

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
June 17, 2021 OSH)
Standards Board Meeting)
_____)

TELECONFERENCE

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

THURSDAY, JUNE 17, 2021

10:00 A.M.

Reported by:
E. Hicks

APPEARANCES

BOARD MEMBERS:

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

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer
Autumn Gonzalez, Chief Counsel
Sarah Money, Executive Assistant
Michael Nelmda, Sr. Safety Engineer

BOARD STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Michael Manieri, Principal Safety Engineer
Lara Paskins, Staff Services Manager
David Kernazitskas, Sr. Safety Engineer
Jennifer White, Staff Services Analyst

ALSO PRESENT:

Eric Berg, Deputy Chief of Health, Division of Occupational Safety and Health (Cal/OSHA)
Corey Friedman, Attorney for Cal/OSHA
Douglas Parker, Director, Cal/OSHA

TKO STAFF:

John Gotcher
John Roensch
Maya Morsi
Brian Monroe
Rey Ursery

INTERPRETERS:

Esther Hermida, Spanish Language Interpreter
Katerina Borghi
Estella Moll

APPEARANCES

PUBLIC COMMENT:

Cristie Connors, Business owner
Helen Cleary, Phylmar Regulatory Roundtable
Monica McCallum, Moorpark Unified School District
Mitch Steiger, California Labor Federation, AFL-CIO
Kristie Sepulveda Burchit, Educate Advocate
Michael Young, CFT Sacramento Office
Rob Lapsley, President of California Business Roundtable
Jassy Grewal, UFCW States Council
Katie Hansen, California Restaurant Association
Saskia Kim, California Nurses Association/National Nurses United
Lawrence Gayden, California Manufacturers and Technology Association
Anne Katten, California Rural Legal Assistance Foundation
Sandra Martinez, Self
Maggie Robbins, Worksafe
Kevin Pedrotti, NFIB
Michael Miiller, CA Association of Winegrape Growers
Tino Barragan, Santa Clara County
Eddie Sanchez, Southern California Coalition for Occupational Safety and Health
Justin Shores, Self
Bruce Wick, Housing Contractors of California
Fran Schreiber, Labor & Employment Committee of the National Lawyers Guild
Rob Moutrie, California Chamber of Commerce
Harry Semerdjian, Los Angeles Area Chamber of Commerce
Janine Dorn, Small Business Owner
Megan Mansell, Rational Ground
Len Welsh, representing California Hotel and Lodging Association, Ironworkers
Management Progressive Action Trust, Grower-Shipper Association of Central California
and Western Steel Council
Hesu Whitten, Independent Doctor
Karen Tynan, Ogletree Deakins, Nash, Smoak & Stewart
Dan Leacox, Leacox & Associates
Tory Quintero, Certified Massage Therapist
Adi Hed, Oakridge Dynamics
Delia Huffman, no affiliation
Cynthia Rice, California Rural Legal Assistance, Inc.
Connor Medina, Orange County Business Council

APPEARANCES (Cont.)

PUBLIC COMMENT: (Cont.)

Giancarlo Rubio, Valley Industry and Commerce Association
Virginia Hammond, no affiliation
Dr. Aimee Smith, Self
Kathy Schaeffer, The Climate Reality Project
Swati Sharma, California Healthy Nail Salon Collaborative
Toni Yoast, Self
Joan Harp, Self
Andrew Sommer, California Employers COVID-19 Prevention Coalition
Brian Mello, Associated General Contractors of California
Erin Dimaggio, Self
Sarah Wiltfong, Los Angeles County Business Federation
Veronica Herrera, Self
Cynthia Petty, Retired Occupational Health and Safety Professional
Pamela Murcell, California Industrial Hygiene Council
Cassie Hilaski, Nibbi Brothers General Contractors
Brooke Billingsley, LA Alliance for a New Economy
Bryan Little, California Farm Bureau Federation
Christina Hildebrand, A Voice for Choice Advocacy
Anwanur Gielow, HR Director and Consultant
Rochelle Lara, California Registered Nurse
Aaron Holmberg, County of Inyo
Matthew Allen, Western Growers Association

I N D E X

	Page
I. CALL TO ORDER AND INTRODUCTIONS	8
II. PUBLIC MEETING (Open for Public Comment)	
A. PUBLIC COMMENT	20
B. ADJOURNMENT OF THE PUBLIC MEETING	106
III. BUSINESS MEETING – All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.	106
<p>The purpose of the Business Meeting is for the Board to conduct its monthly business.</p>	
A. PROPOSED PETITION DECISION FOR ADOPTION	124
1. Rex and Judy Barton, Owners LunarGlo LLC Petition File No. 586	
<p>Petitioner requests to change existing portable restroom Illumination Guidelines to be consistent with feasible and most up to date technology for illumination levels provided by solar lighting manufacturers</p>	
B. PROPOSED EMERGENCY SAFETY ORDER FOR RE-ADOPTION (GOV. CODE SEC. 11346.1)	106
1. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS Chapter 4, Subchapter 7, new sections 3205, 3205.1, 3205.2, 3205.3, and 3205.4 COVID-19 Prevention	
C. PROPOSED VARIANCE DECISIONS FOR ADOPTION	130
1. Consent Calendar	

I N D E X (Cont.)

	Page
III. BUSINESS MEETING (Cont.)	
D. REPORTS	129, 128, 131
1. Division Update (p. 129)	
2. COVID-19 Prevention ETS Subcommittee Update (p. 128)	
3. Legislative Update (p.131)	
4. Executive Officer's Report	
E. NEW BUSINESS	132
1. Future Agenda Items	
<p>Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).).</p>	
F. CLOSED SESSION	---
1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270	
2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210	
3. National Retail Federation, et. al., v OSHSB, et. al., County of San Francisco, CA Superior Court Case No. CGC-20-588367	
4. Western Growers Association, California Farm Bureau Federation, et. al. v OSHSB, et al., County of San Francisco, CA Superior Court Case No. CPF-21-517344	

I N D E X (Cont.)

	Page
III. BUSINESS MEETING (Cont.)	
F. CLOSED SESSION (Cont.)	---
5. Personnel	
G. RETURN TO OPEN SESSION	---
1. Report from Closed Session	
H. ADJOURNMENT OF THE BUSINESS SESSION	133
Next Meeting:	July 15, 2021 Teleconference and Video-conference (In accordance with Executive Orders N-29-20 and N-33-20) 10:00 a.m.
Reporter's Certificate	134
Transcriber's Certificate	135

1 PROCEEDINGS

2 JUNE 17, 2021

10:00 a.m.

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

10 Also present from our staff for today's meeting are Ms.
11 Christina Shupe, Executive Officer; Ms. Autumn Gonzalez, Chief Counsel;
12 Ms. Sarah Money, Executive Assistant; and Mr. Michael Nelmidia, Senior
13 Safety Engineer, who is providing technical support for us.

14 Supporting the meeting remotely today are Mr. Michael
15 Manieri, Principal Safety Engineer; Mr. David Kernazitkas, Senior Safety
16 Engineer; and Ms. Jennifer White and Ms. Cathy Dietrich, Regulatory
17 Analysts.

18 Via teleconference we are joined today by Mr. Eric Berg,
19 Deputy Chief of Health, and Ms. Corey Friedman, Attorney, representing
20 the Division of Occupational Safety and Health.

21 At this time, we ask those of you participating in the WebEx
22 videoconference to please email your name and contact information to
23 oshsb@dir.ca.gov, which will become part of the official record of
24 today's proceedings. While supplying your information is not required, it
25 is appreciated.

1 Today's agenda and other materials related to today's
2 proceedings are posted on the OSHSB website.

3 In accordance with Executive Orders N-29-20 and N-33-20,
4 today's Board meeting is being conducted via teleconference, with an
5 optional video component.

6 This meeting is also being live broadcast via video and audio
7 stream in both English and Spanish. Links to these non-interactive live
8 broadcasts can be accessed via the "what's new" section at the top of the
9 main page of the OSHSB website.

10 We have limited capabilities for managing participation
11 during the public comment period, so we're asking everyone who is not
12 speaking to place their phones on mute and wait to unmute until they
13 are called on to speak. Those who are unable to do so will be removed
14 from the meeting to avoid disrupting the proceedings.

15 As reflected on today's agenda, today's meeting consists of
16 two parts. First, we will hold a public meeting to receive public
17 comments or proposals on occupational safety and health matters.
18 Anyone who would like to address any occupational safety and health
19 issues, including any of the items on our business meeting agenda, may
20 do so at this time. Members of the public who have contacted staff
21 either by email or phone and asked to be placed in the public comment
22 queue will be called on in turn.

23 Please listen for your name and an invitation to speak before
24 addressing the Board. Please remember to mute your phone or computer
25 after commenting. Today's public comment will be limited to two

1 minutes per speaker, and the public comment portion of the meeting
2 will extend for up to two hours, so that the Board may hear from as many
3 members of the public as is feasible.

4 Board staff can be contacted by email at oshsb@dir.ca.gov or
5 via phone at 916-274-5721 to be placed in the comment queue. If you
6 experience a busy signal or are routed to voicemail, please hang up and call
7 back again.

8 After the public meeting has concluded, we will conduct the
9 second part of our meeting, which is the business meeting to act on those
10 items listed on the business meeting agenda. The Board does not accept
11 public comment during its business meeting unless a member of the
12 Board specifically requests public input.

13 We're going to address everything on the agenda today, but
14 I'm going to move a few things around to facilitate the COVID-19 ETS
15 discussion. So before we open public comment I'd like Mr. Berg to
16 provide a briefing to the Board on the revisions that are before us today.

17 Mr. Berg, would you please brief the Board?

18 MR. BERG: Okay, thank you very much, Chairman Thomas.
19 Cal/OSHA wants to thank the Board and the Board staff for taking
20 extraordinary measures to allow for rapid changes to be made to the
21 proposed COVID-19 Emergency Temporary Standard.

22 We owe special thanks to the Board Members who are
23 volunteer public servants being tasked with critically important decisions
24 that affect workers, employers throughout the state.

25 Lastly, we want to thank all the stakeholders and members of

10

1 the public for their valuable input during the latest series of Board
2 meetings.

3 Cal/OSHA's proposal presented today for the Board's
4 consideration is intended to ensure that workers are protected, while
5 businesses also resume normal or near-normal levels of activity and
6 productivity. The proposal is aligned with the California Department of
7 Public Health guidance for the general public on face-covering
8 requirements which Dr. Aragon, the Director of CDPH, discussed with you
9 last week. The proposal is also consistent with the most recent public
10 health guidance on the state's June 15 reopening, and that eliminates
11 requirements for physical distancing and barriers except in limited
12 circumstances.

13 For unvaccinated workers, instead of physical distancing
14 Cal/OSHA is proposing that employers provide N95 or comparable
15 respirators to unvaccinated workers who request one. The rule includes
16 a requirement to communicate to unvaccinated workers the rule of
17 respirators, and preventing inhalation of airborne viruses and basic
18 measures to help ensure employees receive a properly sized respirator
19 that can seal to their face. As Dr. Aragon presented -- presentation
20 noted last week, a good-fitting respirator is better than physical
21 distancing and protecting against airborne transmission of COVID-19.

22 In addition to being consistent with state guidelines the
23 Emergency Temporary Standard proposed addresses a number of
24 stakeholder concerns about burdensomeness while still protecting
25 employees. The rule retains robust measures to control the spread of

1 the virus if there are surges resulting in increased workplace COVID-19
2 outbreaks and major outbreaks.

3 The proposed changes include the following: No face
4 coverings are required outdoors for any employees regardless of their
5 vaccination status except in certain situations during outbreaks and
6 major outbreaks.

7 There are no face covering requirements for vaccinated
8 employees indoors except in settings where they are required by CDPH
9 such as on public transit as well as during outbreaks.

10 All employers must document the vaccination status of
11 vaccinated employees in order for them not to wear face coverings
12 indoors. Employers are not required to retain copies of vaccine cards.
13 Self-attestation by employees is an option for employers.

14 Physical distancing requirements have been eliminated
15 except where an employer determines there is a hazard, and during
16 major outbreaks when distancing is feasible. There are no physical
17 distancing requirements in the employer-provided housing and
18 transportation regulations. And as I explained earlier in lieu of physical
19 distancing, N95s need to be provided upon request to vaccinated
20 employees who work indoors or in vehicles with other people.

21 For fully vaccinated employees without symptoms there is no
22 requirement to offer testing or exclude them from work after a close
23 contact with a COVID-19 case.

24 Vaccines listed for emergency use by the World Health
25 Organization are now acceptable if a person is fully vaccinated outside

1 the United States. Employer-provided housing and transportation
2 regulations do not apply for everyone who is vaccinated.

3 Most disinfecting requirements in the proposal are now
4 eliminated. Prohibitions on sharing phones, keyboards, headsets, desks
5 and writing materials, instruments, tools and other personal items are
6 now lifted in favor of more general cleaning requirements.

7 Only COVID-19 cases among employees need to be
8 considered when determining if there is an outbreak or a major outbreak.
9 In the existing ETS all COVID cases regardless of employee status needed
10 to be considered, so this proposed change reduces the scope of the two
11 outbreak sections.

12 In addition, the following enhancements are proposed for
13 the COVID-19 Emergency Temporary Standard. Employers must make
14 COVID-19 testing available to unvaccinated employees when they have
15 symptoms.

16 Employers must review the interim guidance for ventilation,
17 filtration and air quality in indoor environments published by CDPH,
18 Cal/OSHA and the Office of Statewide Health Planning and Development.

19 Employers are to evaluate ventilation systems to maximize
20 outdoor air, increase filtration efficiency, and also evaluate the use of
21 additional air cleaning systems.

22 Employees who voluntarily wear face coverings, regardless of
23 their vaccination status, are expressly protected from retaliation by their
24 employers. And vaccinated employees who request respirators for their
25 voluntary use are also expressly protected from retaliation by their

1 employers.

2 The proposal also addressed possible surges by requiring
3 affected workplaces to respond effectively to COVID-19 cases. If there is
4 an outbreak face coverings are required regardless of vaccination status,
5 and 1) indoors and 2) outdoors when employees are less than six feet
6 from another person. General exceptions will still apply, such as during
7 eating or drinking.

8 Employers must also evaluate whether physical distancing or
9 barriers are necessary to protect workers. In addition, in a major
10 outbreak, physical distancing is required where feasible and barriers are
11 required there where physical distancing is not maintained.

12 Regarding the proposal's respirator requirements, as Dr.
13 Aragon explained last week, respirators are effective in protecting the
14 user from airborne transmission. Scientific evidence regarding the
15 airborne transmission of SARS-CoV-2 is overwhelming. This means that
16 very small particles exhaled by infected persons can stay suspended in
17 the air and infect others who later inhale those small particles.

18 Face coverings provide very effective source control,
19 because they trap many exhaled particles when they are relatively large
20 before they begin to evaporate and become smaller particles. However,
21 they are not sufficient protection against the inhalation of small
22 particles. This is particularly important in workplaces where workers
23 may be in close proximity to one another for extended periods of time.

24 There is a large variety of face coverings and many in use are
25 not made to meet any particular standard for filtration efficiency. Small

1 particles can pass through these face coverings with low filtration
2 efficiency. Since face coverings do not seal to the face small particles
3 can also bypass these face coverings through the gaps and openings
4 between the face and the face covering.

5 Only approved respirators provide high-level protection to
6 the user against small particles. They have been designed and tested to
7 provide high-filtering efficiency that removes the very smallest particles.
8 The most common respirators, N95s, are designed to seal to the face to
9 prevent small particles from bypassing the respirator. Approved
10 respirators serve as an improved and enhanced face covering for
11 unvaccinated employees with the highest risk for infection with COVID-
12 19. This includes employees who cannot be vaccinated, because of a
13 medical condition.

14 With respirators now available, this proposal is a lower
15 hurdle to businesses resuming normal operations than physical
16 distancing and barriers. If used correctly it is also a more effective
17 means for protection of workers than physical distancing.

18 There have been calls to end the Emergency Temporary
19 Standards. Cal/OSHA does not support repeal or a drastic scaling back of
20 the ETS at this time. California has made tremendous progress in
21 reducing the transmission rate of COVID-19 in workplaces and in the
22 general population. The efforts of the State of California, including its
23 vaccination efforts, its public health guidance and orders, and the
24 Emergency Temporary Standards have all been a part of a successful
25 strategy to bring California infection rates to among the very lowest in

1 the nation.

2 However, there is still a significant percentage of workers,
3 particularly low income and workers of color who are not fully
4 vaccinated. The vaccine equity metrics shows that the percent of
5 persons fully vaccinated in the lowest quartile is nearly 25 percent less
6 than persons in the highest quartile.

7 And outbreaks of COVID-19 are still occurring in California
8 workplaces. CPH data now shows from January 1st, 2021 through May
9 31st, 2021 in that time period there are over 7,400 workplace COVID-19
10 outbreaks, resulting over 80,000 workers infected. In the last 30 days of
11 this data there were over 700 outbreaks and over 10,000 workers
12 infected. While we understand the desire not to have requirements in
13 place a day longer than necessary workers will bear the cost if we end
14 requirements a day sooner than necessary,

15 There have also been calls to end the ETS and instead rely on
16 employers' obligations under the written Injury and Illness Prevention
17 Programs, or IIPP. Cal/OSHA does not agree with this approach relying
18 only upon the IIPP. It would eliminate important elements of the ETS,
19 such as outbreak response, the voluntary respiratory provisions, testing
20 for COVID-19 and exclusion pay.

21 I also note that while Cal/OSHA is confident that it can
22 conduct COVID-19 related enforcement, under the IIPP the California
23 Occupational Safety and Health Appeals Board has yet to rule on a single
24 case involving a COVID-19 IIPP citation to confirm Cal/OSHA's approach.
25 In contrast to the arguments for repeal of the ETS made by employers at

1 the Standards Board meetings, some employers are contesting our
2 citation by arguing before the Appeals Board that Cal/OSHA's authority
3 under the IIPP is narrow and limited. Providing clarity about Cal/OSHA's
4 authority is one of the reasons for issuing the ETS and that reason is still
5 valid.

6 There are also other key provisions of the proposed standard
7 that have received a lot of attention, including the face-covering
8 proposal. And the current proposal reflects current CDPH public health
9 orders and is consistent with CDPH and aligned with CDPH.

10 There has also been a lot of attention given to the proposal's
11 elimination of physical distancing and barrier requirements as well as the
12 requirement to provide employees N95 respirators. We recognize that
13 Federal OSHA guidance recommends physical distancing for unvaccinated
14 persons and those recommendations continue for Federal OSHA.
15 However, Cal/OSHA's voluntary respirator proposal without physical
16 distancing will be a feasible alternative in most workplaces. The
17 Governor recently announced that the state would make available a one-
18 month supply of N95 respirators to employers that wanted them for their
19 unvaccinated employees. California is partnering with local
20 organizations in each county to help distribute these masks. A list of
21 partners is available on the website saferatwork.ca.gov and this list will
22 be updated as more partners join the program.

23 Also Cal/OSHA is dedicated to helping employers and
24 employees with this proposed ETS. Cal/OSHA has already posted answers
25 to frequently asked questions about this new proposal. I will be adding

1 to these new frequently asked questions, and update the previous
2 frequently asked questions.

3 Cal/OSHA is also creating a training video on voluntary
4 respirator use that will be soon posted to our website. We also will
5 update the revised model COVID prevention program on the website.
6 And Cal/OSHA consultation will hold training webinars on the new
7 proposal next week. Anyone can sign up to attend and these webinars
8 from consultation will also be recorded and available online for anyone
9 who wants to watch them later.

10 This proposed ETS aligns with state guidelines. It addresses
11 a number of stakeholder concerns about burdensomeness while still
12 providing robust protection to employees.

13 Again, we thank the Board for their consideration of this
14 proposal. And I'm available to answer any question the Board Members
15 may have. Thank you very much

16 CHAIR THOMAS: So at this time -- thank you Eric -- we will
17 hold questions for Mr. Berg and Ms. Friedman until after the Board hears
18 public comment. Then the Board will be able to ask the questions that
19 they want to ask.

20 We will now proceed with the public meeting. Anyone who
21 wishes to address the Board regarding matters pertaining to occupational
22 safety and health is invited to comment, except however the Board does not
23 entertain comments regarding variance decisions. The Board's variance
24 hearings are administrative hearings where procedural due process rights
25 are carefully preserved. Therefore, we will not grant requests to address

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1 the Board on variance matters. At this time anyone who would like to
2 comment on any matters concerning occupational safety and health will
3 have an opportunity to speak.

4 For our commenters who are native Spanish speakers we are
5 working with an interpreter, Esther Hermida will provide a translation of
6 their statements into English for the Board. At this time, Ms. Hermida will
7 provide instructions to the Spanish-speaking commenters so that they are
8 aware of the public comment process for today's meeting.

9 Ms. Hermida?

10 (Audio issues.)

11 MS. SHUPE: Ms. Neidhardt, are you on the meeting and John if possible
12 can you please unmute Amalia Neidhardt?

13 MR. GOTCHER: Yes, I can.

14 MS. NEIDHARDT: Yes, good morning. Can you hear me?

15 CHAIR THOMAS: Hello.

16 MS. NEIDHARDT: Yeah, can you hear me?

17 CHAIR THOMAS: Is this Ms. Hermida?

18 MS. SHUPE: No, this is Amalia. (Overlapping colloquy.)

19 Amalia, I apologize to put you on the spot like this, but do you have a
20 copy of what Ms. Hermida was going to read for us?

21 MS. NEIDHARDT: No, but I can mention in Spanish that anyone that
22 wants to address the Board, they can give us the name and phone number and then
23 they can put on the list to send us an email, so they can ask for the translator. Would
24 you like me to do that?

25 MS. SHUPE: If you could say that now and then I'm going to have a copy

1 of the script sent to you. So if you can pull that up, we'd like to make sure that the full
2 scope of the information is shared with our Spanish speakers.

3 MS. NEIDHARDT: Absolutely.

4 CHAIR THOMAS: You want me to read it and have her translate me to
5 them? Yes or no?

6 MS. SHUPE: No, we have a written copy for her.

7 CHAIR THOMAS: Okay.

8 MS. NEIDHARDT: Okay I received a written copy. One second, let me
9 open it. We're asking right now that they add their name, right?

10 MS. SHUPE: I'm sorry, what was that?

11 MS. NEIDHARDT: We are asking them -- basically, I'm going to translate
12 right now that they send us an email or that they raise their name, so they -- excuse me,
13 call the number, so they can be added to the queue, right?

14 MS. SHUPE: Correct. If you go to page 5 of the document that was just
15 sent to you, you will see the Spanish public comment instructions.

16 MS. NEIDHARDT: Yes, I see it now.

17 CHAIR THOMAS: If you could do that, we'd appreciate it.

18 MS. NEIDHARDT: Absolutely.

19 CHAIR THOMAS: Thank you.

20 MS. NEIDHARDT: Very good, starting.

21 [READS THE FOLLOWING IN SPANISH] Public Comment Instructions.

22 "Good morning, and thank you for participating in today's Occupational
23 Safety and Health Standards Board public meeting. Board Members present are Mr.
24 Dave Thomas, Labor Representative and Chairman; Ms. Barbara Burgel, Occupational
25 Health Representative; Ms. Kathleen Crawford, Management Representative; Mr. Dave

20

1 Harrison, Labor Representative; Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-
2 Davis, Management Representative and Ms. Laura Stock, Occupational Safety
3 Representative.

4 "As reflected on the agenda, today's meeting consists of two
5 parts. First, we will hold a public meeting to receive public comments or
6 proposals on occupational safety and health matters. Second, after the
7 public meeting has concluded, we will conduct a business meeting to act on
8 those items listed on the business meeting agenda.

9 "We have limited capabilities for managing participation during
10 the public comment period. We are asking everyone to keep their phones
11 and WebEx audio on mute until your name is called to address the Board.
12 Please remember to mute again after you have finished commenting.

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

17 "Please listen for your name to be called for comment. If you
18 have not provided a written statement, please allow natural breaks after
19 every two sentences so that we may follow each statement with an English
20 translation. Today's public comment will be limited to 2 minutes per
21 speaker, and the public comment portion of the meeting will extend for up
22 to two hours, so that the Board may hear from as many members of the
23 public as is feasible."

24 CHAIR THOMAS: Thank you, Amalia, I appreciate that.

25 MS. NEIDHARDT: Absolutely.

1 CHAIR THOMAS: Thank you very much.

2 Mr. Gotcher, do we have any commenters in the queue?

3 MR. GOTCHER: Yes, our first commenters are Cristie Conners followed by
4 Helen Cleary, with first Cristie Conners who is a business owner.

5 CHAIR THOMAS: Cristie, can you hear us?

6 MS. CONNERS: Yes, I can hear you.

7 CHAIR THOMAS: Go right ahead.

8 MS. CONNERS: You guys can hear me, correct?

9 CHAIR THOMAS: Yes, go ahead.

10 MS. CONNERS: Great, thank you. Thank you for taking my call and
11 making time to hear the community. My name is Cristie Conners and I'm a small
12 business accountant. I had almost 20 clients before the pandemic hit. At least 3 of
13 them have closed their doors for good and a few others are still at risk. This is extremely
14 concerning because two-thirds of my clients are nonprofit businesses who serve their
15 local communities.

16 The current ETS as proposed still requires employers to determine
17 vaccination status, mask unvaccinated employees, forces masking of unvaccinated
18 employees paid for by the employer, and expensive cleaning protocols and mandates
19 that I believe are unnecessary for my small business clients. If passed the current ETS
20 will change regulations in such a way that many of my clients will be unable to serve
21 their communities.

22 Governor Newsom promised to align with the CDC and open the state on
23 June 15th. These regulations as proposed do not align with CDC. First, these are all
24 mandates and the CDC has guidelines.

25 Second, your mandate requiring masks for unvaccinated is arbitrary and

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1 an attempt to mark unvaccinated employees. Forcing employees to use a medical
2 device that is not made to prevent COVID is discriminatory. Every mask, cloth or
3 disposable, comes with a warning label will not provide any protection from contracting
4 COVID, rendering them useless. Further, it is well documented that COVID is not
5 transmitted via surfaces, so your cleaning protocols and trainings are undue burdens on
6 businesses.

7 A lot of my clients that are vulnerable --

8 MR. GOTCHER: Thirty seconds.

9 MS. CONNERS: -- have college students and have -- okay. So my clients
10 are expressing to me that they are not able to serve their communities. Another client
11 serves the San Francisco Bay area and he serves addicts and this community has seen a
12 relapse significantly, which has resulted in over 620 people in San Francisco dying from
13 overdoses, because he can't do his job. The same city only experienced 173 COVID
14 deaths over the same time period. Please repeal these mandates, exclude them
15 (indiscernible) solution. Thank you.

16 CHAIR THOMAS: Thank you.

17 Who do we have up next John?

18 MR. GOTCHER: Our next commenter is Helen Cleary from the Phylmar
19 Regulatory Roundtable.

20 CHAIR THOMAS: Helen, can you hear us?

21 MS. CLEARY: I can, good morning and thank you. My name is Helen
22 Cleary and I'm the Director of PRR. On Monday PRR members discussed the
23 amendment and compliance solutions. One challenge was raised, how will employers
24 address cafeterias?

25 The face covering section requires physical distancing for non-vaccinated

23

1 workers while eating and drinking. Members discussed consideration of separate
2 eating areas for non-vaxed and vaxed workers. That's a segregated lunch room. To
3 enforce face coverings employers will be pushed to create two classes and physical
4 markers for vaxed and non-vaxed employees. This is undesirable for safety and ethical
5 reasons and many PRR members do not want to do that, but the Board is giving them
6 little choice.

7 We truly appreciate the Division's quick response to align with CDPH and
8 draft FAQs, particularly the FAQ allowing for self-attestation for vaccination status.
9 These are helpful changes, but they're not complete solutions. The only way to rectify
10 this is to trust that employees can manage their own health. We trust our employees
11 every day including not coming to work with COVID-19 symptoms. We need to respect
12 decisions not to get vaccinated, trust that people understand the risk, and acknowledge
13 natural immunity.

14 Also PRR is still opposed as respirator requirements specifically correct
15 size and style and think the FAQs encourage stockpiling.

16 COVID-19 is still a public health issue yet recent developments shift all
17 responsibility to mitigate the disease to employers. At last week's meeting CDPH's Dr.
18 Aragon stated he did not know what was in the ETS and deferred workplace questions.
19 California leaders are celebrating the state's reopening and a few COVID-19 restrictions
20 for the public.

21 MR. GOTCHER: Thirty seconds.

22 MS. CLEARY: (Indiscernible) the rules and the Board votes. This leaves
23 employers and employees to mitigate COVID-19 in California.

24 The ETS is broken and it cannot be fixed. The Division should continue to
25 clarify its intent and the Board's special committee needs to identify scientific data and

24

1 triggers that will determine repeal.

2 To conclude I just want to say it's unfortunate that on Tuesday FAQs were
3 posted with no announcement and comments were due. Today we have two minutes
4 and an executive order is expected to make the changes effective immediately.

5 MR. GOTCHER: Two minutes.

6 MS. CLEARY: I understand that everyone wants to move quickly, but
7 these are significant decisions and process does matter. Thank you for your time today.

8 CHAIR THOMAS: Thank you.

9 John, who do we have next?

10 MR. GOTCHER: Our next commenters are Monica McCallum followed by
11 Mitch Steiger, with next Monica McCallum from the Moorpark Unified School District.

12 CHAIR THOMAS: Monica, can you hear us?

13 MS. MCCALLUM: Yes, I can hear you.

14 CHAIR THOMAS: Go right ahead.

15 MS. MCCALLUM: Okay, first thank you for letting me speak. And my
16 comment is such that the new mask policy, I believe, is a discriminating policy. And
17 does not take into account the natural immunities of those like myself who have already
18 had COVID. And have been informed by my personal physician that a vaccine is not
19 needed and actually less effective than the actual immunity that comes from recovering
20 from COVID-19.

21 Also, those who have the vaccine should have no problem with those
22 who choose not to get the vaccine, because they themselves are already protected. If
23 someone chooses not to get the vaccine regardless of the reason, they should not be
24 discriminated against by forcing them to wear masks when those who already are
25 vaccinated are not required to wear a mask. The result can be public humiliation of any

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1 individual who is required to wear one. I would implore the Board to reconsider the
2 forced mask wearing of those who are unvaccinated. It's completely discriminatory.

3 And also the vaccine, while many have taken it, is not actually FDA
4 approved and so there are many people that are unwilling to get the vaccine at this
5 point. Not that they might get it in the future --

6 MR. GOTCHER: Thirty seconds.

7 MS. MCCALLUM: -- but it should not be forced upon people to wear a
8 mask. I think you should consider that people can make their own health choices and
9 the people that are vaccinated don't need to be concerned, because they're vaccinated.
10 So the people that are not vaccinated should make their own health decisions. And I
11 thank you very much for hearing my requests and I look forward to your decision. Thank
12 you.

13 CHAIR THOMAS: Thank you very much.

14 John?

15 MR. GOTCHER: Our next commenter is Mitch Steiger from the California
16 Labor Federation AFL-CIO.

17 CHAIR THOMAS: Mitch, are you there?

18 MR. STEIGER: Yes, thank you Chair Thomas.

19 CHAIR THOMAS: Go right ahead.

20 MR. STEIGER: Thank you, Chair Thomas and Members. Mitch Steiger
21 with the California Labor Federation, I appreciate the opportunity to testify today.

22 So the good news, it does really seem like this version protects key
23 provisions of the ETS including training, exclusion pay, outbreak response and a few
24 others.

25 But the bad news is that by effectively removing face coverings from the

26

1 workplace, this version and the corresponding FAQ essentially pretend that the
2 pandemic is over and ignore the harsh realities that dozens of workplace outbreaks and
3 several hundred new work-related cases are reported to the state every day. Most
4 Californians are still not fully vaccinated and that the new and far more transmissible
5 Delta variant will likely soon become the dominant strain here in California.

6 You take all those circumstances together and there's really no way to
7 escape the fact that so drastically weakening the face covering requirements in the
8 standard this version will sicken many and likely kill some workers, particularly in rural
9 areas and especially among underserved communities that are more likely to remain
10 unvaccinated.

11 It seems like often the gravity of the decisions made by this Board get
12 kind of lost in the epidemiological data and the jargon and the statistics. And we think
13 that's in large part, because the workers who are most directly affected by these
14 decisions are often not here to protest. The millions of workers out there that are
15 affected by this ETS are not here today to talk about how they're relying on us to make
16 good decisions.

17 MR. GOTCHER: Thirty seconds.

18 MR. STEIGER: And we really don't think this new version represents a
19 good decision if it does happen today, whether through Board action or executive order
20 or both. And we essentially absolve employers of their responsibility to meaningfully
21 assess vaccination status. We will literally have decided to sacrifice workers lives in
22 order to spare employers the inconvenience of looking at a vaccine card or a picture of a
23 card or something similar. And we implore Board Members to really think about that
24 tradeoff and if that's worth making.

25 We thank you for the opportunity again to testify.

1 CHAIR THOMAS: Thank you, Mitch.

2 Who do we have next?

3 MR. GOTCHER: Our next commenter is Kristie Sepulveda Burchit from
4 Educate Advocate.

5 CHAIR THOMAS: Kristie, can you hear us?

6 MS. SEPULVEDA BURCHIT: Yes. I'm Kristie Sepulveda Burchit at Educate
7 Advocate. We are a statewide grassroots nonprofit organization that serves persons
8 with special needs and disabilities, many of whom are part of California's workforce.

9 The revised ETS states: a) for all employees who are not fully vaccinated
10 employers shall provide face coverings and ensure that they are worn when indoors or
11 in vehicle; b) employers shall provide face coverings and ensure they are worn by
12 employees when required by orders from the CDPH. We would ask that you remove
13 line item a, there is no need to duplicate efforts. There is confusion here also if
14 employers are providing face coverings does this mean now that employees cannot
15 wear their own face coverings?

16 Also, this seems to be a way to have the unvaccinated stand out even
17 more if they only wear certain face masks provided by their employer. As we have
18 shared previously we are hearing of physical illness and infections from employees
19 forced to wear face coverings while working, especially physical jobs all day. This body
20 should revisit weighing the risks to benefit analysis of mandating face coverings for
21 employees as this idea of sending face coverings to labs will spread. And the reality that
22 they are saturated with contaminants and pathogens such as these will come to light.

23 We would ask you to consider the issue of liability of both of Cal/OSHA
24 and the employer providing face coverings. An article was published yesterday after
25 parents sent in their kids' face mask to a lab at the University of Florida. The resulting

28

1 report found that five masks were contaminated with bacteria, parasites and fungi,
2 including three with dangerous pathogenic and pneumonia-causing bacteria. It is
3 immoral, unethical and discriminatory to segregate and isolate employees --

4 MR. GOTCHER: Thirty seconds.

5 MS. SEPULVEDA BURCHIT: -- both those vaccinated and unvaccinated
6 branding them with a scarlet letter face covering.

7 Several of the Board Members at the last meeting discussed vaccine
8 passports or vaccine verification. The federal workforce answered the question that
9 COVID-19 vaccination is not a condition of employment and federal employees can
10 voluntarily share their vaccination status. The agency should not require this disclosure
11 of the information. If federal employees are not subject to this why is this body
12 subjecting California employees to it? And you need to look at also immunity.

13 MR. GOTCHER: Two minutes.

14 MS. SEPULVEDA BURCHIT: People have COVID immunity after having
15 COVID. Thank you.

16 CHAIR THOMAS: Thank you.

17 Who do we have next John?

18 MR. GOTCHER: Our next commenter is Michael Young from CFT
19 Sacramento Office.

20 CHAIR THOMAS: Michael, can you hear us?

21 MR. YOUNG: Yes, I can.

22 CHAIR THOMAS: Go right ahead.

23 MR. YOUNG: Thank you, Board Members. This is Michael Young with the
24 California Federation of Teachers. We represent educational employees working at
25 every level of public and private education from Head Start to early childhood

1 education, K-12 schools, community colleges, and the UC.

2 The proposed changes to the ETS as it relates to the scope of an outbreak
3 and major outbreak are significant in beginning the current standard in workplace
4 protections, especially in workplaces where workers have potential long-term exposures
5 to people who either aren't eligible or aren't able to get a vaccine. By only considering
6 workers when determining if an outbreak or major outbreak has occurred, and not
7 considering all persons as is the current standard, this means that you will only be
8 considering workers in either a caseload classroom or in a college classroom course.
9 Where literally, every student could test positive for COVID, but they wouldn't be
10 counted towards if an outbreak had occurred. This is a significant weakening of the
11 current standard.

12 We urge the Board to take a look at this in reconsidering this weakening.

13 Again, the changes for the determination of outbreak and major
14 outbreak, and the definition of "exposed group" would mean that literally that every
15 student in the classroom could test positive and that would no longer constitute an
16 outbreak under the ETS definition. As you'd consider as you have your discussions on
17 how to move forward we'd urge the Board to reconsider this modification and keep in
18 place the current all-persons standard. Thank you.

19 CHAIR THOMAS: Thank you.

20 John?

21 MR. GOTCHER: Our next commenter is Rob Lapsley who is the President
22 of California Business Roundtable.

23 CHAIR THOMAS: Rob, can you hear us?

24 MR. LAPSLEY: Yes, and good morning, Mr. Chairman.

25 CHAIR THOMAS: Go right ahead.

1 MR. LAPSLEY: So my name is Rob Lapsley, President of California
2 Business Roundtable. We obviously represent California's large employers across all
3 sectors of California's economy. For the record, we want to be positive and constructive
4 today, but we have some very serious concerns and we appreciate the opportunity.

5 Throughout the pandemic, the business community has invested
6 hundreds of millions of dollars to keep employees and customers safe and we were
7 steadfast in our commitment to that cause, moving forward pursuant to your
8 regulations. While we appreciate the efforts made by the Board and OSHA staff to
9 provide clarity and conformity, today's regulations still do not align with either CDC or
10 CDPH guidance and they do remain a significant barrier to fully reopening the economy.

11 Mr. Chairman, we appreciate the FAQs, but the ETS and the FAQs still
12 leave many more questions. And they are the exact opposite of the clarity that
13 businesses need and that we are hearing across this state to rehire and reopen.

14 We believe the following points must be addressed immediately after the
15 adoption of the new standard. First, businesses should not have to retain the private
16 health information of the vaccinated employees who wish to go unmasked. We are
17 creating obviously a huge opening for a violation of privacy laws and for liability.

18 Second, the requirement for providing N95s is unnecessary and not in
19 alignment either with the CDC or CDPH --

20 MR. GOTCHER: Thirty seconds.

21 MR. LAPSLEY: -- therefore, it must be medically cleared before they can
22 wear an N95. Who is responsible for providing that clearance? Should all employees be
23 cleared just in case an N95 is required at a later date?

24 And lastly, when does the ETS end? What are the benchmarks in
25 vaccination, immunization or test positivity rate that will end the ETS? We need this

31

1 kind of clarification. Today's goal cannot be the end of the conversation. We need
2 immediate action and we appreciate your willingness to take testimony.

3 MR. GOTCHER: Two minutes.

4 MR. LAPSLEY: But we look forward to working with you on all of these
5 issues. Thank you.

6 CHAIR THOMAS: Thank you.

7 Who do we have next, John?

8 MR. GOTCHER: Our next commenter is Jassy Grewal from UFCW States
9 Council.

10 CHAIR THOMAS: Jassy, can you hear us?

11 MS. GREWAL: Hi, can you hear me?

12 CHAIR THOMAS: Yeah go right ahead.

13 MS. GREWAL: Thank you. Good afternoon Chair and Board Members.

14 My name is Jassy Grewal, Legislative Director with the United Food and Commercial
15 Workers, Western States Council. The UFCW represents 180,000 workers in the private
16 sector in California mainly in the food sector, from farm workers to meatpacking
17 workers to grocery workers to delivery drivers as well as workers in the healthcare
18 industry and other commercial industries.

19 I'd like to align my comments with those of the California Labor
20 Federation and thank the Cal/OSHA staff for all the work they have done throughout
21 this pandemic to protect workers. UFCW members have been working in industries and
22 workplaces most affected by the COVID-19 pandemic. While announcements of lifting
23 of mask mandates and capacity limits may create the illusion that the COVID-19
24 pandemic is over it is simply not true. Our members continue to fall ill to the virus and
25 we have not reached herd immunity with vaccinations. In the last 30 days there have

32

1 been 22 reported grocery store outbreaks, or 296 cases. And since January there have
2 been 244 reported outbreaks, or 1,708 cases in grocery stores. These are only reported
3 outbreaks, many outbreaks and infections go unreported.

4 Additionally, there are rising concerns around the new Delta variant that
5 has caused (indiscernible) to delay the reopening. Our workers rely on protections from
6 the Emergency Temporary Standard to ensure they are protected from the public, who
7 we do not know are vaccinated or unvaccinated, as they enter our stores and
8 workplaces. The ETS is critical to continue to protect our workers and we urge the
9 Board to keep the ETS in place and adopt the new revisions.

10 More specifically, we would like to share our support for the ventilation
11 standards, testing provisions and exclusion pay.

12 Additionally we urge the Board that employers be required to keep N95s
13 on hand or other forms of PPE available onsite for workers to access upon request.

14 MR. GOTCHER: Thirty seconds.

15 MS. GREWAL: Workers should not be subjected to days or weeks of
16 delay in receiving N95 masks or other appropriate respiratory protection.

17 Lastly, we need a permanent standard to address this and future
18 pandemics. There are ongoing concerns of COVID-19 variants spreading all over the
19 world. And there are also fears and expectations of future pandemics through
20 increased globalization. And working on a permanent standard needs to happen now,
21 with triggers in place. And this will lead to saving lives in the future.

22 Thank you for your time today.

23 CHAIR THOMAS: Thank you, Jassy.

24 John?

25 MR. GOTCHER: Our next commenter is Katie Hansen from the California

1 Restaurant Association.

2 CHAIR THOMAS: Katie, can you hear us?

3 MS. HANSEN: Yes, good morning.

4 CHAIR THOMAS: Good morning.

5 MS. HANSEN: Katie Hansen with the California Restaurant Association.

6 We would like to thank the Cal/OSHA Standards Board and staff for moving in the right
7 direction in revising the proposed ETS to better align with CDPH and CDC guidance.

8 However, the revised ETS before you does not reflect a full reopening of
9 California. The revised ETS locks workplace COVID-19 requirements into place until the
10 beginning of 2022 for all employers at a time when the federal government has limited
11 the OSHA ETS to the healthcare industry and all other business sectors are to follow
12 industry-specific guidance.

13 As the weeks pass and California vaccination rates continue to increase
14 and COVID cases reach all-time lows, it will be untenable for restaurants to continue to
15 ask unvaccinated employees to wear masks until the beginning of 2022. The ETS must
16 not be locked into place until the end of 2021.

17 While we appreciate the sensible improvements to the proposal before
18 you, there are several areas we strongly object to. Requiring community restaurants to
19 provide and N95s to unvaccinated employees for voluntary usage is a questionable and
20 costly approach for a community that is struggling financially due to government-
21 ordered shutdowns. Face covering such as surgical masks defined in the amended ETS
22 should suffice. N95s should be reserved for medical professionals, frontline responders,
23 and used to comply with the emergency wildfires smoke regulation.

24 Restaurants strongly object to the requirement to obtain and maintain
25 COVID-19 vaccination documentation of the employees. How are restaurants supposed

34

1 to respect an employee's privacy and personal medical decisions (indiscernible) --

2 MR. GOTCHER: Thirty seconds.

3 MS. HANSEN: -- obtain and maintain an employee's COVID-19
4 vaccination documents. While the revised ETS allows an employee (indiscernible)
5 vaccination status it does not specifically state the way that self-attestation needs to
6 occur. We need further clarification on self-attestations, providing a standardized form
7 from the state of California for employees to sign. It is critical if you are going to require
8 this of us.

9 Additionally the mandate you are imposing needs to come with the
10 details so employers know exactly how long the State of California --

11 MR. GOTCHER: Two minutes.

12 MS. HANSEN: -- will require employers to keep these medical records.

13 Thank you for the opportunity to provide comments.

14 CHAIR THOMAS: Thank you.

15 John, who do we have next?

16 MR. GOTCHER: Our next commenter is Saskia Kim from the California
17 Nurses Association and National Nurses United.

18 CHAIR THOMAS: Can you hear us, Saskia?

19 MS. KIM: Hi, can you hear me okay?

20 CHAIR THOMAS: Yes, go right ahead.

21 MS. KIM: And yes, I can hear you. Thank you, good morning, Saskia Kim
22 with the California Nurses Association.

23 As you know well CNA has concerns with the rollback of protective
24 measures like masking, testing, physical distancing, capacity limits. We've been
25 outspoken with these concerns in our press release issued on the eve of California's

35

1 relaxation of many of these measures. We urge the public to voluntarily adhere to
2 multiple measures of protection including the simple, cheap and accessible practice of
3 wearing a face mask.

4 Simply put, the June 11th update to the COVID ETS moves California in
5 the wrong direction. The lack of infection control restrictions will endanger our most
6 vulnerable Californians including essential workers who tend to be disproportionately
7 black, indigenous, and people of color and their family members who are under age 12
8 or are immunocompromised. In fact, according to data from CDPH the 7-day average of
9 new COVID-19 cases among children ages 0 to 17 increased 21 percent over the last
10 week. This is a concerning trend.

11 Nurses are worried that the results of rolling back protective measures
12 could see more patients in our hospitals. In fact, a recent study found that the Delta
13 variant has been linked to about double the risk of hospitalizations. And indications are
14 that the Delta variant will become the dominant strain in the U.S. Even Governor
15 Newsom recognized the threat of the Delta variant as of Tuesday's press conference
16 announcing California's reopening.

17 Vaccination is a critically important part, but only one part of the
18 comprehensive infection control program. And so California's approach relies almost
19 exclusively on vaccination as an infection control measure and it relies on people to self-
20 disclose whether they have been vaccinated. This is not sound health strategy. And the
21 burden should never fall on essential workers who have already borne a
22 disproportionate share of infections and deaths.

23 And finally, just to quickly mention --

24 MR. GOTCHER: Thirty seconds.

25 MS. KIM: -- some have argued the proposed regs don't align completely

1 with CDPH or CDC guidelines, but even Dr. Aragon was clear the other day their
2 guidance covers the general public, not the workplace. For all these reasons CNA
3 requests that you maintain the highest level of protections for workers. Thank you.

4 CHAIR THOMAS: Thank you.

5 Who do we have next, John?

6 MR. GOTCHER: Our next commenter is Lawrence Gayden from the
7 California Manufacturers and Technology Association.

8 CHAIR THOMAS: Go ahead, caller.

9 MR. GAYDEN: Thank you, can you guys hear me out there?

10 CHAIR THOMAS: We can hear you. Go ahead.

11 MR. GAYDEN: Yes, the California Manufacturers and Technology
12 Association, I appreciate the opportunity to provide testimony at today's Standards
13 Board meeting on the proposed readoption of the COVID-19 ETS. We want to thank the
14 Board and OSHA staff for their flexibility throughout this process.

15 And we are happy to see some considerations omitted in the new regs
16 (indiscernible) provide some relief to California manufacturing and the business industry
17 at large. However, the proposed revisions still present some challenges related to
18 clarity and feasibility of our concerns along with those we have submitted and that you
19 have heard earlier as well from our business industry counterparts.

20 First, the most being the N95 respirator requirement and the practicality
21 of officially having employers needing to stockpile masks for voluntary use for
22 employees who are unvaccinated who typically also may not really want to wear a
23 mask.

24 Second, our concerns being the receivability (phonetic) regarding the
25 vaccination documentation requirements for employers and the entire self-attestation

37

1 (indiscernible) manufacturing compliance driven, and aspects of the ETS may force
2 manufacturers (indiscernible) that will still need many improvements and lack
3 significant clarity around kind of the future that we will see.

4 CMTA appreciates the opportunity to participate in this conversation.
5 We look forward to a continued conversation on how to improve the ETS, achieve the
6 right balance between worker protections, and operational integrity for manufacturing.
7 And we look forward to having our concerns be addressed in the future FAQs. Thank
8 you.

9 CHAIR THOMAS: Thank you.

10 Who do we have next, John?

11 MR. GOTCHER: Our next commenter is Zebadiah Hutchison from the
12 Mid-Coast Transit Constructors.

13 CHAIR THOMAS: Zebadiah, are you with us?

14 (No audible response.)

15 MR. GOTCHER: Zebadiah, if you called in to the WebEx then you'll need
16 to press *6 to unmute yourself.

17 (No audible response.)

18 CHAIR THOMAS: Let's move on to the next, and we will come back to
19 him.

20 MR. GOTCHER: Okay our next commenter is Anne Katten from the
21 California Rural Legal Assistance Foundation.

22 MS. KATTEN: Yes, good morning. This is Anne Katten from California
23 Rural Legal Assistance Foundation.

24 CHAIR THOMAS: Good morning. Go right ahead.

25 MS. KATTEN: Good morning, and we appreciate retention of key

1 provisions in the revised proposal, but we fear that it is too weak to protect vulnerable
2 workers who are disproportionately workers of color and low-income workers. And we
3 think the best choice would be to retain the existing ETS, but failing that to make some
4 key changes before voting.

5 Remembering that some of the earliest, and most serious COVID
6 outbreaks last year occurred in crowded worker housing, we are frankly alarmed by
7 elimination of bed spacing and physical distancing requirements in employer-supplied
8 housing and transportation when not all workers are fully vaccinated. If you consider
9 passing this provision at minimum, we urge first reverting to the May 20th housing and
10 transportation requirements that retained physical distancing unless all workers were
11 vaccinated.

12 We interpret ensuring that unvaccinated workers wear masks indoors
13 and in vehicles to require employers to verify vaccination status and keep records and
14 the Board should insist on this interpretation.

15 Employers routinely check that where workers have proper licenses to
16 operate vehicles and equipment and this is analogous. Without true verification many
17 unvaccinated workers --

18 MR. GOTCHER: Thirty seconds.

19 MS. KATTEN: -- will forgo masks, resulting in infection surges, especially
20 with physical distancing and barrier requirements eliminated. It's also important that
21 any masks and N95 respirators be made available to employees readily not merely upon
22 request, because fear of retaliation and language barriers will prevent mask and
23 respirator access by low-wage workers who need the protections most. Thank you.

24 CHAIR THOMAS: Thank you, Anne.

25 Who do we have up next, John?

1 MR. GOTCHER: Our next commenter is Sandra Martinez and they will
2 be representing themselves.

3 CHAIR THOMAS: Sandra, can you hear us?

4 MS. MARTINEZ: Oh, hello. Can you hear me?

5 CHAIR THOMAS: Yeah, go right ahead.

6 MS. MARTINEZ: Okay, thank you. Good morning. If I understood
7 correctly this proposed revision is quite an improvement from the previous ETS and I
8 want to provide a little bit of clarification. Coronavirus rates are dropping, because
9 viruses naturally have an 18-month lifecycle. It has nothing to do with the measures
10 taken. And according to a number of vaccine experts it appears the variants are actually
11 being generated by the vaccinated people.

12 Also there is prophylactic and effective early treatment, but it is currently
13 unavailable in California. And things are in the works to create access to these
14 medications, which will have a huge impact on safety for workers.

15 Asking vaccine status is still invasive and a breach of privacy, which still
16 remains a concern and is still a very, very slippery slope. I fully support a worker's right
17 to choice when it comes to masking, but not mandatory masking. The liability and costs
18 of providing respirators and N95s are burdensome and open one to lawsuits.

19 Thank you for continuing to revise the ETS, so that it is favorable for
20 worker's privacy and choice.

21 CHAIR THOMAS: Thank you.

22 John, who do we have up next in the queue?

23 MR. GOTCHER: Our next commenter is Fran Schreiber from the Labor &
24 Employment Committee of the National Lawyers Guild.

25 CHAIR THOMAS: Fran, can you hear us?

1 (No audible response.)

2 MR. GOTCHER: Fran Schreiber, are you on the line? If you dialed into
3 WebEx you will need to press *6 to unmute yourself.

4 CHAIR THOMAS: All right. John, let's move on and we'll get her back into
5 the queue at a different time.

6 MR. GOTCHER: Okay. Our next commenter is Maggie Robbins from
7 Worksafe.

8 CHAIR THOMAS: Maggie, can you hear us?

9 MS. ROBBINS: Hi, yes. Can you hear me?

10 CHAIR THOMAS: Yeah, Maggie, go right ahead.

11 MS. ROBBINS: Hi, thank you. This is Maggie Robbins and I'm with
12 Worksafe, an Oakland-based nonprofit that focuses on keeping workers safe on the job
13 in California. Thank you for taking our comments.

14 I just want to reiterate a few things that I said in our written comments.
15 This is a temporary standard and we believe it continues to be meaningful, providing
16 expectations of protections in the workplace for both employers and workers.

17 Worksite outbreaks are continuing to occur across the state. And just
18 during the month of May there were 25 outbreaks per day reported to the Department
19 of Public Health. These outbreaks during May affected more than 10,000 workers who
20 were infected. So these workers, their families and communities are still right in the
21 middle of this pandemic even if many of us want to put it in the rearview mirror. We
22 are concerned that controls to limit spread in the workplace being rolled back just a
23 little too soon.

24 Vaccination is underway indeed, about 56 percent of the state is
25 vaccinated, another 10 percent are partially vaccinated. That's about 22 million, with

41

1 almost 23 million people. But we vaccinate at most 130,000 people a day with one of
2 their two doses, so we've got a long way to go to get us to a larger rate of vaccination.

3 And the other fact about this is that the vaccination rate varies a lot by
4 county. Many of our most populous counties have fairly high vaccination rates at this
5 point --

6 MR. GOTCHER: Thirty seconds.

7 MS. ROBBINS: -- but a lot of counties don't. We have about 11 counties
8 that have fewer than 40 percent with even a first dose. We have another one that's
9 actually just under 30 percent. And we do not believe that all the unvaccinated people
10 are people who refuse, who believe that they just have not had access yet to vaccine.
11 This is why we feel a relaxation of worksite protections is happening just a little bit too
12 soon.

13 We all want this in the rearview mirror, we really all do. I just don't want
14 us to jump too soon and leave people vulnerable to be getting infections at work and
15 taking it home with them. We do support the proposal in maintaining many of the
16 important protections in the standard, from dealing with outbreaks to identifying cases
17 and close contacts, the ventilation. So there's a number of good things we think we can
18 --

19 MR. GOTCHER: Twenty seconds.

20 MS. ROBBINS: -- thank you -- that are being preserved, but we do have
21 concerns about some of the relaxations. Please look at our written comments for more
22 details.

23 I'll finally close with two comments --

24 (Sound cuts out.)

25 CHAIR THOMAS: Oh Maggie, we lost you.

1 MS. ROBBINS: Sorry, that was bizarre.

2 CHAIR THOMAS: Yeah, go ahead, finish it up.

3 MS. ROBBINS: So I'm sorry, two final points. One is we'd like to have the
4 Board support having the California Department of Public Health release more detailed
5 outbreak data, so that we can actually see where is the worksite outbreaks are
6 occurring. Right now we get aggregated data statewide, which isn't that helpful in
7 having workers and advocates understand where these outbreaks are really occurring.

8 And second is we do urge the Board and Cal/OSHA to begin developing a
9 more permanent infectious disease standard. The standard process takes a very long
10 time and we need to get working on it, so that we can get through that multi-year
11 process before the next pandemic strikes and while the memory of this one is still firmly
12 in our brains. Thank you very much.

13 CHAIR THOMAS: Thank you, Maggie.

14 Who do we have next John?

15 MR. GOTCHER: Our next commenters are Kevin Pedrotti followed by
16 Michael Miiller, with next Kevin Pedrotti from NFIB.

17 CHAIR THOMAS: Caller, can you hear us?

18 MS. PEDROTTI: Yes, I can

19 CHAIR THOMAS: Go right ahead.

20 MR. PEDROTTI: Can you hear me?

21 CHAIR THOMAS: Yeah.

22 MR. PEDROTTI: Yeah, thank you, Mr. Chair and members of the Board,
23 Kevin Pedrotti representing NFIB. First of all I'd like to align ourselves with the
24 comments of the CalChamber, which will be forthcoming. Small business strongly
25 supported the Governor's move to reopen the economy on June 15. However,

1 confusion will stop the economic growth of California. Continued confusion means
2 possible liability and frustration for both employees and customers. Small employers
3 don't need further economic hurdles and additional costs. We believe we need a
4 unified approach that alleviates confusion and instills confidence in the progress
5 California has made to protect against COVID-19. Thank you.

6 CHAIR THOMAS: Thank you.

7 Who do we have next, John?

8 MR. GOTCHER: Our next commenter is Michael Miiller from the California
9 Association of Winegrape Growers.

10 CHAIR THOMAS: Michael, can you hear me?

11 MS. MIILLER: Yes, I can, thank you. Can you hear me?

12 CHAIR THOMAS: Yes, go right ahead.

13 MR. MIILLER: Good morning Chair Thomas, Board Members and staff.

14 My name is Michael Miiller with the California Association of Winegrape Growers.

15 The readoption before the Board today is vastly improved and we thank
16 you all for your efforts. However, today we are once again asking that the ETS be
17 repealed. This is in part, because while California is reopening the ETS is going the
18 opposite direction by needlessly increasing workplace requirements.

19 For example, to address problems created by the ETS Governor Newsom
20 said on Monday that the state would provide N95 masks to help employees and
21 employers comply with this new requirement. This is greatly appreciated and is the
22 right thing to do, but it begs the question if the state has to provide N95 masks from the
23 emergency stockpile to "get back to normal," are we really getting back to normal? In
24 short, the N95 provision should be eliminated.

25 I also take exception with Mr. Berg's representation that the ETS is part

44

1 of a successful, comprehensive strategy in helping this state to reopen. Workplaces in
2 California are reopening primarily, because of the effectiveness of vaccines and efforts
3 by employers in helping to get employees vaccinated. But the ETS does absolutely
4 nothing to get people vaccinated. If the Board really wants to help keep employees safe
5 please help us get them vaccinated.

6 If you keep the ETS in place, please seriously consider your next steps.
7 The subcommittee should meet immediately informing us and the public when you
8 believe Californians have had enough of this regulation. To be clear, what is the
9 percentage of workforce population that must be vaccinated before the Board will
10 consider repeal of the ETS? Please give us a goal, then formalize that goal so
11 Californians have clear direction.

12 MR. GOTCHER: Thirty seconds.

13 MR. MIILLER: The last few weeks have clearly shown that the ETS has
14 been an obstacle to our reopening. Trying to fix this fatally flawed ETS has (indiscernible)
15 conversation at the mad hatter's tea party. If we crawl out of the rabbit hole we will
16 find that the best way to fix the ETS is to repeal the ETS. Handily keeping the ETS in
17 place ignores science, data, reason and logic.

18 You should repeal the ETS at your earliest convenience. And thank you
19 very much for your time and all your work in this effort.

20 CHAIR THOMAS: Thank you.

21 John?

22 MR. GOTCHER: Our next commenter is Tino Barragan from Santa Clara
23 County.

24 CHAIR THOMAS: Mr. Barragan, can you hear us? I think (indiscernible)
25 I'm not sure. Hello?

1 MS. BARRAGAN: Who are you calling on?

2 CHAIR THOMAS: Go ahead, sir.

3 MR. GOTCHER: Tino Barragan.

4 MR. BARRAGAN: Okay, thank you. Cal/OSHA is aware surgical and cloth
5 masks never worked based on the presentations last meeting. That's why you're
6 focusing on N95s now, so people who do not take the shots are also choosing not to
7 wear masks. N95s are supposed to have a proper fit test. Will employers have a
8 technician do a proper fit test every time an employee wears a new mask? Are people
9 going to get a physical to make sure they can handle N95s? Cal/OSHA knows about the
10 potential for cross contamination due to improper mask usage and that other health
11 concerns exist. The public has not been wearing the masks properly the entire time.

12 Chairman Dave Thomas wore his mask improperly for over three hours
13 last meeting (indiscernible) all night. Then the public had to listen to him lecture us
14 after watching that display.

15 FDA just had three members resign due to the agency fast-tracking
16 approval of another drug. Twenty-seven experts put out a release statement to the FDA
17 listing eight reasons why these shots shouldn't be rushed for approval. The CDC is
18 having an emergency meeting due to heart inflammation. J&J was paused over six
19 blood clots and yet nobody will talk about the over 10,000 deaths that have been
20 reported on VAERS. And we're still not considering natural immunity when discussing
21 herd unity.

22 Collusion is taking place to take the shots with lotteries, vacations,
23 unhealthy food that contributes to obesity, which is one of the main reasons people get
24 a negative reaction to the virus. And now you are about to force discrimination and
25 segregation. Some employers are mandating masks and vaccines or people will lose

1 their jobs. So the choice is between experimental shots with more info about negative
2 reactions coming out every day or test negative with a severely flawed (indiscernible) --

3 MR. GOTCHER: Thirty seconds.

4 MR. BARRAGAN: -- or mandate N95s after over a year of misguided
5 science surrounding masks. Vaccination rates are high, cases and deaths are low. Even
6 Dr. Monica Gandhi who has pushed experimental shots and masks has said that if you
7 push these mandates you will risk losing your credibility. This isn't about health or
8 protecting people the state is abusing emergency power based on a flawed PCR testing
9 strategy while using an asymptomatic narrative that has never been proven. End the
10 ETS. Thank you.

11 CHAIR THOMAS: Thank you.

12 John, who do we have next?

13 MR. GOTCHER: Our next commenter is Eddie Sanchez from the Southern
14 California Coalition for Occupational Safety and Health.

15 CHAIR THOMAS: Mr. Sanchez, are you with us?

16 MS. SANCHEZ: Yes, good morning.

17 CHAIR THOMAS: Go ahead.

18 MR. SANCHEZ: Wonderful. My name is Eddie Sanchez with Southern
19 California Coalition for Occupational Safety and Health, SoCalCOSH. We are a nonprofit
20 organization based in Southern California and advocate for safe, healthy and secure
21 workplaces for low-wage, immigrant and workers of color.

22 We are here in support of strengthening the COVID-19 Emergency
23 Temporary Standard. We want to thank the Board for your courage and resilience
24 during this process and for considering our comments today. COVID-19 cases currently
25 are low, but loosening the standard now could put many workers knowingly in danger

47

1 when we see cases spike again.

2 As of now cases are still increasing, but in very small numbers due to the
3 protections we currently have in place. Removing those protections can undo the work
4 and sacrifice so many have made. We know from experience now that employers will
5 not do what's right or what's safe on their own. Strong standards guide, move, and hold
6 employers accountable.

7 Also, it's unclear how well vaccines prevent asymptomatic and mild
8 COVID infections. How will vaccine prevention prevent this transmission of the virus
9 and how long prevention from vaccines will last? At the same time we know many
10 workers are still not vaccinated, many of whom have not been given paid time off by
11 their employers to get it. Eliminating the scope of this standard directly puts those
12 workers at risk.

13 Comparatively, we see low-road employers ignoring basic guidelines,
14 failing to install measures in the workplace and they see the state and local guidelines as
15 suggestions rather than the law.

16 We ask that the Board keep the Emergency Temporary Standard in place,
17 push for data transparency on outbreaks, establish triggers to restart controls, ensure
18 face coverings can remain, retain protections for unvaccinated folks, and ultimately
19 push for a permanent infectious disease standard. We need a permanent standard to
20 address this and future pandemics, especially as variants --

21 MR. GOTCHER: Thirty seconds.

22 MR. SANCHEZ: -- especially as variants continue to spread through the
23 UK, Brazil and other countries. California workers are looking to the Board to make the
24 best decision and pass a common-sense solution to ensure Cal/OSHA is able to hold
25 employers accountable for violating COVID-19 guidance and keep workers safe. I want

48

1 to thank you all for your time, consideration and work on this effort. Thank you.

2 CHAIR THOMAS: Thank you.

3 John, who do we have next?

4 MR. GOTCHER: Our next commenter is Justin Shores, and they will be
5 representing themselves

6 CHAIR THOMAS: Justin, can you hear us?

7 MR. SHORES: Yes. Can you hear me?

8 CHAIR THOMAS: Yeah, go right ahead.

9 MR. SHORES: I called last week and talked about my job being in
10 jeopardy for choosing to not wear a mask after your meeting a couple weeks ago. And it
11 still is in jeopardy. I'm actually the only one outside now wearing a mask, because most
12 of my corporation has vaccinated. So now it's me only along with one other person
13 that's standing outside with the mask on at my job, so just take that into account. I
14 don't know why they're forcing a vaccine on me if it's not protecting them. If they're
15 afraid of me then how is it going to protect me if I get it?

16 I just don't understand how you guys can cause these regulations.
17 Looking at California's devastating business economy right now 40 percent of our small
18 businesses closed, because of lockdown regulations not because of COVID. This is
19 because of boards like you choosing to lock down these businesses and crushing them
20 financially.

21 Also with your regulations, you keep adding on more to these businesses,
22 so people like me are going to leave the state. Based on your meetings this is how I will
23 decide what to do for my family. So we're a family, I have a smart kid, they could raise
24 families here, but instead you're taking away that human capital from our state with
25 your decisions. So you really need to think about that.

49

1 We are a -- just look at one thing for me if you can, Germany only did
2 masks, okay. They're the only country that only did masks and it changed nothing.

3 MR. GOTCHER: Thirty seconds.

4 MR. SHORES: So if you look at the science, just the science please, look at
5 what we've done here, which was six different mitigations. You said the masks worked,
6 but really look at the data. They don't really work. We know in the box they don't work.
7 We know based on real science, based on known science, masks do not stop COVID.
8 And COVID will be around forever, so all the people worried about outbreaks, "Hey
9 we're going to have COVIDs forever, there's three trillion COVIDs in your body right
10 now." So (indiscernible).

11 MR. GOTCHER: Two minutes.

12 CHAIR THOMAS: Thank you, caller. We appreciate your time.

13 Who do we have next, John?

14 MR. GOTCHER: Our next commenter is Bruce Wick from the Housing
15 Contractors of California.

16 CHAIR THOMAS: Bruce, are you with us?

17 MR. WICK: I am. Thank you, trying to do my video, there we go. Thanks.
18 In my written comments, I gave six reasons to rescind the ETS and return to IIPP
19 enforcement. We need to use the science and data available. That data shows 3
20 percent of cases were occupational where medical treatment was provided, 2 percent
21 of the total deaths are attributable to the workplace.

22 The Workers' Comp data has been readily available all along. It shows
23 the difference vaccines are making. Of the Workers' Comp claims reported January
24 through May of this year, 89 percent were January/February, 11 percent from March
25 through May. The cases reported, the 10,100 in May, only 521 Workers' Comp claims

50

1 were filed from those cases. The outbreak data has been available since January 1 and
2 has been given by the Division in bulk form. You need to have analysis of it. Health
3 facilities were 47 percent of the reported outbreaks. They're covered by the ATD. Of
4 the total cases reported less than 1/3 turned into Workers' Comp cases.

5 When comparing May outbreak data there's terrific information. In May
6 compared to the previous four months in all workplaces a 55 percent reduction in
7 outbreaks, a 43 percent reduction in cases, in retail 65 percent reduction in outbreaks,
8 53 percent reduction in cases. We need to have the Division give real data and
9 information (indiscernible) --

10 MR. GOTCHER: Thirty seconds.

11 MR. WICK: Thank you, John. And it's not the ETS, but the vaccines that
12 are making this difference. Governor Newsom provides the data to us on where
13 California stands; the best 3 percent in the country. The Division isn't giving us that kind
14 of data. We need it to make decisions. Thank you.

15 CHAIR THOMAS: Thank you, Bruce.

16 Who do we have next John?

17 MR. GOTCHER: Our next commenter is Frances Schreiber from the
18 Labor & Employment Committee of the National Lawyers Guild.

19 CHAIR THOMAS: Fran, are you with us this time? Fran did you mute
20 yourself, *6.

21 MS. SCHREIBER: Star 6.

22 CHAIR THOMAS: There you are. We can hear you.

23 MS. SCHREIBER: Okay, thank you. Okay, somebody unmuted me, thank
24 you.

25 The Employment Committee is one of the original petitioners for this

1 ETS. And I basically want to say we are the lawyers who work with and represent the
2 unions who represent hundreds of thousands of workers in the State of California. And I
3 appreciate the comments made by the folks from Labor earlier in this meeting and want
4 to support all of those comments.

5 And to emphasize to you that so many of the workers that we represent
6 can't be on this phone call, can't be on this Zoom, can't tell you because they can't take
7 off time for work. And they cannot even afford to have a computer and an Internet
8 connection like so many of the people who are on this call. So I just want to say that I
9 hope you seriously take the comments of those who represent a huge number of
10 workers in the State of California.

11 I want to make just a couple of simple points. One is that we want the
12 Emergency Temporary Standard to remain and to adopt the new provisions. Although
13 we would like to have some improvement with respect to documentation that the
14 employer has to keep in terms of folks who are vaccinated, because folks will not
15 necessarily give correct information. And leaving it in a way that the Division cannot
16 verify is not an effective way to make sure that people are protected.

17 The second thing is that is of serious concern to me is the importance for
18 us to also begin the movement for the second part of the petition that we submitted,
19 which is a permanent standard for infectious diseases. I appreciate the work that the
20 Standards Board has done, that the Division has done. And I hope that you will all vote
21 to adopt the revisions that the Division has offered in this meeting. Thank you so much.

22 CHAIR THOMAS: Thank you, Fran.

23 Who do we have next, John?

24 MR. GOTCHER: Our next commenter is Rob Moutrie, who will have four
25 minutes to speak, because time was ceded to him from Louie Brown; Rob Moutrie from

1 the California Chamber of Commerce.

2 CHAIR THOMAS: Rob, can you hear us?

3 MR. MOUTRIE: Yes, Mr. Chair, thank you.

4 CHAIR THOMAS: All right, hold on a second. Go ahead, we've got you on
5 the clock.

6 ROB MOUTRIE: I will have to use all of them this week, my apologies.

7 (Laughter.)

8 CHAIR THOMAS: Good, go ahead.

9 ROB MOUTRIE: Rob Moutrie from the California Chamber of Commerce,
10 speaking on behalf as well of Louie Brown of Kahn, Soares & Conway, who represents a
11 range of agricultural employers for the time.

12 First, I'd like to echo the thanks to the Board and the Division staff for
13 their really quick work here in getting these turned around. We know this is not easy to
14 do. And a couple of key improvements were made over the prior drafts, and the
15 Board's concerns were heard, and we appreciate that.

16 Specifically, we are really glad to see the improvements surrounding face
17 masking, social distancing, and the recognition of WHO-recognized vaccines, which
18 makes for families that live in and out of our country and also for employers which
19 international workforces, it makes that much more viable. So we appreciate those.

20 We also appreciate the FAQ's released yesterday. Obviously, there are
21 concerns and revisions we would hope for, but we appreciate them coming out as
22 promptly as possible in light of the Governor's promise to put this into effect as quickly
23 as possible if it is passed.

24 Finally, I would like to flag as was mentioned earlier, we appreciate the
25 Governor's commitment to providing N95s to assist employers with quickly acquiring

1 them to comply with this regulation. I know the State Chamber as well as a number of
2 local Chambers of Commerce are going to get involved in the program to help
3 distribute, so we appreciate that as a feasibility issue.

4 And I do want to be clear, we in the business community certainly have
5 ongoing concerns, particularly around feasibility of some of these provisions, providing
6 sufficient N95s and the timeline to get into compliance. But in response to some of the
7 comments earlier really saying this draft ignores the pandemic or removes face masks
8 entirely, things like that, I think we have to disagree. We would say this is a measured
9 step. It's certainly not opening quickly enough for some, and we have concerns there,
10 and certainly too fast for others. But we do think that this is a good step in that
11 direction and appreciate the work there.

12 A few comments were made about the Delta variant and I'd like to briefly
13 address those. Just today NPR put out a story on this with quotes from Dr. Fauci,
14 pointing out that the Delta variant is addressed by current vaccines. And we would urge
15 everyone as has been said previously on this call to get vaccinated. That is the safest
16 way out of this and I would urge everyone to do it. I have, my family has, it will help.

17 The last point I'd like to touch on briefly is the self-attestation issue,
18 which has been discussed by a couple of comments, and that is a difficult issue.

19 Obviously we understand that self-attestation and how do you determine
20 if an employee is vaccinated is a difficult issue. There are real feasibility concerns. As
21 many of you know who were vaccinated when you received your vaccine card no one
22 said save this, right? No one said this will be necessary for your work or things to that
23 effect. You were just given it. So we have -- many of our members have problems
24 where employees may say, "Well I'm vaccinated," who already have asked questions
25 about this. May say, "Well I'm vaccinated, but I lost my card." Or the issue of how do

1 you confirm if that card is true or not? Those are issues, which we don't see a feasible
2 solution to aside from self-attestation.

3 And for that reason, particularly for small employers we don't see a
4 better solution to that issue that can be dealt with here. At some point, we have to
5 trust workers when they tell us we are or are not vaccinated. And employers can't really
6 fix that issue for us.

7 So I will stop there, hopefully not having used all four minutes, but
8 appreciate the time and work and we view this as a considerable improvement over the
9 present ETS. Thank you.

10 CHAIR THOMAS: Thank you, Rob.

11 We're going to hear two more comments and then we're going to take a
12 15-minute break at, I believe, it's going to be like 11:35. So who do we have up next?

13 MR. GOTCHER: Our next commenter is Harry Semerdjian from the Los
14 Angeles Area Chamber of Commerce.

15 CHAIR THOMAS: Harry, can you hear us?

16 MR. SEMERDJIAN: Yes, I can. Thank you, sir.

17 Good morning Chair Thomas and honorable members of the Board. My
18 name is Harry Semerdjian and I'm a senior public policy manager with the Los Angeles
19 Area Chamber of Commerce.

20 I would like to thank the Board for today's very important discourse that
21 will impact millions of Californians. On behalf of the 503,000 businesses in Los Angeles
22 County and our 1,400 members, the Los Angeles Chamber of Commerce greatly
23 appreciates Cal/OSHA aligning its newest proposed regulations to CDC and CDPH by
24 eliminating the requirement for vaccinated employees to wear masks in workplaces as
25 well as ending social distancing obligations as soon as the regulation goes into effect.

55

1 We strongly urge Cal/OSHA to adopt these recommendations today and
2 provide additional clarification to employers, thus enabling our great state to get back
3 to business. Thank you very much.

4 CHAIR THOMAS: Thank you.

5 Last commenter until we go into our 15-minute recess. Go ahead, John.

6 MR. GOTCHER: Our next commenter is Janine Dorn who is a small
7 business owner.

8 CHAIR THOMAS: Janine, can you hear us?

9 MS. DORN: Hello. Can you hear me?

10 CHAIR THOMAS: Yes, go right ahead.

11 MS. DORN: Hi, can you hear me? Okay.

12 CHAIR THOMAS: Yes.

13 MS. DORN: All right, so I'm calling on behalf of a friend who can't speak
14 today, because she's working, so I'm just going to read what she wrote:

15 "Mask mandates have destroyed my family and have been promoting
16 fear among my staff. I'm a grandmother and department head. I'm over 70 years old.
17 Since the pandemic not one person caught COVID-19 from another person at work. I
18 know of 3 people out of over 400 employees who caught COVID from a family member,
19 came into work asymptomatic, and stayed home when symptoms presented. I repeat,
20 no one caught COVID-19 from them at work and there was no asymptomatic spread.

21 "I know of more colleagues from work whose family members have been
22 injured from the COVID-19 vaccine and from the surveillance testing that I know who
23 got COVID. The daughter of a coworker got all the COVID symptoms from the first
24 vaccine and now has heart problems. Her daughter-in-law had multiple strokes after
25 the second vaccine, both in their mid to late 30s. And now my youngest daughter is

56

1 having to wear a heart monitor since the second vaccine with no preexisting
2 conditions. My sister's friend got a staph infection from the surveillance testing and her
3 son-in-law has continual nosebleeds, because he is frequently tested for his work.

4 "I was threatened termination by my employer if I did not submit to
5 surveillance testing.

6 Our local hospital was never overrun. Even when the specifics came out
7 the full capacity was not taken into account, so that whole thing of flattening the curve
8 is ridiculous. The fear propagated by just the mask mandate is real. There are a few in
9 my organization who are terrified to come into work even though we have not had
10 anyone catch COVID-19 at work.

11 "My grandchildren ages 7 and 11 months -- "

12 MR. GOTCHER: Thirty seconds.

13 "MS. DORN: -- who live (indiscernible) from my home. They have not
14 seen my face for a year. They only see me on Zoom. Their parents are trying to follow
15 the mandate to a T for fear of their safety. When I drop something at their house, I
16 must leave it outside, so they can thoroughly clean it. I ring the doorbell and when my
17 7-year-old granddaughter sees that it is me she starts crying, because she does not want
18 to put a mask on because she cannot hug me. I'm not allowed to get close to the
19 children nor hold the baby. The children cannot see their cousins who live in the same
20 town and have never seen the baby due to COVID-19 fear. My daughter cries, I cry. We
21 cannot have meals together."

22 MR. GOTCHER: Two minutes.

23 MS. DORN: "Mask mandates instigate fear and causes alienation from
24 loved ones. Please stop making people wear masks. The survival rate is 99.78. The
25 people who are dying are of the age of expectancy of life, 78.6 years. People who die

1 have more than 2.5 co-morbidities.”

2 Thank you so much for listening to this, appreciate that. Thank you.

3 CHAIR THOMAS: Thank you.

4 So at this time we are going to take a 15-minute break until 11:50. And
5 so at this time we are going to recess and we will be back in order at 11:50. Thank you.

6 (Off the record at 11:34 a.m.)

7 (On the record at 11:51 a.m.)

8 CHAIR THOMAS: We are back in session. And we have an announcement
9 from Christina Shupe, so go right ahead Christina.

10 MS. SHUPE: Thank you. Chair Thomas.

11 This is a reminder that the public comment portion of today's meeting
12 will be two hours, so that the Board may hear from as many commenters as feasible and
13 still have sufficient time to conduct its business. We're currently halfway through the
14 public comment period. And we have over 100 commenters in queue. We will get to
15 everyone that we can within that time allotment. Thank you.

16 CHAIR THOMAS: Thank you, Christina.

17 So, John, who do we have up next in the queue?

18 MR. GOTCHER: Our next commenters are Megan Mansell followed by
19 Len Welsh, with next Megan Mansell from Rational Ground.

20 CHAIR THOMAS: Megan, can you hear us?

21 MS. MANSELL: Yes, I can.

22 CHAIR THOMAS: Go right ahead, please.

23 MS. MANSELL: Hi, my name is Megan Mansell. The reason I am calling
24 today is because I want you to think about how this transfers over to all of your areas of
25 coverage. Because when you are working in a factory and you're required to be

1 protected against volatile chemicals for respiratory inhalation, you look at the
2 minimum viable particle size under pressure, or the minimum excessive particle size
3 under pressure.

4 And when we have a known pathogen we look at minimum infective
5 deaths and minimum viable particle size under pressure. The minimum viable particle
6 size under pressure for COVID is at .06 microns, which puts it firmly within the radically
7 behaving particulate range, which means multiple COVID-19 sized baryons can be part
8 of the given cluster and still fall easily within range. 90 percent of respiratory emissions
9 fall under .3 microns, and that remaining 10 percent as composed of the larger droplets
10 can easily be aerosolized due to expulsive respiratory pressure explosive force-
11 generating events within a mask against that matrix or membrane.

12 And how this transfers over into other protective coverage areas is, is it
13 okay to wear gloves that only protect your hands 20 percent when you're handling acid?
14 Is it only --

15 MR. GOTCHER: Thirty seconds.

16 MS. MANSELL: -- under this compulsory measure you're not getting the
17 health clearance, the medical clearance. And on children in schools these are entirely
18 unregulated apparatuses. There are no efficacy standards for child-size masks and it's
19 experimental while causing severe developmental harm. And it should never have been
20 a measure to begin with. Masks exacerbate the spread of airborne pathogens and
21 masks are --

22 MR. GOTCHER: Two minutes.

23 MS. MANSELL: -- not source control for airborne pathogens. Thank you.

24 CHAIR THOMAS: Thank you.

25 Who do we have next, John?

1 MR. GOTCHER: Our next commenter is Len Welsh, who will be receiving
2 four minutes and had time ceded to him from Kevin Bland. Len Welsh is representing
3 California Hotel and Lodging Association, Ironworkers Management Progressive Action
4 Trust, Grower-Shipper Association of Central California and Western Steel Council.

5 CHAIR THOMAS: Len?

6 MR. WELSH: Can you hear me?

7 CHAIR THOMAS: Yeah, John just took up a half a minute of your time, but
8 go ahead.

9 MR. WELSH: Yeah, geez what is this? Anyway, good morning Chair
10 Thomas, Board Members and also staff of DOSH and the Board.

11 I want to express one more time my appreciation for the tough situation
12 you're in and the efforts and hard work you've been putting in to resolving what
13 continues to be an unprecedented set of problems for us here and of course everybody
14 all over the world.

15 You know, once again we're in this situation where I think the Board is
16 feeling like it may have to pick its poison here. And I have to point out again there is a
17 problem with this process in that we're being presented with a series of fait accompli.
18 We get a chance to comment after the draft has been made and there's no meaningful
19 dialogue taking place. And it's the dialogue that we desperately need here.

20 As we've heard bits and pieces of in the comments so far there are lots of
21 different data points people allude to and we only halfway or fractionally know about
22 them, because there's no time to really dig into what those factual issues are. For
23 example how many people are vaccinated, what's the level of protection, what should
24 the level of vaccination be for us to decide we have herd immunity, a host of other
25 issues having to deal with the unintended consequences of having these regulations and

60

1 compliance measures we're talking about.

2 So we can't really get into those things until we have discussion and
3 dialogue. And you all -- for the most part I am -- you all are generalists in trying to deal
4 with all the different issues we confront in this state. And that means the only way to
5 competently confront these issues is to have the kind of dialogue that will educate us all
6 about each different industry segment, what their exposure issues are, what issues they
7 have trying to comply with measures that would address the exposure issues.

8 We're regulating in the dark here for the most part. And the only way
9 we're going to get out of this loop we're in now is to have a real advisory committee
10 process with real dialogue. And that, we could have started that a long time ago. I hope
11 this meeting that the three Board Members are having with DOSH will begin a process
12 like that, where we could just have ongoing periodic meetings. Where there can be
13 dialogue, maybe one subject at a time if necessary to manage the time. But we have to
14 start that kind of process if we're going to competently deal with this issue.

15 The current proposal is definitely an improvement over the last one.
16 However, I agree with Michael Miiller, Bruce Wick, Rob Moutrie. I don't know if Rob
17 completely said this but I think that the standard needs to be repealed. We're in a
18 different state now, status now, given the prevalence of vaccination. There are
19 consequences of having to comply with these measures. And frankly the IIPP is
20 sufficient to deal with just about every issue we confront now, that we have this high
21 status — state of vaccination.

22 And finally I want to point out that that advisory committee discussion
23 should include an analysis of what kind of presence is the most effective. For example, I
24 don't believe we have taken enough advantage of opportunities to partner with industry
25 associations and with labor unions for that matter. For example, Grower-Shipper

1 Association of Central California --

2 MR. GOTCHER: Thirty seconds.

3 MR. WELSH: -- has led on its own initiative a vaccination campaign,
4 which for many employers in agriculture has led to their workforces be more than 90
5 percent vaccinated as of now. They got no help from government or Cal/OSHA or
6 anybody on that. There could be partnerships that deal with these issues much more
7 effectively than regulations that lead to citations when you don't comply with them.

8 Thanks for the opportunity to comment and thanks again for your hard
9 work.

10 CHAIR THOMAS: Thank you, Len.

11 Who do we have next, John?

12 MR. GOTCHER: Our next commenters are Dr. Hesu Whitten followed by
13 Karen Tynan, with next Dr. Hesu Whitten.

14 CHAIR THOMAS: Dr. Whitten, can you hear us?

15 DR. WHITTEN: Oh, I'm up next?

16 CHAIR THOMAS: Dr. Whitten, can you hear us?

17 DR. WITTEN: Yeah, can you hear me?

18 CHAIR THOMAS: Yeah, go right ahead.

19 DR. WHITTEN: Hi, Tammy Clark and Kristen Meghan, two of OSHA's
20 senior scientists testified that OSHA knows that medical masks do not stop viruses.
21 They do nothing positive in non-healthcare settings and in fact take a person's oxygen
22 and CO2 to the dangerous levels. This was OSHA's moment to shine and stand for
23 science and public health but it didn't.

24 Today I want to address EUAs. The first criteria is that the vaccine works.
25 So are the vaccines effective? Well according to the "Lancet" the absolute risk

1 reduction, which is the relevant metrics for the public is 1 percent, not 95 percent,
2 which is based on a meaningless metric called a relative risk reduction. Nowhere in the
3 trials was the vaccine shown to reduce infection, transmission or deaths. So the vaccine
4 reduces symptoms, but not transmission. The vaccinated will be the asymptomatic
5 spreaders and can't contribute to herd immunity.

6 The second basis for EUAs is that the benefits of the treatment outweigh
7 the risks. Today's COVID-19 numbers from Worldometer is 5.1 million active cases, of
8 which 4,300 are serious, around 1 in 1,200. The EUA is based on an emergency, there is
9 none. Moreover, we're dealing with a vaccine that already has over 6,000 reported
10 deaths. So no, the benefits do not outweigh the risks. And vaccination must be —

11 MR. GOTCHER: Thirty seconds.

12 DR. WHITTEN: -- voluntary and free from coercion.

13 The third criteria for an EUA is there is no alternative to the vaccine.
14 Hundreds of frontline doctors and now dozens of studies show hydroxychloroquine,
15 Ivermectin, Vitamin D and Budesonide are extremely effective for prevention in early
16 treatment as well as for stopping long-haul COVID. So the science definitely does not
17 support that there are no alternative treatments. Therefore the EUAs should never
18 have been —

19 MR. GOTCHER: Two minutes.

20 DR. WHITTEN: -- authorized and you should not mandate anyone to get
21 it. Thank you.

22 CHAIR THOMAS: Thank you.

23 Next caller, John?

24 MR. GOTCHER: Our next commenters are Karen Tynan followed by Dan
25 Leacox, with next Karen Tynan from Ogletree, Deakins, Nash, Smoak & Stewart.

1 MS. TYNAN: Can you hear me Judge Thomas -- I mean Chairman
2 Thomas?

3 CHAIR THOMAS: Well, I'm not a judge, but no go right ahead. (Laughter.)

4 MS. TYNAN: I'm usually in court. So thank you Chair Thomas and
5 members.

6 We need to address the sunset or repeal of this Emergency Temporary
7 Standard. During the last few months we've heard the Division and Board Members
8 refer to workplace outbreaks under this Emergency Temporary Standard. The use of
9 that term is incorrect, inaccurate, imprecise and wrong. In fact, the term was used just
10 this morning.

11 Sections 3205.1 and 3205.2 require California employers to report
12 COVID-19 cases to the local health department and then to implement protocols.
13 California employer reports to the local health department in no way evidence
14 workplace outbreaks. They evidence community spread. Workers who are COVID-19
15 positive through social contact and community spread are lumped into this large
16 homogenous assemblage of COVID-19 cases, but labeled workplace-related.

17 Much of the Division's information and points regarding outbreaks try to
18 imply that correlation equals causation. Board Members have adopted correlation
19 equals causation despite no data to support claims regarding COVID-19 outbreaks.
20 Point in fact, the week after Thanksgiving just days after the ETS was in place, there
21 were substantial outbreaks reported to public health departments across the state,
22 meaning at least 3 employees, COVID-positive in 14 days. Those outbreaks cannot be --

23 MR. GOTCHER: Thirty seconds.

24 MS. TYNAN: -- simply work-related as they were the week after
25 Thanksgiving when many employees were away from work. If workplaces were the root

64

1 cause of COVID-19 we would see decreases in COVID-19 cases after Thanksgiving,
2 Christmas, and other holidays. Instead these outbreaks reflect social contact, holidays,
3 and travel.

4 Please stop forcing California employers to act as public health managers.
5 We need a sunset or repeal of the Emergency Temporary Standards. Thank you.

6 CHAIR THOMAS: Thank you.

7 Who do we have next, John?

8 MR. GOTCHER: Our next commenters are Dan Leacox followed by Tory
9 Quintero, with next Dan Leacox from Leacox & Associates.

10 CHAIR THOMAS: Dan, are you there?

11 MR. LEACOX: I am. Can you hear me?

12 CHAIR THOMAS: Yeah, go right ahead.

13 MR. LEACOX: Great. Good morning, Board, I think that's still true -- well
14 no, it's passé. So good afternoon, Board staff and stakeholders. Thank you very much
15 for the personal time and attention that all of you have given to this matter. My name
16 is Dan Leacox. I'm here today representing small businesses in the form of composite
17 manufacturers.

18 Today again, I leave comments on the particulars of the rule amendments
19 to my colleagues representing the business community. They are experts in the practice
20 of putting rules into operation so you end up with both viable jobs and safety. I
21 recommend their comments highly.

22 I'd like to look forward and recommend that the subcommittee formed at
23 the last meeting focused on the proper end of this ETS. In doing so I hope the
24 committee will look back honestly at the role this ETS has and has not played in dealing
25 with COVID-19. I heard it said, and others have commented that the ETS needs to

65

1 continue to keep in place the actions that saved lives the last 15 months. That notion
2 concerns me, because it rests on an unreal assessment of the role played by this ETS.

3 This ETS has been a Johnny-come-lately throughout this ordeal. It was
4 not adopted until November 2020, eight months into the pandemic response. The
5 actions that saved lives were those taken in the eight months before the ETS and
6 continued after the ETS without need (indiscernible).

7 MR. GOTCHER: Thirty seconds.

8 MR. LEACOX: Those actions were based on employees caring for their
9 own health, the goodwill of responsible employers, a host of permanent rules already in
10 place and guidance documents for the implementation of those rules. The existing
11 permanent rules are well-documented in the staff evaluation recommended against the
12 ETS.

13 Of course, the other action with great impact has been the vaccination
14 program. Here again the ETS is a Johnny-come-lately with vaccination amendments five
15 months after the release of vaccines --

16 MR. GOTCHER: Two minutes.

17 MR. LEACOX: -- just as California approaches herd immunity based on
18 the number of people vaccinated and some uncounted number who have natural
19 immunity from exposure to the virus.

20 One last comment, so let's have a subcommittee that looks at whether
21 the ETS should continue based on a real assessments of the difference it has made.
22 That would be an assessment that does not confuse the ETS with what happened and
23 what would have happened without it. Only that way can we make a reasoned
24 determination to end the ETS based on science and not science says. Thank you.

25 CHAIR THOMAS: Thank you.

1 Who do we have next, John?

2 MR. GOTCHER: Our next commenters are Tory Quintero followed by Adi
3 Hed, with next Tory Quintero.

4 CHAIR THOMAS: Tory, can you hear us?

5 MS. QUINTERO: Yes, I can and thank you. Thank you for having me
6 again. Hello, I'm Tory Quintero a certified massage therapist in the State of California
7 since 1991.

8 In public comment via phone at the last Board Meeting I implored you to
9 create specific protections for massage therapists working in companies such as spas
10 and resort settings. I want to remind you that we need all the protections we can get
11 since we work at close range for extended periods of time with our clients. Medical
12 observations have surfaced recently, which infer increased health risks for us, because
13 they document how spike proteins from the illness and encoded by the vaccination
14 migrate throughout body tissues causing widespread cellular damage.

15 Moreover, it is shown to be transmissible not only via breath, but also
16 through expiratory pathways and body fluids including perspiration, which has direct
17 impact on massage therapists and medical occupations involving body contact.

18 We apply our bare hands and arms to apply pressure directly to exposed
19 body surfaces. Often clients perspire as a result of increased circulation. This translates
20 into inordinate safety risks because our unprotected skin is exposed to client
21 perspiration during each massage treatment around spike proteins which can be easily
22 absorbed from clients with mild or asymptomatic cases of COVID infection or who are
23 producing spike proteins after being vaccinated.

24 We reference Dr. Byram Bridle's spotlight report on present phenomena,
25 which corresponds with prior lab data from the Japanese company serving as the

1 regulatory agency over Pfizer's vaccine development. We've also referenced scientific
2 descriptions of the spike protein as a prion. Prions are deadly (indiscernible) --

3 MR. GOTCHER: Thirty seconds.

4 MS. QUINTERO: -- derangement of the neuromuscular system and
5 precipitate disease states of Parkinson's, ALS and other rapidly degenerative diseases. I
6 repeat, there are fewer employees more at risk, critical risk, than our field of bodywork
7 providers. That is why I urge you to specifically and clearly define our industry as
8 related to the medical profession, so that you can craft protections that properly shield
9 us from physical harm.

10 Please enact the following safety protections to help us survive this highly
11 communicable disease.

12 MR. GOTCHER: Two minutes.

13 MS. QUINTERO: One, masks worn by client and bodyworker inside
14 treatment rooms under the Aerosol Disease Standards. Two, HEPA filter and ionizer
15 inside treatment rooms. Three, gloves worn by therapists on their hands during
16 treatments and handling soiled linens. Four, other safety precautions that may arise
17 from research on prion disease and preventions and/or treatments. Thank you for
18 acting promptly to keep massage therapists 100 percent safe in (indiscernible)
19 workplace settings.

20 CHAIR THOMAS: Thank you.

21 Who do we have up next, John?

22 MR. GOTCHER: Our next commenter is Adi Hed from Oakridge Dynamics.

23 MR. HED: Hi. Can you hear me?

24 CHAIR THOMAS: Yeah, go right ahead.

25 MR. HED: Hi, my name is name is Adi Hed. I'm with Oakridge Dynamics

68

1 and we do COVID testing for movie, television, film production and photo shoots. I was
2 speaking with Jane Nunez at AICP, which is the Association of Independent Commercial
3 Producers about an update to COVID testing regulations. And I'd like to share my
4 thoughts.

5 Most productions I work with either use the AICP guidelines for testing or
6 Los Angeles County's Appendix J. According to Emily Beiler (phonetic) the Los Angeles
7 County Department's Appendix J will be retired. And instead film production workplace
8 requirements will be governed by Cal/OSHA. Due to that fact, I want to share my
9 thoughts about testing at the workplace. After speaking to some key people in
10 production they are met with uncertainty on how to ask if a person is vaccinated and
11 furthermore, how to establish if that person is successfully and fully vaccinated per their
12 claims. Trust, but also test and verify, is the name here.

13 Our idea is simple and should be considered if Cal/OSHA decides PCR
14 testing is no longer required for those claiming to be vaccinated. We have a serology
15 test that shows with a fair degree of certainty if a person has the antibodies present
16 after successful vaccination. It is the same test certain countries are now doing to verify
17 vaccination before entry into the country from the airport is permitted. To take the test
18 takes about 10 minutes and is very simple and easy to do on set. It will follow the same
19 guidelines as the airports when people are permitted to enter.

20 MR. GOTCHER: Thirty seconds.

21 MR. HED: And I'd be happy to demonstrate this. I've emailed the link as
22 well. Simply put, we test the crew on set before they enter and it gives both production
23 and employees assurance that all the people on set are successfully vaccinated. It's a
24 one-time test at the beginning of production. There's no need to continue to check
25 again during production.

1 The other option for those who have not been vaccinated or cannot be
2 vaccinated is PCR testing. It's easy and secure. Two groups work on set: vaccinated
3 people --

4 MR. GOTCHER: Two minutes.

5 MR. HED: -- who take the serology test and they're clear to work. Non-
6 vaccinated people take the PCR test for our productions. Thank you for your time.

7 CHAIR THOMAS: Thank you, appreciate it.

8 John, who do we have up next?

9 MR. GOTCHER: Our next commenters are Delia Huffman (phonetic)
10 followed by Cynthia Rice, with next Delia Huffman.

11 CHAIR THOMAS: Delia, can you hear us?

12 MS. HUFFMAN: Yes, I can hear you. Thank you.

13 CHAIR THOMAS: Go right ahead.

14 MS. HUFFMAN: Good afternoon everybody, thank you so much. I
15 appreciate everybody's comments so far and I appreciate how well-crafted. And there
16 is very much good information being shared. I would like to take a different approach
17 though this morning.

18 I am representative of the brown poor class and I would like everyone to
19 stop speaking on my behalf. I speak on my behalf and I am upset that these numbers
20 that are being proposed are actually manipulated and false. We all know and we have
21 all seen that there is error in the numbers and the information being touted by our
22 government officials. And yet you continue to use these words like outbreaks and such
23 to then craft and come up, conjure up with these rules that you want us to adhere to.
24 As a lower income "poor person of color" I would like you to stop talking to me as if I am
25 not able to take a look at this information.

1 And on a sub-note, we as Hispanic women and especially Hispanic
2 women, we are taught to respect people who are in authority. And we will comply and
3 do, and that's why you see so many people (indiscernible) --

4 MR. GOTCHER: Thirty seconds.

5 MS. HUFFMAN: -- wearing their masks, because they believe you. Stop
6 lying to us. We take your word at hand, because we are respecting you.

7 Lastly, the definition of evil is morally reprehensible. You have done evil
8 by lying to us and manipulating numbers, stop doing it.

9 CHAIR THOMAS: Thank you.

10 John?

11 MR. GOTCHER: Our next commenters are Cynthia Rice followed by
12 Connor Medina, with next Cynthia Rice from the California Rural Legal Assistance,
13 Incorporated.

14 CHAIR THOMAS: Cynthia?

15 MS. RICE: Good afternoon. Good afternoon

16 CHAIR THOMAS: Please go ahead.

17 MS. RICE: Thank you all for the opportunity to speak again. We certainly
18 appreciate the work that the Division staff has been doing. And this most recent
19 iteration of the emergency standard represents a real attempt to balance many of the
20 comments that we have all heard over the last couple of months. We submitted written
21 comments indicating our concerns about some of the lessening of the standard and that
22 we believe that the recommended standard adopted earlier in May should stand.

23 However, in the event that you do move forward to adopt this we
24 particularly want to emphasize the importance of reconsidering the recommendations
25 with respect to the transportation and housing provisions, in particular the elimination

1 of the physical distancing requirements both in the transportation and in the housing.

2 Staff in May made an attempt to balance some of the concerns that were
3 raised by employers about the difficulty of applying those physical distancing standards
4 and I think did a good job of doing that. Workers continue to be exposed at a higher
5 and more sustained rate in that housing and transportation. And they need additional
6 protection, which was represented in the original ETS and as refined in the May version.
7 And we would ask you to go back to that.

8 Let me address just a couple of points. Once again I need to point out
9 that Mr. Wick's comments about using Workers' Compensation data --

10 MR. GOTCHER: Thirty seconds.

11 MS. RICE: -- as an indicator of outbreaks is not reliable. Studies,
12 including a 2015 UCLA study, show dramatic underreporting of Workers' Compensation
13 for low-wage workers, particularly under circumstances where symptoms might only
14 last 14 to 28 days.

15 And that a return to the IIPP is no answer at all. It's clear from these
16 hearings that there is a difference of opinion about what employers think needs to be
17 done and what health professionals and worker advocates think, so what will show up in
18 the IIPP? Not a transparent, clear standard or right to a mask, but the interpretation of
19 the employer, which provides no protection to an employee who wants to take
20 advantage of the standards that have been already established.

21 So we would urge you to continue with the May standard that was
22 developed and move forward toward a permanent standard. Thank you very much.

23 CHAIR THOMAS: Thank you.

24 John, who do we have next?

25 MR. GOTCHER: Our next commenters are Connor Medina followed by

1 Giancarlo Rubio, with next Connor Medina from the Orange County Business Council

2 CHAIR THOMAS: Connor, can you hear us?

3 MR. MEDINA: Yeah, good afternoon, Chair Thomas. Can you hear me?

4 CHAIR THOMAS: I can, go right ahead.

5 MR. MEDINA: Good afternoon Mr. Chair and members of the Board. My
6 name is Connor Medina and I am the Government Affairs Manager for Orange County
7 Business Council, the leading voice of business in Orange County. Thanks for the
8 opportunity to provide input today.

9 While the revised regulations are a step in the right direction OCBC has
10 several concerns. Businesses, workers, and customers need clarity in reopening rules,
11 not confusion. Specifically, OCBC recommends resolving the unclear self-attestation
12 and testing standard in the ETS, which would subject businesses complying in good faith
13 to unfair liabilities that could be enforced by Cal/OSHA. Due to this lack of clarity there
14 should be a compliance window prior to enforcement. OCBC asks that Cal/OSHA not
15 require employers to retain documentation of employees' private health information.
16 And to minimize confusion around employees disclosing their vaccination status.

17 We also suggest CDPH and Cal/OSHA develop a sample template that
18 employers can provide to employees to use. This would ensure consistency and
19 minimize the burden on employers in determining the accuracy of self-attestations.

20 Additionally, we ask the state to create a public standard under which the
21 ETS will be rescinded, whether this is a benchmark vaccination rate among the
22 employment-age population or a different metric. It would be -- it would further
23 suppress uncertainty for businesses --

24 MR. GOTCHER: Thirty seconds.

25 MR. MEDINA: -- on the duration of the ETS. But we appreciate the

1 Board's continued collaboration with the business community and other stakeholders.
2 And we hope to continue conversations on how to most effectively protect workers
3 while reopening the economy. This is a great opportunity for the state to present a
4 unified front with business leaders and instill confidence among Californians on how
5 much progress we have made in combating COVID-19 rather than adding to people's
6 confusion and mistrust. Thank you.

7 CHAIR THOMAS: Thank you.

8 Who do we have next, John?

9 MR. GOTCHER: Our next commenters are Giancarlo Rubio followed by
10 Virginia Hammond, with next Giancarlo Rubio from the Valley Industry and Commerce
11 Association

12 CHAIR THOMAS: Gian, can you hear us?

13 MR. RUBIO: Hi. Can you hear me?

14 CHAIR THOMAS: Yeah, go right ahead.

15 MR. RUBIO: Excellent. Thank you, thank you very much. The Valley
16 Industry and Commerce Association does express concern over the Cal/OSHA
17 readoption of the ETS. When it comes to face coverings, the ETS should align with the
18 CDC guidance to allow for fully vaccinated employees to remove their face coverings
19 indoors as long as unvaccinated individuals are wearing face coverings as a vaccine. And
20 vaccine options are fully and completely available to all Californians.

21 When it comes to physical distancing it's essentially required social
22 distancing to remain in place until the 31st of July. But this should end when state
23 physical distancing requirements and not go beyond that.

24 When the CDC issued its updated guidance stating fully vaccinated
25 individuals no longer need to wear masks in indoor settings, we fully expect these dates

74

1 to conform with the most recent guidelines from the CDC and the rest of the scientific
2 community.

3 When it comes to the use of respirators there are numerous provisions
4 requiring the employers to offer or provide respirators for voluntary use. The ETS or
5 frequently asked questions should make clear that employers should provide employees
6 with reasonable notice and information on how to obtain a respirator for voluntary use.

7 And when it comes to return to work criteria this needs to align with the
8 CDC guideline that vaccinated persons need not quarantine.

9 And then for time off for COVID cases and close contacts it's just a little
10 too overbroad and that it has no limit and thus could require unlimited paid time off.

11 MR. GOTCHER: Thirty seconds.

12 MR. RUBIO: And there also should also be a base rate regular rate of pay.
13 And that is a legal determined required calculation that includes overtime.

14 And we understood the California Department of Public Health decisions
15 to align with the CDC guidelines of June 15th. Businesses of all sizes began making
16 hiring and reopening plans based on those announcements. The recently passed
17 Cal/OSHA Emergency Temporary Standard undermine the critical work we've done to
18 safely reopen on the 15th.

19 MR. GOTCHER: Two minutes.

20 MR. RUBIO: The ETS has created a lot of open-end questions, questions
21 can pertain from expensive liabilities that the business community has to navigate,
22 confusion and contradictory statements, to regulations on coming from various levels of
23 government. And this is why we are asking the Governor to issue at least an immediate
24 executive order confirming the workplace guidelines with the CDC and the California
25 Department of Public Health guidelines. Thank you very much and have a good rest of

75

1 your day.

2 CHAIR THOMAS: Thank you.

3 John, who do we have next?

4 MR. GOTCHER: Our next commenters are Virginia Hammond followed by
5 Dr. Aimee Smith, with next Virginia Hammond.

6 CHAIR THOMAS: Virginia, can you hear us?

7 MS. HAMMOND: Yes, I can. Hello. For some of us face masks have been
8 an inconvenience or a distraction but for others it has been an obstruction to the ability
9 to do their job. And even if the mandate for vaccinated individuals is lifted I'm
10 concerned that employers will still require masking and they'll take the stricter standard
11 approach.

12 Just because there are exemptions for people with disabilities and for the
13 hearing-impaired doesn't mean that employers allow those exemptions and
14 employment service providers allow those exemptions.

15 And I want to conclude my comments reading a statement from my
16 daughter.

17 "My name is Ann Hammond (phonetic). I had a brain tumor when I was
18 seven and radiation treatment that caused two other neurological disorders. I have to
19 wear glasses, because I have double vision and I am deaf and wear a cochlear implant in
20 my left ear help me hear speech. It is impossible to wear a mask, glasses and a cochlear
21 implant while I am at work. I have days I have to choose between removing my glasses
22 and seeing double or removing my cochlear processor and not hearing coworkers or
23 customers. My Cochlear implant processor has fallen on the ground many times while
24 trying to keep everything on my ears. I cannot wear a face shield, because my magnet
25 for the processor — "

1 MR. GOTCHER: Thirty seconds.

2 MS. HAMMOND: “ -- is on the back of my head center left while the
3 processor has to be on my left ear. I am fully vaccinated and this is an unnecessary
4 burden that I shouldn't have to struggle with on the job. I can't function without my
5 glasses or cochlear implant, so please let me lose the mask so I can do my job.” Thank
6 you.

7 CHAIR THOMAS: Thank you.

8 John, who do we have next?

9 MR. GOTCHER: Our next commenters are Dr. Aimee Smith followed by
10 Kathy Schaeffer, with next Dr. Aimee Smith and they will be representing themselves.
11 (Overlapping colloquy.)

12 DR. SMITH: Hello, I'm looking for -- oh.

13 CHAIR THOMAS: Go ahead.

14 DR. SMITH: I have a PhD in material science from MIT and I am a very
15 careful consumer of medical interventions. We all should be aware that the CDC profits
16 from vaccine sales, has a revolving door to the multibillion-dollar-pharmaceutical
17 industry, and is well known to rely on reviewers who have financial conflicts of interest.

18 COVID is no longer an emergency and effective preventions and
19 treatments exist, such as hydroxychloroquine and Ivermectin if only doctors would be
20 allowed to know about them and use them. Vitamin D has also been shown to be very
21 protective, but no one is encouraging people to make sure their levels are adequate.

22 The ETS is violating the California law and Nuremberg principles by
23 coercing employees into a medical experiment using the unlicensed and ineffective
24 mask requirement for those who do not wish to participate in the experiment of these
25 completely new gene therapy technologies is a stitch meant to coerce vaccination. But is

77

1 it your right to coerce a medical decision? Are you our doctors?

2 All of these gene therapy treatments use genetic- engineered material to
3 invoke the body to create antigenic material. Traditional vaccines inject the antigenic
4 material directly into the body. These are not traditional vaccines and they raise many
5 unanswered questions. When we have our own cells turned into the manufacturing
6 sites of the antigenic material how long will this keep going? No one knows. What is
7 the risk of autoimmunity? Unknown. What are the effects of other components such as
8 the risk (indiscernible) --

9 MR. GOTCHER: Thirty seconds.

10 DR. SMITH: -- in the mRNA's injections? No one knows. What if the
11 antigen generated the spike protein is toxic to the human body? Indications say that this
12 may be true. Many scientists believe this is why we're seeing so many adverse reactions
13 related to blood clotting and neurological and heart issues. So these vaccines are not
14 proven to work, not proven to stop transmission, as if getting 100 percent vaccination
15 means COVID is over.

16 MR. GOTCHER: Two minutes.

17 DR. SMITH: That is not founded on science, so please have the
18 discussion, have the full scientific discussion. And do not coerce people into this
19 experiment that was never tested on animals and we are the experimental animals.
20 Thank you very much for your time.

21 CHAIR THOMAS: Thank you.

22 John?

23 MR. GOTCHER: Our next commenters are Kathy Schaeffer followed by
24 Swati Sharma, with next Kathy Schaeffer from The Climate Reality Project.

25 CHAIR THOMAS: Hello, Kathy?

1 MS. SCHAEFFER: Hi.

2 CHAIR THOMAS: Hi, go right ahead, we can hear you.

3 MS. SCHAEFFER: Hi, thank you. Thank you, my name is Kathy Schaeffer
4 representing The Climate Reality Project San Fernando Valley Chapter. My content is
5 about the health and safety of grocery store workers and also the safety of our
6 environment.

7 As California reopens the highest priority is for the safety of essential
8 workers obviously. But I also want to note the increase of single-use plastic for grocery
9 bags and restaurant takeout containers that has taken a toll on our environment. Plastic
10 grocery bags are labeled reusable, but most of them end up in landfills after being used
11 once or twice. Here are some pre-COVID statistics: Americans use 100 billion plastic
12 bags a year, requiring 12 million barrels of oil to manufacture. In 2015 about 730,000
13 tons of plastic bags and wraps were generated in the U.S., but more than 87 percent
14 were not recycled ending up in landfills and oceans. Plastic bags never break down
15 completely but become toxic micro-plastics that pollute the environment and endanger
16 our drinking water.

17 It's my understanding that the recent guidance for grocery stores did not
18 address the issue of employees handling customer's reusable bags. So my request
19 today is pretty simple compared to all of the other complicated issues that you've been
20 hearing this morning. My request is that Cal/OSHA update and immediately release
21 guidance that reinstates reusable bags --

22 MR. GOTCHER: Thirty seconds.

23 MS. SCHAEFFER: -- without restrictions -- reusable bags without
24 restrictions. Thank you so much.

25 CHAIR THOMAS: Thank you.

1 John, who do we have next?

2 MR. GOTCHER: Our next commenters are Swati Sharma followed Toni
3 Yoast, with next Swati Sharma from the California Healthy Nail Salon Collaborative.

4 MS. SHARMA: Great, thank you. Can you hear me?

5 CHAIR THOMAS: I can, go right ahead.

6 MS. SHARMA: Great. Thank you for the opportunity and thank you to
7 the Board. I know it's been a difficult few months and weeks, so I appreciate all of your
8 efforts. I'm calling on behalf of the California Healthy Nail Salon Collaborative, which is
9 comprised of salon workers, owners, and 30 public health and environmental advocates.
10 California's nearly 500,000 manicurists are mainly women of color most of whom are
11 refugees, immigrant women, and low-wage workers, the communities that have been
12 heavily impacted by COVID-19. The pandemic has had a devastating impact on the nail
13 salon industry and impacted employers and workers alike.

14 We agree with the statement that Mitch from California Labor Federation
15 and Maggie from Worksafe made. While COVID-19 rates continue to decrease, the
16 pandemic is not over and still remains a risk for communities. As California re-opens
17 outbreaks and new cases still continue and are a major concern in the workplace. It's
18 imperative for employers to continue to take the steps to reduce the risk of COVID-19.

19 The CDC and CDPH experts assert that unvaccinated individuals should
20 continue to wear face coverings indoors and we agree. Personal care workers continue
21 to be at high risk for infection, since due to the nature of their work services are
22 conducted in close proximity and salons typically have limited ventilation and workers
23 cannot maintain social distancing of six feet or more from their clients.

24 The most recent updates to the ETS allow for workers to self-attest a full
25 vaccination status as an allowed —

1 MR. GOTCHER: Thirty seconds.

2 MS. SHARMA: -- form of documentation. This can be problematic.

3 Unvaccinated workers may feel obligated to remove their face coverings and will not
4 want to face judgment. We strongly believe employers must be required to review clear
5 documentation regarding vaccine status. This includes valid vaccine cards, legible
6 photos of valid vaccine cards or other effective methods.

7 Also, regarding N95 respirators we strongly believe regardless of vaccine
8 status all employees should be given access to this.

9 MR. GOTCHER: Two minutes.

10 MS. SHARMA: We appreciate the one-month supply, but we hope that
11 the state and local governments can provide N95 respirators for employers since this is
12 costly and can be difficult to access. Thank you for the opportunity to comment on this
13 proposal. Thank you again for all of your work.

14 CHAIR THOMAS: Thank you.

15 John, who do we have?

16 MR. GOTCHER: Our next commenters are Toni Yoast followed by Joan
17 Harp, with next Toni Yoast.

18 MS. YOAST: Can you hear me?

19 CHAIR THOMAS: Toni, can you hear us?

20 MS. YOAST: Yes. Can you hear me?

21 CHAIR THOMAS: Yeah, go right ahead Toni.

22 MS. YOAST: As a human resources professional this has been an
23 extremely difficult year. I have spent approximately 70 percent of my time with COVID-
24 19 related issues. My company has locations in 38 states. And as you know, each state
25 has a specific take on COVID mandates. California has been especially onerous with

81

1 several different agencies, the Governor, CDC and Cal/OSHA each providing guidance
2 that is not always (indiscernible). We have tried to do our best to comply, but I often
3 find myself wondering in this past year where is the common sense in all of this?

4 I have several questions regarding the ETS for you to consider. First, your
5 new standards do not address employees who have had COVID and developed
6 antibodies. How do we do address this specific employee?

7 Second, (indiscernible) to provide COVID vaccination due to privacy
8 concerns, what actions should we take? What actions do we take if an unvaccinated
9 employees refuses to wear a face covering and cannot work from home? Do we
10 terminate them based on the Cal/OSHA standards? If an unvaccinated employee
11 chooses not to wear a mask they are doing it so of their accord. How about treating
12 adults like adults capable of make their own decisions and being held accountable for
13 the consequences of those decisions. Which Cal/OSHA Board Member has a strong
14 medical background, which helped to determine the standards you are presenting
15 today?

16 And is the state ever going to return to a place of common sense
17 practices instead of political posturing?

18 MR. GOTCHER: Thirty seconds.

19 MS. YOAST: No wonder we have (indiscernible) probably population of
20 our taxpaying citizens. Thank you for listening to my questions and concerns.

21 CHAIR THOMAS: Thank you.

22 John, who's up next?

23 MR. GOTCHER: Our next commenters are Joan Harp followed by Andrew
24 Sommer, with next Joan Harp.

25 CHAIR THOMAS: Joan, can you hear us?

1 MS. HARP: Good afternoon. My name is Joan Harp and I am part of the
2 entertainment -- good afternoon.

3 The use of masks are detrimental. First of all in 2008 there was a study
4 done based on historical data that showed that masks had no effect, and in fact caused
5 bacterial pneumonia. If you've ever been an entertainment set we're asked to wear
6 shields and a mask. This is a danger. I tripped backstage at a studio and almost was
7 very much injured, because my glasses fogged up wearing all this paraphernalia that
8 isn't necessary.

9 The death COVID numbers are completely conflated. And a study on the
10 coronavirus spike protein that was done and released in "Circulation Research" in April
11 30th shows that this is a vascular disease, not a circulatory one. The continuation of this
12 ridiculous need to wear a mask for a disease that is no more deadly than the common
13 cold is a travesty and truly against humanity. I ask that OSHA protect me on my job
14 against falls and other injuries that happen, because I'm wearing unnecessary
15 requirements.

16 Now the young lady before you talked about masks. Most nail salon
17 people wear a mask, because they are dealing with hazardous chemicals. For me there's
18 no business asking me to wear a mask as well. If they want to wear one that's fine, but
19 to ask me to wear one when we know they're not effective is ridiculous.

20 Further, the whole way that we have handled this pandemic --

21 MR. GOTCHER: Thirty seconds.

22 MS. HARP: -- is ridiculous and it's been an affront to every small business
23 owner, everyone who has to work for a living. If you work in a dog kennel and you need
24 to wear a mask all it does is put your life at risk, because the dog cannot read your facial
25 cues. I ask that OSHA do responsible work for all of us and not just some lobbyists that

83

1 are continuing this epidemic of nonsense. Thank you for your time.

2 CHAIR THOMAS: Thank you.

3 Who do we have up next, John?

4 MR. GOTCHER: Our next commenters are Andrew Sommer followed by
5 Brian Mello, with next Andrew Sommer from the California Employers COVID-19
6 Prevention Coalition.

7 MR. SOMMER: Good afternoon, Chairman Thomas and members of the
8 Board, can you hear me?

9 CHAIR THOMAS: Yeah, go right ahead.

10 MR. SOMMER: Perfect, Andrew Sommer from the law firm Conn Maciel
11 Carey, on behalf of the California Employers COVID-19 Prevention Coalition. The latest
12 revisions by DOSH are a significant improvement in bringing Cal/OSHA in line with CDC
13 and science-based guidance, particularly on face coverings and physical distancing
14 issues. And we appreciate all of the efforts that have gone into both the Division and
15 the Board.

16 We do have two significant concerns that I wanted to raise briefly.

17 First, the proposed requirement for employers to carry N95 respirators
18 for unvaccinated employees; it is not realistic in the way that it is phrased. The
19 requirement that respirators be provided upon request seemingly provides some
20 flexibility in the timing of the provision of those respirators. However, the frequently
21 asked questions issued by DOSH we believe makes that additional language superfluous
22 as requiring that respirators be provided as soon as possible. And that essentially of
23 course have on hand the correct size and type to fill reasonable foreseeable requests
24 upon demand. The guidance fails to support the need of lag time to obtain respirators
25 following a request. And the last thing we want to do is encouraging stockpiling of

1 respirators that may ultimately expire due to lack of use or deprive other sectors that
2 desperately need respirators such as health care and workplaces during wildfire season.

3 The other concern is about the winding down of the ETS. We don't want
4 to be caught flatfooted --

5 MR. GOTCHER: Thirty seconds.

6 MR. SOMMER: -- like we have been with these revisions and where we
7 have progress in the pandemic and we don't have a standard properly in place. And I
8 agree with the other speakers, Mr. Miiller, Mr. Wick, Mr. Leacox about the need to have
9 some objective criteria in place to address the winding down of the pandemic, of the
10 ETS, and that this be addressed by the subcommittee.

11 And lastly I wanted to address Mr. Berg's point that we shouldn't --

12 MR. GOTCHER: Two minutes.

13 MR. SOMMER: -- be relying on the IIPP to address COVID-19 issues,
14 particularly on paid continuation. It should be noted that we do have the COVID-19
15 supplemental paid sick leave available for this purpose. We also have the IIPP, which is
16 a performance-based standard that involves identification and correction of workplace
17 hazards, training and investigations, all that can be done under the subject of COVID-19.
18 And of course we have the ATD standard for health care.

19 Second, all of these provisions have been an effective tool in addressing
20 COVID-19. Thank you for the opportunity to speak.

21 CHAIR THOMAS: Thank you.

22 John, who do we have next?

23 MR. GOTCHER: Our next commenters are Brian Mello followed by Erin
24 DiMaggio, with next Brian Mello from the Associated General Contractors of California.

25 CHAIR THOMAS: Brian, can you hear us?

1 MR. MELLO: Yes.

2 CHAIR THOMAS: Then go right ahead.

3 MR. MELLO: Thank you, Mr. Chairman. Good afternoon, my name is
4 Brian Mello. I'm a safety manager for Associated General Contractors of California. AGC
5 of California appreciates everyone on the Cal/OSHA's Standard Board and the work
6 performed on top of individual careers. Thank you for making additional modifications
7 to the proposed ETS. The modifications take ETS in a positive direction.

8 While we appreciate Cal/OSHA being in more alignment with the CDPH
9 guidance AGC of California would like to address a few concerns. The definition of fully
10 vaccinated means the employer has documented that a person received a COVID-19
11 vaccine. Construction has a unique multi-employer environment, which means there
12 may be multiple employers at one worksite. Clarity is needed on what exactly "has
13 documented," means and how Cal/OSHA plans to enforce these measures especially
14 within the multi-employer environment.

15 AGC of California strongly urges the Board to consider the different
16 options available including a plan to repeal the ETS at the appropriate time. It is our
17 suggestion that an enforceable standard detail into categories of industries as is the
18 case with existing wage orders and is mirrored in Title 8, subtype Chapter 4
19 "Construction Safety Orders."

20 Since the initial adoption on November 30th Cal/OSHA has yet to address
21 the issues within construction that arise from emergency temporary standards. AGC of
22 California suggests that Cal/OSHA once again update the FAQs, addresses general
23 questions, but also addresses industry-specific questions such as that of the multi-
24 employer environment in construction. Each industry is unique —

25 MR. GOTCHER: Thirty seconds

1 MR. SOMMER – but all covered over a blanketed COVID-19 Emergency
2 Temporary Standard, which creates unique circumstances and situations that may need
3 to be addressed by industry rather than general Q&A.

4 We appreciate your time and consideration around these comments as
5 well as the detailed written comments that were previously submitted. Thank you.

6 CHAIR THOMAS: Thank you.

7 John?

8 MR. GOTCHER: Our next commenters are Erin DiMaggio followed by
9 Sarah Wiltfong, with next Erin DiMaggio.

10 CHAIR THOMAS: Erin, can you hear us?

11 MS. DIMAGGIO: Hi, this is Erin DiMaggio. Yes, I can hear you.

12 CHAIR THOMAS: Go right ahead.

13 MS. DIMAGGIO: Can I go right ahead?

14 CHAIR THOMAS: Yes.

15 MS. DIMAGGIO: Yes hello, this is Erin DiMaggio. I am a health coach and
16 a mother and I am representing the children. And these face masks represent one of
17 the many ways in which the modern medical establishment and pharmaceutical industry
18 are consistently masking symptoms while allowing the root cause of diseases to grow.

19 COVID-19 is not a public health issue. It is a personal one, 78 percent of
20 total COVID deaths in patients that were hospitalized were of people that were obese
21 and overweight. Exposure to SARS-CoV-2 does not cause death. An unhealthy lifestyle
22 of diabetes, heart disease, and being on multiple pharmaceutical agents is what makes
23 Americans susceptible to this virus.

24 And these masks are once again one more way that we're not actually
25 dealing with the root cause of disease. And in fact, they are causing more disease

1 because these masks are filled with bacterial. At the end of the day these masks are
2 filled with over 93 different strains of bacteria and other viruses, because by nature we
3 are supposed to exhale what we don't need inside of our body. And that is why people
4 who are wearing masks are having symptoms of headache, nausea, dizziness, irritability
5 and some are even vomiting from wearing the mask all day.

6 We are traumatizing people and it should be a choice. Informed consent
7 laws tell us that we must note the risks versus benefits. For some people it might
8 benefit them to wear the mask, because they feel safe, but for many others it is causing
9 emotional, mental and physical distress and is (indiscernible) --

10 MR. GOTCHER: Thirty seconds.

11 MS. DIMAGGIO: -- this should be a choice. No American should be
12 forced to have a medical intervention without consent. And by continuing with this
13 theater of pretending that the mask can save people who are sick and dying inside, you
14 are stripping people of their most basic fundamental rights, the right to breathe.

15 CHAIR THOMAS: Thank you, caller.

16 Who do we have next, John?

17 MR. GOTCHER: Our next commenters are Sarah Wiltfong, followed by
18 Veronica Herrera, with next Sarah Wiltfong from the Los Angeles County Business
19 Federation.

20 CHAIR THOMAS: Sarah.

21 MS. WILTFONG: Hi. Can you hear me?

22 CHAIR THOMAS: Yeah, go right ahead.

23 MS. WILTFONG: Thank you. My name is Sarah Wiltfong and I'm here on
24 behalf of the Los Angeles County Business Federation, also known as BizFed, an alliance
25 of over 200 business organizations who represents over 400,000 employers in Los

1 Angeles County, here to comment on the updated ETS.

2 While we appreciate Cal/OSHA attempting to get in lockstep with of the
3 Governor's Office and the CDC, like several other organizations before me we still
4 believe there are inconsistencies with the state and federal guideline that will add
5 confusion to businesses, their employees, and prevent their ability to reopen properly.

6 We question the need for the current ETS in general. However, if one is
7 going to be adopted we request these changes. One, do not require employers to retain
8 documentation of employees private health information, which can be subject to
9 privacy laws. Two, to limit confusion the CDPH and Cal/OSHA should develop a uniform
10 document employers can provide employees on the state-mandated disclosures of their
11 vaccination status. Three, remove the unnecessary N95 mask mandate, which does not
12 align with CDC or CDPH guidelines. And four, create a standard as to when the ETS will
13 be removed which will eliminate uncertainty for businesses on how long the ETS will
14 remain in effect.

15 Again, we appreciate you updating the current standards. We believe
16 that businesses want to reopen safely and effectively, but in order to do that they need
17 these additional clarifications. Thank you very much.

18 CHAIR THOMAS: Thank you.

19 John?

20 MR. GOTCHER: Our next commenters are Veronica Herrera followed by
21 Cynthia Petty, with next Veronica Herrera.

22 CHAIR THOMAS: Veronica, can you hear us?

23 MS. HERRERA: Yes, I can. Can you hear me?

24 CHAIR THOMAS: Yeah, go right ahead please.

25 MS. HERRERA: Okay. I appreciate everybody's efforts to get through this

89

1 horrible time that we're all in, but I do want to let you know that I do not agree that
2 employees should be asked to wear a mask, because they choose to be unvaccinated.
3 I do not agree that unvaccinated employees should be segregated from vaccinated
4 employees, and that employers should be used to coerce employees to get vaccinated.
5 These regulations are not about public health, it's about control. And under no
6 circumstances should there even be a vaccine verification database that employers can
7 access and use against their employees. And that's it. Thank you.

8 CHAIR THOMAS: Thank you.

9 John?

10 MR. GOTCHER: Our next commenter is Cynthia Petty, who is a retired
11 occupational health and safety professional.

12 CHAIR THOMAS: Cynthia?

13 MS. PETTY: Yes, thank you Mr. Chair and Board Members. As a
14 toxicologist with more than 30 years of experience in the occupational safety and health
15 profession, I have had the privilege of working with OSHA in the past in my capacity as
16 an employee and as a manager and director of biomedical and pharmaceutical industry
17 organizations.

18 Historically, Cal/OSHA's approach to rulemaking has been established on
19 sound scientific principles and has resulted in effectively protecting the health and
20 safety of workers. However, I wish to express my concern with what appears to be a
21 significant departure by Cal/OSHA from a reasoned, independent and science-based
22 approach in their proposed COVID-19 ETS.

23 As an example, the mask mandate in Cal/OSHA's proposed COVID-19 ETS
24 will require face coverings for all unvaccinated workers to prevent spread of COVID, but
25 fails to recognize the fact that fully vaccinated personnel are not protected from

1 infection by the virus or from transmitting the virus. Cal/OSHA's proposed ETS fails to
2 recognize scientifically accepted data in relation to the vaccine's known limitations.

3 Furthermore, the fact that the natural immunity derived from exposure
4 to the SARS-CoV-2 virus is longer lasting than immunity from the COVID-19 vaccine, thus
5 the Cal/OSHA proposed ETS would actually discriminate against those workers who are
6 fully protected by natural immunity. Because Cal/OSHA fails to recognize these workers
7 as being entitled to workers' rights similar to their vaccinated coworkers. Don't mistake
8 this criticism as a request to have all workers masked.

9 MR. GOTCHER: Thirty seconds.

10 MS. PETTY: To the contrary, I believe that Cal/OSHA's mask requirements
11 related to COVID-19 ETS should be removed entirely. Cal/OSHA's respiratory protection
12 standard clearly states that use of N95 masks presents increased risk to the health of
13 certain populations including those who have respiratory and cardiac health issues. This
14 increased risk is not adequately addressed by the proposed ETS.

15 Further, the use of masks in the prevention of viral transmission has
16 demonstrated virtually zero effectiveness. I wish to express my strong objection to this
17 burdensome and discriminatory proposed ETS as it will fall far short of Cal/OSHA's
18 mission to protect --

19 MR. GOTCHER: Two minutes.

20 MS. PETTY: -- or improve the health and safety of workers and could in
21 fact lead to negative health consequences for many California workers. Thank you for
22 your time

23 CHAIR THOMAS: Thank you.

24 John, at this time we are going to have one more caller and then we are
25 going to break at 12:50 for 15 minutes -- let's make it 20 -- and we'll come back at 1:10,

91

1 but let's have our last caller. Thank you.

2 MR. GOTCHER: Our last caller is Pamela Murcell from the California
3 Industrial Hygiene Council.

4 CHAIR THOMAS: Go ahead, caller. Pamela, can you hear us? Pamela go
5 ahead. (No audible response.) We have a problem with your audio.

6 MS. MURCELL: Oh, thank you, Chair Thomas. Can you hear me?

7 CHAIR THOMAS: Yeah, go right ahead.

8 MS. MURCELL: Am I okay now?

9 CHAIR THOMAS: Yeah.

10 MS. MURCELL: Okay, thank you. Moving ahead, good afternoon Chair
11 Thomas, Board Members and staff, Division staff, my name is Pamela Murcell. I'm here
12 today representing the California Industrial Hygiene Council. I'm the current President
13 of the CIHC and the CIHC represents occupational health and safety professionals in the
14 state and works to enhance their professional practice.

15 We appreciate the opportunity to comment on the COVID ETS. And the
16 accent I should add there is maybe spelling that out is "Emergency Temporary
17 Standard." We appreciate the challenges this issue has presented and the hard work
18 and countless hours from Board staff and DOSH staff on this issue.

19 The proposed version of the ETS that is being proposed today is an
20 improvement from the version that was adopted in November 2020. We especially
21 agree with including exceptions for those who are fully vaccinated and bringing the ETS
22 in line with CDPH guidelines. We agree with N95s not being required. We thank for the
23 Division for providing FAQs to address how employers will determine fully vaccinated
24 employees versus those who are not while maintaining confidentiality of employees
25 health issues. This is an important FAQ, whether we are talking about COVID-19

1 vaccinations or vaccinations from other infectious diseases. Having this information in
2 place is a good step forward.

3 There is precedence in the blood borne pathogen standard on the
4 employer knowing vaccinated versus unvaccinated --

5 MR. GOTCHER: Thirty seconds.

6 MS. MURCELL: -- by use of the vaccination declination form for Hepatitis

7 B. We are also concerned that requiring the use of face coverings for unvaccinated
8 employees potentially presents unintended consequences for work environments.

9 We have other comments. I'm going to submit them in writing as well,
10 but just first action please consider repealing the ETS or at least establishing an
11 expiration date for the near future. And at least let the ETS expire as an emergency
12 regulation if today's --

13 MR. GOTCHER: Two minutes.

14 MS. MURCELL: -- version is readopted without further action.

15 And the second is to please move forward expeditiously with a
16 permanent regulation to address worker protection in all industries from infectious
17 diseases. We've made this comment before and we do appreciate your consideration.
18 We look forward to working with the Board and staff if the opportunity arises.

19 CHAIR THOMAS: Thank you, Pamela.

20 At this time we're going to take a break until 1:10. And then we'll
21 reconvene, probably hear some more comments to make sure that we have fulfilled our
22 two hours. And then after that we'll go into our regular business.

23 So at this time let's take a break and we're adjourned.

24 (Off the record at 12:52 p.m.)

25 (On the record at 1:15 p.m.)

1 CHAIR THOMAS: Thank you, John. And Board Members, public we are
2 back in session. And this is a reminder that public comment portion of today's meeting
3 will be 2 hours and it has been, but it's been a little bit spotty. So we're going to give
4 another 20 minutes for public comment, so that the Board can hear from as many
5 commenters as feasible and still have sufficient time to conduct our business. We
6 currently have over 100 commenters in the queue, so we're going to get to what we can
7 do in 20 minutes and then we'll get going to our business meeting.

8 So, John, who do we have next in the queue?

9 MS. SHUPE: Just a quick reminder for the folks who are listening today
10 that this is not the only way to provide the Board with feedback, that you can also
11 submit written comments to oshsb@dir.ca.gov. Thank you.

12 CHAIR THOMAS: Thank you, Christina.

13 John, who do we have?

14 MR. GOTCHER: Our next commenters are Cassie Hilaski followed by
15 Daniel Betts, with next Cassie Hilaski from Nibbi Brothers General Contractors.

16 CHAIR THOMAS: Cassie, can you hear us?

17 MS. HILASKI: Yes. Can you hear me?

18 CHAIR THOMAS: Yeah, go right ahead.

19 MS. HILASKI: Great. So first I wanted to recognize Chairman Thomas's
20 closing comments at the last board meeting. I think it's really important that the public
21 and the regulated community be reminded that the Board is simply trying to do its best
22 to meet the needs of everyone they are responsible for. I really do believe that you all
23 are sincerely trying to carry out the duties that have been entrusted to you and to do so
24 as conscientiously as possible. And I know that's clearly no easy task, so thank you.

25 Secondly, I wanted to thank the Board and the Division for all their hard

94

1 work in turning around the ETS update so quickly. I know it must have been nerve
2 wracking for Eric and his team to update the language to align with the CDPH guidelines,
3 practically overnight. Those efforts are truly impressive and very much appreciated.

4 The proposed updates to the ETS now truly bring us into June of 2021,
5 which is where I think we all want to be. And while there are still some challenges
6 outlined by callers like Helen Cleary and Rob Moutrie I believe approving today's
7 proposal is the best action that can be taken today to keep us in step with the current
8 science and eliminate confusion and frustration among both employers and employees.

9 Therefore, I urge the Board to pass the proposed updates. And I thank
10 you for your service to the people of California.

11 CHAIR THOMAS: Thank you, Cassie.

12 All right, John, who do we have next?

13 MR. GOTCHER: Our next commenters are Danielle Betts followed by
14 Brooke Billingsley, with next Danielle Betts.

15 CHAIR THOMAS: Danielle, can you hear us? Danielle? Hello Danielle?
16 (No audible response.) We're not getting anything, so let's move on to the next person.

17 MR. GOTCHER: Okay. Our next commenter is Brooke Billingsley from the
18 LA Alliance for a New Economy.

19 CHAIR THOMAS: Brooke, are you with us?

20 MS. BILLINGSLEY: Yes, hello.

21 CHAIR THOMAS: Go right ahead.

22 MS. BILLINGSLEY: My name is Brooke Billingsley on behalf of the Los
23 Angeles Alliance for a New Economy. I am an outreach organizer and a former retail
24 worker who worked through the pandemic. We urge you to keep these much-needed
25 emergency standards in place. Working retail during the pandemic was often a

1 terrifying experience and I was relying on standards such as these to protect myself,
2 because my employer refused to take the necessary action to keep us safe.

3 I was frequently forced into small spaces with unmasked customers or
4 staff, and when I tried to rectify these issues I faced relentless retaliation that eventually
5 led to me losing my job. Keeping the emergency standard in place is so important for
6 workers. We are still a ways away from herd immunity and many vulnerable community
7 workers are still far from being fully vaccinated. It's too premature to remove the
8 protections in place and with variants spreading around the state this can cause a
9 potential spike in outbreaks, which means putting lives at risk.

10 Based on my experience working during the pandemic it is important to
11 continue sharing transparency of outbreaks in the workplace, including company names
12 and locations. This is important to workers, communities and advocates to know where
13 outbreaks are still occurring and where more preventative measures are needed.

14 Finally, we are asking that face coverings remain in place. Face coverings
15 among the simplest tools we have to reduce transmission and should be retained due to
16 the ease of use and implementation. Face coverings should remain in place until we are
17 out of this pandemic, which could be right around the corner if we retain those
18 protections. Thank you so much for your time.

19 CHAIR THOMAS: Thank you, Brooke.

20 John, who do we have next?

21 MR. GOTCHER: Our next commenters are Bryan Little followed by
22 Christina Hildebrand, with next Bryan Little from the Employment Policy.

23 CHAIR THOMAS: Bryan?

24 MR. LITTLE: Hi, good afternoon. Can you hear me?

25 CHAIR THOMAS: Yes, go right ahead.

1 MR. LITTLE: Hi, this is Bryan Little with California Farm Bureau. And I'd
2 like to start off by saying that Board Members and agency staff thanks for the
3 opportunity to testify. I wanted to echo what Cassie said a minute ago about how hard
4 you all have worked to try to navigate your way through this mess. And I'm sure you
5 guys have worked very hard, in fact I know you guys have worked very hard and we
6 appreciate all that you're doing.

7 I wanted to associate myself with many of the comments offered earlier
8 by many of my colleagues who are doing employer advocacy today. There's so many of
9 them I can't possibly name them all, but I just wanted to associate myself with them and
10 let you know that we agree with a lot of what they said before.

11 We appreciate that the Standards Board is finally considering revisions to
12 the ETS that belatedly recognize the availability of highly effective COVID-19 vaccines.
13 Events have overtaken both the November 20 ETS and this proposal to some degree. As
14 the calendar has turned from May to June and soon enough July, it's time for the agency
15 and the Board to reconsider this ill-advised path and either withdraw the ETS altogether,
16 or return to enforcement of guidance as was the case before the ETS. Or postpone or
17 consider action that's actually in compliance with the Governor's direction at the
18 Board's June 17 meeting.

19 Additionally, the agency's Standards Board should seriously consider the
20 necessity of any infectious disease standard outside the context where employees may
21 be exposed in the normal course of their duties like health care providers and first
22 responders. The regulatory process that led us to this point clearly illustrates that any
23 regulatory action is going to be obsolete on the day that it becomes effective and will
24 become more so with the passage of time. It's simply not possible for the agency and
25 the Board to promulgate --

1 MR. GOTCHER: Thirty seconds.

2 MR. LITTLE: -- or approve regulations and amendments quickly enough
3 to adjust to the constantly evolving pandemic.

4 We also have serious concerns about mandating N95 respirators. Our
5 concerns stem from the fact that if we are going to require the use of N95 respirators
6 for indoor employees on demand, then those respirators will be unavailable for outdoor
7 employers in compliance with the wildfire smoke regulation. That's going to potentially
8 tie up millions and millions of respirators and that could become a huge problem later
9 on this summer.

10 We'd like to suggest that either --

11 MR. GOTCHER: Two minutes.

12 MR. LITTLE: -- this Board or the Board Subcommittee that will meet the
13 first time next week should begin with consideration of benchmarks to wind down the
14 ETS as soon as possible. Thank you for your time.

15 CHAIR THOMAS: Thank you, Bryan.

16 Who do we have next, John?

17 MR. GOTCHER: Our next commenters are Christina Hildebrand followed
18 by Stephanie Driscoll McHenry, with next Christina Hildebrand, A Voice for Choice
19 Advocacy.

20 MS. HILDEBRAND: Hi, I'm Christina Hildebrand from A Voice for Choice
21 Advocacy. We ask you to remove the ETS completely and allow the IIPP and the CDPH
22 and CDC guidelines to govern the workplace safety. This will allow businesses to act
23 with future updates quickly and effectively rather than having to wait on Cal/OSHA to
24 update their guidelines.

25 If you do not remove the ETS completely we ask you to address the

1 following issues in the new wording that you're voting on today. These are very
2 specific to the new wording. Please ensure the new ETS complies with federal and
3 (indiscernible) civil rights act in ensuring that vaccinated and unvaccinated persons are
4 treated equally by all businesses and governmental entities and California. Currently it
5 does not.

6 This new ETS creates segregated lunchrooms, puts scarlet letter masks on
7 unvaccinated employees who can only wear employer-distributed masks. And puts this
8 burden on employers with potential civil rights liability and medical privacy lawsuits
9 against them.

10 Specifically throughout the ETS it states, "For all employees who are not
11 fully vaccinated employers shall provide face coverings and ensure they are worn when
12 indoors or in vehicles." The way this written means that unvaccinated employees can
13 only wear those masks provided by the employer rather than their own mask. Please
14 change this, so that employees should be able to wear their own masks if they wish.

15 In the description of the COVID test at the beginning of this ETS it states
16 that any FDA approved or EUA COVID test can be used, but throughout the rest of the
17 ETS there are references to the PCR tests. There are new, more accurate sequencing
18 tests coming out on the market that the FDA has emergency use authorized, have been
19 emergency use authorized. These should be allowed (indiscernible) –

20 MR. GOTCHER: Thirty seconds

21 MS. HILDEBRAND: -- the references to COVID tests rather than PCR tests
22 throughout.

23 There's also no reference to natural immunity. Natural immunity is
24 scientifically recognized as effective as vaccination. The European Union has
25 implemented that those who have had COVID-19 in the past 180 days are immune. We

1 ask Cal/OSHA to recognize this as well.

2 Furthermore, the quarantine throughout is 10 days. With the high-cycle
3 threshold being used with most PCR tests false positive rates are high.

4 MR. GOTCHER: Two minutes.

5 MS. HILDEBRAND: If a positive test is followed by several negative tests
6 with no symptoms then a doctor's evaluation should be allowed to determine if the
7 person actually has COVID or if it was a false positive.

8 A Voice for Choice Advocacy asks you to ensure these issues are
9 addressed prior to your vote on this (indiscernible) today. Thank you for your time.

10 CHAIR THOMAS: Thank you, Christina.

11 Who do we have next, John?

12 MR. GOTCHER: Our next commenters are Stephanie Driscoll McHenry
13 followed by Anwanur Gielow, with next Stephanie Driscoll McHenry who a private
14 citizen.

15 CHAIR THOMAS: Stephanie, can you hear us? Stephanie? (No audible
16 response.) I'm not hearing anything, John.

17 MR. GOTCHER: Okay. Our next commenter is Anwanur Gielow.

18 CHAIR THOMAS: Anwanur, are you there?

19 MS. GIELOW: Hi. Can you hear me?

20 CHAIR THOMAS: Yes, go right ahead.

21 MS. GIELOW: Hi. Good morning, or good afternoon, sorry. I have
22 worked in HR for 18 years and I oppose the new proposed ETS. Please return to the use
23 of IIPP to keep workers safe as well as the CDC guidelines and the California Health
24 Department Guidelines. The science does not support continuation of the ETS. The
25 proposed new standards are far too onerous to employers and still do not align with the

100

1 CDC guidelines.

2 Businesses have jumped through endless changing and shifting hoops to
3 simply keep the doors open and stay afloat and keep people employed and able to pay
4 taxes to our state -- and may now be required to put even more resources into a legally
5 risky area of violating medical privacy in order to track employee vaccination status for a
6 medication that is still under emergency use authorization. Under emergency use
7 authorization everyone has the legal right to not have, to refuse. And also has the legal
8 right to not be coerced to take the vaccination.

9 The ETS does not take into account those who have natural immunity.
10 And who should not be getting vaccinated as many peer review studies show and
11 experts confirm. Medical procedures are clearly private information, which the state
12 and federal case law has upheld.

13 The majority of smaller businesses do not have the capacity to comply
14 with new mandates while complying with the myriad of --

15 MR. GOTCHER: Thirty seconds.

16 MS. GIELOW: -- other employment laws. The increase in unlawful
17 burden will result in increased and unaffordable legal risk. At this point it seems like
18 Cal/OSHA is trying to put small and medium companies out of business in order to
19 appease their large (indiscernible) partners.

20 Furthermore, different rules for vaccinated versus unvaccinated creates
21 two classes of employees and segregation, which is not only unethical, it is against
22 California constitution and ripe for creation of new discrimination lawsuit
23 (indiscernible.)

24 MR. GOTCHER: Two minutes.

25 MS. GIELOW: As a Native American woman, I find this particularly

1 disgusting. Segregation has never ended well in history and the idea that a minority
2 like myself needs help to ensure my health is insulting.

3 Again, Cal/OSHA is placing unreasonable burdens and legal risks on
4 employers. Please do the right going and return to the IIPP and consider the California
5 public to be smart and able to handle their own health risks and concerns. Thank you.

6 CHAIR THOMAS: Thank you.

7 John, who do we have next?

8 MR. GOTCHER: Our next commenters are Lauri Kriva followed by
9 Rochelle Lara, with next Lauri Kriva.

10 CHAIR THOMAS: Caller, can you hear us? I think it was Lauri Kriva? Can
11 you hear us? (No audible response.)

12 MR. GOTCHER: That's right. And if you called in you'll need to press *6
13 to unmute yourself.

14 CHAIR THOMAS: Let's go on to the next, John.

15 MR. GOTCHER: Okay. Our next commenter is Rochelle Lara.

16 CHAIR THOMAS: Rochelle, can you hear us?

17 MS. LARA: Hello.

18 CHAIR THOMAS: Rochelle, is that you?

19 MS. LARA: Yes. Can you hear me?

20 CHAIR THOMAS: Yeah, go right ahead.

21 MS. LARA: Oh okay, thank you. All right, thank you. I just lost 20
22 seconds starting.

23 Okay, good afternoon. I not only represent citizens of the United States
24 of America that adhere to the Constitution of the United States of America, which
25 defends our God-given inalienable rights, I also represent California as a registered

102

1 nurse. And that we're taught to be advocates for our patients, our community, and
2 our colleagues.

3 And we are taught to practice our profession with evidence-based
4 (indiscernible) Everything we do in our profession is conducted around evidence-based,
5 credible research studies. And what you're discussing today, mask mandates in the
6 workplace, as a nurse in the emergency department I'm still stuck on the premise why
7 we're even requiring masks for the general public this long?

8 In your discussion and voting today please consider the following. Why
9 are there even mask mandates for a virus with a 99.8 percent recovery? Why are you
10 deciding today why someone has to wear a mask or have a vaccine? It's a VOM policy,
11 vaccine or mask policy. Isn't that considered coercion for an EUA of an investigational
12 drug termed the COVID-19 vaccine?

13 You're already aware that it's a federal violation to mandate or coerce
14 someone to get an EUA. Why aren't people allowed to exercise that medical
15 autonomy? And doesn't the vaccine protect against non-mask wearers anyway? Why
16 are there mask mandates when there hasn't been any --

17 MR. GOTCHER: Thirty seconds.

18 MS. LARA: Oh -- why are there mask mandates without all of the
19 scientific peer-reviewed credible research that shows if they are effective or not?

20 Please consider that we don't require mask mandates in flu season,
21 especially when there is a mismatch of the vaccine. But especially as a nurse, as a
22 frontline nurse, I don't want to consent to be the poster child for the public for coercion
23 of a COVID-19 vaccine and mask mandates. Public isn't aware of all of the side effects,
24 they don't --

25 MR. GOTCHER: Two minutes.

1 MS. LARA — know what an EUA is. And I don't agree with the California
2 Nursing Association that we're afraid of the public not getting a vaccine or wearing a
3 mask. We didn't have surge except for November or December, which happens to be
4 flu season. Nurses were getting supplemental unemployment until September of last
5 year, because our census was low and our hours were cut. We're not afraid of
6 (indiscernible) vaccine or mask.

7 You need to let people have their autonomy. And the government is in
8 charge of our health, but they are there to protect our rights, that's what we should be
9 focusing on. Thank you for your time.

10 CHAIR THOMAS: Thank you, caller.

11 So we are going to go to our last two comments, John, so let's go to the
12 last two commenters please.

13 MR. GOTCHER: Our next commenters are Elle Fehr (phonetic) and
14 Frances Lee with first Elle Fehr.

15 CHAIR THOMAS: Elle Fehr, are you with us?

16 MR. GOTCHER: If you called in you will need to press *6 to unmute
17 yourself.

18 CHAIR THOMAS: Elle Fehr, can you hear us? Apparently not, we will go
19 on to the next.

20 MR. GOTCHER: Okay. Our next commenter is Frances Lee from the San
21 Fernando Valley Climate Reality Project.

22 CHAIR THOMAS: Frances, are you with us? Frances? (No audible
23 response.) All right, John, who's next?

24 MR. GOTCHER: Okay. Our next commenter is Aaron Holmberg from the
25 County of Inyo.

1 CHAIR THOMAS: Mr. Holmberg, was it Aaron Holmberg? Yeah, go
2 ahead. Go ahead, Aaron.

3 MR. HOLMBERG: Good morning. Thank you very much for the FAQs.
4 They've been very helpful. I'm a safety officer and I'm still trying to figure out how
5 practically we can implement having some employees -- when we have employees who
6 are vaccinated, employees who are unvaccinated or employees who don't want to state
7 whether or not they are vaccinated, how do we manage that practically in accordance
8 with the ETS? And if you could add more FAQs on how we can actually manage that for
9 a roomful of people it'd be really helpful.

10 And also I'm wondering if you're going to issue an updated model COVID-
11 19 prevention plan and if so when we might be able to get access to that. Thank you.

12 CHAIR THOMAS: Thank you.

13 All right, so I said two more, so we have one caller left, one final caller.
14 John, who is our final caller?

15 MR. GOTCHER: The final caller is Matthew Allen from the Western
16 Growers Association.

17 CHAIR THOMAS: Matthew, are you there?

18 MR. ALLEN: I am. Good afternoon, Mr. Chair and members of the
19 Standards Board, I just skated in.

20 I would just reiterate the comments made by Michael Miiller, Bryan Little
21 at the Farm Bureau and Len Welsh. And we believe that now really is the time for us to
22 be having further conversations about finding the appropriate pathway to see the ETS
23 rescinded now that the state is reopening. And we thank you for that brief comment
24 this afternoon.

25 CHAIR THOMAS: Thank you, Matthew.

1 And that will end the comment portion today. The Board thanks you.
2 We appreciate your testimony. The public meeting is adjourned and the record is
3 closed. And at this time we will now proceed with the business meeting.

4 The purpose of the business meeting is to allow the Board to
5 vote on matters before it and to receive briefings from staff regarding the
6 issues listed on the business meeting agenda. Public comment is not
7 accepted during the business meeting. Again, to facilitate the discussion I'm
8 going to -- hold on a second please.

9 MS. SHUPE: There is a recommendation from staff to facilitate
10 the COVID-19 discussion since we've just listened to the public comment,
11 and Eric Berg has provided his briefing, that we now move that agenda item
12 which is on the agenda as Item B up to the top and address it now.

13 CHAIR THOMAS: Thank you. The Board will now consider the
14 COVID-19 ETS revisions, which are on the agenda under Items B in the
15 business meeting. A "Proposed Emergency Safety Order for Re-adoption,
16 Government Code section 11346.1."

17 Mr. Friedman will you please brief the Board? I'm sorry, is it Mrs.
18 Friedman?

19 MS. FRIEDMAN: It's okay.

20 CHAIR THOMAS: Ms. Friedman, will you please brief the Board? I can't
21 see very far right now, go ahead. Oh, I think you're muted.

22 MS. SHUPE: Ms. Friedman, you're muted
23 (Audio issues briefly with off-mic colloquy.)

24 MS. FRIEDMAN: Is this working now?

25 CHAIR THOMAS: There we go. Yeah, go right ahead.

1 MS. FRIEDMAN: Thank you, Chairman, and thanks to the Board
2 Members for giving me a chance to speak in response to the public comment. I may be
3 able to answer some questions, clarify a few things after we've heard from the public.
4 And thank you to everyone who made public comments today.

5 I think it's first worth going back just a moment to remind everyone
6 about the protections included in this proposal. I'm not going to reiterate everything
7 that Deputy Chief Eric Berg said earlier this morning, but I think it's worth giving just a
8 quick, broad overview of what's included here and how the pieces fit together. Because
9 we've spent a significant amount of time talking about particular details, so very quickly
10 just going to say again what some of the primary methods of protection are and how
11 things have and have not changed relative to the existing emergency standards.

12 So one of the big things that this proposal does is answer the question,
13 what to do if there has been a COVID-19 case in the workplace. Last time, I checked
14 earlier today, the CDPH was reporting about 830 cases today. So this is a question that
15 employers are going have to continue answering for a while yet, hundreds of employers
16 have to deal with this every day. So what do these proposed regulations say? They say
17 you need to keep a person with COVID-19 out of the workplace until they can safely
18 return.

19 You figure out who has been exposed, you offer those people testing,
20 and then you remove them from the workplace until enough time passes that you can
21 be confident that they're not infectious. And at this point in the pandemic all of this
22 may seem almost intuitive, because we've been dealing with it for so long. But these
23 are in fact, critical measures that prevent case number one from possibly leading to case
24 number two.

25 Now the details in this proposal have changed since the original ETS was

1 enacted in November. Most obviously for fully vaccinated employees who can now
2 keep working even after an exposure, but the major concept is the same. That these
3 protections make sure that if there is a COVID-19 case steps are taken to prevent
4 transmission to other people at the workplace.

5 Another main thing that these regulations do is deal with outbreaks. So
6 as pointed out by a few commenters, the number of outbreaks is going down. Many
7 employers will not have to worry about these provisions at all going forward. However,
8 when there are three cases among employees within a 14-day period there is still a risk
9 that there may be a fourth case circulating that has not yet been identified. So the
10 Emergency Temporary Standards as proposed require employers to cast a wider net by
11 offering testing to more people. And then to keep testing until they get down to zero
12 cases again.

13 There are additional requirements related to face coverings, ventilation.
14 If you get to 20 key cases in 30 days, a major outbreak, then further precautions are
15 needed including more frequent testing; 20 cases in 30 days is not going to be an issue
16 for very many employers. And that is true, but we still need to address those kind of
17 situations when they occur.

18 The place where these regulations differ from what is currently in place
19 has to do with what preventative measures employers must take regardless of whether
20 there's a COVID-19 case, so in other words the preventative measures. There has been
21 a lot of discussion of course about face coverings, which are no longer required outside
22 or required in most cases for fully vaccinated employees. And of course physical
23 distancing is now only mandated during major outbreaks although some employers may
24 decide to keep it for some time period perhaps while they consider how to adjust to the
25 state's reopening. But at any rate the end of physical distancing is a response to the fact

1 that California is reopening, because of lower transmission rates.

2 However, I know the Board is concerned not just with averages, but also
3 with protecting individual workers. And although one commenter noted that he's
4 aware of a business that's got a 90 percent vaccination rate, which is fantastic, that's not
5 necessarily the norm. And it doesn't reflect the overall situation in California. So the
6 Board still needs to recognize the fact that there are many unvaccinated employees who
7 are working. That's why this proposal requires employers to provide respirators such as
8 N95s to unvaccinated employees upon request. And as Dr. Aragon noted when he came
9 and spoke before the Board that is going to be more effective if worn, than physical
10 distancing.

11 The regulations also provide that people who are not fully vaccinated and
12 who show COVID-19 symptoms have to (indiscernible) COVID testing. That is another
13 new requirement. And this combination of providing N95 respirators upon request and
14 testing people who are not vaccinated and showing symptoms, is very important to
15 protect employees who are not fully vaccinated. And our numbers hopefully continue
16 to tick up in terms of vaccination rates. But we're not there yet and so we can't ignore
17 the fact that California's workforce includes a lot of people who are not vaccinated.

18 So that's the overview of what we're asking the Board to vote upon right
19 now. And maybe I can also address some of the individual questions or concerns that
20 have been raised, hopefully provide a little extra information that may be useful.

21 A few commenters raised the issue of providing respirators, and what
22 they have to do in order to make that happen. The Division understands that not
23 everyone has a huge pile of N95s in their back pocket. And so we have issued a FAQ on
24 that issue, it is public, and available online right now. But it does also note that
25 employers can poll their workers to find out who wants respirators before they are

1 ordered. So that should hopefully be useful.

2 Someone also asked about whether we are going to revise our model
3 plan. The answer is yes, it is in the works. It is expected to be posted next week if not
4 there already. And I think next week is the target date. So that will be available for
5 employers to use.

6 One of the points that was also raised is immunity for people who have
7 already had COVID-19. A few different people suggested that these proposed
8 regulations do not address that. That is incorrect. There are exceptions for quarantine
9 and testing provisions for people who have recovered from a COVID-19 case. That is for
10 a limited time period, but that's consistent with the CDC. We're still waiting for
11 evidence about the length of immunity, so for now we are sticking with the CDC and
12 CDPH recommendations. But it is included in this package.

13 Another thing that has been raised is the fact that these proposed
14 regulations don't have a specific end date. And the Board is convening a subcommittee
15 to talk about what to do next. And perhaps that is a reasonable topic of discussion for
16 that subcommittee whether there should be some kind of specific threshold, after
17 which these regulations shouldn't apply. However, I should remind everyone that this is
18 a temporary regulation. It will expire as a matter of law before -- while there are still
19 COVID-19 cases happening in California. So that is something to keep in mind.

20 Another point that I may be able to provide some useful information on
21 is the question about Workers' Compensation data. If the subcommittee is interested in
22 having specific information that's something that we may be able to gather, although
23 there are some limits on what Workers' Compensation data can be made public.

24 I should note that Workers' Compensation data can be very useful in
25 analyzing things, but it is not an indication of the number of occupational cases of

1 COVID-19. That is because people generally apply for Workers' Compensation when
2 they are seeking compensation first obviously. So if they have a sick leave or vacation
3 benefits that cover their time off of work they are much more less likely to apply. If they
4 have private health insurance, whether it's through work or some other means that's
5 covering their medical costs, they are less likely to apply. A lot of people don't realize
6 that non-citizens can get Workers' Compensation. Also, employees actually have a year
7 to file a Workers' Comp claim, so we may not know even the total number of claims for
8 quite some time.

9 All of that said however should the Board's subcommittee seek any
10 particular information, perhaps on number of complaints or investigations that have
11 done, of course the Division will be fully able to provide whatever we have.

12 Finally --

13 CHAIR THOMAS: Wait a minute.

14 MS. FRIEDMAN: Yes?

15 CHAIR THOMAS: I was going to say Corey, I was going to ask at this time
16 that if there are any questions from the Board for you or Mr. Berg that they ask them at
17 this time if you've completed your --

18 MS. FRIEDMAN: Sure, I'm happy to answer any questions.

19 CHAIR THOMAS: Sure. So at this time does the Board have any questions
20 of Ms. Friedman?

21 BOARD MEMBER HARRISON: You ready, Dave?

22 CHAIR THOMAS: Yeah, yeah.

23 BOARD MEMBER HARRISON: Yeah okay, sorry about that. Yeah, this is
24 Dave. So I just want to make a comment first and then I have a handful of questions
25 here.

1 So I just recently learned that 2021-wide COVID-related deaths have
2 surpassed all of 2020 deaths, COVID deaths. So while I understand the proposal in front
3 of us today is extremely controversial and inconvenient, now I don't think is the time to
4 let our guard down. We need to do everything reasonable, and I highlight "reasonable."
5 I'm sure many folks will appreciate that within their power to protect employees in
6 California and across the country, but I know we're tasked with California here.

7 Len Welsh asked about dialogue and I think the subcommittee has a
8 great opportunity to have a dialogue that he was asking for, to address a concern while -
9 - address a lot of concerns that were brought up. Pamela Murcell asked to establish an
10 ETS expiration date. I appreciate that as well.

11 So I have a few questions and I don't know if they are for the Division or
12 for the subcommittee, but I just want to throw them out there and hopefully at some
13 point we can get those addressed. So why is it important to keep the regulation in
14 place? I think we've talked about that a lot, all right. What is full community immunity?
15 Is it 60 percent vaccinated, 70 percent? And then how will that effect the winding
16 down, if you will, of the ETS? Is natural immunity being studied and how will that be
17 measured and considered?

18 And then will we be studying the self-attestation process? I stated in the
19 last meeting that I don't support self-attestation and that stronger accountability
20 measures should be adopted. However, I'm not willing to upset the apple cart here over
21 that one issue. But I would like to be able to evaluate that issue as we move forward
22 and see if the self-attestation is effective, and if not be able to address that.

23 And then finally, the expiration date question that was just discussed a
24 little bit. What will be considered when determining that date?

25 CHAIR THOMAS: Dave, why don't I have Courtney (sic) ask -- I don't know

1 if you can remember all those questions, or if you have some answers, Courtney.

2 BOARD MEMBER HARRISON: Sorry about that, I've just been writing a lot
3 of notes today.

4 CHAIR THOMAS: Who else? Oh, did I say Corey? It's Corey, right?

5 MS. FRIEDMAN: Yeah, Corey.

6 CHAIR THOMAS: Sorry about that. Corey, go ahead.

7 MS. FRIEDMAN: Well, it did seem primarily like comments from the
8 Board Member, but maybe if there is -- I mean, the last issue was about exploring an
9 end date with the subcommittee. And of course the subcommittee of the Board will be
10 able to discuss whatever it wishes. And the Division will provide whatever information
11 we can.

12 There is not any threshold currently proposed by CDPH or any other
13 public health authorities as an end date. But of course were this regulation to remain in
14 effect more than a few more months, and we are working out the exact time, that will
15 be for the Office of Administrative Law to determine the exact end date of this
16 readoption. But beyond that date, this Board would have to do a second adoption in
17 order to keep it in place. So if the Board doesn't do that then the regulations will
18 naturally cease to exist.

19 Eric, do you have any other comment about that?

20 CHAIR THOMAS: Dave, we will come back to you if you have -- if you
21 remember. Laura, go ahead.

22 BOARD MEMBER STOCK: Yeah, I actually have a number of comments
23 but I'm going to hold them in a minute, because I want to just ask a specific question of
24 Corey if I could.

25 And so I just wanted to go back to the expiration date. I know that there

1 are people have been talking about what the subcommittee might recommend to the
2 Board relative to benchmarks. But I'm interested in the timeline that's built into this
3 regulation, because I know that there have been a range of different kinds of whether
4 it's going to be 90 days or 210 days and I'm wondering if you could comment on that.
5 Because I know that we will have one more opportunity to readopt it.

6 I also recognize that we definitely want to be able to see if surges are
7 occurring in the summer, particularly as we start to loosen restrictions. Or in the fall
8 when a lot of people are expecting that that would be the time when additional surges
9 might come into play. And so I'm wondering if you could let us know or if it's been
10 determined yet what the end date will be or how many days, whether it's 90, 210,
11 etcetera, will be in place for this version. Even leaving aside the readoption where we
12 could extend it.

13 CHAIR THOMAS: Laura, I think Christina has --

14 MS. SHUPE: Yeah, so OSHSB staff have been in touch with the Office of
15 Administrative Law preparing for the possibility of the submission of the ETS revisions.
16 And we do have an answer on that. And I'm happy to report we will have some
17 flexibility there. Our expectation is that it will have a 210-day lifespan, which will allow
18 the Board to either allow it to stay in place for up to 210 days at which point you would
19 have to consider a second readoption. Or as we are doing here, we're considering
20 revisions, because this current November regulation isn't set to expire until October. So
21 we're considering new regulations early. We can also do that with the readoption, so
22 we have some flexibility of timing there for the Board.

23 BOARD MEMBER STOCK: Okay. Thank you, Christina. And as I said I have
24 some general comments, but I will hold them to see if other Board Members have
25 particular questions for Corey or Eric. And then I can step in after that.

1 CHAIR THOMAS: Any other questions from the Board, just raise your
2 hand so I can -- ah Chris, go right ahead.

3 BOARD MEMBER LASZCZ-DAVIS: Great. I don't have any specific
4 questions at this point in time. I'm sure I'll have a number as we move into the
5 subcommittee work. But I do want to thank Eric and his staff. I want to thank Christina
6 and her staff. I want to thank the CDPH and all the commenters.

7 It's an awful lot to assimilate. I think we all want the same thing. It looks
8 very difficult as to figure out what the balance is, so that we're doing the most good for
9 the most people, but not at all dismissing the vulnerable in our population. So we've
10 got a lot of work ahead of us, but the feedback's been tremendous and I thank you all.
11 But no questions at this point.

12 CHAIR THOMAS: Thank you, Chris.

13 And I can't see all the Board Members on the screen, so who else do we
14 have there?

15 MS. SHUPE: If we could have the Board Members' videos' activated if at
16 all possible that would be helpful.

17 BOARD MEMBER CRAWFORD: So this is Kate. I'll make a comment --

18 CHAIR THOMAS: Go ahead, Kate.

19 BOARD MEMBER CRAWFORD: -- if I may. Thank you.

20 I am very, very concerned about the claims of inaccuracy for regarding
21 the science or the data. And I really want to make certain that we have a path or a tool
22 in place that we can define who those experts are going to be in terms of our scientific
23 data. And that we can kind of stop this disagreement of -- the disagreement on data. If
24 it's good or if it's bad or it encompasses everything or it doesn't. We have to make
25 regulation with sound science principles. So it's not really a question for anyone, but it's

115

1 more of a statement of how are we going to get the actual science involved here?

2 MS. FRIEDMAN: If I could just respond to that very quickly? I understand
3 it's not a question, but just to provide a little bit more information, which is that
4 Cal/OSHA in general throughout this process has tried to track and be consistent with
5 CDPH. That's been our primary benchmark throughout this. And that doesn't mean
6 that we've ignored CDC or any other sources of information. But because this is
7 California, and this is a statewide regulation, that's the entity on which we've most
8 trying to stay consistent with.

9 So I don't know if that helps, but it just gives maybe an idea of the science
10 and data that we've been relying on.

11 CHAIR THOMAS: Thank you, Corey.

12 Any other questions that the Board has? Oh Laura?

13 BOARD MEMBER STOCK: Oh, Nola. I didn't know if did you have a
14 question? Because I have some general comments, but I just wanted to be sure that
15 you had a chance to — (indiscernible) otherwise I can say my sort of general comments,
16 which include some of my concerns that maybe Corey or Eric can respond to.

17 I mean in general, again I appreciate all the work that has gone into this
18 by Board staff and by Division staff and thank all the commenters. And it seems clear to
19 me that no matter how tired we are of restrictions the pandemic is not over. And a
20 number of commenters provided data that showed in California the rate of infections in
21 the last month, just in the month of May, over 10,000 new cases have occurred, over
22 748 outbreaks. So it's clear that the pandemic is still going on.

23 And also I've been following information about the rise in new variants,
24 and particularly the Delta, which is contributing to new surges around the world. I just
25 read something today that there is a whole bunch of Californians who only have one

1 dose and there's a concern that that makes them less protected from the Delta variant,
2 another reason to understand that the pandemic is still going on.

3 And I know that I saw a quote in a recent article from the -- let me find it
4 -- that was Mark Ghaly of the California Health & Human Services Secretary says, "I have
5 no doubt we are going to see some places that are largely unvaccinated that are going
6 to have an outbreak and that's going to have real consequences." So like one of the
7 commenters said, I mean, this has real consequences that people can get sick and die
8 due to exposure in the workplace.

9 And I also just want to comment that we can't forget the
10 disproportionate impact of this pandemic on certain populations: low-wage workers,
11 people of color and immigrants, many of whom were essential workers and are
12 essential workers who continue to work while others of us were able safely shelter at
13 home. And the vaccination rate actually mirrors that disparity.

14 And I just want to also just reflect that these workers not only dealt with
15 higher rates of infection, but a lot more sort of abuse and stress and violence at the
16 hands of the general public when trying to enforce these precautions. And I think
17 people recently saw an article about a cashier in another state who was shot and killed
18 by a member of the public when trying to enforce mask rates. And I know that that's
19 been a huge issue for workers, just part of what they've had to experience being on the
20 frontline.

21 And then just again another general comment that a lot of people are
22 talking about personal choice. The principle of public health is that individual choices
23 are shaped by structural issues, such as poverty and discrimination, lack of access to
24 healthcare, and impact of the health of the community. And one person's choice to go
25 maskless puts others at risk. So our responsibility as a Board is to make decisions in

1 their best interest not of individuals, but of workers as a whole. That's where as a
2 public health professional, how I've been trying to think this through.

3 And I've been very conflicted by the choices presented to us today. On
4 the one hand, I really appreciate the measures that have been retained. And I
5 completely support the idea that we need to recognize the impact of very effective
6 vaccines on this pandemic. And that people who have been vaccinated are protected,
7 so I do support those changes.

8 On the other hand, I'm disappointed in this revision and concerned it
9 actually goes too far in rolling back essential protections while the pandemic is still going
10 on. You know, in specific things like eliminating physical distancing and partitions, even
11 saying that they can be -- partitions for example that are already in place can be
12 removed, which seems -- they're already in place. Why not leave them there if they
13 provide any kind of protection?

14 I do see that in the general -- that in the minor outbreaks the language
15 saying you should evaluate whether partitions are necessary. But there is no language
16 that says you have to implement anything, so that's a concern. And I know that in
17 certain workplaces like meat packing, for example, where people are just up against
18 each other those things really can make a difference.

19 But most importantly my biggest concern is that we are now putting
20 most of our eggs in a basket around vaccines. And if vaccines is our primary strategy
21 here it is critical to ensure, and verify who is vaccinated and who isn't. I'm very
22 concerned about the weakening of the language around documentation. I believe it is
23 essential to this approach to ensure that employers verify vaccine status through a
24 reliable method. And I just have to say that I don't believe that self-attestation,
25 particularly workplaces with workers who are vulnerable to retaliation, does not meet

1 this goal. So that is a grave area of concern to me.

2 And a couple of other things just to support some of the things I've heard
3 about the removal of physical distancing in employer-provided housing and
4 transportation, when there were compromises that were struck in previous drafts that
5 I'm sorry to see couldn't have come into this. So I find it very difficult to support this
6 current revision.

7 I'm happy to be able to be part of the subcommittee process. I hope that
8 some of these issues can be addressed there and perhaps better addressed in the FAQs.
9 And I'm interested to hear what other Board Members, what their perspective is. Thank
10 you, that's all I have for now.

11 CHAIR THOMAS: Thank you, Laura.

12 Do you have any comments or questions for Corey by any of the other
13 Board Members? (No audible response.) It doesn't look like it.

14 BOARD MEMBER STOCK: And to interrupt Dave, I'm sorry, there were
15 just two more things I wanted to say if I could quickly just say two other things. And
16 maybe this is something that Corey and others could try to make happen.

17 I also want to support the idea, and particularly in line with what Kate is
18 saying about needing good data, to really reinforce the importance of collecting industry
19 and workplace specific data. And making that available to the public about workplace
20 outbreaks. I know there's been some glitches in that process and I think that data is
21 really, really critical. So whatever you might be able to do or the Division to try to
22 promote better collection, end up better sharing and transparency of that data, would
23 be really, really important.

24 And also I just want to second the need to begin work as soon as possible
25 on a permanent infectious disease standard. Thank you.

1 CHAIR THOMAS: Thank you, Laura.

2 And then Eric Berg, do you have comments or do you have any answers
3 for any questions that you've heard?

4 MR. BERG: To Laura's comments? No, I think we can address these
5 issues more thoroughly during the subcommittee, which I think is beginning on Monday.
6 Is it Monday? It's coming up really quick, so I think there are important issues, really
7 important issues that Laura raised and we are open to discussing them.

8 CHAIR THOMAS: Did any of the other Board Members -- Dave, do you
9 have a question?

10 BOARD MEMBER HARRISON: Yeah, I just wanted -- you know, I kind of
11 rambled on, I was trying to keep my comments under two minutes but --

12 CHAIR THOMAS: That's not for you, Dave.

13 BOARD MEMBER HARRISON: Oh, okay.

14 CHAIR THOMAS: Please go ahead.

15 BOARD MEMBER HARRISON: And so hopefully they are in the record.

16 And I wasn't looking for an answer to everything I asked today, I was just kind of
17 throwing those out there. And I wanted to thank Chris, Laura and Nola for volunteering
18 for the subcommittee. I know that's a lot of extra work and you guys are doing God's
19 work, if you will so thank you for that.

20 CHAIR THOMAS: Thanks, Dave.

21 BOARD MEMBER CRAWFORD: This is Kate. Actually I want to echo what
22 Dave just said. That subcommittee work is going to be key and it's going to be a lot of
23 work. So I don't actually -- well, that's enough for right now, but I think they've got
24 quite the task ahead of them.

25 CHAIR THOMAS: I agree.

1 So I just had a few comments I wanted to make before I ask for a
2 motion. You know, every meeting I hear a lot of misinformation that is said over our
3 meeting regarding vaccines, regarding masks. And I do think without getting into all of
4 them, I think we all know what they are. And it is amazing to me that after all this time
5 that we still have so much information that's being passed around. But I just want to
6 add that I'm vaccinated. The vaccine, as far as I know works, and it hasn't -- nobody has
7 died from it. And I that I just want to make the statement that if you haven't been
8 vaccinated, I wish that you would seriously consider it. Because I think it's probably the
9 most important thing that you can do for yourself in these circumstances.

10 Regarding the masks, regarding everything else, the controls, once you're
11 vaccinated I just think it alleviates all that anxiety and suffering that people go through
12 not knowing.

13 And I don't really think I have any questions other than I know that with
14 the self-attestation -- and you can correct me if I'm wrong, Eric or Corey -- some of the
15 reason for that is because people were never really told, "Hey, you need to keep these
16 because you might need to show someone at some point that you are." Although I --
17 implicitly I think understood that a lot of people didn't. But that's a question that's
18 going to have to be answered in the subcommittee, how we approach that. Because it
19 is important. But I know that there are people that didn't think about that when they
20 got their vaccine.

21 And if there aren't other questions or comments then I would think at
22 this time that I'll ask for a motion to readopt the proposed Emergency Safety Order. Do I
23 have a motion?

24 BOARD MEMBER LASZCZ-DAVIS: I so move.

25 CHAIR THOMAS: Do I have a second?

1 BOARD MEMBER HARRISON: Second.

2 CHAIR THOMAS: I have a second. It has been moved and seconded that
3 the Board readopt the proposed emergency safety order. At this time, Ms. Money, will
4 you please call the roll?

5 BOARD MEMBER STOCK: Wait. I'm sorry, Dave, can I ask a question
6 about that motion please?

7 CHAIR THOMAS: Okay.

8 BOARD MEMBER STOCK: So the vote that we're taking because -- so
9 there is the existing ETS and then there is this proposed revision. And so I just want to
10 understand the vote, whether the vote that we would be taking now, it seems like if the
11 vote is to adopt this revision; is that correct? It's not an overall vote on whether or not
12 the ETS isn't in place, so can somebody just clarify that?

13 CHAIR THOMAS: So I'm not sure I'm understanding.

14 MS. SHUPE: So just one moment and let me swap the video.

15 So the item that is currently on the agenda is the ETS proposed revisions
16 that were noticed and provided to the public more than five calendar days in advance.
17 And that's what the Board has been discussing today. There's been calls from the public
18 to consider a repeal, but there has been no Board discussion of a repeal. So as I
19 understand it, and please Chairman Thomas step in if I'm incorrect, but as I understand
20 the motion it would be to vote whether or not to adopt the ETS revisions that were
21 noticed and on the agenda today.

22 CHAIR THOMAS: And that would be correct.

23 BOARD MEMBER STOCK: Yeah, if we could -- I just want to be sure that
24 the motion is defined in that way. You know, as I mentioned I'm not -- you know,
25 finding it difficult to support this revision, but I'm very much in support of the existence

122

1 of the ETS. And the way that motion was phrased seemed to be a little different from
2 what you just said, Christina.

3 CHAIR THOMAS: No, I don't -- I think it's the motions that we're
4 adopting, what we have been talking about and what has been changed by the Division,
5 since we had our last meeting.

6 Are there any other questions? If not, Ms. Money will you please call the
7 roll.

8 MS. MONEY: So Chris was the motion and who was the second?

9 CHAIR THOMAS: I believe it was Kate.

10 MS. SHUPE: So Kate made the motion I believe.

11 CHAIR THOMAS: Chris you made the motion, right?

12 BOARD MEMBER LASZCZ-DAVIS: Chris made the motion, Dave seconded.

13 CHAIR THOMAS: Oh, was it Dave? Thank you, Dave. I'm sorry, my bad.

14 MS. MONEY: Thank you.

15 CHAIR THOMAS: Thank you.

16 MS. MONEY: Mr. Harrison?

17 BOARD MEMBER HARRISON: Aye.

18 MS. MONEY: Ms. Kennedy?

19 BOARD MEMBER KENNEDY: Aye.

20 MS. MONEY: Ms. Laszcz-Davis?

21 BOARD MEMBER LASZCZ-DAVIS: Aye.

22 MS. MONEY: Ms. Stock?

23 BOARD MEMBER STOCK: No.

24 MS. MONEY: Ms. Crawford?

25 BOARD MEMBER CRAWFORD: Aye.

1 MS. MONEY: Chairman Thomas?

2 CHAIRMAN THOMAS: Aye. And the motion passes.

3 Thank you Board, I know this was difficult. We have a couple of other
4 items of business to take care of here, but I do appreciate the time and concern and
5 hours we've spent in these meetings to get to this conclusion. But I'd be remiss if I
6 didn't thank you guys. It's a lot of work and a lot of responsibility.

7 So without further ado we will go to the next order of business, Proposed
8 Petition Decision For Adoption, Rex and Judy Barton, owners Lunarglo LLC, Petition File
9 No. 586. Petition requests to change existing portable restroom illumination guidelines
10 to be consistent with feasible and most up-to-date technology in illumination levels
11 provided by solar lighting manufacturers.

12 Mr. Manieri, will you please brief the Board?

13 MR. MANIERI: Yes. Good afternoon Chairman Thomas and members of
14 the Board. As you know, the Standards Board received a petition on August 19th, 2020,
15 from Rex and Judy Barton. They represent LunarGlo, LLC, manufacturers of solar
16 lighting devices.

17 The Petitioners request the Board to amend Title 8, California Code of
18 Regulations, section 3449 concerning the required illumination levels for portable
19 restrooms by agricultural employees.

20 They requested two items. One, to amend the required illumination
21 levels with title 8, section 3449, to 2.9 foot candles measured at 34 inches from the floor
22 or 5 foot candles measured at 53 inches from the floor. And to add within title 8,
23 section 3449, that the hours of operation for solar light be defined as "consistently lit
24 from dusk to dawn."

25 Board staff prepared an evaluation dated March 29th, 2021, which

1 concurs with the Division that the Petition lacks merit and should be denied by the
2 Board.

3 Essentially, the Board staff note that the Petitioners' are seeking to lower
4 the standard to 2.9 foot candles at 34 inches above the floor without any justification
5 other than to say that the LunarGlo product, their product, while not achieving the
6 required levels appeared to be satisfactory in the past. Board staff is of the opinion that
7 a reduction in the required illumination levels equates directly to an increase in risk to
8 agricultural workers performing their tasks, which Board staff is unacceptable.

9 As you know, the current regulation is performance based and does not
10 require the use of solar lighting devices. The determination as to the best lighting
11 device or combination of devices is left to the discretion of the employer to establish for
12 their own unique individual lighting needs in their workplace.

13 The Division's evaluation report dated March 23rd, 2021, states the
14 Division does not support the Petitioner's requested changes and recommended the
15 Petition be denied as I indicated earlier.

16 In its recommendation, the Division stated product performance is really
17 not a valid basis to amend title 8 regulations and the existing regulations do not prevent
18 the use of the Petitioner's product. The Division stated that it was of the opinion that
19 the proposed requirement for continuous lighting is really not necessary and creates an
20 unnecessary burden upon the employer.

21 The Board staff rejected the Petitioner's request to add language
22 specifying the hours, which solar lights must operate as being "consistently lit from dusk
23 to dawn." This terminology is quite problematic. As you know, weather forecasts
24 typically identify the times for sunrise and sunset. California employers are required to
25 provide illumination inside the restroom from sunset to sunrise when the restroom is

1 occupied.

2 The Petitioners have provided really no compelling safety-related reason
3 that we can find for further amendment of the current standard, which has been in
4 effect for quite some time. And the Standards Board staff declines to create a
5 prescriptive requirement that places one type of lighting device in competitive
6 advantage over others for reasons really unrelated to worker safety and health.

7 Again, both the Division and the Board staff agree that amendment of
8 title 8, section 3449 is not justified merely because the Petitioners' devices are not able
9 to produce the illumination called for by the existing standard. The (indiscernible)
10 standard is a standard based on national consensus standards for illumination, which
11 was unanimously adopted by the Board some time ago.

12 Despite the apparent inability of the LunarGlo product to produce the
13 required illumination levels, there is nothing in this section 3449 that would prevent as I
14 said the employer from purchasing the LunarGlo product. And simply supplementing it
15 with other acceptable forms of illumination or purchasing multiple LunarGlo
16 illumination devices.

17 For all these reasons, as recommended by both the Board and the
18 Division of Occupational Safety and Health, it's recommended that Petition No. 586 by
19 Rex and Judy Barton, LunarGlo LLC, be denied. Thank you.

20 CHAIR THOMAS: Thank you, Mike.

21 Do I have a motion to adopt the petition decision, which is to deny. Do I
22 have motion?

23 BOARD MEMBER STOCK: So moved.

24 BOARD MEMBER HARRISON: Seconded.

25 CHAIR THOMAS: Who made the motion?

1 BOARD MEMBER STOCK: I did, Laura.

2 CHAIR THOMAS: Oh Laura, thank you. And Dave seconded it?

3 BOARD MEMBER HARRISON: Yeah.

4 CHAIR THOMAS: Thank you. We have a motion and second to adopt the

5 petition decision, which is to deny it. Does the Board have any points of discussion?

6 (No audible response.)

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

8 MS. MONEY: Ms. Crawford?

9 BOARD MEMBER CRAWFORD: Aye.

10 MS. MONEY: Mr. Harrison?

11 BOARD MEMBER HARRISON: Aye.

12 MS. MONEY: Ms. Kennedy?

13 BOARD MEMBER KENNEDY: Aye.

14 MS. MONEY: Ms. Laszcz-Davis?

15 BOARD MEMBER LASZCZ-DAVIS: Aye.

16 MS. MONEY: Ms. Stock?

17 BOARD MEMBER STOCK: Aye.

18 MS. MONEY: Chairman Thomas?

19 CHAIRMAN THOMAS: Aye. And the motion passes. Thank you very

20 much.

21 Proposed Emergency Safety Order for Readoption -- oops, we changed

22 those. I've got find the -- all right, Proposed Variance Decisions for Adoption. Sorry,

23 we've moved things around a little bit, so I'm trying to figure out which one I'm on.

24 MS. SHUPE: Yeah, so we would be on the Consent Calendar now.

25 CHAIR THOMAS: Okay, thank you. The proposed variance decisions for

1 adoption are listed on the Consent Calendar.

2 Ms. Gonzalez, will you please brief the Board?

3 MS. SHUPE: I apologize. Ms. Gonzalez is on a call with the Office of
4 Administrative Law right now.

5 CHAIR THOMAS: Do you have the --

6 MS. SHUPE: So what we will do is with the Chair's leave I'll go ahead and
7 advance to an update on the COVID-19 Prevention ETS Subcommittee.

8 CHAIR THOMAS: Go ahead.

9 MS. SHUPE: Okay, just one moment please. I'm having a little technical
10 difficulties. Thank you.

11 So as was noticed last Friday the first meeting of the COVID-19 ETS
12 Subcommittee will be on Monday. It will be a two-hour meeting and we've noticed it
13 from 10:30 to 12:30, with one hour allowed for public -- up to one hour allowed for
14 public comment.

15 This first meeting will primarily be to establish the working format for the
16 subcommittee. They'll be selecting a chair and a liaison to work with the Division. And I
17 will also be assigning staff to help support the subcommittee.

18 Aside from that we expect that the subcommittee will be meeting again
19 between July 8th, sometime between July 8 and July 15th, which will give the
20 subcommittee members time to one, collect input from their stakeholders. And also
21 allow the person that they designate as the liaison to work with the Division over the
22 next four weeks on some of the data that will be coming in as California reopens.

23 CHAIR THOMAS: Thank you, Christina.

24 And I want to say that the subcommittee work will be very important for
25 this COVID-19 Emergency Temporary Standard to complete the work. It's going to

1 continue on. I'm sure there's going to be some things that are going to come up during
2 that period that we may have to revisit it at some point, but we have one more chance
3 to do that.

4 So is Ms. Gonzalez --

5 MS. SHUPE: We are checking on her status right now, thank you.

6 CHAIR THOMAS: Just give us one second, we'll be right --

7 MS. SHUPE: At this time, I recommend that we touch on the Division
8 Update.

9 CHAIR THOMAS: Go right ahead. Mr. Berg, or you.

10 MR. BERG: Yeah, the Division or Cal/OSHA has no further briefings or
11 updates other than what we already talked about. Thank you.

12 CHAIR THOMAS: Eric, you were supposed to talk for a few minutes so we
13 can get (indiscernible).

14 BOARD MEMBER STOCK: Well, actually I have a question for you and
15 that'll kill a couple of minutes.

16 MR. BERG: Okay, go ahead.

17 BOARD MEMBER STOCK: Eric, could you comment on the schedule or
18 plans around moving towards developing a permanent infectious disease standard?

19 MR. BERG: Well yeah, we are looking at ideas but I don't have any formal
20 schedule established yet, but we want to get started on that. We've been fully occupied
21 with the ETS since the last month. So once this, I think, is underway and we get the
22 subcommittee underway we'll be able to put more time and establish a schedule for
23 that. At this time we don't have that on a set schedule.

24 CHAIR THOMAS: Right.

25 BOARD MEMBER STOCK: I mean, I totally understand how (indiscernible)

129

1 make sense. And maybe we could just begin to add an item to our regular — you
2 know, during the Board updates that as that moves forward if we could get updates on
3 how that's going it would be great.

4 MR. BERG: Okay, thank you.

5 CHAIR THOMAS: And I believe — oh you're ready? Go ahead.

6 MS. SHUPE: No, and I apologize. And so this is a very public display of
7 what happens when you have a very thinly staffed organization dealing with a
8 tremendous amount of work. Ms. Gonzalez is working very hard to try to get some
9 things squared away right away. It looks like I have the information on the Consent
10 Calendar now.

11 CHAIR THOMAS: Thank you.

12 MS. SHUPE: And so with that if the Board is ready we will go ahead and
13 address the Consent Calendar on the agenda, Items A through H are ready for adoption.
14 And there are no outstanding issues that we are aware of.

15 CHAIR THOMAS: Thank you. Do I have a motion to adopt the Consent
16 Calendar?

17 BOARD MEMBER HARRISON: So moved.

18 BOARD MEMBER LASZCZ-DAVIS: Second.

19 CHAIR THOMAS: Dave. And I have a second from?

20 BOARD MEMBER LASZCZ-DAVIS: Chris.

21 CHAIR THOMAS: Chris, thank you. I have a second from Chris.

22 Ms. Money, will you please call the roll? (No audible response.) Sarah?

23 MS. SHUPE: Ms. Money, you're muted.

24 MS. MONEY: I'm here.

25 CHAIR THOMAS: Great.

1 MS. MONEY: Ms. Crawford?
2 BOARD MEMBER CRAWFORD: Aye.
3 MS. MONEY: Mr. Harrison?
4 BOARD MEMBER HARRISON: Aye.
5 MS. MONEY: Ms. Kennedy?
6 BOARD MEMBER KENNEDY: Aye.
7 MS. MONEY: Ms. Laszcz-Davis?
8 BOARD MEMBER LASZCZ-DAVIS: Aye.
9 MS. MONEY: Ms. Stock?
10 BOARD MEMBER STOCK: Aye.
11 MS. MONEY: Chairman Thomas?
12 CHAIRMAN THOMAS: Aye. And the motion passes.
13 Reports, Division Update. I think Mr. Berg, we already passed that, so we
14 don't need that. Ms. Shupe will you please brief the Board on the Calendar for the
15 COVID-19?
16 MS. SHUPE: So we addressed that. So the next item up would be the
17 Legislative Update, which again would normally be Ms. Gonzalez, but I do have that
18 information.
19 CHAIR THOMAS: Go ahead Christina.
20 MS. SHUPE: So there are a number of bills that have moved to the
21 Senate after passage in the Assembly including AB 701. There was a written legislative
22 update prepared on June 8th and included in the Board's packet. It's also included in
23 our online posting. And at this time we will be waiting for action in the Senate before
24 we have additional information to share.
25 CHAIR THOMAS: Thank you, Ms. Shupe. New Business: Future Agenda

1 Items. Do any of the Board Members have questions for staff on items that they would
2 like to propose for future board agenda items? Anybody? Or any information they seek
3 regarding items that are going to be coming before us? (No audible response.) It looks
4 like that's a no.

5 Do we have closed session?

6 MS. SHUPE: We do not have a closed session.

7 CHAIR THOMAS: We don't have a closed session. So I want to thank the
8 Board for all the hard work. The next Standard Board regular meeting is scheduled for
9 July 15th, 2021, via teleconference and video conference.

10 And before we adjourn I just want to add one thing. During these
11 meetings we have seen when we had the chat function going, a lot of threats. And I'm
12 just going call them what they are, they were threats. They might have been thinly
13 veiled, but they're threats. And we're not going to tolerate that.

14 When you get on that function we have your information and so you're
15 not going to be anonymous like you told us we're not going to be. Well, I haven't been
16 anonymous for a long time, so I resent the fact that people would do that and thinking
17 that that's simply going to stop us from doing our job. And it's not going to be
18 tolerated. And there's no reason at all for any of the Board Members or myself to be in
19 any kind of jeopardy. That is just not going to be tolerated. I've seen it all too often in
20 the last years.

21 And I see it again or hear it again I will find a way to, if it's illegal, to have
22 you prosecuted. I'm not putting up with this, none of the Board Members should and
23 it's just disrespecting.

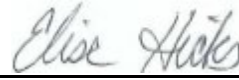
24 So I want to thank you Board Members again for all your hard work. I
25 know how hard this has been.

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