In The Matter Of:

DEPARTMENT OF INDUSTRIAL RELATIONS
WILDFIRE SMOKE PROTECTION

PUBLIC HEARING
May 8, 2019

CLARK REPORTING & VIDEO CONFERENCING
2140 SHATTUCK AVE. STE. 407
BERKELEY, CA 94704
510.486.0700

Cal/OSHA Advisory Meeting

Protection of Workers from Wildfire Smoke

Wednesday, May 8, 2019

10:00 a.m. - 3:00 p.m.

Elihu Harris State Building

1515 Clay Street, Second Floor, Room 1

Oakland, California

CLARK REPORTING & VIDEO CONFERENCING

2140 SHATTUCK AVENUE STE. 407

BERKELEY, CA   94704

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REPORTED BY SHELLI ENG

1   PROCEEDINGS

2   10:03 A.M.

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6   ERIC BERG: Welcome, everybody. If we can get

7   started in a couple of seconds. Thank you, everybody.

8   Welcome. Okay. We have the handouts on that table over

9   there. And also if everyone could please sign in so we

10   can contact you for future meetings -- is it working

11   now?

12   Okay. So if everyone could please sign in.

13   And also for Spanish speakers, we have

14   translation service in the back.

15   (Spanish dialogue.)

16   ERIC BERG: I think that's it. Okay. Thank

17   you again, everybody. My name is Eric Berg. I'm the

18   deputy chief of Cal/OSHA Research and Standards. And we

19   are here today to discuss protecting workers from

20   wildfire smoke. And I want to introduce people who are

21   with me.

22   Chris Kirkham, principal safety engineer of

23   research and standards.

24   Corey Friedman, attorney with Cal/OSHA.

25   Amalia Neidhardt, senior safety engineer with

1   Cal/OSHA.

2   And from DIR, we have Pamela Allen and

3   Kumani Armstrong, Department of Industrial Relations as

4   well.

5   And then Cora Gherga as assistant chief of

6   Cal/OSHA.

7   Mike Mavieri, principal engineer with

8   Occupational Safety and Health Standards Board.

9   Christina Shup, executive officer,

10   Occupational Safety and Health Standards Board.

11   Maryrose Chan, senior safety engineer with the

12   Occupational Safety and Health Standards Board.

13   And we also have Valerie Royo. She is taking

14   notes for us.

15   Okay. So we posted our draft. We also have a

16   copy of the proposal we are working on. And then we

17   received a lot of comments -- written comments so far.

18   And we weren't able to update it on the website because

19   we got so many comments, we want to go through them

20   first before we do an update.

21   So we are still going to discuss the original

22   draft, even though we are aware of some things that may

23   need clarifying, but we would like your help today to

24   help us clarify those as best as possible.

25   Since we have limited time today, please keep

1   your comments under five minutes. And if you're unable

2   to get in everything you want, please feel free to send

3   us written comments by this Friday.

4   And when it is your turn to speak, basically

5   we are going to go through each subsection, and then we

6   will ask people to line up and provide any comments.

7   Please provide your name and organization you represent

8   each time you speak because we have a court reporter

9   here taking -- transcribing the meeting. And I think

10   that's it.

11   Let's go into background, why we are here. We

12   are here today to discuss protecting workers from

13   wildfire smoke. And thanks to Petition 573 from

14   Worksafe, CRLA, and California Labor Federation, I

15   proposed we do this emergency regulation that was

16   submitted back in December.

17   And the March -- I believe it was the March

18   standards board meeting, they voted for Cal/OSHA and its

19   board staff to work on emergency regulation to protect

20   workers from wildfire smoke.

21   So, I mean, we put up that draft, got your

22   comments, and now we want to get all your oral comments

23   as well.

24   So I will pass it over to Chris. I think

25   Chris is going to talk about the emergency rule-making

1   process.

2   CHRIS KIRKHAM: Yes. So posted on our website

3   and as a handout in the back, we have a flowchart that

4   looks like this. I want to just kind of point out to

5   you where we were in the process.

6   So this is an emergency rule-making flowchart.

7   So today, we are at a point in the process that precedes

8   this whole flowchart. Today is one of the few days you

9   have to provide us with crucial input, so this is an

10   informal phase of the rule-making process.

11   There will be another Occupational Safety and

12   Health Standards Board meeting on May 16th that is here

13   in Oakland. That will be another opportunity to provide

14   your input. That will be to the standards board.

15   And then July 18th, the standards board will

16   vote on this proposed rule-making, and that will be in

17   San Diego.

18   So three opportunities for input; today,

19   May 16th, and July 18th.

20   Now, then, that gets us into the emergency

21   rule-making process, and that's summarized here in the

22   flowchart. It's very different from normal,

23   nonemergency rule-making. The deadlines are much

24   shorter. Some of the paperwork doesn't come into play

25   here, and it's summarized pretty well on this page.

1   So you can see on the bottom that if we have

2   an emergency rule that goes into effect, it can be in

3   effect for up to about a year with two possible

4   readoptions in that year.

5   Anything else?

6   ERIC BERG: No.

7   COREY FRIEDMAN: So one thing to keep in mind

8   with this very quick process is that if you have any

9   comments that you don't get a chance to make at this

10   meeting, if you think about something later, we really

11   need that input as soon as possible. So we are asking

12   for any written comments on this draft to be submitted

13   to us by 5:00 p.m. this Friday. So we really encourage

14   you to do so, if you would like to have your comments

15   considered in a revised draft.

16   So we are going to go through this regulation

17   starting with the scope. I would like to address a few

18   issues that have been raised in comments so that you

19   realize what is noted about this draft. And then we

20   will take comments on all of part A.

21   So part A1B notes that one of the requirements

22   for when this regulation is effective, this is a

23   realistic possibility that employees may be exposed to

24   wildfire smoke. "Realistic possibility" is a phrase

25   that is taken from an appeals board -- Occupational

1   Safety and Health Appeals Board decision. It is a

2   little bit esoteric perhaps, and so it's been raised

3   that possibly that should be reasonableness based

4   standard.

5   Another issue is under A2. As you can see, A

6   and B refer to enclosed building or structures, enclosed

7   vehicles. There were a lot of questions about what

8   "effectively limited" means, as far as making sure that

9   employee exposure to outdoor unfiltered air is

10   effectively limited.

11   And the intention of those sections was

12   basically to refer to enclosed buildings or vehicles

13   that are actually closed. So closed windows, closed

14   doors, no open bays, that sort of thing. So we are

15   looking at the potential revision of that language.

16   I also did want to note that although there is

17   reference in the definitions section later on to types

18   of filtration, the scope section does not discuss any

19   particular type of filtration. So the exemptions from

20   the section apply to any enclosed building, structures

21   or vehicles that meet these requirements regardless of

22   what kind of filtration system they may use.

23   Finally, 2E refers to emergency response

24   personnel performing lifesaving emergency rescue and

25   evacuation. And we do welcome comments from anyone

1   about whether there are specific collusive people with

2   specific activities for which the exemption from all or

3   part of this regulation is appropriate because of the

4   need to act quickly in an emergency and how people would

5   see that defined and see those people in activities

6   described in the regulation.

7   Thank you very much. And like we said

8   earlier, we are taking comments. Please limit them to

9   five minutes each.

10   Would anyone like to speak on subsection A?

11   If you could line up by the podium, that would be great.

12   And just another reminder. We do have a court

13   reporter here -- pardon?

14   And if you could please -- when you begin your

15   comment -- state your name, and if you represent an

16   organization, what organization that would be so that we

17   can keep an accurate record. And please speak a little

18   slower than normal, if you can, so that our court

19   reporter here can take everything down.

20   Thank you.

21   PODIUM SPEAKER: Okay. I'm Dr. Bob Bernstein.

22   I'm a county health officer in Tuolumne County,

23   California.

24   But most relevant to this particular meeting

25   in addition to the experience during smoke exposures in

1   our county, I was the Centers for Disease Control

2   investigator in charge of a four-year followup for

3   loggers that were judged to be the most intensively

4   exposed to highly irrespirable particulate matter during

5   the eruptions in Mount St. Helens and advised

6   President Carter and others on the hazards likely to

7   occur, and published a four-year study in that regard.

8   My concern is that the elimination or

9   discounting of the fire workers/fire persons responsible

10   for responding to fires, as well as emergency workers,

11   to me appears inappropriate in the absence of evidence

12   for long-term results, resulting from a lack of use of

13   N95 or higher efficiency respiratory protection.

14   In the case of the loggers exposed to Mount

15   St. Helens, they were exposed continuously during their

16   work for more than four years, and the study was able to

17   produce evidence using episodic and not continuous,

18   unfortunately, protection with N95 respirators. They

19   were able to do their work, very difficult work, as

20   loggers on Mount St. Helens, but they were also

21   protected from the hazards of what was not just a highly

22   respirable particulate matter, but also a mineral dust

23   containing free silica, which could have resulted in a

24   chronic respiratory hazard.

25   So with evidence in mind that acute hazards

1   are clear, respiratory, cardiovascular, exacerbations of

2   asthma, exacerbations of other existing chronic lung and

3   cardiovascular conditions, that's clear.

4   But in the absence of evidence of long-term

5   effect, I think it's premature to exclude those folks

6   from this rule-making, and I would urge you to make

7   contact with -- if you haven't already done so, which I

8   imagine you have -- both the occupational respiratory

9   studies group in NIOSH in Morgantown, West "by God"

10   Virginia where I work, and in California here with the

11   CDPH.

12   Thank you very much.

13   (Speaker change.)

14   PODIUM SPEAKER: Good morning. My name is

15   Elizabeth Treanor. I work with the Phylmar Regulatory

16   Roundtable. It's a group of companies that are

17   committed to improving workplace safety and health. We

18   have a time limit of five minutes, so I'm going to try

19   to get through this, but Ms. Friedman also asked that we

20   speak slowly, so that's going to be a challenge. So

21   thank you very much for holding this meeting on this

22   extremely important issue.

23   Our first comment is that the board meeting

24   made a finding of emergency for outdoor workplaces. The

25   petition was for outdoor workplaces, and we recommended

1   the emergency regulation focused on outdoor workplaces

2   and deal with indoor when you begin the permanent

3   rule-making because we believe that would be more

4   appropriate to do there.

5   Also, because duration of exposure is

6   essential in determining what the dose is that people

7   are exposed to, we recommend that DOSH include another

8   exception for employees that are exposed to AQI greater

9   than 150 for more than one hour for PM2.5. So we

10   recommend that.

11   In addition, we recommend that there be a

12   revision to the A2E. Some PR member companies will

13   follow me and discuss their activity. There are

14   individuals who are engaged in emergency addressing

15   downed power lines, addressing downed communications

16   facilities, and it is very important that those workers

17   be able to move in quickly and address that.

18   So there is the restoration of power, water

19   systems and communications systems, but there is also

20   the actual removing of the imminent hazard to the local

21   community.

22   So we request that that language be revised to

23   say "emergency response personnel performing emergency

24   operations," and that would cover utility employees and

25   communications employees that are actively involved in

1   controlling high hazards.

2   Thank you very much.

3   COREY FRIEDMAN: Thank you.

4   And it seems like a good time to note if

5   anyone has any specific language that they would like us

6   to consider as the last commenter had, please feel free

7   to send it if you have changes to the draft that you

8   would like to be included. Specific language is always

9   great. Thanks.

10   (Speaker change.)

11   PODIUM SPEAKER: Good morning. Rob Moutrie

12   for the Cal Chamber of Commerce and the coalition who

13   are sitting out there.

14   I will also try to keep it clear, as my habits

15   from court. The reporters will just look at me with a

16   mean face if I go too fast. I will try to be compliant.

17   So as to the scope provision. The employer

18   community concern really is just predictability and

19   feasibility. Looking at the present draft, our concern

20   is that we can't predict well when it would be in

21   effect, and thus when it will trigger the following

22   section. So our thoughts are aimed at addressing that.

23   First, as to section A1A, which refers to a

24   smoke advisory, presently a smoke advisory is not

25   limited by the location of the advisory or the location

1   of the issuing agency, so we would urge that the

2   location of the advisory be tied to either in proximity

3   the work site or including the work site and potentially

4   to advisory agencies, which are either federal or

5   California. We assume that's just an oversight. We are

6   clearly not concerned about fires in Massachusetts.

7   To the second factor, the realistic

8   possibility, which you've acknowledged awareness of,

9   it's our perception that that is because it was

10   important, not really as workable here, and I'm sure

11   others will comment on that. Our thought would be that

12   should be removed and the PR is really well-written in

13   individual line edits which have submitted in their

14   letter to deal with this as well, and we support those

15   which you have; or if not removed an "and" should be

16   added between sections should be A1A and A1B such that

17   we have a warning and a potential for smoke, which

18   narrows it down a little bit.

19   Next we want to flag -- here we are. Yes.

20   Next, though it is not included here, we have

21   some concern that the way this regulation is presently

22   drafted seems to imagine that an employer and/or

23   employee is consistently on their phone or on some other

24   online source checking into AQI, which is truly one of

25   the advantages of AQI. It's available online.

1   But we have concerns about the feasibility of

2   that being a triggering mechanism. You have employees

3   off site. The employer is not constantly checking. It

4   seems like there would be necessarily some time for the

5   employer to notice that. So our thought is there should

6   be some discovery period here to allow employers to

7   catch online information, and to take steps to comply

8   with the effects of the regulation. Our initial thought

9   is twelve hours or one shift, something to that effect.

10   We echo Ms. Treanor's prior comments and the

11 PR letter's comments about this being vested to outdoor

12 only. Indoor creates a host of issues. I'm sure we

13 will get to them later, but MERV routines aren't in

14 place in many buildings.

15   And outdoors workers are also the most

16 exposed, and it's where AB1124, which is, of course, in

17 the background for all of us, I'm sure, is aiming. So

18 we think outdoor is the proper place for us to focus

19 exclusively and PR's edits on that point address that

20 very succinctly, and I think that they are helpful.

21   And related to outdoor, one of the points I

22 will add is though we are using AQI here, AQI is really

23 best suited to outdoor as well.

24   PEL is time weighted. AQI is not time

25 weighted the same way. An outdoor worker is in a

1   consistent environmental time. AQI also makes the most

2   sense in that environment, as opposed to mixed workers

3   walking in and out or something to that effect.

4   And with that, I will stop for the next.

5   Thank you.

6   COREY FRIEDMAN: Thank you.

7   And just to say again, in case I wasn't clear

8   earlier, the exception for closed buildings or

9   structures or closed vehicles, it does not require a

10   MERV filter or another kind of filter. So basically,

11   it's people are inside with all the windows and doors

12   shut and no other big opening under this draft with the

13   intention that they would be accepted.

14   (Speaker change.)

15   PODIUM SPEAKER: Good morning. I'm

16   Roxanne Fynboh. I'm representing California Industrial

17   Hygiene Council or CIHC. We, the council, represents

18   industrial hygienists in the state of California.

19   Our comments have been -- we have done a

20   strikeout and underline format that incorporates our

21   comments that we will be submitting. I'm going to try

22   to summarize some of them here.

23   We consider this to be a sort of emergency

24   action plan type regulation that applies to outdoor

25   workers. And to clarify that, we propose that the title

1   be changed so that it reads, "5141.1. Emergency

2   procedures for protecting outdoor workers from wildfire

3   smoke."

4   Under scope and application, we propose

5   changing No. 1 to "This section applies to outdoor

6   workplaces."

7   And -- no. "This section applies to outdoor

8   workplaces," and then we strike the AQI reference, and I

9   will be explaining that a little more later.

10   And the conditions that the scope -- that the

11   regulation will apply to includes those conditions where

12   wildfire smoke advisory has been issued by a local,

13   regional, state or federal government agency, and there

14   is a realistic possibility -- or alternate word for

15   realistic -- that outdoor employees may be exposed to

16   wildfire smoke.

17   We also propose to strike in consideration of

18   the AQI as being the citing of, in fact, a PEL. And

19   again I will have comments be about that later. We

20   propose to strike C under No. 2.

21   And also propose to eliminate section --

22   section 3, which again we will cover in another section

23   when I make my comments later.

24   (Speaker change.)

25   PODIUM SPEAKER: Hi. I'm Scott Bourdon. I'm

1   with the Cal State University System Wide Risk

2   Management Office. And I did submit some comments

3   earlier, so this is just a brief summary of my comments.

4   One is regarding the use of the AQI, and the

5   challenges of having inconsistencies between the PEL,

6   PM2.5 and AQI when they were developed for different

7   purposes. And, you know, one being more applicable to

8   workers and one being -- the AQI being more applicable

9   to the community.

10   So speaking on behalf of our systemwide risk

11   management, we are -- we prefer the PEL process be

12   pursued.

13   Also, regarding the AQI, there are different

14   baseline AQIs as our understanding for different

15   locations in the state, so if there could be a baseline

16   number, maybe a percentage, a baseline consideration for

17   this language, that might be helpful.

18   Also, regarding the exemption for the employer

19   to demonstrate the concentration below PM2.5, AQI of

20   150.

21   First of all, the language is a little vague.

22   If there could be some clarification on the sampling

23   method used, or as determined by a CIH or CSP, something

24   along those lines, that would be helpful. And also

25   regarding that, for the employer to make that call,

1   then, you know, your local agency has a different

2   number. I just think that's problematic for employers.

3   It's going to be -- I mean, just -- I think it's going

4   to be a challenge to kind of explain that to your local

5   community -- I mean, your employees if you're making

6   that exemption. So a general comment on that.

7   And also regarding 2C, I believe it is, under

8   identification of harmful exposures. That first

9   sentence there, "When exposed to an AQI greater than

10   150," if you can just add "during wildfire event" just

11   so it's clear. I mean, I know in other places you've

12   made that clarification, but if you could just clarify

13   that there in that section.

14   Those are all my comments.

15   (Speaker change.)

16   PODIUM SPEAKER: Good morning. My name is

17   Michael Miller with California Association of Wine Grape

18   Growers. Our growers provide the grapes that make

19   California's finest wines in the world.

20   We take workplace safety very seriously. We

21   have experienced wildfires in wine country in 2017. We

22   had a devastation in wine country. Our vineyards

23   actually served as a firebreak for those fires and

24   stopped them from being even worse than they were, so

25   this is a very important issue for us as growers.

1   Our concern with the scope is that it is very

2   broad-based, and looking at a measure of air quality

3   index based on potentially the regional air quality

4   management district, but the realty is that it is

5   different in several locations in the district.

6   So you may have a district put up an advisory

7   saying here is the level of AQI in one part of the

8   district. It may be very different than another part of

9   the district based on wind patterns and everything else.

10   So we need something that is very specific to

11   the workplace. What is the air quality index at the

12   workplace? I'm not quite sure how we can measure that

13   or how you want to approach that, but if you look at the

14   broad level, this can be very, very hard to determine if

15   you have a vineyard at one location where the air is

16   perfectly fine because the wind is blowing at a certain

17   way, and another location where it is more difficult,

18   but you have the same AQI report from the regional

19   district. So we would like to look at that also.

20   And B, where it says "exposed to wildfire

21   smoke." I think you want to say something about

22   dangerous level of wildfire smoke or something that

23   makes it clear, because the realty is that in the last

24   year, last summer alone, most of California was exposed

25   to wildfire smoke at some level or another.

1   Thank you.

2   (Speaker change.)

3   PODIUM SPEAKER: Good morning. My name is

4 Karen Tynan, and I'm an attorney in California, and I

5 represent a number of agriculture businesses, producers,

6 and have been in the workplace safety arena for about

7 ten years.

8   I would like to specifically speak from my

9 experience as a Sonoma County resident in 2017, so I was

10 there when the fires happened. And one consideration

11 that I would like to put forward is that when these

12 incidents are happening, they are very dynamic and there

13 is a lack of information. And, in fact, in

14 Sonoma County, the cell towers burned down in the early

15 hours of Monday morning, and we had no cell coverage, no

16 ability to check the news from Monday morning at about

17 2 a.m. until Wednesday evening. So just like the olden

18 days, we were relying on AM radio, which was focused on

19 evacuation orders and law enforcement.

20   And so the idea that people are going to be

21 able to use their phone and check a website, I assert is

22 not realistic and is, in fact, not feasible because of

23 the dynamics in these situations -- and I used that

24 Sonoma County example -- we also did not have cable.

25 There were utility cutoffs up through Thursday in

1   Sonoma County, so you're talking about a period of three

2   to four days where there is a lack of information, and

3   the AM radio emergency broadcast are focused more on

4   personal safety and law enforcement. So that comment is

5   directed towards A1A.

6   And further to that, I will support the Cal

7   Chambers' suggestion that the "or" would need to be

8   changed to an "and" because of the difficulty in

9   obtaining information from public sources during the

10   very dynamic times that these fires happened.

11   Thank you.

12   (Speaker change.)

13   PODIUM SPEAKER: How are you doing? My name

14   is Brian Miller. I'm with Rudolph & Sletten and I also

15   represent CEA.

16   I will just clarify as the draft stands now,

17   it appears that A2C does allow for the employer to do

18   local monitoring at the workplace; the challenge being

19   as some of our projects are several miles from the local

20   reading station that the AQI is pulled on the website,

21   and so the conditions vary.

22   Some of the jobs would like to opt to do that

23   local monitoring. Other sections allude to before the

24   shift starts and periodically throughout the day and/or

25   as conditions change through the day; wind, heat and

1   whatnot. So I just want to clarify right now it does

2   stand that you can do your own monitoring.

3   ERIC BERG: Yes. That is the intent, that you

4   can do your own monitoring.

5   Thank you.

6   (Speaker change.)

7   PODIUM SPEAKER: Good morning. I'm

8   Brian Heramb, Certified Industrial Hygienist

9   representing San Diego Gas and Electric, and thanks for

10   the opportunity to make some comments.

11   In particular, I wanted to share just some

12   experiences from a gas and electric utility related to

13   2C.

14   If the AQI of 150 for PM2.5 is used, there are

15   some practical issues related to establishing that for

16   any level of any duration of exposure. One of them is

17   that often we have people in complexes where there may

18   be smoke where they're transiting from one building to

19   the next, and they're indoors for essentially all day,

20   but they may be going back and forth from laboratories

21   to offices or other things.

22   So Elizabeth Treanor suggested that there be a

23   time of one hour, for instance, that would be a

24   reasonable period of time that would allow people to

25   transfer from building to building, but not be adversely

1   affected doing their normal work in an enclosed

2   building.

3   This one hour would also allow some things to

4   happen in other areas where there is active either

5   response or restoration to wildfire. For instance, we

6   have a lot of equipment being delivered by trucking

7   companies.

8   In 2007, we have 3,000 poles that had to be

9   delivered to work sites that have been burned out, and

10   quite a number of those poles came from Canada. So we

11   have on-site deliveries being made where so the people

12   that may be driving trucks or making deliveries are

13   going to be getting in and out of vehicles, maybe just

14   for a brief period of time. So again, practical time

15   limit might be something that would be applicable and an

16   hour is one that we consider may be useful.

17   Related to 2C, the emergency response

18   exemption. I also wanted to share a few things about

19   the activities that gas and electric utilities

20   participate in. There are really at least two

21   significant phases that we were involved. The first one

22   is actual response. And this can occur during -- after

23   firing burns because at that point, we are actually

24   having our own systems, the gas and the electric systems

25   are threatened. And any of the customers can actually

1   be affected by damaged equipped, whether we have leaking

2   pipelines or we have downed wires that are still

3   energized.

4   So some of the responders, responding teams

5   that we have, their purpose is really to identify

6   trouble and immediately respond to protect people, so

7   it's a life protection activity. And sometimes it takes

8   the form of actually doing switching or de-energizing

9   wires or other electric equipment.

10   Sometimes it is a matter of not even being

11   able to do that, but it's trying to keep people out of

12   areas where there are downed wires, for instance, that

13   are energized, to enable people to evacuate safely

14   through different corridors.

15   And when areas are so badly damaged by fire,

16   that buildings are actually destroyed, then it is

17   possible to have gas actually leaking from the gas

18   services to those buildings, and gas crews have to get

19   in and actually shut off the gas either to an entire

20   complex or by home, home by home or business by

21   business, at their meter service.

22   So during the action -- and also if we have

23   any damaged pipelines that require some real aggressive

24   types of work where we actually have to excavate and

25   squeeze pipelines or do some other types of shutoff,

1   then our employees are actually engaged in work as the

2   electric crews are. It is very quick action, very

3   organized teamwork. And it's very focused so that

4   attention to certain types of none -- or things that are

5   not specifically related to the emergency response can

6   sometimes get overlooked or its of lower importance than

7   the immediate protection of people related to the

8   emergency.

9   COREY FRIEDMAN: Could you tell us what

10   protections for PM2.5, if anything, could be used under

11   those circumstances? And I ask that question of anyone

12   who is an employee or has employees that might work

13   under similar condition.

14   PODIUM SPEAKER: Certainly, providing the

15   safety pieces, that's something that can be done ahead

16   of time. And typically for any of our wildfire

17   response, we try to inform our employees and provide

18   them.

19   I think typically the issue is when employees

20   are actually doing the work, then it doesn't interfere

21   with communication or is it just an extra step that they

22   have to take to get -- to actually put on the

23   respirator, to take it out of the truck, or do they

24   remember to actually get it onto their trucks before

25   they reported to areas.

1   If we are doing gas leak response, often we

2   will have airline respirators that can be used for that.

3   But it's typically in the immediate response and the

4   designation and identification of the hazard and the

5   entire -- the steps have to be taken very quickly to

6   assess areas where there is a hazard to the public or

7   any other first responders because we are typically

8   trying to work in coordination with the incident

9   commanders, and we are taking radio communication from

10 that. And our crews are working either individually as

11 a single employee or in two, three, four person crews.

12 So they are often the eyes and ears of, let's say, an

13 incident command structure for certain areas as well.

14   COREY FRIEDMAN: Thank you.

15   PODIUM SPEAKER: Thanks.

16   (Speaker change.)

17   PODIUM SPEAKER: Good morning. Nicole

18 Marquez, senior staff attorney with Worksafe.

19   Just want to focus in on the scope and we

20 applaud the division's efforts in this first draft, and

21 we are in agreement and support of the use of AQI as the

22 measurement to have a threshold for this particular

23 standard. We feel that the "or" is an important part in

24 that there might be a situation where the AQI for PM2.5

25 is greater than the threshold, and no advisory has been

1   issued, but that there is a realistic possibility of

2   smoke exposure. So that gives flexibility and will

3   protect more workers.

4   We also strongly encourage that the division

5   considered changing the thresholds from 150 to 101,

6   which is in our opinion a more protective way to address

7   the situation where you have workers who are possibly

8   part of this incident group or you have kind of certain

9   health conditions, especially landscapers, folks that

10   are doing agricultural work.

11   And so we believe that the AQI for PM2.5

12   should be greater than 101.

13   We also feel that the ease in which folks can

14   kind of obtain this information is reasonable, and my

15   colleagues from Cause will talk a little bit more about

16   that, so thank you.

17   (Speaker change.)

18   PODIUM SPEAKER: Good morning, and thank you

19   for the opportunity to comment on the safety standard.

20   My name is Lucia Marquez, a policy advocate

21   with the Central Coast Alliance United for a Sustainable

22   Economy for Cause in the Central Coast working in the

23   Ventura and Santa Barbara County.

24   During the Thomas Fire in 2017, we saw many

25   farm workers in our region working outdoors without

1   protections from wildfire smoke. So we along with

2   partners distributed over 15,000 masks, as well as

3   providing education of what exposure to wildfire smoke

4   and the impact it has on individuals' health.

5   And so we believe that the threshold of 150 on

6   AQI is not enough. The standard is considered unhealthy

7   for the general public, but many of our workers are

8   already living with preexisting respiratory conditions

9   due to exposure to pesticides or dust in their work

10   places. And so your day-to-day person is being advised

11   to take safety precautions walking around outdoors, but

12   outdoor workers are performing manual labor outdoors

13   often up to ten hours a day.

14   And so during the wildfires in our region, I

15   was outdoors when the AQI was unhealthy above 150,

16   distributing masks. And just standing outdoors, the air

17   quality was immensely bad. So just imagine doing that

18   manual labor for ten hours. That is my belief it should

19   be lowered to 101.

20   And so, yeah. Like I mentioned, outdoor

21   workers we believe are considered the sensitive group,

22   and that is why that threshold should are lowered, as

23   well as the accuracy of AQI readings is really reliable

24   in terms of monitoring the PM2.5 release from wildfire

25   smoke, but in terms of forecasting future conditions and

1   the difficulty of knowing how it would change throughout

2   the day, our thoughts is that, you know, doing that

3   local monitoring for the local air districts, and when

4   we see that there is likelihood for harmful air

5   conditions, you know, taking the precaution to let

6   outdoor workers -- that they should take the necessary

7   precautions to be safe because we know that the pattern

8   is changing, if the air quality is expected to get worse

9   throughout the day, we should just be prepared to know

10   that.

11   So in order to ensure protections for all

12   outdoor workers, the easiest solution for employers is

13   to provide the necessary safety measures like

14   respirators at the beginning of the workday, even if

15   conditions are clear at that time, because it allows

16   them to reasonably expect that conditions may worsen

17   later that day.

18   And so just to speak about the accessibility

19   and the reliability of AQI. We have heard comments

20   about people thinking that it doesn't apply to workers,

21   but, you know, AQI is -- workers are part of the

22   community, and when you're outdoors during wildfires,

23   the air quality is clearly really bad, and you don't

24   necessarily have to reference an AQI to know that. AQI

25   is a tool that allows us to come with that standard, but

1   it's just like you could check it throughout the day and

2   morning on your phone and it's something that employers

3   can do at the start of the day and just monitoring and

4   just being able to be prepared.

5   And if employers have the safety precautions

6   and have respirators available for workers, there isn't

7   necessarily a need to know do I have need to have these

8   masks ready if they already have them available.

9   (Speaker change.)

10   PODIUM SPEAKER: Good morning. My name is

11 Nancy Zuniga and I'm here with IDEPSCA, The Institute of

12 Popular Education of Southern California.

13   We are workers centered in Los Angeles. We

14 offer four worker centers and work mostly with day

15 laborers and domestic workers.

16   We work doing wildfire relief support for day

17 laborers and domestic workers after the Woolsey Fires,

18 mostly in the Malibu and Calabasas areas, and we talked

19 to over 500 workers about how they were impacted by

20 these fires. And so our comments specifically are

21 supporting Worksafe. And Cause was mentioning about the

22 AQI. I just really want to hone in on the sensitive

23 groups. So the majority -- a big majority of day

24 laborers and domestic workers are aging. They're the

25 people that clean our homes and do construction, that do

1   the landscaping that also were the first and second

2   responders during these fires, which is something that a

3   lot of the common public doesn't know, but we know from

4   experience from talking to these workers that they were

5   actually doing this work.

6   And by that, I mean, in many instances,

7   workers shared that they were actually protecting homes,

8   by acting as first responders, from fires actually

9   continuing and spreading into other homes. And so they

10   were in many ways acting as first responders, and so we

11   really think that given that some of those sensitive

12   groups are elders and folks with heart or lung disease,

13   thinking about who day laborers are. Like I said, many

14   are aging. Many are over 60. Many have existing

15   chronic diseases such as diabetes, such as high blood

16   pressure.

17   We do actually have stories and testimonies of

18   workers that did end up in the ER after they were

19   working outdoors doing this type of work. So day

20   laborers and domestic workers, even though they're not

21   typically thought of as doing a lot of the clean up, a

22   lot of the emergency response, they actually were doing

23   this.

24   And so if we really want to have a (inaudible)

25   that protects workers, we have to also think about the

1   most vulnerable workers that are out there, and we

2   really consider that day labors and domestic workers are

3   those workers that are most vulnerable, and within those

4   most vulnerable, those that are part of the sensitive

5   groups.

6   Thank you.

7   (Speaker change.)

8   PODIUM SPEAKER: Good morning. Erin Guerrero

9   on behalf of the California Attractions and Parks

10   Association.

11   Just briefly, our concerns with the scope, we

12   take the health and safety of our employees very

13   seriously, and there is a lack of clarity specifically

14   with regard to employees that move in between both

15   indoor and outdoor areas.

16   Take any kind of theme park or attraction, you

17   will see an employee frequently spend sometime outdoors,

18   sometime indoors. Think about the characters that do

19   this frequently. So we see that there is a lack of

20   clarity sadly which employees this would apply to. And

21   not to repeat what the others have said, there is also a

22   lack of clarity exactly when this would kick in.

23   So for purposes of us being able to comply,

24   and we want to comply, we just request that you consider

25   some clarifications specifically regarding when it takes

1   place and exactly which employees it affects.

2   Thank you.

3   (Speaker change.)

4   PODIUM SPEAKER: Good morning. Bruce Wick,

5   CALPASC Specialty Contractor Association. I align my

6   comments first with Elizabeth Treanor and Rob Moutrie.

7   Secondly, I do want to talk about a couple of

8   things. One is I think it is really important that

9   communication on -- it is important that you all

10   communicate the process to us of an emergency

11   regulation.

12   We are in construction. If I'm going to -- I

13   need to communicate with my member safety coordinator so

14   they are prepared ahead of time when the reg is coming

15   down, the very fast emergency reg process, because they

16   have to train crews that are all over the place and get

17   them up to speed with whatever the reg entails, so it is

18   really important that you communicate when these things

19   will happen, and so we can be prepared to move based on

20   the finality of the reg, et cetera.

21   And I have a question about the timeline. So

22   I would like you to restate the timeline so we can

23   understand it more clearly, but also there is AB-1124 in

24   the legislature that has urgency measure. It is already

25   in the Senate. That is an emergency reg. If that

1   passes, what does that do to this proposal and this

2   process, which sort of gets me back to we always have

3   this problem of trying to balance in a regulation,

4   getting it right and getting it out there.

5   And I was there when Mitch Steiger introduced

6   the petition, and I've heard no one on the employer's

7   side say, no, we don't need a regulation.

8   Let's protect our outdoor workers. And, for

9   instance, the concepts in AB-1124 make a lot of sense to

10   move fast. But, I mean, this is as big as an advisory

11   committee gets. We are going to spend almost an hour

12   talking about the scope, and we are still broadly --

13   have disparity between the stakeholders. And I think we

14   would be better off trying to have a more focused reg.

15   Let's get workers protected by the start of

16   the fire season. We could do that, and then take a

17   little more time to figure out what's the right --

18   what's the full-time reg, you know, kind of like we did

19   with outdoor heat back in the day. Passed an emergency

20   reg, and we amended several times on an ongoing process

21   to make it work out for all people.

22   To try and do an emergency reg of this scope

23   and magnitude in one four-hour meeting is kind of -- is

24   really hard. And let's get the workers protected with

25   this fire season providing respirators. And again, with

1   construction, as many other industries, our workers

2   don't like to eliminate their facial hair. So doing a

3   voluntary opportunity, you know, in providing N95 dust

4   masks, we can get those to thousands, thousands of

5   workers if we have an emergency in the middle of June,

6   but I'm afraid we are going to not provide that, if

7   things get delayed or we try and do something too big

8   too fast.

9   Thank you.

10   COREY FRIEDMAN: So just to give a little

11   information about timing. For those who cannot see me,

12   I'm Corey Friedman. I'm an attorney with Cal/OSHA.

13   About timing, the plan is for the proposed

14   emergency rule-making package to go to the standards

15   board at the July meeting. We should all know if you

16   want to make comments on it, it is probably preferable

17   to do so before that meeting. There is going to be

18   another standards board meeting in May, and I believe

19   June as well. Yes, June as well.

20   So you will have an opportunity either at

21   those meetings to comments, if you would like, because

22   at the July meeting, the standards board will vote. And

23   if they approve something, there will not be further

24   changes in the regulation before it takes effect before

25   it goes to administrative law. And if it is approved,

1   it would take affect.

2   And after the standards board will vote, that

3   that very short procedure on your emergency rule-making

4   page, that takes place after the standards board's vote.

5   So at that point, there won't be an

6   opportunity to change the emergency regulation.

7   However, the emergency regulation is only in effect for

8   a limited period of time.

9   So there will be an opportunity to work on the

10   permanent regulation. Whether that will look like this

11   or something very different, but the emergency

12   regulation has an expiration date. It can be extended

13   for up to about a year, and that's it.

14   So there will be a permanent regulation and

15   that will go through a usual rule-making process. For

16   those of you who may not (inaudible), there will be more

17   opportunities for public comment, more opportunities for

18   potential revision (inaudible) --

19   THE INTERPRETER: I'm sorry, can you speak up

20   louder?

21   COREY FRIEDMAN: So I'm not sure how much of

22   that you caught, the court reporter and the interpreter,

23   but I was saying that once the emergency regulation is

24   in place, assuming that it is, there will be the

25   permanent regulation process, and there will be more

1 opportunities for public comment, that is the longer

2 more detailed process. There is more opportunity for

3 revision.

4   So there will be a chance at that point to

5 talk about changing this, adding to it, subtracting to

6 it, however it turns out. And presumably during that

7 process, if this emergency reg or something like that is

8 enacted, there will also be some experience with this

9 implementation.

10   And just to respond to one point by the last

11 commenter. This is not going to take effect until after

12 the standards board votes and it is approved by

13 administrative law and takes effect, but there is

14 certainly nothing stopping any employers from taking

15 action now.

16   And we are acting quickly because wildfire

17 season is upon us very soon. But, of course, there are

18 already regulations in place that govern respiratory

19 hazards. They are not specific to PM2.5, but they do

20 state that employers must protect workers from

21 respiratory dangers. So nothing is preventing anyone

22 from providing respirators or taking any other actions.

23   PODIUM SPEAKER: All right. Thank you.

24   My name is James Mackenzie with Southern

25 California Edison, and I'm the principal manager of

1   safety programs and compliance.

2   And first, I do want to align my support with

3   the comments from Ms. Treanor from Phylmar Regulatory

4   Round Table. I do agree with the language provided. I

5   also did submit a letter on April 26 that I know you

6   have receipt of as well. It has some specific language.

7   And I wanted to draw attention to four specific points

8   with these comments here.

9   The first being in A2E, I agree with the

10   comments that a couple of organizations have had around

11   widening or providing clarification around emergency

12   responders to those that providing important utility

13   services.

14   And the languages that I provided in my letter

15   simply the same such as those providing utility

16   services. And what that does is allow our workers who

17   often accompany those first responders to go in and make

18   sure that downed lines are de-energized, removed from

19   the area. Mr. Heramb from San Diego Gas and Electric

20   mentioned the gas implications as well.

21   And you had asked a good question earlier

22   around what are we doing today. We do have a

23   longstanding history of providing N95 dust masks to our

24   workers that are in their areas for voluntary use. And

25   that's something that, as I've benchmarked with my

1   utility peers over the years, that I believe is

2   longstanding of all of the companies in California at

3   least that we go through many -- unfortunately, because

4   of the amount of wildfires, we go through many of those

5   masks, and the employees are wearing them.

6   The second point is with regard to further

7   clarification on the outdoor versus indoor. I do

8   support the notion that this is an emergency declared

9   for outdoor workers and agree with allowing some level

10   of exception for those that are maybe traversing between

11   buildings. One hour does seem to be a good time frame

12   for that.

13   A third comment is in response to a couple of

14   comments around A2C, where we do support the provisions

15   allowing the employer to demonstrate that the

16   concentrations do not exceed the AQI of 150. There are

17   tools available to do that.

18   And a question that raises is how we would do

19   that, and we have data that shows that. So the burden

20   is on the employer to support that in those situations.

21   We have several situations of coastal wildfires where

22   the closest -- the closest monitoring equipment is

23   indicating a higher AQI, but with offshore -- I was

24   confused, offshore or onshore. Fresh air is coming in.

25   So where they are working, it's not a problem at that

1   time.

2   So if we have the ability to monitor that, it

3   does allow workers -- one of the challenges that I

4   shared previously is when you have workers working in

5   high voltage situations where you have to wear arc-rated

6   clothing, there are challenges related to some of those

7   respirators and the arc-rated environment, the N95

8   masks. So it allows the retaining voluntary use of

9   allowing the employer to demonstrate whether or not a

10   hazard is there is helpful.

11   The final comment I have is there was a

12   comment earlier, and I know I've heard it as well around

13   the exception for -- this is in A2A, around when the

14   indoor work environment is mechanically ventilated, I

15   think there is some confusion reading the current draft

16   where because of the comments later in the document

17   around the MERV and the HEPA filters, so by simply

18   saying filtered by any mechanical ventilation system, I

19   think it helps clarify that. That's all I have to say.

20   Thank you.

21   (Speaker change.)

22   PODIUM SPEAKER: My name is Jay Weir, and I am

23   a senior manager of environmental health and safety with

24   AT&T.

25   We have requirements under the Department of

1   Homeland Security to be there during the first issue of

2   a fire. For example, the Camp Fire started Thursday

3   night. We were there Friday morning. We needed to be

4   out there to remove and make sure that things were safe

5   for people to come in, including firefighters. We also

6   had the responsibility to make sure the communications

7   were up.

8   You heard earlier about communications, taking

9   time to get it up. We were trying our best to make sure

10   that cell sites that had been destroyed were put back

11   together as quickly as we possibly could by bringing in

12   equipment.

13   We do have a robust program in our company.

14   We do provide N95 masks. That's all part of our

15   program. All of our technicians before they leave are

16   trained. None of them leave alone. I'm usually on site

17   when these things are happening. And they do leave in

18   at least in pairs or in groups so they can take care of

19   each other in the situation that they're in.

20   We are in there when the fire is still going,

21   so they are provided a mask and they could use them.

22   It's on a voluntary use, but most of our people will use

23   their mask.

24   That's why I would like to see just one little

25   part here, and that's the A2E, to add utility services

1   including communications, electric, gas and water. Make

2   it clear.

3   We are first in line to be out there. Every

4   one of our people, before they go in, they're required

5   to carry a letter from the Department of Homeland

6   Security that says you're allowed to go into the fire

7   zone.

8   The other people that we are talking about are

9   not allowed in the fire zone itself, not until after the

10   fire is totally out, but utilities are required to go

11   into the fire zone to make things safe for those people

12   who are putting the fire out.

13   Thanks for your time.

14   (Speaker change.)

15   PODIUM SPEAKER: Hello. My name Abad Leyva.

16   I'm from the Street Level Health Project and the Oakland

17   Workers Collective, and we work with day laborers and

18   recent migrants and refugees.

19   And as somebody else mentioned before, day

20   laborers are first and second response when fire

21   happens, and even after fire happens as well. And this

22   population is being obviously neglected. They have

23   health issues. Sometimes they're unaware of it or

24   ignored. So we believe that is important to reduce AQI

25   from 150 to 101. It is important to base all of these

1   protections on the most vulnerable ones in our

2   population because if we don't do that, then we are not

3   doing our job. And we believe it is important to start

4   right there.

5   Thank you.

6   (Speaker change.)

7   PODIUM SPEAKER: Good morning. I'm Ann Katon

8   from California Rural Legal Assistance Foundation, and I

9   support the comments of Worksafe and Cause and the day

10   laborers.

11   And, in particular, we think -- we really

12   appreciate all the work that Cal/OSHA has done on

13   working on this standard, and it's a great foundation.

14   We do think also that the AQI should -- the threshold

15   should be reduced to 101 to protect the sensitive

16   workers. Workers who are doing very hard physical labor

17   outdoors, if they have any health sensitivities, they're

18   going to be particularly vulnerable.

19   Also, I think it is important to realize you

20   can check the air levels of -- you don't have to check

21   them right out in the field. You can check them where

22   there is cell or internet service in an area, you know,

23   even if it is more spotty because of an emergency. And

24   combined with that, in these kind of situations, it's

25   very important for employers to have a way to

1   communicate with workers who are out in the field, you

2   know, even if the cell service is spotty. That's

3   already required for emergency medical and heat stress

4   standards, so people should have a system for that in

5   place.

6   And AQI is the appropriate -- AQI for PM2.5 --

7   standard to be using because it is readily available.

8   We cannot wait for development of a PEL, and the AQI has

9   been scientifically reviewed very well.

10   Thank you.

11   (Speaker change.)

12   PODIUM SPEAKER: Good morning. My name is

13   Mitch Steiger. I'm with the California Labor

14   Federation.

15   I first just want to thank you both Cal/OSHA

16   and the standards board for all of their work on the

17   standard. I know that it is a very abbreviated

18   timeline, much quickly than we are used to doing things,

19   and we very much appreciate it overall. Thanks.

20   The language here looks really great and we

21   are really impressed at how quickly this came together

22   and what a great starting point we are at.

23   Specifically with respect to this section, we

24   think it makes sense to kind of think about the general

25   hazard that we are looking at here. This one is a

 1   little bit unique in that there is no regulation. There

 2   is no regulatory language that is going to match this

 3   perfectly. It is not a very cooperative hazard. It

 4   happens very suddenly. It moves all over the place. It

 5   is very hard to measure. It is very hard to track.

 6   And when we look at things like the AQI and

 7   take it apart and really get into the weeds of the fact

 8   it wasn't designed for this, we would urge that those

 9   getting into that level of detail about this think about

10   where we are in current language; that right now, what

11   we have is standard that says that if the employer

12   believes exposure is harmful, then they're supposed to

13   do something.

14   And so it essentially asks employers to be

15   physicians, be scientists, be all of these things that

16   they're too busy to do, and we have no idea what their

17   conclusion is going to be, but the result is likely

18   going to be that workers are not exposed to this hazard,

19   and we know this because that's exactly what happened

20   last year.

21   We saw story after story of workers outdoors

22   with nothing who were forced to breathe this air

23   regardless of whether they were pregnant, regardless of

24   whether they have asthma, and see people walking from

25   their cars into a store with masks on.

1   And they're like, well, wait, they're outside

2   for 30 seconds, and they have masks. I'm outside for

3   eight hours. What is this doing to me?

4   And that's also a really important thing to

5   consider, that this hazard goes a lot deeper than just

6   sore throats and just irritated respiratory systems;

7   that this permanently reduces your lung function, and

8   this causes a lot of permanent damage. If you have some

9   sort of underlying heart disease, if you have some sort

10   of underlying respiratory disease, this can mean a

11   hospital visit. This can mean death. And so we really

12   need to do something. We need to do it quickly. It

13   needs to be in place for this year's fire season.

14   And with that in mind, we would echo the

15   comments of previous commenters who said that the AQI

16   should be lowered from 150 to 100 or 101.

17   I just checked, and it looks like about

18   8 percent of the population has asthma, which in

19   California, that's more than a million workers. And so

20   if we were to leave the AQI at 150, we are asking over a

21   million workers to breathe the air that the scientific

22   community seems to agree is very harmful for them to be

23   breathing.

24   And when you consider that with the rest of

25   the regulation on what it is that we are asking

1   employers, it seems pretty fair to make sure that those

2   workers, given that so many of them do have asthma or

3   are pregnant or do have some underlying condition, that

4   they're protected by this standard.

5   And we would also just generally state that --

6   just keep in mind that this is an emergency regulation,

7   that we are going to get to come back and do permanent

8   regs after this, that we will be able to take the time

9   that we need to get into things like exactly how we

10   define it or exactly what we do, but that moving forward

11   with what we've got is very much going to leave a lot of

12   workers at risk of serious harm, and we would just urge

13   everyone involved to keep that mind; that if there is

14   something we don't get exactly right, we should do the

15   absolute best we can for whatever goes to the standards

16   board in a few months.

17   But overall we just need something in place so

18   that we don't go back to that world of workers out there

19   breathing the harmful air with nothing regardless of

20   what's going on, regardless of what the exposure to

21   their own lungs may be, to their own baby may be, and

22   just to keep that in mind as we move forward.

23   Thanks.

24   (Speaker change.)

25   PODIUM SPEAKER: Good morning. Kevin Bland

1   with Ogletree Deakins representing the Western Steel

2   Council, California Framing Contractors Association and

3   the California Framers Contractors. Did I say that

4   twice? Residential Contractors Association is the third

5   one. Sorry about that.

6   I think it is important -- there is one point

7   I want to comment on that came up earlier, Ms. Friedman

8   talking about current regulations. One, we have an

9   emergency regulation law for an emergency situation and

10   we need this in that context because currently, it would

11   be impossible for an employer in the classical wildfire

12   to be able to comply with what the current standard is

13   that morning, that day, with what the respiratory

14   standards say. It is just an impossibility.

15   And so that is why this is important. It is

16   important for employers to have something they can

17   comply with, something that is going to be protective of

18   their employees moving forward, and something that is

19   reasonable. And we have seen this, been through this

20   rodeo a bunch of times, so the last 20 years of doing

21   this.

22   So with that, I want to give a little bit of a

23   history lesson the issue of realistic possibility. I

24   look around the room and I think I may be the only one

25   still around that was there during the drafting of

1   AB-2774, working with agency and with the legislature.

2   Mitch may have been there. Oh, Beth was there, okay.

3   So there was a few.

4   But realistic possibility was something that

5   was tied to a standard dealing with the issuance of a

6   serious violation. It wasn't in this context.

7   And what has happened to that term in front of

8   the standards -- in front of the appeals board as time

9   has gone on, for lack of a term, it's been kind of

10   bastardized. The whole intent and idea of the term

11   "realistic possibility" was not supposed to be the mere

12   possibility or just a possibility. It was supposed to

13   be a lesser standard that the current, which was

14   substantial possibility, but more than just a mere

15   possibility.

16   So I understand that we were considering here

17   reasonable. That would be a higher standard, I think,

18   or one that may have at least more guidance. And I

19   think it's very important that it's tied to something.

20   In AB-2774 that passed in 2011, January 1,

21   became effective, that was tied to an actual hazard.

22   And that was in exchange for language that was there

23   where you had to presume a hazard exists, which combined

24   with substantial probability -- I probably lost half of

25   the room on that.

1   But my point being is realistic possibility in

2   this context doesn't work for employers. It doesn't

3   work for enforcement. It's not -- it needs to be tied.

4   I know we used the word, and my point would be to take

5   that out completely, realistic possibility, and so that

6   an employer knows.

7   Right now, we are also dealing with the issue

8   of the scope of this, with the AQI, index. And I hear

9   arguments to lower it. Right now, we are talking about

10   an emergency situation. We are talking about something

11   that has to happen on a dime. And when we lower this,

12   it is going to make it even harder to comply with.

13   I join in the (inaudible) Cal Chamber, and

14   join in Beth Treanor's comments earlier. And I think

15   it's very important if we get the scope right, I think

16   everything else can flow. There's going to be a few

17   other comments I want to make about other sections, but

18   right now, if we don't tighten up the scope and make it

19   something that employers can comply with reasonably, the

20   division can enforce reasonably, we are not going to

21   protect the employees in which we are trying to protect

22   today.

23   I think if we can accomplish that in here,

24   then we will accomplish something great for the state of

25   California for the employers and the employees to make

1   it safe.

2   But right now the way this stands, I think

3   it's too difficult to understand how to comply with it

4   when you can be in compliance with it with the words

5   "realistic possibility" still in the regulation. So I

6   appreciate that. Thank you. Hope that everybody could

7   hear me all right. Thank you.

8   (Speaker change.)

9   PODIUM SPEAKER: Going morning. Getting

10   pretty close to good afternoon, I suppose. I'm

11   Brian Little with California Farm Bureau Federation.

12   Okay. Good. I'm not going too fast. Okay. Good.

13   The Farm Bureau, you may or may not know is

14   the largest organization probably of agricultural

15   employers in California. And I would like to start off

16   by associating myself with the remarks offered by

17   Mr. Moutrie, Ms. Treanor, Mr. Wick, Ms. Bland, and some

18   of the others who have preceded me.

19   Mr. Wick, in particular, his comments I

20   thought were interesting in that he talked about the

21   fact that -- at least I understood he talked about the

22   fact that it's going to be the responsibility of people

23   like us, in particular, me in particular, to try to

24   explain to, in my case, agriculture employers what the

25   agency expects them to do as a result of this regulation

1   and when they expect them to do it, which leads you back

2   to questions about scope.

3   And the scope, I think, is going to be more

4   than a little bit problematic. Kevin expounded in some

5   length about the realistic possibility problem. That

6   was meant to be a compliment -- expounded at some great

7   explanatory length about the problem with realistic

8   possibility and why that presents a problem.

9   Another thing that concerns me is I'm looking

10   at A1A, wildfire smoke advisory has been issued by -- as

11   I read this, it is any one of local, regional, state or

12   federal government agency.

13   So my concern about that would be if you're an

14   agricultural employer and you're working in a rural

15   area, but a rural area in most of California is going to

16   be closely abutted by urban areas and are going to be

17   subsumed in regional air pollution control and air

18   quality management districts, does that mean that if an

19   employer checks with a local agency that deals with air

20   quality issues -- that a regional agency that deals with

21   air quality issues and finds no applicable alert, and

22   then stops and does not go on to check with state or

23   federal agencies, that he may or may not be aware may

24   have issues or warning.

25   If they had, as this reads, that employer

1   would be required to begin to do the things that are

2   required by the regulation.

3   My suggestion, for what it's worth, would be

4   to allow an employer to be able to consult with the

5   local or regional air quality management agency that

6   covers the area -- geographic area where they are

7   working at a minimum, with the understanding that these

8   regions are very large, and the distribution of smoke

9   and dangerous air quality is going to be significantly

10   influenced by issues like geography and weather.

11   To give you an example of this, the last few

12   days, I've been checking in on the air quality reports

13   with the San Diego air pollution control district. Air

14   quality in San Diego at six locations. Most of the days

15   I've looked, most of those locations have had good air

16   quality.

17   For some reason, the air seems to be pretty

18   bad in Otay Mesa, and the fact that an employer at

19   San Diego County is going to be looking -- and, of

20   course, that's going to change and they're going to be

21   times when the air quality is not going to be good at

22   five and not so good at one.

23   That ag employee in San Diego County is going

24   to be looking at these air quality reports from the

25   pollution control district and trying to figure out, do

1   I look at that? And I tried to figure out whether I'm

2   covered by that in terms of airline miles, in terms of

3   the direction the wind happens to be blowing today. And

4   if I were that employer, I might be a little confused

5   about and concerned about whether or not I know that

6   this triggers on for me.

7   Without taking too much of your time, because

8   I know that there is a limit of what we have to talk

9   about here, I would also like to associate with myself

10   in particular with Bruce's comment about 5144 and the

11   implementation of 5144 in an instance when you have air

12   quality issues.

13   In months when there is a lot of agricultural

14   work going on, our industry will employ 470- to 500,000

15   people. At various times in the year, we reckon there

16   are about a million people that do agricultural work at

17   various times. A lot of people don't work a full year.

18   It would be logistically impossible to prophylactically

19   fit test and medically evaluate a half a million to a

20   million farm workers on the possibility that a wildfire

21   might occur close enough that it would have an impact on

22   the location where your operation operates.

23   Once the fire begins, it's going to be

24   logistically impossible to be able to medically evaluate

25   and fit test 25, 100, 150, 200, 300 workers that are

1   working on your location at that given time probably not

2   before the fire -- the threat from smoke and other air

3   pollutants has passed. So that possibility is going to

4   be very difficult, and that was one of the reasons why I

5   was encouraged when I heard the discussions about this

6   regulation that we would allow provision of respirators

7   at air quality levels in excess of 150 with PM2.5

8   without -- under voluntary respirator rules.

9   But I would say that there is an equal

10   possibility of being able to do this when the air

11   quality reaches 300.

12   As a practical matter when that happens, if

13   you're going to require the implementation of 5144 at

14   that point, you're effectively going to require an air

15   filter employer to cease operation on that day because

16   the -- it is going to be as logistically impossible to

17   either prophylactically fit test and medically evaluate

18   workers or to do it when the fire hits, so that's all I

19   have for now.

20   Thank you very much.

21   (Speaker change.)

22   PODIUM SPEAKER: Good morning. Gail

23   Blanchard-Saiger with California Hospital Association.

24   So I'm here probably on a pretty narrow issue.

25   As many of you know, California healthcare workers are

1   often on the front lines of response when there is a

2   wildfire. And we have a lot of concern both for our

3   patient safety and our employee safety.

4   An evacuation is rarely undertaken unless it

5   is absolutely necessary, so when I saw section A2E,

6   emergency response personnel performing lifesaving

7   emergency rescue and evacuation as exempt, I thought

8   that our healthcare workers that would be engaged in

9   that activity would fall under that section.

10   But in looking at some of the other materials,

11   there is a suggestion that that exception would not

12   apply to healthcare workers evacuating patients. And I

13   guess I'm just a little confused by that, and I'm hoping

14   that there is some clarification that will be realistic

15   to the situation.

16   I don't know if any of you saw the accounts of

17   the Camp Fire and the healthcare workers evacuating the

18   patients at the Feather River Hospital when the fire was

19   coming over the hill. Very scary. Very scary for our

20   patients, for our employees. I would say most of them

21   had masks on, most of the healthcare workers.

22   I don't -- I'm still trying to evaluate and

23   understand what our disaster preparedness plans are that

24   take into account these issues, but we are on the front

25   line, and evacuating the patient is the same as a

1   firefighter fighting the fire or a police officer trying

2   to get folks out of their homes, that type of thing.

3   So hopefully I will have more information by

4   the Friday comment period, but I really think that's a

5   consideration, in particular, with our disaster

6   preparedness plans. Again I'm thinking of a number of

7   healthcare workers came to the hospital location when

8   they realized the fire was so close. I don't know if

9   they could get in and get a mask. There is just a lot

10   of considerations.

11   And obviously that is very different from the

12   experience that our Sacramento hospitals had. Obviously

13   those are indoor workplaces that weren't necessarily

14   that type of evacuation activity.

15   Sacramento, UC Davis and Shriners were

16   accepting patients from Feather River Hospital, but

17   obviously people weren't working outside in the way they

18   were having to work outside in Feather River. So again

19   I plan to have more information to you on Friday, but I

20   think this is a real significant concern for us.

21   Thank you.

22   (Speaker change.)

23   PODIUM SPEAKER: Good morning. My name is

24   Walter Brooks and I'm representing the Napa Valley Grape

25   Growers.

1   The workers' health and safety is of paramount

2   concern to us, the quality of our product depends on the

3   quality and health of our workforce. So we are excited

4   to see you guys take on the challenge of working on

5   this.

6   As most of you know in that valley, we

7   directly experienced the effects of the Tubbs Fire, the

8   Nuns Fire, and the Atlas Peach Fire. And what we

9   realized and maybe possibly the new normal in our

10   environment, our harvest season is going to coincide

11   with fire season and so these incidents may occur more

12   frequently and we need a methodology to deal with this.

13   I want to speak specifically to A2C, and

14   that's the local monitoring. And I'm a grower in Napa

15   Valley and I experienced this and I'm close to the

16   valley floor and we were inundated and everybody was in

17   N95 masks for the work we were doing outdoors.

18   But when I took my fruit to the top of

19   Howell Mountain, there was absolutely no smoke at all

20   out there, and there was no need to do that. But if you

21   were to look at what the AQI index said, you'd say that

22   was a dangerous area.

23   So I like the idea of 2C, where you can do

24   local monitoring. But I'm concerned, you know, some of

25   that local monitoring, the equipment can be tens of

1   thousands of dollars. There are portable ones that run

2   in the hundred of dollars.

3   We do have weather stations at a lot of our

4   vineyards, so the idea of putting an air quality index

5   monitor at your vineyard that would allow you to

6   determine whether it was healthy for your workers to be

7   there is an interesting idea. This may be something

8   that is more part of your permanent regulation than this

9   interim regulation, but trying to understand what we

10   would need to document, what devices, and what equipment

11   you consider to be qualified, and that you would believe

12   those results would be extremely important to be able to

13   actually implement that.

14   And for those who are familiar with Napa

15   Valley, we do everything from valley floor up into

16   2,000, 3,000 foot elevation. So you would expect during

17   a fire that you might have very different conditions at

18   the different sites where you would be harvesting and

19   doing work. And so getting some more clarification

20   around that would be really interesting.

21   Thank you.

22   (Speaker change.)

23   PODIUM SPEAKER: Good morning. Jeremy Smith

24   on behalf of the State Building and Construction Trades

25   Council California.

1   I would like to first thank the staff here,

2   the interpreters, everybody in the room for being here

3   today and turning around this language so quickly.

4   There definitely is a realistic possibility this summer

5   that workers are going to be exposed to something that

6   is going to hurt them. So thank you for your hard work

7   on this.

8   I would like to associate my comments or

9   myself with the comments from Mr. Steiger from Labor

10   Federation and Worksafe. We would agree that the AQI is

11   too high now, and the standard needs to be moved back

12   down to 101, because if we don't do something like that

13   and don't do this standard, what we are asking is for

14   workers to bear the brunt of having to go to work and

15   getting injured just for wanting to show up to work and

16   do what they do every day.

17   So this standard goes a long way towards

18   protecting those workers. There are some places that

19   could be changed. We did have written comments to

20   outline those issues.

21   And finally I would like to finish with -- I

22   only have three pages here -- on the idea of realistic

23   possibility for Kevin.

24   I was in the room when 2774 was negotiated

25   with Glen and Kevin and a myriad of other people. And

1   the reason we changed then to realistic possibilities is

2   because the appeals board at the time was rolling over

3   Cal/OSHA attorneys and worker representatives and

4   overturning decisions where there was serious harm being

5   done to workers.

6   We needed a different terminology than we had

7   then, and realistic possibility, I think, was right then

8   and it is right in this language in the regulation as

9   well, because it helps ensure that workers aren't going

10   to be in danger because some employers think it's just

11   too hard to provide N95 masks or too hard to take care

12   of them.

13   Some of those -- many of the employers in the

14   room are not those employers. Many of the employers and

15   the associations in the room are good employers and want

16   to help workers. Unfortunately, we have to regulate and

17   legislate for the bad employers in this state, and there

18   are many, many bad employers in the state that think

19   it's okay for workers to be outside when you can clearly

20   see with your eyes -- not relying on AQI, not relying on

21   anything else -- clearly see with your eyes that people

22   shouldn't be out there working, and they're still out

23   there working. So it is for those employers that we are

24   here today.

25   Thank you again for your hard work. Thank

1   you.

2   ERIC BERG: All right. Thank you very much

3   everybody for your comments on subsection A. We will

4   move on to subsection B. B and C we can combine.

5   (Off the record.)

6   ERIC BERG: Okay. So we will take comments on

7   subsection B, definitions, and subsection C,

8   identification of harmful exposure.

9   PODIUM SPEAKER: Thank you. My name Elizabeth

10   Treanor. I'm with the Phylmar Regulatory Roundtable,

11   Occupational Safety and Health Forum.

12   I also want to take a moment to express

13   gratitude to the staff for their hard work and quick

14   turnaround on this challenging issue.

15   Regarding definitions, since we believe that

16   the finding that the Board made was for outdoor

17   employees only, we believe that the definitions for high

18   efficiency, particulate air, MERV, and effective

19   filtration and PM2.5 should be deleted in entirety

20   because they relate to indoor environments as opposed to

21   outdoor.

22   Secondly, we recommend that the definition of

23   wildfire smoke be revised to exclude the word "planned

24   or," the reason being is that wildfire events that are

25   planned are done so under the auspices of fire control

1   authorities, who have already done an evaluation of the

2   area prior to instituting it, and therefore that plan

3   should be deleted.

4   Regarding C, identification of harmful

5   exposures, we support the comment made earlier by

6   someone who said that in that provision, it should be

7   clear that whenever an employee may reasonably expect

8   during wildfire events to be exposed to AQI greater than

9   150, that will clarify again that it is during wildfire

10   events.

11   One of the issues that we addressed in our

12   written comments was related to mobile crews. Some of

13   our members, one in particular, mentioned that he had

14   70 crews out covering a 200,000 acre area. And it says

15   here before the shift starts and periodically thereafter

16   to monitor the AQI, what our recommendation is is that

17   we ask the employees to, because if the employees have

18   to switch from one location to another at a different

19   time, they are the ones that are going to be in the best

20   position to identify what the AQI is in the area that

21   they are at the moment, to have someone back in

22   headquarters or whatever who is trying to organize an

23   emergency response, because this is an emergency, to

24   have to track all these -- according to members -- is

25   impossible. And I understand that a few of them will be

1   giving you specific examples.

2   Thank you.

3   (Speaker change.)

4   PODIUM SPEAKER: Hello. My name is

5   John Balmes. I wear multiple hats. I'm a professor of

6   medicine, pulmonary and critical occupational and

7   environmental medicine at UCSF, professor of

8   enviromental health sciences -- sorry if I'm going too

9   fast. Professor of enviromental health sciences at the

10   School of Public Health at U.C. Berkeley, and I'm

11   physician member of the California Resources Board.

12   I have been studying wildland firefighters and

13   wildfire smoke exposure in communities for a long time,

14   and gave 32 media interviews during the -- or following

15   the Camp Fire in November. So I have some strong

16   opinions. I mostly came here to listen. But I just

17   wanted to clarify something about the AQI.

18   I agree with the speakers who have said that

19   the -- that people with preexisting heart and lung

20   disease are at greater risk, more susceptible than the

21   general population. And so would support those

22   individuals getting respiratory protection.

23   I also support anybody who feels uncomfortable

24   to wear an N95 mask, but I have problems with a

25   requirement that everybody should wear a mask at 101 --

1   AQI of 101. I support the 150 for everyone, and 101 for

2   susceptible subgroups.

3   I don't know if that could be written into the

4   rule in a way that people can follow, but that was my

5   main point here.

6   And I also would echo what one of the speakers

7   said earlier. PEL and AQI are two different beasts, and

8   they shouldn't be mixed.

9   Thank you.

10   (Speaker change.)

11   PODIUM SPEAKER: Roxanne Fynboh. California

12   Industrial Hygiene Council.

13   I would like to just say that a lot of our

14   comments with meant to help in -- since this is an

15   emergency rule-making, help to make this very simple and

16   get it through as quickly as possible, and also so that

17   it can be implemented quickly by employers, and that it

18   be very clear.

19   And so we have comments for changes to

20   (inaudible) quite a bit, but also with the realization

21   that certain issues need to be taken up by an advisory

22   committee.

23   In light of that, for section C, first of all,

24   we propose that that section be called "emergency

25   procedures" in line with our view that this is somewhat

1   an emergency action plan, and that employees are covered

2   when they are exposed in accordance within the scope --

3   again, referring back section A.

4   And that at that point, it becomes almost a

5   work practice standard in which we support training,

6   provision of training and a provision of respirators,

7   N95 respirators.

8   We would like to take out the references to

9   the AQI, because we believe that that is something that

10   should be considered by an advisory committee, and that

11   it has many complexities to it. We believe that no data

12   is -- or that bad data is better than no data, and that

13   poor decisions can be made if you have poor data and

14   that this regulation in many ways pushes the employer

15   towards the option of having to do some monitoring.

16   So, for example, if you're trying to show that

17   the controls implemented are effective in reducing the

18   AQI, you necessarily have to go to exposure monitoring,

19   which I think that we need more guidance in terms of how

20   to do that exposure monitoring, and then of how to

21   interpret the data.

22   So while we support the basics of this, that

23   will provide protection from employees by providing some

24   training and then providing respirators, we would like

25   to leave the determination of the hazardous

1   concentration in setting what I was calling sort of a

2   permissible exposure limit to an advisory committee that

3   could consider all the good science and get the input

4   also from also all the stakeholders.

5   Thank you.

6   (Speaker change.)

7   PODIUM SPEAKER: So I'm Dr. Bob Bernstein,

8   County Health Officer for Tuolumne County.

9   I want up to dibble on the remarks I made

10   earlier and the marks just a few moments ago by

11   Dr. Balmes.

12   Missing from the document is the definition of

13   a sensitive group, a member of the sensitive group. And

14   without that, comments that a number of people have made

15   about the need to or the desirability of lowering the

16   advisory to the 101 from 150 is difficult.

17   So especially for groups that are employed,

18   whether it's an agricultural worker, a prisoner who is

19   going to do wildfire work, or an emergency response

20   worker, or whatever employed individuals, at the time of

21   employment, there should be prescreening and a

22   evaluation and fit testing, if there is any anticipation

23   that that individual is going to be working in an

24   environment where AQI will exceed 101, and that person

25   may be a member of a sensitive group.

1   So two things. Please find a way to include

2   the proper definition of a sensitive group, member of

3   sensitive group. And then adjust the requirement N95

4   fit testing and preemployment medical evaluation to

5   employees who may be employed and sensitive to

6   particulate matters exposure in the 2.5 range.

7   (Speaker change.)

8   PODIUM SPEAKER: Bruce Wick, CALPASC.

9   On item C -- this is good, right?

10   Identification of harmful exposures. Again, we've

11   talked about for entities in construction, you can have

12   50 crews over a hundred mile radius, and how do you

13   monitor every site, as it changes, throughout the

14   workday? I mean, there is just no way we can feasibly

15   do something like that. And this is where the balancing

16   of this reg will matter, I think.

17   So, for instance, construction, if the rules

18   regarding -- compliant with 5144, where we don't have to

19   do the fit testing and require shaving off your facial

20   hair, but can hand employees masks, right now, I can't

21   do that as a voluntary basis as the employer to the

22   employee without doing those two things.

23   If we can do this because, as we talked about,

24   wildfires are temporary emergencies, right? And we will

25   get much more compliance if we look at it, in my

1   opinion, that way. And I believe a lot of construction

2   employers will then send out their crews and their

3   superintendents on that day and say wherever you are in

4   this general area, we will provide N95 dusk masks,

5   rather than having to ID what's happening on any

6   specific job site of your 25 or 50 crews.

7   Many employers, we would get much more

8   compliance readily that way if we are balanced that

9   that's the requirement, providing respirators to

10   employees.

11   Thank you.

12   (Speaker change.)

13   PODIUM SPEAKER: Jay Weir with AT&T.

14   I just wanted to add to what Elizabeth Treanor

15   mentioned about mobile crews.

16   I will admit to being a person with 70 crews

17   and over 200,000 acres. It is difficult to try to put

18   the AQI for each specific crew and to track it on a

19   regular basis.

20   Every morning, we leap, we send the groups

21   out. But before we do, we have -- what we have is a

22   specific IIPP for that work, for that firework. We call

23   that the HASP, health and safety plan, which they're

24   covered on prior to leaving the work location on a daily

25   basis. We have the N95 respirators available. They're

1   on the crew trucks. The supervision, including myself,

2   I carry a box of N95 respirators to replenish those that

3   the crews are using.

4   But to try to track the AQI on -- for each

5   crew on a regular basis is impossible. I mean,

6   literally impossible. And to try to do that -- again,

7   we do a daily send out for the guys and take care of

8   them that way.

9   Thanks.

10   (Speaker change.)

11   PODIUM SPEAKER: Good morning. I'm Bill

12   Taylor representing PASMA, Public Agency Safety

13   Management Association.

14   I just want to echo the previous comments

15   about deleting the definitions for effective filtration

16   of PM2.5 and MERV.

17   And just to give you some context, I represent

18   a lot of building facility managers that manage public

19   buildings, and this definition of MERV 13 sent panic to

20   a lot of them as far as the (inaudible).

21   So just deleting would help a lot, eliminate

22   that confusion, if you clarify that (inaudible).

23   Thank you.

24   (Speaker change.)

25   PODIUM SPEAKER: Hi. Tiffany Eng with the

1 California Environmental Justice Alliance or CEJA.

2   We like to comment on section B of the

3 guidelines. And again, we really appreciate these

4 conversations and comments that have been shared today,

5 especially those that have advocated for greater

6 protection for farm workers who, as we all know, endure

7 some of the hardships of working conditions on a daily

8 basis.

9   We wanted to align our comments with those

10 mentioned by Cause, which is also part of the CEJA

11 Alliance. Also with Worksafe, the building trades and

12 CalFed.

13   We really want to emphasize the prior

14 recommendations, number one, that the AQI is the

15 appropriate monitoring system to use for this emergency

16 protocol. We know that it can give fast and updated

17 measurements in air quality and really emphasize its use

18 in these situations.

19   Number two, that the overall AQI for -- PM.2.5

20 should be lowered to 101, sorry -- sorry, not 150.

21   During the last couple of fires in our state,

22 we have witnessed how quickly an AQI of 150 can increase

23 to 300 during a wildfire. We also know that keeping

24 high AQI target of 150 would not be sufficient to

25 safeguard the health and safety of outdoor workers.

1   We at CEJA urge the adoption of stronger

2 standards to protect workers who frankly are some of the

3 people in our state who we rely on to provide the food

4 and agricultural products that we all need to survive

5 and to have a strong economy in our state. And as

6 previous comments are mentioned, you know, quality

7 products rely on healthy and strong workforce.

8   We also want to recognize that an overwhelming

9 majority of these workers are low-income latinas,

10 workers, majority immigrants, and are general people of

11 color. And that by not providing strong protections for

12 these workers, we believe that this is a big

13 environmental injustice.

14   So thank you so much for your time, and we

15 look forward to seeing your final recommendations.

16   (Speaker change.)

17   PODIUM SPEAKER: Hello. Rob Moutrie for the

18 California Chamber of Commerce and Coalition. And

19 please tell me if I speak too quickly or I'm bumping

20 into the mic really loud.

21   First, I would like to echo the comments of

22 Elizabeth Treanor regarding deleting two provisions

23 under the definitions specifically related to indoor

24 references. We believe that this should be focused on

25 outdoor (inaudible) those provisions become obsolete.

1   Secondly, we like to echo the provisions, the

2   statements by Beth that the potential for employers to

3   have their employees tracked while traveling just

4   eliminates a lot of the feasibility issues here. So we

5   like to see that enshrined. You heard multiple people

6   come up and testify about the feasibility issues,

7   communication and travel, so we would like to act on the

8   importance of monitoring of the employees while moving.

9   Next also to the context, this is something

10   that I think is getting lost a little. The context here

11   is really a balancing of we protection. Employers want

12   to protect their employees and making sure it is written

13   clearly and feasibly and predictably so that we can make

14   sure that happens. And that's particularly important as

15   to what Bruce Wick mentioned, that the entire importance

16   of these is because we are in emergency situation, these

17   must come out. Quick fit testing and quick medical

18   evals just aren't feasible in that way.

19   As to the comment made by an esteemed doctor,

20   who I did not catch your name, so my apologies to you in

21   advanced -- to a doctor that perhaps we should

22   prophylactically provide fit testing and medical

23   evaluations to any employee who might be in a wild fire

24   zone.

25   The problem with that, you know, from the

1 employer perspective is that includes the whole state.

2 How are we to know months in advance where there might

3 be a wildfire in California. That's just not a feasible

4 way to approach, which is what brings us -- and I

5 haven't been here as long as Kevin, but to the central

6 point of these, which is to allow masks to be

7 distributed in a feasible way and avoid those things

8 that would get in the way like medical evaluations and

9 fit testing.

10   Sorry. That's the end of my comments. I will

11 keep this later for lunch.

12   (Speaker change.)

13   PODIUM SPEAKER: Hello. My name is

14 David Woodard. I'm with the East Bay Municipal Utility

15 District.

16   I want to speak about C, and I want to echo

17 some of the comments we heard from other speakers and

18 utility agencies. Being a water supplier, we have stuff

19 we do every day just to keep water flowing. There are

20 leaks. There are pipes that need to be fixed. There's

21 inspections and things that need to be done to our

22 system, and the ability to track all of those crews

23 during the day and update their AQIs on the (inaudible)

24 employer is difficult at best either in a room maybe

25 similar to this with people sitting there doing nothing

1   but to track where they're going through the day and

2   updating that.

3   So what we have done in the past, before there

4   was a rule, like a lot of employers here, we certainly

5   here like to take care of our employees. We made N95s

6   available before anyone told us we had to do it. We

7   tried to pull the employees in who are not critical kind

8   of things, but if there's a leak running down Clay

9   Street and water is going everywhere, we have to go fix

10   it. And then they fix that and they move to the next

11   one, and then they move to the next one.

12   And I may have 20, 30, 40 crews out there

13   during the day moving around fixing things, and to track

14   those AQI as they move would be very difficult at best.

15   Thanks.

16   (Speaker change.)

17   PODIUM SPEAKER: So Dr. Bob Bernstein,

18   Tuolumne County health officer.

19   I just want to follow up on the comment on

20   feasibility of providing preemployment fit testing and

21   medical evaluations and require that every employee in

22   the state of California undergo that. That was not the

23   suggestion that I was making.

24   I just learned from my homeowners insurance

25   policy that because I live in a high-risk area, my

1   insurance coverage was going to go up to $15,000 a year.

2   So I'm sure that there are designated areas regarded as

3   high risk. And what I was talking about where

4   potentially high-risk employee categories, such as fire

5   workers, wildfire workers, such as prisoners who are

6   going to fight wildfires, such as emergency workers and

7   so forth, if they're going to be employed in an area

8   that is at high risk for wildfire, there should be

9   pre-employment assessment and medical evaluation for fit

10   testing of N95 respirators, to find out if they are a

11   member of a sensitive group.

12   (Speaker change.)

13   PODIUM SPEAKER: I was looking for my pen. I

14   found it.

15   Kevin Bland again, California Framing

16   Contractors Association, Western Steel Council, and the

17   Residential Contractors Association.

18   I will be brief. I just want to put a fine

19   point, because I want to make sure everyone is clear of

20   the understanding of without this regulation, what the

21   respiratory requirement is for employees if you're going

22   to voluntarily provide a respirator in the state of

23   California.

24   What that means is that if you do voluntarily

25   provide an N95 respirator to an employee as an employer,

1   there must not be an exposure, and you must provide them

2   with a form called Appendix D that explains all the

3   information about that respirator.

4   But the key term there is, there is no

5   exposure, but they want to wear one anyway, right? And

6   so it really throws the baby out with the bath water

7   when we start saying, well, we can hand these out.

8   That's the purpose of this emergency reg, is because

9   once there is an exposure and it is required, there is

10   medical evaluations, fit testing, a whole host of things

11   of 5144 that are required that are impossible to do in a

12   short notice.

13   And back to, I think, Robert's point, was that

14   if we go down that road, we are going to have to test

15   every single person, keep those for 30 years, it could

16   be invasive for the employees, and it's not going to

17   happen. Let's just be real.

18   And so I want to make sure there is a clear

19   understanding that that's the purpose of this, and why

20   the employers are behind the supportive of, hey, this is

21   an emergency. We want to protect our employees, but we

22   can't be handcuffed with what the 5144 reg requires

23   today. Tomorrow, we want to protect them and be able to

24   do that in a way that's feasible and effective and

25   protective without having to go through all the hoops of

1   5144 even in a voluntary requirement, because even that

2   means there is no exposure if they're wearing it.

3   Thank you.

4   (Speaker change.)

5   PODIUM SPEAKER: Yes. My name is

6   Robert Armstrong. I'm with Pacific Gas & Electric.

7   And I want to take a moment to reiterate

8   what's been set forth by some of the people before me,

9   including Ms. Treanor's comments regarding

10   identification of harmful exposures.

11   PG&E has a service territory of over

12   approximately 70,000 square miles. And when we have one

13   of these fire events, we are very, very good at

14   mobilizing our forces to focus on that particular area.

15   But that being said, we still have -- we still

16   have an enormous number of crews that are still doing

17   business as usual across the rest of our service

18   territory. So just from a logistics standpoint, it

19   would be nearly impossible, as echoed by the young

20   gentleman from AT&T, for us to monitor every location if

21   our very transitory workforces are jumping from one job

22   location to the next.

23   In addition to just being cumbersome, I think

24   it really puts the employee in the best possible

25   position to get the best possible data if they are in

1   some way charged with some of the responsibilities

2   themselves.

3   Thank you.

4   COREY FRIEDMAN: I would just ask to clarify

5   one thing about this rule-making process, which is that

6   after this emergency regulation rule-making is complete,

7   assuming that the emergency reg is put in place, we are

8   going to launch immediately into permanent rule-making.

9   We only have a maximum of about a year to get some

10 regulation in place.

11   And the reason I wanted to bring this up is

12 there was a lot of talk about having a slower advisory

13 process, and there may indeed be room for that,

14 something that would take longer than a year. But that

15 would be in addition to a rule-making that wants to take

16 place within about a year after the time of the

17 emergency rule takes effect. Thanks. And I think we

18 are breaking for lunch.

19   (Lunch recess.)

20   ERIC BERG: One two three.

21   AMALIA NEIDHARDT: We are going to continue.

22 We are going to carry on.

23   The next item that we are seeking input is

24 subsection D, communication. Either comments on

25 subsection D1 or D2, informing employees or encouraging

1   employes. Anyone interested?

2   Thank you.

3   PODIUM SPEAKER: So I'm still Bob Bernstein,

4   county health officer in Tuolumne County, California.

5   We use the EPA's visual methodology for

6   citizens and workers to be able to make an estimate of

7   what the AQI was. In other words, you observe site and

8   the distance from that site to where you are, and the

9   visibility of that site in the EPA methodology enables

10   you to determine whether or not you're in an AQI

11   hazardous for the general population or hazardous for

12   sensitive populations.

13   Is it possible to incorporate that because

14   several people -- I've forgotten the name, the big guy.

15   Several people have made the appropriate comment that we

16   are not wearing personal air breathing zone

17   methodologies. And in the areas where people work or

18   are planning to work or required to work, there isn't

19   necessarily a stationary device, but the ability to use

20   this EPA methodology might serve to at least enable

21   those people with a sensitive medical history to

22   determine whether or not they want to continue to

23   volunteer in that setting, whether they want to help

24   out.

25   AMALIA NEIDHARDT: So for clarification,

1   Dr. Bernstein, so you're saying to use them together

2   with the AQI, the visibility that you're talking about?

3   PODIUM SPEAKER: As an alternative or

4   supplement to the AQI. If, for example, you're not able

5   to find an AQI reading for the area that you're in or

6   planning to work in.

7   AMALIA NEIDHARDT: Got it. Thank you.

8   (Speaker change.)

9   PODIUM SPEAKER: Good afternoon. Division

10   staff. My name is Elizabeth Treanor. I'm with the

11   Regulatory Roundtable, and I did have one comment on D,

12   communication.

13   We are concerned about where it says

14   "informing employees," because in this situation,

15   particularly where you have mobile crews, you want

16   two-way communication. So we would recommend instead of

17   using the word "informing," that you use "communicating

18   with employees about" so that they can give us employers

19   information, and the employers can give them

20   information, and it's more of a two-way way for them to

21   address what the current events and how best to protect

22   themselves.

23   Thank you.

24   (Speaker change.)

25   PODIUM SPEAKER: Bruce Wick with CALPASC.

1   Again, talking about construction, multiple

2   job sites, multiple crews out and about. This section,

3   as it's written, seems to be, hey, somebody is right on

4   site, and you're exchanging information back and forth,

5   when for most contractors, how they would typically like

6   to do this is start of the work shift, you know

7   something is going on, and the employees have the N95

8   dusk mask or we will have done this training, this

9   communication, on a consistent basis, so employees can

10   give us that information.

11   But as it's been talked about, sometimes

12   communication is not available in the way you would like

13   it to be. Superintendents will need to be roaming. We

14   would rather have them focused on making sure everybody

15   is using, you know, whatever they need to be using and

16   we have the availability for the N95 mask.

17   So I think we need to consider employers

18   having options of having done much of this communication

19   ahead of time. And, you know, then communication can be

20   done afterwards as necessary, but not in the middle of

21   this temporary emergency that's going on.

22   (Speaker change.)

23   PODIUM SPEAKER: Good afternoon. Michael

24   Miller with the California Association of Wine Grape

25   Growers. And I apologize for speaking too quickly

1   earlier. I will try to slow down.

2   Relative to communications, I think a

3   hopefully simple resolvable concern, the way that it is

4   currently written, it is very, very subjective at how to

5   be interpreted relative to compliance. Words like

6   establish and implement the system, it use PM2.5 levels

7   instead AQI. I'm not sure what you refer there. And

8   it's got things like encouraging employees to inform the

9   employer of, then it lists the three conditions.

10   If those were simply in a form that was handed

11   to the employee, where he said, hey, please read this

12   form all relative to the situations, and you simply

13   require an open-communication dialogue between the

14   employer and the employee in the various workplaces,

15   that might be a more succinct way of getting that

16   communication issue.

17   But the way this is written right now, it is

18   very subjective at how to be interpreted relative to and

19   requires a tech to comply.

20   Thank you.

21   (Speaker change.)

22   PODIUM SPEAKER: Nicole Marquez. Senior staff

23   attorney with Worksafe.

24   I want to talk about communication and we

25   support lowering the threshold to 101 AQI, or greater.

1   We also believe that in the employer's communication

2   plan, we understand that this wildfire event is

3   temporary, but the health effects could be lifelong. So

4   we would have the employers inform workers about the

5   corresponding levels of health concern and any health

6   effects that this exposure might have.

7   We also support employers encouraging workers

8   to report any adverse symptoms, and also to encourage

9   them to seek first aid. We also support required

10   increased supervision during a wildfire event, and that

11   this means of communication needs to be something that

12   is not a mechanism for harassment or any way of

13   retaliating against workers when they do seek first aid,

14   especially given a climate with a lot of the workers who

15   are low wage, immigrant workers, working in landscaping,

16   construction, day laborers, the climate now is very much

17   anti-immigrant, so we would really want to make sure

18   that the increased supervision during this type of event

19   is in a way that is supportive and helping to prevent

20   any health events.

21   Thank you.

22   (Speaker change.)

23   PODIUM SPEAKER: Lucia Marquez from Cause.

24   In section D, the employer must communicate in

25   a form readily understandable by all employees. It

1   should be emphasized that many agricultural workers

2   primarily speak indigenous languages from Southern

3   Mexico, and many have limited literacy, so we would

4   think that training should be available in the

5   employee's primary language and should not be limited to

6   written materials.

7   And the division should also consider

8   directing the creation of specialized training materials

9   for workforces that (inaudible) barriers to safety

10   training.

11   COREY FRIEDMAN: Okay. The next subsection is

12   subsection E on training. If anyone has any comments on

13   that, I will note there is a reference to an appendix,

14   unfortunately, because we have been trying to work

15   quickly, we have not had an opportunity to make that

16   appendix available yet. We fully intend to do so.

17   But the intention was to provide information

18   to make training easier and simpler for employers and

19   employees to have some documents that would get

20   everything in one place in a way that would facilitate

21   training. So when that is available, it will be made

22   public.

23   PODIUM SPEAKER: Hello. Elizabeth Treanor.

24   Phylmar Regulatory Roundtable.

25   Regarding training, we invite the division to

1   sort of step back and recognize that there is a

2   contextual meaning to training.

3   Since 1991, when training has been required

4   under the Injury and Illness Prevention Program,

5   compliance officer shows up, show me your curricula,

6   show me your sign-in sheet, show me your rosters, and so

7   it has that meaning and connotation for the regulating

8   community.

9   And when we have got a situation -- this is an

10   emergency, so we have people that are trying to restore

11   power, gas, water, communication systems. For them to

12   stand down and make sure they have their curriculum

13   signed -- employees in for a roster, what we would

14   recommend is that you change the word to "instruction"

15   so that the employees have to be instructed in all of

16   those measures to take to protect their health, what the

17   hazards are working with wildfire smoke, working in

18   wildfire smoke, so that it would be clear that on the

19   job briefings and tailgate meetings and those type of

20   training -- those types of instructions are going to be

21   provided rather than what we have come to believe or

22   understand "train" means.

23   Thank you.

24   (Speaker change.)

25   PODIUM SPEAKER: Roxanne Fynboh. California

1   Industrial Hygiene Council.

2   To reiterate what has already been said is

3   that this needs to be done quickly and on an emergency

4   basis and should be simple and informed that the

5   employer can implement to be able to respond quickly.

6   And we suggest that the Cal/OSHA develop

7   appendix A, and in appendix A essentially outline the

8   training program, so it has all the contents that the

9   employer needs to cover so that essentially, section --

10   this training section would reference appendix A and

11   require the employer to provide outdoor employee with

12   training in a form readily understandable by all

13   effective employees when the emergency situation is

14   first identified, and that the training cover the

15   information in appendix A, training be documented is a

16   requirement of the regulation anyway, and that the

17   employer develop the training in advance using that

18   appendix and allowing them to expedite training when the

19   emergency situation is first identified.

20   (Speaker change.)

21   PODIUM SPEAKER: Good afternoon. Brian Little

22   with California Farm Bureau Federation.

23   Looking at the training section E, E8, perhaps

24   something that needs to be pointed out. E indicates

25   that an employee should be properly trained on how to

 1   properly put on, use, and maintain respirators provided

 2   by the employer.

 3   I think it is important to keep in mind that

 4   the respirators that are going to be used in this

 5   circumstance are going to be filtering face piece

 6   respirators which are intended to be disposable.

 7   I don't think it necessarily would be a good

 8   idea for the training we provide to employees to

 9   discourage them from disposing of respirators when they

10   need to be disposed of, and with filter and face piece

11   respirators, their lifespan is typically relatively

12   short.

13   Thank you.

14   (Speaker change.)

15   PODIUM SPEAKER: Lucia Marquez with Cause.

16   In subsection E1, training should include both

17   acute and chronic health effects from wildfire smoke.

18   Without this knowledge, many workers may choose not to

19   wear protective gear if they are not experiencing

20   short-term effects such as difficulty breathing and

21   exposure to themselves -- you know, exposing themselves

22   to long-term health effects such as cancer risk.

23   In section E7 training should include the

24   difference between N95 respirator masks and other facial

25   protection. Farm workers often wear bandannas due to

1   regular exposure to dust and pesticides, and believe

2   that this might also protect them from fine particulates

3   without explicit training otherwise.

4   And then in subsection E8, training should

5   include the need for regularly change of mask at least

6   daily. Particularly, employers should be required --

7   jumping ahead to F, section 3A, to provide new masks

8   daily.

9   Thank you.

10   (Speaker change.)

11   PODIUM SPEAKER: Hello. My name is Nancy

12   Zuniga from IDEPSCA, Institute of Popular Education of

13   Southern California. We work with day laborers and

14   domestic workers.

15   And just to really reiterate, we actually did

16   training in the past couple of months with 200 workers,

17   where we did 15 to 30 minutes in-person trainings

18   showing workers how to properly use N95 masks. And so

19   just to really emphasize the importance of training and

20   having the elements that Cause mentioned right now in

21   terms of accessibility, making sure that it is

22   accessible regardless of literacy levels.

23   The hands-on piece is really important, and

24   really making sure that workers understand how to put it

25   on/off, and how often it needs to get changed. That was

1   really important for sharing with workers.

2   Thank you.

3   (Speaker change.)

4   PODIUM SPEAKER: Hello. James Mackenzie with

5   Southern California Edison.

6   And I also wanted to request the changing of

7   the term "training" to "instruction." There's a lot of

8   logistical concerns with training, as mentioned by

9   Ms. Treanor from Phylmar, in definition and going back

10   to what we typically interpreted as a classroom-type

11   setting where you have PowerPoint presentation and

12   rosters and things of that nature.

13   For this content, I actually -- the logistics

14   is one piece. I actually think it's more effective to

15   be when you are in the field ready to do the work, you

16   have the dust mask in your hand and someone's talking

17   through it. Here is how you put it, here's how you take

18   it off, and it's real-time as opposed to something maybe

19   I had nine months ago and now I have to open it up and

20   remember what I learned in that classroom, because for

21   large employers, that's probably what formal training

22   would refer to, is something that you get on an annual

23   cadence. That's really the only way to logistically

24   handle that.

25   So by referring to it as instruction, we can

1 retain the same content, have it be arguably more

2 effective at the time of the incident.

3   I would also submit that No. 9, bullet 9,

4 there, creates redundancy with the emergency action

5 planning regulations, and so I would offer to remove

6 that -- creates some redundancy with the emergency

7 action planning regulations, so we are pulling in from

8 other regulatory sections that already have expectations

9 for us as an employer there, so it arguably muddies the

10 waters.

11   Thank you.

12   (Speaker change.)

13   PODIUM SPEAKER: Ann Katon from California

14 Rural Legal Assistance Foundation, and I support the

15 comments of Worksafe and the other advocacy

16 organizations.

17   And I just want to add that it's important for

18 the training to include disclosure, that it's the

19 employer's responsibility to provide the respirators and

20 also in addition to being replaced at the end of the

21 work shift, that they should be replaced any time that

22 they become spoilt or clogged.

23   Thank you.

24   (Speaker change.)

25   PODIUM SPEAKER: Good afternoon. Rob Moutrie

1   for the Cal Chamber of Commerce again attempting to go

2   sufficiently slow.

3   So I think I'm going to bring together a

4   couple of things, and thank all of you for your

5   discussion of appendix A, and having kind of a model

6   employers can rely on because much of our concern is

7   ambiguity in what we need to do. So we look toward to

8   seeing that, and hopefully we will have enough time to

9   comment on that and deal with it because it sounds like

10   it will address many of our concerns and many of the

11   concerns about specific provisions that some groups have

12   raised being included.

13   I'd also like to echo the comments of a number

14   of prior speakers related to flexibility. As a group

15   that represents a broad base of employers -- I'm sorry,

16   the gentleman just before me, I forgot your name. My

17   apologies. James.

18   But we want to make sure that the employers

19   have the flexibility to use training (inaudible), and

20   appendix A may solve that depending on the way you see

21   it, but I want to emphasize that to you, given the

22   breadth of off our membership.

23   And last, a specific point as to E-4, which

24   reads presently, employers shall provide training in how

25   employees can check the AQI at their location.

1   We would seek some clarification there because

2   it's not clear. If we all worked in an office every

3   day, it would be easy. We could direct the workers to

4   utilize their personal PCs and check AQI. But how the

5   worker is to on a minute to minute or per shift basis to

6   check the AQI, and if they're required to see a live

7   feed or if they can ask their shift leader who checks at

8   the beginning of the shift.

9   Just clarifying how they're supposed to check

10   on that would help us to anticipate what that requires

11   and prepare for it.

12   Thank you.

13   (Speaker change.)

14   PODIUM SPEAKER: Raj Puri. Occupational

15   medicine physician at Stanford University.

16   I just want to echo some of the points of my

17   colleague, Dr. John Balmes and also Dr. Bernstein, who I

18   just heard.

19   I wanted to emphasize some clarity regarding

20   the definition of sensitive groups to include

21   preexisting asthma, elderly greater than 65, pregnant

22   women, et cetera, and other groups.

23   Also training, what exactly -- to provide some

24   clarity regarding what effective training actually

25   means.

1   Suggesting possibly an online training module,

2   that could be very helpful.

3   And also E3, the right to obtain medical

4   treatment to clarify. What exactly does that mean? Is

5   it to the primary care physician or to the on-site

6   occupational medicine physician or both?

7   ERIC BERG: Okay. The next subsection we

8   would like comments on is subsection F, control of

9   harmful exposures to employees. This includes

10   administrative controls, if they are feasible, and then

11   providing respiratories for volunteer use, if the AQI is

12   less than 300, and then for mandatory use if it's above

13   300. That is subsection F. So we invite people to

14   comment on that now.

15   Thank you.

16   (Speaker change.)

17   PODIUM SPEAKER: Elizabeth Treanor. Still

18   with the Phylmar Regulatory Roundtable unless I got an

19   e-mail before I stood up telling you I was no longer

20   with them.

21   With regard to F, it's long been recognized by

22   the standards board and the division that respiratory

23   protective equipment is permissible in emergency

24   circumstances, and that's in 8 CCR 5141(c)(3), it

25   provides for that use.

1   Feasibility in a regulatory context is really

2   not applicable in an emergency context. One of the

3   things that you mentioned here is that feasible

4   engineering controls will be used. And feasibility is a

5   two-part test; one, is it capable of being achieved, and

6   two, is it without someone going out of business.

7   So employers, and particularly PRR employers,

8   would have the economic means to develop enclosed

9   structures for their workers. But we suggest that in

10 times of emergency, there is better use that can be put

11 to building those enclosed structures, which by the time

12 they're completed, the workers may no longer be there.

13   So we would encourage you to have employers

14 take a look at each situation and identify whether or

15 not engineering or administrative controls would be

16 appropriate. And if they're not appropriate in that

17 context, then they would use the respiratory protection.

18   And when we understand the hierarchy of

19 controls, and in most cases we support it. If you can

20 eliminate the hazard with engineering control, that is

21 always the preference. But this is an emergency

22 situation, and it is not going to be realistic.

23   If you're dealing with a fire, a wildfire

24 event, an engineering control, at least what my members

25 have told me and hopefully they will add something to

1   it. Engineering controls are almost always not really

2   practical in that situation. What they need to do is

3   address the problem of restoring water, power, gas,

4   communication systems, and move on.

5   And those crews tend to keep moving because

6   they're trying to build a structure around them. They

7   could afford to do it and it's capable of being done,

8   but it is not the best use of resources.

9   Thank you.

10   (Speaker change.)

11   PODIUM SPEAKER: Roxanne Fynboh. California

12   Industrial Hygiene Council.

13   We would like to reiterate Elizabeth's

14   comments. We would like to simply refer to section 5141

15   under control of exposure to employees, and then we

16   would like to reiterate that respirators are allowed to

17   be used in emergencies, and that the hierarchy of

18   controls should always be considered, but just to

19   reiterate that that is an allowable option.

20   And then at this point, I would like to just

21   summarize some of my comments. We are saying that we

22   would like to have people protected regardless of the

23   AQI, by looking at whether or not a wildfire smoke

24   advisory has been issued, and there is a possibility of

25   outdoor employees being exposed to wildfire smoke.

1   That would, in itself, trigger certain

2 protective measures, which would include the training

3 component, which hopefully would be outlined in the

4 appendix and be ready to go, and then also would include

5 the provision of N95 respiratory protection.

6   Thank you.

7   (Speaker change.)

8   PODIUM SPEAKER: Michael Miller again.

9 California Association of Wine Grape Growers.

10   We are very concerned about worker safety. We

11 want our workers to be safe and healthy when they're

12 working with us. And always, we are concerned that the

13 way that subdivision F3 is written, especially combined

14 with subdivision E and subdivision C, 2C creates a

15 problem where you're requiring the employer to encourage

16 employees to use respirators.

17   So remember, there is no medical evaluation

18 here, so what you are creating is a situation where the

19 worker has been told that there are adverse symptoms

20 likely resulting from wildfire smoke exposure, such as

21 asthma attacks, difficulties breathing and chest pain.

22   They've also been trained or received some

23 guidance on the importance, limitations and benefits of

24 using a respirator when exposed to wildfire smoke. And

25 now the employer is encouraging them to wear the

1   respirator.

2   But what happens if that person has a medical

3   condition where the respirator creates problems for

4   them? The employers say, hey, this is really important

5   you have to wear it. They have been trained on it.

6   They have been given all this information saying you

7   have to -- not that you have to wear it, but the

8   employee worker may very well feel, oh, I really have to

9   wear this, even though they don't know for sure. And it

10   also works the other way around too. What if the

11   employer didn't adequately encourage the worker to wear

12   it, and the worker says, oh, I didn't know I have to

13   wear it. I just thought I was fine to go out there

14   without it. So it's ambiguous and creates problems for

15   how the employer communicates with the worker on the

16   whole voluntary use of the mask.

17   So I would simply suggest that on page 3 --

18   F3A, strike the words "and encourage employees to use

19   respirators."

20   I think with everything else that you're doing

21   as far as training them and giving them information,

22   they're getting that encouragement anyway. But to

23   require it specifically at that point I think creates

24   potential problems and substantial risk for the worker.

25   Thank you.

1   (Speaker change.)

2   PODIUM SPEAKER: Hi. My name is Deborah Gold,

3   and I used to work for Cal/OSHA.

4   And I really wanted to commend the Cal/OSHA's

5   staff work on this proposal. I think you've done an

6   excellent job in a short period of time. Of course,

7   there are differences, 101 versus 150; that I support,

8   but I just think you've done a really excellent job in

9   constructing this.

10   I want to address specifically the issue of

11   mandatory respirator use when the AQI is 300 or 301, and

12   why I think that makes sense. So section 5144 requires

13   for full respirator use, not voluntary use. And I'm not

14   going to use the word "mask" because it is a respirator.

15   It requires a program. It requires an administrator.

16   It requires program review. It requires procedures for

17   use. It requires training. And then for each user, it

18   requires medical evaluation and fit testing.

19   And specifically, I want to address this issue

20   of fit testing. So the assigned protection factor for

21   the N95 respirator is 10. That is that every user who

22   uses a respirator and is in a full respiratory

23   protection program should get a reduction of tenfold

24   from outside respirators to inside respirators.

25   So when we apply that at the level of 300,

1   which is 250 point -- I don't know where these decimals

2   come in this AQI thing -- it implies a level of accuracy

3   that I think might be overstated, but it should then --

4   when you have an assigned protection factor and you're

5   at that 301 level, you should be at 25, which is within

6   that moderate health -- of a moderate risk to health

7   range.

8   And even when you're at 500, you're down to

9   50, and you're within the unhealthy for sensitive

10   groups. And I'm talking micrograms per cubic meter.

11   That's when you've got 10.

12   But when you don't have fit testing, and so --

13   oh, God. I'm going to get into math. Okay. But when

14   you are looking at this assigned protection factor of

15   10, what you are looking at is the 95th or 5 percent,

16   whichever way you want to turn your numbers around --

17   into a 5 percent of people. Only less than 5 percent of

18   people should get that 10, okay.

19   But when you don't fit test, that comparable

20   number in a number of studies sponsored by NIOSH and

21   other researchers is that at least 5 percent of people

22   may not even get 3. If we then apply that 3, that

23   simulated workplace protection factor of 3 to the

24   numbers of micrograms per cubic meters in this chart, if

25   we are at 500, we have only lowered people's exposure to

1   the unhealthy level -- or not even to that level; to the

2   very unhealthy level.

3   So for that reason, I commend you for setting

4   that level of required use at 300 because I think you

5   should be aiming at 101, but for whatever reason, you at

6   least have to get people down to unhealthy for sensitive

7   groups, and that requires triggering in your fit

8   testing, because all that fit testing does, it doesn't

9   improve the performance of any respirator. It doesn't

10   make a respirator a better filter. What it improves is

11   the relationship between the user and the respirator so

12   that the user is getting the full protection available

13   from that respirator.

14   And if you're not requiring fit testing,

15   you're not getting a protection factor of 10. And when

16   you're up at 300, you need that protection factor.

17   So I really commend you for making that

18   decision. I realize it was a politically difficult

19   decision for you to make given the levels that some of

20   the PM2.5 has reached, so thank you very much.

21   (Speaker change.)

22   PODIUM SPEAKER: Hello. Brian Heramb with

23   San Diego Gas and Electric again.

24   And I want to address section -- subsection

25   F3B, and I think this reflects comments that have been

1   made by other presenters as well as other utilities.

2   It's our belief that establishing mandatory respirator

3   use at any AQI -- much less an AQI of 300 -- is

4   impractical and infeasible and should not be implemented

5   as a part of this emergency rule-making.

6   It may be useful under a permanent rule-making

7   after there is much more study done. I will illustrate

8   several reasons.

9   First of all, it's impractical. It takes from

10   the standpoint of medical evaluation even if just

11   medical questionnaires are used for the employees, they

12   have to be reviewed by a qualified medical professional

13   or a PLHCP proficient or other licensed healthcare

14   professional.

15   In addition, fit testing typically takes at

16   least ten minutes per person.

17   So as mentioned, we have hundreds or thousands

18   of workers that may be affected by this. So it will

19   effectively stretch the limits of any possible resources

20   that we have, whether we are contracting or trying to do

21   in-house or having the employees, you know, fit tested

22   by some other vendors.

23   So fit testing and medical evaluation are

24   extremely difficult to do even on an annual basis. We

25   dedicate large amounts of resources for people who are

1   engaged in that or that have exposures already.

2   Second, it is also impractical from the

3   standpoint of facial hair. If you expect that

4   compliance with the respirator standard is going to be

5   required, most of the workers that we have in the field

6   have facial hair or many of them do, I will say.

7   If you take a snapshot of the Giants or the

8   Oakland A's baseball teams, that's what most of our

9   workers look like, so it's not just five o'clock shadow.

10   It's beards, goatees, whatever. And it is a lifestyle

11   choice that many of them made. For instance, recently,

12   we did a special training for first-class welders. All

13   seven students have full facial hair, okay.

14   So it means that we would be requiring

15   employees to shave in occupations that they normally

16   don't. For line crews, for electrical workers that

17   typically don't have a requirement for respirators, that

18   would be an unusual requirement and would be very

19   difficult to enforce, especially under short term.

20   Another reason, and I think this is one from a

21   professional standpoint that we have to take less

22   seriously, is that the AQI, as we mentioned before,

23   being used as an emergency trigger for requiring

24   different types of protections is useful. But when you

25   come to establishing a standard that's as complete with

1   requirements as respiratory protection is, it really

2   needs to be based on an occupational exposure limit that

3   has been studied with a complete risk assessment as the

4   permissible exposure limits have been.

5   So, in fact, if we look at the difference, for

6   instance, it will illustrate how dramatic the

7   occupational exposure limit is for particulate versus

8   what the AQI is. Currently, the closest PEL is

9   particulates not otherwise regulated, the respirable

10   dust fractions, and that's currently set at 5 milligrams

11   per cubic meter. The highest AQI of 500 is an

12   incredible level of .5 milligrams per cubic meter, ten

13   times lower than the current PEL for respirable dust.

14   There is a difference because PM2.5 is different than

15   the side aerodynamic diameters that are used in the

16   respirable PEL, which includes everything less than

17   10 micrograms or 10 micrometers, but it does illustrate

18   for you that the AQI is so much lower than the PEL that

19   it's clear that a risk assessment needs to be performed

20   to establish really what is a hazardous level that

21   employees can be exposed to and for what duration.

22   Are we establishing it also an acute exposure

23   or is it for chronic exposure or over working lifetime?

24   So those two reasons in practicality and lack

25   of an established reliable occupational exposure limit

1   for workers, it's difficult to see establishing an

2   emergency standard that relies on respirators and AQI.

3   The third one I want to bring up, especially

4   for electrical workers. It was mentioned in passing.

5   Currently the standard that was recently implemented for

6   electrical protection from electric arcs. It prohibits

7   the use of any type of protective gear unless it is

8   arc-rated at the level that the worker may be exposed

9   to. And during these operations in wildfires where we

10   have energized equipment, there may be situations where

11   employees are exposed in a well-above two calories per

12   square centimeter, the effective arc-flash boundary.

13   And there are no respirators that I'm aware of that are

14   arc-rated.

15   So it may be possible to have some tested and

16   determine if, in fact, they are actually providing

17   protection from arc flash, but currently, the rubber or

18   other materials haven't been tested to determine if they

19   could ignite or if they could melt, drip, and stick to

20   the skin and cause further injury.

21   So for these three types of reasons;

22   practicality, lack of established risk assessment for

23   occupational exposure, and a conflict with requirements

24   for the arc rating, our recommendation is to withhold

25   mandatory respirator use until a current rule-making can

1   address and resolve any conflict.

2   Thank you.

3   (Speaker change.)

4   PODIUM SPEAKER: Hi. Ann Katon from

5   California Rural Legal Assistance Foundation.

6   And I just wanted to second Deborah Gold's

7   comments that when the air levels are hazardous for

8   PM2.5 and fit testing should be required, the time spent

9   is well worth the protection needed for workers.

10   Also I really support the way you've drafted

11   this where you have to have the respirators available

12   for workers, not just provide them upon request for

13   voluntary use, is very important especially for

14   low-income workers like agricultural workers who

15   wouldn't ask if -- you know, wouldn't make the request.

16   They wouldn't feel comfortable for it.

17   And for that same reason, I think you should

18   keep in the language that says that workers should be

19   encouraged to wear the respirator because you're also

20   providing training about reporting symptoms, so that

21   should counteract if a worker is having difficulty

22   wearing a respirator. Thank you.

23   (Speaker change.)

24   PODIUM SPEAKER: Hello again. James

25   Mackenzie. Southern California Edison.

1   Two main points in this section. The first is

2   echoing the comments made by Ms. Treanor related to the

3   hierarchy of controls. What we do as a company submit

4   wholeheartedly to the hierarchy of the controls for the

5   vast majority of situations.

6   In this situation, though, when you look at

7   the word "feasible" in there, it can create some

8   potential outrageous outliers. And I use an example of

9   we probably do have the resources to put a HEPA filter

10   tent over the power line while we are working on the

11   repairs, but I think we would all agree that that's

12   probably a little bit outrageous to do that and it

13   wouldn't make sense to do.

14   In many situations, the employees are doing

15   inspections where they're moving from site to site to

16   site, so those administrative or engineering controls to

17   the point made earlier when -- by the time they're

18   constructed or put in place, we've moved on to the next

19   section.

20   So I believe in line with the (inaudible) this

21   is a situation where looking at -- in the letter I

22   submitted, use the word "practicable" instead of

23   "feasible" where we should look at it. I think it makes

24   sense for us to look at what we can do from an

25   engineering standpoint, what we can do from an

1   administrative standpoint, and from there go to the

2   personal protective equipment. But to call it feasible,

3   to ensure that it's feasible creates challenges like I

4   mentioned.

5   The other point, I did want to concur with

6   Mr. Heramb's comments related to mandatory requirements.

7   We have concerns with that. And some of them lie in

8   that we don't know what we don't know yet. I think

9   there have been many comments on both sides around how

10   the AQI and using it for this function is new.

11   And so I would submit that going to what we

12   are doing, which is what I call the mandatory provision

13   of voluntary respirator use, that is a big step level

14   increase for the state and probably a fantastic step for

15   the emergency regulation, and gives us an opportunity to

16   understand how we apply the AQIs, and how we do this

17   work with these provisions in mind when we go into

18   permanent rule-making. Otherwise we can end up tying

19   hands on the mandatory provisions, and based on that

20   understanding what implications could lie behind the

21   scenes on that, some of which are concerns around -- I'm

22   not personally aware of an N95 mask that passed an

23   arc-rating test, so that puts us in a quandary of do we

24   have to choose which section to violate, essentially,

25   and I don't think any one of us want to be put in that

1 type of position.

2   Thank you.

3   (Speaker change.)

4   PODIUM SPEAKER: My name is Abad Leyva. I'm

5 from the Street Level Health Project and the Oakland

6 Workers Collective.

7   We are doing this because we try to save

8 lives, and saving lives is always practical. Fit

9 testing, which should be mostly required. Have

10 respirators available for workers at all times mostly

11 required as well. And training must be done in the

12 language that the worker speaks as well.

13   Thank you.

14   (Speaker change.)

15   PODIUM SPEAKER: I'm Bill Taylor with PASMA,

16 and I just wanted to echo the concerns about the

17 arc-rating of the N95s. I think during these emergency

18 operations for the electrical workers, they should be

19 exempt from that because that arc flash is a concern.

20   But another major concern about F3A, because

21 you're tying the providing respirators to the AQI, I

22 think it's not going to be at least as effective as a

23 federal standard. I have a concern about that it might

24 be a problem down the line.

25   (Speaker change.)

1   PODIUM SPEAKER: Good afternoon. Kevin Bland

2   again.

3   I want to bring us back to where we started a

4   little bit. Remember this is an emergency regulation

5   for an emergency situation. And now that kind of drifts

6   into a nonemergency situation where we are talking about

7   this hierarchy of controls, what we could do in a

8   standard hazard analysis environment. If we have a

9   project that we are going to do in six months from now,

10   we are going to look at the engineering controls. Okay.

11   Can we do something there feasible? No. Can we do

12   something administratively? No. Okay. We have to use

13   the respirator as a last resort in those normal common

14   instances.

15   In this case, we don't have that kind of time

16   in these situations. So the idea -- my understanding of

17   this -- is before, there wasn't a way or a provision for

18   us to handle the emergency feasibly as an employer in

19   California for our employees in California.

20   We have that opportunity now, but if we make

21   it so complicated or resort back to the nonemergency

22   rules, we are taking a step backwards because we're not

23   going to be able to comply with it. And we are not

24   going to be able to accomplish that.

25   So I urge people to take a step back, think

1   about what we are trying to accomplish here in

2   emergency, give us an opportunity as employers to

3   provide protection, albeit in some cases and maybe not

4   all cases, is it going to be perfect? But it's going to

5   be a hell of a lot better than what we have today and

6   are able to do today under the current regulations, and

7   that have been in place for 20, 30 years.

8   So in this emergency environment, I urge us to

9   take a little bit of a step backwards, look at the big

10   picture, try to get an emergency reg that we can

11   implement in this season that's feasible for the

12   employers to comply with, feasible for the employees to

13   use and benefit from. And then when it comes time for

14   the other rule-making, it gives an opportunity to look

15   more at these levels and look more at some of these

16   things in an environment in which we have had some times

17   to see how does this work, how did this work during this

18   fire season on what we did?

19   So I just want to urge us to take that step

20   back especially on the hierarchy of controls here in

21   section F, because if you really do this the right way,

22   that's a six-month project to go through the engineering

23   controls, administration analysis, and all that. We may

24   only have six minutes. We may only have six hours, so I

25   think we have to take a step back of that.

1   Secondly, I think it is important for those of

2   you that don't know, I may be a talking head here on the

3   employer's side right now, but I had to work for a

4   living before I was an attorney. I was an ironworker

5   out in the field. I grew up on a farm. So I understand

6   what it is like to work with my hands and work outside,

7   and so I'm not taking this just from one side. I

8   understand it. But when I was in the field, I wanted

9   something that, one, I knew was safe for me to use, two,

10   made sense to me, and, three, I wouldn't have to shave

11   my beard for. So the last part was a joke about the

12   beard, but it is an important thing because a lot of us

13   that have beards, Mitch, a lot of you agree with me that

14   beards are important.

15   And in this context, literally, you have to

16   have everybody in the state of California who is an

17   employee clean-shaven when we get to the 300s because we

18   have to be prepared for that, and that is not fair.

19   That's not fair for the employees, that's not fair to

20   me.

21   So anyway, thank you very much.

22   (Speaker change.)

23   PODIUM SPEAKER: Hello again. Rob Moutrie.

24   California Chamber of Commerce.

25   I will try to be brief here. Much of this has

1   been well-covered, so I will skip to the points that I

2   think we can add to.

3   The chamber is very concerned about the

4   hierarchy of being in place for exactly the feasibility

5   reason, as Kevin pointed out, time and feasibility is

6   hard to calculate.

7   So one example that hasn't been brought

8   forward yet that I do want to emphasize is unlike an

9   issue which we are aware of and have time to calculate,

10   wildfires shift quickly. We have changing weather

11   conditions and we have changing severities. And so the

12   feasibility calculation doesn't just need to be done

13   quickly. It also has shifting variables making it that

14   much more difficult to say which one is more feasible in

15   a situation. For that reason, you know, broadly, using

16   respirators is at least predictable on the employer's

17   side, you know, as opposed to the other variables that

18   are hard to calculate. At least then we know where we

19   are going, regardless of where they are set in these

20   variables.

21   For tier one, something that isn't mentioned

22   in this section, the 150 to 300 category. You know, we

23   are absolutely understanding and agreeable with handing

24   out the (inaudible) and handing out the training form

25   with it, as you mentioned appendix A, we think those

1   could come together. And mentioning appendix A here

2   might be something we can do to make that clear.

3   The second tier, we share the concerns of how

4   is the timeline for this to react? It's something we

5   will try to get you in comments by Friday if we can is

6   that has not been discussed is the quickness at which

7   the AQI could rise with a severe fire. So what the

8   feasible for employers to do to get employees ready if

9   we went to 150, and we knew 300 is coming and it is

10   going to be here in a couple of days or some time

11   period, but the speed of that rise doesn't seem to have

12   been considered right now, but we will try to look at

13   that and get back to you by Friday.

14   As to the select groups issue which has come

15   up a couple of times, and since it is probably featured

16   in this section of the regs, we will just briefly deal

17   with it here.

18   Collecting health information about employees

19   to determine if they meet whatever select categories may

20   be, I think we heard asthma and pregnancy and age. Of

21   course, age is not as hard to determine, but asthma or

22   other medical conditions that might create issues that

23   require employers to correct that information or ask

24   employees about it. That's just a minefield that we are

25   hesitant to step into.

1   We all know that that can be a big concern

2   generally and there are a lot of other rules about that.

3   So especially in the emergency regs setting, we are very

4   concerned about writing in employers requesting health

5   information or dealing with individuals, you know,

6   private health conditions as part of our practice.

7   And that's especially true where here, we are

8   already looking at a regulation written around a

9   standard that we haven't used before in this way. We

10   have been talking about AQI versus other standards that

11   have been used in a regulatory context, but we are

12   already putting in emergency reg whereas you mentioned,

13   we are going to be looking at this and revising and

14   considering is it the right way. We already have one

15   new big variable coming in, the use of AQI and how we

16   monitor and communicate. Writing in an additional

17   selected health group variable seems like from our

18   perspective a lot to do on an emergency basis.

19   And that's all I have. Thank you.

20   (Speaker change.)

21   PODIUM SPEAKER: Good afternoon. Brian Little

22   with California Farm Bureau Federation.

23   I think that a lot of you in this room

24   probably live in Sacramento, and you probably remember

25   those handful of days during the Camp Fire when the air

1   quality was 400, and the scale only goes to 500, and

2   there was a lot of conversation going on in those couple

3   of weeks when all that was happening.

4   The Sacramento Metro Fire Department set out

5   to divide some of the stock of N95 respirators they had

6   accumulated the community for the use of the community.

7   That went on for three our four days, maybe a week, I

8   can't remember exactly how long, before the County

9   Department of Public Health told Sacramento Metro Fire

10   to knock it off.

11   And as far as I could tell from the news

12   coverage, the reason they did that was because they were

13   concerned that provision of respirators on those

14   circumstances may have given people a false sense that

15   they were getting more protection than they actually

16   were getting.

17   That struck me at the time, and it still does,

18   as an exercise in allowing the perfect to be the enemy

19   of the good. Some protection has to be better than no

20   protection. I think the simple part of this emergency

21   regulation you're doing here is permitting the use of

22   filtering face piece respirators in appropriate

23   circumstances -- in appropriate emergency circumstances

24   on an emergency basis.

25   There is an awful lot of additional

1   complication in this draft regulation that puts you in a

2   position where you may be allowing the perfect to be the

3   enemy of the good.

4   So I would urge you to consider what really

5   needs to be in this, and perhaps what doesn't need to be

6   in this at least on an emergency basis, and reserve the

7   resolution of a lot of these issues that have been

8   discussed here today for the permanent regulation that

9   we will all be participating in trying to write. That's

10   all.

11   Thank you.

12   AMALIA NEIDHARDT: Okay. So now we are going

13   to open the floor to hear about any comments on

14   feasibility, cost, or any issues related to

15   alternatives. Anything else that we didn't address

16   already? Other issues? Are we all done? You can come

17   to the podium, please.

18   PODIUM SPEAKER: Roxanne Fynboh. California

19   Industrial Hygiene Council.

20   I didn't bring this up before, but since I

21   represent practicing industrial hygienists, I want to

22   bring up a conundrum that we have, and that is that we

23   don't routinely measure exposure to PM2.5. As someone

24   else brought up, we measure exposures to PM10. So we

25   have that data. But if I had to guess, I would say

1   there were a lot of farm workers and a lot of other

2   workers right now that are being exposed to PM2.5 levels

3   that are in excess of the levels that correspond to the

4   AQIs.

5   So that presents a bit of a conundrum for us

6   in terms of evaluating exposures even during an

7   emergency, what part of that is a small exposure, what

8   is always there, which may be, like I said, quite a bit

9   higher than what is presented during a smoke situation.

10   There are also people that work with fire. By

11   that, I mean some winery workers, vineyard workers that

12   have to burn old vines. They were in the rice fields.

13   They do different things where they are all exposed

14   probably to a level in excess of what we are talking

15   about now. So that's just a conundrum that we have.

16   And the good news is it in some way clarifies some of

17   those issues with some additional guidance.

18   AMALIA NEIDHARDT: Well, okay. That's all the

19   comments we have. Thank you very much.

20   (Proceedings concluded at 2:10 p.m.)

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