 feet works, and it always has.

When it first started -- and it's been a fight
for over 15 years to get that going and get it in
people's heads. And to go backwards -- it's going
backwards. I haven't been able to tell one person out
there, who this is all for, why it's changed back to 60
feet.

And "Why are we making it worse for me? What's
a DAR? What's a" -- "What's a law judge have to do with
me having to carry something up a ladder, some stairs,
or do whatever now," because, you know, they just don't
understand.

So the emergency, the biggest one almost, is what the people think of why we're not taking care of them now that we've decided to change it. And they blame us. I don't know what to say to them, you know, of why it did change. And you just tell them, and then you go on.

So it's a big deal. It is an emergency. And we need to get it back to 36 feet. And the language, to me, it's pretty simple. Just change it. Make it to where we don't have to go to court over and over again or have somebody come out and go, "Oh. We don't agree with this clarification letter. We don't agree with this DAR."

Let's just clear -- let's get it fixed. An emergency; let's get it done in a week or two weeks, not two years from now, where I'm going to say people are going to get hurt and maybe die because there's no way of getting them off the building.

Yeah, you've got cranes sometimes, and you've got the fire department shows up, and there are ways of getting people down. But why not do it the easy way? And having the CPH up and running is a smart way of doing work anyway. There's just no way around it.

So, yep, there's no winners if don't install
the CPH at 36 feet. It's been working. We've been
fighting for it for over 15 years now. So let's get it
back to where it makes sense, to us and the people who
it's for.

And that's it. Anybody have any questions?
Thank you.

CHAIRMAN THOMAS: Thank you very much.
MR. McCLELLAND: Good afternoon,
Chairman Thomas and the Board Staff.

Gosh, let me get my eyeballs on. Wow, it is
already the afternoon. My name is Greg McClelland. I'm
the Executive Director at the Western Steel Council.
I'm one of the originators of the petition, myself and
president Zampa, who you will hear from later.

You know, we filed this petition not as a way
to cut out any of our partners or general contractors or
any of the folks that we work with in the field. It was
based on an immediate outcry from the folks that we
represent and the danger that they felt they had been
placed in by this decision, this DAR.

You know, the Western Steel Council and
President Zampa represent over 20 million man hours just
in our craft alone. We're one of a dozen trades that
rely on the access and egress of the building with this
standard that we've lived with for many years. As you
heard from Mr. McCrary, it works. It has worked. It's confusing it and it has caused significant disruption.

We're here today with Labor, with Building Trades, Management. We know that there's been several controlling contractors submitted letters of support, have reached out to us to ask you to consider our request.

Quite simply, the recent decision to delay the installation of a construction personnel hoist -- a CPH, CPE, whatever you would like to call it -- puts our employees in harm's way, period. It's been a longstanding practice, an enforcement of the hoists being installed at 36 feet whenever the building is going to be over 60 feet or greater in height.

The first responders have been referenced. If you've ever seen an individual with a grave injury be placed in a Stokes litter and then brought down a stairs gaffle or by ladders or by ropes, it's a sobering experience. I don't recommend it.

The last several decades, the practice of our CPHs being installed at 36 feet have definitely saved lives. They've made a more efficient job. They've made it a faster, cleaner job. We support and we appreciate the Division's form 9. That was not the reason for this petition.
We have met with our partners, our controlling contractors, and there is an agreement that there is some cleanup that needs to be done. That's different than what we're talking about today. We're not trying the cut anyone out of the equation or the discussion here.

However, in speaking with Board staff, we would support an expedited rulemaking with the assurances of the presented timelines. Construction is not going to stop. The hazard isn't going to go away. But we support the fastest way possible to rectify and reinstate the previous practice of the CPH trigger height requirements.

Each day we work in a current state of disruption; we put our men and women in the trades at risk. I appreciate your attention, and I'd be glad to answer any questions.

Thank you.

CHAIRMAN THOMAS: Thank you very much.

MR. ZAMPA: Good afternoon. Chairman Thomas, Ladies and Gentlemen of the Board Staff. Thank you very much for your time. Appreciate the opportunity to speak with you today. I appreciate the time that you spend looking out for the lives of working people in California. That's exactly why I'm here. I sincerely
believe that this concern is an emergency.

As some of my coworkers, my management coworkers, our safety expert has stated time and again of we've seen what happens when we don't have access to a CPH manlift, in my terminology, all my 40 years of ironwork.

UNIDENTIFIED SPEAKER: What is your name?

MR. ZAMPA: Oh, I apologize. I'm Don Zampa.

I'm President of the District Council of Ironworkers, State of California vicinity. Got a little carried away there.

CHAIRMAN THOMAS: Thanks, Dottie.

I would have said something. I know you, so I didn't.

MR. ZAMPA: I apologize.

So as Russ McCrary was articulating, when we don't have a CPH, not only moving the men and women up the building, but also all the materials as well. And when that doesn't exist, that means people are on the side of the building, oftentimes got to drop the perimeter cables to hoist in conduit, plumbing, rebar, mesh, everything -- anything and everything that goes into the building. So it creates additional hazards and dangers.

So, as I said, I represent ironworkers
specifically, personally, about 20,000 in the State of California. As Greg mentioned, we're talking over 20 million man-hours just in our craft alone.

But we also have spoken to and received the support of firefighters, SMACNA, the Sheet Metal Employers Association, and numerous others you should have received letters from.

So, in addition to the trade, I personally represent and I'm speaking on behalf of many tradesmen and women that are up on those buildings working above 36 feet, 60 feet, maybe over a thousand feet. I worked on a build over a thousand feet in Las Vegas, the Stratosphere. It had a manlift. Had no problem.

Over the last few years, we have met with staff from DOSH a number of times relative to challenges that we've seen. And numerous times, easily a half a dozen times, we've run across contractors that said, "It can't be done. We can't do this. We can't put the manlift in here."

And not yet, not once have they proven that they couldn't. It was difficult. Might have been more expensive. Might have taken more time, but it was possible every single time. I'm not saying it will never -- we will never find an incident where you couldn't, but that's what we face every day.
We had an employers association speak earlier that wants to engage in discussions. I want to too. I want to engage in a discussion where he's representing a contractor that's up above 60 feet and still doesn't have a manlift on it and doesn't even have the permit listed. When our representative visited the jobsite, they asked for the permit. They said, "Well, we can't find it."

When DOSH went out the following day -- thank you very much -- they found their permit, and they got the manlift -- they stopped work until they got the manlift up. That's the correct way. It shouldn't take our representatives and DOSH's representatives to do that.

I want to mention that I'm in agreement with Chief -- Deputy Chief Bird's language right here. It's short and simple. Cal/OSHA agrees with the petitioner that access to a structure via CPE should be required when the height or depth of the structure initially reaches 36 feet for any structure whose final height will be 60 feet or greater or whose final depth will be 48 feet or greater. Short, simple. I greatly appreciate it.

I came down here to speak specifically about emergency ruling, but after talking to staff and my
coworkers and labor management, we are -- I will
support, hesitantly concerned, the expedited process,
and I look forward to working with you.

Thank you very much.

CHAIRMAN THOMAS: Thank you.

MR. WICK: Bruce Wick, CALPASC. I just want to
support Western Steel Council, the ironworkers. And
you're going to hear from Jeremy, I think in a moment.

This situation I believe absolutely qualifies
as an emergency problem. Rescue operations are huge on
construction sites. Lives are in the balance. So
absolutely this qualifies for an expedited process to
get this very focused issue resolved as fast as
possible.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. SMITH: Chairman Thomas, Members of the
Board, Staff, Jeremy Smith here again on behalf of the
State Building Construction Trades Council.

I'm glad I let Bruce go ahead of me because he
put a very fine point on it. This is a very vital
health and safety issue. And the reason OAL probably
wouldn't view this as an emergency is because,
thankfully, there are no dead construction workers
because of this issue. But, make no mistake, that could
definitely, definitely happen.

My boss, Robbie Hunter, the president of the State Building and Trades, an ironworker, told me a few stories last week about workers having to be lowered off of a building via crane because there was no hoist attached to the building, or a worker falling down, bleeding from his ears, having to be put onto a gurney head first down the stair cases, probably causing further jury to that worker.

So we believe this is an emergency. We believe that having an emergency regulation in place while the staff does the regulation -- permanent regulation process is the best way to go. We agree with the Division's assessment of that, but we understand that we are up against OAL. And so we are, like Mr. Zampa, reluctantly supporting the process moving forward as outlined in the Board's response.

But we want to be very clear that the trigger height of when this goes into effect must be part of the language that comes from staff, the 36 feet requirement. The status quo as it is and out in the field now, we believe that needs to be included in any language that is proposed to be voted by you all.

We want to thank the Division. I should have done this in the beginning. Thank the Division Staff
and the Board Staff for the quick turnaround on this. We were very pleased to have this on this month's agenda. We know that took a lot of work, a lot of effort, so we appreciate that. We thank you for that. And moving forward, I just want to reiterate that we believe that any language that comes out of this discussion needs to mirror as much as possible the language that was in the joint petition by the Western Steel Council and the District Council of ironworkers. The 36-foot trigger height is vital to ensure that these are put on buildings when they should be as early as possible so the worker health and safety does not suffer because of a lack of a hoist.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. BLAND: Hello. Good afternoon, Chairman Thomas --

CHAIRMAN THOMAS: Good afternoon.

MR. BLAND: -- Board Members, Board Staff, Division Staff. I'm still Kevin Bland. I represent this time Western Steel Council as well as the Residential Contractors Association and the California Framing Contractors Association.

I won't reiterate everything that's been said thus far, other than that we feel that this is a very
important petition. We're talking about the petition, the joint petition between the Ironworkers and Western Steel Council. So everyone -- well, not everyone -- may know I was an ironworker for many years before I got a lazy job being an attorney.

But the manlift -- I always called it a manlift, now the CPH, so they have different words for it -- was always a vital part of the structure. The sooner you got it in, the safer it was, the better it was. The clarity that we need from this rulemaking and the expediency we need from this rulemaking is vital.

I do want to put on the record that we appreciate the timeliness and the Division's efforts and the Board staff's effort. But, you know, we started out wanting an emergency regulation, and we have moved to the expedited -- that's a new term of art we've created here for this -- the expedited regular rulemaking proposal that was on the table.

And I just want to make sure that the assurances and the discussions and the promises regarding that timeline are held because we're relying on that. The Management's relying on that, Industry's relying on that, the Union's relying on that, the Division's relying on that. And so there's a lot of weight on the shoulders because I've been down this
road. I think you used some examples: Seven years, ten years on things.

We're looking at seven months, so we're going to have to really blow and go and get through this. But I also think that if we keep that simple as to what the goal is of this particular petition, we can do that. I also want to -- well, while I'm up here -- support moving forward on the other petition dealing with the same subject matter but different issues. There's broader issues that need to be handled, but that's not for the emergency, but support 574 moving forward as well.

So with that being said, I thank you. And I don't know if there's anybody else to speak on this topic. If there is, I'll come back up. I've got one more topic today.

CHAIRMAN THOMAS: You can speak on as many as you want.

MR. BLAND: You don't want me to really do that.

CHAIRMAN THOMAS: I'm just being nice.

MR. BLAND: I've just got to consult with Elizabeth Taylor again.

MR. TATE: Good afternoon, Mr. Chairman, Members of the Board, Staff. My name is Greg Tate. I'm
Regional H&S Manager with Swinerton here in California. We're also active members of the CEA with Mr. Miller from R&S And AGC.

A couple of items that I'd like to point out, and CEA submitted a letter to you all discussing this petition and noted that there was a lack of substantial evidence justifying an emergency. They commented that, basically, "We're looking at speculation." Comments in the petition that talked about -- sorry. I've got my notes here -- "widespread confusion and disruption in the industry."

I'm on jobsites. I'm on high-rises in San Francisco and throughout the state. I've yet to see any confusion or disruption to our operations. As general contractors, we want the CPH in as soon as we can possibly get it in. They've made comment earlier that it's good business. It is good business. It makes the job safer. There are practical challenges of getting in at 36 feet. There always have been.

Comments earlier saying that 36 feet works. It doesn't necessarily work, and there are significant challenges to make sure we get in at that height. Okay? We are also VPPC contractors. We've been partners with the Division since the program began. We continue to partner with the Division, and we plan on doing so in
the near future also.

But an expedient Advisory Committee process we think is much more appropriate to address these issues. Because we agree, 1630 is challenging. There's lots of things in there that we would like to see adjusted. We agree, there's a lot of confusion. An Advisory Committee process we think is the most appropriate there.

The other part I hear with the petition, we notice, that there seem to be lacking facts throughout the entire petition. So I went ahead and I pulled some facts from not only ourselves but some of our competitors who are in the room here today, including Rudolph and Sletten, Webcor, and McCarthy Builders.

Between the four of us -- we looked at this -- and, in total, we've been in business in California for over 300 years, when you combine all of our experience. We currently employ, as of yesterday, almost 3,500 craft workers, at our company. This doesn't include all of our subcontractors.

In 2017, between our four firms, four of the largest contractors in the State of California, we put in over nearly 8 billion dollars' worth of work in the state. And when you combine our EMR's, which we don't usually do, but when you combine our EMR's, we're at
Swinerton alone has a safety department of nearly 50 credentialed safety professionals dedicating our lives and our profession to making sure that all the workers on our sites go home. Every worker on the jobsite are members of different unions, but they're our family. We work with them every single day. That's why we can stand with our competitors. When it comes to safety, we're all one. We're one team.

And that's critical to make sure that everybody goes home to their families at the end of the day. That's what we're doing. We're on the frontlines. We're on our jobs every day with all of the different tradespeople. We want to see them go home. But we want to make sure that there's regulations that actually make sense, that are practical, and we can actually comply with them.

So, again, we request that this Board denies the petition and allows us to move forward with the Advisory Committee so that we can come up with a regulation that actually does make sense and is capable of being put into place.

In the event that you do approve the petition, in the petition they've made the comment that: "We want to preserve the status quo." In our experience -- and
I've checked with CEA representatives, about 115 general contractors throughout the State of California -- those who I have spoken with, those who I have talked to, nobody is changing our standard operating procedure. Nobody is changing it. It goes back to the lack of confusion in the industry.

I've also asked those -- some of us do quite a bit of work in large excavations in the big cities. One recently would get down as low as 67 feet. The question I asked was: "Have we ever been required to have it end at 36 feet?"

The Division has always held that 48 is trigger, and we can get it in now. It's hard to put a manlift or a CPH in when you're digging because it has to have something to land on. Not impossible, but it's very challenging.

And then we get that pad in there at 48 feet, and we continue to dig beneath it. There's significant challenges to making that happen. 36 feet going down has never been the status quo. So if you do approve it, we at least would like to have that stricken, so we can go through the Advisory Committee and try and fix the rest of it.

Thank you very much.

CHAIRMAN THOMAS: Thank you.
MR. SHADIX: Good afternoon, Chairman Thomas, Members of Board. Tim Shadix, again, with Worksafe. We agree with the Ironworkers and the Western Steel Council that there needs to be a fix to the CPH issue and a fix that is timely. Makes the most sense to make sure that workers are protected before there are any incidents of harm.

We appreciate the Division's analysis that an emergency rulemaking would have been appropriate. We're not opposed to the idea of an expedited rulemaking, but we're not aware of any real statutory requirements or definitions around that term, so we might just ask if there could be some kind of discussion on the record just to clarify exactly what that means, what the precedent is for that, and any -- what the assurances are that that process will follow the timeline that is being proposed to be shorter than an emergency rulemaking process.

Thank you.

CHAIRMAN THOMAS: Thank you.

MS. VERT: Good afternoon. My name is Verta, and I'm here on behalf of Workers of the Adult Film Industry. Primarily, I would like to apologize for being so emotionally reactive at last month's meeting. The feedback that I have received from
performers has been very positive, but a lot of them are afraid of retaliation if they come before the Board.

There is a performer here with me who is going to address the Board.

I would like to thank Eric Berg for his diligence in evaluating the petition. I know that there is a lot there to investigate. And I would like to thank the Board for being so patient with me. And, also, good luck with the emergency wildfire regulations.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. ALEX: Good afternoon. My name is Alex. I am, like she said, an adult performer or commonly known as a porn star. We get paid to have sex for money. And what she is petitioning for is an outline to protect those of us who have sex for money.

Now, it's typically a very unspoken network and side of culture, this sort of aspect of legalized, escorting prostitution. And it's something that I think it's certain that we can all agree isn't going to go away any time soon.

And in as much, I think it's amusing to listen to all this talk about wildfires, when we have all grown up in a state that's had wildfires every year, and all of a sudden now it's such a great time to do something
about it. So in the same vein, this is something that we know has been going on for a long time.

We've raised our children expecting them to be safe when they go out into the world, and we provide them with all sorts of precautionary pamphlets for now panicked events in schools, panicked events in workplaces with gunmen. We train them for wildfires.

And we laugh at sexual education, and we think that they are not going to go out into the world and do what everybody else has been doing age after age, which is selling their body as much as they have been selling their mind.

So all this is looking for is safety. That's it. That's all you guys are here for. That's all these people are coming here for is the safety of others. So I'm talking about safety of children that go from the age of 17 to 18, jump into a workforce filled with men who do not care about them, filled with women solely rising to the top in the same industry adjacent to the MeToo Movement, where there is a lot of bullshit that just isn't going to play anymore. So I think that it's about time for something.

There are a lot of aspects to what she is proposing that the adult performers aren't going to be happy with, that the directors that the people
controlling money aren't going to be happy with. And there's even more about it that they're going to laugh at. I laugh at it. I think it's really funny.

Because a lot of things that you could even potentially propose for us to do on set we're just not going to do, and that's an aspect that a lot of people have mentioned requires oversight. There has to be somewhere -- someone there making sure that these safety precautions are being upheld. And that's laughable in regards to the situation we're talking about. You cannot police generations of people filming themselves in private acts. It's silly.

But when you get into aspect of the businesses that go beyond hiring these people, then you get into the aspects of a Labor Board. These are businesses and companies that hire people, and they should be held to a higher standards.

Thank you.

CHAIRMAN THOMAS: Thank you.

MS. VLAMING: Good afternoon. I'm Paula Vlaming. I represent the Construction Elevator Contractors Association, which is in support of the petition that was filed, 577. So I wanted the Board to know that the contractors do support that petition and the Board's decision in terms of going forward in an
I'm also here to speak on behalf of SICA for Petition 574. So is this the appropriate time to do that?

CHAIRMAN THOMAS: Go ahead.

MS. VLAMING: Very good. So Chairman of the Board and Staff and Division, I appreciate the time that went into reviewing our petition. Your request for additional information from us was helpful. I've taken the time to review both the staff evaluation and the Division evaluation.

I just wanted to go through some of those points because I know that time went into you coming up with those evaluations and recommendations to deny the petition, and I'd like the opportunity to just address some of those concerns and, hopefully, have you see that the changes don't create some of concerns that were raised in the evaluations.

So the first -- in the staff evaluation, the concern was that the manufacturer specifications would vary and create ambiguity. It wouldn't create clarity by which inspections could take place. But, in fact, the subsection 3 uses manufacturer specifications as the exact measure by which you're measuring the times for CPHs to be anchored.
So while I understand that manufacturer specifications may seem vague and may create ambiguity on each jobsite, it's already a standard that's being used, according to 1604.583. And that's the reason why we included that language in our petition, which I understand created some confusion as well.

There's -- one of the concerns is that section 2 and section 3 are in conflict and that they actually talk about different apparatuses being used; one being an anchor and one being a tie-in. We recognize that; that subsection (a) is -- (a)(2) is talking about anchors, and (a)(3) is talking about tie-ins.

The reason we used both of those in our petition is to demonstrate that the regulations already refer to the use of manufacturer specifications as a measuring tool and use as it refers to tie-ins. So you already have measures in place to do the inspections upon that requirement, and we're just asking that that be used for the anchoring intervals as well.

One of the other concerns was that the 30-foot interval has been in place for a long time. And I'd like to point out, as you know, the standard that is in place right now was based on the industry standards at the time, ANSI and ASSE.

It does not comply exactly with the federal
regulations, but it's going with the industry consensus standards. That standard has changed. That's why we have requested that Cal/OSHA change the regulation to include language that is consistent with the industry standards, and that's what California regulation had done in the past.

In 2016, ANSI changed the recommendation to say manufacturer specifications, rather than 30-feet intervals. And so we're just requesting that you update, as California has been progressive and consistent in using the expertise of the industry standards to go ahead and make that change here as well. That, really, was the main impetus behind the petition.

The other issue was that there was some confusion in the field as to using the industry standard for the tie-ins versus the 30-foot standard for the anchoring. So that created some confusion in the field. This would make both standards the same.

You'd be measuring the anchors by manufacturer specs and the tie-ins by manufacturer specs. So it actually would create more clarity. You're going to have to have the manufacturer specs there anyway. That's what they're using in the field. So we're just asking that you use them for the anchoring intervals as well.
So that kind of goes to the ease of use and how
the regulation is implemented. In terms of safety,
which is the primary concern here -- and we have an
engineer who will be speaking to this more specifically
because he understands the ins and outs of the many
calculations -- he's actually a calculation engineer --
that go into how they determine what the manufacturer
specifications are.

And the problem with the 30-foot interval is it
only takes one factor into control -- or into effect.
And, really, what we're looking at is many factors.
He'll explain the buckling. He'll explain external
factors, such as wind. He'll explain the load factors
and how that creates additional things that they need to
take into consideration.

So by saying 30 feet, it seems simple and
straightforward. You put up a measuring tape, and
you're done, but it's not really the safest thing in the
field. These pieces of equipment are essential, as
we've heard from the prior petition, but they're also
very complicated and requires complicated engineering,
and the engineer will be able to demonstrate that to
you.

So saying 30 feet might seem simple and it
might seem safe, but he'll actually explain to you that
shorter distances can, in some instances, create more danger because there's more torque, depending on what material you're using, what you're attaching to, and what you're putting in the hoist.

So by using the manufacturer specifications, you're using a standard that is specific to that piece of equipment at that time, and it's probably going to be the best standard that we can use in the field to ensure that these devices are attached securely to the building that they're being used for.

And that is -- the industry standard has gone that way as well. Rather than using a rote number, they've decided, "Let's go with the manufacturer's specifications." We're just asking that the California Board continue in aligning themselves with themselves that industry standard.

One of the other issues is that the 30-foot standard does not align with the federal standard -- or that the new standard would not align with the federal standard. Well, the federal standard is 25 feet.

So California already has been a leader in creating what they believe is the safest and most effective standard, and that has been following the ANSI standards. That's what the 30-foot standard was based on. It's now evolved to be manufacturer specs. We're
just asking that you continue and go with manufacturer specs. You're not consistent right now with the Feds and you're not consistent with the industry standard.

So rather than being a standalone outlier, the recommendation is to go with the manufacturer specifications. And that would give the security of the manufacturer, when they're putting something in the field, knowing that it's going to be used in the way that they've designed the calculations for it to be used.

According to the engineer and the people who use these in the field, they're going to the specifications that are given to them by the manufacturers no matter what. They don't want these things to fail. So by requiring some outlier 30-foot standard is requiring something that they're not designed to do.

So we're creating and imposing a restriction that isn't considered in the calculations of the equipment when it's being designed. And as I said, the standard that you already are using for the tie-ins requires that you use the manufacturer specifications.

So any concerns about being able to use that as a standard, it not being practical, not being on the jobsite, I think can be allayed by the fact that that is
already being used, and we're just asking that it be now applied to the anchorage intervals.

Any questions? If not, I was going to introduce Dennis Johansson, who is the calculation engineer. He flew in from Sweden to speak a little bit more specifically about the actual safety implications of the calculations that are made and how the manufacturer specifications are used.

CHAIRMAN THOMAS: Thank you.

Before I have you speak, we have some flights that we're going to have to change. So we're going to take a small break, a five-minute break, and then you can speak after that. Okay?


CHAIRMAN THOMAS: Okay. Thank you very much.

MR. JOHANSSON: Thank you.

CHAIRMAN THOMAS: We're going to take a five-minute break. Thank you.

(RECESS.)

CHAIRMAN THOMAS: Take your seats, please.

Thank you. We will come back to order, and we will proceed with the comments.

So you may proceed.

MR. JOHANSSON: Yes.

CHAIRMAN THOMAS: Can you introduce yourself
MR. JOHANSSON: Yeah. My name is Dennis Johansson. I'm from Alimak in Sweden. So I'm the Calculation Engineer in the R&D Department at that company. We're manufacturing construction homes.

And from our point of view, the 30-feet regulation does not improve the work safety. There's quite a lot of different reasons. I'll try to explain them.

One thing is that you only have a 30-feet rule, which doesn't really take into account anything of the -- how the mast actually is built up. A more slender mast -- for instance, we have two different product range, one 650 and one 450, where the 650 has a dimension of 650 millimeters, and the smaller one has 450 millimeters in the width of the mast.

And this will highly influence the tie distance you should have. And just having a 30-feet regulation doesn't really take into account all of the other aspects of that structure.

Second, the tie distance is actually a part of our product design. We are designing it to have a specific range for having the best performance. And there is, as I said before, not really possible to say that just shortening the tie distance will increase the
And it's because often when you shorten the tie distance, you will actually increase the forces onto the ties and into the walls. And this is often quite contradicting to what you would think happen. If you're thinking of a wind blowing on the mast, then it's better to have a lot of ties because it's pushing the whole mast towards the side.

But when you're actually having a hoist hanging onto the side, you're introducing a torque onto the mast. And by having longer distance between the ties, you're actually getting more lever, and hence, reducing the tie force. So reducing -- sometimes our recommendation is actually when a company is having trouble with high tie forces is to increase the tie distance. But if then you have a rule against it, it's going to be difficult to do that.

And, also, when you're decreasing the tie distance, you actually -- if you look at the ratio between the mast stiffness to the tie stiffness -- because this is a system that interacts with each other -- you also then increase that ratio, which actually increases the influence the tie has onto the system.

And with that shorter tie distance, you would
get a more conservative force most often, on the
conservative side for the forces into the tie, but the
buckling will be un-conservative. And buckling is -- I
don't know if all of you is familiar with what buckling
is. It's if you have a long, slender stick and you push
on top of it, it will hold the force, and then all of a
sudden just collapse. That is buckling.

And it's going to be -- there's a risk that
it's going to be un-conservative because the high tie
force might actually make the mast buckle over several
tie intervals, which then isn't maybe what it's
intended, if you're going below what's recommended.

And also, finally, I want to say that when we
are actually designing this kind of technical product,
we do so with a understanding that the product that we
have engineered and calculated and getting the specs for
will be followed when you're installing it. That's our
intention when we make it. So -- and that's how it's
working in most -- most other countries.

I've been doing calculations since I started at
Alimak in 2012 for multiple countries. I never come
across another place where you have a limitation on tie
distance. You can have recommendations on how to
perform calculations, but for United States, we always
follow the AISC, the structural -- steel structural
standards, so you make sure that you're making correct
buckling calculations and so on.

But just having a set limitation, I never come
across. And I made calculations for Middle East, China,
Australia, Europe. I made calculation for Israel, and
everybody is basically running with the manufacturer's
specs.

And, yeah, that's basically it. I think I
have -- if you have any questions, I am happy to answer
them.

CHAIRMAN THOMAS: Thank you very much. We
appreciate it.

MR. JOHANSSON: Okay.

MS. GADIENT: Good afternoon. Maureen Gadient,
and I am the Regional EHS Manager for Webcor Builders.
We're in San Francisco, and we do have a smaller
division but growing here in the L.A. region as well.

I kind of struggled with my notes here, if I
seem to, if I go by them, repeat what Brian Miller and
Greg Tate have already stated so well.

We are not opposed to having substantive,
meaningful, and collaborative conversations regarding
Petition 577, but we don't see anything that backs it
being an emergency.

It was -- I think was it Kevin that said --
stated, you know, one instance of a contractor that was
well over 60 feet without a lift.

MR. BLAND: For the record, that wasn't me.

MS. GADIENT: Okay. I'm sorry. I can't
remember. I didn't write it down who stated that, but I
find that to be the exception rather than the rule.

If we remove safety from this aspect
altogether, it makes perfect, good sense business-wise
to install these lifts as soon as we're physically able
to per the design of the building and able to get these
erected. Time is money. We're moving personnel. We're
moving materials as fast as possible.

So, again, I'm not seeing statistics that show
where this constitutes the emergency and would request
that it be dismissed on that, and rather, go through the
regular channels and process to have these conversations
and clarify how we want the language to be, which we've
already, you know, begun as a group of contractors.

Thank you.

CHAIRMAN THOMAS: Thank you.

Any other commenters?

Yes. Come on up.

MR. BLAND: Yeah.

UNIDENTIFIED SPEAKER: Are you still
Kevin Bland?
MR. BLAND: I am still Kevin Bland. I am still on the clock, representing California Framing Contractors Association and the Residential Contractors Association for this first segment, and I won't go sit down and come back for my next segment.

So the -- as everyone -- or not everyone here knows -- there's 1716.2, the financial analysis that was conducted that we heard Bruce Wick go through in detail. I joined Bruce on the letter. I did speak with the gentleman there. I won't reiterate all the inaccuracies that are in there. That's all laid in the letter, but I wanted to make sure it was clear that I agree with those inadequacies and inaccuracies, and I think it's very important those get addressed in that analysis.

I also want to give just a quick update on what's going on with the Residential Fall Protection Standard somewhat from a national basis, so to speak, because this all -- being we had a great regulation started back in 2001 discussions, Advisory Committee 1716.2.

Everything had been working smooth, and then the Feds came in under the previous administration and decided that what we had wasn't as good as what they had, for whatever reason, without going through the whole story.
Now we have a new administration in. We are talking and working with the Federal OSHA folks and the National Carpenters. I spent a whole day -- so two weeks ago -- touring their apprenticeship facility. I don't know if anyone has been there. It's the Las Vegas facility. It's millions of square feet, beautiful facility, training facility for the union carpenters.

I spent time with their train -- their folks, and they're in support of moving forward with trying to have a rule that's similar to what we have, if not identical to 1716.2.

So it's our hopes that the reins get pulled back a little bit of the pressure that's been given you guys to what I feel lessens our standard for the, quote, unquote, six-foot rule. Because, really, what the six-foot rule at the federal level is is a controlled-access zone license, and we got away from that 12 years ago. And I want to make sure that we don't end up going back there with our regulation and changes that the Feds have been -- had been pushing and pressuring us for.

So two points that come out of all that spiel:
One is the numbers aren't right, that we need to get that corrected as far as the cost analysis go.
Number two is we are going -- we are starting
to work on a meeting in July with some of the Federal
OSHA folks on the point with the union management and
trade contractors and builders across the country. The
meeting is going to be held at my office. So I know for
sure it's going to happen.

Then switching back now to Western Steel
Council, California Framing Contractors, and Residential
Contractors, I wanted to make sure I was clear on my
point regarding Petition 574. When I said I support
that, I support the petition, but not the outcome the
Division -- I mean the staff had come to. So my request
would be to oppose or deny the analysis and
recommendation of the staff and move forward with the
rulemaking on Petition 574. I don't know if I was clear
in my first comment about that.

We feel like that's important. It's all in the
same vein of what we were talking about all morning, and
I believe there's a form 9 somewhere out there too on
this very issue, and I think there's a lot of work that
needs to be done on that.

And just one last point: I can't help myself.
We have talked -- we heard some numbers in here of -- I
don't know -- 300 years of experience. Just between the
Ironworkers Employers that Don Zampa represents and the
Employers of Western Steel Council, if everybody is in
business for only one year, we have 640 years.

We know they've been in business longer than
that because we have 640 companies that we're
representing here. So there was a lot of time and
experience that went into our thought process for that
petition as well.

And with that, I'm hoping we're going to have
lunch pretty soon. Thank you.

CHAIRMAN THOMAS: Thank you.

Question: Were you speaking at the end about
577 or 574?

MR. BLAND: 577 would be --

CHAIRMAN THOMAS: Wait --

UNIDENTIFIED SPEAKER: 574.

MR. BLAND: Let me clarify: I spoke about
three different things.

UNIDENTIFIED SPEAKER: We understand that your
last comments were about 574.

MR. BLAND: The very last comment about how
many Western Steel Council has, that was about 577.
Okay?

UNIDENTIFIED SPEAKER: Oh. But 574 was for the
petition, but not --

MR. BLAND: I just tried to make things more
clear, and I just confused you. I apologize.
CHAIRMAN THOMAS: I think we got it.

MR. BLAND: In summation, 574, which is the one from the -- that the engineer was speaking of.

CHAIRMAN THOMAS: Right.

MR. BLAND: That one, deny what's been recommended and go to rulemaking. Ours, Western Steel Council, which is 577, I'm saying we need to go to the expedited rulemaking based on that timeline. That's my whole point to this whole conversation.

CHAIRMAN THOMAS: Thank you.

MR. BLAND: Yeah. And fill the numbers out they were giving you on the framing contractor stuff.

CHAIRMAN THOMAS: All right. Any other comments?

Thank you. We appreciate all the testimony given today, and this public meeting is adjourned, and the record is closed.

We will now proceed with the public hearing. During the hearing, we will consider proposed changes to the Occupational Safety and Health Standards that were noticed for review today, the Occupational Safety and Health Standards Board, about standards in our judgement will provide such freedom from danger as the nature of the employment reasonably permits and that are enforceable, reasonable, understandable, and contribute
directly to the safety and health of California employees.

The Board is interested in your testimony on the matter before us. Your recommendations are appreciated and will be considered before final decision is made.

If you have written comments, you may read them into the record, but it's not necessary to do so, as long as you submit them to Sarah Money, our Executive Assistant, who will ensure that they are included in the record. Ms. Money will also forward copies of your comments to each Board member, and I assure you that your comments will be given every consideration. Please include your name and address on any written materials that you submit.

I would also like to remind the audience that the public hearing is a forum for receiving comments on the proposed regulations, not to hold public debates. Though rebuttal comments may be appropriate to clarify a point, it's not appropriate to engage in arguments regarding each other's credibility.

If you would like to comment orally today, please come forward to the podium when I ask for public testimony, please state your name and affiliation, if any, and identify what portion of the regulation you
intend to address each time you speak. If you have a
business card, please present it to Ms. Money so we have
your correct name and contact information for the
record.

After all testimony has been received on the
record and the record is closed, I will prepare a
recommendation for the Board to consider for the future
business meeting.

We will turn to the first proposal schedule for
today's public hearing: Title 8, Construction Safety
Orders, subchapter 4, Article 15, "Cranes and Derricks
in Construction." Section 1618.1 and 1618.4, "Cranes
and Derricks in Construction, Operator Qualification."
This is a HORCHER matter.

Mr. Manieri, will you please brief the Board.

MR. MANIERI: Chairman Thomas, Board Members,
the Occupational Safety and Health Standards Board
intends to adopt the proposed rulemaking action pursuant
to the Labor Code, which mandates that the Board adopt
regulations at least as effective as federal regulations
addressing occupational safety and health issues.

The U.S. Department of Labor Occupational
Safety and Health Administration promulgated regulations
addressing qualifications for operators of cranes and
derricks in construction back on November 9th, 2018.
The Board is relying on the explanation of the provisions of the federal regulations in the Federal Register as the justification for the Board's proposed rulemaking action. We propose to adopt regulations which are the same as the federal regulations, except for a few editorial and format differences, which are non-substantive.

The proposed amendments include a new federal requirement for the evaluation of trainees and operators prior to operating any equipment covered by Article 15, cranes and derricks, which are the existing State requirements for training, are also proposed to be clarified by adding the term "operator in training" to assure consistency with the federal standards.

This proposal also introduces a new term. The term is "licensure," since operators employed by non-military government entities who only operate equipment within that entity may be licensed by that entity in accordance with specified criteria in lieu of being certified by an credited crane operator certifying entity.

Other issues addressed -- to be addressed in the proposal, but are not limited to, training and qualification of trainers, their demonstration of their skills, reevaluation of training and skill and
qualifications specific criteria for the evaluation to
meet and be deemed qualified to train.

As stated in a 2019 letter from Federal OSHA
Region 9, received recently, Region 9 to the Board, it's
stated that proposal was deemed, quite obviously, be
commensurate with the federal standards for these
issues. I think there's been at least one written
comment to that effect regarding the proposal.

Now, I want to bring out three points that are
very important. This is my own public -- or public
instruction to the Board members and to the public who
are attending the meeting today:

Per the so-called HORCHER process, comments
from the public on these types of rulemakings are
restricted to three areas, which you should all be aware
of: One, the effective date; two, why California should
deviate from the federal final rule due to unique
differences of something going on in California that is
not going on in the rest of the country; and, three,
additional issues that should be addressed in the future
related to this rulemaking proposal that are outside the
scope of the present proposal, but which stay close if
you wish for the Board and staff to address in the
future.

So keeping that in mind and the comment letter
that we did receive, the staff believes the proposal is ready for the Board's consideration and the public's comment.

CHAIRMAN THOMAS: Thank you, Mr. Manieri. At this time, we will accept public testimony.

MR. BADGER: Good afternoon.

CHAIRMAN THOMAS: Good afternoon.

MR. BADGER: My name is Chris Badger. I'm with the City of Santa Rosa. I'm in the Water Department with Santa Rosa. I hope I stay in the three things that you listed. I'm not sure.

Just stop me, if I'm getting out of that scope. But I do have a lot of concerns with this standard. As far as adopting a standard that's as effective as the federal standard, I think that should be pretty easy because there's a lot of confusion with this standard.

Throughout the industry, I'm a safety training coordinator; I've been doing that since '97 for the City Water Department. I train operators, commercial drivers, forklift operators. I used to train boom truck operators before the standard changed and they had to be certified. Backhoe operators, and I think I mentioned forklift drivers already.

So that's my background. And in reading this standard, there's been a lot of confusion. The first
confusion was, like, who does it even apply to? And when I look for interpretation of construction versus maintenance, I get letters from Federal OSHA, letters of interpretation.

And in those letters it states that if you have a system of telephone poles with a hundred poles, and you are going to replace one with the identical pole, that that is considered maintenance. However, if you replace that with a upgraded pole, that would be construction.

To me, that doesn't make sense. And the reason it doesn't make sense, you're replacing it with the same piece of equipment, and the same physical hazards are there. And one I have to be certified to do that job, the other I don't.

The new pole that's the upgraded pole may be lighter, it may be less hazardous to place; and yet, I would have to be certified to put that one in but not certified to put another one in.

So there's a lot of confusion throughout our industry what's construction, what's maintenance. We maintain a city -- a potable water system, we maintain a sewer collection system, and we maintain a treatment plant.

That's what we do, we maintain. All of our
supervisors feel that we do maintenance work, but under these interpretation letters it looks like we're -- some of the stuff we're doing is construction work. And there's just that argument back and forth. What's construction? What's maintenance?

So I know from talking with other people in the industry -- even that are here today -- there is a lot of confusion over that, and I think that that makes the standard fairly ineffective, because some people are just going to say, "We're maintenance. We're not going to" -- "We don't have to do that. We don't have to certify our operators."

When I look at what drove this standard for the Federal OSHA, it's based on two crane studies, one done by Cal/OSHA in '97 to '99 on crane accidents, and one in 2006 from the Bureau of Labor Statistics. All of those studies, most of the accidents that occurred, were done -- the accidents, they were using mobile cranes.

Mobile cranes can lift up to -- you know, the heaviest ones -- can lift up to 700 tons. I was surprised to read that in doing this research. I didn't even know they made equipment with that capability.

What we typically use and what I'd really like to address today are service truck cranes. Service truck cranes are generally rated from 2,000 pounds to
6,000 pounds. They're used in maintenance a lot. But in these definitions, it looks like they're used in construction too.

Now, these vehicles, none of them are mentioned, you know, in those two crane studies. They don't say the size of the crane involved in any of the accidents. They don't give lifting capacities. They don't give boom lengths. None of them mention service truck cranes. They mention mobile cranes being involved in most of the accidents.

So, in looking at this -- and I'm looking at how do I safely train our employees to operate these cranes? Which we've been doing for years. You know, I have been with the City 37 years. We have never had an injury accident in using a service truck crane. Not once. And we use them every day.

So, in looking at this, you know, other things that I think are difficult for us to comply with, with the bigger cranes, bigger mobile cranes, you need a big platform for that truck to operate. A lot of times it's not the capability of the crane itself. It's what it's sitting on. Can it take that load?

And those bigger trucks require commercial driver's license. Commercial driver's license requires random drug testing and a physical every two years. So
that meets the regulation for a mobile -- for this crane operator training.

It's easy for us. When we had to start training and certifying our boom truck operators, we didn't have to put them in a random drug testing. They were already in it. We didn't have to do extra physicals. They were already in it.

But there's a lot of smaller agencies, smaller towns that don't have commercial drivers, but they do have service truck cranes. They'll have to implement a random drug testing program and have to do these every two-year physicals.

And that's going to require going to their union reps and negotiating for that because because now what the employee does on the outside affects what they -- their life at work. And one issue right now, legalization of marijuana. Well, it's not legal to be a commercial driver and do marijuana. What about mobile cranes? After work how do you deal with that?

So a lot of challenges there. Another place were it's confusing: You mentioned that a government -- a non military government agency can license the operators. In all the reading that I did, when the federal standard came out, that, to me, in reading their interpretation, apparently there's other states where
there's counties, cities, and the state itself that may require a specialized crane operator license, the same way you have to have a driver's license given by a government agency like the DMV.

So are we talking that kind of government agency? Are we talking -- I'm the City of Santa Rosa. I'm a government agency. Cal Trans is a state -- they're a government agency. Can they license their operators? We're not even sure if we can do that. So we don't know what they mean by a non military government agency. It's just not clear. We would like to do that.

What I think would be more effective than this entered as is, is when it comes to service truck cranes -- which I said are generally -- typically, they're 2,000 to 6,000 pounds, smaller booms. The reason they're 6,000 pounds, because electric motors can't lift more than 6,000 pounds. You've got to have the hydraulics to lift more than 6,000 pounds.

For those cranes, if we had a standard that modeled -- was modeled after 3668, the Powered Industrial Truck Training, where it specifies truck-related topics we have to address and workplace-related topics for these service truck cranes, that would be more effective and easier for us to
implement than the standard as is.

And I would propose that the Board consider doing that. That would allow us to train in-house. That would save us certification test fees, and people would do it.

There's a lot of people I've talked to, and they're, like, "No. We're not doing that. It's maintenance work, and we're not doing it."

And they're wrong if they read the definition.

So I would just really like the Board to consider another standard for -- specifically for service truck crane operators that is modeled after that 3668.

Thank you.

CHAIRMAN THOMAS: Thank you.

MR. THOMPSON: Chairman Thomas, Members of the Board, I'm Richard Thompson. I'm with the National Commission for the Certification of Crane Operators.

We'll call it CCO, because I know the other is too long.

With regard to proposed state standard 1618.1, NCCO or CCO supports proposed paragraph 1618.1(a) with regards to training -- or excuse me -- certification and evaluation. However, CCO recommends the sentence be modified to read, "The employer shall insure that each operator is qualified by virtue of being trained, certified/licensed, and evaluated in accordance with
"CCO believes that since the standard makes numerous references to and throughout to qualification and qualified that this is an important term to set at the" -- "make at the outset." Stop. Okay.

Okay. "CCO supports proposed paragraph 1618.1(b)(4)(3) that requires training" -- "trainers to have knowledge, training, and experience necessary to direct an operator in training on the equipment in use and provides a valid certificate of competency for the type of crane operated by the trainee."

Okay. "CCO also realizes that proposed paragraph 1618.1(d)(1)(a) includes requirements for operators to be certified for type or type and capacity of equipment or higher capacity equipment of that type."

CCO recommends that this language be substituted with the phrase "that type of equipment," thereby deleting references to type and capacity. That was a struggle that Fed OSHA had with regards to the federal regulation regarding type and capacity, and it becomes a little bit of an issue for certifying entities, where certifying by type alone really clears up the issue. Okay?

Okay. "Proposed paragraph 1618.1(d)(3) states that crane operators shall recertify every five years."
CCO recommends amending the language to read, "Crane operators shall recertify at least every five years."

The reason is that certification bodies already have a window that allows for recertification. CCO's window is 12 months prior to the end of your certification cycle. And we believe that the recommended language would more accurately reflect what actually happens in real practice.

Okay. "Proposed paragraph 1618.1(d)(3) provides, in part, that operators with at least 1,000 hours of documented experience shall not be required to take hands-on examination specified in subsection (g)(4) of this section to recertify."

CCO recommends that that be deleted in its entirety. We believe that should be left up to the certifying entities to determine appropriate pathways for recertification. We also believe that there's a risk of disenfranchising thousands of certified operators if this prescriptive requirement is adopted.

All right. Now some fun stuff.

"Proposed paragraph 1618.1(g)(1) and 1618.1(g)(2) would require accredited certifying entities to issue certificates to operators who have passed a physical examination and a substance abuse test."
CCO recommends that this requirement be moved to 1618.1(f), which is evaluation. There are no standardized physical examinations or drug tests for crane operators. This responsibility is more properly and effectively borne by the employer.

All right. One of my favorite ones here, in the exceptions. Exceptions to 1618.1, with regards to exception proposed -- excuse me -- the proposed exception number two in 1618.1 pertaining to the operation of articulating boom cranes or knuckle boom cranes when used to deliver material to a construction site, CCO recommends deleting this reference entirely.

Okay? Much like the digger derrick exception, it's already in 5006.1 and 1618.1, putting what is basically a general industry reference into the construction industry standard is going to create additional confusion. And it has for years with the digger derrick regulation.

You get guys who read only as far as the word "digger derrick," see the word exception, and believe that that digger derrick is exempt from operator certification, just about everything, although we know it's not. But it creates an additional layer of confusion that has been prevalent since 2005, when that exception was put in there.
So that's all I have. Any questions?

CHAIRMAN THOMAS: Thank you.

MR. SICKLESTEEL: Good afternoon,

Chairman Thomas, the Board Staff. My name is Tom Sicklesteel. I'm the CEO elect of NCCCO, National Commission for the Certification of Crane Operators. We're one of four accredited -- national accredited testing agencies for crane operator certification. We have over 100,000 crane operators that we certify, and so we wanted to make a few comments.

We submitted in writing, but I wanted to comment a little bit on areas where Cal -- the California rule is a little bit beyond OSHA, and address some issues that that has happened -- or that that creates.

What OSHA did is they changed up the rules on qualification of an operator. They went from a concept where the operator was certified -- and that was the exclusive end of it -- to a qualification of certification plus evaluation with the employer.

And so that qualification truly changes the game a little bit. The reason OSHA did that was because there were so many configurations of cranes and so many different alternatives that there was no way to have a standardized national exam to handle that. So that's
why OSHA made that change.

Within that, the standards that California has proposed, there's those trees of those different branches. So training is one branch, certification is another, and employer evaluation is not clearly expressed in all cases.

And so there's a few situations where the qualification or words are used, and what happens is where it says, "The employer shall deem the employer qualified," that language is unclear.

So, specifically, we think that it would be great to start the standard off with what does qualified mean? Qualified means that they are, by virtues of the certification -- the training, certification, and the evaluation. That should be right up on the front end. We're all clear what that means. So that should be in 1618.1(a).

In 1618.1(d)(1)(a) it talks about deem qualified, and it doesn't reference which part of the tree we're talking about. That section is actually talking about certification. So the language that should actually say, "is deemed to meet the certification requirement" because we don't mean that by simply doing that action they meet all of the requirements. So we think it's really important to be
specific.

There are a few areas, four specific areas, where the proposed language is more prescriptive. And we feel like some of those areas get the -- roll into either an issue with current language or current practices or sets it up so it has to be revised on a pretty consistent basis and a frequent basis.

So 1618.1 paragraph D.2 talks about accreditation, and it references some acts and some things behind that on the accreditation. It just simply needs to say that the NCCA or ANSI, those are the two main accrediting bodies. And if you meet those requirements, then it's an accredited agency.

On D.3 it gives a waiver of exams for recertification. The waiver element has been changed by ANSI as time goes on. They keep changing the rules a little bit on accreditation. Sometimes they make it more stringent, most of the time they make it more stringent.

And so I don't think a list of how we're going to waiver out of a practical exam is a very good approach, especially when ANSI may be in disagreement with that. You would force accrediting agencies like -- or certified agencies like us to choose between their accreditation and compliance with the rule, and that
wouldn't make sense. So we think striking that language
would make more sense. We could reference industry best
practices, if you want to, but that would make more
sense.

In the development exams in paragraph G.3, that
talks about, again, a different prescriptive method and
a specific dated item, and it would be better to have
industry best practices there.

The last item on the prescriptive nature is in
item G.3(a)(7), and it came really from the OSHA
language, and then it flipped it right at the end to
include California. And what it says is that the
national exam should have a California-based element in
it, that they understand the California language.

And we think that that's a little too
prescriptive; that that would actually fit better under
an employer evaluation element, instead of a nationally
accredited exam element.

My last point on this, regarding the
evaluations -- the evaluation section of the tree, as
Dick Thompson just talked about. The physical
qualifications and substance abuse made more sense to
fit under the employer evaluation because they are
really customized.

When you have a physical qualification for a
crane, it changes not only based on crane type, but the
actual type of job that it's doing. And that could
really change what the physical demands are.

And so having a standardized physical
requirement on a national level just isn't practical.
And a substance abuse exam is even -- has a little bit
harder of an avenue to accomplish that because it's not
transferable. It's not portable from employer to
employer. And so that should be moved as well down to
the employer evaluation section.

The last part of that is there's a waiver at
the end, which is a great waiver. Employers can use
this waiver to say, "I don't have to do an evaluation on
every single type of crane and every single
configuration of crane. I can say that this crane is
really similar. It's similar in type, it's similar in
function, and that sort of thing. And that relieves me
of the responsibility as an employer to have to do
reevaluations in every other scenario.

The problem is in the section 1618.1(f)(4),
it's not really clear if that applies only to the
evaluation, or if that could be deemed to also go to the
certification as well. And so we would ask that that
language be clarified. That concludes my comments.

Thank you.
CHAIRMAN THOMAS: Thank you.

Any other comments?

Yes.

BOARD MEMBER BURGEL: Can I make a comment?

I would like to comment on section 1618.1(g)(1), where it talks about passing a physical examination conducted by a physician, which at a minimum, shall include the, you know, criteria specified either by the American Society of Mechanical Engineers or the U.S. Department of Transportation criteria.

I'm a nurse practitioner, and I just wanted to put it out there that nurse practitioners and physician assistants often can perform these exams, and surveillance exams, are quite capable of doing these exams.

And so this language, as it's currently written, is very limited and restricts opportunities for a variety of providers. The Fed standard often uses a physician or other licensed health care professional.

But I also wanted to comment that the DOT, the Department of Transportation, uses certified medical examiners. And certified medical examiners, nurse practitioners and physician assistants can do and can conduct and frequently conduct DOT exams.

And so I just wanted to highlight that for
future opportunities, that we can include more inclusive 
language of individuals that are health care providers 
that do these exams all over the country. 

Thank you.

CHAIRMAN THOMAS: Comment?

MR. HARRISON: I just want to say that I 
generally agree with both Mr. Thompson and 
Mr. Sicklesteel's comments. There was a lot to follow 
there, and so I'll try to follow the roadmap there.

But the one comment that I agree with 
specifically was the removal of exception number 2 in 
confusing general industry and construction. I know 
there's a rulemaking going on right now where we're 
trying to bring the two back into one standard here in 
California, which leads me to my final comment requiring 
specific recognition of the California standard.

I don't know that deleting that would 
necessarily be appropriate, with the idea that we're 
moving from two standards back into one as much as 
possible. So but I did want to thank you for your 
comments as -- that there are very productive.

CHAIRMAN THOMAS: Thank you.

Anyone other comments?

Seeing none, the public hearing is closed.

Written comments will be received until 5:00 p.m.
today. Thank you.

We'll now proceed with the business meeting.

The purpose of the business meeting is to allow the Board to vote on matters before it, receive briefings from staff regarding the issues listed.

The business meeting agenda. On the business meeting agenda, the Board does not accept public comment during its business meeting, unless a member of the Board specifically requests public input.

First one is proposed safety orders and adoptions, Construction Safety Order section 1504, 1526; General Industry Safety Orders sections 3361 3364, 3437, 3457, and 5192, single user toilet facilities.

Mr. Manieri, will you please brief the Board.

MR. MANIERI: Yes. Chairman Thomas, Members of the Board, briefly, again, on September 28th and September 29th, 2016, as many know, the California Assembly Bill 1732 was signed by the Governor and became effective in March of 2017.

It amended the Health and Safety Code to require that single user toilet facilities be identified as all gender facilities with signage compliant with Title 24 of the California Code of Regulations.

On July 25, 2017, the Division submitted a form 9 request for a newer change in existing safety
orders to the Occupational Safety and Health Standards Board to request changing Title 8 to remove potential conflicts with the Health and Safety Code section 11860 concerning all gender designation of single user toilet facilities.

The proposal that was developed by Board staff serves the purpose of allowing more employers to meet Title 8 toilet facility requirements by means of a single user toilet facility that is also compliant with the Health and Safety Code, which is a gender neutral designation requirement.

It was previously deemed commensurate with federal standards, and at this time Board staff recommends -- staff recommends the Board adopt the proposed amendments to the general industry and construction safety orders as proposed herein. Thank you.

CHAIRMAN THOMAS: Thank you, Mr. Manieri.

Are there any questions for Mr. Manieri? Do I have a motion to --

BOARD MEMBER STOCK: So moved.

CHAIRMAN THOMAS: Do I have a second?

BOARD MEMBER LASZCZ-DAVIS: Second.

CHAIRMAN THOMAS: I have a motion to second.

Is there anything on the question? Hearing none,
Ms. Money, will you please call the roll.

MS. MONEY: Ms. Burgel?
BOARD MEMBER BURGEL: Aye.

MS. MONEY: Mr. Harrison?
BOARD MEMBER HARRISON: Aye.

MS. MONEY: Ms. Laszcz-Davis?
BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?
BOARD MEMBER STOCK: Aye.

MS. MONEY: Ms. Kennedy?
BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Chairman?
CHAIRMAN THOMAS: Aye.

Motion is passed.

Low voltage electrical safety order section 2300 and 2305.2, high voltage electrical safety orders, sections 2940.2 and Appendix A to Article 36, electrical power generation, transmission, and distribution, electrical protective equipment, final rule corrections.

Mr. Manieri, will you please brief the Board.

MR. MANIERI: Yes. Chairman Thomas, Board Members, this rulemaking proposes technical and editorial corrections for clarity and consistency to the electric power generation, transmission, and distribution, electrical protective equipment final
rule, which is a vast overhaul of the federal standards, which was promulgated by the Feds back in April of 2014.

It's been a long project, which was heard by the Board on March of 2017, with an extended comment period to March 31st, 2017, to make sure that all the comments we received from our state pollers were received and considered.

It later became effective in California on April 1st, I believe, of 2018, following adoption by the Board. These proposed amendments will correct technical and editorial errors to the existing state regulations to be consistent with 29 CFR 1910, 2269, all of the tables for alternating current, AC systems, and Appendix B.

The proposal will avoid, we believe, confusion by making technical and editorial corrections to existing state regulations to be consistent with those federal standards, the tables, the Appendix B, et cetera.

These proposed amendments to section 2940.2 will correct -- make very important corrections to very important formulas contained in table 2940.2-1 with face-to-face exposures to voltages 630KV or more. These equations calculate the minimum approach distances, which is the closest distance a qualified person which
include qualified electrical workers, qualified tree workers, qualified line clearance tree trimmers may approach and energize or ground an object.

Obviously, if those formulas are wrong, the calculations will too be wrong; and heaven forbid, a worker could be exposed or approach to a distance which could result in a serious injury or electrocution. So these are very important corrections.

In the April 2nd, 2019, letter from Federal OSHA Region 9 to the Board stated that the proposal that we developed was determined to be commensurate for federal standards for these issues. Therefore, the staff recommends this proposal be adopted. Thank you.

CHAIRMAN THOMAS: Thank you, Mr. Manieri. Are there any questions for Mr. Manieri?

Hearing none, do I have a motion to adopt the revision as proposed?

BOARD MEMBER LASZCZ-DAVIS: I so move.

BOARD MEMBER STOCK: I second.

CHAIRMAN THOMAS: I have a motion and second.

Is there anything on the question?

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

MS. MONEY: Ms. Burgel?

BOARD MEMBER STOCK: Aye.
MS. MONEY: Mr. Harrison?

BOARD MEMBER HARRISON: Aye.

MS. MONEY: Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?

BOARD MEMBER STOCK: Aye.

MS. MONEY: Ms. Kennedy?

BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Chairman Thomas?

CHAIRMAN THOMAS: Aye.

Motion passes.

Petition -- proposed petition decisions for adoption. Michael Vlaming, Construction Elevator Contractors Association, petition file number 574.

Petitioner requests amendment to the construction safety orders section 1604.5(d)(2), regarding construction of towers, mast, and hoistway enclosures.

Ms. Shupe, would you please brief the Board.

MS. SHUPE: Thank you, Chair Thomas.

The petitioner requests the Board amend section 1604.5 (d)(2) to remove the specific requirement the construction elevator hoist structures be anchored to a building or other structure at intervals not exceeding 30 feet, and instead rely on manufacturer's specifications for compliance.
The petitioner contends the proposed amendment is necessary due to inconsistent enforcement of section 1604.5 (d)(2) due to possible conflicting requirements, and section 1604.3 (d)(3), which sets requirements for tie-ins. Petitioner also argues that the current regulation deviates from consensus standards on which the requirements were originally based.

The petition has been thoroughly evaluated by both the Division and Board staff. The Division recommends denying the petition and disagrees with sections 1604.5 (d). Subsection 2 and subsection three are in conflict, as they address two separate requirements that refer to different components.

Subsection 2 refers to the locations at which an elevator tower must be anchored by tie-ins, while subsection 3 requires tie-ins themselves should be in conformance with or equal to manufacturer specifications.

Board staff also recommends denying the petition, finding that the petitioner's proposal would reduce the safety of the regulation and reduce its clarity and specificity, pointing out that there are many CPHs built prior to the most recent addition of ASNI consensus code that are still in operation, some for more than a year. Also each success of addition of
a consensus code does not necessarily provide greater protections than the superseding code.

While not exactly mirroring Fed OSHA, current regulations have been determined to be at least as effective as Fed OSHA standards. Both Division and Board staff know that the petitioner's proposal would not meet the Board's duty under Labor Code section 142.3, which requires Title 8 regulations to be at least as effective as the Federal OSHA standards.

Manufacturer specifications do not have the same restriction as evidenced by those that are specifications that are more than double the federal requirement. For these reasons, the decision before you today proposes denying the petition. The decision is now ready for your consideration.

CHAIRMAN THOMAS: Thank you, Ms. Shupe.

Any questions for Ms. Shupe?

Yes.

BOARD MEMBER HARRISON: I would like to make a comment. As much as I would like to speak to this petition, I do have a conflict. And upon advice from counsel, I'm going to abstain from voting.

CHAIRMAN THOMAS: Okay. Any other questions?

Do I have a motion to adopt the petition decision to deny --
MR. MANIERI: Could I just clarify? I believe, to clarify what you were saying, is that you didn't belief that you had an actual conflict, but in an abundance of caution, because you do some business with at least one of the petitioner entities, out of that abundance of caution -- although you don't believe you have a conflict -- you are going to abstain. Is that more correctly stating your position?

BOARD MEMBER HARRISON: I appreciate your caution. Yes.

CHAIRMAN THOMAS: Thank you. Thank you. Okay. Any other questions?

BOARD MEMBER STOCK: Oh. No. I was waiting to move.

CHAIRMAN THOMAS: Okay. So do I have a motion to adopt the petition decision, which is to deny the petition?

BOARD MEMBER STOCK: So moved.

BOARD MEMBER LASZCZ-DAVIS: Second.

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

MS. MONEY: Ms. Burgel?

BOARD MEMBER BURGEL: Aye.

MS. MONEY: Mr. Harrison abstained.
Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?

BOARD MEMBER STOCK: Aye.

MS. MONEY: Ms. Kennedy?

BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Chairman Thomas?

CHAIRMAN THOMAS: Aye.

Motion passed.

Petition -- I'm sorry. Donald A. Zampa, President District Council of Ironworkers,

Greg McClelland, Executive Director Western Steel Council, petition file number 577. Petitioner requests emergency rulemaking to amend construction safety order section 6030(a) elevators and hoisting -- for hoisting workers. Ms. Shupe, will you please brief the Board.

MS. SHUPE: Thank you, Chair Thomas.

The petitioner requests the Board amends section 1630(a) to address an exceptional situation created by a recent Cal/OSHA Appeals Board decision after review, also known as a DAR, on May 29th, that changed the interpretation of when to install construction personnel hoists and elevators, a conflict of longstanding industry practice and Division enforcement.
The petition has been evaluated by both the Division and Board staff. The Division recommends approving the petition as submitted, with minor grammatical corrections.

Board staff acknowledge the exceptional situation and the need for expedited action; however, as experts in rulemaking advise the petition be granted to the extent that a definition for height be added to section 1630 and highly expedited regular rulemaking be pursued.

The triggering DAR on plain language interpretation of section 1630, subdivision (a), leading to the conclusion that a building must reach 60 feet in height before a construction passenger elevator will be required.

In contrast, for many years industry practice and Division enforcement have understood that section 1630, subdivision (a) should be harmonized with subdivision (d), requiring installation of a construction passenger elevator on a building planned to be in excess of 60 feet in height once the building reaches 36 feet in height.

The petitioner's proposed emergency language, while aligned in intent with Board staff recommendation, goes beyond the scope of the triggering DAR and will
require significant substantiation to meet the APA requirements for emergency rulemaking.

However, the narrowly defined definition for height for section 1630 that remedies the issue identified by the DAR, and is proposed as a highly expedited regular rulemaking, provide a permanent clarification of when a construction personnel elevator must be installed and a similar timeframe to emergency rulemaking.

A supporting timeline has been prepared for you in today's Board packet and provided to the public. For that reason, the decision before you today proposes granting the petition to the extent that Board staff be directed to promptly develop a highly expedited regular rulemaking that is limited in scope to address the definition of height as it pertains to section 1630. Additional changes to 1630, as proposed in the Division form 9, are to be considered only as a separate rulemaking process.

CHAIRMAN THOMAS: Thank you, Ms. Shupe.

Are there any questions?

BOARD MEMBER STOCK: Yeah. So I have some questions about expedited versus emergency, but I understand that most of the stakeholders in the room seem satisfied with the expedited process, in which
case -- you know, with the assurance that everybody's asked for it that it will happen quickly, you know, that -- I have no question about that.

I am wanting to just -- I'm a little -- I'm not sure I completely understand all of the legal ramifications that you've described, but I just want to say for the record that my hope and expectation if we were to go along with this Board proposal, is that it would, in fact, address the very specific issue that has been raised by many, many stakeholders, that this be provided at 36 feet.

And so I just -- I was a little confused by the last part of what you said, and I may just be misunderstanding you. That it would cover height, but other matters would have to be regular rulemaking. I want to be sure that if we vote for this expedited rulemaking versus the Division proposal to accept the petition, that expedited rulemaking could and would result in a regulation that would address both of those issues, or would be definitely addressing the 36 height.

MS. SHUPE: So the Division Board staff and the stakeholders all agree that the issue that the DAR has created is the understanding of when to install a construction personnel hoist, and our desire is aligned on all cases to keep the -- what has been the
understanding that it goes in at 36 feet for buildings
that are planned to be over 60 feet in height.

BOARD MEMBER STOCK: Okay.

CHAIRMAN THOMAS: Questions?

BOARD MEMBER BURGEL: So, just to clarify,
Laura, were you asking that 36 feet be included in the
motion? Because right now it doesn't state 36 feet.

BOARD MEMBER STOCK: I know. And I -- that is
one option. I'm wondering what the impact of making
that suggestion would be on the process that you're
describing.

MS. SHUPE: So my request is that you adopt the
conclusion in the order as written because it was
written specifically to allow our engineers to work to
develop something that is very narrow and focused and
will address the issue.

The more specific you put requirements into the
conclusion and order, the more you will tie our hands.
And you may wish to, but I'm asking you to trust that we
are all on the same page here to get to the same
destination.

BOARD MEMBER BURGEL: Does that help or not
help?

BOARD MEMBER STOCK: I'm not sure why I know in
past rulemaking we've been able to make those kinds of
modifications. So I understand that there may be something about this specific process that limits that, you know.

So I don't know whether -- Peter looks like he has an explanation. And if that is, in fact, the case, going on the record here, from what I have said and what you have said, that the intent is to have the outcome reflect that -- the same outcome that everybody has been advocating for, that that's what I want to confirm.

If what you're saying accomplishes that goal, then I understand that I may not understand something specific about this process, but I just want to be sure that the outcome is the same.

MR. HEALY: It's not so much -- it's not as much the process as it is the technical nature of the Appeals Board decision. It's, dare I say, somewhat legalistic, in that it does an analysis of statutory construction or regulatory construction, the relationship of subparts of the -- of 1630 and how the (a) subpart really addresses when the rest of the requirements of 1630 come into play.

And so it really all comes down to that definition of height. And you're also contemplating a wider rulemaking to address other concerns raised by the Division in their form 9.
BOARD MEMBER STOCK: Right then -- yeah.

MR. HEALY: So that distinction for purposes of the expediting I think is important, and one of the dynamics of an expedited rulemaking is to put that forward and argue that the minimum impact, and essentially, by having the wording of the decision the way it is, allows us to focus on a very narrow rulemaking that is consistent with saying that we're basically correcting -- we're carrying forward the status quo.

So it gets a little technical as to the construction of the subparts of that section, but the objective is to correct and reestablish the intent of the Board as the status quo that it's not just talking about existing height when they're doing an inspection, it's planned height upon completion.

So when they go out and they're looking at a 40-foot structure, this requirement and all the rest of the requirements in 1630 will come into play if it's a building that's headed towards 60 feet or above.

So this allows us to deal with those technical delicacies and specifics of this situation by giving us that ability to address it this way.

BOARD MEMBER STOCK: So I understand that there are two issues. One is to be clarified that it is
reflecting the design. It's not whether it's already at
60 feet, but whether the intent is that it's going to be
at 60 feet, and that seems clear.

And the other issue is that it would trigger
that at 36 feet that construction hoist would be
attached. Those are two issues, both of which are very,
very important; and there's a lot of stakeholders who
want -- seem to be in alignment with wanting those two
issues to clarify that it is the intent to be 60 feet,
and the trigger for attaching the construction hoist,
that is the direction that I would want to vote for
through whatever process you're now recommending as the
fastest. I would want that process to be addressing
both of those issues.

So assuming that they will be, then it sounds
like there's not that much of a difference between the
expedited and the emergency. Because, obviously, the
Division is recommending -- was recommending the
emergency and seemed to believe that they could have a
statement that would say it could also address the
trigger height, just to clarify my question.

MR. HEALY: To summarize how the Appeals Board
looked at the petition of the Division, it was that you
needed to understand sections A -- subparts A and D
together; that if you understood them together, then you
understood that once the building was at 36 foot level,
if it was headed to 60 or above, that these requirements
would come into play.

So that decision, that's our decision from
interpreting the position of the Division, was that if
they had that definition of height the way they wanted
it, which was existing or planned height upon
completion, the rest of the section functioned properly.

BOARD MEMBER STOCK: Okay.

MR. HEALY: That was their position. Now,
there are degrees of clarity. They could also be of the
position, "You know, though? We could make it even
clearer."

So one way of interpreting it is that their
position during the DAR was: "It's clear enough, if you
understand them, how they work together." At the same
time, it could be their position that: "You know what?
We could make it even clearer."

And that would be part of the regular
rulemaking where they're trying to do other things --
larger things as well. But as far as the core position
of what we have on our hands and how they function
together in their existing form, the pivot point and the
problem point was with what height means.

So they could -- it's consistent with them
going forward with regular rulemaking and making it additionally clear, doing all sorts of other clarifications and adjustments. At the same time for the core issue before the Board of the -- what the decision after reconsideration caused, letting us focus in on that for this bifurcated, simplified portion of it allows us to do that most effectively.

BOARD MEMBER STOCK: You go ahead.

BOARD MEMBER KENNEDY: That's begs the question. Am I to understand that there really is -- that there are two different timelines for those two issues, or are they one timeline?

MS. SHUPE: I'd like to step in and address the timeline. Because there are two timelines, but there is one for this petition that addresses this issue, and that's the timeline that I sent out to everybody and I made public.

The only other timeline is for the comprehensive rulemaking that addresses 1630 as the form 9 proposes. So as far as we're talking timelines, we are sticking specifically to this petition, resolving it to address the issue created by the DAR and addressing the concerns as we all understand them, and all want to be on the same page for.

CHAIRMAN THOMAS: I've got one question: It's
going to be at 36 feet; right?

MS. SHUPE: Yes.

CHAIRMAN THOMAS: I don't know why nobody wants to say that, but that's what it's going to be; right?

MS. SHUPE: Uh-huh.

CHAIRMAN THOMAS: Okay.

BOARD MEMBER STOCK: That's within the expedited timeframe.

CHAIRMAN THOMAS: Yes. Absolutely.

MS. SHUPE: Yes.

CHAIRMAN THOMAS: Question. Not really a question, just some comments. I just wanted to speak to some of speakers today because I had a few concerns, and the first one is around just the idea of an emergency petition, and I don't want to dilute the emergency petition process. I think it's there for a reason. And I've been on the Board with Laura now for what? Seven years? I think I've seen two in that time, and now all of a sudden we've got two in the last few months here. And so I don't want to -- I'm not minimizing the issue at hand, but I did want to, you know, point that out because I don't want to make the emergency process for granted and start using it because we're not happy with the timeliness of things.

I also wanted to say we have a very competent
Board staff, and I think they brought a very good proposal to us and an explanation and a proposed decision that I feel confident in because I want to see this expedited along as well.

There were some comments that this isn't as big an issue as what it's being blown up to be, and I think this rule's been in place for a long time, and after one DAR, which I was pretty sad to see, now here we are. And we haven't had this much public comment in a while. So, with that said, I believe I'm going to be supportive of the -- of both decisions.

I also wanted to say that I do think this is an emergency, but whether it is or not, timeliness is at hand. And the quickest way to get this through is an expedited version, which you would think it wouldn't be that way, but that's the way it is. And I think this timeline lays it out pretty plainly. And not to dismiss the emergency value. I certainly think it is, but we're going to go the quickest way we can.

BOARD MEMBER HARRISON: I would like to emphasize highly. Highly expedited.

CHAIRMAN THOMAS: Thank you.

Any other comments?

All right. Any other questions for Ms. Shupe?

Hearing none, do I have a motion to adopt the
petition decision, which is the expedited -- highly expedited regular rulemaking process?

BOARD MEMBER HARRISON: So moved.

CHAIRMAN THOMAS: Thank you.

Do I have a second?

BOARD MEMBER KENNEDY: Second.

CHAIRMAN THOMAS: I have a motion to second.

Is there anything on the question?

Hearing none, Ms. Money, would you please call the roll.

MS. MONEY: Ms. Burgel?

BOARD MEMBER BURGEL: Aye.

MS. MONEY: Mr. Harrison?

BOARD MEMBER HARRISON: Aye.

MS. MONEY: Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?

BOARD MEMBER STOCK: Aye.

MS. MONEY: Ms. Kennedy?

BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Chairman Thomas?

CHAIRMAN THOMAS: Aye.

And the motion passes.

Let's see. Proposed variance decisions for adoption. It's kind of anti-climatic, right?
But, anyway, proposed variance decisions for adoption. This sounds like consent calendar.

Mr. Healy, will you please brief the Board.

MR. HEALY: Yes, Chair Thomas and Board Members, regarding proposed variance decisions on your consent calendar, items A through W, I'm aware of no resulting procedural issue. I believe with A through W, we are ready for the motion for adoption.

CHAIRMAN THOMAS: Thank you, Mr. Healy.

Are there any questions for Mr. Healy?

Hearing none, then, do I have a motion to adopt the consent calendar A through W?

BOARD MEMBER LASZCZ-DAVIS: I so move.

BOARD MEMBER HARRISON: Second.

CHAIRMAN THOMAS: I have a motion and a second.

Is there anything on the question?

Hearing none, Ms. Money, would you please call the roll.

MS. MONEY: Who was second?

BOARD MEMBER STOCK: Chris.

CHAIRMAN THOMAS: Chris.

BOARD MEMBER HARRISON: No. I was the second.

BOARD MEMBER STOCK: Oh.

BOARD MEMBER HARRISON: Chris made the motion.

BOARD MEMBER STOCK: We are getting tired.
MS. MONEY: Ms. Burgel?

BOARD MEMBER BURGEL: Aye.

MS. MONEY: Mr. Harrison?

BOARD MEMBER HARRISON: Aye.

MS. MONEY: Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?

BOARD MEMBER STOCK: Aye.

MS. MONEY: Ms. Kennedy?

BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Chairman Thomas?

CHAIRMAN THOMAS: Aye.

The motion passes.

Let's see. Mr. Berg, do you want to brief the Board on the proposed upcoming decisions or --

MR. BERG: Oh, rulemaking? And some health rulemaking or --

CHAIRMAN THOMAS: Please.

MR. BERG: Sure. So last time I mentioned for the indoor heat rulemaking we had a threshold analysis which was being done, and that's been completed and determined that it will be a standard -- standardized regulatory impact assessment needed.

So it's over 50 million cost. And so we've gotten started with a consultant to do the three, as
that is a long process. So that -- and equally requires
assessment and will take some time, but they started on
that already.

BOARD MEMBER BURGEL: How long, Eric?
MR. BERG: The one for lead took over a year.
So I'm not sure. I'll try to give you updates as soon
as I hear anything back from the consultant. It's
called the Berkeley Economic Advising and Research, I
believe it's called. But they are the consultants that
do the SRIAs for us. I'll check the progress records as
we hear back from them.

And they did one for lead as well, and they
completed that one, and that was sent to the Department
of Finance. And then the Department of Finance got back
to us on some, I guess, agreements we have with them.

So we're working with Department of Finance to
work through the SRIA for the lead one, and we're also
working on the -- finalizing on the rulemaking documents
for that. But once that's smoothed out with the
Department of Finance, we'll then go to rulemaking.

BOARD MEMBER BURGEL: So how long do you think
that would take? Same time?
MR. BERG: I don't know. I haven't heard back
from the Department of Finance. We submitted our
comments on their comments. So we have to wait to hear
back from them.

BOARD MEMBER BURGEL: Okay.

MR. BERG: Yeah. There's several agencies involved. Workplace violence, they're supposed to update a draft. They're still updating the draft proposal, and it should be done by this fall, an updated draft proposal for that too.

BOARD MEMBER STOCK: Do you have any particular target date for that? Month or something? Do you have a guess.

MR. BERG: I could guess October, beginning of October.

BOARD MEMBER BURGEL: Okay.

MR. BERG: I could be wrong. Let's see. PELS. We have four PELS that we should be in rulemaking on this year for cyclohexane, and propanol, tetrabromoethane and trimellitic anhydride. So we're planning on that, kind of obscure chemicals that can be very dangerous, that we plan to do when we get those this year, before the end of this calendar year.

And we're working on eight others as well for PEL. And we continue to have advisor committees about four times a year on PELs. So they are generating more recommendations, and we can -- we'll make it on -- that's what we're planning on right now.
First aid, we sent that to agency. They were sent to agency last year, so we're still waiting to hear back on that one. And the other ones, there's no change. Antonio Plastic, no change on that. We're still developing the rulemaking documents.

There's also Surgical Plume, which we had Advisory Committee last year. So once we have some time I'll update a draft proposal on that and have comments on that.

And then there's nationally-occurring asbestos. We're developing a draft proposal that we can post and get comments on, and we'll advise you of any. And, hopefully, that is before the interview. And that's all my major rulemakings we're working on right now.

CHAIRMAN THOMAS: Thank you. Thank you, Mr. Berg.

Proposed wildlife smoke emergency regulations, I think we've reviewed those today. Legislative updates, Mr. Healy, will you please brief the Board.

MR. HEALY: Sure. Chair Thomas and Board Members, I'll update you on at least the bills that have moved between chambers since we last got an update.

MS. MONEY: Can you turn on your mike, the bottom of the mike?

MR. HEALY: Oh. Is it louder now?
BOARD MEMBER BURGEL: That's a little better.

MR. HEALY: I think David has control of the

volume. He turned it down.

Yes. AB 35 concerned a worker blood lead

level, and AB 35 would require the State Department of

Public Health to consider a report from a laboratory of

an employee's blood level at or above 20 micrograms per

deciliter to be injurious to the health and to report it

within five days of receiving the information,

forwarding that to Cal/OSHA as a complaint, charging a

serious violation of Division-enforced safety orders.

Such complaint would be subject -- subject the

workplace to Division investigation and would require

the Division to publish these tours on an annual basis

and any resultant citations or fines.

And on May 28th, that passed the Assembly and

moved on to the Senate. AB 203, concerning the valley

fever issue, AB 203 would require construction employers

engaged in specific work activities or vehicle

operations in counties where valley fever is endemic, to

provide effective aware training of valley fever to all

potentially exposed employees annually and before an

employee begins work, that it's reasonably anticipated

to cause substantial dust disturbance.

As currently draft AB 203 does not specifically
call for the standard Board to regulate in this subject area, but instead sets out the training requirements directly in the statute, and that on May 23rd, passed the Assembly and moved on to the Senate.

AB 1158 concerns conveyance permitting authority restrictions, and AB 1158 relates to the existing law authorizing the Division to issue a preliminary order for repairs and alterations of an existing conveyance that upon inspection -- they knew that if upon inspection determined the situation to be unsafe. The Division also may prohibit the operation of a conveyance until the unsafe conditions are corrected.

This bill would authorize temporary suspension of even the work in progress under a permit to install or modify a conveyance if a Building and Safety or Cal/OSHA inspector finds that the work does not comply with applicable building or elevator safety standard requirements. The bill also would provide for an opportunity to prevent suspension of hearing, and that's moved from the Assembly to the Senate on May 23rd as well.

AB 1805, it relates to reporting of serious injury or illness. Existing law defines serious injury or illness, serious exposure for purposes of reporting serious occupational injury or illness to the Division
for purposes of establishing the divisions of duty to
investigate such employment accidents and exposures.

This bill would recast the definition of
serious jury or illness, removing the 24-hour time
requirement for qualifying hospitalizations and expand
the scope of what falls within the scope of serious
injury or illness and serious exposures, necessitating
reporting to the Division.

Existing law also establishes the standard for
what constitutes a serious violation requiring faster
response from the Division, within 3 days, rather than
14. Mainly, that there is a substantial probability,
substantial probability that death or serious injury
could result from the condition alleged in the
complaint.

This bill may be an indication -- instead
establishes serious violations exists when the Division
determines that there is a realistic possibility of
death or serious injury. So moving from substantial
probability to realistic possibility. That would
result -- that would cause the member to do the
reporting more promptly.

And that moved -- I'm sorry -- that passed the
Assembly and went to the Senate on May 16th.

SB 1, it would require specific agencies to
take prescribed actions regarding certain federal
requirements and standards pertaining to air, water,
protected species, labor standards, and occupational
safety and health standards.

It would establish a protective baseline.

Federal regulations update says that as of January 19th,
2017, and would call for the agencies including a
Standard and Poor's published at least quarterly a list
assessing what any ensuing changes to the Fed OSHA
regulations were less stringent than those on -- that
existed on January 19, 2017, which would be considered
the baseline.

If reduction in federal standards were found to
have occurred, the agencies then would be called upon to
consider emergency rulemaking to preserve California
protections. Though, as the Board understands,
regardless of the bill's provisions, tight regulations
remain in place when -- with their existing protections
even if federal standards in our area of regulation are
relaxed. And that passed the Senate on May 29th and
moved to the Assembly.

The last one is SB 363 concerning workplace
safety in hospitals of California State Hospitals.
SB 363, it has been amended to now no longer mandate
that violence protection in health care standards apply
without exemption to three types of state hospital
facilities; department of state hospitals, developmental
-- those of developmental services, and those in
corrections and rehabilitation.

The bill now more narrowly requires that these
facilities confidentially report the total number of
assaults against employees on a monthly basis,
bargaining union representatives of those affected
employees and annually to the legislature. And that
passed the Senate on May 23rd, and that concludes the
legislative update.

CHAIRMAN THOMAS: Thank you, Mr. Healy.

Executive Offices report, Ms. Shupe, will you
please read it.

MS. SHUPE: Well, I was going to thank -- but I
notice Dan Leacox is no longer here, so I'll address
that at the next meeting.

I just want to make this opportunity to thank
the Division and everybody who worked, all of our staff.
We had a couple of all-nighters to turn Petition 577
around, and the work is not done yet to meet that very
ambitious timeline, but we will get it done. And I want
to say you have a very great and dedicated staff, and
the cooperation from Eric over here was just incredible.
And thank you.
CHAIRMAN THOMAS: Thank you, Ms. Shupe.

I think we've just covered future agenda items. So at this time I think we're going to adjourn this meeting. Our next meeting will be July 18th, 2019 in San Diego. And I would like to announce the birth of my first granddaughter on June 8th at 12:30 in the morning. And, wow, they are great. Grandkids are awesome, man. So, anyway, at this time we'll see you next month in San Diego. We're adjourned.

***

(End time: 2:46 p.m.)
REPORTER'S CERTIFICATE

I, NOELLE C. KRAWIEC, CSR No. 14255, a certified shorthand reporter in and for the state of California, do hereby certify:

That said proceedings were taken by me in shorthand at the time and place herein named and was thereafter transcribed into typewriting under my direction, said transcript being a true and correct transcription of my shorthand notes.

I further certify that I have no interest in the outcome of this action.

NOELLE C. KRAWIEC
CSR NO. 14255
June 20, 2019, Meetings of the Occupational Safety and Health Standards Board

Transcript Errata

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