

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
June 16, 2022 OSH)
Standards Board Meeting)
_____)

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

Cal/EPA Building
Byron Sher Auditorium
1001 I Street
Sacramento, CA 95814

Attend via Teleconference & Videoconference

THURSDAY, JUNE 16, 2022

10:00 A.M.

Reported by:
M. Nelson

APPEARANCES

BOARD MEMBERS PRESENT AT CAL/EPA BUILDING:

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

BOARD STAFF PRESENT AT CAL/EPA BUILDING:

Christina Shupe, Executive Officer
Steve Smith, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
Lara Paskins, Staff Services Manager
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant
Amalia Neidhardt, Senior Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Jennifer White, Regulatory Analyst

TKO STAFF:

Maya Morsi
John M. Roensch
John E. Roensch

ALSO PRESENT VIA WEBEX:

Chris Kirkham, Principal Safety Engineer, Cal/OSHA

SPANISH INTERPRETERS:

Julia Elizarras
Monica Desiderio

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony)

Michael Reitzell, Ski California
Charles Megivern, Mammoth Mountain Ski Area
Amy Armstrong, Kirkwood Ski Patrol, Avalanche Artillery
Users of North America, AAUNA
*Jeff Goldstone, Alpine Meadows Ski Area
*Michael Gross, Ski California
*Steven Fennimore, UC Davis Plant Sciences
Adam Ikemire, Kirkland Ski Resort
Caroline Miller, Kirkwood Resort
Jassy Grewal, UFCW Western States Council
*Jeff Jurgens, on behalf of Stephanie See, Association of
Equipment Manufacturers (AEM)
*Michael Strunk, IUOE Local Union No. 3
Michael Dentinger, AG OEM Development
Jake Winters, Monarch Tractor
Stavros Vougloukas, UC Davis
*AnaStacia Nicol Wright, Worksafe
*Praveen Penmetsa, Monarch Tractor
*Anne Katten, CRLA Foundation
Mitch Steiger, California Labor Federation
Michael Miiller California Association of Winegrape Growers
Bryan Little, California Farm Bureau Federation
*Matthew Allen, Western Growers Association
Bruce Wick, Housing Contractors of California

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1 P R O C E E D I N G S

2 June 16, 2022

10:00 A.M.

3 (Call to Order and Introductions)

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

13 Also present from our staff for today's meeting
14 are Ms. Christina Shupe, Executive Officer; Mr. Steve
15 Smith, Principal Safety Engineer; Ms. Autumn Gonzalez,
16 Chief Counsel; Ms. Lara Paskins, Safety Services Manager;
17 Ms. Sarah Money, Executive Assistant; and Ms. Amalia
18 Neidhardt, Senior Safety Engineer who is providing
19 translation services for our commenters who are native
20 Spanish speakers.

21 Attending via Webex from Cal/OSHA is Chris
22 Kirkham, Principal Safety Engineer.

23 Supporting the meeting remotely is Ms. Jennifer
24 White, Regulatory Analyst.

25 Copies of the agenda and other materials related

1 to today's proceedings are available on the table near the
2 entrance to the room and are posted on the OSHSB website.

3 This meeting is also being live broadcast via
4 video and audio stream in both English and Spanish. Links
5 to these non-interactive live broadcasts can be accessed
6 via the "Standards Board Updates" section at the top of the
7 main page of the OSHSB website.

8 If you are participating in today's meeting via
9 teleconference or videoconference, we are asking everyone
10 to place their phones or computers on mute and wait to
11 unmute until they are called to speak. Those who are
12 unable to do so will be removed from the meeting to avoid
13 disruption.

14 As reflected on the agenda, today's meeting will
15 consist of two parts. First, we will hold a public meeting
16 to receive public comments or proposals on occupational
17 safety and health standards. Anyone who would like to
18 address the Board regarding occupational safety and health
19 matters including any of the items on our business meeting
20 agenda, may do so when I invite public comment.

21 If you are participating via teleconference or
22 videoconference, the instructions for joining the public
23 comment queue can be found on the agenda. You may join by
24 clicking on public comment queue link in the "Standards
25 Board Updates" section at the top of the main page of the

1 OSHSB website, or by calling 510-868-2730 to access the
2 automated public comment queue voicemail.

3 When public comment begins, we are going to
4 alternate between three in-person and three remote
5 commenters. When I ask for public testimony, in-person
6 commenters should add their name and affiliation to the
7 commenter list and announce themselves to the Board prior
8 to delivering a comment.

9 For commenters attending via teleconference or
10 videoconference, please listen for your name and an
11 invitation to speak. When it is your turn to address the
12 Board, unmute yourself if you're using WebEx, or dial *6 on
13 your phone to unmute yourself if you're using the
14 teleconference line.

15 We ask all commenters to speak slowly and clearly
16 when addressing the Board, and if you're commenting via
17 teleconference or videoconference, remember to mute your
18 phone or computer after commenting. Today's public comment
19 will be limited to two minutes per speaker, more or less,
20 and the public comment portion of the meeting will be
21 extended up to two hours, more or less, so that the Board
22 may hear from as many members of the public as is feasible.
23 Individual speakers and total public comment time limits
24 may be extended by the Board Chair, me, if practicable. So
25 you know me, I'm going to let you speak almost as long as

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1 you want to, but then there is a limit.

2 After the public meeting is concluded, we will
3 hold a business meeting to act on those items listed on the
4 business meeting agenda.

5 We will now proceed with the public meeting.
6 Anyone who wishes to address the Board regarding matters
7 pertaining to occupational safety and health is invited to
8 comment, except however, the Board does not entertain
9 comments regarding variance matters. The Board's variance
10 hearings are administrative hearings where procedural due
11 process rights are carefully preserved. Therefore, we will
12 not grant requests to address the Board on variance
13 matters. At this time, anyone who would like to comment on
14 any matters concerning occupational safety and health will
15 have an opportunity to speak.

16 For our commenters who are native Spanish
17 speakers, we are working with Amalia Neidhardt to provide a
18 translation of their statement into English for the Board.

19 At this time, Ms. Neidhardt will provide
20 instructions to the Spanish-speaking commenters so that
21 they are aware of the public comment process for today's
22 meeting. Ms. Neidhardt.

23 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]
24 Public Comment Instructions.

25 "Good morning and thank you for participating in

1 today's Occupational Safety and Health Standards Board
2 public meeting. Board Members present are Mr. Dave Thomas,
3 Labor Representative and Chairman; Ms. Barbara Burgel,
4 Occupational Health Representative; Ms. Kathleen Crawford,
5 Management Representative; Mr. Dave Harrison, Labor
6 Representative; Ms. Nola Kennedy, Public Member; Ms. Chris
7 Laszcz-Davis, Management Representative; and Ms. Laura
8 Stock, Occupational Safety Representative.

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10 video and audio stream in both English and Spanish. Links
11 to these non-interactive live broadcasts can be accessed
12 via the "Standards Board Updates" section at the top of the
13 main page of the OSHSB website.

14 "If you are participating in today's meeting via
15 teleconference or videoconference, please note that we have
16 limited capabilities for managing participation during
17 public comment periods. We are asking everyone who is not
18 speaking to place their phones or computers on mute and
19 wait to unmute until they are called to speak. Those who
20 are unable to do so will be removed from the meeting to
21 avoid disruption.

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

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2 videoconference, the instructions for joining the public
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6 OSHSB website, or by calling 510-868-2730 to access the
7 automated public comment queue voicemail.

8 "When public comment begins, we are going to be
9 alternating between three in-person and three remote
10 commenters. When I ask for public testimony, in-person
11 commenters should add their name and affiliation to the
12 commenter list and announce themselves to the Board prior
13 to delivering a comment.

14 "For our commenters attending via teleconference
15 or videoconference, listen for your name and an invitation
16 to speak. When it is your turn to address the Board,
17 please be sure to unmute yourself if you're using Webex or
18 dial *6 on your phone to unmute yourself if you're using
19 the teleconference line.

20 "Please be sure to speak slowly and clearly when
21 addressing the Board, and if you are commenting via
22 teleconference or videoconference, remember to mute your
23 phone or computer after commenting. Please allow natural
24 breaks after every two sentences, so that an English
25 translation of your statement may be provided to the Board.

12

1 "Today's public comment will be limited to four
2 minutes for speakers utilizing translation, and the public
3 comment portion of the meeting will extend for up to two
4 hours, so that the Board may hear from as many members of
5 the public as is feasible. The individual speaker and
6 total public comment time limits may be extended by the
7 Board Chair, if practicable.

8 "After the public meeting is concluded, we will
9 hold a business meeting to act on those items listed on the
10 business meeting agenda.

11 "Thank you."

12 CHAIR THOMAS: Thank you, Ms. Neidhardt.

13 If there are any in-person participants who would
14 like to comment on any matters concerning occupational
15 safety and health, you may begin lining up at this time
16 right here at this speaker. We will start with the first
17 three in-person speakers and then we will move to the first
18 three speakers in the teleconference and video conference
19 queue. So anybody who would like to speak please walk up
20 to the microphone and state your affiliation please. Thank
21 you.

22 MR. REITZELL: (Audio difficulties.) There we
23 go. Good morning, my name is Michael Reitzell. I'm
24 President of Ski California, the trade association that
25 represents 35 ski areas in California and Nevada, including

1 all of them that conduct avalanche mitigation.

2 I have about 2 minutes and 15 seconds for giving
3 you comments. I'll try to slow down and not speed it up
4 for that 2 minutes and 15 seconds. But we are here today
5 to talk about Remote Avalanche Control Systems, otherwise
6 known as RACS. I believe this Board is somewhat familiar
7 them. They supplied a previous petition by Mammoth
8 Mountain Ski Area about four years ago. We have four
9 speakers here, including myself in-person, and we also have
10 two on the phone that will be addressing this specific
11 topic.

12 The basic gist of RACS is that they remove the
13 worker from the explosive that was used for avalanche
14 control.

15 While RACS are somewhat new technology, they have
16 been in place for over 20 years. They have been used for
17 places around the globe including Europe and in several
18 western states surrounding California including Utah,
19 Colorado, Wyoming, Washington, Alaska and even in Canada as
20 well.

21 So a top tool for us in California is artillery.
22 In California we currently have more howitzers being used
23 for avalanche control than any other state. Those are
24 commissioned by the army. The army has however indicated
25 that they would like to end that program. And the biggest

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1 reason they want to end that program is because they
2 believe it can be replaced by RACS. RACS are currently not
3 in use in California with the exception of Gazex, if you've
4 heard of that. It's not within the explosives realm
5 because it uses two gases to mix together to cause not an
6 explosion of sorts, but a reverberation to use for
7 avalanche control.

8 We believe that RACS, all the available ones that
9 are out there not being used in California can be permitted
10 in California under current title 8, under section
11 5357(a)(4)(E). There are two caveats to that: one, is that
12 it be approved by the Division; and number two is that it
13 is of the equivalent safety of Avalaunchers, which
14 basically amounts to when you look at the regulations.

15 As to the latter requirement anyone of the
16 experts here will let you know that it is certainly of
17 equivalent safety and certainly more safe than the
18 Avalauncher. And the Division has actually even already
19 confirmed that previously.

20 The issue and why really, we're here today, is
21 number one, which is approval by the Division. There's
22 currently no process for getting them approved by with the
23 Division. It's unclear what "approved by the Division"
24 even means. What part of the Division? Is it mining and
25 tunneling, something else? We don't know. We understand

1 there's definitely a staffing challenge with the Division
2 and we're willing to work with the staff to deal with that.
3 We know that's a problem. But we need to move things
4 along.

5 We've been told that the earliest an advisory
6 committee can be convened to even talk about this is summer
7 of 2023. That's an advisory committee that was actually
8 approved by this Board four years ago, and to date nothing
9 has happened. And we just don't have that time to wait,
10 because our California resorts are ready, willing and able
11 to employ this new technology for worker safety, but they
12 can't do it until we have that process in place.

13 So I'm going to turn it over to some of our
14 resorts to actually offer some additional details on this.
15 I would appreciate the opportunity when our folks have
16 finished speaking just to come back for maybe 30 seconds
17 just to offer our final ask of this Board with respect to
18 RACS, and even answer any questions you may have. Thank
19 you.

20 CHAIR THOMAS: Thank you.

21 MR. MEGIVERN: Thank you. My name is Charles
22 Megivern, I'm here on behalf of Mammoth Mountain Ski Area.
23 I'm a Ski Patrol Manager and also a Trainer for the
24 Avalanche Artillery Users of North America Advisory
25 Committee, AAUNAC. As an avalanche worker and a licensed

1 blaster I'm passionate about improving safety for myself
2 and others in the field.

3 Three years ago I brought to you, the Board,
4 Petition Number 575 to amend the regulations to allow for
5 these devices.

6 The evaluations from both the Division and the Standards
7 Board staff, and ultimately in your adopted decision,
8 recognize that these devices provide equal or superior
9 safety than the currently allowed methods.

10 These devices have become common, throughout the
11 mountain blasting of the past three years. And we remain
12 committed to seeing a process, which will allow the use of
13 these devices in California. Thank you.

14 CHAIR THOMAS: Thank you.

15 Well we'll have one more live speaker and then
16 we'll go to the phones. But go ahead, go ahead please.

17 MS. ARMSTRONG: Good morning. My name is Amy
18 Armstrong. I'm with Kirkwood Ski Patrol. I also manage
19 the artillery program at Kirkwood. I also sit on the
20 Executive Committee of the Avalanche Artillery Users of
21 North America Committee as Chuck mentioned.

22 The purpose of AAUNAC is to develop guidelines
23 and consistency among all of the artillery programs. We
24 also develop guidelines and consistency of training and
25 facilitate information-sharing among all the programs. We

1 also function as the point of contact between the artillery
2 programs and the Army.

3 All of the avalanche artillery programs use 105-
4 millimeter M101A1 howitzer. We are responsible to know
5 these guns inside and out and top to bottom. We live and
6 we breathe with these guns. We're also trained to
7 recognize any potential issue with them. That being said,
8 all of the guns that we are currently using for avalanche
9 mitigation were built in 1944 and 1945. That means that
10 steel is 80 years old, and it's not getting any younger.

11 The Army has made it abundantly clear to us that
12 they are not going to be giving us another gun system. And
13 that is because these RACS systems are available, they have
14 proven their worth, and they are in wide use in multiple
15 other states and countries.

16 So for the continued safety of our avalanche
17 technicians, our ski patrol personnel, and the public these
18 RACS are our way forward. Thank you.

19 CHAIR THOMAS: Thank you.

20 So at this time we'll go to anyone we have
21 online. So Maya can you give us the callers and we'll
22 start there?

23 MS. MORSI: First person is Jeff Goldstone with
24 Ski California.

25 CHAIR THOMAS: Jeff, are you with us?

1 MR. GOLDSTONE: Hi.

2 CHAIR THOMAS: Go right ahead.

3 MR. GOLDSTONE: (Indiscernible) for taking the
4 time. I'll try to keep it short a little bit
5 (indiscernible) --

6 CHAIR THOMAS: We can barely hear you.

7 Could you turn him up a little bit?

8 (Audio difficulties.) Are you still there?

9 MR. GOLDSTONE: I am still here.

10 CHAIR THOMAS: All right, we've got to figure out
11 how to -- just hold on a minute -- we've got to figure out
12 how to turn you up.

13 MS. MORSI: Would you mind speaking, Mr. Jeff
14 Goldstone?

15 MR. GOLDSTONE: Can you hear me now?

16 MS. MORSI: Please speak, so I can test your
17 audio.

18 MR. GOLDSTONE: I'm speaking now, can you hear
19 me?

20 CHAIR THOMAS: That's better. Yeah, go ahead,
21 we'll work with it as you go.

22 MR. GOLDSTONE: Give it another try here.

23 Yeah, my name is Jeff Goldstone and I'm currently
24 the Mountain Manager at Alpine Ski Area. I'm responsible
25 for avalanche mitigation within the ski area.

1 Additionally, we provide avalanche mitigation under
2 contract with (indiscernible.)

3 (Audio cuts in and out.)

4 CHAIR THOMAS: Yeah, I think we have a bad
5 connection here. Is it his connection? Yeah, I think you
6 may have to call back. Let's do that. Try and call back
7 in.

8 And then we'll go to our next caller, Maya.

9 MS. MORSI: Next caller is Michael Gross with Ski
10 California.

11 CHAIR THOMAS: Michael, can you hear us?

12 MR. GROSS: I can, I'm actually in the
13 (indiscernible) would that help if I get a little bit
14 closer?

15 CHAIR THOMAS: Well, for a minute it was good.
16 Get as close as you can.

17 MR. GROSS: All right I'm going to turn off the
18 video and see if we can just try the --

19 CHAIR THOMAS: Yeah, right there. That's it.
20 (Inaudible.) Go ahead.

21 MR. GROSS: How about that? Is that better?

22 CHAIR THOMAS: Yes, go ahead.

23 MR. GROSS: All right. Do you want to have --
24 can I just defer back to Mr. Goldstone here since he's got
25 some stuff that's more in line with what the other two

1 folks that just spoke?

2 CHAIR THOMAS: Sure. Go right ahead.

3 MR. GOLDSTONE: Okay. Let's try this one again.
4 Can you hear me?

5 CHAIR THOMAS: Yes, we can. Hurry up, we don't
6 want to lose you. (Laughter.)

7 MR. GOLDSTONE: Yeah. Okay. I'm always nervous.
8 I've had the opportunity to talk in front of the Board
9 before, so I'm much more comfortable using explosives to
10 control avalanches than talking to the Board, so bear with
11 me.

12 I'm currently the Mountain Manager at Alpine
13 Meadows Ski Area. And I'm responsible for avalanche
14 mitigation within the ski area. And additionally, we
15 provide avalanche mitigation under contract for Placer
16 County on Alpine Meadows Road. And we also provide
17 mitigation for Caltrans on Highway 89 between Olympic
18 Valley and Tahoe City. We use every type of avalanche
19 mitigation type of system that is out there, including
20 extensive use of Avalaunchers.

21 A little about myself. I'm a licensed blaster in
22 California and have been for 35 years. I'm licensed for
23 hand-placed and propelled charges and have been using
24 explosives of all types for avalanche mitigation for at
25 least 40 years now. (Indiscernible) I've been a master

21

1 gunner at (indiscernible) Artillery Program.

2 Additionally, I'm also currently the NSAA --
3 that's the National Ski Area Association's Explosives
4 Committee Chairman. And in the past, I've been involved
5 with creating national standards for explosives training
6 programs including hand-charging, harness-blasting and
7 Avalauncher use.

8 As I mentioned before I served on an advisory
9 committee to this Board in 2007 to '08 in a complete
10 revision of title 8 Article 1.7, so I've had a lot of
11 extensive involvement.

12 You know, I also share the passion for the safety
13 of my employees. I work with 70 blasters. And they are
14 all very well-trained and we have an excellent safety
15 record. And I think it's our responsibility to see that we
16 offer the safest work environment possible for them.

17 RAC Systems as currently mentioned are in use in
18 other states and other countries. They've been proven
19 effective and safe. We want to offer increased safety for
20 our folks and that's definitely a way to do it. Any
21 operation -- excuse me -- any opportunity we have to remove
22 the blasters from the blast area will obviously increase
23 safety by removing them from explosives.

24 I'll add one other thing in here. When we are
25 speaking about advisory committees and the forming of

1 advisory committees, in 2007 I was pretty involved in that
2 wording that we are talking about in 537(a)(4) and (E). As
3 mentioned earlier, the wording of that, the intention of
4 that during the creation of that wording was that the
5 advisory committee would not have to be formed to approve
6 every device that came along. And we wanted to stay
7 flexible with that as technology changed.

8 And it was always the intention that the
9 Division, and we assume that to mean the mining and
10 tunneling piece of that would be individually looking at
11 each RAC system, right, and giving us an opinion or giving
12 us the opportunity to work together on that to set the
13 regulations so we could be able to use those.

14 I think that's about my time. Hey, the bottom
15 line is this is all about worker safety. I represent a lot
16 of workers and RAC Systems will increase workers safety.
17 And I think that's about it. And I will hand it over to
18 Michael Gross.

19 CHAIR THOMAS: Thank you. Go ahead, Michael.

20 MR. GROSS: Great. Thank you for the time.
21 Hopefully I won't replough old ground here. I wanted to
22 cover up on a couple of things. I think to Jeff's point,
23 and as you heard from the other speakers, the feeling is
24 that we want to move through this process as expeditiously
25 and judiciously as possible. And our feeling is that it

1 does fit in with the existing title 8 language, so I would
2 ask that the Board strongly consider that.

3 The other piece that I want to talk about is just
4 the financial impact. These systems are not cheap. They
5 run anywhere around, let's call them \$150 to \$3-400,000 per
6 unit. Specifically where I work at Palisades Tahoe, we're
7 looking at multiple installations, which will account for
8 millions of dollars. So the sooner we can get through this
9 process and get approval then I can start going to my
10 bosses to secure the funding to move forward with the
11 planning to actually get these devices installed to move
12 forward with worker safety.

13 So I know that I speak for all the folks that are
14 on this call, whether it be Mammoth or the folks from
15 Kirkwood that have just spoken. You know, the industry at
16 least in California, and the people that are representative
17 today, they have the support of ownership and leadership to
18 move forward with these large financial purchases to
19 improve worker safety. And we're committed to doing this,
20 so we're hoping to work with the Board as closely as
21 possible or with OSHA as closely as possible to move this
22 through as quickly as possible. Thank you.

23 CHAIR THOMAS: Thank you.

24 Who do we have up next, Maya? One more call from
25 outside.

1 MS. MORSI: Up next is Steven Fennimore with the
2 University of California Davis Cooperative Extension.

3 CHAIR THOMAS: Steven, are you with us?

4 MR. FENNIMORE: Yes, can you hear me?

5 CHAIR THOMAS: Yeah. Don't be nervous. We are
6 superheroes, but we're nice people so go right ahead.

7 MR. FENNIMORE: Okay. I'm sure, I'm sure.

8 I'm an extension specialist and professor of
9 cooperative extension. I've been working on automated
10 cultivators -- we call them lots of names, intelligent
11 weeders -- since 2008, primarily in vegetable crops. I'm
12 in Salinas, so I do a lot of work in lettuce and broccoli.
13 I'm now working on carrots as well.

14 We have published a number of papers on this
15 subject, and these, the current machines, they're getting
16 better every year. They have proved they reduce the need
17 for hand-weeding by 30 to 50 percent. And last year we had
18 one that did as much as 70 percent.

19 So the second point I make, the idea that
20 improving labor-use efficiency will take away jobs is in my
21 opinion not valid. I'm a weed scientist. Weed competition
22 is a time-sensitive operation. You have to remove weeds in
23 a crop like lettuce, which is purchased by people who look
24 at the food and they make choices, it's based on quality
25 and appearance. And so if the weeds are allowed to compete

25

1 for a very long time it damages the crop. So growers tell
2 me that they cannot get workers when they need them.
3 Sometimes they can or it's delayed by five days or a week,
4 that's a critical delay. So apparently the workers are
5 already choosing other things to do.

6 So I grew up on a farm in Oregon, and I have
7 spent weeks hand-weeding and hand-harvesting strawberries
8 and snap beans. These are low-level jobs and they're done
9 only to earn money. They are not career positions.
10 They're not career jobs. These workers move into more
11 lucrative jobs in agriculture, transportation, or
12 construction. We need to focus on training young people
13 how to use this technology. How to use machine learning.
14 How repair the vision systems, because we have machines
15 that are on the ground that are looking at the crop and the
16 weeds and they're able to differentiate them. It's pretty
17 amazing. And they're getting, as I said earlier, they're
18 getting better all the time.

19 Last Wednesday, June 8th, we had an Extension
20 Field Day here in Salinas, just a quarter of a mile from
21 where I'm sitting right now. Naio is a French company,
22 which had an autonomous cultivator. People were curious --
23 I mean, we had lots -- we had fourteen different machines
24 and so people were curious. And somebody got too close, it
25 may have been me, got too close to the side of the machine.

26

1 It stopped cold. It did not move more than an inch. So
2 these detection -- worker detection systems are good,
3 they're really good. Don't underestimate them.

4 In 2019, I was down at Santa Maria observing an
5 autonomous cultivator from FarmWise. There was a 20-acre
6 field, and no one was in the field. The machine attendant
7 was obeying the letter of your regulations, he was running
8 behind the machine. There is no one else in the field.
9 This one-size-fits-all, it's almost most absurd. There
10 needs to be some right-sizing of these regulations because
11 my vision of where we need to be is we need to be moving
12 towards somebody sitting at the end of the field within
13 sight of these machines that's supervising five of these
14 machines. So if there's a problem, it gets stuck or it
15 runs out of the end of the field and gets into a ditch,
16 they can deal with that. They are within sight of the
17 machine. That's what I'd like to see as far as a
18 regulation.

19 I have heard, and I can't seem to verify it, but
20 I've heard that California is the only state in the U.S. to
21 regulate autonomous ag vehicles the way that California
22 does. So yet in the Yuma Valley, if you go down there in
23 December through March, it's identical to Salinas today:
24 same crops, same, full of workers. Arizona does not
25 regulate -- it's a different state -- they do not regulate

27

1 it. So why does California choose to place obstacles to
2 developing this technology?

3 And I just have a couple more points. Right now
4 red diesel, offroad diesel, non-tax diesel is \$6.00, which
5 means a Cat Challenger is burning maybe as much as a \$1,000
6 of fuel each day. Salinas is full of trucks, thousands of
7 trucks shipping produce across the country to the East
8 Coast. We are looking at somewhere between \$12 and \$15,000
9 per truck. So the growers are stressed. This idea that
10 the growers are wealthy, and they can have -- they can pay
11 a lot more for labor. I mean, these guys are barely making
12 it. Right now it's \$15 a box for lettuce is the break-
13 even. That's hard to get. So the growers need a break.
14 Please consider that.

15 And the last point I'm going to make is that this
16 petition is about electric tractors. You know, California
17 has set goals on reducing carbon footprint. These
18 discussions I've had with various commodity boards like the
19 Almond Board, having a Roomba tractor would allow a tractor
20 to recharge itself anytime with a low-carbon fuel,
21 electricity, solar power, and that's where we need to be
22 heading.

23 So the last thing I'm going to say, please, think
24 long-term. That's what I have. Thank you.

25 CHAIR THOMAS: Thank you.

1 And now we'll continue with in-person testimony,
2 so step up to the mic.

3 MR. IKEMIRE: Thank you, good morning. Back to
4 the RACS discussion from the avalanche control discussion.
5 My name is Adam Ikemire. I'm the Director of the Ski
6 Patrol at Kirkwood Ski Resort. I'm here today to support
7 the work of the previous speakers -- sorry, Steven -- I
8 don't know Steven -- but the previous RAC discussion
9 speakers and any work that needs to be done by the Board or
10 the Division regarding RACS and their use in California.

11 I'm a licensed blaster and a user of explosives
12 and artillery at our resort that is heavily reliant on
13 explosives and artillery to function and to operate as a
14 business. I'm also responsible for the avalanche
15 mitigation program and the other users of explosives within
16 this ski patrol.

17 Kirkwood is a resort that was built 50 years ago
18 around the artillery program. And any time we have
19 advancements in new worker safety regarding avalanche
20 control we certainly look into that. We're using third-
21 party contractors and consultants at the moment to start a
22 planning system. We know it does take quite a bit of time
23 for capital planning to plan these advancements in those
24 systems. We're certainly going in that direction.

25 As a ski patrol group we certainly look into all

1 types of training and advancements and the study of
2 avalanches in general, right? So as advancements are made
3 in the study of avalanches and propagation and start zones
4 and explosives use, we kind of want to keep going with
5 those advancements in the systems that mitigate those. So
6 I appreciate it and thank you very much.

7 CHAIR THOMAS: Thank you.

8 MS. MILLER: You thinking about avalanches yet?

9 Good morning. My name is Caroline Miller, I'm
10 the Mountain Manager at Kirkwood Resort. Like Adam said
11 Kirkwood was built on the howitzer and we're not trying to
12 leave you with ideas of dreaming of Kirkwood and big old
13 guns. But at the end of the day we are excited at the fact
14 that these new technologies really aren't that new anymore.
15 They're not in trial phases. They're not experimental.
16 The systems that other states are using and even other
17 resorts within the Vail Resort portfolio, of which we are,
18 they have tried, tested, and approved these uses and these
19 resources.

20 As Adam said, we're looking to modernize our own
21 mitigation strategies. And while we are from ski resorts
22 it doesn't just impact ski resorts and ski resort workers
23 and employees. While Union Pacific and Caltrans are not
24 able to be here today those are other really important
25 industries that would benefit astronomically from the

1 inclusion of RACS into the current code.

2 Before I was the mountain manager at Kirkwood, I
3 was the risk manager. And I got deep in the Cal/OSHA rules
4 and regulations quite often. And I thought a lot about my
5 time in that role when preparing for today and thinking
6 about how many times I went to my team and begged them to
7 consider that the new progressive way that we were asking
8 them to do something was viable, was realistic, was just as
9 safe if not safer than what we were doing. And so it's
10 ironic now that we're here asking Cal/OSHA to do the same
11 thing that we ask our employees to do, to consider the new
12 progressive way when it comes to avalanche mitigation.
13 Because as 5357 is written regarding Avalaunchers we're
14 confident that the systems that we're asking to be included
15 are just as safe, if not safer, and eliminate the employee
16 in a lot of different scenarios.

17 So I know Michael is going to wrap this up in a
18 second, but I think what's really important for you all to
19 consider is that we know bandwidth is really tight and
20 staffing is difficult. And we're the professionals about
21 avalanches, so however we can get you the information you
22 need and transportation, installation, upkeep, re-racking
23 these systems, we want to partner with you to get you that
24 information so it can be included in a way that the current
25 regulation is written. We believe that it encompasses it

1 largely, but whatever information we can provide is why
2 we're here, because it's not your job to know everything
3 about every avalanche system inside and out, but we love
4 it. So use us to help us move forward. Thank you.

5 CHAIR THOMAS: Thank you.

6 MR. REITZELL: Thank you. Michael Reitzell,
7 again, Ski California, just to wrap up very quickly. I
8 think our speakers have said all that would need to be
9 said, but we're asking -- we know that that this Board
10 can't offer any directives at this point or take any
11 action, but you can refer to staff. And what we would like
12 to do at this point is let our experts work with staff to
13 come up with the process to make sure that we can get these
14 systems approved and online as quickly as possible, so we
15 can really raise the level of worker safety when it comes
16 to avalanche control.

17 I'm happy to answer any questions for the Board
18 but thank you for your time.

19 CHAIR THOMAS: Thank you.

20 And now we will go to the phone lines. Maya, who
21 do we have?

22 MS. MORSI: Up next is Jassy Grewal with UFCW
23 Western States Council.

24 CHAIR THOMAS: Jassy can you hear us?

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

1 CHAIR THOMAS: Yeah, go right ahead.

2 MS. GREWAL: Wonderful. I will try to get
3 through this in two minutes, so let me know if I need to
4 slow down. But good morning, Chair and Standards Board
5 Members. My name is Jassy Grewal here on behalf of UFCW
6 Western States Council --

7 CHAIR THOMAS: Slow down. Excuse me, just slow
8 down just a little bit. You have plenty of time, just slow
9 down a little bit. Thank you.

10 MS. GREWAL: Okay, will do. -- and our 180,000
11 clients, essential workers, in California. I'm going to
12 speak to three items today.

13 First, I wanted to express UFCW support of the
14 Standards Board staff recommendation to deny the autonomous
15 tractor Petition Number 596.

16 Second, I want to urge the Standards Board and
17 staff to incorporate exclusion pay into the semi-permanent
18 COVID-19 standard due to supplemental paid sick gaps and
19 coverage for smaller businesses, and its impending
20 expiration at the end of September.

21 And lastly, where I'll take up most of my time, I
22 would like to urge this Board and Cal/OSHA to expedite the
23 process for the development and adoption of the General
24 Industry Workplace Violence Standards. The National Retail
25 Federation conducted a survey in 2021 that found more than

1 50 percent of store owners said that workplace violence is
2 now the number one threat to employees.

3 An NBC article yesterday highlighted how grocery
4 stores, a critical component to communities across
5 California, are now hotbeds for racism and hate crimes.
6 Since 2010, hate crimes at grocery stores has quadrupled.
7 Our workers and retail workers across the state and country
8 have had to mourn the loss of numerous victims who died due
9 to mass shootings or workplace violence at grocery stores.

10 On May 17, 10 people were killed in a mass
11 shooting at a supermarket in Buffalo, New York. On June 6th
12 a Safeway worker in San Jose was gunned down. On July 17th,
13 2021, a Rite Aid worker was shot to death in Los Angeles.
14 And on March 21st, 2021, 10 people died in a mass shooting
15 at Kings Super in Boulder, Colorado. There are so many
16 more unfortunate stories of retail workers, our members
17 being shot, stabbed, violently harassed, and threatened all
18 while trying to do their jobs of providing food for their
19 communities during a global pandemic when others got to
20 shelter safely at home.

21 Workers have shared that at a certain point these
22 cumulative stressors start to take a toll on their ability
23 to cope. Grocery stores are now a recurrent setting for
24 workplace violence, because they are open from early
25 morning until late at night. And are one of the few retail

1 environments that are consistently open.

2 Grocery store workers have shown their commitment
3 to this state every day of this pandemic. And the least we
4 can do is protect them while they're at work with an
5 enforceable robust workplace violence standard. Our
6 grocery stores and drug retail stores continue to be
7 chronically understaffed, which puts our workers in the
8 unsafe position of being open to numerous workplace
9 violence threats on a daily basis. Frontline workers are
10 traumatized. And in the absence of employer action
11 Cal/OSHA needs to urgently adopt a standard to ensure that
12 not one more worker falls victim to workplace violence
13 anymore.

14 Thank you for allowing me to testify today.

15 CHAIR THOMAS: Thank you.

16 Who do we have next, Maya?

17 MS. MORSI: Up next is Stephanie See with
18 Association of Equipment Manufacturers.

19 CHAIR THOMAS: Stephanie, can you hear us?

20 MR. JURGENS: Can you hear me?

21 CHAIR THOMAS: Yes.

22 MR. JURGENS: My name is Jeff Jurgens. I will be
23 speaking for Stephanie See. She's contracted COVID, Mr.
24 Chairman.

25 CHAIR THOMAS: Go right ahead, Jeff.

1 MR. JURGENS: Thank you. AEM is the North
2 American international trade group representing offroad
3 equipment manufacturers and suppliers, with more than 1,000
4 companies and more than 200 product lines in the
5 agriculture and construction-related industry sectors
6 worldwide.

7 The equipment manufacturing industry supports 2.8
8 million jobs in the U.S. Equipment manufacturers also
9 contribute \$288 billion dollars a year to the U.S. economy.

10 We appreciate the opportunity to express our
11 support for amending California title 8, section 3441(b) to
12 promulgate appropriate safety regulations for the use of
13 autonomous farm equipment. Off-road equipment is here and
14 autonomous offroad equipment is here and destined to play
15 an increasing role in agriculture. The governing
16 regulations were last reviewed 37 years ago in 1985, long
17 before this technology was developed to create autonomous
18 farm equipment.

19 With the next 5 to 10 years autonomous tractors
20 will be widely available on the market, thus the time is
21 right to be begin examining the regulatory framework that
22 will allow this equipment to operate safely.

23 Agricultural use of autonomous equipment promotes
24 reduction of worker exposure to a variety of hazards.
25 Driverless sprayers reduce instances where employees are

1 exposed to pesticides during their application. The
2 undistracted nature of onboard sensors can provide an
3 excellent level of detection for monitoring the environment
4 to prevent incidents. The use of autonomous tractors can
5 remove workers from environmental health and safety
6 hazards, such as dust, heat, and vibration, keeping workers
7 healthier.

8 Autonomous machines can perform physically
9 demanding labor such as hauling heavy loads from fields or
10 shaking nuts from trees, thus lessening the wear and tear
11 on a worker's body. Autonomous fruit pickers can keep
12 laborers from ladders, reducing fall hazards.

13 Furthermore, the diversity and inclusion benefits
14 of offroad autonomous should not be overlooked. The nature
15 of many employment opportunities in California farms
16 restricts who can apply based on the applicants' physical
17 abilities. Together, AEM and Cal/OSHA can enable off road
18 autonomy to pioneer farming operations by creating
19 employment opportunities for workers from an expanded range
20 of physical ability, including disabilities and
21 professional backgrounds who otherwise could not be
22 reasonably accommodated.

23 Due to the emerging nature of this equipment we
24 do not have extensive data on safe usage of autonomous farm
25 equipment. However, our industry can draw on the previous

1 experiences of related industries and is currently studying
2 the safety of autonomous farm equipment through a
3 partnership with Cal/OSHA.

4 Since 1994, over 900 Caterpillar and Komatsu
5 mining trucks outfitted with autonomous systems have hauled
6 8 billion tons of material across 90 million miles with
7 zero system-related lost time, injuries incurred.
8 Employees deployed at these worksites operate in
9 cooperation with the autonomous machines, resulting in a
10 demonstrably safer environment that reduces human exposure
11 to hazards.

12 Monarch Tractor, an AEM member company, is
13 currently conducting research through an experimental
14 variance period granted by Cal/OSHA in August of 2021 that
15 will evaluate the safety of autonomous tractors through
16 various commissions over several years. Once complete this
17 data will allow stakeholders to accurately educate the
18 safety of this technology in the environment in which it
19 will be used.

20 We also encourage the Board to review other data
21 points with similar equipment operating in similar
22 environments. Either seeding, spraying, and spreading
23 operations, or even applied technology has accumulated
24 8,000 hours of operational time covering 69,000 acres with
25 18 different machines.

1 According to its website, Blue White Robotics, an
2 autonomous agricultural equipment manufacturer, has 10,000-
3 plus hours of safe operation.

4 KeyBanc Capital Markets published its first
5 autonomous truck technology dashboard. As of March 1st,
6 2022, KeyBanc counted 147 autonomy-equipped trucks
7 traveling an estimated 4.1 million miles. KeyBanc reports
8 no unsafe driver violations resulting from 40 inspections
9 in February.

10 Schnucks Markets announces that it's rolling out
11 artificial intelligence-powered robots to all 111 of its
12 stores in Illinois, Indiana, Missouri and Wisconsin. These
13 robots will be interacting with customers that have had no
14 special training at all to interact with autonomous
15 machines.

16 Because the technology used in autonomy has
17 proven its reliability, the 27 countries of the European
18 Union are considering allowing the self-certification of
19 autonomous agricultural vehicles.

20 Autonomous agricultural equipment is designed and
21 tested to international standards that are developed under
22 an open and balanced consensus process. Any materially
23 interested party may participate in this process allowing
24 all viewpoints and comments to be addressed before the
25 standards are finalized and published.

1 The International Organization of Standards,
2 ISO, addresses highly automated agricultural machines in
3 ISO 18497 as a standard for agricultural machinery and
4 agricultural machines, specifically safety of highly
5 automated agricultural machines.

6 ISO 18497 is a performance-based standard that
7 specifies the principles in the design of self-driving
8 tractors to achieve safe operation. To be compliant with
9 18497, self-driving tractors must contain at the minimum
10 all of the following features in their design: A perception
11 system capable of detecting and locating persons or other
12 obstacles relative to the machine; a perception system
13 capable of locating and positioning the equipment to
14 prevent unintended excursions beyond the boundary of the
15 working area. It must be able to ensure that there is no
16 obstacle in the hazard zone prior to moving, giving an
17 audible or a visual alarm, and enter its defined state when
18 an obstacle is detected, or an obstacle enters its hazard
19 zone.

20 It must have the means to enable a local or
21 remote operator to stop or to start highly automated
22 operation and allow for adequate supervision by a local or
23 remote operator.

24 CHAIR THOMAS: Jeff, could we get you to wrap up?
25 We're --

1 MR. JURGENS: Yes, sir.

2 CHAIR THOMAS: -- over two minutes so please,
3 thank you.

4 MR. JURGENS: I apologize, sir. I'm doing my
5 conclusion right now.

6 We would also like to invite this Board to attend
7 FIRA USA in Fresno, October 18th through 20. This is the
8 leading industry event for agricultural electronics, and it
9 will host in field robot demos at the California State
10 University Fresno Farm. Attendees will have the
11 opportunity to watch dozens of robots working in real
12 conditions by bringing this academic community together.
13 It aims to set priorities and focus on solving some pain
14 points.

15 So in conclusion, AEM is strongly in agreement
16 that updating this regulation is needed for California to
17 continue to be a world leader in both agriculture and the
18 innovations that support it. AEM looks forward to
19 collaborating with Cal/OSHA to develop a forward-looking
20 and effective regulation that ensures California workers
21 have a safe workplace they are entitled to while preparing
22 for the invaluable future that offroad autonomy is ushering
23 in.

24 I apologize for the long overtime, Mr. Chairman,
25 and I thank you for the time today to speak.

1 CHAIR THOMAS: Thank you. We appreciate it.

2 Who do we have next, Maya?

3 MS. MORSI: Up next is Michael Strunk with
4 Director of Safety, Operating Engineers Local Union Number
5 3.

6 CHAIR THOMAS: Michael, can you hear us?

7 MR. STRUNK: Yes, sir. Good morning.

8 CHAIR THOMAS: Go right ahead.

9 MR. STRUNK: Chair Thomas, Standards Board, my
10 name is Michael Strunk. I am the Director of Safety for
11 the International Union of Operating Engineers, Local Union
12 Number 3.

13 I testified to autonomous tractors Petition 596
14 several times. And I just wanted to thank you for the
15 forum and the opportunity, no matter how you decide this
16 matter is going to pan out. We appreciate the process. We
17 support the process and while we oppose the petition and
18 the experimental temporary variance, we appreciate all the
19 work you do for us in keeping us safe. Thank you very
20 much.

21 CHAIR THOMAS: Thank you.

22 We will go back to a live testimony, so you may
23 step up to the podium.

24 MR. DENTINGER: Hello, good day. I'm Mike
25 Dentinger. I'm with Trimble. And I'm based in Sunnyvale,

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1 California, and the Director of AG OEM, manufacturers of
2 vehicles, AG OEM Development, and Trimble's liaison with
3 Monarch.

4 Trimble's Ag Division has fielded (phonetic)
5 hundreds of thousands of precision ag systems, basically to
6 assist in the guidance using GPS inertia measurement units
7 of tractors, ag vehicles, sprayers, and a variety of other
8 equipment used on the farm.

9 We've been supplying this equipment for over 20
10 years. New systems require a driver to be present and
11 that's been our basis, but we're doing research into the
12 driver-optional vehicle marketplace, which is growing
13 rapidly.

14 We also fielded ag autonomy, which is the basis
15 of Monarch's petition, or 596, is a solution for the dirty,
16 dangerous and dull jobs, but specifically for California
17 I'd like to add one more "D," which is "demanding." Our
18 specialty crop industry requires a lot of manual labor, and
19 it's an extraordinarily demanding job. It involves
20 conditions and it involves maneuvers and operations that
21 are complicated and very demanding.

22 The 4 Ds of autonomy, the value proposition there
23 is to help minimize the workplace hazard exposure. Ag
24 technology is sometimes viewed as a threat, but it really
25 is not a zero-sum game. We can deliver simultaneous wins

1 for the farmer, the worker, and California ag economy, the
2 environment, and the food supply chain.

3 We support the approval of Monarch's petition as
4 we believe Monarch has proactively collaborated with
5 Cal/OSHA to create modern guidelines in a rapidly changing
6 ag tech world.

7 We encourage other autonomy organizations. We've
8 heard of people that say, "Hey, we'd like to participate,"
9 we encourage them to step up and make their voices heard.
10 Because as you've heard from several of the speakers
11 previously, this is happening all through California and we
12 want to acknowledge that in this -- pardon, oh sorry -- so
13 in addition, we acknowledge that the company that goes
14 first in a process like this there was a disproportionate
15 burden when advocating for change that benefits many, so we
16 support Monarch.

17 So in the adoption of Ag autonomous vehicles,
18 it'll happen slowly. Research has been going on in this
19 area for many, many years and it is at the point where the
20 sensors, the technology, the capabilities are coming
21 together.

22 What would be very good is for a -- and great
23 values to companies working in this area -- is a pragmatic,
24 tangible milestone, so test cases and timeframes so
25 businesses can plan for success. Mechanization and

1 autonomy is happening worldwide. California agriculture
2 and California ag workers deserve to have the best
3 equipment and safest working environment possible. Thank
4 you.

5 CHAIR THOMAS: Thank you.

6 MR. WINTERS: Good morning. Thank you to each of
7 the Board Members and all of the staff for facilitating
8 this opportunity to speak today, we really appreciate it.
9 My name is Jake Winters. I'm the head of Government
10 Relations at Monarch Tractor. I think all of us in this
11 room are aligned on the goal to just increase safety
12 whenever possible for humans. When we have an opportunity
13 to prevent a worker's exposure to pesticides, we should
14 take advantage of that. When we have an opportunity to
15 prevent workers being harmed by a rolling tractor or by a
16 wheel mower, we should take advantage.

17 Today, I'd like to instead spend some time
18 speaking on Petition 596, with relation to the driver-
19 optional equipment in agriculture, where it appears to be
20 heading, and what decided path forward and the lack of
21 mechanisms means for safety in agriculture in California.

22 I'd like to start with the proposed decision on
23 596 from Cal/OSHA. It reads as follows, "Subsequent to the
24 completion of the Cal/OSHA temporary experimental variance
25 process, and the data-gathering currently underway, the

45

1 Board anticipates being able to establish whether the
2 proposed technologies require new regulations to be added
3 to title 8 or modifications of current standards.”

4 So how does the variance process come to a
5 completion? Let's take a look at the language from the
6 temporary experimental variance that was granted last year.
7 The variance will end when the earliest of the following
8 occurs: option one, the Occupational Safety and Health
9 Standards Board grants or denies a permanent variance
10 regarding the autonomous tractor use in the places of
11 employment covered by this experimental temporary variance.

12 Option two, a title 8 regulation allowing for the
13 autonomous tractors in California is granted and
14 established.

15 For option three, five years from the issuance of
16 this variance, the variance will expire unless an extension
17 is granted by Cal/OSHA.

18 The first option is really a type of extension
19 exclusively for the two farms that are covered under the
20 variance, leaving thousands of farms in California out to
21 dry.

22 Taking a deeper look at option two, the variance
23 needs to be completed to start the rulemaking process.
24 However, the variance itself seems to be completed with the
25 establishment of a rule under title 8, section 3441(b).

1 So we're left only with option three to complete
2 the variance, wait until five years from the date of
3 issuance. Five years from the date of issuance is August
4 6th of 2026.

5 As of yesterday, Monarch Tractor's technology
6 alone has logged more than 1,300 operational hours in
7 autonomous modes, representing about two-and-a-half years
8 of real-world use while successfully identifying 131,758
9 humans in their vicinity, all with zero incidents, zero
10 accidents, zero injuries, and zero close calls.

11 The data shared by Jeff and AEM goes further to
12 support the dataset that exists to evaluate these kinds of
13 technologies. Cal/OSHA has done extensive and exhaustive
14 testing in-person onsite with Monarch tractors in-person.
15 All passed with flying colors within a strict set of safety
16 guidelines. How much data is needed to start the process?

17 If we truly believe that more data and a deeper
18 understanding is needed to inform a rulemaking process, the
19 smallest possible component of action is the convention of
20 an advisory committee.

21 If we are to continue to delay action, I fear
22 that by August 6th of 2026, California will be known as the
23 state with one of the highest rates of preventable deaths
24 in agriculture as the rest the country adopts state-of-the-
25 art safety technology or the people that grow our food.

1 Thank you for your time.

2 CHAIR THOMAS: Thank you.

3 MR. VOUGLOUKAS: Good morning, dear members of
4 the Board, my name is Stavros Vougloukas. I'm a professor
5 in the Biological and Agriculture Department, Engineering
6 Department of UC Davis. I have been doing research in
7 agricultural robotics for 20 years now. And I promise not
8 to give a lecture. I will be brief.

9 My position is also that highly automated
10 agricultural machines can increase farm worker and operator
11 safety and benefit growers, consumers, and general public,
12 the economy and the environment. We need them, and we need
13 them urgently. Therefore, we must facilitate innovation in
14 this space and California can and should lead this effort.

15 Now, what are the facts? Unfortunately, no
16 existing standards are mature enough to prescribe the
17 safety performance of these machines under well-defined
18 conditions that could inform benchmarks or certification
19 procedures. So that's something that's a fact.

20 The other fact is that the environments in which
21 these machines operate, and the ag operations that they
22 carry out, can be very different. Some situations that may
23 lead to improper machine behavior and possible accidents
24 can be predicted, but others cannot. Unforeseen, let's
25 call them corner safety cases, will be frequent. And

1 appear only after enough of these machines have been
2 deployed in fields in a wide range of real-world conditions
3 for a long time. So we have a challenge here.

4 Number one, we need to ensure a reasonable level
5 of safety for these machines whose technology keeps
6 evolving. It's a moving carpet, and this is one of the
7 reasons we don't have any standards. But we also need to
8 allow for their deployment in larger scales in order to
9 collect the data that will help us increase the level of
10 safety through establishment of benchmarking procedures,
11 certifications, and standards.

12 What is my position? So in a nutshell I think
13 that the current temporary variance for Monarch is overly
14 restrictive in terms of its duration up to five years, the
15 number of allowed sites, only two of them. As you heard
16 earlier it also lacks clear criteria for transitioning to a
17 larger-scale deployment. They can only use two sites, and
18 then that's pretty limited.

19 On the other hand having read the petition, my
20 view is that it proposes a change in title 8 whose language
21 and conditions are too vague to ensure a minimum level of
22 safety. And let us not forget, it's not only Monarch. If
23 title 8 changes, it's not only Monarch or Company X or Y;
24 it's anybody.

25 My suggestion, I strongly support the

1 establishment of a -- I call it a task force, because it a
2 sense of urgency or advisory committee that will be formed
3 promptly, not after the variance expires. That committee
4 could generate either a template variance that could apply
5 to other companies, or eventually a change in title 8. But
6 it should be specific enough to define requirements and
7 benchmarks and allow companies to promptly transition to
8 larger deployment scales in terms of number of tractors and
9 size. We need them to be deployed to gather the data.

10 Also, we need to establish a feedback mechanism
11 so that that data from the deployment gets back to the task
12 force, and so that way we can continuously update the
13 benchmarking and requirements of future variances or the
14 title 8 itself.

15 My suggestion is that in addition to Cal/OSHA
16 personnel, this task force includes representatives from
17 industry -- not only from ag, because mining and other
18 industries here have a lot of experience in this space --
19 academia and growers. Thank you very much.

20 I would like to also say that the FAA follows a
21 similar approach when it comes to package delivery by
22 drones. They require that the companies meet a minimum set
23 of standards and specifications, and they work with them.
24 Within a committee they work with certain partners to get
25 more data and guide the process of creating benchmarks and

1 standards. Thank you very much.

2 CHAIR THOMAS: Thank you.

3 Maya, who do we have on the phone now?

4 MS. MORSI: We have AnaStacia Nicol with
5 Worksafe.

6 CHAIR THOMAS: Ana, can you hear us?

7 MS. NICOL: Yes. I'm on video.

8 CHAIR THOMAS: Go right ahead.

9 MS. NICOL: So good morning, everybody. My name
10 is AnaStacia Nicol. I'm a staff attorney with Worksafe and
11 I wanted to make a comment regarding the 596 autonomous
12 tractors denial. Worksafe wants to offer our strong
13 support regarding the matter of the autonomous tractor
14 denial. We stand with our fellow employee advocates such
15 as California Rural Legal Assistance, UFCW Western States
16 Council, and other employee-rights advocates on that
17 matter.

18 We also wanted to comment on exclusion pay.
19 Although this item isn't on the agenda today, Worksafe
20 would like to make a comment regarding exclusion pay in the
21 upcoming two-year permanent COVID-19 standard. So for the
22 last two years and counting, exclusion pay has been the law
23 of the land in California. It's essentially become this
24 kind of status quo reality for workers. And California
25 workers are relying on it, they are expecting it, and they

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1 deserve it.

2 Also, I'd like to gently remind people that
3 supplemental paid sick leave is expiring. There is no
4 guarantee it will come back. Nor is there any guarantee
5 that it will come back for a long enough period of time to
6 support workers. And even if it does come back, and it
7 comes back for a substantial amount of time, it's still not
8 a replacement for exclusion pay that has been offered --
9 the version of exclusion pay that has been offered by the
10 ETS.

11 Exclusion pay offers different beneficial and
12 needed protections for workers that supplemental paid sick
13 leave just doesn't offer. And without the Standards Board
14 intervention to protect exclusion pay it may expire or be
15 severely weakened, and this would be devastating to workers
16 throughout California

17 And with that, on behalf of California workers,
18 Worksafe would respectfully urge the Board to include
19 exclusion pay, so that California workers can continue to
20 expect and rely on what they've come to know over the last
21 two years during the COVID-19 pandemic. Thank you.

22 CHAIR THOMAS: Thank you.

23 Who do we have next, Maya?

24 MS. MORSI: We have Praveen Penmetsa with Monarch
25 Tractor.

1 CHAIR THOMAS: I think it was Praveena? Are you
2 there?

3 MR. PENMETSA: Hello, I'm here. Can you guys
4 hear me, okay?

5 CHAIR THOMAS: Yeah. Go right ahead.

6 MR. PENMETSA: Hi, I'm Praveen PenmetSA. I'm the
7 CEO and co-founder here at Monarch Tractor.

8 I'm here to advocate for the support of the
9 Petition 596 that we have in front of the Board.

10 For a little bit of a background on myself having
11 worked in the automotive industry and the aerospace
12 industry, I entered agriculture in 2015, when California
13 farmers reached out asking for support on existing
14 technologies that can be deployed in agriculture to help
15 alleviate their challenges.

16 Before I jump into our support of the Petition
17 596, I want to take a second to thank the Cal/OSHA Board
18 and also all the Cal/OSHA staff for the challenges that we
19 have all overcome together over the last couple of years.
20 In spite of all the global challenges with the pandemic and
21 the safety-related issues a specific call-out to all the
22 Cal/OSHA staff who have spent time with our team here, and
23 working with us collaboratively on the variance, and then
24 helping us draft the regulations, and in conducting the
25 inspections, and basically have spent a huge amount of time

1 and effort over the last few years. I want to express my
2 gratitude to each and every person on the Cal/OSHA staff
3 that has been involved in our process.

4 The Board today has heard from a number of
5 people, from UC professors to industry, advocating for the
6 support of the petition. I want to take this one moment
7 not to reiterate what was said, but to highlight the fact
8 that Monarch Tractor with support from the rest of the
9 industry, has been working with Cal/OSHA in a collaborative
10 manner on ensuring the draft of the variance. But also
11 ensuring that the technology is being tested and deployed
12 and the data being shared in order to advance this
13 technology and also to advance farm worker safety over the
14 last three years.

15 We have taken a lot of feedback from the Cal/OSHA
16 staff and have incorporated all of that technology. So
17 far, I wish to highlight two main points of contention when
18 it comes to our petition.

19 Number one is safety. On the safety side, again,
20 anybody who has like looked at the variance and report can
21 see that there are speed limitations that are set in place,
22 there are very specific call-outs to protect any workers
23 that are in the vicinity even of that technology. And how
24 the machines should respond. So they have gone into great
25 detail on exactly how the technology should respond in

1 these scenarios from a safety standpoint. And a number of
2 people have talked about the existing safety challenges and
3 how this technology will only help increase farm worker
4 safety.

5 The second challenge that we have heard on is on
6 the labor side. We have been working with farm workers
7 over the last three years in terms of not just getting
8 their input on how they can use our tractor, but also
9 getting feedback from farm owners. And we have support
10 from a number of growers.

11 There is a support letter that is in front of the
12 Board as well. And it includes, just to call out a few
13 names: the California Fresh Fruit Association, the
14 California Apple Commission, the United Ag, California Farm
15 Bureau, Western Growers, California Association of
16 Winegrape Growers, the Agricultural Council, Olive Growers,
17 and the California Citrus Mutual just to name a few, not to
18 include the Blueberry Commission, Strawberry Commission; I
19 could keep going here.

20 The farmers and the farm owners are under a lot
21 of pressure, and they are asking for this. Not a single
22 one of them has talked about any labor displacement. All
23 of them have said that they can use this technology and use
24 their existing drivers with our technology, get them away
25 from being on the tractor to watching the tractor. And

1 also keeping close contact with the tractor and still
2 getting to manage operations, but being away from the dull,
3 dirty, and dangerous nature that currently exists. So
4 that's the second point that I wanted touch upon was on the
5 labor side.

6 The third challenge has been with regards to the
7 variance and the fact that there is a variance process
8 underway. Again, you know we wanted to highlight the fact
9 that there is ambiguity in existing regulations, as is. We
10 are not asking for any relief on the existing variance
11 process. We fully intend to go through the variance
12 process. But like a few of my colleagues have highlighted,
13 the variance process has not clearly outlined in a time-
14 phased manner how we go from where we are today with the
15 variance process, to the next step. And if there is any
16 time delaying that the California farmers will have a huge
17 impact in terms of their operations. And this is not going
18 to advance the safety side for any of the farm workers.

19 So in conclusion, I would like to recommend the
20 Board to take heed of all the voices that have been heard
21 and please to take that into consideration. Also, we are
22 an industry that is asking for regulation, we want to
23 collaborate with Cal/OSHA and (indiscernible) as a low-risk
24 approach we would -- I would like to, again, throw my voice
25 in and recommend that forming of a task force to with clear

1 definitions. So that the data that we are presenting to
2 Cal/OSHA staff today can be examined by a larger industry
3 group consisting of multiple stakeholders and we can
4 advance this technology forward that California farmers
5 desperately need.

6 They have enough challenges on the weather side.
7 There's enough challenges on the resource side. Whatever
8 we can do to help would be greatly appreciated and that's
9 what we are hearing from farmers. I would like to throw my
10 recommendation in for the approval of that petition, and
11 also ask for the formation of that task force as a way to
12 keep the momentum going.

13 Thank you for your time and thank you for the
14 support.

15 CHAIR THOMAS: Thank you.

16 Who do we have next, Maya?

17 The last remote speaker we have is Anne Katten
18 with CRLA Foundation.

19 MS. KATTEN: Hi, good morning.

20 CHAIR THOMAS: Hello Anne. Hi Anne, go ahead.

21 MS. KATTEN: Yes. Hi, good morning. This is
22 Anne Katten with CRLA Foundation. And thank you very much
23 for all the Board's work on work health and safety.

24 We are speaking today to urge you to adopt the
25 proposed decision to deny Petition 596 regarding autonomous

1 tractor rulemaking. We strongly concur with the Division's
2 conclusion that this technology is not yet proven. And the
3 Board's conclusion that it's premature to begin rulemaking
4 when an emergency variance that involves only two
5 vineyards, is still in process.

6 We'd also like to point out that electric
7 tractors and precision-weeding attachments can and are
8 already being used with drivers in the seat.

9 Our biggest concern, which we explained before,
10 is if the automatic perception systems and stopping
11 mechanisms fail due to a technology glitch, due to real-
12 world tractor maintenance issues, or variations in terrain,
13 and the machine doesn't register that a worker has fallen
14 in the path of the vehicle or otherwise, that the outcome
15 will be tragic. A worker will be seriously injured or
16 killed.

17 And we're particularly concerned about this,
18 because the experimental variance allows other workers to
19 be in the field while these tractors are being used. And
20 that is seems to (indiscernible) intention in the way that
21 (indiscernible). Can you still hear me? I'm getting
22 static.

23 CHAIR THOMAS: Yeah, we can hear you.

24 MS. KATTEN: Okay, very good. Okay.

25 Also, we need to consider that California has

1 much more labor-intensive agriculture than many of the
2 other states such as the Midwestern states where I believe
3 these technologies are already being used. It's very much
4 different using a large tractor in a wheat field by
5 yourself to spray or cultivate using it autonomously, to
6 using it in a field where there are workers harvesting
7 grapes or doing other labor-intensive work where they could
8 be in the line of the tractor's passage.

9 We also wanted to point out that a recent
10 National Highway Safety Administration report found that
11 for autonomous vehicles that have been under test on public
12 roads for years, in the last 10 months there have been 130
13 incidents, including a collision with a bicycle. And for
14 vehicles with driver-assisted technology (indiscernible) --

15 CHAIR THOMAS: I think we lost you, Anne.

16 MS. KATTEN: (Audio cutting in and out.) -- Uh-
17 oh.

18 CHAIR THOMAS: Oh, go ahead. Go ahead.

19 MS. KATTEN: Can you hear me now?

20 CHAIR THOMAS: Yeah.

21 MS. KATTEN: Okay.

22 CHAIR THOMAS: You left off with the bicycle
23 incident, so continue from there.

24 MS. KATTEN: Okay. Sure.

25 And then in that same National Highway Safety

1 Administration report for vehicles with driver-assisted
2 technology, there have been 400 crashes, resulting in 6
3 deaths and 5 serious injuries during that time period. I
4 realize those are at higher speed, but also there is the
5 added situation in agriculture where you're on different
6 terrain. And it's, I believe, that the hazard is greater
7 than some of the autonomous vehicles on city streets.

8 Again, I think that it is premature to do any
9 rulemaking. It might soon be time to consider additional
10 experimental variances under different situations, but if
11 that is considered the process should include some public
12 modification before they are granted because in agriculture
13 most workers don't have a collective bargaining agreement,
14 so there is no union to notify of this. So there should be
15 another process to notify other worker advocates so that --
16 before any variances are granted. And so again we urge you
17 to deny the petition.

18 And then finally, to change gears, I also want to
19 urge consideration of adding exclusion pay to the permanent
20 COVID standard, so that workers can afford to quarantine
21 when they're ill with COVID to better protect other workers
22 and families, especially those who are immunocompromised.

23 Thank you.

24 CHAIR THOMAS: Thank you.

25 Do we have any other live -- we do.

1 MR. STEIGER: Thank you, Mr. Chair, members and
2 staff. Mitch Steiger with the California Labor Federation,
3 appreciate the opportunity to testify today.

4 First to just touch on Petition 596, we are here
5 in respectful opposition to the petition and express our
6 appreciation for the proposed decision to deny the
7 petition. A lot has been said today about the petition
8 specifically as well as the concept of automation overall
9 and the relationship between those two.

10 And we think the really important point here is
11 that all of this technology that's being talked about, all
12 of the sensors and the automatic shut-off and the machine-
13 learning and all of these things, we could not support
14 these things more. Anything that helps keeps workers more
15 safe on the job is something that we absolutely applaud.
16 And we -- you know, hats off to companies like Monarch for
17 developing that sort of technology.

18 But as we're all painfully aware of after two
19 years in the pandemic technology fails all the time.
20 Sometimes we know why it happens. Sometimes we don't know
21 why it happens. Sometimes we can kind of keep going with
22 the technology we've got. Sometimes you just have to give
23 it up and the Zoom call can't happen, or your phone just
24 doesn't work. And in those cases, it's incredibly
25 important to have a person there to make a judgment call

1 about what to do next. Especially when we're talking about
2 something as dangerous as a big, heavy, moving object like
3 a tractor.

4 And but as we also know people aren't perfect
5 too. Sometimes people are tired. They're overworked.
6 They might have gotten really bad news on their way in to
7 work and they are obsessing over that. In which case, it's
8 great to have all of that safety technology there to make
9 up for whatever the person might be struggling with.

10 All of which is to say the absolute safest
11 possible option is to have all of these safety devices as
12 well as a person there. That we should be designing this
13 technology to work on the strengths of both, so that when
14 one is having a tough day or when one isn't working the way
15 that it should, the other one can step in. And eliminating
16 one of those, eliminating the person from the equation,
17 doesn't make any more sense than eliminating all of the
18 safety devices from the equation. They should both be
19 there. They should both work together. And we really
20 believe that no amount of advisory committee for discussion
21 is ever going to change that fact. And we should all just
22 focus on how do we design technology to work with the
23 strengths of the person and then add strengths of the
24 machinery, so that workers can be kept as safe as possible.

25 And then just really briefly to touch on the

1 issue of the ETS we would echo the comments of previous
2 speakers like UFCW and Worksafe and CRLA and really
3 emphasize the need to include exclusion pay in the final
4 ETS.

5 I checked today and case rates, reported case
6 rates, are now well over 10 times what they were a few
7 months ago. And hopefully that's temporary. Hopefully it
8 starts to go back down soon. But after that, there'll be a
9 new variant that'll take over and then we'll just keep
10 going up and down probably for the foreseeable future.

11 And we also need to keep in mind that the virus
12 is many orders of magnitude more contagious than it was
13 when we started. And we need to go into the future keeping
14 that in mind, knowing that the virus is going to change.
15 It's probably going to just keep getting more
16 transmissible. Workers are still going to need the option
17 to stay home with pay, so that we can keep outbreaks from
18 happening in the workplace.

19 In reality, we like to kind of feel like things
20 have gotten better in the last two years and in some ways
21 they have. We have greater availability of vaccines. The
22 virus appears to be slightly less lethal than it was at
23 first, but it's still out there. It's still causing
24 outbreaks.

25 Long COVID is very real and very scary. A lot of

1 articles have been coming out about that recently. And
2 it's really something we need to keep in mind as we move
3 into the future and figure out how we're going to live with
4 this thing long-term. At a minimum, we should take steps
5 like including exclusion pay in policy, so that workers can
6 take the time off when they need. We can minimize
7 outbreaks. And we can keep workers as safe as possible.
8 Thank you.

9 CHAIR THOMAS: Thank you.

10 Who do we have next?

11 MR. MIILLER: Good morning, superheroes, Chair,
12 members and staff, appreciate your time. (Laughter.)

13 CHAIR THOMAS: Bad joke. Sorry about that.

14 MR. MIILLER: I always remember a bad joke. My
15 name is Michael Miiller. I'm with the California
16 Association of Winegrape Growers. I'll try to be brief
17 this morning. There's already been a lot of discussion on
18 both of the issues I want to talk about.

19 First, I would like to talk about the Department
20 of Finance comments on the Standardized Regulatory Impact
21 Assessment, the summary from COVID-19 Prevention
22 Regulation. Finance comments were dated June 1st. In
23 short, Finance points out some issues that we've been
24 discussing for the past several months two years now.

25 First, we all need to see the text on the

1 proposed regulation. Finance points out that the Division
2 has not made the text of the regulation public, which
3 limits their ability to thoroughly review and provide
4 informed comment. We agree with that entirely, we've been
5 saying that for a while.

6 Two, as Finance points out that the Division has
7 not provided sufficient data to support its conclusions
8 relative to the effectiveness and cost of the regulation.

9 But honestly, after reading the SRIA and reading
10 the Finance comments, it's really hard to blame the
11 Division for the shortcomings. Asking the Division to
12 adopt a permanent effective COVID regulation and to
13 complete an accurate SRIA on that regulation is almost
14 asking them to do the impossible. This is because the data
15 and the science are changing too quickly to possibly keep
16 up with it, and reflect it in the SRIA and the proposed
17 text.

18 For example, Finance states, "The SRIA uses
19 disease data from 2021 when the Alpha and Delta strains
20 were dominant as a basis for assumptions, including
21 transmission rate and case severity. More recent data
22 indicates that Omicron variant is less lethal and
23 vaccination rates are higher than in 2021, implying the
24 benefits may be about half of the estimated amount."
25 That's from the Department of Finance. That's not an

1 advocacy statement, that's an analysis.

2 Compounding this data problem even more is that
3 the state is not tracking where and how people get COVID.
4 Do people get COVID at work? Do they get it on a train
5 coming into work? Do they get it on an airplane? Do they
6 get it at the movie theater? Do they get it at church? We
7 still don't know and there's no data on that. So it's
8 literally impossible for the Division to provide a
9 meaningful analysis on data relative to the workplace.

10 The data discussion leads to the second issue
11 that I'd like to talk about, and that is the Monarch
12 Tractor petition. We support that petition, and we align
13 ourselves with comments from the UAW, Monarch, and others
14 who already testified, including AEM.

15 It's interesting today that when you're talking
16 about ski slopes and ag land, and the need for regulations
17 in both, the common theme is technology and how do we keep
18 up with technology. And it's very important that we do
19 that. That is why we support this regulation.

20 That said, when you read the staff reports from
21 the Division and the Board the underlying theme is that the
22 issue needs and deserves increased study.

23 We believe the best way to achieve this is
24 through convening an advisory committee. This could be
25 headed up by the Division and Board staff and include all

1 stakeholders. This includes employee groups, employer
2 groups, academia, manufacturers, safety experts, everybody.
3 Bring us together and let's talk about it, do a deep dive,
4 and figure out the right approach to take. This will allow
5 for a full examination of the technology and the data, and
6 it will best inform future changes to the regulation.

7 Absent that advisory committee, this issue is
8 just going to keep coming up every two or three years. We
9 know that, because the regulated community is struggling
10 with how to fully utilize green era technology on a leaded
11 fuel era regulation, and so we need that change.

12 That said, I do have to comment on two things
13 already previously stated. Someone mentioned the NHTSA
14 study, the National Highway Traffic Safety Institute (sic:
15 Administration) study. I want to briefly comment on that.
16 The study found that there had been 367 crashes in the last
17 9 months involving vehicles that were using driver-assist
18 technologies. However, and this is very important, NHTSA
19 also states the data lacks critical comment.

20 NHTSA Administrator, Steven Cliff specifically
21 stated, "I would advise caution before attempting to draw
22 conclusions based on the data we are releasing today. In
23 fact, that data alone may raise more questions than they
24 answer." And I've provided your staff with a handout with
25 that quote and the information on that study, so you could

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1 read it for yourselves.

2 And when you're really looking at safety and the
3 current technology, this is the danger point. This is the
4 traffic safety technology danger point. The National
5 Safety Council reports that cell phone use while driving
6 leads to 1.6 million crashes every year. In fact, at any
7 given time throughout the day approximately 660,000 drivers
8 are attempting to use their phones while driving. Go
9 Warriors, by the way. But that said when you look at that
10 study it is virtually irrelevant to this this request.

11 Also, people have been talking about the safety
12 of the equipment. I think in discussing the safety of the
13 equipment, we have to also consider who manufacturers that
14 commitment -- or that equipment.

15 Monarch is a small company in California. But
16 the largest manufacturer is located in the Midwest and
17 their workers who manufacture this equipment as certified
18 safety, are represented by the UAW, the auto worker union
19 employees. My uncle and aunts actually, my aunts and
20 uncles in Michigan, worked in shops, in the auto shops in
21 Flint, Michigan.

22 My Uncle Don, he had a job where he had to
23 analyze or look at the transmissions as it came off the
24 line. His job was to certify that they were manufactured
25 correctly, and that they were safe. He took that job very

1 seriously. And I know that every UAW employee that I've
2 known through my childhood and my adult life, the UAW
3 employees take their jobs seriously. And when they put a
4 tractor out for use for farm workers, they want to make
5 sure it's safe.

6 And I thank you very much for your time.

7 CHAIR THOMAS: Thank you.

8 MR. LITTLE: Well, good morning. I'm a little
9 bit surprised that I'm actually able to bid you a good
10 morning. I thought we might be going into the afternoon by
11 this time. I'm Bryan Little with California Farm Bureau
12 Federation. For those of you who might not know, Farm
13 Bureau is the largest agricultural organization in
14 California. We represent people who grow everything from
15 avocados to Zinfandel grapes and California farmers
16 produce about two thirds of the fresh produce, fruits and
17 vegetables, that are consumed in the United States every
18 year.

19 I don't have as long a comment to offer you as my
20 colleague Mr. Miiller does, did, but I would like to
21 comment on two things.

22 First, the Department of Finance's comment on was
23 Standard Regulatory Impact Analysis on the COVID-19
24 permanent -- the COVID-19 standard, I should say. It's
25 pretty hard to offer a meaningful comment on something that

1 you haven't seen. All of us who are stakeholders in that
2 process are suffering from the same handicap that the
3 Department of Finance suffered from in offering their
4 comment on the SRIA. None of us have seen what this draft
5 regulation is going to look like. The soonest date that we
6 can see that regulation would be beneficial to all
7 stakeholders. And I hope that the agency can get us
8 something to look at and comment on as soon as possible.

9 Second, with respect to Petition 596 brought to
10 you by Monarch Tractor I would urge you to not reject that
11 petition. But if you are going to reject that petition,
12 please issue a decision to impanel an advisory committee to
13 gather all the stakeholders on the matter and get us all
14 together in a room and talking through solutions to the
15 problem. This kind of automated technology is not going to
16 go away. It's here to stay. It's being used more and more
17 and more all the time.

18 Some people who spoke before me talked at great
19 length about the extensive adoption of some of this
20 technology in various roles and uses in agricultural
21 production, and in other industries as well. It's being
22 extensively used already. We need to figure out how to use
23 it safely. I think you might think about automated
24 technology in agriculture.

25 In occupational safety and health we all take

1 very seriously the hierarchy of protections for workers,
2 beginning with engineering controls, then administrative
3 controls, and lastly personal protective equipment. I
4 think that you could probably think of autonomous vehicles
5 used in agriculture as a form of the ultimate engineering
6 control.

7 When you have an opportunity to be able to remove
8 a person from any place where they might be exposed to any
9 kind of hazard, that probably is the very best way to
10 ensure that that employee is protected from any possible
11 hazard they could encounter. Being able to use autonomous
12 agricultural equipment to able to remove operators from any
13 possible danger in spite of innovations over the years like
14 rollover protective standards, seatbelt -- or rollover
15 protective structures, I should say -- seatbelts, spray
16 cabs, filter cabs, all of the other technology that we've
17 implemented over the last 50 years to protect tractor
18 operators. If you could remove the operator from that
19 position altogether, you've eliminated the hazard
20 altogether.

21 So I would urge you to not reject Petition 596
22 out of hand, perhaps to amend it. Whatever parliamentary
23 thing you need to do in order to create an opportunity to
24 impanel an advisory committee, gather all the stakeholders
25 together to have a thorough going discussion about what we

1 need to go forward while the existing variances are
2 unfolding. And perhaps grant more variances in the future
3 to allow other issues to be addressed that aren't addressed
4 in the current variances and be able to figure out what the
5 way forward is. Because I'm sure there is a way forward.
6 If we can get everybody talking about it, I'm sure we could
7 find one.

8 If you do choose to impanel an advisory
9 committee, I would urge you to supervise that committee
10 very carefully. Be sure you get periodic feedback as to
11 what the committee is talking to about and whether or not
12 it's being effective. And hold that advisory committee
13 accountable for producing a product that's going to be
14 useful at some point in the relatively near future. Thank
15 you for your time and for your attention.

16 CHAIR THOMAS: Thank you.

17 We'll now go to phone. Do we have any commenters
18 on the phone, Maya?

19 MS. MORSI: We have Matthew Allen with Western
20 Growers Association.

21 CHAIR THOMAS: Matthew, can you hear us?

22 MR. ALLEN: I can. Can you hear me, Mr. Chair?

23 CHAIR THOMAS: Yes. Go right ahead.

24 MR. ALLEN: And good morning, Mr. Chair and
25 members of the committee. Matthew Allen with Western

1 Growers Association. We represent growers in the fresh
2 produce industry, and I won't go over previous talking
3 points in the interest of time, other than to say we are in
4 full support of Petition 596. We believe that this
5 technology needs to be utilized in the field. We trust the
6 Division and the Standards Board to work with the industry
7 on safety guidelines.

8 If for some reason the petition is declined, we
9 also as previous speakers have indicated, would support
10 moving forward on an advisory committee process so that we
11 could continue this very important conversation. Thank you
12 for your time.

13 CHAIR THOMAS: Thank you.

14 Who do we have next, Maya?

15 MS. MORSI: That is all for public commenting.

16 CHAIR THOMAS: All right. So we have no more
17 phone calls. Do we have any other in-person speakers
18 today?

19 Seeing that we -- oh, we do. Bruce.

20 MR. WICK: Just in the nick of time.

21 CHAIR THOMAS: Go right ahead now. (Laughter.)

22 MR. WICK: Thank you, Chair Thomas, Board
23 Members, staff. Thanks for the opportunity. I do want to
24 just state a couple of things all around the COVID SRIA
25 that was issued last month. I do want to clarify --

1 MS. SHUPE: (Overlapping colloquy.) Bruce,
2 please state your full name for the record.

3 CHAIR THOMAS: Yes, sorry about that.

4 MR. WICK: Oh, Bruce Wick Housing Contractors of
5 California. Sorry, Chair Thomas threw me off. I almost
6 didn't make it out.

7 CHAIR THOMAS: My bad.

8 MR. WICK: Last month, I made a couple of
9 comments and requests, and I'm perplexed by the Division's
10 response. As you know, I asked why in an 85-page SRIA
11 Workers' Comp data was not included. That's the first data
12 you look at. And yes, we know, especially rates and minor
13 Workers' Comp claims with no lost time Workers' Comp claims
14 can be under-counted under COVID, but certainly not the
15 more severe claims. So why that information wasn't there,
16 there was no response?

17 And then when I said there was no listing of who
18 prepared it, the response from the Division was, "Well then
19 we'll just list everybody who worked on it," and that's not
20 what I was asking. It seems pretty straightforward that if
21 you're doing a SRIA you should say as the agency, we had an
22 outside consulting firm do it or we did it in-house, in-
23 agency. And if we used any outside consultants, here's who
24 they are. And most importantly, that whoever organized and
25 prepared that SRIA on behalf of the agency, if it's truly

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1 inside the agency, that single person, the person most
2 responsible or knowledgeable, should be listed so you would
3 know who you'd contact if there were issues. That's all I
4 was asking.

5 It seems like a reasonable request. And I am
6 perplexed by that response, because it is important,
7 especially with the Department of Finance's response to the
8 SRIA.

9 I have a different perspective than Michael
10 Miiller. I think you can do an effective SRIA on COVID
11 knowing yes, things will change, but you can be up to date.
12 And again, as has been said, no regulation was supplied
13 with the SRIA, so that's an ineffective way of dealing with
14 it.

15 The SRIA said -- it failed -- or the DOF said,
16 "It failed the quantitative analysis on fiscal impacts."
17 That's basic.

18 It also said that SRIA lacked several
19 disclosures. Michael Miiller talked about those, that the
20 benefits may be half of what the SRIA indicated.

21 But most importantly it said, "The SRIA needs to
22 disclose the rationale underlying any assumptions that are
23 material in the analysis." Now that same verbiage was used
24 by the Department of Finance to the Division on the indoor-
25 heat SRIA and that was as of November, November 3, the

1 Division -- the Department of Finance said that to the
2 Division. The Division has not yet responded to the
3 Department of Finance on those same things.

4 So what of the chances of the Division responding
5 here in any timeliness? I think probably not that very
6 good. And now they've put you as a Board in a bind. We
7 will not have an effective SRIA very likely if you are
8 wanting to consider a permanent reg to replace the ETS as
9 of January 1, and I'm really saddened by that.

10 And as we've said, Cal/OSHA's budget is \$200
11 million dollars annually. Employers pay \$170 million of
12 that directly from Workers' Comp surcharges, Fed OSHA pays
13 the rest. With that kind of budget how can we be so under-
14 resourced in any one area to not give you the information
15 you need to do your job effectively? I'm frustrated that
16 the Division is compromising your proven ability to do good
17 governance. How do you do an expensive regulation without
18 a SRIA? The Department of Finances when it's -- when the
19 regulation will be put up for public comment it must have
20 the Department of Finance comments and responses. Are we
21 going to have one and will it be effective? That's really
22 hard.

23 So I want to make a couple of suggestions. One
24 is --and this is not only related to COVID -- Chief Killip
25 has talked about Cal/OSHA being collaborative and

1 partnering. And I really think we need someone
2 representing the enforcement side of the Division here
3 every month. We need to know about how effective regs are
4 to enforce, their ability to enforce, how are things going.

5 I remember early in COVID we had workers
6 testifying that there was a McDonald's in Oakland that
7 wasn't protecting them from COVID, and those people came
8 back month after month saying the same thing. Why didn't
9 Enforcement take care of that right then? I mean that
10 should've been an immediate response from Enforcement.

11 I think Enforcement should tell us how things are
12 going with COVID. I looked at the Appeals Board, the
13 latest information they had regarding COVID Prevention Plan
14 citations. And out of -- they have stopped doing the
15 analysis as of January 18 was the last time they did it,
16 because it's too labor-intensive. But that was pretty
17 informative that while employees covered by the ATD are 5
18 percent of workers, 39 percent of the appeals are covered
19 by ATD. And that says 60 or 61 percent are covered either
20 by the IIPP or the ETS. And so those 39 percent of the
21 exposures to COVID are our courageous healthcare workers.
22 They have been covered. They will continue to be covered
23 regardless.

24 It would be really helpful if Enforcement would
25 come here and tell us of those other 61 percent, what

1 industries are they? Why haven't some of those industries,
2 if they haven't come into compliance, why are there
3 continuing struggles? That's information you should have.
4 We as the public should have. We as employers are paying
5 \$200 million dollars for Cal/OSHA to be effective. And I
6 think our labor folks would agree as well, worker
7 advocates, that we should have Enforcement as part of this,
8 as partnering with us here in this Board.

9 And again, what do you about the bind that you
10 will likely not have an effective SRIA to consider for a
11 permanent reg? I would suggest we do it right this time.
12 We can convene a true advisory committee co-hosted by
13 someone from the Board staff and let the IIPP and the ATD
14 take care of things and until we get it done right. Let's
15 figure it out, let's do it right. We all need it. We all
16 deserve it. And this Board -- I can go back many years
17 with all your predecessors, people who were dedicated to
18 promoting regs that really worked, not just looked good on
19 paper but actually worked on the ground. Frontline
20 employees were protected, everybody knew what the regs
21 were, and we all supported that. And Enforcement chased
22 down those who were not in compliance. And that's what we
23 need to be again. So thank you.

24 CHAIR THOMAS: Thank you.

25 Do we have any other commenters in-person?

1 Anybody on the phone, Maya?

2 MS. MORSI: We do not have anyone on the phone.

3 CHAIR THOMAS: What did she say? What was that?

4 MS. MORSI: We do not have any more commenters on
5 the phone.

6 CHAIR THOMAS: Okay, all right. Well the Board
7 thanks you for your testimony and comment. The public
8 meeting is adjourned, and the record is closed.

9 We will now proceed with the business meeting.
10 The purpose of the business meeting is to allow the Board
11 to vote on matters before it, and to receive briefings from
12 staff regarding the issues listed on the business meeting
13 agenda. Public comment is not accepted during the business
14 meeting unless a member of the Board specifically requests
15 public input.

16 So we have Proposed Petition Decision for
17 Adoption: Praveen Penmetsa, Jake Winters, Petition File
18 Number 596. Petitioner requests to amend section 3441(b)
19 to permit the use of highly automated and autonomous
20 agricultural equipment. The proposed amendment would allow
21 for the use of driver optional tractors without a human
22 operator stationed at the vehicular controls within a
23 strict set of safety guidelines.

24 Ms. Shupe, will you please brief the Board?

25 MS. SHUPE: Thank you, Chair Thomas.

1 Petition 596 was received by the Board on
2 December 20th, of 2021. Petitioner contends that its
3 technology provides a multitude of benefits for the
4 agricultural industry including improved air quality,
5 sustainability, improved food quality, and improved farm
6 worker safety.

7 They also contend that section 3441(b) of title 8
8 does not take into account ongoing technological advances
9 in tractors and other farm machinery.

10 The petition has been thoroughly evaluated by
11 both Board and Division staff. The Board staff evaluator
12 notes the need to examine the impacts of emerging
13 technology on the workplace and recommends convening an
14 advisory committee.

15 The Division evaluation points out that the
16 technology utilized by the Petitioner is still very new,
17 and while it has a potential to increase worker safety, the
18 current dataset available is too small to conclude
19 equivalent safety would be achieved at this time.

20 The Division continues by detailing existing
21 temporary experimental variance currently in progress,
22 which will generate significant data to inform future
23 rulemaking decisions.

24 The Division recommends that the petition be
25 denied at this time. In light of the existing temporary

1 experimental variance, which is still in progress, the
2 proposed decision before you today is to deny the petition.

3 It does, however, direct Board staff to monitor
4 the status of the related temporary experimental variance
5 and request periodic updates from Cal/OSHA on its
6 progression and their conclusions.

7 CHAIR THOMAS: Thank you.

8 So with that do I have a motion to deny the
9 petition?

10 BOARD MEMBER LASZCZ-DAVIS: When do we have
11 discussion?

12 BOARD MEMBER HARRISON: Can we have some comments
13 maybe?

14 CHAIR THOMAS: Yeah, but I need to go through the
15 --

16 BOARD MEMBER STOCK: So moved.

17 CHAIR THOMAS: Do I have a second?

18 BOARD MEMBER HARRISON: Second.

19 CHAIR THOMAS: All right. Comments, Board
20 Members please.

21 BOARD MEMBER HARRISON: Yes, please.

22 So first I'd like to thank all the commenters
23 today, both in support and in opposition to 596. I've been
24 outspoken on this issue from day one actually.

25 For the record, I met with the Petitioner and

1 some other stakeholders on this. And my position has been
2 consistent from day one. The Petitioner told me himself
3 that the experimental temporary variance was they picked
4 two farms that are family-owned farms, which as we know in
5 the agricultural industry are largely immigrant workforces.
6 Neither of which have representation so -- or are the least
7 inclined to stand up and speak when there's a serious
8 safety hazard present.

9 I looked at the issues around safety. I want to
10 really thank Mr. Steiger and his comments. I align very
11 closely with those comments as I support the environmental
12 impact of this equipment. I cannot support the safety
13 impact around employees in the fields on this equipment.

14 We heard Mr. Winters talk about, I believe he
15 said over 1,300 workers worked in close proximity to this
16 equipment, with zero incidents reported. Again, I fall
17 back to the family operation, or the large immigrant
18 workforce with zero representation, who are least likely to
19 report those incidents. So I don't have a lot of
20 confidence in that data.

21 So for that reason I support the petition
22 decision to deny the petition in whole. Thank you.

23 CHAIR THOMAS: Thank you, Mr. Harrison.

24 Any other Board Members? Go ahead.

25 BOARD MEMBER LASZCZ-DAVIS: Here. Does this mean

1 I'm on?

2 MS. SHUPE: Yes.

3 BOARD MEMBER LASZCZ-DAVIS: Okay. All these --

4 CHAIR THOMAS: They don't have those green, they
5 just (indiscernible).

6 BOARD MEMBER LASZCZ-DAVIS: I don't know. You
7 know, you can speak when the light is red here. That makes
8 absolutely no sense to me whatsoever.

9 You know, just another perspective for your
10 consideration. I mean, what I heard today was that there
11 is a dearth of data on the experimental variance. We also
12 heard that Cal/OSHA granted a temporary experimental
13 variance. We have heard from at least one or two people
14 that there was some concern with the fact that the person,
15 the people judgment, would be eliminated in this process.
16 And unless I misunderstand this, what I'm understanding is
17 that while these would be autonomous vehicles, there would
18 be a remote operator. He would have some influence and
19 control over these vehicles, so it's not entirely people-
20 less. I think there is a difference.

21 Just to comment on the workplace, I think the
22 farm acreage that doesn't have a lot of people is a
23 different workspace than the public sector, which is where
24 we've heard that most of the occurrences, the adverse
25 occurrences, have occurred. I think that's a consideration

1 for me just in terms of not only the scope of the work
2 site, but the people in involved.

3 Technology, and technology is a tough one,
4 because it's going to go ahead and move forward regardless
5 of whether or not we're involved.

6 (Baby crying, interference on the line.)

7 BOARD MEMBER LASZCZ-DAVIS: This is appropriate.

8 MS. SHUPE: Can you hear me? Can you
9 (indiscernible). (Off-mic colloquy.) Give us just a
10 moment, our tech crew is working on that.

11 BOARD MEMBER LASZCZ-DAVIS: Are we good?

12 CHAIR THOMAS: I think we've got it, go ahead.

13 BOARD MEMBER LASZCZ-DAVIS: Okay. Actually it
14 was perfect timing. (Laughter.)

15 And I'm a big believer that while most technology
16 has its flaws, unless we embrace it and begin to study and
17 understand it, we're not going to provide the kind of input
18 and get the kind of feedback we ultimately want.

19 If you look at the global food supply chain and
20 the shortage of workers in most agriculture communities, I
21 don't think we have a choice but to make sure that
22 technology is addressed at some point. And I think we need
23 to be part of the solution rather than wait for the
24 outcome. I mean, what that does suggest at the very, very
25 minimum is that we have an advisory committee formed to

1 really work with the stakeholders involved in this whole
2 issue. It's not going to go away, it'll continue to come
3 back, so let's be part of the solution.

4 So I mean that suggests, if you just want to be
5 black and white about this, that it suggests that we grant
6 this to the extent that we have an advisory committee
7 formed. So that's my perspective.

8 CHAIR THOMAS: Thank you, Board Member.

9 Laura, go ahead.

10 BOARD MEMBER STOCK: Thank you. Yes, thanks to
11 everyone who testified.

12 So how I interpret this is I don't interpret
13 what's going on here as being anti-technology. I think
14 it's clear that there is a huge amount of promise with this
15 technology that can be very beneficial, so I think that
16 that seems undeniable.

17 What I interpret, and what I hear when I read the
18 decisions is a timing issue, that we right now have a
19 variance process going on that is designed to collect data
20 that is not complete. That in fact the dataset is very,
21 very small. And so what I am hearing is that it's
22 premature to take this on and that the recommendation is to
23 wait until that data is in. And I think an advisory
24 committee is something, it's a question of bringing
25 stakeholders together to discuss the data that they have.

1 So I'm in favor of that process, but it seems like we need
2 the data first. That's what we need to wait for.

3 And I also share the concern that Dave, you
4 mentioned, that in terms of what we're hearing about
5 whether or not there's been a problem. Again, the people
6 who would be experiencing this, we don't have confidence --
7 I share your concern -- that are we really getting the
8 biggest picture? Since the people who are most vulnerable
9 to problems with this technology are not a group that has
10 representation, and are surely very fearful of speaking up
11 in that circumstance.

12 So I would concur with your conclusion, Dave,
13 that we should accept the Board's denial at this point.
14 And I appreciated the language of the denial, specifically
15 it directs that we would be monitoring the input from that
16 variance so that when there was more data that might be the
17 appropriate time to move forward for an advisory committee.

18 I heard some questions also about concerns about
19 the variance process, are there enough sites being used,
20 etcetera.

21 I don't know enough how this happens, but if
22 there are concerns about the variance process, perhaps
23 that's something that can be addressed through the variance
24 process, through working with Board staff. So I don't
25 know, but it doesn't seem that those concerns are a subject

1 of our work. That it seems that our role here is to say,
2 "Are we ready to move forward with rulemaking," which an
3 advisory committee is the first step in that. Or is it
4 prudent to wait until the data has come in and then monitor
5 that data, be able to evaluate it, and then move forward?

6 And I am concerned about the study that we've
7 heard today about the fact that autonomous vehicles are
8 having more crashes and more problems than anticipated.
9 And I don't -- I think that a lot of what we've heard about
10 is yes, there might people monitoring it, but that what
11 people are advocating for is driverless vehicles. And I
12 also concur with what we heard from some of the people
13 testifying about the value of having both of those as a
14 failsafe.

15 So for that reason, I'm inclined to agree with
16 you Dave, to accept the Board's recommendation to deny, but
17 to monitor the results of the variance.

18 CHAIR THOMAS: Any other comments from the Board?
19 Yeah, go ahead, Kate. (Off-mic colloquy.) Just push
20 "Speaker" and you're on. There you go.

21 BOARD MEMBER CRAWFORD: It'll take me a moment to
22 kind of collect my thoughts on this. But I think the
23 simplest answer is here, everyone actually agrees that
24 technology is good, there may be flaws, but technology is
25 good. It's here to stay. So we need to figure out how to

1 work together and go forward on this now sooner versus
2 later. I think the sooner we have an advisory committee,
3 the sooner we can get more of this information in front of
4 everyone, so we can make a good, clear decision on all of
5 this. So I'm in support of moving forward with an advisory
6 committee as soon as possible.

7 CHAIR THOMAS: Thank you.

8 A comment, Dave?

9 BOARD MEMBER HARRISON: Yep. So if I can, sorry,
10 Chris. So we've heard a lot. We heard from the Petitioner
11 today, Mr. Penmetsa, who listed off a long list of
12 supporters for the petition, none of which were labor
13 representatives. And we've got two farms where the
14 petition is -- where the experimental variance is being
15 conducted, with zero labor representatives there. And
16 we've heard from zero labor in support. We haven't had one
17 worker come forward in support of this. Our job as the
18 Board is to help provide worker safety. We conduct
19 rulemaking to protect workers. And we haven't heard any
20 worker, not one, come forward in support of this. Not one
21 worker representative come forward in support this.

22 And I don't know how. We go through this process
23 day in and day out and we frequently, if not every meeting,
24 hear from workers. And the only workers that we've heard
25 from are in opposition to this petition, so I don't know

1 how this Board and specifically me could ever support the
2 petition moving forward.

3 CHAIR THOMAS: Thank you. Thank you, Dave.

4 Any other Board comment, I think -- go ahead,
5 Chris.

6 BOARD MEMBER LASZCZ-DAVIS: Oh yeah, we are on a
7 roll here. Okay, somebody, in fact you Barbara, had made
8 the comment that we wait until we get the data in, at which
9 point then we convene an advisory committee. I don't know
10 of any major effort in industry that I've been involved in
11 where, in terms of the project, you waited until data came
12 in not knowing for sure if your stakeholders had input to
13 the design of that project.

14 I mean, if you take that and transpose it on this
15 issue in terms of the data gathering, in terms of
16 understanding what data is critical, how much of it is
17 critical, and how much of it has to be verified, I think
18 you've got to have an advisory committee to be part of the
19 planning process. Not just dealing with the metrics that
20 come out of the other end. Just a comment.

21 CHAIR THOMAS: Go ahead. Go ahead, Barbara.

22 BOARD MEMBER BURGEL: I have a point of
23 information as far as with the existing temporary variance,
24 which has not completed stage two, is there any option at
25 this point to expand it to include labor representatives,

1 you know, farm groups, to actually modify and expand the
2 TEV? I don't know if Christina or if Eric can answer that
3 question?

4 MS. SHUPE: So the temporary experimental
5 variances are granted and governed by the Division, they
6 are not granted and governed by this Board. We grant and
7 govern permanent variances. And so that is a request that
8 the Board would need to make to the Division.

9 One of the things that I'd like to highlight is
10 that the proposed decision before you does request a report
11 from Cal/OSHA on the progress of the variance and that
12 would provide you with an opportunity to provide feedback
13 to them.

14 BOARD MEMBER BURGEL: Because I would just want
15 to concur with Dave's comment that it's a little shocking
16 that Cal/OSHA, when they were approving the temporary
17 experimental variance, did not make sure or ensure that
18 there was a labor represented site involved in rollout of
19 this autonomous tractor technology. So that's my view.
20 Thank you.

21 BOARD MEMBER STOCK: I just want to make one
22 quick thing about that. I think we heard from Jassy
23 Grewal, I believe from UFCW, who specifically called out
24 the issue about how labor can be engaged in this or not.
25 And the fact that they do not know when these variance --

1 and so I think there's a gap there about the voice of
2 workers and labor here as we're collecting, so I think that
3 is something that's important. So I just wanted to
4 reiterate that.

5 And I also -- I might add I'm struck the same way
6 that Dave is that the people who are representing, CRLA and
7 others who actually represent agricultural workers are here
8 in opposition and concerned. And so that's really the only
9 voices that we've heard from people who are workers in the
10 fields.

11 CHAIR THOMAS: Well, let me just comment on what
12 I've heard so far. And I believe you have to have
13 represented workers involved in this at some point.
14 Because we all know if you're in that population, which is
15 subject to losing your job at the whim of the employer,
16 you're not going to say anything. If you're represented,
17 and you have some rights and you know them, you will talk
18 and you will say what you feel and what's really going on.
19 I don't think we have that.

20 I think that the Division has to expand this, at
21 least somewhat out, so that we have more information. I
22 don't think there's enough hours that have been reported
23 yet. And I think that the expansion of it, at least to the
24 point where we have some represented workers out there,
25 would be very helpful and then you would get some real

1 opinions on this.

2 And technology is great. We have new technology
3 almost every day. I'm 64. I remember when we used to have
4 landlines in our houses and I don't know anybody that has a
5 landline anymore, because we stopped. We have cell phones,
6 right? And that's been for a decade now where people just
7 don't use landlines.

8 But technology is great until it isn't, until it
9 doesn't work. And then as soon as it doesn't work, as long
10 as nobody gets killed it's fine, you just fix it. And
11 anybody who has CarPlay knows what I'm talking about. It's
12 great until it doesn't work and then you're -- and I can't
13 drive unless I have that thing on now. I've got to see
14 where I'm going.

15 But anyway, I agree with Dave. There's not
16 enough evidence to this yet. And anybody who has watched
17 the Tesla tests where they show these vehicles running into
18 people -- I don't know about people, but things all the
19 time -- it makes you a little nervous about that. And I'm
20 one who would be happy, I commute every day. And if I had
21 something that would drive me to work and back and I didn't
22 have to -- I could sleep in the backseat, I'd be fine. But
23 that day hasn't come yet. So I'm inclined to deny the
24 petition or to --

25 MS. SHUPE: Accept the proposed decision.

1 CHAIR THOMAS: -- accept the proposed decision,
2 which is to deny the petition. I can't even talk, yeah
3 petition. So that's my opinion. I'm not adverse to
4 expanding it to farms where they have represented
5 employees. And I'm not adverse to an advisory committee,
6 but I don't think we can really have an advisory committee
7 until we have more information, until that goes out to
8 represented people.

9 So I have a motion and second.

10 BOARD MEMBER KENNEDY: I have a quick comment.

11 CHAIR THOMAS: Go ahead. Go ahead, Nola.

12 BOARD MEMBER KENNEDY: So I just wanted to
13 quickly say I think my comments or my view on this are
14 pretty closely aligned with that of Chris's. I think we
15 have to move forward with technology. I also think we
16 really need to protect our California workers. I would
17 like to hear from the labor representatives, who have been
18 here, about their reasons for not supporting the petition.
19 I thought Mitch was elegant in presenting the added benefit
20 of a redundancy in protections. And I certainly think that
21 that might be a way to move forward as this technology is
22 tested.

23 I think the comment that we don't have enough
24 data may be inaccurate. This experimental variance, and
25 the data that's being acquired from it, is not the only

1 data in existence. It's the only data that Cal/OSHA is
2 aligned with and working with the Petitioner on. But
3 clearly, it sounds like there are plenty of autonomous
4 vehicles already in operation on farmlands, so I think
5 there's probably other data out there. And I think we
6 should consider, I don't know how this is done, but to me
7 to wait to 2026 before we even begin to consider whether
8 autonomous vehicles will be allowed in California farms, is
9 probably waiting too long. But I don't know, that's how
10 I'm looking at this.

11 CHAIR THOMAS: Thank you.

12 So I have a motion and I have a second. Are
13 there any other comments?

14 Ms. Money, will you please call the roll?

15 MS. MONEY: Let me make sure I have this correct.
16 I have the motion as Ms. Crawford and the second from Mr.
17 Harrison.

18 UNIDENTIFIED SPEAKER: No.

19 BOARD MEMBER HARRISON: Ms. Stock.

20 BOARD MEMBER STOCK: I think I did one of those,
21 but I don't remember which one.

22 BOARD MEMBER HARRISON: It was Laura and myself.

23 BOARD MEMBER STOCK: Or we could say I did the
24 first one and Dave did the second for -- not sure if it was
25 exactly that way.

1 CHAIR THOMAS: We'll have to go back to the
2 recording and figure it out.

3 MS. MONEY: Okay. So I have a motion from Laura
4 Stock and second from Mr. Harrison, correct?

5 CHAIR THOMAS: Correct.

6 MS. MONEY: Ms. Burgel?

7 BOARD MEMBER BURGEL: Aye, to accept and adopt
8 the decision, right, which is to deny the petition. Aye.

9 MS. MONEY: Ms. Crawford?

10 BOARD MEMBER CRAWFORD: No, I'm in support of the
11 petition, so my vote is no.

12 MS. MONEY: Mr. Harrison?

13 BOARD MEMBER HARRISON: Aye.

14 MS. MONEY: Ms. Kennedy?

15 BOARD MEMBER KENNEDY: Nay, no.

16 MS. MONEY: Ms. Laszcz-Davis?

17 BOARD MEMBER LASZCZ-DAVIS: No.

18 MS. MONEY: Ms. Stock?

19 BOARD MEMBER STOCK: Aye.

20 MS. MONEY: Chairman Thomas?

21 CHAIR THOMAS: Aye. And the motion passes.

22 Proposed Variance Decisions for Adoption, Ms.
23 Gonzalez, will you please brief the Board?

24 MS. GONZALEZ: Good afternoon, Board Members.
25 Variance proposed decisions 1 through 69, with the

1 exception of variance decision number 20, are ready for
2 your consideration and possible approval.

3 CHAIR THOMAS: Do I have a motion to -- for the
4 Proposed Decisions for adoption on Variances 1 through 59,
5 excluding 20?

6 MS. GONZALEZ: 69, I'm sorry.

7 CHAIR THOMAS: Oh, 69 excluding 20?

8 BOARD MEMBER LASZCZ-DAVIS: So moved.

9 BOARD MEMBER HARRISON: Second.

10 I have a motion and 2nd. Is there anything on
11 the question?

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

14 MS. MONEY: Okay. So I have a motion from Chris
15 Laszcz-Davis and a second from Mr. Harrison, is that
16 correct?

17 CHAIR THOMAS: Correct.

18 MS. MONEY: Ms. Burgel?

19 BOARD MEMBER BURGEL: Aye.

20 MS. MONEY: Ms. Crawford?

21 BOARD MEMBER CRAWFORD: Aye.

22 MS. MONEY: Mr. Harrison?

23 BOARD MEMBER HARRISON: Aye.

24 MS. MONEY: Ms. Kennedy?

25 BOARD MEMBER KENNEDY: Aye.

1 MS. MONEY: Ms. Laszcz-Davis?

2 BOARD MEMBER LASZCZ-DAVIS: Aye.

3 MS. MONEY: Ms. Stock?

4 BOARD MEMBER STOCK: Aye.

5 MS. MONEY: Chairman Thomas?

6 CHAIR THOMAS: Aye. The motion passes.

7 Division Update, Mr. Kirkham, will you please
8 brief the Board?

9 MR. KIRKHAM: Hi. So I'm filling in for Eric
10 Berg who's on a very well-deserved vacation. I'm sorry he
11 can't make it today. He did pass along some things he
12 wanted me to pass along to you. He did not have any
13 updates.

14 However, since he left on vacation, one major
15 item did come that we want to share with you. So the text
16 for the proposed non-emergency COVID-19 Prevention
17 regulation has been posted to the Cal/OSHA website. It has
18 been posted. And that was done earlier this week.

19 And that the only other item that he wanted me to
20 convey is that if you had any comments or questions, please
21 write him.

22 CHAIR THOMAS: Can you tell us how to find that
23 decision? Because it seems like everybody is having a
24 problem finding it.

25 MR. KIRKHAM: Yeah. Yeah, no problem. So if you

1 just do a web search for "Cal/OSHA - Proposed Regulations,"
2 at the very top of that webpage you'll find a hyperlink to
3 the PDF of the text.

4 CHAIR THOMAS: All right.

5 MR. KIRKHAM: "Cal/OSHA - Proposed Regulations."

6 CHAIR THOMAS: Okay, we're going to wait for
7 confirmation here from somebody who's --

8 MR. KIRKHAM: Okay.

9 MS. SHUPE: So I was able to locate it and I'll
10 be working with Board staff to go ahead and send that link
11 out via our Constant Contact list to all of our
12 stakeholders. So if you are not on our email list, please
13 go to our website and join it, and we'll send that out by
14 tomorrow at 5:00 p.m.

15 But alternatively, you can navigate to the
16 Cal/OSHA website and click on "Laws & Regulations," which
17 is down at the bottom. And then from there you can click
18 on COVID-19 -- I'm sorry, "COVID-19 Prevention," I believe.

19 CHAIR THOMAS: All right.

20 MS. SHUPE: -- or "Proposed Regulations" and then
21 "COVID-19 Prevention."

22 BOARD MEMBER BURGEL: It's not clearly linked
23 though on the COVID page. It's kind of interesting.

24 MS. SHUPE: Yeah, so it's not on the COVID page
25 for -- it's actually they have it under their "Laws &

1 Regulations," under "Proposed Regulations."

2 BOARD MEMBER BURGEL: Got it. I found it.

3 MS. SHUPE: Yeah.

4 CHAIR THOMAS: Good.

5 BOARD MEMBER BURGEL: But I was looking earlier,
6 and I couldn't find it. Interesting, you'd expect it to be
7 linked or highlighted on the COVID page right above the
8 Emergency Temporary Standard, and it's not there
9 (indiscernible).

10 CHAIR THOMAS: All right. Thank you, Mr.
11 Kirkham.

12 I can't tell if anybody out there was in prayer
13 for a minute or they were looking it up, because everybody
14 was -- (Does a head down gesture.) interesting.
15 (Laughter.)

16 But anything else, Mr. Kirkham, for us?

17 MR. KIRKHAM: No, thank you.

18 CHAIR THOMAS: All right, thank you very much.

19 Legislative Update, Ms. Gonzalez, can you please
20 brief the Board?

21 MS. GONZALEZ: Sure. We're still tracking about
22 eight bills right now. And they're moving through the
23 committee process so hopefully soon, perhaps by next Board
24 meeting, we'll have some updates on which ones are going to
25 get to the Governor and which ones won't.

1 CHAIR THOMAS: Thank you.

2 Executive Officer's Report. Ms. Shupe, will you
3 please brief the Board?

4 MS. SHUPE: Thank you, Chair Thomas.

5 So as promised I'll be updating you on our
6 ability to continue to host hybrid meetings. At this time
7 we've done a thorough review of available funding sources,
8 including federal grant funding, that's available to
9 support outreach efforts during the COVID pandemic. And we
10 expect to be able to continue offering hybrid meetings
11 through the end of 2022. This is something that has --
12 we've received positive support from both labor and
13 management stakeholders. And our work here impacts more
14 than 18 million Californians. And with a Board that's
15 committed to transparency and active engagement, it's
16 something that we have set as a priority. And so that is
17 my report on our funding opportunities for hybrid.

18 At this time I have nothing else to report. Does
19 the Board have any questions?

20 CHAIR THOMAS: All right, hearing none --

21 BOARD MEMBER KENNEDY: Wait, I have a question.

22 CHAIR THOMAS: Go ahead.

23 BOARD MEMBER KENNEDY: So just we've heard
24 several people talk about the RACS and --

25 MS. SHUPE: Mm-hmm.

1 BOARD MEMBER KENNEDY: I'm trying to find it --
2 so how do we respond to that? I mean, that question was
3 basically when are we going to be able to move forward on
4 this?

5 MS. SHUPE: So the avalanche blasting, we have
6 two different rulemaking packages that address avalanche
7 blasting. I actually attended an A/C where I learned about
8 RACS back in 2018. What we are, and what they have noted,
9 is that we are definitely dealing with a resource issue
10 though. The Board has a number of high priority projects
11 that we're involved in, and it does take a matter of time
12 to be able to move a multitude of projects forward.

13 BOARD MEMBER KENNEDY: Oh. Thank you.

14 CHAIR THOMAS: Yes, Chris?

15 BOARD MEMBER LASZCZ-DAVIS: Yeah, the other
16 question that came up a couple of times with the issue of
17 violence in the workplace, where are we at on that?

18 MS. SHUPE: So that would be a question better
19 directed to Chris Kirkham, because that is a Division
20 rulemaking package.

21 BOARD MEMBER LASZCZ-DAVIS: Is he still there?

22 CHAIR THOMAS: Are you there, Chris? Not Chris,
23 I'm sorry. (Overlapping colloquy.)

24 MR. KIRKHAM: Yeah, this is Chris Kirkham. So
25 we've revised the draft text and posted that on our

1 website, on a different webpage under the advisory
2 committee meetings webpage. And we are asking for comments
3 on that revised draft to please be submitted by July 18th.

4 CHAIR THOMAS: Thank you.

5 Any other questions for -- yes, go ahead, Laura.

6 BOARD MEMBER STOCK: I just want to comment on
7 the whole resources issue. And just say I mean I feel the
8 frustration of all the people who came to testify about
9 that. And when is that advisory committee going to get
10 started? And I hear what you're saying about the lack of
11 resources.

12 And I know the Governor is now getting ready to
13 review a budget. And I just want to -- I'm hoping that
14 there is funds and resources in that budget that are going
15 to enhance the ability to set standards and develop them.
16 And I don't know if there has been any requests as part of
17 that new budget that you can report to us to try to
18 increase the resources. Or if there is anything we can do
19 as the Board to add our support to that, because we just
20 see the impact of that every month. We see people who are
21 waiting and it's very frustrating to the regulated public
22 and to us as well. So is there anything we can do to help
23 address that issue?

24 MS. SHUPE: Your continued support for the
25 operations of your staff is really invaluable, as is that

1 of our stakeholders on both sides of the aisle.

2 I will tell you -- I can share with you that we
3 submitted a budget change proposal last year to address the
4 immediate need, which was our legal unit. And so we have a
5 request in the current budget proposal that would add two
6 new attorneys, two legal secretaries, and an AGPA.

7 And you may recall that last year in June we had
8 a critical failure in our variance granting program. That
9 program impacts millions, if not billions, of dollars in
10 construction projects in California every single year. And
11 so that has been a significantly growing program. We don't
12 anticipate that workload to really end, even with the
13 adoption of Group V.

14 We did, we are working on a budget change
15 proposal for this next fiscal year as well to address the
16 needs that we have on the administrative side and
17 management side. But this is an organization that has had
18 a flat staffing structure for at least the past 20 years
19 while our workload has grown tremendously. And it will
20 take a number of years to bring us up to adequate staffing.

21 And so continued support for the Board's
22 operations and the workload that we have, will allow us to
23 start moving packages more quickly, but it will take some
24 time.

25 BOARD MEMBER STOCK: Yeah. I mean, the problem

1 of understaffing not only of the Board, but of Cal/OSHA as
2 well, is known and it's critical. And so, yeah, I mean
3 when there are opportunities to add that support in any
4 tangible way, I hope that you will let us know, because
5 both for the Board and the Division side.

6 MS. SHUPE: We appreciate that.

7 CHAIR THOMAS: All right. Any other questions
8 the Board has?

9 Ms. Gonzalez, do we need a closed session?

10 MS. GONZALEZ: Excuse me, yes, I think we are
11 doing a closed session today.

12 CHAIR THOMAS: All right. So at this time,
13 pursuant to Government Code section 11126 (a) (1), (c) (3)
14 and 11126 (e) (1), the Board shall now enter into closed
15 session to confer with counsel regarding matters on appeal
16 or pending litigation, matters listed on today's agenda in
17 addition to the consideration of personnel matters.

18 After the closed session is concluded, we'll
19 reconvene the meeting and we will report on any closed
20 session action.

21 So at this point we are going to go into closed
22 session, and we'll be in recess. Thank you.

23 (Off the Record 12:20 p.m.)

24 (On the Record at 12:51 p.m.)

25 CHAIR THOMAS: Thank you. We are back in

1 session, and we have nothing to report, except that Ms.
2 Barbara Burgel has an announcement to make.

3 BOARD MEMBER BURGEL: Yeah. Thank you, Dave.

4 I just wanted to let people know that I am not
5 going to be reapplying for my four -- an additional four-
6 year term on the Board. So, as you may know, I was
7 appointed by the Governor Jerry Brown in August of 2018,
8 and my four-year term is up. And I will continue to stay
9 on the Board until a representative for the Occupational
10 Health seat is appointed, through next May of 2023.

11 And I'm doing this -- I've enjoyed this important
12 policy position and working collectively with this great
13 group of people. But on personal reasons, my husband is
14 retiring next year. And we are planning extensive travel,
15 God willing and COVID -- hopefully COVID will be a little
16 bit more controlled.

17 But thank you. I will be involved as long as --
18 until hopefully, we get another Occupational Health
19 Representative, so please encourage your colleagues. And
20 thank you again for this great opportunity.

21 CHAIR THOMAS: I just want to thank Barbara for
22 her years of service. And I mean, I feel like you probably
23 just got oriented into this and now you're going to leave
24 us. Because it does take a while to get acclimated to
25 this, because when you walk in here you don't know

1 anything. But anyway, you slowly learn it and you kind of
2 pick everything up. But I'm sorry that you're leaving, I
3 really am.

4 BOARD MEMBER BURGEL: Thank you, Dave. I have to
5 say fondly that elevator orientation -- I think, Dan, you
6 were there -- and that Cal/OSHA Elevator Division, it was
7 fabulous. I learned so much about different types of
8 elevators, who knew? So that was my first introduction on
9 the Board, was to get oriented and educated about all the
10 ins and outs of elevators and those variances. So thank
11 you.

12 CHAIR THOMAS: Any other comments?

13 All right, there being no further business our
14 next -- got to turn the pages here -- our next meeting is -
15 - I know it's in San Diego and --

16 MS. SHUPE: July 21st.

17 CHAIR THOMAS: -- July 21st in San Diego and we
18 will see you there. And there being no further business,
19 this meeting is dismissed and adjourned. Thank you.

20 (The Business Meeting adjourned at 12:54 p.m.)

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

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

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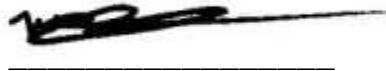
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