

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD
PUBLIC MEETING, PUBLIC HEARING AND BUSINESS MEETING

In the Matter of:)
October 20, 2022 OSH)
Standards Board Meeting)
_____)

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

County Administration Center
Room 310
1600 Pacific Highway
San Diego, CA 92101

Attend the meeting via Video-conference

THURSDAY, October 20, 2022

10:00 A.M.

Reported by:
E. Hicks

CALIFORNIA REPORTING, LLC
229 Napa Street, Rodeo, California 94572 (510) 224-4476

APPEARANCES

BOARD MEMBERS PRESENT AT COUNTY ADMINISTRATION CENTER:

Dave Thomas, Chairman
Dave Harrison, Labor Representative
Nola Kennedy, Public Member
Chris Laszcz-Davis, Management Representative

BOARD MEMBERS PRESENT VIA TELECONFERENCE:

Barbara Burgel, Occupational Health Representative
Kathleen Crawford, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT COUNTY ADMINISTRATION CENTER:

Christina Shupe, Executive Officer
Autumn Gonzalez, Chief Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant
Amalia Neidhardt, Senior Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager
Jennifer White, Regulatory Analyst

ALSO PRESENT AT COUNTY ADMINISTRATION CENTER:

Kevin Graulich, Senior Safety Engineer, Cal/OSHA
*Eric Berg, Deputy Chief of Health, Cal/OSHA

TKO STAFF:

Maya Morsi
Vashish Singh
John Roensch

SPANISH INTERPRETERS:

Patricia Hyatt
Estela Moll

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony)

Helen Cleary, Phylmar Regulatory Roundtable
Bruce Wick, Housing Contractors of California
And on behalf of Kevin Bland and his organizations
(California Framing Contractors Association,
Residential Contractors Association, Western Steel
Council)
Kurt Jordan, RND Construction, Inc.
*Michael Miiller, California Association of Winegrape
Growers
*AnaStacia Nicol Wright, Worksafe
*Janine Pera, Self
Steve Johnson, Associated Roofing Contractors of the Bay
Area Counties, Inc.
Bryan Little, California Farm Bureau
*Jassy Grewal, UFCW Western States Council
*Mitch Steiger, California Labor Federation
*Andrew Sommer, Conn Maciel Carey LLP on behalf of the
California Employers COVID-19 Prevention Coalition
*Robert Moutrie, California Chamber of Commerce
*Michael Strunk, Operating Engineers Local Union No. 3
*Robert Blink, MD, Worksite Partners Medical Group
*Carmen Comsti, California Nurses Association
*Cassie Hilaski, Nibbi Brothers General Contractors

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

2 OCTOBER 20, 2022

10:00 A.M.

3 CHAIR THOMAS: Thank you and good morning. This
4 meeting of the Occupational Safety and Health Standards
5 Board is now called to order. Let's stand for the Pledge
6 of Allegiance, please.

7 (Whereupon the Pledge of Allegiance was recited.)

8 CHAIR THOMAS: Thank you. My name's David
9 Thomas. I'm the Chairman. And the other Board Members
10 present here in San Diego are Mr. Dave Harrison, Labor
11 Representative; Ms. Nola Kennedy, Public Member; Ms. Chris
12 Laszcz-Davis, Management Representative.

13 Board Members attending via teleconference are
14 Ms. Barbara Burgel, Occupational Health Representative; Ms.
15 Kathleen Crawford, Management Representative; and Ms. Laura
16 Stock, Occupational Safety Representative.

17 Present from our staff for today's meeting are
18 Ms. Christina Shupe, Executive Officer; Ms. Autumn
19 Gonzalez, Chief Counsel; Mr. David Kernazitskas, Senior
20 Safety Engineer; Ms. Sarah Money, Executive Assistant; and
21 Ms. Amalia Neidhardt, Senior Safety Engineer, who is
22 providing translation services for our commenters who are
23 native Spanish speakers today.

24 Also present are Mr. Kevin Graulich, Senior
25 Safety Engineer, a Cal/OSHA Chief and -- oh, sorry, he's

1 not. So we'll just say Mr. Kevin Graulich, Senior Safety
2 Engineer. And we're expecting maybe to have Mr. Eric Berg,
3 Deputy Chief of Health for Cal/OSHA, but we don't know for
4 sure.

5 Supporting the meeting remotely are Ms. Lara
6 Paskins, Staff Services Manager; and Ms. Jennifer White,
7 Regulatory Analyst.

8 Copies of the agenda and other materials related to
9 today's proceedings are available on the table near the
10 entrance to the room, and are posted on the OSHSB website.

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

16 If you are participating in today's meeting via
17 teleconference or videoconference, we are asking everyone
18 to place their phones or computers on mute and wait to
19 unmute until they are called to speak. Those who are
20 unable to do so will be removed from the meeting to avoid
21 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 comment or proposals on
25 occupational safety and health. Anyone who would like to

1 address any occupational safety and health issues,
2 including any of the items on our business meeting agenda,
3 may do so when I invite public comment.

4 If you are participating via teleconference or
5 videoconference, the instructions for joining the public
6 comment queue can be found on the agenda. You may join by
7 clicking the public comment queue link in the "Standards
8 Board Updates" section at the top of the main page of the
9 OSHSB website, or by calling 510-868-2730 to access the
10 automated public comment queue voicemail.

11 When public comment begins, we are going to
12 alternate between three in-person and three remote
13 commenters.

14 When I ask for public testimony, in-person
15 commenters should provide a completed speaker slip to the
16 staff person near the podium and announce themselves to the
17 Board prior to delivering their comments.

18 For commenters attending via teleconference or
19 videoconference, please listen for your name and an
20 invitation to speak. When it is your turn to address the
21 Board, unmute yourself if you're using WebEx, or dial *6 on
22 your phone to unmute yourself if you're using the
23 teleconference line.

24 We ask all commenters to speak slowly and clearly
25 when addressing the Board, and if you are commenting via

1 teleconference or videoconference, remember to mute your
2 phone or computer after commenting. Today's public
3 comments will be limited to two minutes per speaker, and
4 the public comment portion of the meeting will be extended
5 for up to two hours, so that the Board may hear from as
6 many members of the public as is feasible. Individual
7 speaker and total public comment time limits may be
8 extended by the Board Chair.

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

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

21 For our commenters who are native Spanish
22 speakers, we are working with Ms. Amalia Neidhardt to
23 provide a translation of their statements into English for
24 the Board.

25 At this time we're going to take a technical

1 break before we start, so.

2 (Off the record at 10:06 a.m.)

3 (On the record at 10:12 a.m.)

4 CHAIR THOMAS: All right, thank you. I think
5 we've solved our technical difficulties and we're back in
6 session. Is everybody hearing me okay? You just nod your
7 head if -- thank you very much, thank you.

8 So, I think I left off for our commenters who are
9 native Spanish speakers we are working with Amalia
10 Neidhardt to provide a translation of their statements into
11 English for the Board. At this time, Ms. Neidhardt will
12 provide instructions to those Spanish speaking commenters,
13 so that they are aware of the public comment process for
14 today's meeting.

15 Ms. Neidhardt.

16 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]

17 "Good morning, and thank you for participating in
18 today's Occupational Safety and Health Standards Board
19 public meeting. The Board Members present here in San
20 Diego are Mr. Dave Harrison, Labor Representative; Ms. Nola
21 Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management
22 Representative.

23 "Board Members attending via teleconference are
24 Ms. Barbara Burgel, Occupational Health Representative; Ms.
25 Kathleen Crawford, Management Representative; and Ms. Laura

10

1 Stock, Occupational Safety Representative.

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

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

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

19 "If you are participating via teleconference or
20 videoconference, the instructions for joining the public
21 comment queue can be found on the agenda. You may join by
22 clicking the public comment queue link in the "Standards
23 Board Updates" section at the top of the main page of the
24 OSHSB website, or by calling 510-868-2730 to access the
25 automated public comment queue voicemail.

1 "When public comment begins, we are going to be
2 alternating between three in-person and three remote
3 commenters. When I ask for public testimony, in-person
4 commenters should provide a completed request to speak slip
5 to the attendee near the podium and announce themselves to
6 the Board prior to delivering a comment.

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

13 "Please be sure to speak slowly and clearly when
14 addressing the Board, and if you are commenting via
15 teleconference or videoconference, remember to mute your
16 phone or computer after commenting. Please allow natural
17 breaks after every two sentences so that an English
18 translation of your statement may be provided to the Board.

19 "Today's public comment will be limited to four
20 minutes for speakers utilizing translation, and the public
21 comment portion of the meeting will extend for up to two
22 hours, so that the Board may hear from as many members of
23 the public as is feasible. The individual speaker and
24 total public comment time limits may be extended by the
25 Board Chair, if practicable.

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

4 "Thank you."

5 CHAIR THOMAS: Thank you, Ms. Neidhardt.

6 If there are any in-person participants who would
7 like to comment on any matters concerning occupational
8 safety and health, you may begin lining up at the podium.
9 We will start with the first three in-person speakers, and
10 then we will go to the first three speakers in the
11 teleconference and video conference queue. So, I'll have
12 the first three in-person. Please give your name and
13 affiliation.

14 MS. CLEARY: Good morning, Chair Thomas and Board
15 Members. My name is Helen Cleary and I'm the Director of
16 PRR. We are an Occupational Safety and Health Forum made
17 up of various industries. Individual members are EHS
18 professionals.

19 We'd like to comment on the COVID-19 Non-
20 Emergency Regulation today. First, we'd like to express
21 genuine appreciation for the multiple changes that were
22 made in the 15-day notification. Many of them aligned with
23 PRR recommendations, and we want to say thank you for that.
24 Particularly the removal of the requirement to keep a
25 record of close contacts that will alleviate some of the

1 burden of contact tracing. So thank you for hearing our
2 concerns and our recommendations.

3 Today though, we'd like to focus on the new
4 definition of close contact. And while we appreciate the
5 definition has some parameters in place, we don't believe
6 it's a practical or effective approach for multiple
7 industries and workplaces. 400,000 cubic feet is an
8 extremely large space. CDPH and the Division give a home,
9 a clinic, a waiting room, as examples of indoor spaces
10 under 400,000 cubic feet. But those spaces don't compare
11 to what 400,000 cubic feet actually is, so we're asking,
12 how was that threshold determined? The definition goes
13 from an airplane to 400,000 cubic feet.

14 Moreover, the definition doesn't consider
15 proximity, ventilation, number of workers in the space, or
16 exposure to the actual hazard. In addition, there are
17 building of workspace configurations that are not
18 considered, that vary per industry. I brought two examples
19 of actual indoor airspace or spaces that are under the
20 400,000 thresh-hold to illustrate our concerns.

21 One of them is a building layout with an outdoor
22 atrium in the center. The actual workspace creates a ring
23 on the outside that's one continuous loop. This particular
24 building has four HVAC units on top that cycle the air.
25 The center atrium is not accessible for employees, so they

1 can't walk through it to get to the other side they have to
2 walk all the way around. Based on the new definition, one
3 positive case on the west side of the building could create
4 close contacts on the east side of the building when the
5 positive case never left their area.

6 The second diagram is an open floor plan call
7 center. It's also under 400,000 cubic feet. It has rows
8 of cubicles, all of them have partitions for customer
9 representatives. Workers use the restroom, they take
10 breaks to walk around, but they primarily work at their
11 stations that they're assigned at and they don't cross over
12 to other areas. It's reasonable to identify close contacts
13 as the people within a few of those rows. But it's not
14 reasonable to say that all 200 workers on that floor are
15 close contacts.

16 Following the isolation and quarantine
17 requirements, all 200 would need to be tested or excluded.
18 Symptomatic tested immediately; asymptomatic tested within
19 three to five days. So if someone tests positive on
20 Monday, an employer could have to test 200 workers between
21 Thursday and Saturday, or they'd have to exclude them. If
22 another person tests positive the following week, all 200
23 would need to be tested again. This was extremely resource
24 heavy to track and manage this, and it could enforce
25 employers back to weekly routine testing, which is no

1 longer recommended by public health. And it wouldn't be
2 doing it for the right reasons anyway.

3 Making tests available is something that we
4 support, but tracking and testing asymptomatic workers in
5 this capacity is going to be untenable. This is
6 exasperated by the fact that if adopted the rule will
7 require employers to do this for 26 more months. Despite
8 deferring to CDPH guidelines, it's imperative that the
9 Standards Board ensures CDPH definitions that are
10 enforceable by Cal/OSHA can be effectively implemented.
11 The agencies we hope are working together, so these
12 recommendations are applicable to all work settings. If
13 that's not happening, then we suggest that the Division
14 break off and come up with a definition that works for the
15 workplace.

16 The definition of close contact needs to include
17 parameters based on proximity for spaces under 400,000
18 cubic feet. Either by explaining what shared airspace
19 means and FAQs or drafting a new definition.

20 Finally, I just want to touch on new concerns and
21 questions that had been raised from the Governor's
22 announcement to end the State of Emergency. The Division
23 stated at the hearing, that the two-year timeline was based
24 on CDPH recommendation. The timeline doesn't seem to align
25 with the Governor and Legislature strategy.

1 The proposed text in multiple areas is reliant on
2 CDPH orders. So it's raising the question, will CDPH
3 orders continue to be updated after the State of Emergency
4 and will they continue to be updated until 2025, the length
5 of the rule?

6 If this isn't certain, at a minimum the recent
7 close contact definition -- this 400,000 number -- should
8 not be incorporated into the actual text of the rule.
9 Because the text will freeze, and it won't be able to be
10 amended. We've experienced this multiple times over the
11 last couple of years about the challenges of not being able
12 to amend text.

13 So PRR, again asks the Board to align the
14 timeline of the rule with the strategies of the state. The
15 rule shouldn't be in place longer than the State of
16 Emergency, but at a minimum it should not be in place
17 longer than recently passed AB 2693. We're going to submit
18 written comments on the recent modifications, again thank
19 you for those. But we wanted to address these larger
20 concerns today. Thank you for your time.

21 CHAIR THOMAS: Thank you.

22 MR. WICK: Good morning, Chair Thomas, Board
23 Members, everybody else. Bruce Wick with the Housing
24 Contractors of California. And today I'm also speaking on
25 behalf of Kevin Bland and his clients: the Residential

1 Contractors Association, California Framing Contractors
2 Association, and Western Steel Council. And I have three
3 things to talk about.

4 The first is COVID, as we're looking at a
5 proposal for you to vote on, at one of the next couple of
6 meetings. Tuesday of this week, the Workers' Comp Rating
7 Bureau confirmed that over 50 percent of Workers' Comp
8 claims are by those in the health care industry covered by
9 the ATD, have been covered by the ATD, will be covered by
10 the ATD. So the question is do we need a continuing non-
11 emergency regulation covering the other 95 percent of
12 employees in California?

13 As you know, I think the IIPP did a great job the
14 first year of the of the pandemic and is fully well capable
15 of taking care of people from here on in. The Workers'
16 Comp data is important.

17 The Commissioner disallowed any charge in the
18 Workers' Comp rate for COVID under his ruling, because he
19 said it couldn't be apportioned properly between employers.
20 But if he had issued one, it would have been 1 percent of
21 Workers' Comp premiums would have been devoted to COVID; 1
22 percent of the total.

23 And I was at the Walking-Working Surfaces
24 advisory committee last week. And Maryrose Chan
25 appropriately put up several slides of injury data for us,

1 as the committee, to inform us in what we're trying to
2 protect. And we continue to see COVID-19 regulations
3 proposed without data, real data that helps inform our
4 discussion of do we need it, and if so where would it be
5 focused? So I would just appreciate if you talk about
6 that.

7 Secondly, on first aid we have a proposal and I
8 appreciate it coming forward. It talks about that we need
9 to have a kit that meets the requirements of ANSI 308.1
10 Class A 2021 version. And I did a perusal on the internet
11 of what's available and how it's presented to people who
12 would be buying it. Some just say, "OSHA compliant, would
13 that work?" Some do say Class A and Class B. But would
14 someone really understand what that means? And some do not
15 list what version of ANSI. Those that do are almost all
16 the 2009 version of ANSI 308.1. A few said 2021 version.

17 And if you -- even more confusing, if you go to
18 the Federal OSHA website, their non-mandatory appendix
19 refers to the 1978 version of ANSI 308.1, a little
20 outdated.

21 So I would ask two things as we look at hopefully
22 finalizing that regulatory proposal. One is that either
23 Brandon Hart in Communications Division or somebody else
24 put forward a clear piece of information that tells
25 employers we have 1.3 million employers in California with

1 less than 25 employees. That means safety directors part
2 time trying to sort through all the different regulatory
3 issues. They need to know when they're buying first aid
4 kits, what's compliant and what's not. Is it ANSI, you
5 know, Class A? And which version, 2009 acceptable or not?
6 Because that's a lot of what's available on the Internet
7 right now.

8 Which brings up the second point about first aid.
9 And the proposal is, what does that mean regarding all the
10 millions of kits out there that are 2009 versions or
11 previous? Are they now -- will they now not be acceptable?
12 And are we going to have to replace them all? Some of my
13 members have 150 different crews to replace all their first
14 aid kits. And if we have 1.4 million employers in
15 California, that means we have 2 plus million first aid
16 kits. If they all need to be replaced with a 2021 version
17 or 98 percent of them, then we're into filing a SRIA to get
18 this done. Because 2 million times -- you know, so much
19 for first aid kits. We're well over the 50 million range
20 to implement this reg.

21 So just hopefully we can come out of this with
22 clarity. And employers can know what they have to buy, and
23 what qualifies and what doesn't. We should be able to give
24 them that information. They shouldn't have to look for it.

25 And the third part is residential fall protection

1 for framing regulations. We are working hard on that. We
2 appreciate the carpenters union who gave us their training
3 center section of that. And we did three days of video
4 production, built a structure. And we're preparing that
5 video and we will have that to present to you to show the
6 concerns we have about the current state of the framing
7 regulation proposal.

8 We do have a meeting set up with federal OSHA in
9 November. We are going to meet with them and walk through
10 these issues. We hope we can come to a reasonable
11 compromise, but watching the video really reaffirmed to us
12 our concerns. Especially about people tying off at their
13 feet, people working off of ladders, and the work they're
14 doing.

15 So following me will be Kurt Jordan. He's one of
16 our members in California Framing Contractors Association.
17 He is responsible for the safety of people, his framing
18 employees, who might have to work under these regulations.
19 And he'd like to share his thoughts with you. Thank you.

20 CHAIR THOMAS: Thank you.

21 CHAIR THOMAS: Good morning.

22 MR. JORDAN: Good morning, thank you. My name is
23 Kurt Jordan. I'm the Director of Operations for RND
24 Construction. We're a framing residential framing
25 contractor here in San Diego. We work throughout the San

1 Diego County and Inland Empire areas. We employ around 175
2 workers. We've been in business 20 plus years, and we've
3 had no OSHA citations or violations. I just want to
4 clarify and note, we're not RND Contractors. There is an
5 RND Contractors out there that does have OSHA violations
6 and citations that -- that's not us.

7 I've worked for RND for over 20 years. I've been
8 involved with the safety program for over the last 15 plus
9 years. Back in 2003, when the current regulations came
10 into being, our owners were 100 percent behind it. They
11 embraced it. It was a great, great change to safety. With
12 the CFCA support, we rolled out the safe -- the fall
13 protection standards. And it provided real protection for
14 our workers who worked at heights. It had an immediate
15 positive effect, made the work much safer. And one of the
16 more important things about the current regulation is our
17 workers can go from job to job and even employer to
18 employer, and still be protected, and know how to work
19 safely. It's not a hodgepodge of different standards,
20 different methods. It's very consistent.

21 But we're always looking for ways to make work
22 safer. But the new fall protection proposal is not a good
23 change. It's a step backwards, and honestly it's scary.
24 It's putting our company in the position of having to
25 choose whether we be in compliance with the regulations, or

22

1 whether we allow our workers to work safely.

2 Additionally, it greatly increases the exposure
3 not only for working from ladders, fall potentials, but
4 also the workers that are erecting all this new additional
5 fall protection. In researching the regulation, I've
6 reached out to several safety product manufacturers:
7 Guardian, 3M, Safety Pole. And they've all responded
8 pretty much the same way which is, this new proposal is at
9 best extremely difficult. But the reality is, it's almost
10 impossible with wood or light steel framing.

11 The technology just isn't there to provide anchor
12 points and the necessary protection for wood and light
13 steel framing. The structures have to be substantially
14 complete in order to provide the necessary strength to tie
15 off at the walls or above or put in -- install poles, or
16 any of the different anchor points that exist. It's just
17 not a commercial building with steel, structural steel, or
18 concrete.

19 When they're using the typical harness and
20 lanyard system to tie off, those systems require 10 to 12
21 feet of clearance from a fall hazard. So when you're
22 working in a typical eight, nine, ten-foot-tall wall,
23 you're already above what's required. Even the best, most
24 specific combination of harnesses, and lanyards, and anchor
25 points out there still only give you five, maybe six feet

1 of clearance. But you can only move two feet from the
2 anchor point. And that's not even factoring in swing
3 distances and the wall bracing that's in there, which just
4 -- it makes it ineffective. It doesn't work.

5 I know this is a tall room, but imagine back
6 there were eight, nine, ten feet. You have two-by-fours
7 running from the top of the wall to the bottom to brace the
8 wall off. And they're every three or four feet. And
9 that's what keeps the wall steady, allows it to be there so
10 we can install the joists, trusses, sheathing to complete
11 the structure. You install an anchor point on that ten
12 feet, eight feet, nine feet off the ground), you have two
13 by fours running every direction. You fall off that wall,
14 a harness and lanyard's not going to stress the fall.
15 You're going to hit a brace, you're going to hit the wall,
16 or you're going to hit the ground before the fall is
17 arrested.

18 Even with the other systems out there like
19 horizontal lifelines or pull based systems, those might
20 provide the attachment points, but we still have the issues
21 with swing distance and the issues with the fall clearance.
22 So even with several sets of lifelines, and several poles
23 that it takes to protect your average single-family, one-
24 story house -- not an apartment building, not a big, you
25 know, custom house -- but a 2,000 square foot single story

1 house. It's going to take several sets of poles, several
2 sets of horizontal lifelines to provide the anchor points
3 that are necessary.

4 So it's not only trading one exposure for
5 another, you're significantly adding to the exposure of
6 those people setting up all that fall protection, to
7 provide fall protection that just is ineffective. It
8 doesn't work, because of the swing distance and the fall
9 clearance hazard. So even though you're ten feet off the
10 ground and you're hooked up to a lanyard and a harness,
11 it's still not going to rest your fall before you hit a
12 brace of the wall or the ground. But you are exposing all
13 those workers to setting up all that equipment.

14 But then the other alternative in the regulation
15 is working from ladders. And working from ladders is also
16 exposing our workers to greater hazards. Work is best
17 performed from a stable location. We work from the top of
18 the walls, from truss plates, from joists, from trusses.
19 And they provided stable work platforms for the last 20
20 years with this current standard. Our workers know how to
21 work effectively and safely from these current standards.
22 A ladder is not a stable work platform.

23 So imagine then walls are ten feet off the
24 ground. Climbing up the ladder, you and three or four
25 other guys -- people, are trying to manhandle trusses,

1 joists from one end of the room to the other. Climb up the
2 ladder, move a couple feet because that's all you can move.
3 Climb down the ladder, move the ladder, maneuvering around
4 all the braces that are every three or four feet. Putting
5 the ladder back down, climbing back up the ladder. Repeat
6 over and over again. One of the biggest exposures on
7 ladders is climbing up and down. And we've just increased
8 that exposure exponentially.

9 So now that they've finally got the material in
10 place, they climb up the ladder and get ready to actually
11 install the work. So, they're using their nail gun, their
12 pneumatic nail guns, or their pneumatic nail drivers. And
13 they're leaning out to the side, they're leaning over. Or
14 they're leaning forward, positioning it at their waist and
15 driving the nail towards their body. Because that's the
16 only way they can effectively do that.

17 Versus the current standard where you're up on
18 the top of the truss plate or the top of the wall, and you
19 can bend down. You can walk around, and get to where you
20 need to go. So again, this this new proposal, it's not a
21 good move. It's not a good effective way. It's a step
22 backwards. And again, it's asking us to choose do we be
23 compliant or do we protect our workers?

24 And just as a final comment -- thank you for your
25 time on all this -- we all know we're in a housing crisis

1 in this state. This proposal is going to further add to
2 that crisis by greatly increasing the cost to build houses,
3 while not providing any real improvement in fall
4 protection. Thank you for your time.

5 CHAIR THOMAS: Thank you. And just so you know,
6 you've used up your time for the next three meetings so --
7 no, I'm just kidding.

8 So now we'll take some on-the-line calls. So Ms.
9 Morsi, who do we have?

10 MS. MORSI: We have Michael Miiller with
11 California Association of Winegrape Growers.

12 CHAIR THOMAS: Mr. Miiller, can you hear us?

13 MR. MIILLER: Yes, I can. Good morning, can you
14 hear me?

15 CHAIR THOMAS: Fine. We can hear you, go right
16 ahead.

17 MR. MIILLER: Great, thank you so much.

18 Good morning, I am Michael Miiller with the
19 California Association of Winegrape Growers. I'm sorry
20 that I cannot be with you today in beautiful San Diego as
21 I'm here in Fresno for a three-day conference focused in
22 part on autonomous ag equipment. Experts from all over the
23 world are here to discuss mechanization, automation, the
24 workforce and much more. As you can imagine, worker safety
25 and regulatory compliance is a big part of those

1 conversations. I was very impressed with how much
2 information is out there.

3 I'll be very brief today. I want to discuss the
4 pending COVID-19 regulation and address issues that came up
5 after the public comment period at the last Board meeting.
6 Specifically, I want to address what other states are
7 doing. To my knowledge, Oregon and Washington are the only
8 states that still have workplace safety requirements in
9 place that are even close to what is being proposed for
10 California. When analyzing all three states, the bottom
11 line is that both states, Washington and Oregon, have far
12 less restrictive standards than what the Board is proposing
13 for California for the next two years.

14 For example, Oregon amended its standard on
15 September 9th, and will likely continue to scale it back.
16 Both states use the definition of "outbreak" that is much
17 larger than California. Neither state uses California's
18 physical distancing, or close contact rules. Washington
19 recognizes risk and that vaccinated employees have a
20 reduced risk. And there are several other major
21 differences between California and what our West Coast
22 neighbors are doing.

23 It is important to look at what other states are
24 doing to get a bigger picture idea of how California worker
25 safety compares to worker safety in those states relative

1 to COVID-19. I can find no reliable state-to-state data on
2 how workplace safety requirements, or lack there-of, have
3 had any effect on the transmission of COVID at work.
4 However, we do know that California's workplace COVID-19
5 prevention standard is part of a comprehensive statewide
6 response to COVID.

7 Therefore, it makes some sense to look at state
8 by state hospitalization and death rates to see how we're
9 doing. We're looking at per capita death rates. The
10 following states have comparable or lower rates than
11 California right now. They are Virginia, Maryland, North
12 Carolina, Minnesota, Nebraska, Colorado, Oregon, New
13 Hampshire, District of Columbia, Maine, Washington, Alaska,
14 Puerto Rico, Utah, Hawaii, and Vermont.

15 When we're looking at the hospitalization rates
16 the following states -- and there are 30 of them -- have
17 comparable or lower rates than California. They are
18 Wyoming, Montana, Vermont, Rhode Island, Minnesota,
19 Washington, Kansas, Wisconsin, New Hampshire, Nebraska,
20 Idaho, Oregon, Colorado, Illinois, Texas, Virginia, Iowa,
21 Nevada, Indiana, Arizona, Oklahoma, New Mexico, Louisiana,
22 Tennessee, Hawaii, Mississippi, South Carolina, Alaska, and
23 Alabama. I appreciate the sentiment that California wants
24 to lead the nation, and we want the safest workplaces
25 possible. However, it's important to note that given the

1 successes in other states who are using far less
2 restrictive standards or no standards at all, it is not
3 likely that any state will follow California's lead on
4 this. Which begs the question: if no one is following, is
5 California really leading? I would say no.

6 Regardless of other states, this proposed
7 regulation is not even leading right here in California.
8 For example, while Governor Newsom has said that the State
9 of Emergency will end on February 28th, this regulation
10 would remain in effect for 22 months beyond that. This
11 regulation is entirely unnecessary when looking at Governor
12 Newsom's endemic plan.

13 I strongly urge Board Members to do an informal
14 survey. When you're at the grocery store, talk to be the
15 cashier, talk to the server at your favorite restaurant,
16 talk with the people at church, your friends, your
17 neighbors. Ask them all whether they think we still need
18 this kind of workplace safety standard for COVID-19. I'm
19 pretty sure you will find what every employer in California
20 has found, our employees are tired of the restrictions, and
21 they are resisting compliance requirements. As much as our
22 employers push for compliance the employees are tired of
23 it. Given that employees don't want the regulation,
24 employers don't want the regulation. The Governor and the
25 legislature are moving on from the pandemic approach to

1 COVID, and no other state is proposing anything even close
2 to what California is proposing, this regulation is
3 ultimately on an island. Absent any solid data that shows
4 that this regulation would improve workplace safety, the
5 regulation should be withdrawn or rejected.

6 I also associate myself with the comments from
7 Helen and from Bruce also. They've made some very valid
8 points and are interested in our industry as well. Thank
9 you for your time and attention to this issue. And please
10 let me know if I can be of any assistance.

11 CHAIR THOMAS: Thank you.

12 Who do we have next, Ms. Morsi?

13 MS. MORSI: Up next is AnaStacia Nicol Wright
14 with WorkSafe.

15 CHAIR THOMAS: Hello, Nicol. Can you hear us?

16 MS. NICOL WRIGHT: Yes, hi everybody. Let me see
17 if my -- I can't see myself. I'm hoping my camera is on.

18 CHAIR THOMAS: There you go.

19 MS. NICOL WRIGHT: Okay. Hello. One second,
20 just pulling up my notes, my apologies. So good morning,
21 everybody, to the Board Members and everybody else who's in
22 the room. My name is AnaStacia Nicol Wright. I'm a Staff
23 Attorney with WorkSafe.

24 And as always I wanted to come here and let you
25 all know how much we appreciate the continuation of worker

1 protections from COVID in California. And the maintenance
2 of the framework, with at least the prospect of adjustment
3 to worsening or ideally improving circumstances. However,
4 we were beyond disappointed to see that -- how OSHA
5 released its latest revision to your permanent COVID
6 standard. And despite the significant data and worker
7 testimony that's been presented, exclusion pay still
8 remains out of the proposed rule.

9 CHAIR THOMAS: Can you slow down your comments?
10 Can you slow down your comments just a little bit because
11 they're being -- thank you.

12 MS. NICOL WRIGHT: Yes. Respectfully, no
13 rationale for moving exclusion pay has ever been made
14 clear. Even after Board Members, including Chair Thomas,
15 explicitly mentioned that exclusion pay should be
16 reincorporated, even after Chief Jeff Kilos'
17 acknowledgement that COVID-19 disproportionately affects
18 black and brown workers. That COVID-19 has been one of the
19 greatest threats to worker health and safety since the
20 beginning of OSHA and Cal/OSHA programs; that Californians,
21 and manual labor, and in-person service occupations
22 experienced disproportionately high COVID-19 rates, with
23 the highest death rates in male Latino and Black workers.
24 Even after all of that, the proposed standard still
25 requires workers to be excluded, but unpaid.

1 There's a precedent being set here and it's very
2 troubling, public health exclusion without job protection
3 or pay protection. This means that a disproportionate
4 amount of latino and black workers will be exposed at work,
5 and excluded at work because of that work exposure, and can
6 possibly lose one week or more of wages. That's one week's
7 worth of rent they won't have. One week's worth of food
8 they can't buy. It's one week's worth of hours to qualify
9 for medical insurance that they can't accrue. It's one
10 week's worth of tuition for their students -- sorry, not
11 their students, but their children or themselves that they
12 can't pay.

13 So this is going to lead to workers coming to
14 work sick and exposing other workers who will get sick.
15 And then go home and make their family sick. And at the
16 end of the day, businesses will still bear the cost of
17 these impacts on their employees.

18 As Chair Thomas pointed out here last month; this
19 decision is being made by a roomful of people who likely
20 have generous sick-time leave policies, in contrast with
21 many of California workers who only get the mandated three
22 days. This decision is being made in a room full of people
23 who likely have generous vacation time accrual in contrast
24 with the majority of Californians.

25 So after all of this, I come before you all

1 mentally and emotionally spent and with very few pleas left
2 to make. But I would like to ask the officials here today
3 why and how, after all of this, is the Board and Cal/OSHA
4 not protecting these workers they've acknowledged are so
5 vulnerable? Thank you.

6 CHAIR THOMAS: Thank you.

7 Who do we have next? Ms. Neidhardt -- Morsi. I
8 should have looked at the paper. Ms. Morsi.

9 MS. MORSI: Up next is Janine Pera, there is no
10 affiliation written.

11 CHAIR THOMAS: What was the name?

12 MS. MORSI: Janine Pera.

13 CHAIR THOMAS: Janine, are you -- can you hear
14 us?

15 MS. PERA: Can you hear me?

16 CHAIR THOMAS: Yes, go right ahead.

17 MS. PERA: Excellent. I tried last month and
18 couldn't figure out the technology. So I'm happy to be on,
19 thank you for your time.

20 I'm a health care practitioner in Marin County,
21 and a health advocate for families and individuals.
22 Hundreds of thousands of people have died unnecessarily
23 from COVID-19 due to suppression of known highly effective
24 early treatment protocols. Thousands of doctors around the
25 world have successfully treated people with these

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1 protocols, achieving 80-100 percent success rate in
2 preventing deaths, severe illness, and long COVID. COVID
3 vaccine EUA's emergency use authorizations would never have
4 been needed or granted, had the lifesaving early treatment
5 protocols been used.

6 Hundreds of thousands of lives have been lost.
7 And people have been severely impacted due to censorship,
8 suppression of effective treatments, and unnecessary
9 measures, regulations, and orders. All under the guise of:
10 "for our health and safety". I urge this regulatory Board
11 to wake up to the reality of what has happened. And to
12 finally move away from the fear and control narrative, to
13 one of true health and wellness. We never needed a COVID
14 emergency temporary standard. And we do not need a non-
15 emergency temporary standard. Thank you for your time.

16 CHAIR THOMAS: Thank you.

17 And I believe that was the third caller. So if
18 we have any other in-person speakers, please come up to the
19 podium. State your name and affiliation. Good morning.

20 MR. JOHNSON: Good morning Chairman Thomas, Board
21 Members, Division staff, and Standards Board staff. My
22 name is Steve Johnson, I'm with Associated Roofing
23 Contractors of the Bay Area Counties, and I'll keep my
24 comments brief. I just wanted to make sure that I have a
25 chance to be on an advisory committee for the fall

1 protection.

2 We've heard from Bruce wick and from Kurt, I'm
3 sorry, I can't remember your last name, Kurt. So we have
4 an expert here who is in the trenches. Who is observing
5 real world, real jobsite conditions. And I think it's
6 extremely important that we have an advisory committee to
7 talk about this. To look at real world situations and not
8 just blindly adopt what Federal OSHA is cramming down the
9 regulated public's throat in California. I not going to
10 say anything more about that. But I'm just not happy with
11 the direction that things are going with this regulation.
12 And I just want the chance to have a voice, to be on an
13 advisory committee when that happens.

14 And the other thing I wanted to say is that, you
15 know, "at least as effective as," doesn't mean "exactly
16 as." It doesn't mean "equal." Otherwise, why even have
17 Title 8 Regulations? Just adopt federal regulations and
18 call it a day. So that's my comment on that.

19 And also, I support the previous comments that
20 have been made on COVID. We're struggling with that as an
21 association. With the close contact definition -- 400,000
22 cubic feet. I mean, most contractors think in square feet.
23 They don't think in cubic feet and airspace. And it's
24 going to be a challenge. And I'm just hoping that we can
25 get some clarification on that standard with close contact.

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1 Definitely opposed to a two-year standard for COVID and
2 I'll conclude my comments. Thanks.

3 CHAIR THOMAS: Thank you.

4 Do we have any other in-house speakers? Good
5 morning.

6 MR. LITTLE: Good morning, thank you for the
7 opportunity to comment. Good morning, Members of the
8 Standards Board, Standards Board staff, agency staff. I'm
9 Bryan Little with California Farm Bureau. I've told you
10 all about California Farm Bureau a few times before, so
11 there's no need to repeat all of that.

12 I wanted identify myself with some of the remarks
13 offered earlier by Bruce, by Helen, by Michael Miiller --
14 sorry, slower, slower, sorry -- Michael Miiller and a few
15 of the other people who have preceded me. Particularly
16 Bruce's comments concerning the First Aid Kit Standard, and
17 the issues related to which version of the ANSI standard
18 that those kits have to be compliant with. And the issues
19 that will raise with educating our members about which
20 version of the kit they need to have. And whether all
21 those kits need to be replaced. And whether we need to do
22 a regulatory analysis on the underlying cost of all of
23 that. But honestly, it's not something I thought of until
24 Bruce raised it at the meeting a few minutes ago.

25 The Governor's decision, announced decision, or

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1 at least his announced timeline that he intends to rescind
2 the State of Emergency concerning COVID-19 in February
3 raises some interesting questions. Some of which Helen got
4 to in her comments about what does this mean with respect
5 to the California Department of Public Health's authority
6 to continue issuing orders. What does it mean with respect
7 to the ongoing validity of the orders they've already
8 issued, after the State of Emergency is lifted in February,
9 if the Governor goes down that road. And where does that
10 leave -- if you adopt a permanent -- well, a two-year
11 COVID-19 standard, where does that inability on the part of
12 CDPH to respond to evolving the evolving situation? Where
13 does that leave any ability to be able to adjust the COVID-
14 19 standard to also adjust to evolving situations.

15 I think that to the extent that the Governor
16 might revoke the State of Emergency in February that might
17 be a good time for this Board to relook at what standard is
18 applicable at that time, and decide whether or not it might
19 be time to take a similar action, and revoke that standard
20 at that time.

21 Lastly, earlier this week, I was at the same
22 meeting that Michael Miiller was at in Fresno where several
23 thousand technologists, farmers, equipment dealers, farm
24 worker advocacy groups and a bunch of other folks are all
25 together looking at automation technology, assistive

1 technologies. And how that's going to wind up impacting
2 agriculture. How are we going to get -- how are we going
3 to pair up venture capital with people who are working to
4 invent, and regularize, and perfect assistive technologies,
5 automation technologies. The kind of capital investment
6 that will ultimately both make our human investment more
7 productive, also will raise their incomes. And will in the
8 long run have the effect of making our industry more
9 capital intensive and less labor intensive in the long-term
10 future than it is now.

11 While I was there on Monday, I met a lot of
12 people who are involved directly in dreaming up and trying
13 to figure out how to make some of these technologies work
14 in the real world. Things like drones that can pick tree
15 fruit. Machines that can move through using lasers and
16 steam, directed steam jets, be able to thin and weed rows
17 of lettuce with absolutely no human intervention
18 whatsoever. This technology is coming. And I don't think
19 that we are ready for it.

20 I have said before and it was offered -- my
21 comment was offered sarcastically in an effort to try to
22 inject a little bit of levity into it -- that our
23 driverless tractor standard is a relic of the age of bell
24 bottom jeans and pork chop sideburns. And we need to look
25 at it and figure out whether or not it's going to work, in

1 the real world that's going to be coming in the future.

2 I met a lot of people. I was there on Monday.

3 And I think several of them would be willing to either
4 invite you to demonstrations of autonomous technology that
5 they're already doing, or perhaps arrange for
6 demonstrations of that technology for you, if you would
7 like to be a part of that. And I think that either Michael
8 or I could help you do that if that's something you'd be
9 interested in doing. I think all of you know where to find
10 me and Sarah has my card. So, if you'd like to do that,
11 please let me know. And thank you for the opportunity to
12 comment this morning.

13 CHAIR THOMAS: Thank you.

14 Do we have any other in-house speakers at this
15 time? It looks like we don't. We'll go back to the
16 phones, Ms. Morsi.

17 MS. MORSI: Up next is Jassy Grewal with UFCW
18 Western States Council.

19 CHAIR THOMAS: Jassy, are you with us?

20 MS. GREWAL: Can you hear me?

21 CHAIR THOMAS: Yes.

22 MS. GREWAL: Wonderful, thank you. Good morning,
23 Chair and Standards Board Members. My name is Jassy
24 Grewal, here on behalf of 180,000 frontline essential
25 workers, who want this standard adopted, to comment on the

1 proposed non-emergency COVID-19 standard.

2 Lifting of the State of Emergency does not mean
3 that COVID-19 miraculously goes away. Which is why UFCW
4 supports the adoption of a non-emergency standard, and
5 urges this Board to adopt a general industry infectious
6 disease standard as quickly as possible. So there's no
7 lapse in coverage between this standard and the next
8 potential public health emergency.

9 CHAIR THOMAS: Can you slow down just -- slow
10 down just a little bit please, thank you.

11 MS. GREWAL: Yes, thank you. And remind me again
12 if I need to slow down, I'm a fast talker.

13 However, UFCW members are extremely disappointed
14 that this draft continues to lack exclusion pay,
15 (inaudible) for exclusion, and codifying the COVID-19
16 notification requirements. I want you all to think back to
17 the early months of the pandemic when every single one of
18 us was uncertain, worried, terrified about what was to
19 happen, as a global pandemic was breaking out. The
20 majority of us got to seek shelter in our homes and
21 continue to work virtually. However, our workers in the
22 midst of all the fear, stress and worry, showed up in
23 person to work, to continue stocking shelves, preparing
24 meals, and serving customers. Even when they were told by
25 their employers they weren't allowed to wear masks, because

1 it scared the customers.

2 Those same workers who lost coworkers and family
3 members were deemed heroes for the courageous work they
4 were doing, so none of us would go hungry. Those same
5 workers fought to ensure they had a strong, enforceable
6 standard to protect them from COVID-19, because the IIPP
7 was not working and was insufficient for enforcement. This
8 agency and Board stood up and fought for those workers by
9 adopting a standard with exclusion pay, and job protections
10 for exclusion.

11 Now, while COVID still continues to be a
12 significant hazard in our workplaces, while servers are
13 becoming the norm, our members continue to show strength
14 and go to work to serve a public who spits at them,
15 harasses them, and sometimes murders them. The difference
16 will be starting January 1, that the same workers you all
17 deemed heroes will no longer have job protections for being
18 excluded with a COVID-19 illness they contracted at work.
19 And will receive no pay while away from the workplace. The
20 reality is if this standard is adopted as written, workers
21 will continue to go to work while sick, serving sensitive
22 community members like immunocompromised customers and the
23 elderly. While being excluded from work with no pay
24 leading to have to choose if they can feed their families
25 that week, turn the heat on to keep their children warm at

1 night, or forego their mortgage and rental payments, and
2 losing their housing.

3 A recent study by the National Partnership for
4 Women and Families shows, that paid leave reduced consumer
5 bankruptcies by 11 percent. Helping workers keep their
6 jobs and homes, especially for low-income workers. Our
7 workers who are under a good union contract would exhaust
8 all their accumulated sick leave with just one exclusion.
9 What leave will they have available for the summer surge,
10 the fall surge, the winter surge, for their children who
11 are sick, for their children who have daycare and school
12 closures? Non-union workers who only have three paid sick
13 days will be even worse off.

14 Our members, a majority of whom are women, will
15 need to leave the workforce to take care of their children.
16 We find significant increase in women leaving the workforce
17 due to the pandemic.

18 Our part-time workers, who make up a majority of
19 the workforce in our stores, will not be able to meet their
20 health care minimums if they're excluded from work for even
21 one week without job protection and/or pay. Those same
22 workers risk losing their jobs and their health care for
23 their families. If this pandemic is over, as everyone in
24 the employer community believes it is, then employers don't
25 need to notify workers of exposures. They don't need to

1 provide exclusion pay --

2 CHAIR THOMAS: Can you slow down? Can you slow
3 down a little bit again?

4 MS. GREWAL: Yeah, yes.

5 CHAIR THOMAS: You're speeding up.

6 MS. GREWAL: -- and don't need to provide job
7 protection. As leaders of this agency whose sole mission
8 it is to protect all California workers, while at work, our
9 essential workers who you deemed heroes would like an
10 explanation as to why this proposed standard does not
11 include these narrow but vital protections to ensure
12 workers who contract COVID-19 at work will have the peace
13 of mind of recovering at home, with pay. And will be
14 afforded the basic protection of ensuring they return to
15 work as if they never left. Those same workers who risked
16 it all, so California remained fed want to know why this
17 agency is okay with passing a standard they know --
18 because it stated in the SRIA analysis -- "will have a
19 disparate impact on low wage workers and workers of color."
20 These same frontline essential workers, who have lost
21 coworkers and family members to COVID-19, want to know why
22 health care workers and workers exposed to lead are
23 afforded these basic protections but they aren't.

24 The least this agency can do is re-include job
25 protections for workers. So, if they're excluded from a

1 COVID-19 illness even without pay, they will be able to
2 return back to work as if they never left, to the same
3 benefits, wages and seniority. It's the most basic of
4 protections the agency can give back to workers or we fear
5 the worst next year amongst the most vulnerable workers in
6 California. I appreciate all the time the Board Members
7 and staff has put into the standard. But we believe
8 there's a little more work left to do before we have a very
9 strong standard going into 2023.

10 We really appreciate the time to be able to make
11 public comment today. Thank you.

12 CHAIR THOMAS: Thank you.

13 Ms. Morsi, do we have any other callers?

14 MS. MORSI: Yep, Mitch Steiger with California
15 Labor Federation.

16 CHAIR THOMAS: Mitch, can you hear us?

17 MR. STEIGER: Yes. Thank you Chair Thomas,
18 Members and staff. Mitch Steiger with the California Labor
19 Federation, I appreciate the opportunity to speak today to
20 the non-emergency COVID standard that's been proposed.

21 As always, we very much appreciate the work of
22 staff and everyone else in preparing the new version of it.
23 We understand it's a lot of work and tough to manage all of
24 the different criticisms and feedback, but very much
25 appreciate the work that everyone has done. And very much

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1 appreciate the fact that we still have a standard here that
2 is being proposed. As was mentioned, most other states
3 don't have anything like this. And we very much appreciate
4 the fact that we prioritize workers enough in this state to
5 keep one there. As I'm always telling my kids, just
6 because everyone around you is making a bad decision that
7 doesn't mean you have to. And we're very much making the
8 right decision here by keeping going with some explicit
9 clear COVID protections for workers, even if most other
10 states don't do that.

11 And so while we appreciate that it's there, we
12 would very much echo the very compelling comments of UFCW
13 and WorkSafe, in raising concerns about this newest
14 version. Primarily, the continued deletion of exclusion
15 pay from the standard. We really can't think of a single
16 good reason to do this. You'll see that we, in particular,
17 made some really great points about what this is going to
18 do if this goes into place as outlined. That we are
19 talking about workers feeling like they have no choice but
20 to go to work while sick. That will cause outbreaks. That
21 will make workers get sick. There will probably be some
22 fatalities as a result, which is really the disturbing part
23 about all of this.

24 That not only are we endangering workers we're
25 not even helping employers by keeping that out of the

1 standard. Because when you look at this in a more holistic
2 long term view we're going to be causing and worsening
3 outbreaks by doing this. We just can't think of a single
4 good reason to do it and would -- especially given that the
5 Board seemed to pretty clearly direct that exclusion pay be
6 returned to the standard at the last meeting. We think it
7 makes sense to put exclusion pay back into the standard and
8 would urge all involved to find a way to make that happen
9 while still not allowing for lapse in coverage.

10 We will also just quickly touch on one other
11 change that was made in there: the weakening of the
12 outbreak standards that allows employers out of the
13 outbreak window while they still have a positive case in
14 the exposed group. It's another one that is just equally
15 inexplicable to keeping exclusion pay out of the standard.
16 Because it's not like the outbreak provisions are
17 unreasonable. We're talking about testing, we're talking
18 about masks, we're talking about ventilation. The exact
19 things that we know work in terms of preventing COVID and
20 easing outbreaks. We're now taking our foot off the gas
21 earlier in a way that we just don't think makes sense.

22 And so, we would strongly urge that that go back
23 to the original version. But more than anything else, we
24 would really encourage the Board to find a way to get
25 exclusion pay back in there. We think it's an incredibly

1 important part of this and would urge that action to be
2 taken. Thank you.

3 CHAIR THOMAS: Thank you, Mitch.

4 Do we have any other phone callers?

5 MS. MORSI: Up next is Andrew Sommer with Conn
6 Maciel Carey.

7 CHAIR THOMAS: I'm sorry, that was Matthew
8 Sommer?

9 MS. MORSI: Yes -- oh I'm sorry.

10 MR. SOMMER: Andrew Sommer.

11 CHAIR THOMAS: Andrew, go right ahead. We can
12 hear you.

13 MR. SOMMER: Oh, thank you. Good morning, Chair
14 Thomas and Members of the Board. Andrew Sommer from Conn
15 Maciel Carey on behalf of the California Employers COVID-19
16 Prevention Coalition, which is composed of a broad array of
17 California employers.

18 I will comment briefly. We wanted to first
19 recognize the division for the work that they've done in
20 considering comments in revising the non-emergency rule.
21 We certainly appreciate all that time and effort that has
22 gone into that. We do believe that there has been a
23 thoughtful consideration of comments. We also believe that
24 there's much further that we could go in recognizing,
25 whether it be flaws or issues identified in comments,

1 incorporating them into the revised draft.

2 I did want to join in the in the comment made by
3 Helen Cleary regarding the COVID close contact definition.
4 And we certainly believe that the 400,000 cubic square foot
5 threshold for larger employers is helpful in reverting back
6 to the six-feet rule for close contacts, which is seen as
7 the gold standard that we've all become accustomed to. We
8 do have a question about how it is that the Division
9 selected for that public health agency selected the 400,000
10 square foot dividing line. And believe that for employers
11 that have a workplace indoors, if it's under 400,000 square
12 feet, that there should be consideration of other factors
13 such as proximity, airflow, and engineering controls. And
14 just having that very, kind of large cubic square foot
15 reference is not necessary in light of the intent of the
16 close contact standard.

17 We're also interested in how the Standards Board
18 intends to reconcile this non-emergency rule with Governor
19 Newsom's announcement that he will be ending the State of
20 Emergency as of February of next year. In our written
21 comments on behalf of our coalition, we recommended that
22 there be some escape clause from that two-year term or the
23 non-emergency rule, to recognize changing conditions and a
24 different direction of the state. We believe we're
25 reaching that point certainly, and that there should be

1 some recognition of that in the term of the non-emergency
2 rule to phase out the rule as the State of Emergency ends.

3 And there was an extensive statement provided by
4 Governor Newsom just recently about the ending of the State
5 of Emergency. And we would hope that there'd be some
6 discussion about how this non-emergency rule would relate
7 to the ending of the State of Emergency. And I believe
8 that this very comprehensive rule is really just a
9 continuation of the initial COVID rule. And certainly, we
10 are at a different place in the pandemic with a lowering
11 number of fatalities and hospitalizations related to COVID,
12 largely attributed to vaccines. And that was all
13 referenced in Governor Newsom's announcement earlier this
14 week.

15 We appreciate the time to comment. Thank you.

16 CHAIR THOMAS: Thank you.

17 Do we have anyone up next, Ms. Morsi?

18 MS. MORSI: Up next is Robert Moutrie with
19 California Chamber of Commerce.

20 CHAIR THOMAS: Robert, are you with us?

21 MR. MOUTRIE: Hopefully. I am if you can hear
22 me, Chair Thomas, can you hear me all right?

23 CHAIR THOMAS: We can hear you. Go right ahead.

24 MR. MOUTRIE: Perfect, thank you. And I, like my
25 colleague Jassy Grewal, I am also a fast talker.

1 CHAIR THOMAS: You're going to have to turn your
2 mic up, or we're going to have to turn it up here.

3 MR. MOUTRIE: Oh, I can project more. Is that
4 more -- is that workable?

5 CHAIR THOMAS: A lot more.

6 MR. MOUTRIE: A lot more. Okay, how about now?
7 Okay.

8 CHAIR THOMAS: Yes.

9 MR. MOUTRIE: Okay.

10 CHAIR THOMAS: Its -- its -- yeah, go ahead.

11 MR. MOUTRIE: Okay. I will -- actually, you know
12 what? If there's another virtual caller, I think I can
13 hook up a better mic. Would you mind circling back to me
14 in one moment?

15 CHAIR THOMAS: Actually, you're fine if you just
16 continue.

17 MR. MOUTRIE: Okay, I'll try at that volume.

18 Again, good morning Chair Thomas, Board Members,
19 thank you for your time. Robert Moutrie, California
20 Chamber of Commerce. Sorry I couldn't join today, some
21 personal family obligations made it impossible.

22 Before getting to the 15-day change notice I want
23 to thank the Board staff for a very, I will say thoughtful
24 advisory committee last week on walking-working surfaces.
25 Obviously a tough issue and there was a lot of

1 disagreement, but it was a well-run advisory committee. So
2 I'd like to thank Board staff for their effort.

3 On the COVID regulation, I want to make clear
4 CalChamber, echoing some of my colleagues, does not believe
5 a two-year extension is appropriate at this time. I would
6 echo Michael Miiller's comments regarding state-to-state
7 comparisons of data do not seem to support that this
8 regulation is having the measurable improvement in results.
9 And I would say that what we do see, is we see COVID-19
10 becoming a widespread social disease where the largest
11 health -- the most important health action really is that
12 vaccination that you can get for yourself. And of course,
13 I urge everyone to get, and I have gotten Of course.

14 With that in mind, I want to comment on the 15-
15 day change briefly, and some specific portions there. I'll
16 actually, interestingly here, I'll echo a portion of the
17 comments from Mr. Steiger. That I really appreciate the
18 work the staff put in on this and the attempt to be
19 responsive to stakeholder concerns. There's a lot of
20 adjustments here, and then we can see the effort there so,
21 that is appreciated. Obviously, we will disagree on some
22 of the changes, but I think we all agree on the
23 appreciation.

24 As to the 400,000 cubic feet threshold for close
25 contacts. I'll echo the questions raised by Helen Cleary

1 here with concerns regarding testing and burdens. And also
2 echo her appreciation of the record keeping adjustments.

3 I'd also like to associate myself with Mr.
4 Sommers's comments regarding questions about how this
5 number was arrived at by CDPH. And the correlation between
6 this number, the duration of the regulation, and the state
7 of the emergency ending. But I do want to be very clear,
8 we appreciate the work on it. There's other comments here
9 I'm not going to go through for purposes of time, but they
10 are appreciated.

11 The one other point I will touch is regarding the
12 outbreak threshold, and this was briefly raised a moment
13 ago. I want to say that the change of an outbreak exit
14 threshold from zero cases in a two-week period, to one case
15 being acceptable in a two-week period, and two cases
16 continuing the outbreak, is very much appreciated. And
17 very much in line with the expansion of the exposed group
18 under this new definition. When you're talking about a
19 workplace that may have 400 or 500 people in an exposed
20 group saying one case does not consist of an ongoing
21 outbreak, we think is a very reasonable adjustment. And in
22 line with that other change to the regulation.

23 I'd also like to associate myself with the
24 comments of Mr. Wick regarding the importance of data
25 regarding COVID and other risks. And the 1 percent

1 Workers' Comp surcharge that was discussed, I think it is
2 an important number.

3 I'd also like to respond briefly regarding the
4 exclusion pay issue, which there's been much discussion
5 about and I know is an interest of the Board. The first
6 thing I'd like to note is Mr. Berg flagged this last month,
7 that the exclusion provisions of the regulation have
8 evolved significantly since the early versions and much
9 less exclusion is occurring. I mean, that's just the
10 nature of the changes.

11 Second, I want to emphasize that this is an issue
12 of the role of Cal/OSHA versus the role of the Legislature
13 in sick leave policies. Generally, the Legislature and the
14 Labor Commissioner handles sick leave. Both state and
15 federal law deal with those issues. So on behalf of
16 CalChamber, we would see it as proper for the Board to --
17 as we end the State of Emergency -- allow those
18 responsibilities to fall on the agencies and entities,
19 which have traditionally handled that. That's particularly
20 important, and I want to emphasize, that the Legislature
21 has acted in this area repeatedly passing sick leave.

22 And should we see -- for example, let's say that
23 we see a holiday spike which is unprecedented, right?
24 Worse than the others and we need to deal with that. The
25 legislature is better equipped to handle that quickly by

1 passing something early in the year via a budget bill, as
2 they have previously, than this Board is. So I think it's
3 important that we consider -- we don't want to discuss
4 exclusion pay in a vacuum. There are other legal
5 requirements out there to provide it. And the Legislature
6 actually can act faster than this Board, in response, if
7 the need arises.

8 Third, I want to touch on this, there was an
9 assertion that employees we fired for having COVID and they
10 will have no job protections. That is not my legal
11 understanding as an attorney. So, the idea that employers
12 are firing employees for having COVID, I am not aware of
13 occurring. You know, I'm sure that hopefully maybe
14 anecdotes can be shared. But I will just say I'm not aware
15 of that being legal to do at present and want to put that
16 on the record.

17 And as to workers going sick and causing
18 outbreaks, that's been raised repeatedly. I just want to
19 remind the Board of Michael Miiller's comments. That is if
20 other states who do not have this requirement, are seeing
21 similar or better results, then I think the argument that
22 this is having a significant change and that this will
23 cause many more outbreaks if we remove it, doesn't seem
24 supported by the data.

25 With that I'm sure I've gone over two or three

1 days of my comment time. So I appreciate the Chair's
2 indulgence, and thank you for the time.

3 CHAIR THOMAS: Thank you.

4 Who do we have up next, Ms. Morsi?

5 MS. MORSI: Up next is Michael Strunk with
6 Operating Engineers Local 3.

7 CHAIR THOMAS: Michael, can you hear us?

8 Michael, can you hear us?

9 MR. STRUNK: Yes, sir, thank you. Thank you for
10 your time. I am Michael Strunk. I'm the Director of
11 Safety with the Operating Engineers Local Union Number 3.
12 I just wanted to thank the Board for an outstanding last
13 several years. Your leadership has been exemplary, and I
14 just really appreciate all you do for us.

15 I also would like to comment on the autonomous
16 tractor issue while we do stand opposed to autonomous
17 vehicles, not operated by humans, I would like to thank the
18 Division for moving forward on our appeal of the
19 experimental temporary variants scheduled for October 28.

20 And with that, thank you for your time.

21 CHAIR THOMAS: Thank you.

22 Ms. Morsi?

23 MS. MORSI: Up next is Robert Blink, M.D. with
24 Worksite Partners Medical Group.

25 CHAIR THOMAS: Mr. Blink, are you with us?

1 DR. BLINK: Good morning, yes. Bob Blink here,
2 Occupational Medicine, formerly with the (indiscernible)
3 Standards Board. Speaking from my --

4 CHAIR THOMAS: You're going to have to fix your
5 microphone. You're kind of muffled.

6 DR. BLINK: I'll try again. I'll have to sit
7 close. Can you hear me now?

8 CHAIR THOMAS: There you go. That's it.

9 DR. BLINK: Sorry, lousy mic on this thing. Let
10 me get my picture off too. Sometimes that slows it down.

11 CHAIR THOMAS: And make sure that you speak
12 slowly. Thank you.

13 DR. BLINK: Sure. And thanks to both the Board
14 and the staff for all their hard work. We all appreciate
15 that. I have comments on two issues today, one on COVID.

16 You know, I think it's worth asking how do
17 various stakeholders look at what's being proposed. The
18 employers -- this is just the burden. They're still free
19 to put in whatever actions they wish in their own
20 workplaces. So not much of a help, I think. Employees,
21 unless they're compensated for sick pay, frankly it's just
22 not going to work very well. And then the science, frankly
23 there's just a disconnect between what's being proposed and
24 whether there's actually any scientific data.

25 And COVID is still a dangerous disease,

1 especially amongst those who unfortunately have not been
2 vaccinated. So I think some level of protection is still
3 justified. But I don't know that this is it. Three words
4 though: winter is coming. And we don't know what lies
5 ahead. We're in the midst of the transition from a
6 pandemic to an endemic situation. No one knows what this
7 will hold. But there's one thing we can guarantee. Six
8 months, a year, two years from now, it will not look the
9 same as it does today. And I think that with locking in
10 these provisions for a two-year period is unwise. I really
11 strongly recommend against it. I think that we're going to
12 wish it hadn't happened, if we do.

13 I'm worried that we're fighting the last war.
14 And if we wait two years to change again, we'll be fighting
15 two or three wars ago. So, I think we need some
16 flexibility. And I would strongly recommend there be some
17 sort of escape valve in any proposal to allow expert input
18 to specific workplace situations to make adjustments for
19 the local realities.

20 For instance, looking at cubic footage simply
21 isn't supported by data. You're going to have -- the real
22 risk is airflow. And if you've got a 100-foot ceiling,
23 that just doesn't really input the same way as it does if
24 you got a 10-foot ceiling. So I think there's some real
25 concerns here. Perhaps some flexibility could be traded

1 off for sick pay provisions, which might satisfy multiple
2 sides of this argument.

3 And on fall protection, I just wanted to remind
4 those who may have been around the period from 2016 I think
5 it was, when Cal/OSHA Standards Board got sideways with the
6 federal OSHA folks saying that we have not complied with
7 their regulations and threatened to pull state OSHA's
8 ability. We were able to preserve, at that time, a
9 disagreement with the federal agency. And it's astounding
10 that here we are all these years later, still arguing over
11 this. But you know if a standard actually produces better
12 results, that is certainly a more effective standard. And
13 I think that's worth standing up for. Especially when
14 you've got both lawyer and labor participation in what
15 seems to be working better.

16 Thank you for your time.

17 CHAIR THOMAS: Thank you, appreciate it.

18 Ms. Morsi.

19 MS. MORSI: Up next is Carmen Comsti with
20 California Nurses Association.

21 CHAIR THOMAS: Carmen, can you hear us?

22 MS. COMSTI: I can hear you, yes.

23 CHAIR THOMAS: Go right ahead, slowly.

24 MS. COMSTI: Good morning, Chairman Thomas and
25 Board Members. I'm Carmen Comsti, Lead Regulatory Policy

1 Specialist with the California Nurses Association. I want
2 to speak to support the comments from Ms. Wright, Mr.
3 Steiger and Ms. Grewal at CNA. Also, to express our
4 support for the prompt issuance of a COVID-19 standard for
5 general industry, which would apply to several hundred of
6 CNA's members. And we also appreciate the staff and the
7 Standards Board's work on ensuring that a standard is
8 issued.

9 But we also want to express our disappointment
10 that the most recent draft of the Board's non-emergency
11 COVID standard does not include exclusion pay and other job
12 protections for required workplace removal. Workers who
13 are required to be removed from the workplace, because of
14 exposure or illness from COVID-19 simply deserve the pay
15 and job protections when they are removed.

16 COVID is still being transmitted and workers are
17 still at risk of occupational exposure to the serious and
18 deadly disease regardless of the administration's intent to
19 end the State of Emergency. Study after study indicates
20 that long COVID continues to pose a serious threat to
21 public health leading to neurodegeneration, cardiovascular
22 disease, diabetes and more. Data indicates that
23 reinfection poses an increased risk of long COVID. Long
24 COVID disrupts workers lives, requiring reduced work hours
25 and stopping work altogether. The only way to effectively

1 prevent long COVID is to prevent infections.

2 And so, this is why exclusion pay and the
3 protections for workers when they are removed, because of
4 exposure illness to COVID, are important. Because it
5 ensures that workers are not forced to make the impossible
6 choice of going to work while sick or staying home without
7 pay. Simply, supplemental paid sick leave is not a
8 substitute for a Cal/OSHA standard. Under California law,
9 at least one in four workers is without access to COVID-19
10 paid sick leave. These protections are currently contained
11 in the COVID ETS. And importantly, other standards
12 approved by this Standards Board, also includes these
13 protections for workers who are required to be removed from
14 work. As a result of occupational exposure to infectious
15 airborne disease.

16 As a result, we again strongly encourage the
17 Board to ask that exclusion pay is retained and added back
18 into the non-emergency standard. Workers need protection
19 on the job when they are excluded from work.

20 I also wanted to express a number of other
21 concerns about the new draft and some changes that were
22 included. We're concerned about the deletion of the record
23 keeping of close contacts and the loosening of the
24 definition of outbreak, which allows a positive case to
25 continue but relieves employers of their obligations under

1 the standard. Record keeping and effective tracking is
2 necessary to ensure we control and understand the
3 transmission of COVID. Particularly as the virus is still
4 changing, and the need to identify the spread of new
5 variants of concern is necessary to prevent future surges.

6 Additionally, we're concerned about the new
7 definition of close contact, distinguishing indoor spaces
8 of 400,000 cubic square feet, with other with other indoor
9 spaces. This distinction is arbitrary. It additionally
10 returns the arbitrary six-foot exposure cutoff in these
11 large indoor spaces. We know that COVID transmission
12 beyond six feet occurs, and physical distancing is not
13 sufficient to stop transmission.

14 Meanwhile, you know, the last thing I want to
15 emphasize is that the close contact definition has been
16 improperly tied to changing CDPH definitions. What may or
17 may not be appropriate for public health guidance should
18 not determine what is appropriate for our occupational
19 safety and health precautions. Again, we appreciate the
20 Standards Board's work on the rule and continue to
21 encourage the Board to ensure the highest protections for
22 workers is included in the non-emergency standard on COVID.
23 Thank you.

24 CHAIR THOMAS: Thank you.

25 How many more callers do we have, Ms. Morsi?

1 Just one? Okay, well we're going to take this call, and
2 then we're going to take a 10-minute break so, go right
3 ahead.

4 MS. MORSI: Up next is Cassie Hilaski with Nibbi
5 Bros.

6 CHAIR THOMAS: Cassie, can you hear us?

7 MS. HILASKI: Hi, can you hear me?

8 CHAIR THOMAS: Go right ahead.

9 MS. HILASKI: Hi, good morning. Sorry I can't be
10 there in person. I actually caught the crud going around
11 my daughter's school, which is not COVID but one of the
12 other viruses that we have to deal with on an annual basis.
13 So my comments are very simple. I just wanted to echo
14 comments shared by Helen Cleary, Michael Miiller and Rob
15 Moutrie. And also thank the Board for all their hard work.
16 Thank you very much.

17 CHAIR THOMAS: Thank you, Cassie.

18 So at this time we have no more callers, Ms.
19 Morsi?

20 MS. MORSI: No, we do not have any more callers.

21 CHAIR THOMAS: Okay, we're going to take -- I'm
22 assuming we have nobody who wants to talk that's in person
23 here? We got through all those. I just want to make sure.
24 (No audible response.) Okay, good. We're going to take a
25 10-minute break. We'll be back at 11:40 -- I'll make it

1 11:45. So we are in recess, thank you.

2 (Off the record at 11:30 a.m.)

3 (On the record at 11:45 a.m.)

4 CHAIR THOMAS: We are back in session, and we
5 have just ended the public meeting, so we are going -- and
6 I wanted to thank everybody for their testimony. The Board
7 appreciates it. The public meeting is adjourned, and the
8 record is closed. We will now continue on with the
9 business meeting.

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

16 So we have for us proposed various decisions for
17 adoption. Ms. Gonzalez, will you please brief the Board?

18 MS. GONZELZ: Good morning, Chair Thomas and
19 Board Members. Today we have proposed decisions 1 through
20 93 for your consideration and possible adoption.

21 CHAIR THOMAS: Thank you.

22 So we have -- do I have a motion to adopt 1
23 through 93?

24 BOARD MEMBER LASZCZ-DAVIS: I so move.

25 BOARD MEMBER HARRISON: Second.

1 CHAIR THOMAS: So I have a motion and second. Is
2 there anything on the question? (No audible response.)
3 Hearing none, will you please call the roll, Sarah?

4 MS. MONEY: Yes. I got Ms. Laszcz-Davis for the
5 motion. And I'm sorry, I missed who was second. Dave
6 Harrison, thank you.

7 Ms. Burgel?

8 BOARD MEMBER BURGEL: Aye.

9 MS. MONEY: Ms. Crawford?

10 BOARD MEMBER CRAWFORD: Aye.

11 MS. MONEY: Mr. Harrison?

12 BOARD MEMBER HARRISON: Aye.

13 MS. MONEY: Ms. Kennedy?

14 BOARD MEMBER KENNEDY: Aye.

15 MS. MONEY: Ms. Laszcz-Davis?

16 BOARD MEMBER LASZCZ-DAVIS: Aye.

17 MS. MONEY: Ms. Stock?

18 BOARD MEMBER STOCK: Aye.

19 MS. MONEY: Chairman Thomas?

20 CHAIR THOMAS: Aye. And the motion passes.

21 We'll now go to reports, Division Update. I
22 believe we have Mr. Berg and Mr. -- oh, (indiscernible).
23 Please give us an update and I'm sure we're going to have
24 some questions for you I'm sure, but go ahead.

25 MR. BERG: Okay, appreciate any questions.

1 On October 12, 2022 the Standards Board website
2 posted the 15-day notice of changes to the proposed first
3 aid regulation in construction and general industry.
4 Changes remained to align the Title 8 First Aid Kit
5 requirements with the anti-first aid kit list. And then,
6 we also list all the items individually. So if people just
7 want to supplement what they have already, they can do
8 that. Or if it's easier, they can find the anti-kit that's
9 listed there. And then we're accepting comments on those
10 through October 28th, so please submit your comments.

11 Next, October 13, 2022 the California Department
12 of Public Health or CDPH updated its definition of close
13 contact in its Public Health Order, which is called "Beyond
14 the Blueprint". The definition of close contact in the
15 COVID-19 temporary emergency regulation includes a
16 provision that if close contact is defined by regulation
17 order of CDPH, the CDPH definition prevails and applies.
18 As a result this new definition from CDPH replaces the
19 Title 8 definition.

20 And so in response Cal/OSHA updated its COVID-19
21 FAQs on October 13, the same day CDPH posted their changes,
22 to clarify this definition for employers, workers and
23 stakeholders. Please take a look at our FAQ for further
24 information and details. The FAQ also contains a link to
25 the CDPH order.

1 And next October 14, 2022, the day after CDPH
2 updated its close contact definition, the Standards Board
3 website also posted the 15-day notice of changes to the
4 proposed COVID-19 non-emergency regulation. The change
5 includes updating the definition of close contact to be
6 consistent with the latest CDPH definition. And we're
7 accepting comments now on that 15-day change through
8 October 31, 2022.

9 And then next we have Cal/OSHA staff has
10 completed the rulemaking package for the trichloroethylene
11 permissible exposure limit. And we'll be sending that to
12 the Standards Board staff for their review.

13 And that's my update. Thank you, and I can work
14 on your questions now.

15 CHAIR THOMAS: All right, any questions from
16 Board Members? (No audible response.)

17 I'm going to ask one first. So if you can,
18 explain the 400,000 cubic feet and how it compares with the
19 6-foot, 15-minute rule? I mean, how does that all -- I
20 don't understand how they work.

21 MR. BERG: Yeah, we were talking with the CDPH
22 scientists who determined this. It wasn't us. It was CDPH
23 scientists that did this. And then they've done modeling
24 looking at long-range aerosols and short range-aerosols,
25 are some publications that are included in the documents

1 relied upon. But they came up with that volume as
2 basically where short term or short-distance aerosols would
3 be the prevailing mode of transmission in these larger
4 spaces. So it's about -- I guess it would be about the
5 size of a Safeway or something like that. That's about
6 400,000 cubic feet roughly just to give you a rough idea.

7 CHAIR THOMAS: So in that 400,000 square feet --

8 MR. BERG: Cubic.

9 CHAIR THOMAS: Cubic feet?

10 MR. BERG: Yeah.

11 CHAIR THOMAS: What's the difference between the
12 six-foot, 15 minute rule that we're all pretty familiar
13 with and I don't understand how it relates. That just
14 seems like a huge amount of space.

15 MR. BERG: Oh, well COVID-19 is an airborne
16 transmissible disease. It can transmit very long
17 distances. Not 6 feet, not 20 feet, much longer distances.
18 But in very large spaces that seems to be less common. So
19 it's in smaller spaces that will be much more of a problem,
20 because it's an airborne transmissible disease, not a
21 droplet-borne disease or contact only disease. So it goes
22 with the airflow.

23 CHAIR THOMAS: Okay.

24 MR. BERG: So that's why the distinction.

25 BOARD MEMBER LASZCZ-DAVIS: Can I ask a question

1 just to dovetail that? Did you indicate that it was
2 mathematical modeling that arrived at those 400,000 cubic
3 feet?

4 MR. BERG: I mean, they've done mathematical
5 modeling. And I've read that study. I didn't see that
6 400,000 cubic feet in the exact study that I looked at.
7 But the person that was doing the mathematical modeling was
8 involved in determining that number.

9 BOARD MEMBER LASZCZ-DAVIS: Was there anything
10 beyond the mathematical modeling mean? I mean, was there
11 anything verifiable from a practical standpoint that that
12 mathematical modeling, in fact held true?

13 MR. BERG: Yeah, we had CDPH do a comprehensive
14 literature search on transmission distances. And so they
15 provide that to us and CDPH.

16 BOARD MEMBER LASZCZ-DAVIS: Okay, thank you.

17 CHAIR THOMAS: Any other questions, Board
18 Members?

19 BOARD MEMBER KENNEDY: I'm going to follow up. I
20 think what Chris was asking was, is there any empirical
21 evidence to support the mathematical modeling?

22 BOARD MEMBER LASZCZ-DAVIS: Thank you.

23 MR. BERG: Well, that's the -- we had CDPH do a
24 comprehensive literature search on transmission distances.

25 BOARD MEMBER KENNEDY: Right, but their

1 literature search could have looked at other mathematical
2 models. So I'm asking, do you know if there's any
3 empirical evidence? I mean, you may not know.

4 MR. BERG: Yeah, I don't know off the top of my
5 head.

6 BOARD MEMBER KENNEDY: Yeah.

7 MR. BERG: It wasn't me that came up with the
8 400,000 cubic feet. I did talk to the people that came up
9 with it. But so it's kind of secondhand for me. And I
10 don't have a scientific background that these persons do.

11 BOARD MEMBER KENNEDY: Okay.

12 BOARD MEMBER LASZCZ-DAVIS: Well, let me --

13 BOARD MEMBER BURGEL: Go ahead.

14 BOARD MEMBER LASZCZ-DAVIS: Let me go on that one
15 just a bit further.

16 CHAIR THOMAS: You're up next, Barbara, just so
17 you know.

18 BOARD MEMBER BURGEL: Thank you.

19 BOARD MEMBER LASZCZ-DAVIS: Yeah, the empirical
20 modeling, you know that's very, very -- I think it's a
21 critical component here. I mean, it seems to determine
22 practices and behaviors. So when I use the term
23 "verifiable," it's really a desire to have data that
24 verifies that that modeling or the literature research in
25 fact, plays itself out in a real life. So whether that's

1 testing, sampling, whatever, I'm uncomfortable with that
2 400,000 cubic feet as a metric we use when we've just dealt
3 with empirical -- when we've just dealt with mathematical
4 formulas and literature researchers.

5 MR. BERG: Well, I mean some of the studies in
6 literature looked specifically at demonstrations of the
7 virus and how far it traveled. In culture bowls, you know,
8 they could culture it from a certain distance away from
9 where it was being (indiscernible). So some of the studies
10 are including that, and others are just actual cases of
11 someone getting it like 180 feet from the source case, so
12 it's a mixture.

13 BOARD MEMBER LASZCZ-DAVIS: Okay, thank you,
14 Eric.

15 CHAIR THOMAS: All right, (indiscernible).

16 BOARD MEMBER STOCK: Now -- oh, go ahead.

17 CHAIR THOMAS: Yeah, you're next.

18 Barbara, you had a question?

19 BOARD MEMBER BURGEL: Yeah.

20 CHAIR THOMAS: And we'll go to Laura, and then
21 we'll go back to (indiscernible).

22 BOARD MEMBER BURGEL: Thank you, Eric. I have a
23 question regarding DOSH's discussions around exclusion pay
24 and sharing the rationale of why not include exclusion pay
25 in our non-emergency COVID standard when it is in the ATD

1 standard? I don't understand the inequities. Why would
2 health care workers versus other workers not have equal
3 access to exclusion pay? I understand that the legislature
4 is extending exclusion pay, but that again it doesn't have
5 to be duplicative. It could be again additive, similar to
6 health care workers. So I am confused as to why DOSH has
7 not reinstated exclusion pay into this version of the
8 standard.

9 MR. BERG: Okay, there's several reasons. As
10 Workers' Compensation is available for workers who contract
11 COVID-19 at work if the worker can demonstrate workplace
12 exposure to COVID-19, and are unable to work further
13 because of the illness. And then in the existing ETS
14 workers who contract COVID-19 outside the workplace are not
15 eligible for exclusion pay. And so adding an exclusion pay
16 to the standard would not solve the problem of unpaid leave
17 for many workers who are excluded under the ETS.

18 Next, Labor Code Section 246 provides some paid
19 leave to some workers. That can also be used for COVID-19
20 illness.

21 There's a new COVID-19 bivalent booster vaccine
22 that are expected to provide better protection against
23 infections, serious illness and death from the Omicron
24 variant specifically. And then for the AT standard --
25 that's correct, it is available to employees after an

1 exposure incident as defined in that regulation. So that's
2 my answer.

3 BOARD MEMBER BURGEL: Okay, thank you,

4 CHAIR THOMAS: Laura, and then we'll go to -- I
5 guess I have to go to Dave first.

6 BOARD MEMBER HARRISON: No, that's okay.

7 CHAIR THOMAS: So, Laura? We can't hear you.
8 You're muted.

9 BOARD MEMBER STOCK: Yeah, I'm unmuted now. Can
10 you hear me now? I forgot to unmute.

11 CHAIR THOMAS: Certainly.

12 BOARD MEMBER STOCK: Okay, so I have some
13 comments and questions. My comment is of course that the
14 basic principle of occupational safety and health is to
15 remove the hazard. And in COVID, the hazard is infectious
16 people. And so I'm glad to see that the proposed reg
17 continues to require exclusion, but it is now asking
18 workers to bear the burden of this policy. And as Ms.
19 Knight's, Ms. Grewal, Mr. Steiger and others have
20 testified, the vast majority of workers in California
21 cannot afford to lose at least a week of pay and risk their
22 job security, job protection, and benefits. So they will
23 of necessity remain at work, thereby infecting others.

24 To expect them to rely on Workers' Compensation
25 to address that when there is an enormous amount of

1 disincentives, which we don't have the time to go into here
2 about the difficulty people face in accessing that -- not
3 that they shouldn't try if they can -- makes no sense. And
4 as Barbara pointed out, this is not a requirement for
5 workers in other industries like health care workers. So,
6 removing job and wage protection removes the fundamental
7 pillar of this regulation. And it is just wrong to require
8 workers exposed at work to be excluded and not to
9 compensate them.

10 A couple of other things I want to say, and then
11 I do have another question. Regarding the fact that COVID
12 is over and I just wanted to note that on the day that my
13 local paper announced the Governor's statement around
14 noting the end of the date of the COVIC emergency, on that
15 very same page an article reported on the rise of a
16 troublesome new variant that is potentially predicted to
17 contribute to a winter surge. So there's a contradiction
18 there. COVID is unfortunately not over. We don't know
19 what the future can bring. But we can base it on past
20 experience, which is that winter surge is going to be
21 coming.

22 I also want to say that in response to previous
23 testimony about other states, I'm proud to be on a Board
24 like this one. We're in a state that has been committed to
25 workplace safety and willing to go further than other

1 states to ensure that workers are protected. I look
2 forward to getting guidance on options available to the
3 Board to reinstate this crucial provision protecting
4 workers' pay and benefits while ensuring that there's no
5 lapse in coverage given the coming, very likely surge.

6 I wanted to ask -- the question that I have for
7 Eric is, can you explain why there wasn't, at the very
8 minimum, a consideration to include protection to pay
9 seniority and job protection, although I don't agree with
10 the decision about removing pay. And also to say that
11 people have state-mandated sick leave, you know many
12 workers -- first of all those who have it, it's three days.
13 That is not sufficient. And as was pointed out, if they
14 use that once and get sick again that's no longer going to
15 apply.

16 But at the very minimum, I'm wondering about the
17 decision not to retain the elements around job protection
18 and seniority. So if you could explain that I'd appreciate
19 it.

20 MR. BERG: Yeah, that type of protection --

21 BOARD MEMBER STOCK: So that people could know
22 that if they had to leave work they would return to the
23 same job that they left, same seniority, etc. And that
24 that job would be guaranteed for them. Can you explain why
25 that was not included?

1 MR. BERG: Well, we're basing that on that other
2 laws that cover that type of protection per Labor Code
3 Section 246.5. "An employer cannot deny an employee the
4 right to use sick leave days, or discharge, threaten to
5 discharge, demote, suspend, or in any manner discriminate
6 against an employee for using sick days."

7 And then the California Family Rights Act allows
8 employees to take job-protected leave for any serious
9 health condition.

10 We believe it's protected under those laws. And
11 the goal of this proposal was trying to streamline and
12 simplify the ETS in this non-emergency regulation. So
13 that's part of it as well.

14 BOARD MEMBER STOCK: Well, thank you for that.
15 I'm not a lawyer, so I'll leave that to others to figure
16 out. But you mentioned specifically they can't be
17 retaliated against for using sick leave. Well, some
18 workers will not have sick leave or job-protected leave.
19 And again, without something in here that defines this as
20 job-protected leave I would question whether that applies.
21 But again, I will leave that discussion to people who are
22 lawyers, but that's why including it in the reg would
23 actually be the clearest. But I think I'm going to stop
24 there for now.

25 CHAIR THOMAS: Thank you.

1 BOARD MEMBER BURGEL: Also, just a case in point
2 with the Family Medical Leave Act you have to have a
3 certain number of hours to qualify for job protection. And
4 so if you're working part time -- I mean, I know that for
5 example my sister was put on leave for three months,
6 because she couldn't work. And they closed her business.
7 And then she didn't qualify for job protection for the
8 Family Medical Leave Act later in the year, because she
9 didn't have the requisite number of hours. Now, I don't
10 know whether our California Fair Employment law requires a
11 certain number of hours to qualify for job protection. But
12 again, as Laura mentioned that's a legal question.

13 CHAIR THOMAS: Dave, you had a question?

14 BOARD MEMBER HARRISON: Yeah. So I don't know if
15 it's a question as much as it is a comment. I guess I do
16 have a question. So first I appreciate and respect the
17 "don't shoot the messenger" idea. And I know this isn't on
18 you, Eric. You're just a messenger, so thank you for
19 delivering this.

20 But procedurally, we've got a majority of this
21 body that have asked multiple times the idea around
22 exclusion pay. And I understand how the process works.
23 But ultimately you are going to come back to us and ask us
24 to approve a rule that none of us agree with, all right?
25 And so, am I wrong in that comment, A? And then B, if we

1 do vote it down, if and when that time comes, what happens
2 next? Because of the lack of exclusion pay in the rule.

3 MR. BERG: If it's voted down, I believe that's
4 the end. There's no regulation.

5 BOARD MEMBER HARRISON: So, the entire rule goes
6 away?

7 MR. BERG: Yes.

8 BOARD MEMBER HARRISON: Because of the Division
9 or whoever's disinterest in including exclusion pay in the
10 rule?

11 MR. BERG: Yeah, that's correct.

12 BOARD MEMBER HARRISON: Okay.

13 CHAIR THOMAS: So I have a question. I want you
14 to put exclusion pay back in. That's a demand.

15 MR. BERG: Okay.

16 CHAIR THOMAS: And you can go to whoever you need
17 to go to. And I don't mean to come off as mad at you.
18 It's bullshit, sorry. This is what people need.

19 And I believe that what Laura said is probably
20 going to be true. I mean, every time we've had where it
21 lightens up, winter comes, we have a surge. Same thing
22 happens, you know, and eventually it'll be like the flu,
23 but it's not now. And we still don't have enough people
24 getting vaccinated to where it's really going to make a
25 difference. There's -- I think I saw some figures, but

1 it's ridiculous how many people aren't. But that's to
2 their own detriment. But it affects all of us because it
3 continues. It continues on. It continues to mutate and
4 become something that could be much stronger than what we
5 faced already.

6 But I think this Board has said what we want, and
7 we want exclusion pay in there to provide people with money
8 when they can't work. Because if that's not in there, and
9 we do have a coming storm and it does start to spread like
10 it has before, you're just telling people, "Go to work
11 sick." Unless they just can't, but they will go to work
12 sick. And then we will have a worse outbreak than we've
13 had before, because people relied on that before. So
14 that's my comment, is it needs to be back in there. And I
15 don't care who's telling you no. Tell them to talk to me
16 and talk to this Board.

17 MR. BERG: Okay, I'll do that.

18 BOARD MEMBER LASZCZ-DAVIS: Can I comment?

19 CHAIR THOMAS: Oh, go ahead.

20 BOARD MEMBER LASZCZ-DAVIS: Yeah, I'm not arguing
21 the need for people to be financially whole during the
22 period when they can't work. But that I will tell you
23 listening to our discussions over the last several Board
24 meetings, and the discussions wrapped around finance. I
25 mean, we've got Workers' Comp. We've got this new assembly

1 bill, which I'm not sure I understand what came out. I'm
2 not sure what that bridges or doesn't bridge. We've got
3 exclusion pay. I am unclear, and I may be the only one,
4 given all the financial mechanisms we presently have in
5 California what do each of these cover? And is there
6 anything that is uncovered by the time all of these are
7 applied? Is my question clear?

8 MR. BERG: Uh-huh, yeah.

9 BOARD MEMBER LASZCZ-DAVIS: I mean, none of this
10 makes sense to me anymore. I'm not arguing the finance,
11 but what remedies do we have for different market sectors?
12 So that as questions come up in different groups and
13 inquire about their ability to be financed, they have
14 avenues to go to that may not all come out of the same
15 bucket. And can somebody describe all this to me?

16 MR. BERG: Well, I could probably take that back.
17 But some of the sick leave laws apply to certain size
18 employers, so it's not for every employee. I forgot what
19 the threshold is. I think it's 35, but I'm not sure --
20 employees.

21 CHAIR THOMAS: So the new the new one is 26.

22 MR. BERG: Is it 26, okay.

23 CHAIR THOMAS: It's 26 or more.

24 MR. BERG: So yeah, it doesn't it doesn't protect
25 all employees. Workers' Compensation should protect all

1 employees.

2 BOARD MEMBER BURGEL: Okay, so at some point
3 though, Eric, this is Barbara. I mean, the first three
4 days of work is not reimbursed in Workers' Compensation
5 unless you're hospitalized. You do not get full pay, you
6 get two thirds. And so there are -- and a lot of low-wage
7 workers will not enter the Workers' Comp system, because of
8 fear of actual retaliation. So Workers' Comp is again not
9 a viable option for most workers unless you're hospitalized
10 or you die. Especially with COVID.

11 I mean, we did not meet tons of people with work
12 related COVID early on in the pandemic. And they did not
13 enter the Workers' Compensation system unless they had long
14 COVID or were hospitalized. So again, Workers' Comp has
15 some big gaps to it. So I'll stop now.

16 BOARD MEMBER STOCK: Yeah, and I also just want
17 to add again, why we would have a different policy --

18 CHAIR THOMAS: Can you turn your mic down a
19 little bit? You're too loud.

20 BOARD MEMBER STOCK: Okay, sorry.

21 Why would we have two rules, one for health care
22 workers and one for other workers? We have a precedent for
23 this and another regulation that was passed by this Board,
24 and every worker deserves that protection. And as we've
25 heard from numbers of people testifying today, we really

1 need to think about the disproportionate impact of this
2 decision on low-wage workers, on workers of color, who tend
3 to have fewer of these benefits. They have only,
4 potentially, state mandated sick leave, three days that
5 will run out very quickly. And as I mentioned before
6 particularly if they have multiple illnesses.

7 So these benefits are -- and even the sick leave
8 benefit that was recently reinstated, I believe it only
9 goes till the end of December. And it also only covers
10 workplaces that have 25 or more workers. That's a huge
11 number of workers who are not protected. And we have heard
12 month after month after month testimony from organizations
13 that represent low-wage workers and low-wage workers
14 themselves about the reality. We've been talking a lot
15 about the need for empirical evidence rather than reading
16 research. I agree. Empirical evidence is really
17 important. And we've had quite a bit of it at this
18 Standards Board where workers have come and testified about
19 the impact when they get sick. How they've been
20 retaliated, how have they been not sort of encouraged, you
21 know, provided with pay that they're entitled to.

22 So I think that the reality is, we have seen that
23 there are a vast majority of workers who do not have that
24 protection, and that it is an appropriate action on the
25 part of this Board. And we have other precedent to do this

1 as an occupational health intervention in order to be able
2 to remove the hazard from the workplace.

3 So I appreciate what you're saying, Dave, about
4 wanting that back in. And I look forward to seeing how
5 that can happen. I want to find a way to have that happen
6 that does not require us to vote down a reg and have no
7 coverage at all. So that is really important. We need to
8 have this reg in place, but we need to figure out a way to
9 get this reinstated.

10 BOARD MEMBER LASZCZ-DAVIS: Can I --

11 CHAIR THOMAS: Go ahead.

12 BOARD MEMBER LASZCZ-DAVIS: Back and forth, but
13 you know the one thing I will still ask for nonetheless,
14 and I'm wondering if we could have it for the next Board
15 meeting, one or two slides that very clearly define the
16 financial remedies and which market sectors and occupations
17 have privy to them. And if they have restrictions, such as
18 Barbara defined for us, I'd like to see that with some
19 clarity. And I think it's a matter of just making sure
20 that as we move forward, we are informed as we make these
21 decisions.

22 CHAIR THOMAS: Yeah, I agree. And it would be
23 nice to have everything side by side so we could really
24 look at it and determine, "what is the best?" Because I
25 think the proof will be there. You'll see what is the

1 best. One reason I think it has to be in there is that if
2 it's not in there people think there's no other way to get
3 it. And there may be other ways but if it's -- certainly,
4 I've quoted our ETS many times where it talks about
5 exclusion pay. And I said this is -- you're going to get
6 paid. This is how it works. You go to an employer, and
7 this is how it works, and it works. And that's the easiest
8 thing to see, is that it's there. You can read it. You
9 can pull it up to an employer and say, "Hey, this is this
10 is what you have to do". Because otherwise it doesn't
11 exist.

12 I mean, in our people's world we represent
13 people. You know, they don't have time. We have to do it.
14 We have to find a form and we have to -- although some are
15 -- they're very creative, and they will find it. Not
16 everybody has the wherewithal to do it. So I just think
17 that that's one of the things that's in there that will
18 make this whole standard much better. For the time being,
19 because I don't think this is -- I don't think we're
20 through this yet. I think I'd like to be through it. I'd
21 like to be through it, but I don't think we are yet.

22 Any other --

23 BOARD MEMBER CRAWFORD: This is Kate. Can I just
24 -- can I just jump in for a minute?

25 CHAIR THOMAS: Sure, go ahead, Kate.

1 BOARD MEMBER CRAWFORD: So I do want to just back
2 up the bus to say thanks to Eric, because he did -- he was
3 responsive. And he did make great efforts to include
4 comments from the stakeholders. And it's a tough job.
5 It's kind of awful, and it has continued to be awful. But
6 I appreciate your work, Eric, and I just want to go on
7 record saying that.

8 I don't actually -- it's no surprise to anyone.
9 I don't actually believe that we need a two-year standard.
10 So I do want to go back to that comment I know Andrew
11 Sommer made, and I think a couple of other folks did, about
12 an escape clause. So I would like that to be part of the
13 conversation forward.

14 And the last thing I want to say is, Chair Thomas
15 made a demand and I think that agree or disagree, we've got
16 some marching orders there. And Chris made some requests
17 for some very specific information that I think will inform
18 us quite well.

19 So I think that there's a lot of value in both of
20 those requests. One is a little stronger in its term.
21 But anyway, thank you, Eric. I will also say 400,000 cubic
22 feet is still clear as mud to me, but we did try to explain
23 it. So anyway, that's that.

24 CHAIR THOMAS: Thank you, Kate.
25 Barbara?

1 BOARD MEMBER BURGEL: I'd just like to read from
2 the ATD Standard 5199, what it says about seniority and job
3 protections and exclusion pay. It says where the physician
4 or licensed health care professional recommends
5 precautionary removal or where the local health officer
6 recommends precautionary removal, the employer shall
7 maintain until the employee is determined to be non-
8 infectious, the employee's earnings, seniority, and all
9 other employee rights and benefits. Including the
10 employee's right to his or her former job status, as if the
11 employee had not been removed from his or her job or
12 otherwise medically limited.

13 So I just wanted to say, that's the current
14 language that our health care workers and our first
15 responders have, under the ATD standard. That I think,
16 minimally, should be included in this version of the non-
17 emergency COVID standard. Thank you.

18 CHAIR THOMAS: Thank you. And I agree with that,
19 because like I said if it's not in the standard, it's not
20 there. They don't know.

21 Any other questions?

22 BOARD MEMBER LASZCZ-DAVIS: Yes.

23 CHAIR THOMAS: Go ahead.

24 BOARD MEMBER LASZCZ-DAVIS: I've got one more
25 question and I think we may be mixed as to the value of a

1 two-year standard, which is on the table. Personally, I'd
2 have to ask myself why a two-year standard, but if we're
3 looking at a timeframe to pull together a worthy, permanent
4 standard, that may just be the amount of time that's
5 required. But if we do have a two-year standard we're
6 looking at where does -- and perhaps it was answered and I
7 just didn't hear it -- where does the flexibility reside in
8 this two-year standard as CDPH and others issue guidelines
9 that may run counter to what's in the permanent standard we
10 might conceivably approve?

11 MR. BERG: A lot of the provisions say if CDPH
12 changes this order, or regulation, then it prevails over
13 what's written in the regulations, so that allows it to be
14 flexible. And other portions instruct employers to review
15 CDPH guidelines when they make their decisions on
16 implementing controls. It doesn't tell employers that they
17 have to follow those, but it instructs them to read those
18 first and then decide what controls they want to input. So
19 kind of performance requirements.

20 BOARD MEMBER LASZCZ-DAVIS: Okay, so the default
21 is the CDPH when that arises in a language?

22 MR. BERG: Yeah, and the CDPH orders are based on
23 authority in the Health and Safety Code. So those will
24 continue.

25 BOARD MEMBER LASZCZ-DAVIS: Okay, thanks, Eric.

1 CHAIR THOMAS: Thank you.

2 Any other questions? (No audible response.) All
3 right, seeing none we will move on to our Legislative
4 Update. Ms. Gonzalez, will you please brief the Board?

5 MS. GONZALEZ: Thank you, Chair Thomas. I wanted
6 to first draw your attention to AB 152, which I think Chris
7 alluded to. That bill was signed by the Governor and it
8 provides grants to small businesses, which would be under
9 that standard, 26 to 49 employees, to help cover the cost
10 of supplemental sick leave. And employers with under 26
11 employees do not have to provide supplemental sick leave.
12 So that's the chunk of employees who are covered by that.

13 And then the Governor also signed AB 1775, which
14 concerns teardown and set up of live events. As well as AB
15 2243, which requires a new look at the wildfire and the
16 heat illness standards by 2025 or the end of 2025.

17 CHAIR THOMAS: Thank you.

18 Any questions for Ms. Gonzalez?

19 BOARD MEMBER STOCK: I'm sorry, it's Laura. I
20 actually have a question. I'm sorry (indiscernible)
21 report.

22 CHAIR THOMAS: Yeah, I think it is Laura, go
23 ahead.

24 BOARD MEMBER STOCK: Yeah, I'm sorry. Just
25 before we leave the previous conversation, I just want to

1 highlight that before the end of this meeting I hope we're
2 going to have an opportunity, either now or at another
3 moment, to really understand what the next steps are
4 relative to the specific request that you made, Dave, to
5 reinsert this. So I just want to just flag that we are
6 still looking for that option or what our options are.

7 So I don't want to leave that without being sure
8 that that's understood and that there will be further
9 discussion about what options are available to us. I just
10 wanted to be sure we do that. I think there are plans in
11 place for that. Thank you.

12 CHAIR THOMAS: Yeah, Christina, why don't -- go
13 ahead, Christina.

14 MS. SHUPE: Well, we can we can address some of
15 it during the new business, which is at the end of the
16 meeting after closed session.

17 CHAIR THOMAS: So keep all your questions locked
18 and loaded for Christina. So we can get them all answered.

19 Any other questions for Ms. Gonzalez? (No
20 audible response.) Okay, seeing none, Executive Officer's
21 Report, Ms. Shupe?

22 MS. SHUPE: Thank you, Chair Thomas. Your staff
23 have been busy so, I have a number of updates for the
24 Board.

25 Under rulemaking obviously, staff have been

1 working with the Division on the COVID-19 proposal,
2 providing editing services, and moving that through the
3 process.

4 We've also -- the rulemaking proposal to update
5 the permissible exposure limit for workplace exposure to
6 lead has completed our initial review and has been
7 submitted for secretary action request approval.

8 For the indoor heat proposal the Division has,
9 we're wrapping up our review now. We expect that that will
10 be submitted for secretary action request by in time for
11 the November meeting. So I'll provide an update in
12 November on that.

13 David Kernazitskas, one of your senior safety
14 engineers and myself, both participated in a public
15 outreach presentation to the PRR Group and a number of
16 their member companies on the operations of the Board and
17 how to participate.

18 We have had an advisory committee meeting on
19 walking-working surfaces. This is a federally mandated
20 proposal that Maryrose Chan, our engineer, has been working
21 on. She held a two-day advisory committee meeting over
22 October 13th and 14th. This is a massive undertaking that
23 will touch just about every single piece of general
24 industry. And so she's taking it topic by topic. The next
25 meeting topic is likely to be addressed in the first

1 quarter of 2023.

2 And for our firefighter personal protective
3 equipment regulation, this Board approved to do the first
4 version -- voted to approve the first version in April.
5 We've already begun work on the next update, which will
6 tackle the next round of NFPA standards. That advisory
7 committee meeting is scheduled for November 15th, 2022. So
8 right before the next Board meeting.

9 And I believe Eric mentioned that the 15-day
10 public notice for changes to First Aid are out. Those
11 public comments are due October 28th. And the 15-day
12 notice for the COVID-19 prevention non-emergency comments,
13 those are due on October 31st.

14 CHAIR THOMAS: Any questions for Christina? (No
15 audible response.) All right, then we'll move on to new
16 business.

17 MS. SHUPE: We have to go to closed session.

18 CHAIR THOMAS: Oh, I thought (indiscernible) that
19 way in mind. But should we go to closed session? All
20 right, so we're going to go into closed session and we're
21 going to recess for -- what do you think? How long?

22 MS. SHUPE: I think we're going to need at least
23 30 minutes.

24 CHAIR THOMAS: Okay, so we'll be back at 1:00
25 o'clock, a little over 30 minutes. So we're in recess and

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1 we will see you back at 1:00 o'clock. Thanks.

2 (Off the record at 12:23 p.m.)

3 (On the record at 1:21 p.m.)

4 CHAIR THOMAS: Thank you, we are back in session.
5 It looks like we've lost a few people here. I have nothing
6 to report that came out of closed session. But we are
7 going to go back and revisit new business. And that's
8 where we actually left off.

9 And I would like to direct Mr. Berg and his
10 people to put back in to this ETS, exclusion pay, as we've
11 talked about. And we feel that that's -- the Board feels
12 that that's a very important component of this.

13 We also would like a somewhat more specified
14 definition of "close contact." What that means instead of
15 what we have, because I don't think anybody grasps exactly
16 how that works, 400,000 cubic feet is just a different
17 thing than we have been dealing with. And we feel -- or I
18 feel like that just takes close contact out of it. But it
19 doesn't compute. It does not make sense. And I'm sure if
20 it doesn't make sense to me I'm sure there's hundreds of
21 thousands of people it doesn't make sense to.

22 So and I'm opening up to the Board if you have
23 any other any other directions or directives for the
24 Division.

25 BOARD MEMBER BURGEL: Thank you, Dave. I just

1 wanted to add that we not just look at exclusion pay, but
2 we include job protections, broadly.

3 CHAIR THOMAS: Thank you.

4 Anybody, any other -- anything else?

5 BOARD MEMBER CRAWFORD: I'd like the escape
6 clause.

7 CHAIR THOMAS: We didn't -- we didn't hear you.

8 BOARD MEMBER CRAWFORD: I'd like the escape
9 clause that has been talked about, so that we're in
10 alignment.

11 CHAIR THOMAS: An escape clause, is that what I
12 heard?

13 BOARD MEMBER CRAWFORD: Yes.

14 CHAIR THOMAS: Okay, thank you. And I think that
15 is -- unless anybody else has another comment. (No audible
16 response.)

17 All right. So, moving on. And I -- just to the
18 Division, we're not asking. We're just telling you put
19 those in. And I'll leave it at that.

20 The next Standards Board regular meeting is
21 scheduled for November 17, 2022 in Santa Clara and via
22 teleconference and video conference. Please visit our
23 website and join our mailing list to receive the latest
24 updates.

25 Thank you for your attendance today. There being

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1 no further business to attend to this meeting is now
2 adjourned, and thank you very much. We'll see you next
3 month.

4 (The Business Meeting adjourned at 1:24 p.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of December, 2022.



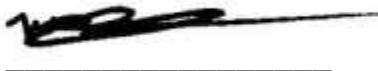
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of December, 2022.



Myra Severtson
Certified Transcriber
AAERT No. CET**D-852