STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

COVID-19 PREVENTION SUBCOMMITTEE MEETING

In the Matter of:)
)
September 9, 2021 OSH)
COVID-19 Prevention)
Subcommittee Meeting)
_____________________)

TELECONFERENCE

PLEASE NOTE: In accordance with Executive Order N-29-20 and Executive Order N-33-20, the Subcommittee Meeting will be conducted via teleconference

THURSDAY, SEPTEMBER 9, 2021

10:00 A.M.

Reported by:
E. Hicks

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APPEARANCES

SUBCOMMITTEE MEMBERS:

Chris Laszcz-Davis, Subcommittee Chair and Management Representative on the Board
Nola Kennedy, Public Member on the Board and Liaison for the Subcommittee to the Division
Laura Stock, Occupational Safety Representative on the Board

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer
Michael Manieri, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
Sarah Money, Executive Assistant
Jennifer Bailey, Sr. Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager
Amalia Neidhardt, Senior Safety Engineer

TKO STAFF:

Brian Monroe
John Roensch
Maya Morsi
Rey Ursery

ALSO PRESENT:

Eric Berg, Deputy Chief of Health, Cal/OSHA
Debra Lee, Deputy Chief of Field Enforcement, Cal/OSHA

PUBLIC COMMENT:

Kevin Bland, Ogletree Deakins
Bethany Miner, Small Business Owner
Scott Bourdon, California State University
Rob Moutrie, California Chamber of Commerce

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

2 SEPTEMBER 9, 2021 10:02 a.m.

3 CHAIR LASZCZ-DAVIS: Good morning. This subcommittee meeting of the
4 Occupational Safety and Health Standards Board is now called to order. I am Chris
5 Laszcz-Davis, Subcommittee Chair and Management Representative on the Board, and
6 the other Board Members present today for this subcommittee are Ms. Nola Kennedy,
7 Public Member on the Board and liaison to the subcommittee to the Division; Ms. Laura
8 Stock, Occupational Safety Representative on the Board.

9 Also present from our staff for today's meeting are Ms. Christina Shupe,
10 Executive Officer; Mr. Michael Manieri, Principal Safety Engineer; Ms. Autumn Gonzalez,
11 Legal Counsel; Ms. Sarah Money, Executive Assistant; and Ms. Jennifer Bailey, Senior
12 Safety Engineer who is providing technical support.

13 Supporting the meeting remotely are Ms. Lara Paskins, Staff Services
14 Manager. And Ms. Amalia Neidhardt, Senior Safety Engineer, who is providing support
15 to Ms. Kennedy and providing translation services for our commenters who are native
16 Spanish speakers.

17 Via teleconference we are joined today by Mr. Eric Berg, Deputy Chief of
18 Health, and Debra Lee, Deputy Chief of Field Enforcement representing Cal/OSHA.

19 Today's agenda and other materials related to today's proceedings are
20 posted on the OSHSB website, go to oshsb@dir.ca.gov.

21 In accordance with Executive Orders N-29-20 and N-33-20, today's
22 subcommittee meeting is being conducted via teleconference, with an optional video
23 component.

24 This meeting is also being live broadcast via video and audio stream in
25 both English and Spanish. Links to these non-interactive live broadcasts can be accessed

1 via the “what’s new” section at the top of the main page of the OSHSB website.

2 We have limited capabilities for managing participation during the public

3 comment period, so we’re asking everyone who is not speaking to place their phones on

4 mute and wait to unmute until they are called to speak. Those who are unable to do so

5 will be removed from the meeting to avoid disrupting the proceedings.

6 As reflected on the agenda today’s meeting consists of two parts. First,

7 we will hold a business meeting for the subcommittee to conduct its business. During

8 the business meeting there will be an opportunity for the subcommittee to receive

9 public comments. These comments are to be confined to the revised COVID-19

10 Emergency Temporary Standard, or ETS, recently adopted by the Board.

11 Please be aware that the committee is capping the public comment

12 period to 30 minutes. And each speaker during the public comment period will be given

13 two minutes to address the committee.

14 You are also invited to submit your comments in writing to the

15 committee at oshsb@dir.ca.gov. Please be sure to specify that your written comments

16 are for the COVID-19 Prevention ETS Subcommittee so that they are directed

17 accordingly by the Board staff.

18 During the public comment period please listen for your name and an

19 invitation to speak before addressing the committee. And please remember to mute

20 your phone or computer after commenting.

21 OSHSB staff can be contacted by email at oshsb@dir.ca.gov or via phone

22 at 916-274-5721 to be placed in the comment queue. If you are experiencing a busy

23 signal or are routed to voicemail, please hang up and call again.

24 After the business meeting's concluded we will conduct the second part

25 of our meeting, which consists of subcommittee consideration and deliberation.

1 For our commenters who are native Spanish speakers we are working
2 with Ms. Amalia Neidhardt to provide a translation of their statements into English for
3 the committee. At this time Ms. Neidhardt will provide instructions to the Spanish-
4 speaking commenters so they are aware of the public comment process for today's
5 meeting. Amalia?
6 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH] Public Comment
7 Instructions.
8 "Good morning and thank you for participating in today's Occupational
9 Safety and Health Standards Board COVID-19 Prevention Subcommittee Meeting. Board
10 Members present are Ms. Chris Laszcz-Davis, Subcommittee Chair and Management
11 Representative on the Board; Ms. Nola Kennedy, Public Member on the Board and
12 liaison to the Division for this subcommittee; and Ms. Laura Stock, Occupational Safety
13 Representative on the Board.
14 "As reflected on the agenda, today's meeting consists of two parts. First,
15 we will hold a business meeting for the subcommittee to conduct its business. During
16 the business meeting, there will be an opportunity for the subcommittee to receive
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12 both English and Spanish. Links to these non-interactive live broadcasts can be accessed
13 via the "what's new" section at the top of the main page of the OSHSB website.
14 "Please listen for your name to be called for comment. When it is your
15 turn to address the committee, please be sure to unmute yourself if you're using WebEx
16 or dial *6 on your phone to unmute yourself if you're using the teleconference line.
17 Please be sure to speak slowly and clearly when addressing the committee and please
18 remember to mute your phone or computer after commenting. If you have not
19 provided a written statement, please allow natural breaks after every two sentences, so
20 that we may follow each statement with an English translation."
21 CHAIR LASZCZ-DAVIS: Thank you, Amalia.
22 With that we move into the business meeting of the meeting today, the
23 Subcommittee Liaison Briefing. Ms. Kennedy, will you please brief the subcommittee?
24 MS. SHUPE: Ms. Laszcz-Davis and Ms. Kennedy, if I might, for a
25 moment? I just want to acknowledge for the record that we have two Board Members

1 who are attending who are not part of the subcommittee, Kathleen Crawford and Dave
2 Harrison. They are observing only and will not be participating in today's meeting.
3 Thank you.
4 CHAIR LASZCZ-DAVIS: Yeah, thank you for that, Christina.
5 Okay, Nola.
6 BOARD MEMBER KENNEDY: All right, I've met with representatives from
7 the Board staff and Cal/OSHA representatives twice since our last meeting, primarily to
8 discuss what we would be presenting at this meeting. And I'll take some questions now
9 if anybody on the call has them or any of the subcommittee members have them, but if
10 not -- well I'll pause now in case anybody has any questions. And of course questions
11 can be asked later also.
12 With that said also I believe that Miss Amalia Neidhardt will be
13 presenting on one of the topics we're interested in, which is a continuation of her
14 discussion of what other states are doing. And today she will be focusing on exposure
15 assessment risk, exposure assessment-based models for dealing with COVID.
16 And with that said I will turn it over to --
17 BOARD MEMBER STOCK: So Nola --
18 BOARD MEMBER KENNEDY: Yes?
19 BOARD MEMBER STOCK: Nola, I was just going to say since you asked,
20 and I guess the only questions is to get --if there's any more information to share about
21 what you've been discussing in those meetings with the Division and the Board staff.
22 BOARD MEMBER KENNEDY: Mostly because we leave the subcommittee
23 meetings with -- you know, people suggest topics for discussion. And then we've sort of
24 been focusing on where to move forward from now, what a regulation might look like,
25 meaning for the readoption. And the question that was brought up at the last

1 subcommittee meeting about advantages and disadvantages of different types or
2 different regulatory options. So that's mostly what we've been discussing.
3 And I don't know if this is an appropriate time, Christina, please stop me
4 if it's not. But we've also talked about the advisory committee process and I believe we
5 have settled. In fact, I'm just going to go ahead and say I would like to request that we
6 cancel our September 23rd subcommittee meeting, because that is a date that
7 Cal/OSHA has identified as being viable for an advisory committee meeting. And so I
8 don't know if this is the right time to consider that or not, someone can step in and let
9 me know. But that was the date that they proposed. And I think to allow full
10 participation it would be good if we could cancel our meeting that day.
11 CHAIR LASZCZ-DAVIS: And I think those are the plans, Nola.
12 BOARD MEMBER KENNEDY: Okay.
13 CHAIR LASZCZ-DAVIS: In fact I would have made the statement at the
14 very end had you not had an opportunity to do that now, so we're all good. We're all
15 good.
16 BOARD MEMBER STOCK: And, Nola, relative to the conversations that
17 you've been having in your time it sounds like we will today we're going to hear a little
18 bit more substance of the nature of that in terms of various regulatory options and
19 things like that, right? The content of that conversation will be discussed during our
20 meeting today?
21 BOARD MEMBER KENNEDY: Correct. I believe so. I believe it is on the
22 agenda.
23 CHAIR LASZCZ-DAVIS: Yes, it is. Yeah, we'll cover it, Laura.
24 BOARD MEMBER STOCK: Okay, thank you.
25 CHAIR LASZCZ-DAVIS: With that, why don't I turn this over to Amalia to

1 make your presentation on risk assessment-based models?

2 MS. NEIDHARDT: Good morning, everyone. And, Rey, if I can –- oh,

3 thank you very much. You're ahead of me. So let's get started because there is a lot of

4 information. And I want to make sure that you're aware I am condensing this

5 information, so please stop me if you have any questions or if you feel like I have missed

6 something. But let's go to the next slide. Let's get started right away.

7 Okay so the goal of this presentation is to highlight the different risk

8 assessments or approaches used by a few of the trailblazing states that I have been

9 reviewing with you guys in the past and review the common factors and tools used by

10 these states.

11 I will also share my observations of the benefits and weaknesses of some

12 of these approaches. And I will present to you a matrix with a summary of the vaccine

13 and mask mandates across the United States. But first, let me review the risk

14 assessment models listed by CDC and OSHA. Next slide.

15 Given the new information available about the Delta variant, the CDC has

16 released a lot of interim guidance and new information. So the first one that I want to

17 bring to your attention is the importance of regularly assessing the need for prevention

18 strategies. On their July 27th interim guidance for fully vaccinated people CDC

19 upgraded their recommendations to emphasize the importance of wearing masks while

20 indoors even if fully vaccinated in areas of substantial or high levels of community

21 transmission. CDC calls out the particular situations that schools are in, given that

22 children under the age of 12 are currently not eligible for vaccination.

23 So yes, vaccination is a critical preventive measure, however it is

24 important to use multiple mitigation strategies. And CDC reminds us that there are

25 effective strategies beyond vaccination. And this includes using masks consistently and

1 correctly, maximizing ventilation whether it's dilution or filtration, maintaining physical
2 distance and avoiding crowds, and also staying home when sick.
3 Previously, CDC had recommended that businesses and employers
4 conduct a risk assessment and take into account workplace factors like determining
5 whether full physical distancing was possible, the amounts of time that employees spent
6 interacting with the public, and whether employees live in congregate housing, etcetera.
7 So a part of the risk factors are reminding people that these are some of the things that
8 you want to take into consideration when you do your risk assessment. Next slide.
9 So I want to reiterate what CDC is stating, right? First thing on the
10 observations that I see is that no one strategy is sufficient to prevent transmission.
11 Multiple interventions should be used concurrently to reduce transmission, meaning
12 don't stop at vaccination, but continue with the masking and then all the other ones
13 that I listed before.
14 Additional prevention strategies should be used to safeguard populations
15 at highest risk for severe outcomes from COVID-19. And these populations will be again
16 the unvaccinated, immunocompromised, or the people that are spending longer time
17 with the public where their vaccinations status is unknown.
18 Prevention strategies should only be relaxed or lifted after several weeks
19 of continuous sustained improvement in the levels of community transmission. And I
20 will talk a little bit more in the next slides. Strategies might be removed one at a time
21 while monitoring closely for any evidence that COVID cases are increasing. Next slide,
22 please.
23 You might recall at the previous presentation, I mentioned this chart that
24 CDC released in their July 27th updated information on the Delta variant and on fully
25 vaccinated people. But also they released an MMWR, which the reference is listed at

1 the bottom, on July 30th, right? So what CDC is recommending is that we look into
2 what would you call these particular items to determine whether or not we should lift
3 one or more of the prevention strategies that have been implemented. So they have
4 community spread, health system capacity, vaccination coverage, early detection of
5 COVID-19 increases and then populations at risk. So let's take a look at the first one,
6 community spread. Next slide, please.
7 So CDC looks at two numbers when they are looking at community
8 spread. And that is the total of new cases and the percent of positivity. And that chart
9 is on your right. Total number of new cases refers to a county's rate of new COVID
10 infections reported over the past seven days per every 100,000 residents. To calculate
11 this number CDC divides the total number of new infections by the total population in
12 that county. Then CDC multiplies this number by a 100,000.
13 Now the percent positivity test refers to the percentage of positive SARS
14 CoV-2 tests in a county over the past 7 days. This number is based on reports from
15 states on a specific type of test known as a nucleic acid amplification test.
16 A high number of total new cases and a higher positivity corresponds
17 with a higher level of community transmission. If the values of each of these two
18 metrics differ, for example if one indicates moderate and the other no, then the higher
19 number of the two should be used to make decisions about, for instance, masks used in
20 a county.
21 So you will see on the left the most recent COVID data that I saw posted
22 on the CDC website called CDC COVID Data Tracker is most of the United States, it's
23 either at the high or substantial community-spread level.
24 So again, what CDC reiterates about this particulate metric is that
25 prevention strategies should only be relaxed or lifted after several weeks of continuous,

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1 sustained improvement in the level of community transmission. And later on you will
2 hear me say or mention that Virginia, the State of Virginia for instance, has adopted this
3 into their permanent regulation. Next slide, please.
4 Health system capacity, this can signal when an urgent implementation of
5 layered prevention strategies might be needed. Strains on the critical care system can
6 increase COVID-19 mortality, so of course we are aware of that part, but I wanted to
7 reiterate that. Monitoring the available number of intensive care unit beds and
8 developing thresholds could help identify a trigger for the community-wide application
9 of layered prevention strategy.
10 And on your right I wanted to point out a letter released on August 16th,
11 2021, by CDPH that is a Public Health Officer Order. And it's note what I have on my red
12 little -- you probably can't read it, but the red square –- that says, "Hospitalizations have
13 increased over 700 percent in the past two months and are projected to continue to
14 increase," so that would be another metric or another thing that we could monitor and
15 use as a trigger to determine whether you should lift restrictions or tighten them. Next
16 slide, please.
17 Vaccination, vaccination rates, this information is available on the CDC
18 website. I want to mention something that in the past back in June when I had
19 presented to you guys about some of those states, initially the states were mentioning
20 70 percent of the population as a trigger or as a metric to be able to say well it's time to
21 lift up masking. That is no longer the case. That used to be prior to the Delta variant. I
22 haven't seen the 70 percent mention anymore or vaccination rate.
23 On the contrary, you will hear me mention the state of Washington just
24 released additional mandates and that's with a vaccination rate of 70 percent. But
25 monitoring vaccination coverage in the communities and organizations is recommended

1 to gauge progress, right? We can also focus vaccination efforts on populations whose
2 coverage is low and inform the need for additional prevention strategies.
3 I have mentioned before that CDC recommends that employers establish
4 supportive policies, such as allowing workers to receive vaccines during work hours or to
5 take paid leave to get vaccinated at a community site as well as offering flexible non-
6 punitive sick leave options for employees. Next slide, please.
7 Testing, as I had mentioned initially they were talking about positivity
8 tests, but first let me mention on your right you will see a slide that is posted on CDPH
9 website.
10 And then on the left is like what the CDC is mentioning in their July 30th
11 MMWR. "Consider monitoring COVID-19 incidence in the following populations due to
12 their high risk of exposure: schools, health care facilities, and workers in high-density
13 work sites. Low detection rates can help demonstrate the effectiveness of current
14 prevention strategies." And, "Rising detection rates can serve as an early warning signal
15 that prevention strategies need to be strengthened or added in the facility and the
16 broader community." Next slide, please.
17 And the fifth element that CDC had mentioned on their July 27th as well
18 July 30th updates is to look at the percentage of population that is at risk for severe
19 outcomes of COVID-19. And these include not only the unvaccinated people, but
20 anyone that is an advanced age or that are pregnant or individuals with a well-defined
21 set of underlying medical conditions. Also to consider the members of or the
22 percentage of people that are of a certain race or ethnic minority groups are more
23 susceptible to severe illness, immunocompromised individuals.
24 And I quickly want to remind you what the update on July 27th mentions,
25 that now even fully-vaccinated persons should wear a mask in public indoor settings in

1 areas of substantial or high transmission. Particularly if they or someone in the
2 household is immunocompromised or at increased risk of severe disease, so this illness.
3 Next slide.
4 So that was about CDC. Now let's quickly review about OSHA. So again
5 I'm extracting a lot of information and I have mentioned information from OSHA before.
6 But here to reiterate what employers are being recommended in the OSHA's August
7 13th guidance to adopt infection prevention control strategies based on a real
8 workplace assessment. And I will mention some of the items that they are
9 recommending once they do the assessment, but the guide is very specific. They are
10 asking employers, they are guiding employers to look at different factors as well.
11 It's important to remain alert and to be informed about the changing
12 outbreak conditions, including community spread of the virus and testing availability.
13 And then consult OSHA's guidance on mitigating and preventing the spread of COVID-19
14 in the workplace. Next slide please.
15 So after an employer conducts the workplace assessment OSHA
16 recommends 11 prevention strategies. But you will see on your life that I have only
17 extracted 8, and this is because I don't want to overload you even more information.
18 The first one, to facilitate employees getting vaccinated, so give priority
19 to vaccination.
20 Second, instruct workers that are sick to stay home even if they're fully
21 vaccinated. They have symptoms, stay home.
22 Implement physical distancing. And this is on their August 13th guide.
23 Provide workers with face coverings or surgical masks.
24 Educate and train workers.
25 Maintain the ventilation systems.

1 Perform routine cleaning and disinfection. Yes, they still mention this.
2 And then also the record-keeping and reporting of COVID illnesses or
3 deaths.
4 Now I also want to remind you, and this is something I had mentioned at
5 my previous meeting but I want to reiterate it one more time, that August 13 guide from
6 Fed OSHA has a particular or a specific appendix on additional steps that should be
7 taken for workplaces with a higher risk. And this includes like manufacturing, meat and
8 processing, high-volume retail or grocery, transit, seafood processing, correctional
9 facilities, detention centers and we have the list goes on for a few more.
10 Again, these additional steps they are asking that you implement
11 additional steps if you're in a situation where your workers are more likely to be in close
12 contact. And that's again assembly lines, that's why I mentioned some of them. Or
13 prolonged closeness to co-workers or the public for that matter, right? That could be 6
14 to 12 hours per shift like warehouses. Consider higher workplaces in any area that is
15 poorly ventilated or facilities where you have frequent contact with individuals in
16 community settings, again because their vaccination status may be unknown. Next
17 slide, please.
18 BOARD MEMBER STOCK: Amalia?
19 MS. NEIDHARDT: Yes?
20 BOARD MEMBER STOCK: Can I ask you a question about this slide? I'm
21 sorry.
22 MS. NEIDHARDT: Yes, please.
23 BOARD MEMBER STOCK: This higher risk exposure, is that confined to
24 designated industries or any workplace that meets these four criteria?
25 MS. NEIDHARDT: Excellent question, Laura. Any workplace that meets

1 one of these criteria and then Fed OSHA provides some recommendations. But it
2 specifically says that their recommendations, for instance, the processing line is not
3 limited to those facilities.
4 BOARD MEMBER STOCK: Okay, thank you.
5 MS. NEIDHARDT: Thank you. So next slide, thank you.
6 So that was the background that I wanted to present, again is reiterating
7 some of the information that I have presented before. And now I'm going to give you
8 the updates and what I see that these states are implementing.
9 First Washington, so in my previous meeting the first thing I wanted to
10 point out that you have heard me mention the proclamation that Governor Inslee
11 released was 20-25. Well now you have Proclamation 20-25.15. And the reason being is
12 that this new proclamation -- I just noticed that over the weekend –- was issued and it
13 spells it out, because of the July 27th CDC update. And because all of the counties in
14 Washington state meet the criteria or CDC criteria for high and substantial transmission.
15 And they also are, when they're working with their Secretary of Health, they're trying to
16 help stem the increases in COVID-19 cases in hospitalizations in many parts of their
17 state.
18 Now I wanted to stress not all the states have the same power with at
19 least their governors, but in this particular case through this proclamation there's many
20 mandates that I want to bring to your attention. The first one is it lists the factors that
21 includes the COVID-19 transmission. The more that people and groups interact, the
22 longer those interactions last, the closer the contact, the denser the occupancy, and the
23 lack and use of face coverings.
24 So in the previous proclamation they had said all individuals, not just
25 workers, all individuals had to wear face coverings in indoor settings. Well, now you will

1 see -- next slide please -- I want to point this out, because I found it very, very
2 interesting.
3 Through that mandate, that Proclamation 20-25.15, the Governor is
4 mandating that all businesses and employers prohibit anyone without a mask from
5 being in their premises. So my take is that they didn't feel it was enough, sufficiently
6 clear before, but they want everyone to be wearing a face covering indoors. So now this
7 new proclamation says that businesses and employers must prohibit anyone without a
8 mask from being in their premises if they're not wearing a mask, again, indoors
9 It also mandates that all businesses comply with all rules, conditions, and
10 interpretive guidance issued by the Department of Labor of Industries. So without a
11 regulation this proclamation is the source of authority to compel employers to follow
12 the guidance of the Washington DOSH.
13 And this particular guidance that you see on your right, it has
14 requirements for employers and public spaces as well as requirements for employers
15 that are not in public. I mean, they do not have -- the have non-public spaces. But the
16 ones for employers that are in public spaces, they are required to do a workplace
17 assessment.
18 In addition to that I want to remind you of what the previous
19 proclamation was, and it’s reiterated in this proclamation, is the mandate to be
20 vaccinated with no opt-out option for all state workers, health care workers, and school
21 staff, teachers and school staff.
22 In addition to that they're mentioning the Secretary of Health's order,
23 which is related to face coverings. So it's not just vaccinations and face coverings,
24 basically is what I'm trying to say. They have this mandate that is compelling these
25 businesses to comply with not only the rules that Washington DOSH has, but

1 interpretive guidance as well. That is supposed to be posted on their website. Next
2 slide, please. Thank you.
3 So again, although Washington DOSH doesn’t have a regulation, in this
4 particular case they are using the Governor's proclamation as a law. And it’s specifically
5 spelled out that that proclamation can be extended, amended or rescinded by the
6 Governor. And then it calls employers to comply with the Secretary of Health orders as
7 well as rules, conditions, and interpretive guidance issued by the Department of Labor
8 and Industries.
9 And what’s interesting is this means to me, is that they're going to have
10 to be updating these proclamations if the CDC guidance were to change, for instance.
11 This is in regards to Washington. Thank you, next slide.
12 Now there's a lot of information on this slide, bear with me, but if you
13 recall Oregon has a permanent regulation. And so they are using a layer approach
14 similar to what CDC and OSHA is recommending. Oregon is also, as part of the
15 regulation, has a layer approach.
16 The first thing I have mentioned to you guys -- I wanted to reiterate back
17 in a previous meeting -- was they used to require in the permanent regulation, physical
18 distancing. That's no longer required. But they still have, and they have updated or put
19 it back into effect, masking requirements for indoor spaces. They did a temporary
20 amendment that got adopted on August 13th and this is a temporary amendment to
21 their permanent regulation.
22 Although cleaning and sanitation is no longer required they do require
23 that employers provide employees with supplies and the reasonable time necessary to
24 clean.
25 They have posted requirements with regards to masking.

1 And require that you conduct a routine ventilation maintenance and
2 evaluation. The Oregon website has forms that employers can use to ensure that they
3 are doing the routine ventilation and maintenance evaluation at their work sites.
4 And it requires that employers conduct a COVID-19 exposure risk
5 assessment. It also requires that they get a participation and feedback from employees.
6 They have to stablish and implement an infection control plan. And this
7 is based on the risks identified in their assessments.
8 It requires employee information and training.
9 And it requires a COVID-19 notification process as well as testing and
10 medical removal of anyone with symptoms.
11 So I put at that, again aside from masks and vaccinations what else, is
12 because I want to reiterate this is not just masking. This is not just vaccination. What
13 else is that they are encouraging employers through their assessments and through
14 infection control; that they looked at different prevention strategies beyond those ones,
15 masks and vaccination.
16 And they have Appendix A-8, masking requirements at schools. Again in
17 their permanent standard, Oregon OSHA, I'm going to use the word “re-implemented,”
18 because they have redrawn that particular appendix. But on August 13th they got
19 together again, their board, and they adopted again Appendix A-8 which is specific
20 about schools. And whether you’re public or private they have masking requirements.
21 And then in addition, this is the permanent regulation for Oregon. I
22 wanted to remind you that their Governor, they have mandatory vaccinations now.
23 They follow the same lead as Washington. They follow Washington’s lead. They have
24 now mandatory vaccinations for healthcare workers, educators and school staff, and the
25 executive branch workers. And in this case “mandatory” is there's no test-out option.

1 Either they are vaccinated or they could lose their job if they're not. Thank you. Next
2 slide right, please.
3 So the tools used to modify these legal mandates, so Oregon OSHA has
4 adopted temporary amendments. But anytime they want to implement or advise new
5 CDC guidelines they have to get again together, have their meetings, and then adopt
6 temporary or amendments to their permanent rule. So yes they have a permanent
7 regulation, but they need to adopt amendments if CDC, for instance, guidance were to
8 change.
9 And then also Oregon OSHA can repeal all or parts of the permanent rule.
10 In their own regulations there's a text right there that spells out you can either rescind
11 the entire regulation. They can repeal it, or parts of it, or they can amend it. And then
12 that's if circumstances were to change, Oregon OSHA will consult with the Oregon
13 Health Authority and stakeholders.
14 And the second item is that spelled out in their regulation also it says that
15 they will consider indicators such as infection rates, including the spread of COVID-19
16 variants, the test positivity rates, and the vaccination rates. As well as other indicators
17 like the severity such as hospitalizations and fatalities.
18 So Oregon OSHA has the authority to enforce the rules adopted by other
19 state agencies. And this is what I wanted to bring to your attention. In their permanent
20 regulation, Oregon OSHA has a subsection 654.025(3)(a). And that means, so let's say
21 the regulation doesn't change, but the Oregon Health Authority releases a new rule.
22 Oregon OSHA could enforce it, because of that subsection that they have in their
23 permanent regulation.
24 So for instance, that Oregon Health order 333-019-1030, which is the
25 vaccination requirements for schools, can be enforced by Oregon OSHA even though it

1 is not just spelled out like that in the regulation.

2 And they also can enforce or mandate through the Governor's executive

3 orders for what they call, "Governor's Announcements."

4 CHAIR LASZCZ-DAVIS: Hey, Amalia, might I ask a real quick question?

5 MS. NEIDHARDT: Yes, absolutely.

6 CHAIR LASZCZ-DAVIS: Is there any example of a Governor's Executive

7 Order announcement being made in Oregon? I know it's allowed, but has it actually

8 been employed, do you know?

9 MS. NEIDHARDT: I know that's what they released at the vaccination

10 some -- Rey can I go to the slide, the previous slide, please? Sorry.

11 So what I put in there, the mandatory vaccinations, that was through the

12 Governor's Order.

13 CHAIR LASZCZ-DAVIS: Okay. Thank you.

14 MS. NEIDHARDT: So, yes. So it's not spelled out in the regulation, but

15 the Governor followed the lead of Washington and they did exactly the same. All

16 executive branch workers have to be now vaccinated or they could lose their job.

17 CHAIR LASZCZ-DAVIS: All right, thank you.

18 MS. NEIDHARDT: Does that answer your question Chris? Absolutely.

19 CHAIR LASZCZ-DAVIS: It does, thanks.

20 MS. NEIDHARDT: Okay. Next slide please, Rey. Thank you. So now let's

21 go to the next slide, Virginia.

22 So Virginia is the one that I found is up ahead of the curve of all states.

23 And because I have mentioned to you they already have a permanent regulation. And

24 back in August, I think it was August 5th they had proposed amendments to the

25 permanent regulation. Well they had their seven-day comment period. And on August

1 26th the VOSH, what it's called, right instead of DOSH, Virginia OSHA. They had their
2 meeting with their Safety and Health Code Board and they adopted these regulations
3 that they had proposed.
4 So what these adoptions mean is that they have proposed to bring in the
5 recommendations from CDC with regards to community transmission. So I let the
6 (indiscernible) -- they will require that employers check the CDC's county-level
7 community transmission map and determine whether fully-vaccinated workers will have
8 to wear masks.
9 And they also use in their regulations a layered approach. It's of course
10 they center on what they call vaccination that's a priority, but they still require other
11 prevention strategies. And some of the other prevention strategies that I had
12 mentioned in the previous meeting, but I will reiterate to you, is for instance even if you
13 are fully vaccinated but you are in a vehicle because of work and you're sharing that
14 vehicle with other employees you will be required to have face coverings.
15 Also all fully vaccinated workers will be required to use masks indoors if
16 they are in a substantial or high community-level transmissions, so what you see on the
17 right. So they don't even have to mention the low or the moderate, they are just saying
18 in the regulation if you are in the substantial or high, even if fully vaccinated, they are
19 requiring face coverings.
20 One of the other things that I saw, again Virginia similar to Federal OSHA,
21 it's very interesting to me. They are adopting the CDC recommendations, but also the
22 Federal OSHA. So that appendix that we saw an earlier mention, that I mentioned
23 earlier, that you will see that Virginia in their permanent regulation they have a
24 particular section carved out for work places with higher risk. And again, they copied
25 the exact list that they have. And it says -- uses the same words –- "not limited to but

1 including," right? And those are the processing lines, manufacturing lines, transit,
2 seafood processing, correctional facilities. They are using that and they require
3 additional steps.
4 And what those additional steps are were the ones that I have
5 mentioned: engineering controls through ventilation, for instance; administrative
6 controls, see if they can stagger shifts; making sure that workers who are sick and
7 exhibiting symptoms, even if fully vaccinated that they don't come to work. And then
8 they have PPE for the people that are not vaccinated, but they are in substantial -- even
9 if they're not in substantial or high, people that are not vaccinated can request PPE
10 based on the OSHA regulations that we are aware of. Okay, and so --
11 BOARD MEMBER STOCK: Amalia?
12 MS. NEIDHARDT: Yes, go ahead.
13 BOARD MEMBER STOCK: I had a few questions before you leave this
14 slide, but you were still going to (indiscernible) here.
15 MS. NEIDHARDT: Thanks, no go ahead.
16 BOARD MEMBER STOCK: Okay, so I'm really interested in this risk basis
17 approach. And I have a couple of questions in Virginia.
18 MS. NEIDHARDT: Yes.
19 BOARD MEMBER STOCK: So, and I don't know if this is relevant to any
20 other states that are using a risk-based approach, but how do they account for ups and
21 downs? Some of the more layered prevention strategies, for example, I don't know
22 exact specifically what they were but if there are barriers or physical distancing or
23 changes in scheduling and some of the things that you're alluding to, is there a sort of a
24 timeframe? I think I saw somewhere that it's -- I'm just wondering how they account for
25 the ups and downs in those rates?

1 MS. NEIDHARDT: You know, that's a very good question, Laura.
2 Because this is the thing similar to what we are doing in Cal/OSHA that we post the
3 comments and then post responses to that. Virginia had a particular comment where a
4 commenter is basically saying that, "Look, how will we know if there's going to be ups
5 and downs? Because then we have to turn around and tell our workforce you have to
6 wear face coverings."
7 But remember the CDC is seven days, right? That's the information that
8 you will have whether substantial or high, is it's based on a seven-day period. And what
9 CDC recommends if you have several weeks of continuous improvement then they can
10 review that. But I found that interesting that it directs employers to look up CDC's
11 website to look at that particular county where they are in, and to look at the
12 community transmission at that particular county.
13 For instance, the commenter was saying, "Well we think that the Virginia
14 Department of Health should list that information." And their response is, "There's no
15 need because CDC has this information of community-level transmission for every single
16 county in the entire state. And it's based on a seven-day average." Does that answer
17 your question?
18 BOARD MEMBER STOCK: Yeah. And another question is, I mean,
19 obviously I can imagine that there might be sort of a certain sense of best practice or it
20 would be easier to leave in place for employers who don't want to keep going up and
21 down. They can leave some of those things in place, I imagine. But I'm also wondering
22 in these states that have a risk-based approach and add layering on if they are in higher-
23 risk situations, can you describe what the core requirements are?
24 If I'm going to understand what you said before correctly it seems like
25 every employer, regardless of that risk base has certain core requirements, for example,

1 to do an assessment, etcetera. Is there anything more you can say about what those
2 core requirements are for every employer?
3 MS. NEIDHARDT: So first of the core requirements, what I had
4 mentioned, the training, the risk assessment, their plans, that's what's common. But
5 the other thing that I found interesting is going back, I think it helps answer your
6 question too, is the fact that they were saying you know what? An employer can always
7 go above and beyond what is minimally required.
8 BOARD MEMBER STOCK: Right.
9 MS. NEIDHARDT: And in going back to that response, to that commenter,
10 what they were saying is that an employer can basically say at this worksite we mandate
11 that everyone wears face coverings regardless of vaccination status, and period. You
12 don't have to be looking every single week to see whether or not it's substantial or high.
13 So that's another thing.
14 And then the promotion of vaccination, in the case of vaccination they do
15 not mandate it. They just recommend that they have policies in place similar to what
16 other states have to encourage vaccination, to encourage employees if they are sick not
17 to come, which is the other one, if you are sick don't come. Remove anybody that is sick
18 even if you are fully vaccinated from the worksite.
19 So that's that, and their reporting they also have the requirement that
20 when you have two or more in the outbreak that they have to be reported. And they
21 have a link where you have to report it to the Virginia Department of Health. Hopefully
22 that answers your question?
23 BOARD MEMBER STOCK: It does. And then just to kind of emphasize, I
24 want to be sure I understand it. And I think you've said this several times, but I think it'll
25 be useful for our thinking, is that they have a list of high-risk industries, but it is included

1 but not limited to those. That in fact, if I'm understanding correctly their approach is
2 that they identify things that make you high risk: crowding, etcetera. And any industry
3 that demonstrates that kind of risk would be covered or considered high-risk. They
4 don't have to be on that list of specific, predesignated industries. That's how I
5 understood what you said.
6 MS. NEIDHARDT: Correct. Correct, so if I have to simplify it I can say
7 Virginia has basic requirements for all employers, the ones I mentioned. Then they have
8 the requirements for health care, which I haven't mentioned to you guys at all, because
9 we have the Aerosol Transmissible Disease, right? And then the third category is what
10 we are mentioning, the higher risk.
11 And those additional steps are based on what we are more familiar with:
12 engineering controls, administrative controls, and PPE. So hopefully that answers your
13 question.
14 BOARD MEMBER STOCK: Thank you.
15 MS. NEIDHARDT: Yes.
16 BOARD MEMBER STOCK: It does, thank you very much.
17 MS. NEIDHARDT: Thank you, yeah.
18 Okay, can I have the next slide? Now this is a tool that I wanted to bring
19 to your attention. And this is something that Virginia is very proud of. So in the event
20 CDC guidelines were to change they have -- oh no, no, prior to that. Let me reverse this
21 slide.
22 So what happens next, the next step on the final permanent standards,
23 excuse me, the amendments that they just adopted on August 26th is that entire
24 package gets sent to the Governor. And so the Governor has 31 days to review it. If the
25 Governor doesn't have the opportunity to review this package within 31 days it

1 becomes automatically law. But if the Governor were to review it and request
2 additional changes then the Board has to meet and review whether or not they are
3 going to adopt recommendations by the Governor.
4 But what I found interesting is that before in the final permanent
5 standard they didn't have effective dates. Now they list in some areas September 8th is
6 the effective date, so I just wanted to alert you to that. So again they are letting all of
7 their stakeholders know that in their regulation the amendment has now been adopted,
8 those versions that we are talking about, but the Governor still have to review it. Next
9 slide, right. Thank you.
10 And this is the part that I found very interesting, I got ahead of myself
11 because I was really excited. Virginia is very proud about this particular subsection in
12 their regulation. And they call it 16VAC25-220-10.E. And what they are saying is that
13 this compels an employer -- so let's say the CDC guidelines changes, so an employer
14 could follow those particular CDC guidelines. And by that I mean not only what CDC
15 mandates, but if CDC makes a recommendation that employer will have to comply with,
16 even though it's just a recommendation will have to comply with that recommendation.
17 And then they will be exempt for the particular parts of the law. So I wanted to bring
18 this to your attention, because they are very proud of it.
19 They do not incorporate the CDC guidelines into their standard. Rather,
20 what they are doing is they are using through this subsection you know what, we don't
21 have to do what Oregon or any other state is doing. If CDC changes we don't have to
22 meet again and vote on that. Instead we can say to that employer, as long as you follow
23 CDC guidelines, and by that all mandates, all recommendations. If they comply with
24 them then they will be in compliance. They will not be issued a citation.
25 The caveat here is that if they were to be inspected before they issue a

1 citation the Board will have to, or VOSH, will have to talk or have a meeting with a
2 State Health Commissioner, because they will have to get advice and technical aid
3 before they can determine again whether or not that employer should be issued a
4 citation. But I just had to bring it to your attention, because this is what Virginia is like
5 saying. And then I put on your right, what is in yellow this is exactly what they
6 highlighted. To their commenters that they are saying, you have a very inflexible
7 regulation. They actually say, "Through this subsection, we are ensuring the permanent
8 regulation has flexibility." Hopefully that makes sense. I just wanted to bring this to
9 your attention.
10 CHAIR LASZCZ-DAVIS: So Amalia –-
11 MS. NEIDHARDT: Yes?
12 CHAIR LASZCZ-DAVIS: So basically I think what you're saying is that this
13 feature about following the CDC releasing of new guidelines supersedes to some extent
14 the permanent standard and enables the fluidity that I think everybody craves.
15 MS. NEIDHARDT: Correct.
16 CHAIR LASZCZ-DAVIS: All right.
17 MS. NEIDHARDT: And they are very careful in saying, "We did not
18 incorporate the CDC," by reference, right? Instead they have spelled out this particular
19 subsection.
20 CHAIR LASZCZ-DAVIS: All right.
21 BOARD MEMBER STOCK: I'm sorry, Amalia, I'm just trying to wrap my
22 head around what you're saying.
23 MS. NEIDHARDT: Yes.
24 BOARD MEMBER STOCK: So what I'm confused about, and is it says if
25 CDC updates their guidelines then that is what goes into play. Could you describe what

1 you said, it therefore exempts? If people follow this CDC guideline it exempts them
2 from the rest of the regulation even if there are aspects of the regulation that are not
3 covered, (indiscernible) timeline?
4 MS. NEIDHARDT: Yes, a good question, Laura. So basically it's a choice,
5 right? The employer can come –- let's says the CDC guideline changes, however it
6 changes, up or more loose or more restrictive, right? The employer can continue to
7 comply with the regulations or they have the option to follow the CDC guidelines. But
8 they have to adopt it even if it says it's a recommendation, it's not a mandate. Does
9 that make sense?
10 BOARD MEMBER STOCK: Yes, so that means that let's just take the case
11 where the CDC loosens requirements. The employer would then have an option to say,
12 "I'm complying with the CDC guidelines instead of the stricter guidelines with the
13 Virginia regulation." And they would have that option.
14 MS. NEIDHARDT: Correct. And I think that's why it mentions if that were
15 to be the case then before they issue a citation that the Virginia OSHA or VOSH, they call
16 themselves VOSH, will have to seek the advice of the State Health Commissioner. So it
17 won't be by themselves making that determination. Does that make sense?
18 BOARD MEMBER STOCK: Yeah.
19 MS. NEIDHARDT: They will consult with their State Health Commissioner.
20 So it's kind of like saying, "We have a third party that will be also extra eyes on that."
21 Hopefully that answers your question.
22 BOARD MEMBER STOCK: Right. So even if the CDC says -- so let's say the
23 Virginia regulation has many elements to it, if the CDC issues new guidelines even if they
24 are unrelated to some of the elements of the Virginia regulation, if an employer chooses
25 to go with the CDC guidelines they do not need to be following any of the elements of

1 the Virginia regulation? Because that's their choice, "I'm complying with this one and
2 not that one."
3 MS. NEIDHARDT: That's my understanding. But again one thing that is
4 spelled out in the responses that VOSH has put together is they said they will have to
5 comply with everything. They can't just choose and pick. So if CDC has guidelines, for
6 instance it says we still recommend vaccination. We still recommend that fully
7 vaccinated people wear masks. But the employer chooses to ignore that because they
8 are saying CDC doesn't mandate it, then they wouldn't be in compliance. Hopefully that
9 answers your questions, that example. Yeah, did I answer your question?
10 BOARD MEMBER STOCK: Yeah, yes. Thank you.
11 MS. NEIDHARDT: Okay. Okay, perfect.
12 Next slide, Rey please, thank you.
13 So this leads me to the benefits and weaknesses on those approaches. If
14 you look at these trailblazing states the benefits, for instance, of Washington is you have
15 a Governor that has the authority to issue these proclamations that carry the weight of
16 law.
17 For instance, the most recent proclamation was the one that I
18 mentioned, 25.15. It basically requires that employers comply with everything, not just
19 the rule, not just the standards, but even guidance released by Washington DOSH which
20 I found very interesting. Because in the guidelines you have basically the requirement,
21 but now it's a law, right? You have to comply with it to conduct a risk assessment.
22 In the case of Oregon they have a permanent standard, that's their
23 benefit. But then they have this particular subsection of the permanent standard, that
24 654.025(a)(3) that allows them to enforce any other rule. So let's say if their health
25 department comes out with a rule that is not spelled out in their regulation, they can

1 enforce it. And it has to be a state agency. I confirmed with them and they said,
2 “Amalia if there's any other state agency they will have to comply, for instance, based
3 on this subsection.”
4 Virginia, that regulation that I spent time on, that particular subsection, if
5 the CDC guidance changes employers can comply with CDC. But it tells you provided
6 that the CDC recommendation -- oh I'm sorry, Laura, I think this is something I missed.
7 So I'm (indiscernible) --
8 BOARD MEMBER STOCK: Yeah, that seems different from what you said.
9 Yeah.
10 MS. NEIDHARDT: You're right, you’re right. That's my mistake, my
11 apologies. So here --
12 BOARD MEMBER STOCK: Oh, no problem. Thank you.
13 MS. NEIDHARDT: Yeah, the CDC recommendation, provided that it is
14 equivalent or provides greater protection, that's the standard. And then the recent
15 proposed amendments have been submitted to the Governor. It could go in effect on
16 September 8th.
17 The weaknesses of course that, for instance, in the case of Washington
18 you have proclamations that will have to be constantly updated, amended or re-
19 released or they could be rescinded. Currently at this time they don't have a temporary
20 or permanent standard.
21 In the case of Oregon if there are changes, for instance CDC changes, they
22 will have to hold an advisory meeting in both of those amendments. And then that's if
23 they change it, right.
24 And then in the case of Virginia the weakness that I saw for that
25 subsection -- that again they look at the CDC guidelines -- if it changes they still need to

1 consult with a State Health Commissioner for advice and technical aid. So even though
2 they have a CDC guideline that would be providing greater or equivalent protection they
3 still have to consult with a State Health Commissioner.

4 Hopefully that explains what I observed as weaknesses and strengths on
5 their different approaches. Any questions on that, if not -- yeah?

6 CHAIR LASZCZ-DAVIS: Amalia, just a real quick question. Again, I mean
7 the work you've done is incredible, but I do have a question. So the benefits and
8 weaknesses lays out process. What about impact? I mean they've all got different
9 approaches, some more similar than others. But so what happens in terms of how it
10 plays itself out in each of the states? Is there any sense of that whatsoever? I know we
11 didn't ask you to do that, but is there any sense as to whether it's working or not
12 working, if the case rates are going down or hospitalizations are tracking the process?

13 MS. NEIDHARDT: Yes, that's a good question, Chris. And yes, although I
14 wasn't asked about it I can tell you, for instance, in Virginia they use that. The fact that
15 all counties, similar to Washington, all counties in Virginia are right now in the
16 substantial high-level. Right now Virginia has seen also an increase in hospitalizations,
17 so they are using that as justification to adopt these amendments.

18 And in the case of Washington that's why their Governor spells out that
19 he has this new proclamation that I'm mentioning to you, because the same as for
20 Virginia, all counties right now in the entire state are in the substantial or high
21 community-spread level, one. And two, they are also seeing the number of
22 hospitalizations going up.

23 So even though I didn't specifically look at it, by the way that they're
24 mentioning it to be, as of right now at this moment I think that will be ineffective by the
25 Delta variant. That's why they're making these changes.

1 CHAIR LASZCZ-DAVIS: All right thank you.

2 MS. NEIDHARDT: And so next slide, Rey, please.

3 And then here I know it's in very small font, but I want to right away
4 mention two things. First, my goal was to try to look at all the different states, looking
5 at the vaccine mandates or mask requirements. So I had to do my second one, which is
6 rather than call every single state what I did is I found in the website different articles
7 that already had done that study for us.

8 So the first ones that you see is like the federal government. I just saw an
9 email today about that they are going to start enforcing vaccinations as well, and for
10 some federal employees and some subcontractors. So that might change.

11 But with regards to states on vaccination mandates here the ones that
12 have them, it varies. If you have at the lead Washington and Oregon that mandate
13 vaccinations, they do not let anybody test out, for state employees, health care, and
14 schools. But then you have other states in between that have vaccine mandates like
15 California and Colorado where they do allow you to test out or they do the weekly
16 testing if you're not vaccinated.

17 And then you have somebody with like New Jersey, for instance, that
18 only has vaccine mandates, but for health care. So I still listed them as they have some
19 type of vaccine mandates, but it varies. They are not all the same. Versus the states
20 that either they actually came out with a law that says no one will be allowed to do a
21 vaccine mandate on their state all the way to they basically do not have a vaccine
22 mandate.

23 Now with regards to masks the same thing you have, for instance,
24 Washington and Oregon that are at the forefront because they require masks for
25 anyone that is indoors. In particular is Washington, it says at the moment that you are

1 with someone from outside your household, indoors you need to wear a mask. And I
2 found it interesting that proclamation that now, pardon me, it forces employers and
3 businesses to not allow anybody that is in their premises without a mask if they are
4 indoors.
5 All the way to other states that say we have requirements for high and
6 substantial or for particular facilities or particular sites like transportation, correctional,
7 healthcare, where they have to wear masks. So I just wanted to have my caveat shall
8 we say, disclaimer.
9 Compared to the very, very right column these are states that have no
10 mask mandates, nothing that I could find. Hopefully that answers your question.
11 So again they might not have a state plan. There might be a plan that is
12 following Fed OSHA. But they could still have through their governor or their health
13 authority mandates that were issued on vaccinations or masks. Basically that's the
14 bottom line, what I wanted to bring to your attention. Okay next slide. And I know I'm
15 taking very long, but this is the summary.
16 Again, I want to reiterate all these states are using multiple prevention
17 approaches, right? They don't focus just on vaccinations or just on masks, they use
18 multiple, a layer approach basically. And they are focusing their prevention strategies
19 on the worker populations that are most at risk: the unvaccinated, not fully vaccinated,
20 persons of higher risk, or yes even if fully vaccinated, but in areas of substantial or high-
21 risk transmission.
22 They are prioritizing indoor settings.
23 They are establishing supportive policies to encourage vaccination. Well,
24 Washington has mandates.
25 And then they are mandating additional prevention strategies for

1 workplaces with higher risk.

2 But I also wanted to mention they are adopting CDC and their OSHA's

3 latest recommendation, especially the OSHA August 13th guide or the CDC July 27th or

4 July 30th into their mandates.

5 They have the common factors, encouraging in vaccinations.

6 And then some states have the power to mandate this to an executive

7 order. They do not need occupational regulation.

8 And that's it. Any questions? That's a lot of information I know.

9 CHAIR LASZCZ-DAVIS: That's a lot of information, it was excellent.

10 BOARD MEMBER STOCK: Really, really helpful. Thank you so much.

11 MS. NEIDHARDT: Thank you, thank you.

12 MS. SHUPE: So at this time I'd like to request, I'm sorry, we're having

13 some technical issues here at the office. Amalia, fantastic presentation and I hate to

14 interrupt, but this would be an excellent time for us to take a little bit of time to

15 consider the presentation. So if we could break for just ten minutes?

16 CHAIR LASZCZ-DAVIS: That works. All right, we'll see you back in ten.

17 MS. SHUPE: Thank you.

18 (Off the Record at 11:08 a.m.)

19 (On the Record at 11:21 a.m.)

20 CHAIR LASZCZ-DAVIS: Thank you very much for that. We're just coming

21 off of a ten-minute break. Amalia Neidhardt had made a presentation right before we

22 broke. And really what would I need to ask is are there any additional questions for

23 Amalia?

24 MR. MANIERI: Excuse me, Chris, it's Mike Manieri. Just a brief note, a

25 reminder moving forward through the meeting this morning if the speakers would just

1 pace themselves a little bit slower for the benefit of the translation folks that are

2 working to record all of this. It would be most helpful.

3 CHAIR LASZCZ-DAVIS: Thank you for that, Mike.

4 MR. MANIERI: Thank you, uh-huh.

5 MR. MANIERI: Well if there are no additional questions for Amalia don't

6 we move over to the Division Report? Mr. Berg, could you please provide the

7 subcommittee on the regulatory options for COVID-19 prevention?

8 MR. BERG: Okay, thank you very much, Chris. So you gave us several

9 different questions to look at and answer, so I will just go through them all. And feel

10 free to stop me if you have any questions on what I'm saying.

11 UNKNOWN SPEAKER: Okay, the first –-

12 MR. BERG: Sorry?

13 CHAIR LASZCZ-DAVIS: No, go ahead, Eric.

14 MR. BERG: Okay, thanks. So the first was how is Cal/OSHA using the data

15 and input from the subcommittee process to help compose changes to the ETS?

16 Okay, Cal/OSHA is using information input from the subcommittee and

17 stakeholders in the development of new language and changes to existing language for

18 updating the COVID-19 Emergency Temporary Standard, or as we refer to it commonly,

19 the ETS. So Cal/OSHA's goal is to make the ETS as flexible as possible without the need

20 for future changes. As soon as draft language is ready Cal/OSHA will post on its website

21 this draft language that we're working on.

22 And then we plan to hold an advisory committee on September 23rd, as

23 you mentioned earlier, to get input from stakeholders on what changes should be made

24 to this draft. So that's the first question.

25 Next was what Appeals Board decisions are there on COVID-19? And

1 Cal/OSHA is not aware of any Appeals Board decisions on COVID-19 cases.

2 Okay, next you asked about a tiered system for the Emergency

3 Temporary Standard, or the ETS. And Amalia spoke a lot about this in her presentation

4 on what some other states are doing.

5 So for California a tiered system for COVID-19 protections have been

6 suggested, and could include different requirements based on transmission rates

7 provided by CDC or CDPH, the California Department of Public Health; different

8 requirements depending on the risk of exposure based on the industry type like in

9 Virginia; different requirements depending on specific events in the workplace, such as

10 outbreaks and major outbreaks, which we have now. And a combination or

11 combination of all these factors could also be used. Some potential advantages of –-

12 BOARD MEMBER STOCK: Excuse me, Eric? Eric?

13 MR. BERG: Yeah?

14 BOARD MEMBER STOCK: Can I just jump in with one comment?

15 MR. BERG: Sure.

16 BOARD MEMBER STOCK: Based on those different tiered models and

17 specifically the one where you say different based on industry type. So I just want -- I'm

18 hoping that as you develop this draft you will kind of consider what we heard from

19 Amalia that the risk-based assessment seems to be that OSHA and others have listed

20 certain industries, but it doesn't preclude, it doesn't only apply to those industries. It

21 also applies to other industries where some of those risk factors are present. So I just

22 wanted to highlight that seems like a very important distinction. I'm hoping that that

23 can be integrated into the thinking as you develop this new language rather than a fixed

24 group of predetermined industries.

25 MR. BERG: Okay, and thank you. I'll make a note of that where these

1 similar conditions exist in other industries.

2 BOARD MEMBER STOCK: Yeah, that seems to be the models that we

3 have heard have been in Virginia and others, according to Amalia's presentation.

4 MR. BERG: Okay, not necessarily a stringent, just applies to this one

5 specific SIC code. It would be --

6 BOARD MEMBER STOCK: Exactly.

7 MR. BERG: Okay, I understand. Okay

8 BOARD MEMBER STOCK: It seems, but not limited to those in some

9 language I heard her say.

10 MR. BERG: Okay. Thank you. I made a note of that. Thank you for that.

11 Okay I'll continue.

12 Potential advantages to a tiered system, it can be more tailored. I guess

13 the requirements can be more tailored to local circumstances. And it can be risk-based

14 and have potentially lower costs.

15 Some potential disadvantages of using a tiered system, it's more complex

16 and complicated to follow for employers. On-again/off-again rules can create

17 compliance fatigue or resentment. The tiered system is reminiscent of the system the

18 state had implemented, but retired back in June. It might not reflect risks or hazards in

19 individual workplaces. And it's unclear, which basic universal precautions should be

20 eliminated based on tiers given that COVID-19 is endemic. And some indicators used in

21 the tiered system can significantly lag behind risk, so the indicators don't change to well

22 after the risks in the workplace that presented themselves such as hospitalization rates

23 and Workers' Compensation claims.

24 And then you also asked about certain alternatives for our COVID rule.

25 And so there is different alternatives, which I will speak about that you asked about.

1 First was letting the ETS expire and working on a broad general industry
2 infectious disease standard. So a general industry infectious disease standard would
3 take probably a minimum of two to three years to develop and begin rulemaking. This
4 would leave workers with no protections specific to either COVID-19 or other infectious
5 disease for an extended period of time.
6 Notably, the Appeals Board has stated in public meetings that it has yet
7 to determine whether employers are obligated to treat COVID-19 as a workplace hazard
8 for purposes of the IIPP. So the scope of DOSH's ability to conduct enforcement under
9 the IIPP is not yet settled law, okay.
10 And then the other alternative was let the ETS expire and go with the IIPP
11 and IIPP editions to rulemaking. Okay and my answer is as I just noted a minute ago, the
12 Appeals Board has not stated in public means it has yet to determine whether
13 employers are obligated to treat COVID-19 as workplace hazards for purposes of the
14 IIPP. So the scope of DOSH's ability to conduct enforcement in the IIPP is not yet settled
15 law.
16 Even if the Appeals Board accepts Cal/OSHA's position that the IIPP
17 requires employers to treat COVID-19 as an occupational hazard there are several
18 important COVID-19 protective measures for which it is particularly unclear whether the
19 Appeals Board will allow enforcement under the IIPP, including the degree to which
20 employers may be required under the IIPP to implement specified ventilation controls.
21 And that would include filtration in the ventilation.
22 Certain COVID-19 testing requirements, finding out who is infected
23 before they are able to infect others is a key component to reducing the spread of
24 COVID-19. A large portion of transmission occurs before or without symptoms.
25 In addition, exclusion of exposed and infected persons for a specific

1 number days while they are infectious may put other workers in danger. The ETS
2 provides clear direction consistent with CDPH and CDC recommendations and it's not
3 clear this could be done under the IIPP.
4 Exclusion pay for infected and exposed persons, so employees are not
5 incentivized to hide their condition.
6 Provision of respirators for voluntary use of unvaccinated employees,
7 respirators are much more effective in stopping transmission of COVID-19 than face
8 coverings
9 Seeking out and tracking specified information regarding all COVID-19
10 cases at the workplace to determine who may have been exposed. Although some
11 information must be recorded under existing regulations the ETS includes particulars
12 like the date of onset of symptoms and the date of testing.
13 Special provisions for containing the COVID-19 outbreaks and major
14 outbreaks, to minimize the impact on other workers and their families.
15 And specific requirements for employer-provided housing, it is unknown
16 how the Appeals Board would treat housing under the IIPP. Especially since housing
17 poses different transmission risks than other workplaces, within workplaces.
18 It is also important to stress that what is enforceable and not enforceable
19 in looking at COVID's – Cal/OSHA's enforcement activities is a small part of the impact of
20 the ETS. Most employers comply or substantially comply with the ETS. If they stop,
21 their workers will be less protected.
22 In considering the structure of a potential permanent standard Cal/OSHA
23 will consider a model that is more performance-based and flexible in some areas.
24 These could be more closely modeled than the IIPP requirements or they
25 could explicitly incorporate COVID-19 as an occupational hazard into existing IIPP

1 requirements. So that was on the IIPP.

2 The next alternative was making changes to the ETS and making it

3 permanent. So a permanent version of the ETS specific to COVID-19 would be the most

4 protective approach for the following reasons. To be tailored to the specific hazards of

5 COVID-19 and how it may be transmitted in the workplace. It identifies specific

6 measures that must be taken to fight the spread of the infectious disease. It provides

7 certainty on what employers are required to do and what employee protections are

8 necessary. It provides clarity in the face of multiple and sometimes conflicting

9 guidelines from the multitude of agencies, associations and organizations. It provides

10 critical protections to employees that cannot be provided through general, nonspecific

11 regulations.

12 A COVID-19 specific regulation could be given additional flexibility

13 through incorporation of health department orders that would evolve and change with

14 the changing conditions and new variants. A COVID-19 specific regulation could sunset

15 certain protections when they are no longer needed.

16 So that is all I have on my part. And I don't know if you want to ask

17 questions now? We also have Debra Lee, the Deputy Chief of Field Enforcement, who is

18 going to present some enforcement information and statistics. How would you like to

19 proceed?

20 CHAIR LASZCZ-DAVIS: Yes, well if you wouldn't mind I am wondering if

21 we can have just a few questions at this point before you move on?

22 MR. BERG: Okay.

23 CHAIR LASZCZ-DAVIS: In terms of the various options that you presented

24 Eric, I mean, when I think about the concept of the ETS moving to a secondary adoption

25 and then a likely permanent standard, I think one of the things that we hear more

1 frequently than not is that it doesn't have the –- the standard as it's presently crafted
2 does not have the fluidity it needs as new guidance comes out.
3 How would you address that? It's not perceived as flexible and fluid.
4 MR. BERG: Well, one of the ideas is to incorporate health department
5 orders. So like right now it says face coverings are required whenever CDPH, the
6 Department of Public Health, requires them. So if they can change their requirements
7 quickly and our regulation automatically follows that conditions change. When they
8 change their requirements the ETS automatically changes. And we could add additional
9 flexibility by adding in local health departments.
10 And this is just for masking. So if we wanted to -- beyond masking it
11 could reference these requirements from local health departments and the state health
12 department for other protective measures as well. So that's how it could be made more
13 flexible, just incorporating these health department regulations -- not regulations, they
14 have I guess requirements, they're not regulations -- that can be incorporated. So that's
15 how it could be made flexible.
16 CHAIR LASZCZ-DAVIS: And thank you for that, but let me make sure I
17 understand better. Are you suggesting that okay we end up with a permanent ETS
18 standard or a permanent standard. And guidance continues to come out, whether it's
19 local public health departments or the state health department. Are you suggesting
20 that that guidance would supersede what exists within the ETS if the ETS is too
21 conservative?
22 MR. BERG: I mean the ETS would probably be the floor, the minimum
23 requirements. And just like the Virginia standard says a it only allows them to adopt
24 CDC if CDC is more protective. So they don't allow for use if CDC guidelines that are less
25 protective. So I think the ETS, it would be the minimum base requirements as a floor.

1 And then as health departments respond to outbreaks and new variants and have
2 additional requirements, like many health departments right now require universal
3 masking regardless of vaccination where the ETS has not. They're more stringent than
4 the ETS. And those could be incorporated.
5 CHAIR LASZCZ-DAVIS: Okay. Yeah, thank you for that, Eric.
6 Any other questions at this point, none? With no further questions why
7 don't we move over to Debra Lee, who will brief the subcommittee on Cal/OSHA's
8 COVID-19 enforcement data. Debra?
9 MS. LEE: Good morning and thank you for this opportunity and thank
10 you for the invite. My presentation here today that I plan on presenting will be brief. It
11 will be an overview of the Cal/OSHA enforcement branch activities regarding to COVID.
12 I will be covering from January 2020 up to September 8th of 2021.
13 I'll start off with information on complaints that we have received, and
14 then move in to fatality reports that we've received and illnesses and injuries all related
15 to COVID. And then I'll move into our inspections, COVID inspections, and end with the
16 COVID violation inspections. So if I can have the next slide, please.
17 So this slide here we're going to be starting with the COVID complaints.
18 And as you can see we broke this information down for you into quarters. And so we're
19 starting with the first quarter being January 1 to the end of March of 2020. And as you
20 look across the chart here you will see that in 2020 the COVID complaints were
21 constantly increasing.
22 And as you move into 2021 you'll see that it started to take a dip, it
23 started to drop. But unfortunately as a state we are starting to see more complaints of
24 COVID in the workplace as you look into July up to September, so that's not completed
25 yet. It's gone up to only September 7th. If we move to the next slide?

1 So this slide here is dealing with the fatalities that has been reported to
2 us. And if you take a look here I kept the COVID in the orange color, so you can take a
3 look at from quarter to quarter what's happening. And once again here unfortunately
4 we are starting to see an increase in the reports of fatalities related to COVID. And I will
5 just make a note here that this is the fatalities that have been reported in. I'm not
6 saying that all of them are indeed work-related. And if we can move to the next slide?
7 This slide here now is dealing with the serious injuries and accidents that
8 have been reported in to the Division. And once again here is broken down into
9 quarters and once again we're looking in the orange when we look at the COVID injuries
10 that have been reported, illnesses have been reported. And once again as you can see
11 we are starting to have another increase here in the month of July, going through to
12 September. And if I can have the next slide?
13 So here I want to move into as I stated into COVID-19 related inspections.
14 And so on the first slide we're going to take a look at the pre-ETS standard. And so here
15 we're looking at from February up to November of 2020. And we've conducted over
16 1,475 COVID-related inspections. Of that 1,475 300 and –- I've got my slides going back
17 there, I think that's 365 right there?
18 CHAIR LASZCZ-DAVIS: It is.
19 MS. LEE: Thank you, I think that helps. So 365 are related to ATD COVID-
20 related inspections and that are covered by our ATD standards. And there we're looking
21 at hospitals, correction centers, things like jails, related to the police department,
22 paramedic services related to the fire department, so we carved that out.
23 And when you look over to September 8th of 2021 we still have out of
24 that group about 23 cases that are still pending, still under investigation. And about 17
25 that are pending that are ATD inspections.

1 So when we move over to the other, to the right side dealing with ETS
2 and looking from December, because the ETS standard took effect November 30th. So
3 we're looking at December 1 to September 8th of 2021 we have issued about -- we have
4 opened, I'm sorry, inspection-wise about 845 and about 240 of those are related to ATD
5 inspections.
6 And so when we look at how many of those cases are still pending or are
7 under investigation looking at the total inspections of COVID-related, we have about
8 100 -- and I should have really made those numbers a lot bigger. 100 and oh my gosh, I
9 need bigger slides, I'm so sorry. Let's make sure I'm giving you the right number here,
10 yeah 192. And then for the ATD we're looking at 62. If I can move to the next slide,
11 please?
12 And here what we wanted to do was to look at the standard, so when we
13 look at the pre-ETS we're looking at where we were citing on section 3203 of the title 8,
14 and 5141 and 5144 violations. And so during the time prior to pre-ETS we issued about
15 250, no 285 citations related to COVID under 3203, 5141 and 5144.
16 And as you can see when it came around to December of 2020 up to --
17 I'm sorry, December 2020 up to September of 2021 you see that the number of 3203s,
18 then 5141, 5144s started to drop. And that's because we had the ETS standard. And so
19 from the orange in the back you can see when the ETS standard passed you see the
20 increase of citations falling under the ETS.
21 And you can see in February you see the opposite, where we're no longer
22 starting to drop in the number of 3203s that we were issuing.
23 So basically what I'm trying to do with this slide here to you is that we
24 had a slight overlap. So if we happen to open a case toward the end of November and
25 the information that we collected at that time, because the investigation started let's

1 say November 30th, that spilled over into the ETS. Then about 21 citations were issued
2 related to the ETS during that time.
3 And then when we open cases in December, staff might have found
4 information or rather evidence of things that took place when the ETS was not in effect,
5 and so therefore issued citations under the 3203.
6 And I would also like to state that we've issued over 1,000 citations in
7 relation to ATD investigations related to COVID. So that's not on the slide there. I
8 apologize for that, but I wanted to let you guys know that as well. Is there any questions
9 at this point?
10 CHAIR LASZCZ-DAVIS: I have a question if I might, Debra?
11 MS. LEE: Yes?
12 CHAIR LASZCZ-DAVIS: Debra, I do have a question. You know, I look at all
13 these statistics. And in fact that the slide that you have up presently, the COVID-19
14 related violations, there's a differential of about 70 citations between pre-ETS and the
15 ETS period. What is the storyline here? That the ETS has a positive impact on
16 deciphering where things are working and not or how would you summarize this in
17 terms of what does this tell you?
18 MS. LEE: That's a good question. As we were looking at this stat, and
19 that is something that we are looking at and evaluating, and so I will say maybe a little
20 bit still too early with this. But what I could say is that in the speaking with staff and
21 speaking with some of our legal is that by having a vertical standard now. And having as
22 Eric, because I think it complements what Eric was talking about with the IIPP and know
23 what areas we can cite, I think it's given a more clear path for our field staff in
24 identifying violated conditions.
25 The IIPP is more general with things and the ETS now outlines, and like I

1 said in a vertical standard, more clearly the conditions that we're looking at. If that
2 helps answer your question. And so we're monitoring that and looking at that very
3 closely, so we'll continue to look at these numbers. But it's a little bit hard to tell, to
4 make a final statement as to what this is indicating.
5 CHAIR LASZCZ-DAVIS: All right. Basically, I think what you are suggesting
6 is that the blueprint for citation is clear under an ETS standard.
7 MS. LEE: Yes.
8 CHAIR LASZCZ-DAVIS: All right. Well thank you, any other questions? Go
9 ahead.
10 MR. BLAND: (Indiscernible.)
11 CHAIR LASZCZ-DAVIS: We can't hear you.
12 MR. BLAND: Yeah, I was locked. Muted, locked, they just unlocked me.
13 Sorry about that. Are you taking questions from the public on this?
14 CHAIR LASZCZ-DAVIS: Oh, I'm trying to figure –-
15 MR. BLAND: (Indiscernible) public?
16 CHAIR LASZCZ-DAVIS: Yeah, you know what, why don't we wait? I never
17 know protocol-wise what we can or cannot do. Can somebody advise me? Can we take
18 a quick question now or do you want to move into the public comment period?
19 MS. SHUPE: So we'll want to wait until the public comment period for
20 those questions. Right now you would want to reserve questions to the subcommittee
21 members.
22 CHAIR LASZCZ-DAVIS: All right, thank you very much for that, Christina.
23 BOARD MEMBER STOCK: I will just thank you for your presentation, it
24 was really useful. And thanks, Chris, for your question, because I think that get to the
25 crux of what we're trying to determine. And it does seem that your presentation in

1 combination with Eric's remarks does seem to provide some clear information about
2 the value and the benefit that the ETS provided in your enforcement efforts. And so I
3 appreciate that presentation, thank you.
4 MS. LEE: Thank you. And I would stay, but I do apologize I will have to
5 depart, but I appreciate it. And any questions, Eric will still be on the line and we'll look
6 forward to responding to those. And I do apologize that I have to depart. I enjoyed this
7 very much, so please invite me back again.
8 CHAIR LASZCZ-DAVIS: We will, Debra. You'll be sorry, we're going to
9 invite you back. So thank you very much.
10 MS. LEE: Thank you guys, bye-bye for now.
11 CHAIR LASZCZ-DAVIS: All right. That now brings us into the public
12 comment period. We will now proceed with the public comment period. Anyone who
13 wishes to address the committee regarding the revised COVID-19 Emergency Temporary
14 Standard, or ETS, recently adopted by the Board is invited to comment.
15 Once again, please listen for your name and an invitation to speak before
16 addressing the committee. When it's your turn to address the committee please be
17 sure to unmute yourself if you're using WebEx, or dial *6 on your phone to unmute
18 yourself if you're using the teleconference line. Please be sure to speak slowly and
19 clearly when addressing the committee. And please remember to mute your phone or
20 computer after commenting.
21 Mr. Ursery, do we have any commenters in the queue?
22 MR. URSERY: Yes our first two commenters up are Rob Moutrie and
23 Kevin Bland, with first being Rob Moutrie of CalChamber.
24 MR. MOUTRIE: There we go. Good morning, everyone. Sorry, I was not
25 prepared, because I don't actually believe I submitted to comment. I requested the

1 presentations and was hoping to prepare my comments a little more thoroughly
2 before I made them. So if I could ask to be briefly pushed back I would find that more
3 efficient for everyone.
4 CHAIR LASZCZ-DAVIS: All right, so that would be our next commenter
5 then, I think, in the queue.
6 MR. URSERY: Yes, our next commenter is Mr. Kevin Bland with Ogletree.
7 MR. BLAND: Good, I think we're still morning, good morning everyone. I
8 think I'm kind of in the same boat as Rob here. It's very difficult and questions may
9 come up, and you're trying to take a note and be able to comment or ask questions
10 specific to slides or certain pages and stuff. I will follow up with what I was going to ask
11 Ms. Lee, because reading that last slide –- and of course I do a lot of appeals in a lot of
12 context -- I'm looking at these numbers. And it looks like there's 392 IIPP alleged
13 violations and 350 ETS if my math is right.
14 So I've heard a lot about how they can't enforce the IIPP, but we can
15 enforce the ETS. And so I'm seeing these numbers relatively close. So my question was
16 how do we square that with saying you can't enforce IIPP effectively, but you can ETS
17 whenever the alleged citations and the alleged violations have similar numbers. So I
18 think that's something.
19 And then if I can recall what I was going to ask about one of the earlier
20 issues was, I think this was with Ms. Neidhardt's presentation, we did hear a lot about
21 either the trailblazing states and what they were doing. And I think, Chris, you may have
22 brought this up and asked this of her, but that would be helpful is to say okay here's the
23 states that have all these regulations in place. Here's the states that have some. And
24 here's the states that have none. And then be able to compare what are the outcomes.
25 Is the hospitalizations off the charts with the ones that are doing less or doing more?

1 How do those compare, because there is no outcome determination it's just process
2 determination.
3 So I'd like to hear some information so we can make some informed
4 decisions related to cause and effect. And there may not -- and be able to at least get a
5 sense of how that compares. Because I think when we looked at the United States map
6 that was all red or whatever it was, well there's only, I think, we discussed three or four
7 trailblazing states, but every state is red. So how is that making a difference? And so I
8 think that would be helpful in making some determinations.
9 The other thing again, I'm reiterating concerns with being able to have
10 this discussion-oriented as opposed to kind of like a Standards Board meeting. And
11 maybe it's just not the -- wasn't created at that forum, but I think an advisory committee
12 process where we could go back to the last 20 years of working on regulations and rules.
13 Where we consider, set and have discussions about points as we're going, as opposed to
14 just a monologue back and forth, that would be helpful. So I'll throw that out again.
15 So I appreciate your time, thank you.
16 MR. URSERY: Our next commenter is Bethany Miner who is an HR
17 professional.
18 MS. MINER: Okay, good morning. I'm also in the same boat of trying to
19 prepare comments and feeling like I don't have everything in place. But one thing I did
20 want to point out is with sick pay for COVID we have been reimbursed as employers, but
21 that's going to end on September 30th. So for a lot of us we have been providing a lot
22 of sick pay, but that's going to become a very huge burden on employers across the
23 board.
24 And there's also quite a few parts of sick pay that seem to be
25 incentivizing employees to not get vaccinated. So the way that the standard is written

1 right now going off of the guidance if you are fully vaccinated and you are exposed you
2 don't currently have to quarantine if you are symptom-free. So that employee is not
3 going to be out and is not going to be getting paid to stay home.
4 However, the employee that is not vaccinated that employee has to go
5 home even if they're not having symptoms but they are not vaccinated. So they're
6 going to go home and get paid for 10 days. Now the employer is out that money. And
7 an employee can say they've been exposed. I don't have any proof that they have been.
8 So I just don't want to incentivize people to not get vaccinated. And I also think it's a
9 huge burden for employers to continue the sick pay.
10 Also I wanted to find out about the advisory board and if there's a way to
11 be a part of that. I don't know who decides who's on an advisory board, but I'd love to
12 participate in more discussions on next steps. That's all I've got right now. Thank you.
13 MR. URSERY: Our next two commenters are Scott Bourdon and I see that
14 Rob Moutrie also raised his hand, so we'll put him in after Scott. So next up is Scott
15 Bourdon with Cal State University.
16 MR. BOURDON: Yes, I hope you can hear me okay. So I asked at the last
17 meeting for feedback on adopting, readopting the ETS or going with the IIPP. I surveyed
18 our 23 --
19 MS. SHUPE: Mr. Bourdon.
20 MR. BOURDON: Yes?
21 MS. SHUPE: I apologize to interrupt, but we're unable to hear you. Can
22 you please speak up?
23 MR. BOURDON: Yes. Can you hear me now?
24 MS. SHUPE: We can. Thank you.
25 MR. BOURDON: Okay. So I surveyed our 23 campus EHS directors about

1 adopting the ETS, readopting, it or going with the IIPP. And they, the respondents
2 preferred going using the IIPP, those who did respond. That's one point.
3 Another point is you seemed to focus on the states with COVID policies
4 and those sort of things, but many states have policies that are probably less onerous
5 than ours. And maybe they're not doing much worse than we are in regard to the work
6 and metrics, COVID-19 metrics.
7 And a third point is I still haven't heard much about focusing on Workers'
8 Comp data. Maybe I missed it, but I think that should be part of the conversation. My
9 apologies if you couldn't hear me. Thanks for your time and you can go on to the next
10 speaker.
11 MR. URSERY: Our next commenter is Rob Moutrie with CalChamber. (No
12 audible response.) You're muted. Mr. Moutrie, you are still muted.
13 MR. MOUTRIE: I just can't get it right this morning, my apologies for the
14 time wasted. Good morning everyone, Rob Moutrie, CalChamber. I just have two big
15 issues to flag. I think, number one, in response to the data we heard I think I heard
16 many times things are up, things are up. And I want to just clarify everything is a matter
17 of perspective with statistics. My, again quick glance at this data, which I've now
18 requested presentations and I will look at. But my understanding if we focus on
19 California, not federally, not at the rest of the nation which has very different policies
20 and very different essentially vaccination rates, is it generally speaking California is
21 doing worse than we were just before reopening. With Delta and reopening that's
22 somewhat to be expected. But significantly better on across the metrics we saw today
23 than we were doing in the late fall and early this year, including case rates and fatalities.
24 Now that being said, I only saw the date flash by briefly, so please forgive
25 me. I have requested the presentations. I say that, because I think it's important we

1 focus really on exactly where we are and sometimes general statements like things are
2 up, say okay well how much (indiscernible) we were? What does that require us to do?
3 You know, we need to really see all of those comparisons in that data.
4 And I do appreciate the visual representations of the data, which allow us
5 to do that over time. And I thank you, Amalia, and others whose names evade me for
6 those visual representations.
7 The second point, and I think this is something that Maggie Robbins and I
8 both mentioned last time, is really looking to the advisory committee. To the Division, I
9 really appreciate the work going there on that preparation, Eric. Thank you, and I'm
10 really looking forward to seeing that draft. But I think we need to start focusing
11 concretely on what provisions we're talking about and exactly what they're going to be
12 given the timeline towards expiration, or excuse me, towards December and then
13 March. I think we have to get to that level quickly.
14 So I really appreciate the advisory committee coming forward and I'm
15 looking forward to seeing that draft. Thank you.
16 MR. URSERY: At this time there are no additional commenters in the list.
17 CHAIR LASZCZ-DAVIS: Boy, that's a surprise. Okay, I'm wondering if I
18 might just ask a real quick question. I know it was asked, Eric, if I might direct this to
19 you? We did have one individual who wanted to learn a little bit more about the
20 advisory board meeting on the 23rd. How will that be facilitated and will everybody
21 have an opportunity to comment or are select people invited to that?
22 MR. BERG: Yeah, it will be similar to the committee that we had in
23 February for COVID where we have select members on the advisory committee. The
24 general public will listen, but not participate in back-and-forth dialogue.
25 CHAIR LASZCZ-DAVIS: Okay. Does that respond to the question that was

1 asked earlier?

2 MR. BERG: I think she wanted to be added to the committee, so she

3 could email the Standards Board. And the Standards Board could forward that to me, so

4 I can pass on her request to be a member.

5 CHAIR LASZCZ-DAVIS: All right.

6 MS. MINER: Thank you.

7 MR. BLAND: Oh Chair, a quick question on that. Did you say the 23rd

8 there was an advisory committee?

9 MR. BERG: Yes, September 23rd is an advisory committee.

10 MR. BLAND: Did an announcement go out? I just don't have it on my

11 calendar, so.

12 MR. BERG: Oh no, I just said it today. I think Chris mentioned it today.

13 So we just said orally today.

14 MR. BLAND: Okay.

15 MR. BERG: An announcement should go out pretty soon.

16 MR. BLAND: Thank you.

17 BOARD MEMBER STOCK: And, Eric, can I just ask? This is Laura, so you

18 mentioned that it's going to be -- is it going to be the same membership as it was before

19 with potential additions if people are requesting, or I'm just curious about who?

20 So just to reiterate what I'm hearing that you said that there are specific

21 designated invitees, but the general public can attend and also speak? Is that the case?

22 So that’s one question, but also will the membership be the same as what

23 it was before? Or is there going to be a new list made available or how do people get on

24 that committee?

25 MR. BERG: I think it will be similar to before and they can contact me to

1 be on the committee. I mean, we can't have –-100 people gets a little too difficult to
2 manage. But I think we had about 60 people before, which is more than most advisory
3 committees. But it seemed to work pretty well the last time.
4 BOARD MEMBER STOCK: And will there be an opportunity for people
5 who are not formal members to be able to provide their comments and input?
6 MR. BERG: Yeah, they can -- the meeting obviously will be open to public
7 and then they can send in any written comments through the email that's posted there.
8 So that will be available too.
9 CHAIR LASZCZ-DAVIS: All right, thank you. And I know there was one
10 other question asked about whether or not we're going to have Workers' Comp data
11 presented. And I know we've had a presentation before. Is that presentation posted on
12 the OSHSB website, Christina?
13 MS. SHUPE: It is. And so, Amalia you may recall the dates offhand, but
14 the Division has addressed questions about Workers' Comp data in our June meeting
15 and I believe also in the May meeting. And so, if anybody would like that information
16 they can go ahead and email oshsb@dir.ca.gov. And we can point them to those
17 meetings that are posted on our website.
18 CHAIR LASZCZ-DAVIS: All right, thank you for that.
19 MS. NEIDHARDT: Yes, if I may add, Chris? I'm sorry to interrupt, so
20 Christina is right. I just wanted to remind or just quickly point out Dr. Seward was the
21 one that provided that briefing where the Workers' Compensation data was mentioned
22 and that issues the pros and cons. I just wanted to point that out. Sorry, thank you.
23 CHAIR LASZCZ-DAVIS: All right. And one final comment before we move
24 off this segment here, and I know it's a frustration, it's hard to comment on data that is
25 presented the very same data of the very same day. And what we'll do at the next

1 subcommittee meeting is open it up for an opportunity to comment on the
2 presentations that were made today, if there are any additional comments to them.
3 MS. SHUPE: And if I may, I'd also like to invite our stakeholders to attend
4 the Board meeting that will be next week on Thursday since we did pull the September
5 23rd subcommittee meeting off the calendar in favor of the advisory committee
6 meeting, so we would have the resources to fully support that. So if any of our
7 stakeholders have had an opportunity to look at the presentation materials that were
8 provided today and would like to address that with the Board they can also attend the
9 board meeting.
10 CHAIR LASZCZ-DAVIS: All right. Thank you for that, Christina.
11 MS. NEIDHARDT: And Chris, if I may? I wanted to also point out in
12 response to what Mr. Kevin Bland had mentioned and also what Rob Moutrie had
13 mentioned, is that it will be great to be able to compare different states. But I just
14 wanted to reiterate this is new policies and amendments that just kicked in, so you will
15 not be able to see the effects.
16 I just wanted to reiterate what was posted for Washington was just
17 posted last week in their proclamation. So to be able to see how effective it will be,
18 given right now that the Delta variant is making several of these communities listed as
19 substantial or high-risk you won't be able to see an effect right away. So I just wanted
20 to point this out, because it won’t be ideal.
21 And then the other thing, versus the other states, I just wanted to remind
22 not every state in the United States is under a state plan, right? So remember that
23 some of them are choosing -- so it will be unfair to compare California with the states
24 that do not have a state plan, in my opinion. I just wanted to point that out.
25 CHAIR LASZCZ-DAVIS: Well thank you for that.

1 MS. NEIDHARDT: Thank you.
2 BOARD MEMBER STOCK: Can I just add one comment? I know there's
3 always requests for more information. I really appreciate all the work you've done
4 already, Amalia, and I'm sure it represents hours and hours and hours of work. And I
5 also agree with what Rob Moutrie and others have said that really we're under a
6 timeframe to start looking at specific language for the readoption. So I do want to be as
7 sensitive as we can be for requesting more reports from you, because I know resources
8 are limited. And I just want to be sure that our resources are really being directed to
9 the development of new language and to facilitate any stakeholder input into that.
10 So I want to acknowledge how much work you all have been doing to
11 provide these reports. And I hope that we'll be able to start lessening that particular
12 workload soon.
13 CHAIR LASZCZ-DAVIS: Yeah, thank you for that, Laura. A very good point
14 for sure.
15 So with that let's move into the next segment of this meeting today. This
16 is what I would call the subcommittee considerations. Nola and Laura, do any of the
17 subcommittee members have anything that they wish to discuss regarding regulatory
18 options and the risk assessment models presented today, Laura?
19 BOARD MEMBER STOCK: Yeah. So, Nola, I see you shaking your head.
20 So yeah, I guess I'll just reiterate that I look forward to seeing this specific language as
21 everybody does, to be able to start really knowing, to be able to comment on particular
22 outcomes. And I do just want to highlight things that stood out for me. I definitely
23 appreciate it. I know people with this issue of IIPP versus ETS has been a discussion
24 that's happened over a year now. That was definitely concerns that were raised before
25 we passed this regulation last November. That was always the question and at that

1 point we were guided by comments from the Division itself that that were saying that
2 they really needed to have more specific enforcement language. So that was a
3 conversation that we had a year ago.
4 And so I'm hearing similar comments from Division staff about the value
5 of having specific regulations, which is not unique to COVID. We have many specific
6 regulations beyond the IIPP. So I think that's kind of standard practice, the value of
7 having specific regulatory language for particular hazards or particular industries. So I
8 just want to acknowledge that point.
9 And this idea of looking at more flexible models, I'm really interested to
10 see what you come up with. I'll just reiterate my hope that we can come up with
11 something that is flexible, but also includes all the industries that have currently been
12 covered. I'd be concerned if certain industries, because of some designation of low-risk
13 are excluded. Because I think that I prefer that the approach that identifies what puts a
14 place at risk and that where those risk factors exist, no matter what industry, they
15 would be covered.
16 I also really am looking forward to what would be core requirements that
17 every workplace regardless of a risk level or community transmission would have to
18 comply with. So I feel like as many people have said now we're really at the point where
19 we have to look at that specific language. And I hope that some of those issues will be
20 taken into account in terms of not limiting coverage and ensuring that there are certain
21 basic requirement that everyone needs to comply with, but also incorporating flexibility
22 as conditions change. So those are the only comments that I would make now. Thank
23 you.
24 CHAIR LASZCZ-DAVIS: Yeah, I think the element of fluidity as conditions
25 change and the element of clarity as people review the ETS or need to comply with the

1 ETS versus a public health department guideline, so they're not working at cross-
2 purposes, but really enable and support each other is absolutely key to whatever we
3 end up with and whatever regulatory scheme and shape that takes place.
4 So with that Nola, Laura, any other comments before we move out of
5 future subcommittee agenda items? (No audible response.) With that then let me ask
6 both of you, do you have any items that you'd like to propose for the next
7 subcommittee meeting, which I believe is in October, early October.
8 BOARD MEMBER STOCK: I mean I guess at that point there will have
9 been the advisory committee. And that if it sounds like then, maybe it'll be clearer what
10 are the remaining issues that there will be some value added to have an additional
11 conversation. So it seems a little hard to know now, but maybe just the general agenda
12 item to continue the discussion of specific language. And just to see where we can
13 contribute additional value above the subcommittee, above the advisory committee.
14 CHAIR LASZCZ-DAVIS: All right. Nola, none?
15 With that I'm afraid, or perhaps some of you are cheering, this brings us
16 to the end of our subcommittee meeting today. We've had some excellent work that's
17 been presented. A lot of questions were raised. And it sounds like some of it may well
18 be resolved at the September 23rd advisory committee meeting. At least there's an
19 option to put it on the table one more time.
20 And let me move into the adjournment. The previously scheduled
21 subcommittee meeting for September 23rd has been cancelled as Cal/OSHA has
22 informed OSHSB that they will be conducting a COVID-19 prevention ETS advisory
23 committee meeting that very day. You heard it from Eric, if you feel you need to be part
24 of that and want to be part of that be sure to let him know.
25 Therefore the next subcommittee meeting is scheduled for October the

1 5th and will be our first hybrid meeting. Attendees may participate at the physical

2 location in Sacramento or via teleconference and video conference. Please visit our

3 website and join our mailing list to receive the latest updates.

4 We thank you for your attendance today. There being no further

5 business to attend to, this meeting is adjourned. And everybody have a great day, thank

6 you.

7 (The Subcommittee Meeting adjourned at 12:13 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 30th day of November, 2021.

ELISE HICKS, IAPRT CERT**2176

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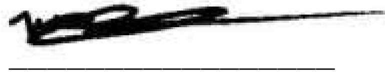

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