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Occupational Safety and Health Standards Board  
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## **FINAL STATEMENT OF REASONS**

### CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 3203(a)  
of the General Industry Safety Orders

### **Employee Access to Injury and Illness Prevention Program**

### **MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons.

### **Summary of and Responses to Written and Oral Comments:**

#### I. Written Comments

#### **Ms. Amber Rose, Area Director, Occupational Safety and Health Administration, by letter dated February 6, 2018.**

##### Comment:

Ms. Rose comments that the proposed standard appears to be commensurate with the federal standard.

##### Response:

The Board thanks Ms. Rose for her comment and participation in the Board's rulemaking process.

#### **Mr. James Mackenzie, Principal Manager, Edison Safety – Safety Programs & Compliance, Southern California Edison, by letter dated March 12, 2019.**

##### Comment 1:

Mr. Mackenzie commented that a definition for "unobstructed access" should be relocated from its current position within the proposed regulatory text to the definitions section of the proposed amendment. He also suggested adding additional language to the definition that would include any employee with "the ability to view and/or print company documents during working hours using company-provided equipment."

Response:

The Occupational Safety and Health Standards Board (Board) is not persuaded by the comment. The Board has placed a description of what constitutes “unobstructed access” near the requirement to provide such access so that employers are readily informed about what is required of them should they choose this option. The other terms defined in the regulation appear multiple times throughout the proposed text, making their listing at the beginning of the subsection more convenient.

For purposes of providing employee access to the Injury and Illness Prevention Program (IIPP), the Board has proposed to allow employers with computer-literate staff to provide such access to employees electronically without the need for a formal request. Employers whose staff does not regularly, predictably, and routinely access electronic means for communication with management or coworkers will not be able to provide access in this manner. By rejecting the commenter’s proposed edit, the Board intends to prevent a scenario where an employer provides a central computer terminal and instructs employees that may not be comfortable using a computer to use it to obtain access to the IIPP.

Comment 2:

Mr. Mackenzie commented that the Board should specify that the request for access to the IIPP be in writing and received by someone tasked with providing the IIPP, such as “the safety, human resources, or company representative responsible for providing the IIPP.”

Response:

The Board is not persuaded by the comment. Proposed subsection 3203(a)(8)(E), which reads “The employer shall communicate the right and procedure to access the Program to all employees” requires the employer to develop the procedure for employees to follow in order to obtain access to the IIPP. Subsection (E) as currently written provides employers with flexibility in determining the best method for providing such access.

Comment 3:

Mr. Mackenzie commented that employers should be allowed ten days to respond to a request for access to the IIPP, instead of five, to aid in the tracking of requests for access and to accommodate out of office schedules of those receiving the requests.

Response:

The Board is not persuaded by the comment. Although the Board recognizes that employees being out of the office and other challenges can make timely responses to requests for access to the IIPP less convenient, the Board aims to provide employers the flexibility to respond to such situations by creating their own procedure for responding to such requests. See also the Board’s response to Comment 2 above.

Comment 4:

Mr. Mackenzie commented that excluding access to the “records of the steps taken to implement and maintain” the IIPP could create confusion and inadvertently cause other records to be included. He suggested explicitly stating that access only to the written program be required.

Response:

The Board is not persuaded by the comment. To prevent access to private or confidential information, the Board has proposed to require access only to the IIPP, but not to any of the supporting programs or documents that could result from the implementation or maintenance of the IIPP.

Comment 5:

Mr. Mackenzie commented that reading the regulations and developing a procedure or form to manage access requests and revising training programs will cost “considerably more than \$10.00,” (the amount that the Board estimated a typical business would incur initially to comply with the regulation.)

Response:

The Board is not persuaded by the comment. Reviewing regulatory requirements is a cost of doing business and is not unique to safety and health regulations. The proposed amendments clarify that employers must make the IIPP available to employees and their designated representatives, but do not place significant additional requirements on them.

Many employers already provide employee access to the IIPP through the availability of printed and/or electronic copies. For employers that do not currently provide such access, they will need to ensure that employees can access a free copy of the IIPP directly or through a designated representative, upon request. As such, providing the access need not be a complex procedure requiring costly development.

The Board thanks Mr. Mackenzie for his comments and participation in the Board’s rulemaking process.

**Ms. Anne Katten, Pesticide and Work Safety Project Director, California Rural Legal Assistance Foundation,**

**Mr. Mark Schacht, Deputy Director, California Rural Legal Assistance Foundation,**

**Ms. Cynthia Rice, Director of Litigation, Advocacy and Training, California Rural Legal Assistance, Inc.,**

**Mr. Tim Shadix, Staff Attorney, Worksafe,**

**Mr. Matt Broad, Legislative Advocate, California Teamsters Public Affairs Council, and**

**Ms. Deborah Gold, Certified Industrial Hygienist, by letter dated March 7, 2019.**

**Ms. Amber Baur, Executive Director, United Food and Commercial Workers Western States Council, by letter dated March 19, 2019.**

Comment 1:

The commenters stated that although they had previously agreed to five business days as the deadline for providing access to a copy of the IIPP, they recently discovered a requirement for employers to provide ventilation system records within 48 hours (see Title 8 Section 5142(b)(3)) and now propose this as the new deadline for providing access. They opined that access to the IIPP “should be readily available and may be needed to address urgent work health and safety concerns.”

Response:

The Board is not persuaded by the comment. Employees (or their designated representatives) should not be expected to be responsible for providing their own health and safety training through a last-minute review of the IIPP as could be inferred from the comment. Although having access to the IIPP can increase understanding of the program’s elements and the employee’s role in creating a safe workplace, primary responsibility for disseminating the information falls on the employer.

Existing IIPP requirements state that employees must be effectively trained before being exposed to workplace hazards. Additionally, employees must be encouraged to report any hazards observed to their employers, who are then required to address such hazards. Every IIPP must name an individual responsible for implementing these and other elements of the IIPP. If employees are concerned that the IIPP is not being properly implemented at their workplace, they have the option to bring their concerns to their employer or file a complaint with the Division of Occupational Safety and Health.

Furthermore, allowing an employer five business days to respond to a request for an IIPP should not be equated to a five day lapse in addressing an “urgent work health and safety concern.” Regardless of the time allowed to respond to a request for an IIPP, the employer is always responsible for providing a safe and healthful workplace to its employees. Based upon input from an advisory committee convened to discuss this matter, the Board affirms that five business days is a reasonable time limit for both employees (or their designated representatives) to wait and employers to respond to a request for a copy of the IIPP.

Comment 2:

The commenters assert that the regulation should clearly state that an electronic copy of the IIPP can only be provided in response to a request when the employee requests said format and the employer has “an electronic copy readily available.” They state that “there [should be] no pressure to accept it in this format.”

Response:

The Board is not persuaded by the comment. Although the Board is not persuaded by the comment, the Board agrees with the concept behind the comment and refers the commenters to the currently-proposed text which effectively states the desired sentiment. Proposed subsection 3203(a)(8)(B)1.a. says that employers are expected to provide a printed copy of the program, “unless the employee or designated representative agrees to receive an electronic copy of the Program.”

The proposed language clearly states that the requester must agree to receive the electronic copy, which also implies that such a format exists. Under the proposed text, the requester can choose to receive either a printed or electronic copy of the program where the employer offers both options; otherwise, the printed copy must be provided.

Comment 3:

The commenters stated that the requirement that the program “need not include any of the records of the steps taken to implement and maintain the Program” may not constitute sufficient access and “misleadingly implies that employees do not have access to exposure records, worksite evaluations, and analyses using exposure or medical records.” They point out that “access to most of these records is already guaranteed by [subsections] 3204(e)(2)(A) and (e)(2)(C).”

They suggest that “a request under [Section] 3203 [IIPP] should automatically result in production of analysis or exposure records as well,” which in their estimation would make the requirements “consistent with [subsection] 3345(e)(2) Hotel Housekeeping Musculoskeletal Injury Prevention.” They propose amending the regulation “to require access to the written IIPP and all records of worksite evaluation, exposure monitoring and incident review conducted to implement the program.” They state that trade secret data and confidential medical and disciplinary records would be required to be withheld.

Response:

The Board is not persuaded by the comment. The Board concurs with the commenters that access to exposure and medical records is already guaranteed by Section 3204 “Access to Employee Exposure and Medical Records,” but does not agree that the current proposal “implies that employees do not have access to [the records specified in Section 3204].” The proposal clearly states that access is granted only to the IIPP, and is silent on access to any other record or program.

The suggestion that a request under Section 3203 automatically include documents required to be provided by other regulations could lead to confusion and cause an employer to inadvertently reveal confidential information. For example, upon request of an IIPP, which covers all employees at a worksite, the employer could mistakenly provide worksite evaluations or incident

reviews to which the requesting employee or designated representative do not have a right to access.

Employees and their designated representatives have the right to access many different types of work-related documents under various Title 8 regulations. Employers and requesters should follow the specific requirements governing access to the desired information to avoid confusion and inadvertent violation of the corresponding sections.

In support of their position, the commenters assert that access to “all records of worksite evaluation, exposure monitoring and incident review” should be granted for the IIPP to be consistent with that allowed by [subsection] 3345(e)(2) “Hotel Housekeeping Musculoskeletal Injury Prevention.” The access, however, afforded by Section 3345 applies very narrowly to “housekeepers in hotels and other lodging establishments” (see subsection 3345(a) Scope and Application). Furthermore, Section 3345 is intended only “to control the risk of musculoskeletal injuries and disorders.”

In contrast, the IIPP applies to every employer in the state and is not limited to a single class of employees or injury risk. Access to the documents proposed by the commenters may be available via other means (e.g. a document request properly received from the Division of Occupational Safety and Health). See also the Board’s response to Comment 4 from Mr. James Mackenzie.

The Board is unsure if the commenters’ proposal that a request for an IIPP automatically result in the production of documents governed by Section 3204 “Access to Employee Exposure and Medical Records” would be expected to occur in the two-day deadline proposed in their Comment 1, but points out that employers currently have 15 days to provide the records discussed in Section 3204. The effect of requiring employers to provide documents within two days that are currently expected within 15 days was not evaluated in the development of the rulemaking. As such, making the proposed change would be inappropriate at this stage of the process.

Similarly, the commenters’ request to require additional documents exceeds the scope of the proposed regulation as noticed in the California Regulatory Notice Register. Regulatory documents filed with the Office of Administrative Law stated that the purpose of the regulation was to clarify that employees have a right to access the IIPP and defined the program that must be provided upon request.

Stakeholders discussed in an advisory committee meeting, convened in February 2018, the benefits of providing the IIPP as defined in the proposed text. The rulemaking documents prepared to publicly notice the subject regulatory proposal did not consider the impact of providing the newly-requested documents on California businesses or state and local government agencies.

Much of the cost impact of the current proposal is avoided by a significant number of companies because of the ability to provide access to the IIPP via a company website or server. Several

businesses representing millions of employees currently provide access in this manner and will not need to amend their safety programs to comply with the current proposal, except to ensure that employees are aware of their right to access the program.

Under the commenters' proposal, businesses would need to place their worksite evaluations, exposure monitoring, and incident review documents online to avoid the regulatory burden of having to respond to requests for such information. If this information is not placed online, which would likely be the case, California employers would need to respond to potentially millions of new employee requests using millions of pieces of printed paper.

Although most of the newly affected employees would be unlikely to request a copy of the program, and most of those requests could be handled electronically, the cost impact would have to assume that every eligible employee would request the default printed program, likely causing the estimated economic and fiscal impact on California businesses and government agencies to exceed the \$50 million mark.

Comment 4:

The commenters suggested that "if an employer has separate and distinct [IIPPs] for different facilities, an employee [should be] entitled to access the program at all facilities where they work."

Response:

The Board is not persuaded by the comment. Although the Board is not persuaded by the comment, the Board agrees with the concept behind the comment and refers the commenters to the currently-proposed text which effectively states the desired sentiment. Subsection 3203(a)(8)(D) says that employers are only required to provide the program(s) applicable to the employee requesting it. The proposed language clearly states that the employer is not required to provide an IIPP that is inapplicable to an employee, meaning the employer must provide access to every IIPP that does apply.

Comment 5:

The commenters are in favor of the definitions for "access", "designated representative", and "written authorization".

Response:

The commenters' support for the proposal is acknowledged. The Board thanks the commenters for their comments and participation in the Board's rulemaking process.

**Ms. Elizabeth Treanor, Director, Phylmar Regulatory Roundtable – OSH Forum, by letter dated March 12, 2019.**

Comment 1:

Ms. Treanor commented that while she supports employees having access to the IIPP, the proposed regulation is unnecessary for employers who have worked since the effective date of the IIPP regulation to provide such access to employees. She suggested targeting industries where employers have refused access in the past. She expressed concerns with placing administrative burdens on employers through the subject regulation without an improvement in employee health and safety. She cautioned that “requiring additional resources to develop and implement a procedure for access to a document that is freely available to all employees on the website diverts overall safety efforts...[reducing] worker faith that the employer is addressing real safety and health issues employees are facing.”

Response:

The Board is not persuaded by the comment. As stated in the Initial Statement of Reasons, the Board has determined the necessity of the present rulemaking effort. One major purpose of the regulation is to clarify that employees have the right to access a copy of the IIPP, which is unclear in the existing regulation. For employers whose IIPP “is freely available to all employees on the website,” the proposal merely requires that employers inform employees of their right to access the IIPP. See also the Board’s response to Comment 1 from Mr. James Mackenzie.

Comment 2:

Ms. Treanor commented that the definition for “unobstructed access” should be relocated to the definitions section of the regulation.

Response:

Please see the Board’s response to Comment 1 from Mr. James Mackenzie.

Comment 3:

Ms. Treanor commented that employee requests should be required to be in writing and presented to a management representative.

Response:

Please see the Board’s response to Comment 2 from Mr. James Mackenzie.



Comment 4:

Ms. Treanor commented that five business days is too short of a time frame to respond to a request for an IIPP. She suggests that the request is not safety-critical and that a period of at least seven days is more reasonable.

Response:

Please see the Board's response to Comment 3 from Mr. James Mackenzie.

Comment 5:

Ms. Treanor commented that the \$10 cost impact of the regulation estimated by the Board significantly underestimates the actual cost of the new requirements.

Response:

Please see the Board's response to Comment 5 from Mr. James Mackenzie.

Comment 6:

Ms. Treanor commented in support of the requirement that only the IIPP be required to be provided and not "the records of the steps taken to implement and maintain the written program." She said that her clients maintain a number of documents to support compliance with the IIPP requirements, some of which may contain "business confidential or proprietary information." She alluded to concerns that "providing access to all these documents will result in a 'fishing expedition' for entities seeking to line their pockets with litigation settlement money."

Response:

The commenter's support for the proposal is acknowledged. The Board thanks Ms. Treanor for her comments and participation in the Board's rulemaking process.

**Ms. Stephanie Roberson, Director, Government Relations, California Nurses Association / National Nurses United, by letter dated March 12, 2019.**

Comment 1:

Ms. Roberson commented that the IIPP regulation should "align with the rest of Title 8 regarding employee access." She pointed out several Title 8 sections where employees and employee representatives are allowed access to compliance records associated with the various safety and health programs. The examples cited are OSHA 300 logs (Section 14300.35), Violence Prevention in Health Care (Section 3342), Health Care Worker Back and Musculoskeletal Injury Prevention (Section 5120), Aerosol Transmissible Diseases (Section 5199), Bloodborne Pathogens (Section 5193), Respiratory Protection (Section 5144), and Hotel Housekeeping

Musculoskeletal Injury Prevention (Section 3345). She requests that the proposal specifically “include records of the steps taken to implement and maintain the written IIPP.”

Response:

The Board is not persuaded by the comment. Although access to supporting documents is granted for many of the safety programs required by Title 8, each of the programs listed (and many more not listed) serves as a component of a system designed to provide a safe and healthful workplace to employees. The IIPP is the overarching program requiring employers to identify, evaluate, and control the hazards and risks of the workplace. The programs listed support the overall purpose of the IIPP and as such are often the product of evaluations and surveys required by the IIPP.

Requiring access to supporting documents of the IIPP, or the “record of the steps taken to implement and maintain the written program” could lead to requiring not only the documents required by the sections mentioned in the comment, but also any other section the employer finds applicable through the implementation and maintenance of the IIPP. For each of the listed sections, the concept of providing such documentation was thoroughly evaluated as part of the respective rulemaking processes. Such access was not, however, evaluated in the present effort. Please see also the response to Comment 3 from Ms. Anne Katten.

Comment 2:

Ms. Roberson commented that, a copy of the IIPP, should be provided within 48 hours instead of five business days.

Response:

Please see the Board’s response to Comment 1 from Ms. Anne Katten.

Comment 3:

Ms. Roberson commented that the regulation should clearly state that an employee must “affirmatively request” an electronic copy in order for the employer to be authorized to provide one in response to a request for access.

Response:

Please see the Board’s response to Comment 2 from Ms. Anne Katten.

Comment 4:

Ms. Roberson commented that if an employer has separate and distinct [IIPPs] for different operations, the employee should be entitled to access to all applicable programs.

Response:

Please see the Board's response to Comment 4 from Ms. Anne Katten.

The Board thanks Ms. Roberson for her comments and participation in the Board's rulemaking process.

**Mr. C. Bryan Little, Director, Employment Policy, California Farm Bureau Federation, by letter dated March 15, 2019.**

Comment 1:

Mr. Little commented that requiring the IIPP to be provided within five days of a request is problematic for agricultural employers because of their decentralized and constantly changing work locations. He suggests that a deadline of 15 days as required by Section 3204 "Access to Employee Exposure and Medical Records" be required instead.

Response:

Please see the Board's response to Comment 3 from Mr. James Mackenzie.

The Board thanks Mr. Little for his comments and participation in the Board's rulemaking process.

**Mr. Toli Mikell, Director, Safety and Compliance, PARC Environmental, by email sent March 21, 2019.**

Comment 1:

Mr. Mikell commented that the five business day timeline for providing a printed copy of the IIPP would be burdensome to his company because his employees are dispersed throughout the state, often with no access to electronic media or any ability to receive a hard copy of the program. He requests a provision to allow employers to take more than five business days if the employee or designated representative agree.

Response:

Please see the Board's response to Comment 3 from Mr. James Mackenzie.

Comment 2:

Mr. Mikell inquired as to what would be an acceptable means of communicating to employees the right and procedure to access the IIPP.

Response:

If the proposed amendments are adopted, employers are granted the flexibility to determine their own effective means of communicating to employees the right and procedure to access the IIPP.

The Board thanks Mr. Mikell for his comments and participation in the Board's rulemaking process.

**Mr. Dan Lecox, Petitioner, Lecox & Associates, by letter dated March 20, 2019.**

Comment 1:

Mr. Lecox commented that the proposal before the Board is far more complex than he envisioned as Petitioner. He opined that the addition of an authorized representative was the cause of the complexity, "but accepted in the spirit of compromise." He said the limitation on the supplied documents to include only the IIPP and not those created by implementing the IIPP was the factor that persuaded him to support the proposed amendments. Further, he commented that "all issues were resolved to a consensus except the potential for employer obligation to more than one representative for the same employee." He was concerned that a unionized employee could request one copy of the IIPP through his union representative and one through a designated non-union representative. Finally, he thanked that Board staff for its work on this rulemaking.

Response:

The Board notes that the proposed amendments contain provisions for duplicate requests for a copy of the IIPP that has not been updated.

The Board thanks Mr. Lecox for his comment and participation in the Board's rulemaking process.

**Mr. Robert Moutrie, Policy Advocate, California Chamber of Commerce, by letter dated March 21, 2019.**

Comment 1:

Mr. Moutrie commented that if a collective bargaining agent is treated automatically as a designated representative, the regulation should require the agent to be the representative for the employee's bargaining unit. He also suggested that a collective bargaining agent should be limited to one free copy of the IIPP per year, similar to employees, "unless the [IIPP] has substantively changed." Finally, he asked that the proposed text be modified to clarify that the "automatic designation of a collective bargaining agent is not intended to create the potential for multiple designated representatives..."

Response:

The Board is not persuaded by the comment. The provision that a collective bargaining agent is to be treated automatically as a designated representative exists in other Title 8 sections (e.g. Section 3204 “Access to Employee Exposure and Medical Records”) without the clarification requested by the commenter. The Board is unaware of any issues with implementing this requirement in other Title 8 sections and therefore elects to keep the language as it is commonly used.

With regard to limiting a collective bargaining agent to one free copy of the unmodified IIPP per year, the Board directs the commenter to the proposed text of Section 3203 (a)(8)(B)1.b., which allows an employer to charge the employee or designated representative for duplicate copies of the same program. As the commenter correctly points out, a recognized or certified collective bargaining agent is automatically treated as a designated representative.

Finally, the Board infers from the comment that the commenter is concerned with potential harassment resulting from an employee selecting multiple designated representatives, including union representatives, to make multiple requests for copies of the IIPP. The intent of the proposed amendments is to ensure that an employee has access to a free copy of the IIPP, whether the employee receives the program personally or through a designated representative.

The proposed amendments entitle the employee or his/her designated representative to a copy of the IIPP and allow the employer to charge for additional copies of the unmodified program provided to the same employee or designated representative. The proposal is not intended to allow the same designated representative to request multiple copies of the IIPP free of charge on behalf of multiple employees, nor is it intended to allow a single employee to request multiple copies of the IIPP free of charge via multiple designated representatives. The right of the employer to charge for duplicate requests of the same program is intended to control the potential for unnecessary duplication.

Comment 2:

Mr. Moutrie commented that the proposal does not allow the “employer to identify to whom the ‘written authorization’ should be submitted.” He also suggests that “the employer should be allowed to take ‘reasonable steps’ to verify the identity of the designated representative to ensure the accuracy of the information provided.” Additionally, he requests “clarification of what specific acts will trigger the time period for providing the [IIPP] to the employee or designated representative.”

Response:

The Board is not persuaded by the comment. As stated in the proposed text, the five-business-day period for providing access to the IIPP begins “after the request for access is received from an employee or designated representative.” Furthermore, as stated in the proposed text, a designated representative requires written authorization from the employee, thereby providing

certainty to the employer of the designated representative's identity. Subsection 3203(a)(8)(E) requires the employer to inform employees of the procedure to obtain such access. Please see also the response to [Comment 2](#) from Mr. James Mackenzie.

Comment 3:

Mr. Moutrie commented that "five days is an incredibly short time frame in which to prepare and provide a copy of the [IIPP]," especially since the employer could be handling multiple requests at the same time with "no limit on the number of requests...an employee may make each year." He suggests 30 days to respond to a request, unless the requester agrees to a longer period.

Response:

Please see the response to [Comment 3](#) from Mr. James Mackenzie.

Comment 4:

Mr. Moutrie commented that the definition for "unobstructed access" is "extremely subjective." He questions "how often an employee would need to utilize electronic means to satisfy the terms of 'predictably' and 'routinely.'" He says that employees can "have regular access to the internet without utilizing email or other electronic communications as part of their work." He suggests that the term "unobstructed access" be defined as "access to the electronically stored [IIPP], without the need to receive permission or approval from a supervisor."

Response:

Please see the response to [Comment 1](#) from Mr. James Mackenzie.

Comment 5:

Mr. Moutrie commented that he is "concerned with the proposal's explicit permission for an employee to 'email' a copy of the [IIPP] to anyone." He states that "unlimited distribution of an employer's internal documents such as the [IIPP] is too broad and should be restricted in the same manner as receipt of a hard copy..."

Response:

The Board is not persuaded by the comment. The Board can find no evidence of any portion of the proposal that provides "explicit permission for an employee to 'email' a copy of the [IIPP] to anyone" as the commenter asserts. The Board is also unsure of the intended meaning of the commenter's request that an employee's receipt of an electronic copy of the IIPP "be restricted in the same manner as receipt of a hard copy." The proposed amendments are silent as to what the employee or the designated representative can do with the copy of the IIPP that they are provided. The Board intends to ensure access to a free copy of the IIPP is available upon request

to employees or their designated representatives for the purposes described in the Initial Statement of Reasons.

Comment 6:

Mr. Moutrie commented that the regulation should include a provision “similar to that included in Labor Code Section 1198.5(n)-(o), that states once an action that relates to [an IIPP] is filed or initiated, the right to access under this section ceases and any request or demand for access should go through the normal course of discovery, or rules of exchange/disclosure within that forum.”

Response:

The Board is not persuaded by the comment. Title 8 already contains various provisions for providing access to employer-created documents that are not currently subject to the cited Labor Code section. The Board does not agree that employee rights to access the IIPP should be curtailed in this manner.

The Board thanks Mr. Moutrie for his comments and participation in the Board’s rulemaking process.

II. Oral Comments

Oral comments received at the March 21, 2019 Public Hearing in Pasadena, California.

**Mr. Dan Leacox, Petitioner, representing Leacox & Associates.**

Comment:

Mr. Leacox expressed concerns that the proposal was far more complex than he proposed as Petitioner. He said that the complexity stemmed from the provisions for a third party representative, but that consensus in the advisory committee was reached because of the agreed upon limitations on the documents required to be provided via a request for a copy of the IIPP. He said that all issues were resolved during the advisory committee, “except for the potential for employer obligation to more than one representative for the same employee and that does not appear to be addressed in the proposal.”

Response:

Please see the response to written Comment 1, submitted by Mr. Dan Leacox on March 20, 2019.

The Board thanks Mr. Leacox for his comments and participation in the Board’s rulemaking process.

**Ms. Elizabeth Treanor, representing Phylmar Regulatory Roundtable – OSH Forum.  
Mr. Jay Weir, representing AT&T, echoed these comments.**

Comment:

Ms. Treanor explained that her organization was surprised to see a bill introduced into the Legislature to allow access to the IIPP because she feels that her employees already have such access. She suggests that if an industrial sector is denying such access, “it would be better to have the proposal focus on that particular sector.” She questions whether or not the proposal will contribute to safety and health. She said that the proposal would require employers to establish a procedure to ensure that requests for access will be addressed within the 5-day deadline.

Response:

Please see the response to written Comment 1, submitted by Ms. Elizabeth Treanor on March 12, 2019.

The Board thanks Ms. Treanor for her comments and participation in the Board’s rulemaking process.

**Ms. Anne Katten, representing California Rural Legal Assistance Foundation.  
Mr. Tim Shadix, representing Worksafe, echoed these comments.**

Comment:

Ms. Katten said that her organization supports the proposal, but recommends a few changes. She said that the deadline for providing employees with a copy of the IIPP should be shortened from five working days to two. She said that employees should be entitled to a paper copy of the IIPP unless they request an electronic copy. She also said that sufficient employee access should include access to the program’s implementation and maintenance documents, including worksite evaluations and incident review records, similar to that provided by Section 3204. Finally, she suggested that the proposal be more affirmative and clear that employees have a right to access all programs applicable to them if their employer has multiple IIPPs.

She also said that the California Nurses Association and National Nurses United are in support of her comments.

Response:

Please see the response to the written comments, submitted by Ms. Anne Katten on March 7, 2019.

The Board thanks Ms. Katten for her comments and participation in the Board’s rulemaking process.



**Mr. Emanuel Benitez, representing California Rural Legal Assistance, Inc.**

Comment:

Mr. Benitez said that employees need to know what is in the IIPP, but many do not even know where it is. He said that employees need to know where the IIPP is to deal with workplace hazards. He provided photographs of a vineyard to support his comments.

Response:

Please see the response to written Comment 1, submitted by Ms. Anne Katten on March 7, 2019.

The Board thanks Mr. Benitez for his comments and participation in the Board's rulemaking process.

**Mr. James Mackenzie, representing Southern California Edison.**

Comment:

Mr. Mackenzie stated that he had concerns with the administrative complexity of the proposal. He suggested moving the definition for "unobstructed access" to the definitions section and altering it "to focus on getting employees access to the IIPP without retribution or hassle" instead of on whether or not employees have email access. He said that the 5-day deadline could be challenging to meet because of illnesses and vacations, and suggested 10 days. Finally he said that the proposal should clearly state that only the written program is required to be provided upon request.

Response:

Please see the response to written Comment 1, Comment 3, and Comment 4 submitted by Mr. James Mackenzie on March 12, 2019.

The Board thanks Mr. Mackenzie for his comments and participation in the Board's rulemaking process.

**Mr. Carlos Maldonado, representing California Rural Legal Assistance, Inc., on behalf of Antonio Vivas.**

Comment:

Mr. Maldonado read a statement from Antonio Vivas, a farm worker, which described many hazards encountered in Mr. Vivas' work. He said that his employer did not provide sufficient training to address the hazards he encounters, and that he fears retaliation from his employer if he asks for a copy of the IIPP. He said that the IIPP should be provided as a paper copy.

Response:

Please see the response to written Comment 1 and Comment 2 submitted by Ms. Anne Katten on March 7, 2019.

The Board thanks Mr. Vivas for his comments and participation in the Board's rulemaking process.

**Mr. Lorenzo Pasani, representing himself.**

Comment:

Mr. Pasani stated it is important that a regulation be in place to protect workers.

Response:

The commenter's support for the proposal is acknowledged. The Board thanks Mr. Pasani for his comments and participation in the Board's rulemaking process.

**Mr. Mitch Steiger, representing the California Labor Federation.**

Comment:

Mr. Steiger stated that his organization supports the proposal because the more clearly access to the IIPP is guaranteed, the more likely the program is to exist. He said that the creation of the IIPP is an opportunity for an employer to collaborate with employees to address workplace hazards and that the current proposal will encourage that discussion to take place.

Response:

The commenter's support for the proposal is acknowledged. The Board thanks Mr. Steiger for his comments and participation in the Board's rulemaking process.

**Mr. Tim Shadix, representing Worksafe.**

Comment:

Mr. Shadix stated that his organization supports the proposal because it removes obstacles that prevent employees from accessing the IIPP. He said that employers already have processes in place to provide access to various workplace records required by other Title 8 sections, and that those same processes can help employers respond to requests for access in a short timeframe.

Response:

The commenter's support for the proposal is acknowledged. The Board thanks Mr. Shadix for his comments and participation in the Board's rulemaking process.

**Mr. Ephraim Camacho, representing California Rural Legal Assistance, Inc.**

Comment:

Mr. Camacho said that he has been denied access to a copy of the IIPP in the past. He said that injured employees are often sent home to take care of themselves. Because the employees haven't seen the IIPP, they don't know if there are procedures in place to address workplace hazards, nor whether or not the employer is following such procedures. He said that the IIPP is the only source for employees to learn how to reduce the risk of injury and the steps to take after an injury occurs.

Response:

Please see the response to written Comment 1 submitted by Ms. Anne Katten on March 7, 2019.

The Board thanks Mr. Camacho for his comments and participation in the Board's rulemaking process.

**Mr. C. Bryan Little, representing the California Farm Bureau Federation.**

Comment:

Mr. Little commented that many small agricultural employers would be challenged to respond to a request for an IIPP within two days. He said that even five days was too short and that 10 days is more reasonable. He also said that requests should be required to be in writing.

Response:

Please see the response to written Comment 2 and Comment 3 submitted by Mr. James Mackenzie on March 12, 2019.

The Board thanks Mr. Little for his comments and participation in the Board's rulemaking process.

**Ms. Cynthia Rice, representing California Rural Legal Assistance, Inc.**

Comment:

Ms. Rice said that her organization has been denied access to a copy of the IIPP in the past. She said that access to the IIPP is paramount to the program's effectiveness. She said that employees

and their designated representatives should also have access to inspection records, including steps an employer has taken to correct the identified hazards. She also said that 10 days to wait for a copy of the IIPP was too long and that some hazards, such as those related to weather, would come and go before the deadline. She suggested two days as more reasonable.

Response:

Please see the response to written Comment 1 and Comment 3 submitted by Ms. Anne Katten on March 7, 2019.

The Board thanks Ms. Rice for her comments and participation in the Board's rulemaking process.

**Mr. Jay Weir, representing AT&T.**

Comment:

Mr. Weir asked why the proposal is necessary. He said that the proposal would add more regulations to employers who are already complying with the current standard. He said that enforcing the current standard on non-compliant employers was the real issue.

Response:

Please see the response to written Comment 1 submitted by Ms. Elizabeth Treanor on March 12, 2019.

The Board thanks Mr. Weir for his comments and participation in the Board's rulemaking process.

**Ms. Pam Murcell, representing KWA Safety and Hazmat Consultants.**

Comment:

Ms. Murcell said that her organization supports an employee's right to access the IIPP. She said that communication and training requirements within the program require employee involvement and wondered why an employer would not want to provide access to its employees.

Response:

The commenter's support for the proposal is acknowledged. The Board thanks Ms. Murcell for her comments and participation in the Board's rulemaking process.

**Mr. Mark Schacht, Deputy Director, California Rural Legal Assistance Foundation.**

**Comment:**

Mr. Schacht said that the agricultural industry had the highest fatality rate in California from 2013 to 2017. He also said that it has one of the highest percentages of violations among major industrial groups. He said that ensuring employee access to the IIPP would be a small step to encourage employers to develop an IIPP.

**Response:**

The commenter's support for the proposal is acknowledged. The Board thanks Mr. Schacht for his comments and participation in the Board's rulemaking process.

**Mr. Kevin Bland, representing the Western Steel Council, Residential Contractors Association, and the California Framing Contractors Association.**

**Comment:**

Mr. Bland said that maintaining the proposal as written in subsection 8(C) is very important because it was carefully considered during the advisory committee. He said that expanding access to documents beyond the IIPP could lead to litigation. He also said that he had concerns with the definition of the term "representative" and that it could lead to employees being represented by individuals who do not have the employee's best interests in mind. He provided written comments in support of his verbal commentary.

**Response:**

The Board is not persuaded by the comment though it confirms that the proposal as written in subsection 8(C) was carefully considered during the advisory committee. Regarding employee representatives, various sections in Title 8 allow for a designated representative similar to the one proposed in the current rulemaking effort. The Board is not aware of any instance where the designated representative has acted in a manner deleterious to the employee being represented.

The Board thanks Mr. Bland for his comments and participation in the Board's rulemaking process.

**Mr. Dan Leacox, Petitioner, representing Leacox & Associates.**

**Comment:**

Mr. Leacox returned to the podium to provide rebuttal comments as well as some additional comments not included in his written comments. He pointed out that Section 3204 "Access to Employee Exposure and Medical Records" does not provide unlimited access to employee exposure records. He said that there are many protections for the employer in the standard, as well as a subsection to define what is, and is not, a medical record. He stated that providing

access to an employee's medical records was much different than providing access to an employer's business records. He recalled that during advisory committee deliberations for workplace violence in healthcare, many participants had concerns with providing access to employer records beyond those already required in Title 8. He said that providing access to inspection and other records ancillary to the IIPP was not vetted by the broad business community. He expressed concern that an employee representative could be a plaintiff attorney looking for a basis for a lawsuit or other action against the employer, and that the employer could be aiding the attorney in such action. He said that in situations of citations or litigation there are many protections telling employers what they must provide and what is not required. He said that bypassing those protections would be inappropriate. He opined that the Board's job is to create a means for the Division to enforce regulations, not private parties.

Response:

The Board understands the comment to be in support of leaving the proposal as proposed. The Board thanks Mr. Leacox for his comments and participation in the Board's rulemaking process.

**Rebecca Cornelio, representing UCLA Labor Occupational Safety and Health Program.**

Comment:

Ms. Cornelio said that it is very wrong to believe that enough is already being done to protect worker health and safety. She said that the IIPP is one of the best tools that employers have to protect the health and safety of their employees, and it is important that they take on this responsibility, and other responsibilities to keep their workers safe, instead of putting profits before people.

Response:

The commenter's support for the proposal is acknowledged. The Board thanks Ms. Cornelio for her comments and participation in the Board's rulemaking process.

**Ms. Chris Laszcz-Davis, Occupational Safety and Health Standards Board Member.**

Comment:

Ms. Laszcz-Davis said that if the new, upgraded requirements facilitate implementation of the IIPP, then the Board needs to consider them. She said that it appears that the Board is creating a standard to implement a standard because the issue seems to be regarding implementation, and revising the standard may not take care of the issue.

Response:

Ms. Laszcz-Davis' comments are noted for the record.

**Ms. Laura Stock, Occupational Safety and Health Standards Board Member.**

**Comment:**

Ms. Stock said that although many employers currently provide access to the IIPP, testimony today demonstrates that many employers do not. She said that many employees have informed her that they do not know if an IIPP exists because they have never seen it. She said that she supports the suggestions made by Ms. Rice and does not see access to records of implementation as a “fishing expedition for records.” She said that providing access to records that are readily available is specific and clear for employers. She counseled that the best way to make sure that an IIPP is effective and having a positive impact is to let people see how it is being implemented. Continuing, she said that the goal of an effective IIPP is to promote worker involvement so that workers can see not just what is supposed to happen and when, but that it has actually happened, and what control measures, if any, are being implemented.

**Response:**

Please see the response to written Comment 1 and Comment 3 submitted by Ms. Anne Katten on March 7, 2019.

Ms. Stock’s comments are noted for the record.

**ADDITIONAL DOCUMENTS RELIED UPON**

None.

**ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE**

None.

**DETERMINATION OF MANDATE**

This standard does not impose a mandate on local agencies or school districts.

**ALTERNATIVES CONSIDERED**

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be: (1) more effective in carrying out the purpose for which the action is proposed, or (2) would be as effective as and less burdensome to affected private persons than the adopted action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.