

DEPARTMENT OF INDUSTRIAL RELATIONS

OAKLAND, CALIFORNIA

STAFF COUNSEL: LISA WONG

In the Matter of the:)
)
ENTERPRISE-WIDE AND EGREGIOUS)
VIOLATIONS RULEMAKING (SB 606))
ADVISORY MEETING)
)
_____)

CERTIFIED COPY

TRANSCRIPT OF RECORDED PROCEEDINGS

Oakland, California

Monday, August 19, 2024

Reported by:

ALLISON SWANSON
CSR No. 13377

Job No.:
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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 1515 Clay Street, 13th Floor, Room 1304,
17 Oakland, California, on Monday, August 19, 2024,
18 heard before DEPARTMENT OF INDUSTRIAL RELATIONS,
19 reported by ALLISON SWANSON, CSR No. 13377,
20 a Certified Shorthand Reporter in and for
21 the State of California.
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25

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1 Oakland, California, Monday, August 19, 2024

2 Unknown Time

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4
5 MS. WONG: Welcome, everyone. So this is the
6 Advisory Committee meeting for SCR Senate Bill 606
7 rulemaking, also known as the enterprise-wide -- sorry --
8 enterprise-wide and egregious rulemaking. And I just want
9 to make sure you're in the right room.

10 So the purpose of today's meeting is to provide
11 an opportunity for the public and stakeholders to provide
12 their input. And we're just going to provide a really short
13 background on SB 606. So as most of you probably know, the
14 California Senate passed Senate Bill 606, which essentially
15 adds two additional classifications to the existing
16 classifications with regard to the Division's citations when
17 they are issued pursuant to any Title 8 violations. And
18 that's Title 8 under the California Code of Regulations.

19 And I believe the -- and in the response --
20 I'll backtrack -- rewind a little. The Division, in
21 response, has basically drafted proposed regulatory language
22 to implement the statutes. And the proposed regulatory
23 language was posted online, along with the information for
24 today's meeting.

25 Just going to do a really short introduction of

1 those of us here representing the Division. And so to my --

2 UNIDENTIFIED: Left.

3 MS. WONG: Left. Thank you.

4 To my left is Ms. Denise Cardoso. She is our
5 assistant chief counsel for the Northern California Legal
6 Unit of the Division of Occupational Safety and Health, or
7 the Division. And to my right is Ms. Rachel Brill. She's
8 the staff counsel with the Legal Unit of the Division. And
9 I am Lisa. I'm also staff counsel for the Division for the
10 Legal Unit.

11 And I just want to review the agenda really
12 quickly. I -- I just want to see, is -- is it possible to
13 have the agenda on the screen so that people in person and
14 also attending online can view the agenda? If not, I will
15 hold back for now for the agenda and I'll just go through
16 the procedures for sharing comments.

17 AUTOMATED VOICE: Recording in progress.

18 MS. WONG: It's -- yeah. So we don't have the agenda
19 yet. So just -- sorry. So -- is that feedback?

20 Oh, thanks. So sorry about that feedback.

21 So we will return to the agenda in a moment
22 when we do have it up. But for now, I wanted to go through
23 the procedure for sharing comment. So we will first start
24 off with comments for those who are in person and then
25 switch off to comments to those who are attending online.

1 And so to be fair, we are limiting -- or not
2 limiting, but we are hoping that only three comments in
3 person first and then we'll switch off to three online
4 comments and then we'll just switch back and forth until,
5 you know, all comments are -- are done for a particular
6 section that we will be going through pursuant to the
7 agenda.

8 So just again, further, some little details
9 regarding the procedure. So for those attending in person,
10 please do come up to the podium, there is a mic, to share
11 your comments. So, again, three at a time. And when you do
12 share your comments, please provide your name and also the
13 organization or company that you're with, just for our
14 records, and then provide your comment.

15 And please note that the comments will be typed
16 up by Ms. Rachel Brill here. So it should be on the screen
17 when we -- we actually start the comment period. At this
18 point it seems like what's on your screen, for those in
19 person and there is those online, is the agenda, which we'll
20 review in a second.

21 So I want to finish off the procedures. So
22 that's going to be procedures for, you know, providing
23 comment in person. For those who are commenting online,
24 once we have -- finish off with the initial three in-person
25 comments, we will then switch off to online comments.

1 Please do raise your hand virtually. And we'll go through
2 three comments online before we switch back to in-person
3 comments, again, as stated, until we're done.

4 So same thing with online comments. If you
5 don't mind also providing your name and the organization and
6 company you're with for our records. And we will go through
7 each section pursuant to the agenda as you see on your
8 screen.

9 Please note that there is a three-minute limit.
10 This is only to ensure that everyone present has an
11 opportunity to be heard. So for those of us in person, I
12 will be using my trusty phone as the timer. And I will
13 display my phone and show the three minutes so you can see
14 how much time you have left. And I hope it's visible from
15 the podium. We'll try it out later. If it's not visible,
16 please do tell me.

17 But for those online, I'm hoping that we will
18 be also able to share an online timer of three minutes so
19 that you know how much time you have remaining.

20 At this point, only with regard to the
21 procedures, are there any questions? I just want to make
22 sure that was clear.

23 Any online --

24 MR. BLAND: No, I --

25 MS. WONG: Yeah.

1 MR. BLAND: I -- I don't have a question, but I have
2 a comment. My understanding, we were having an advisory
3 committee, not a hearing. And not something where -- where
4 we would be -- have an opportunity with the stakeholders to
5 discuss as opposed to just testify the issues that are
6 presented in -- in this.

7 Am I -- did I miss something? 'Cause this
8 isn't part of the official rulemaking record. So it's --
9 kind of sounds like it's being run like a hearing as opposed
10 to an advisory committee. And I just want to make sure I
11 understood.

12 MS. WONG: No, we do hear your -- your -- your
13 comment. So if you do have any comments where you want to
14 have a discussion, maybe we can further discuss, you know,
15 amongst yourselves when you do provide a comment maybe to
16 share your thoughts, if that's something that works.

17 MS. CARDOSO: It's an -- this is an advisory
18 committee, it's not a public hearing.

19 MR. BLAND: Okay.

20 MS. WONG: Oh, that answers --

21 MS. CARDOSO: And, you know, there's four people in
22 person and you all have microphones. So -- unless -- if --
23 if you want -- if Lisa needs you to go to the podium --

24 MS. WONG: Sorry.

25 MS. CARDOSO: -- if not, I think we could handle it

1 without having to go to the podium.

2 MR. BLAND: Thank you.

3 MS. WONG: Sorry. That was set up for the comments.
4 So I was --

5 MS. CARDOSO: But I do appreciate everybody coming in
6 person. It's nice to see people post COVID, dressing up,
7 the whole thing.

8 UNIDENTIFIED: I was dressed up.

9 MS. WONG: Oh --

10 MS. CARDOSO: Mister --

11 MS. WONG: Mr. Wick.

12 MS. CARDOSO: Mr. Wick.

13 MR. WICK: Thank you. Couple questions, or points, I
14 guess. This is a direct -- this is a set of regs under
15 director's reg. So if you -- I think it would help the
16 audience for you to tell us how that differs from something
17 that goes through the standards board procedure so we can
18 know what'll happen from here.

19 I do -- also at the standards board meeting on
20 Thursday, there were several people who had no idea this reg
21 was up for today. I only -- I'm on, I think, almost every
22 list served for Cal/OSHA. I never got it. So I think we
23 need to think about all the people who were not -- who are
24 not here today, virtually or here, who were not aware.

25 So that -- that's a -- that's -- 'cause

1 these -- these regulations have significance. That's why
2 we're here in person, and I'm kind of surprised that people
3 weren't aware of it who normally are very aware of what goes
4 on. So --

5 MS. BRILL: That's interesting because --

6 MS. WONG: Thank you for the feedback.

7 MS. CARDOSO: We -- we --

8 MS. BRILL: And so --

9 MS. CARDOSO: Yeah.

10 MS. BRILL: I don't (indiscernible)

11 UNIDENTIFIED: It's working.

12 MS. CARDOSO: Okay.

13 MS. BRILL: Awesome. I'm -- we sent this out to the
14 usual blast list serve that we use for advisory committees.
15 And I think you reached out directly to Eric about this, if
16 I'm remembering. And then he --

17 MR. WICK: (Indiscernible)

18 MS. BRILL: Right. So then he forwarded me your
19 name, and then I made sure to keep you on the next e-mail
20 about it.

21 MR. WICK: And -- and I appreciate that. Like I
22 said, I get almost everything, but this one I did not and --

23 MS. CARDOSO: That's concerning.

24 MR. WICK: -- I know several others who did not and
25 were not aware of this going on.

1 MS. WONG: No, we appreciate the feedback.

2 MS. CARDOSO: Yeah.

3 MS. WONG: 'Cause sometimes we're in our world trying
4 to plan, make sure that, you know, the public knows about
5 this. And so it's -- it's nice to have feedback of how that
6 actually played out.

7 MR. WICK: (Indiscernible) get this? I didn't get
8 it.

9 MR. BLAND: I -- I -- I did. And that's how these
10 guys know. And I'll tell you how I got it because I'm on
11 the Advisory Committee. I was appointed way back during
12 Schwarzenegger --

13 MR. DONLON: I didn't get it.

14 MR. BLAND: Oh, you didn't? That's how I -- I
15 thought that was the list served that I got.

16 MS. CARDOSO: Oh, that's not good.

17 MR. BLAND: The direct -- we used to call it the
18 director's advisory. What do you call it now? The Cal/OSHA
19 advise -- but you remember too.

20 MR. DONLON: I remember, yeah.

21 MR. BLAND: Okay. That's where I recall getting it,
22 I think, from you, Rachel, I think.

23 MS. BRILL: Yes, I --

24 MR. BLAND: Yeah. But I sent it out to some of our
25 folks. But not -- I'm -- I don't have the universe, and I

1 just presumed everybody else got it. I think it was just
2 talking and then you called, Eric. Yeah.

3 MR. WICK: Well, I just talked to Cal/OSHA
4 (indiscernible) so I e-mailed Eric.

5 MS. CARDOSO: Huh.

6 MS. BRILL: That is disconcerting 'cause I was -- my
7 understanding was that the list I was using was the -- sort
8 of like the overarching "here is the universe of people that
9 we invite to advisory committees." I'm not sure what --

10 MR. BLAND: There -- there is a list, at least --
11 that may be the standards board list. But there is a list
12 where when people go to the meeting, they sign up and they
13 say "I'm interested in advisory committees" or "I'm
14 interested in these five subject matters" or I'm -- and so
15 there's like 20 different lists and depending on the subject
16 matter. I don't know if we've done that here on the
17 Division side. That might be why their universe is larger.
18 But just a thought.

19 MS. CARDOSO: Yeah. Well, we'll look into it, for
20 sure. We're expecting a big crowd today so we planned -- we
21 planned for a large crowd based on our invitation.

22 Yes?

23 MR. JOHNSON: Could you do introductions one more
24 time because I didn't catch --

25 MS. CARDOSO: Sure.

1 MR. JOHNSON: I didn't catch the names.

2 MS. CARDOSO: I'm Denise Cardoso. I'm assistant
3 chief counsel for the Cal/OSHA Legal Unit Northern
4 California.

5 MS. WONG: Oh, I'm -- oh, I'm Lisa Wong. I'm staff
6 counsel with the Southern California Legal Unit of the
7 Division of Occupational Safety and Health.

8 MS. BRILL: Hi, my name is Rachel Brill. I'm also
9 staff counsel with Division. I work out of the
10 San Francisco district office.

11 MR. JOHNSON: I'm sorry. What's the last name
12 again?

13 MS. BRILL: Brill, B, as in "ball," R-I-L-L.

14 MR. JOHNSON: Thank you.

15 MR. DONLON: I thought you were gonna say B, as in
16 "Brill."

17 MS. BRILL: Do you know how often I have to spell
18 this out?

19 (Laughing)

20 MS. WONG: And so if there's no further comments or
21 any questions right now, I just wanted to run through the
22 agenda really quickly. If we can have the agenda back up on
23 the screen or in the corner for the duration of the -- the
24 meeting.

25 UNIDENTIFIED: If you could respond to the question

1 by Director Frank, how that process works. 'Cause weren't
2 you -- we're much more used to the standard (indiscernible).

3 MS. WONG: Yeah, if you can.

4 MS. BRILL: Is it okay if I try to explain?

5 So the -- the regulatory process is hopefully a
6 bit more streamlined. When we do director's regulations, we
7 don't have to go through the Occupational Safety and Health
8 Standards Board hearing process for getting this approved,
9 but we will have a public hearing on these regulations.
10 It'll just be within the division. It won't involve the
11 standards board staff.

12 And now that I have everybody's names and
13 e-mails, you will absolutely get invitations to that. But
14 the director's regulations are -- they tend to be lower
15 numbers. So you find them at the be -- usually at the
16 beginning of Title 8, of our sections of Title 8. Although
17 there are some quite at the other end. And those ones
18 just -- the difference is just that they don't go through
19 the standards board.

20 We work on the text here. We get feedback from
21 the office of the director. We get feedback from
22 enforcement. And then we go through the process just --
23 just in-house.

24 MS. CARDOSO: Yeah.

25 UNIDENTIFIED: (Indiscernible)

1 MS. BRILL: Oh, I'm so sorry. It's the same
2 California APA process for rulemaking. We will still have
3 to go through a 45-day notice period, public hearing.
4 Potentially there'll be more notice periods to get comments,
5 depending on what happens at the first public hearing. And
6 then we will, in the end, submit rulemaking documents to the
7 Officer of Administrative Law to get their sign-off. And
8 then once they sign off on it, it'll go to the Secretary of
9 State, et cetera, et cetera, and so forth.

10 MS. CARDOSO: Yeah. And the big difference is -- or
11 how we like to think about it internally is we have the
12 administrative regulations, like these regulations that deal
13 with penalties, and then we have the technical regulations
14 that go through RNS, like heat, lead, fall protections.
15 So -- yeah.

16 So these are administrative. So that's why
17 they don't go through research and standards review. And I
18 don't know if you're familiar with the repeat regulation.
19 So that was also a director's regulation.

20 MS. WONG: Okay. So if there's nothing further, I'm
21 just going to run through the agenda really quickly.

22 So we already started. It's already 10:21, but
23 we're now within the morning session. And we will be
24 receiving comments pursuant to the outline on the agenda.
25 And then we'll break at 12:00 for an hour for lunch and then

1 we'll reconvene and come back at 1:00 o'clock and end at
2 3:00 for the afternoon session.

3 So as you may have noted from the agenda, we
4 are going through each section. Substantive changes are
5 any, you know, revisions, are additions with regard to the
6 proposed regulatory language to provide an opportunity for
7 everyone attending to provide comments. And we'll also
8 have, in the afternoon session, a period for just comments
9 on anything that we have not discussed that anyone attending
10 would like to discuss.

11 So at this point we will start off with any
12 comments for section 332.4 changes. If we can -- sorry --
13 at this point have -- yeah.

14 MS. BRILL: Is that ledge -- is that readable or I
15 can increase the font size if that would be helpful.

16 UNIDENTIFIED: Just a little bit.

17 MS. BRILL: Just a little bit? Sure. Hold on.

18 UNIDENTIFIED: That's great.

19 MS. WONG: So we're going to open it up for comments
20 with regard to section 332.4. There is -- I just want to
21 clarify that at -- I'm sure most of you here know. So any
22 of the language that is underscored is being proposed as
23 additions and anything that's stricken is being proposed to
24 be taken out.

25 And so, again, we're only going through

1 substantive changes. So if there's any other changes that
2 are kind of "he," "she," or changes "he" to "the employer"
3 is not included at this time.

4 So, again, pursuant to the procedures. If
5 anyone here, in person, has any comments, please feel free
6 to use your mic. I guess you don't have to use the podium.
7 And -- so this is where there's -- if you want some sort of
8 order, you can come to the podium because -- unless you can,
9 in person -- see, that's the thing. I don't know who's
10 going to be first, second, or third.

11 But we want it to be flexible because there's
12 only four in-person individuals. So if you want to, amongst
13 yourself, raise your hands -- yeah -- and then just comment.
14 So, again, this is comment for section 332.4.

15 Mr. Blunt (phonetic).

16 MR. BLAND: So the issue here I see is the -- two.
17 One is, this applies to every -- all the note -- this is a
18 change not just for egregious and enterprise. This's for
19 all citations; right?

20 MS. WONG: Yes.

21 MR. BLAND: Okay. And so the issue I have is the
22 "and." 'Cause this just appears to have two potential
23 postings; right? Because it says "shall be posted at or
24 near the reference site that gives rise to the order and
25 where notices are customarily" -- I think it should be "or

1 where," 'cause that then prescribes two places in -- in --
2 traditionally, it's been either at the -- at the location.
3 Lot of times there's not a location to -- decided that the
4 job's over or site conditions changed and it gets posted
5 where the employees can see it, like, on their labor poster
6 board or some place like that, which is customary. So I
7 think it should be "or" as opposed to "and."

8 MS. WONG: Okay. Thank you for your comment. And
9 anyone in person who would like to make another comment?

10 MR. DONLON: Mike Donlon. I'm here representing
11 Construction Employers Association, United Contractors, Wall
12 and Ceiling Alliance, and the Northern California Allied
13 Trades.

14 And, yeah, just hanging on to what Kevin said
15 is, oftentimes, in a construction world, the location where
16 the accident happened is completely changed or gone or, you
17 know, no longer there.

18 And the other issue in construction that's so
19 problematic is that, you know, weather. You can't
20 necessarily put it where that is, so it often goes where the
21 postings are in construction, just 'cause that's a dry spot.
22 And so I think "or" is really important for -- for
23 construction.

24 MS. WONG: Okay. Thank you for your comment. And --

25 MS. CARDOSO: But this is --

1 UNIDENTIFIED: Lisa, we do have a (indiscernible).

2 MS. CARDOSO: I -- I -- I have a comment. But adding
3 this where notices to employees are customarily posted will
4 help you because, like, the reasons you're saying that
5 oftentimes the location, you're no longer there. But you
6 want the "or."

7 MR. DONLON: Yeah, if it's "or" -- if it's "or," it's
8 very helpful 'cause that's what we end up doing and --

9 MR. BLAND: Anyway.

10 MR. DONLON: Yeah.

11 MS. CARDOSO: You do anyways, right --

12 MR. DONLON: Yeah.

13 MS. CARDOSO: -- that was the (indiscernible).

14 UNIDENTIFIED HELPER: Okay. So we do have an online
15 commenter who's raised their hand to comment.

16 MS. WONG: Sure. I just want to make sure we go
17 through three -- any three comments here for in-person
18 comments. Is there a third comment?

19 Okay. So if not, we will then --

20 MS. BRILL: Can I just really quickly -- I -- I want
21 to make sure I spelled your surname correctly. Is it --

22 MR. DONLON: (Indiscernible)

23 MS. BRILL: I don't think that's what I heard.

24 Donlon. Okay. I apologize. I misheard.

25 MS. WONG: So at this point we'll go on to the online

1 comments.

2 UNIDENTIFIED HELPER: Great. Our first hand raised
3 is from Mitch Steiger with CFT.

4 Mitch, if you have the ability to unmute your
5 microphone, please go ahead and speak.

6 MS. WONG: If you're speaking, we don't hear you.

7 We can't hear --

8 MS. BRILL: Mr. Steiger, I believe you're on mute.

9 UNIDENTIFIED: Doesn't sound like anyone --

10 (Inaudible talking)

11 MS. BRILL: Hold on just a second. So I can hear
12 Mr. Steiger on my computer audio, which is problematic
13 because if I say or do anything, there's a bunch of
14 feedback. Is there a way --

15 UNIDENTIFIED HELPER: Mr. Steiger, can you -- can you
16 make your comments again? We made adjustment here to see if
17 we can get you louder in the room.

18 MR. STEIGER: Can you hear me now?

19 UNIDENTIFIED HELPER: We sure can.

20 MR. STEIGER: Testing. Testing.

21 UNIDENTIFIED HELPER: We can. Yes, go ahead.

22 MR. STEIGER: Oh, you can. Okay. Great.

23 So I -- I think we would argue that "and" makes
24 more sense than "or" just because the goal here is to
25 prevent further injury. And so if it's only where they are

1 customarily posted, it's entirely possible that that's
2 really far away from wherever the violation or condition
3 was. And especially, you know, in the world of COVID and
4 lots of people working remotely, you wouldn't have to, I
5 think, go too far down that road to think of a lot of
6 hypotheticals where if it's where it's customarily posted,
7 the people who would most likely be exposed to the condition
8 would never -- so, you know, we're just -- it's a posting.

9 Just do two of 'em. It -- it seems like it
10 would make a much -- make much more sense and it would also
11 probably make enforcement a little bit more straightforward
12 rather than having to figure out which one -- which location
13 has the posting, trying to talk to the right person, maybe
14 there was communication about where it was gonna be posted.

15 It -- it -- it seems like there are a lot of
16 ways that that could go wrong, and it'd be a lot more clear
17 and it would do a much better job of preventing injury if it
18 was at both places.

19 MS. WONG: Thank you for your comment.

20 And who's our next comment?

21 UNIDENTIFIED HELPER: Thank you. Yes. We do have
22 another hand raised with Jessie Grewal from the UFCD.

23 Jessie, please unmute your microphone and go
24 ahead.

25 MS. GREWAL: Thank you. Good morning. Can you all

1 hear me?

2 MS. WONG: Yes.

3 UNIDENTIFIED HELPER: Yes, we can.

4 MS. GREWAL: Wonderful.

5 I also just want to echo and support the
6 comments of Mitch Steiger. There are oftentimes where a
7 citation can be posted, say, on an unguarded machine that
8 might not come into con -- where workers might not
9 physically be on that line, but it is still really important
10 for workers at that worksite to know that there was a
11 violation and a citation that was issued and an area in
12 which to avoid the workplace and that potential hazard.

13 And so making sure that notices are posted at
14 where the hazard is but also where other employees can
15 access and read about the hazard is very important. We want
16 to make sure that workers are avoiding areas that are deemed
17 hazardous, whether they're, like, walking around at a
18 warehouse or walking to and from different facility
19 locations, that they know that there's a potential hazard
20 there and to avoid that hazard.

21 So I just wanted to echo the comments of Mitch
22 in saying that this could be helpful to have a more wide
23 understanding throughout the workplace of a hazard and
24 violation.

25 MS. WONG: Thank you for your comment.

1 Do we have a third com -- online comment?

2 UNIDENTIFIED HELPER: Yes, we do. Oh, actually, no.
3 The hand went down. Thank you. No -- no further hands at
4 this time.

5 MS. WONG: And although we don't seem to have -- we
6 didn't have three comments earlier from in-person attendees,
7 but in response to the comments that have been made, are
8 there any further comments from those attending in person?

9 Mr. Bland.

10 MR. BLAND: Thank you. And I forgot to say who I
11 represented. Kevin Bland, representing the California
12 Framing Contractors Association; the Western Steel Council;
13 and the Residential Contractors Association, both union and
14 non-union entities are members of those.

15 I -- I got to reiterate, there's almost an
16 impossibility sometimes. That's why we've had the -- had
17 the "or" language there in the past. I understand
18 Mr. Steiger's point of people working remote. But if
19 they're working remote, then they're not even at the
20 worksite and subject to that concern.

21 Number two is we have requirements already for
22 postings -- labor codes, OSHA posters -- where folks
23 traditionally -- and know to go. There are probably some
24 exceptions, like the speakers pointed out, if you have a
25 machine in a factory. But that isn't every case. And this

1 applies to every single case. And so there's an
2 impossibility of compliance, ability of compliance here.
3 And so I want to --

4 MS. CARDOSO: But -- but not always. But where
5 feasible --

6 MR. BLAND: But it doesn't say that.

7 MS. CARDOSO: I know. But if that was added in,
8 "where feasible" and --

9 MR. BLAND: I would say "or" because "and" then has
10 two; right?

11 MS. CARDOSO: But that's a way to ensure that
12 everyone --

13 MR. BLAND: I -- I --

14 MS. CARDOSO: Because all -- everybody knows of the
15 hazard.

16 MR. BLAND: Then we have to prove feasibility and
17 then we're litigating over the posting. The issue is, you
18 want to make sure employer -- employees know what's going
19 on; right?

20 Where do employees go to find out what's going
21 on with OSHA and safety? They go to our safety board.
22 Every single employer in the unit -- in California is
23 required to have a safety board and a posting for employees
24 to go to, to find out what's going on with safety and -- and
25 what their rights are and what things are. That's the most

1 efficient way to notify the -- everyone that's employed at a
2 location.

3 MS. CARDOSO: Mm-hmm.

4 MR. BLAND: The machine -- the machine may be often
5 an area that no one goes to.

6 The other thing, this is presuming that once
7 they're made aware of this, that it's just gonna remain
8 unguarded or whatever is wrong. I find that to be not the
9 case that often. Maybe it could be if there's -- if it's
10 contested as to the abatement or it has to be -- or I will
11 say, that's a minority.

12 But you still have -- and when you give this
13 double -- double thing here, if it becomes traditional or if
14 it becomes -- that then they're gonna know. They go to the
15 poster board and there's nothing there, they're not gonna be
16 checking anywhere else. But they know to go to the poster
17 board.

18 So I think having two also can add confusion
19 for those you're trying to protect. Because if they know
20 where to go to find out what's going on and that's where
21 they go all the time, that's gonna reach the largest number
22 of folks.

23 MS. WONG: Thank you for your comment.

24 And is there any further in-person comments?

25 Okay.

1 MR. JOHNSON: Hi. Steve Johnson with Associated
2 Working Contractors of the Bay Area Counties.

3 And I agree with Kevin's comments. That is
4 something that is a challenge for construction employers.
5 And I just wanted to go on the record as agreeing with --
6 with Kevin. Thank you.

7 MS. WONG: Thank you, Mr. Johnson, for your comment.

8 And --

9 UNIDENTIFIED HELPER: We do have an online commenter.

10 MS. WONG: Yes. And so if there is no further --
11 yeah -- in-person comments, we're going to move forward to
12 online comments. We seem to have, oh, at least one. I
13 think Mr. Steiger.

14 MR. STEIGER: Yes. Thank you.

15 Just wanted to add that, you know, one of the
16 big weaknesses of where employees are customarily posted is
17 most of those things don't change that much. So it's things
18 like, you know, your right to file a workers' comp claim,
19 you're not -- your right to not be retaliated against for
20 contacting Cal/OSHA. So it becomes this thing that you
21 don't habitually check every day.

22 When we're talking about an unguarded machine
23 or some sort of violation or condition, especially one that
24 was so serious as to give rise to an egregious penalty, this
25 is really important. People really need to know about this

1 so that they can keep their fingers or not get hurt on the
2 job. So I -- I don't think it's an excessive ask to make
3 sure that workers know about this.

4 And especially if it becomes an "or" and it's
5 always moving around and there could be miscommunication
6 about where it was supposed to go. There are a lot of
7 different ways that that could go wrong, and the end result
8 could be someone who doesn't know about this violation and
9 doesn't take the appropriate steps to keep them safe.

10 We really think that where people's lives and
11 safety are at risk, it's that much more important that we
12 really make sure workers know about it. And having two
13 postings doesn't seem like too big of an ask to us.

14 MS. WONG: Okay. Thank you.

15 MR. STEIGER: Oh, sorry. Mitch Steiger, CFT.

16 MS. WONG: Thank you, Mr. Steiger, for your comment.

17 Are there any further online comments?

18 UNIDENTIFIED HELPER: There are no hands raised at
19 this time.

20 MS. WONG: I'm sorry. Was that -- I didn't hear.

21 UNIDENTIFIED HELPER: There are no hands raised at
22 this time.

23 MS. WONG: Okay. So we're going to switch back to
24 in-person comments.

25 I believe, Mr. Wick, you had a comment?

1 MR. WICK: Yes, thank you. Bruce Wick, Housing
2 Contractors of California.

3 Mitch just said an egregious violation posting
4 for an egregious violation, and we're gonna talk about
5 egregious, but think Kevin asked, this applies to all
6 postings; right?

7 MS. WONG: Yes.

8 MR. WICK: So that -- that -- that raises it up that
9 even a single general violation, technically, you'd have to
10 do something like this. So that's part of the question. If
11 we were only dealing with egregious violations or only
12 dealing with serious violations, that might be different.

13 And, you know, if we talk about a particular
14 machine guarding, maybe we could focus on that type of
15 situation 'cause, again, construction and agriculture, by
16 the time the citation is issued, normally gone or not --
17 we're not there anymore 'cause we -- we completed what we
18 were there for.

19 MS. WONG: Thank you for your comment.

20 Is there any further online -- I'm sorry --
21 in-person comments?

22 Okay. Mr. Bland.

23 MR. BLAND: Sorry. The one thing that -- just from a
24 practical standpoint, we start talking about serious versus
25 general and all that. So it's like, where is -- you post a

1 serious or -- or an IIPP violation that is alleged to have
2 not been affected; right? That's the allegation. So this
3 applies to all of 'em. So there's a lot of details in -- in
4 this that -- in this broad application.

5 I think -- there's some good reason as to
6 why -- I think, you know, Mitch's point with the guarding.
7 I get that. If it's a machine that's at a fixed location
8 and it's unabated, that -- that is something that maybe we
9 think about in the context of adding something here that
10 says "with a fixed machine that has been alleged to have
11 been unguarded and has not been abated, then it needs to be
12 posted at the machine."

13 Do not -- it should be tagged out and you have
14 OPUs to tag those out if they're not being fixed; right?
15 If -- and I know we don't use those very often but, I mean,
16 there's a lot of mechanisms to -- that are at the
17 enforcement office's disposal here.

18 But this broad posting and this broad language,
19 we can come up with a thousand scenarios, both directions,
20 that make sense and don't make sense. And that's why I
21 think -- before, we had the idea of options that applied as
22 opposed to this restrictive "and," and it didn't -- you
23 didn't have to contemplate every single -- we get into this
24 so much with these general applications where it makes it
25 almost impossible to come up with every situation in here

1 and make it so finite unless we start listing, "Okay. These
2 five types of citations have to be posted at the location if
3 it's still there" versus -- you know, that's why I think
4 it's so important to have the "or" and have the posting to
5 have that ability.

6 MS. WONG: Okay. Thank you for your comment.

7 One more in-person comment, if there are any.
8 If not, we will switch off back to any online comments at
9 this point.

10 UNIDENTIFIED HELPER: At this time there are no hands
11 raised.

12 MS. WONG: Okay. So we will then move on to the next
13 section.

14 So now we'll move on to comments for sections
15 334, subsection f, (f)(1), and (f)(4). And I do note that
16 is a little out of order, but the (f)(1) is related to
17 (f)(4). So, again, our opening up comments for sections
18 334(f), 334(f)(1), and 334(f)(4). And we'll start off with
19 in-person comments.

20 Mr. Donovan [sic].

21 MR. DONLON: Mike Donlon.

22 MS. WONG: Donlon.

23 MR. DONLON: Yeah, I have several -- just go through
24 all -- all the way through 1 to 4? So --

25 UNIDENTIFIED: Can we -- I think we're doing 1 and 4.

1 MS. CARDOSO: Yes, that's correct.

2 MS. WONG: Yes, 1 and 4. Yeah.

3 MS. CARDOSO: We're not gonna do 2 -- 2 and 3 right
4 now. Just 1 and 4 right now.

5 MR. DONLON: Oh, Okay. Oh.

6 UNIDENTIFIED: (Inaudible)

7 MR. DONLON: Okay. Gotcha.

8 MS. WONG: Thank you.

9 MR. DONLON: I don't have anything, then.

10 MS. WONG: Oh, okay. Sorry. That's Mr. Donlon.

11 MS. BRILL: Donlon.

12 MS. WONG: Donlon. I'm sorry. My ears. I do
13 apologize.

14 So any other in-person comments with regard to
15 sections 334(f), (f)(1), and (f)(4)?

16 Okay. So any online comments?

17 UNIDENTIFIED HELPER: At this time there are none.

18 MS. WONG: Okay. So we're gonna move forward to
19 sections 334(f)(2). And this is regarding subsections
20 (2)(A) through (2)(D).

21 So we're gonna open up comments with that.
22 We'll start off with in-person comments.

23 And, Mr. Wick.

24 MR. WICK: I'll -- I'll let others comment on couple
25 other parts. I would like to talk about A and C. The word

1 "intentionally" is used there. And we have, in construction
2 anyway, had, in various venues, including an appellate court
3 ruling, say "intentional" was you -- you did it. I -- I
4 believe we should use the term "willfully" there because the
5 example of the appellate court ruling that was in issue is a
6 HVAC contractor, 800 employees, missed two permits on one
7 project.

8 They do -- they take out thousands of permits a
9 year. And then one project, they missed two. And the
10 appellate court said, "Well, that happened so you must have
11 intended it." It was not knowingly willful. It was not --
12 somebody just made one mistake.

13 So with that kind of use of the word
14 "intentional" out there, I would prefer, in A and C, we
15 replaced it with "willful" or "willfully."

16 MS. WONG: Okay. Thank you for your comment.

17 And are there any further comments in person
18 for (f)(2)(A) through (D)?

19 And -- sorry.

20 MR. JOHNSON: Steve --

21 MS. WONG: Mr. Johnson. Sorry.

22 MR. JOHNSON: Steve Johnson. I -- I sup -- agree
23 with Bruce's comments on the -- the changing the language
24 from "intentionally" to "willfully."

25 MS. WONG: Okay. Thank you for your comment.

1 Mr. Donlon.

2 MR. DONLON: Mike Donlon.

3 On (2)(B), there's two issues I have with that.
4 One is, you've lumped a serious citation in with a repeat
5 and a willful, which are much worse than a serious citation.
6 So if you have one serious citation, you fall under this.
7 And I think it's -- the second thing is, it's not really
8 clear what exactly the violations per 100 employees applies
9 to, if it's the whole statement or if it's just the general
10 and regulatory. So I would recommend breaking that up into
11 three subsection.

12 And what I was thinking was employer has a
13 history of one -- one or more repeat or willful violations
14 or more than ten serious violations per hundred employees or
15 more than 20 general violations for hundred employees. I'm
16 just throwing a number out there. We could -- that's up for
17 discussion.

18 But, you know, if you have three subsections, I
19 think it just would make that really clear.

20 MS. BRILL: Can I ask you to repeat yourself so I can
21 capture that accurate. I had one -- one or more for repeat
22 or willful.

23 Oh, thank you.

24 MS. WONG: And -- and while this is going on, just
25 for everyone attending online and in person, if there's any

1 substantive changes or changes that you would like to
2 recommend, please go slowly because we do want to capture
3 everything, all your comments. Thank you.

4 And we're finishing off the comment from
5 Mr. Donlon.

6 Okay. Thank you. And, Mr. Donlon, do you have
7 any further with regard to your comment?

8 MR. DONLON: No, I'm done.

9 MS. WONG: Okay. So is a third comment -- in-person
10 comment? And again, this is for sections 334(f)(2), A
11 through D, as in "dog."

12 MR. BLAND: So -- yes, Kevin Bland again.

13 Under C, I think we touched on that
14 "intentionally" should be "willfully," based on the
15 statement said. And also it says, "Are refusing to comply
16 with the act act." We don't have an act, we have -- that's
17 a federal language. And so that should be the -- deleted
18 there.

19 The other issue is, this term "affect" --
20 what's that? Oh, yeah. Yeah.

21 This term "effective" and "operative." We see
22 thousands of these a year for allegations that the IIPP is
23 not effective or operative. So I feel like that needs to be
24 deleted 'cause the -- think the intent here was someone that
25 just doesn't have an IIPP at all is an issue. So without --

1 for failing to maintain an injury and illness prevention
2 program. That's pretty -- pretty big deal.

3 But effectiveness is always argued back and
4 forth. So that would make almost every one of these serious
5 egregious if the allegation is included in just effect and
6 operative.

7 MS. WONG: Thank you.

8 MR. BLAND: I -- I don't really think someone --
9 well, I think -- also, I'll just add on to Mike Donlon's,
10 just where the numbers came up with on 1, 10, and 20.
11 Because 20 was the stated number in there regarding general.
12 And so we just reduced it at intervals that seemed to
13 make -- make sense there.

14 MS. WONG: Thank you for your comment.

15 So now that we've had three in-person comments,
16 we'd like to switch off to online comments, if there are
17 any.

18 UNIDENTIFIED HELPER: There are. Mitch Steiger with
19 CFT has his hand raised.

20 Go ahead, Mitch.

21 MR. STEIGER: Thank you. Just wanted to make kind of
22 a broad comment about all of these, which is that for all of
23 them, the first bar to clear is that this be a willful
24 violation, which as we know, are vanishingly rare. I think
25 when we were researching this while doing the bill, there

1 were something like three a year. It's probably more now
2 that we're out of COVID, but I'm sure it's still a very low
3 number. So this is a very small universe of people.

4 So we would argue that it makes sense to cast
5 a -- what may sound like a -- may look like a wider net on
6 first glance, but also always keep in mind that this is a
7 really small number of people that we're considering for
8 this add -- this new class of violation.

9 And so -- for example, like not having an
10 effective and operative IIPP, it is something that lots of
11 employers probably would be guilty of if you just showed up
12 and started checking out their IIPP. But this is not all
13 employers, this isn't everyone, this is just those of you
14 who have cleared the bar for a willful, which is a very hard
15 thing to do. Cal/OSHA doesn't do very many of these.

16 But there's still something additional there.
17 So that's the point that we just wanted to stress. And
18 hope -- hopefully that perspective can kind of guide our
19 analysis of this entire section.

20 MS. WONG: Thank you for your comment, Mr. Steiger.

21 Any other online comments?

22 UNIDENTIFIED HELPER: There are no other online
23 comments at this time.

24 MS. WONG: Okay. So we're gonna switch back to
25 in-person comments.

1 And, Mr. Wick.

2 MR. WICK: Yeah. I just wanted to make a quick
3 comment so you know -- kind of like Mitch's comment for the
4 overall tenor that, in construction, we all go -- mostly go
5 through pre-qualification process. And someone who is
6 looking at us can look at our permanent OSHA history on the
7 website. And they can see if we were cited for something.

8 And even if the final resolution, final order
9 was different, they still can see we're cited for it. And
10 someone could say, "Well, you were cited for an egregious,"
11 even if you wound up not being that -- you know, that not
12 being held.

13 So we have -- you know, equal -- pre-qualifying
14 is like you're -- you know, the standard you have to have
15 otherwise you can't bid the job. So that's part of why
16 we're, on the construction side, so significant about what
17 is issued as a citation. Because even if it's proven to be
18 incorrect, it's still on our history forever.

19 MS. WONG: Okay. Thank you for your comment.

20 Mr. Donlon.

21 MR. DONLON: Mike Donlon.

22 The other thing is, for us, there's really -- I
23 mean, we want you to nail the egregious violators. We -- we
24 represent people that really try hard. We don't want our
25 clients that are really trying hard to get mixed up in this.

1 So we're trying to set that bar just a little bit higher on
2 that, you know, where serious isn't lumped in there with,
3 you know, willful and repeats, which are much worse than a
4 serious violation. And so that's really what we're trying
5 to do, is make sure this really ends up applying to the
6 worst employers.

7 MS. CARDOSO: And you have to remember, this is
8 willful-plus. So they first have to meet the willful
9 standard to even be considered for an egregious. So it's
10 not a serious. You're starting with a willful. It's
11 willful plus A through --

12 MS. WONG: G.

13 MS. CARDOSO: -- G. A plus one of these additional
14 factors.

15 MR. DONLON: It's willful plus one serious citation,
16 which -- and they're -- you know --

17 MS. CARDOSO: No, that one serious citation has to be
18 willful.

19 (Inaudible talking)

20 MS. CARDOSO: Well, the original -- to even get and
21 to under -- like, to get here, we have to be contemplating a
22 willful violation.

23 MR. DONLON: Right. You have to be (indiscernible) a
24 willful violation and you're thinking about going egregious
25 on.

1 MS. CARDOSO: Right.

2 MR. DONLON: So if it's already a willful and I have
3 one serious violation, a single serious violation on my
4 record, then it becomes egregious. And I think that's
5 just -- you know, I think there should be more than that.

6 MS. WONG: Understood. Thank you for your comment.

7 Mr. Bland, you're the third, I believe,
8 in-person comment.

9 MR. BLAND: Thank you. Kevin Bland again.

10 Kind of going on Mike Donlon's thing. Whatever
11 we land in on B, it's still the way it's written is highly
12 confusing. As you can tell -- I mean, we have some
13 reasonable minds in here. But is it one or more -- one or
14 more serious repeat willful per 100 employees, the way this
15 is written, or does it only apply to the 20? I think that
16 needs to be vetted out of this.

17 And I think, to his point -- we understand
18 we're in a willful already. Okay? So you got a willful
19 violation here. And then if one of these -- and so any one
20 of these -- so I think it's really important. Because if
21 we're going from willful to egregious -- egregious, my
22 understanding's, worse than willful; right? So we have to
23 take that part serious.

24 Now, as Michael said, obviously, we want bad
25 actors to be nailed. There's no question there. But some

1 of these rope in non-bad-actors if this language isn't
2 identified and tightened well. And I know this is -- in
3 each one of -- each one of these sentences stand alone
4 'cause it doesn't have to be two or more or four or more of
5 these things. It's only any one all the way through --
6 what? -- G or something?

7 MS. WONG: Yes. G.

8 MR. BLAND: And so -- I think it's five or six. I
9 don't know. I'm glad this isn't a test of the alphabet.

10 But the six different things, six different
11 possibilities, the one of which, under B, is an issue. And
12 then this "intentionally" versus "willful" that -- that
13 needs to really be addressed. I don't think it's losing the
14 vigor it has. And it still gives -- gives you the
15 one-in-six chance of being egregious. But I -- I think we
16 do need to tighten -- tighten that up.

17 MS. WONG: Okay. Understood. Thank you for the
18 comment, Mr. Bland.

19 I believe we can then move on to online
20 comments, if we have any at this time.

21 UNIDENTIFIED HELPER: We do. We have Mr. Fred Walter
22 who raised his hand and is ready to make his comment.

23 MR. WALTER: Hi. Thank you for having me. I'm with
24 Conn Maciel Carey, not representing as many clients today as
25 Kevin. Although I agree with what Kevin's had to say.

1 My question is as to sub B, "history of one or
2 more or more than 20 general or regulatory violations per
3 100 employees." I think you need to put a time limit on
4 that. As we know, establishment search lists every citation
5 a -- a company gets from the beginning of the Federal Act.
6 And that's getting to be a lot.

7 So I think you have to put some perspective on
8 that. 'Cause it's much easier to say, "Okay. I'm not gonna
9 fight a general that I otherwise would fight if it was
10 serious. I'll just take my lumps and go away." And that
11 becomes something on your record.

12 This skews the characterization of an employer
13 if you have more than 20 generals or regulatory in your
14 history. And the older -- the longer you're in existence,
15 the more likely you are to have 20 generals or regulatory.

16 So there.

17 MS. WONG: Thank you for your comment.

18 MS. CARDOSO: Yeah. Hi. Hi, Fred Walter, this is
19 Denise Cardoso. Nice to hear you.

20 MR. WALTER: Hi.

21 MS. CARDOSO: There is a five-year look-back period.
22 Similar to the repeat regulation. So we look back five
23 years and that's in the proposed text.

24 MS. WONG: That will --

25 MR. WALTER: What is that -- where is that --

1 MS. WONG: -- will have -- section for section
2 (3)(F) --

3 MS. CARDOSO: Oh, wait. I think Fred was --

4 MS. WONG: Oh, (g)(3). Did I say F?
5 Oh, I -- actually, I think it's not (g)(3),
6 it's actually -- yeah.

7 MS. CARDOSO: Yeah.

8 MS. WONG: It's actually (f)(3). We will have an
9 opportunity for you to comment on that. But if you want to
10 review that, that does provide the five-year look-back
11 period in response to your comment, Mr. Walter.

12 Is there any other online comments?

13 UNIDENTIFIED HELPER: There are. We currently have
14 two hands raised, the first of which is Jessie Grewal from
15 UFCW.

16 MS. GREWAL: Thank you. I appreciate being allowed
17 to make comment again.

18 I just wanted to respond to the comments
19 related to (2)(B) and having a history of one or more
20 serious repeat or willful violations. I am -- I think it's
21 important to look at this, like the Cal/OSHA staff has
22 mentioned, in its totality.

23 These are looking at willful violations and
24 making sure that -- I mean, in a five-year look-back, it is
25 pretty serious to have a history of either a serious repeat

1 or willful violation or in totality with all these other
2 factors as well too.

3 These are some of the more serious and
4 egregious violations that we are looking at and honing down
5 into the -- these requirements. So I think that's really
6 important to look back, especially within that five-year
7 period, to see what has the employer's behavior been
8 regarding addressing serious repeat and willful violations.

9 So I think to the comments that the -- the
10 folks are making in person, this does separate out who is
11 some of the more egregious actors from those that are trying
12 to comply with the law. So willful is a very high standard.
13 I think we need to go back to what is a willful standard,
14 and that is very high in order to meet that bar. And so
15 looking to see if they had a serious or repeat or willful
16 violation is really important within that worksite.

17 MS. WONG: Thank you for your comment.

18 Any other online comments?

19 UNIDENTIFIED HELPER: Yes, we have Mitch Steiger has
20 also raised his hand.

21 Mitch, go ahead.

22 MR. STEIGER: Thank you.

23 Just really wanted to also agree with what
24 Jessie said about this section and the importance of
25 preserving it. We would really emphasize the need to not

1 weaken that. That 20 violations, even regulatory or general
2 ones, per hundred employees, that's -- that's quite a few to
3 go back to. I think Bruce mentioned an HVAC contract with
4 800 employees. That would be 160 violations. That's a lot.

5 Like, there's a -- there's a problem. Even if
6 they are general or regulatory. Once you get to that
7 amount, that's probably smoke where there's fire if you look
8 a little bit more closely. So we think this section makes
9 sense and it should be kept -- kept strong.

10 MS. WONG: Thank you for your comment.

11 Do you have any further online comments?

12 UNIDENTIFIED HELPER: We do. We have two additional
13 hands raised. The first of which is Samuel Rose from
14 Conn Maciel Carey, LLP.

15 Mr. Rose, please go ahead.

16 MR. ROSE: Good morning, everyone. Thanks for the
17 opportunity to make a comment.

18 To Kevin and Bruce's point, on (2)(B), if
19 there's some ambiguity about whether the serious repeat or
20 willful violation has to be a final order or just have been
21 issued one of those citations. And I think that the section
22 needs to be clarified about whether these are final order
23 seriouses or just being issued a serious citation at any
24 point in the last five years.

25 MS. WONG: All right. Thank you for your comment.

1 I do understand there's one more online
2 comment. But to fair, I think that was already three, so
3 we're going to switch back. Oh. Oh, okay.

4 MS. BRILL: Are you guys all okay with Kevin
5 (indiscernible) for you? Okay.

6 MS. WONG: I know --

7 MS. BRILL: Very democratic --

8 MR. BLAND: Bruce says no, but...

9 (Inaudible talking)

10 MS. WONG: Yeah, it --

11 UNIDENTIFIED: Yes.

12 MS. WONG: And just really quickly, sorry to put a
13 spotlight on you, sir, in the back, are you attending the --
14 the meeting?

15 UNIDENTIFIED: I am (indiscernible).

16 MS. BRILL: Oh.

17 MS. WONG: Oh, okay. Okay.

18 (Inaudible talking)

19 MS. WONG: Oh, okay. Just wanted to make sure.
20 'Cause you can sit up front if you'd like.

21 So I -- I apologize for that.

22 MS. BRILL: There's enough --

23 MS. CARDOSO: There's so much room.

24 MS. BRILL: -- seats at the table.

25 MS. WONG: You get your own mic.

1 Okay. So -- so sorry about that interruption.
2 But it seems like it's okay by the in-person participants
3 that we move on to the fourth online comment.

4 UNIDENTIFIED HELPER: We do have another hand raised.
5 And I hope I get this right. It's Lisa Baiocchi.

6 MS. BAIOCCHI: That was pretty good. It's Baiocchi.
7 But thank you.

8 UNIDENTIFIED HELPER: Okay.

9 MS. BAIOCCHI: This is Lisa Baiocchi with the
10 Principal Firm. And thanks to the folks in the room for
11 letting me jump the line.

12 I just wanted to kind of iterate what some of
13 the other comments have been on subsection (2)(B) here. I
14 understand, you know, 20 regulatory or general violations --
15 you know, that's a lot. But one serious citation is not, as
16 I'm sure many folks in the room and online can attest -- you
17 know, employers receive, sometimes, multiple serious
18 citations over a course of several years. And it doesn't
19 make them a bad actor; it just means that under certain
20 circumstances or -- and they could be completely different
21 circumstances than what is being looked at here for in a
22 willful egregious citation.

23 So if you can have a serious citation for a
24 completely unrelated matter and it puts you potentially in
25 this bucket. So I feel like the issue of having one serious

1 citation, it's gonna put far too many employers in this
2 category. And I -- I think that there should probably be a
3 higher bar, at least with regard to serious citations.

4 Thank you.

5 MS. CARDOSO: Hi, Lisa. It's Denise. What do you
6 recommend? Two or more?

7 MS. BAIOCCHI: I mean, honestly, I -- I think it
8 needs to be more than that. Because we're not talking just
9 serious accident related, we're talking serious. So, you
10 know, if you've got, you know, five serious accident-related
11 citations on your record, okay. That's one thing. But if
12 you have five serious citations, I do think that's a
13 different thing.

14 There are a lot of different types of citations
15 that can be issued, you know, from guarding to fall
16 protection, to IIPP, to heat illness. And so, you know,
17 I -- I mean, I -- I guess -- I hate to throw a number out,
18 but I'd say, you know, you need at least five or more. And
19 then are we differentiating between serious and serious
20 accident related? I think that's another thing that you
21 would need to look at.

22 MS. WONG: Okay. Thank you for your comment.

23 Any further online comments at this moment?

24 UNIDENTIFIED HELPER: We do. We have another hand
25 raised by Mr. Andrew Sommer.

1 Mr. Sommer, please go ahead.

2 MR. SOMMER: Good morning. Andrew Sommer with Fisher
3 Phillips.

4 I mean, I think, you know, I'm echoing, you
5 know, many of the concerns that are raised already. But the
6 way this is drafted with so many different elements that, on
7 their own, can give rise to an egregious violation, it
8 essentially -- it's giving fertile territory for litigation
9 before the Appeals Board.

10 There's a tremendous lack of clarity about what
11 each prong means and how it's drafted. It's essentially
12 creating an egregious violation for a willful violation.
13 These additional elements, in a way, are becoming
14 superfluous, the way they're drafted, and they're
15 overlapping.

16 And so I think it's really incumbent upon all
17 of us, collectively, to develop clarity and to make this
18 truly an egregious violation. An unusual situation, such as
19 Lisa pointing out, that would support, legitimately, an
20 egregious violation.

21 MS. WONG: Okay. Thank you for your comment.

22 We already -- I think that was the fifth online
23 comment. Just want to switch back to make sure there's no
24 further -- okay. So there are in-person comments.

25 So Mr. Wick first.

1 MR. WICK: Yeah, I'll speak for myself. The -- this
2 is a -- a tough issue. We understand. And this is why I
3 appreciate this where we can go back and forth. I greatly
4 appreciate because we want to do the right thing.

5 My members hate competing with egregious, bad
6 employers. They drive by and there's no fall protection on
7 a jobsite. And we don't like that. That's a problem.
8 So -- but the difference between -- it has been said before,
9 serious versus a repeat or a willful, that's a big
10 difference. So I really think repeat or willful should be
11 in the same category.

12 And I will say, again, not -- I think it's part
13 of this conversation. Willful is a high bar. An -- a
14 contractor can have 25 superintendents doing jobs and just
15 one of them can make a -- a bad, wrong choice, and that can
16 be a willful violation. And on -- we're liable for that
17 citation, but that isn't that employer all the way through.
18 And that employer's gonna be stuck with that.

19 So I think we need to understand, sometimes you
20 can have a superintendent that does something you just go
21 "oh, my gosh" and fire them and all those kind of things.
22 So differentiating between repeat willful on the one hand
23 serious -- I think those just have to be your categories.

24 Thank you.

25 MS. WONG: Thank you.

1 Mr. Donlon?

2 MR. DONLON: Mike Donlon.

3 I represent, through my association, some of
4 the largest union contractors in the state. In addition to
5 having a bunch of superintendents, they have a whole bunch
6 of subcontractors under them too. And if one of those
7 subcontractors messed up, they're probably gonna get a
8 multi-employer citation on that, you know, and -- and so
9 that -- you know, they -- a lot of 'em do have one serious
10 citation on their record because of -- of a mistake a
11 subcontractor made or just an obscure incident where they
12 had to fire a superintendent for doing something real dumb.

13 But these are, you know, large employers. One
14 serious for a very large employer is -- is, you know, not
15 much. So I -- I really think we need to split it out and
16 have that number a little higher.

17 MS. WONG: Okay. Thank you for your comment.

18 Mr. Bland?

19 MR. BLAND: Yeah. Not to keep reiterating, but I
20 think Mr. Sommer made a very good point of that, basically,
21 without tightening this up, every willful is going to be
22 considered egregious. And this is supposed to be another
23 category level worse than willful, is my understanding,
24 and -- and what comes with that.

25 And so -- then back to B -- I know we're

1 spending a lot of time on the numbers here. One big
2 clarifying point would be, does that mean per 100 employ --
3 hundred employees for everything or just for the generals?
4 'Cause I think Mitch -- Mitch and I don't always agree on
5 things, but we -- you know, we would agree that per -- if
6 it's per 100, 20 -- that's -- that's the number. That's why
7 you haven't heard us argue about that either.

8 But when it comes to the number of serious, I
9 think that needs to be entered in here because -- and I know
10 we're primarily sitting in -- inside here dealing with a lot
11 of construction that's a large part, I know it goes outside
12 of that. But if you have, you know, two, 3,000 carpenters
13 in the field, you know, framing houses, it isn't difficult
14 to end up with one or two serious in a five-year period.
15 Even the best contractor, that can happen.

16 And -- and so I think we got to clarify what's
17 the per 100 mean. Does it mean for each one of these
18 categories? Which then -- and then if we get to there, I
19 don't think there's an argument on willful, the number were
20 willful and repeat or the number for a hundred -- excuse
21 me -- number for generals.

22 There is, it sounds like, a little bit of a
23 divide on the number for serious and if it's five or ten.
24 Five -- I think we could probably live with 5 per 100, but I
25 don't want to speak for everybody. Yeah. But at least my

1 constituency could live with 5 per 100. That would tighten
2 this up.

3 I don't want us to lose track -- also, I know
4 it's a five-year look-back when -- when doing this, but we
5 do want to make sure that -- and I think this may have
6 been -- I can't remember if this was Fred or -- or Lisa that
7 brought this up, or maybe it was Andrew. That -- the issue
8 with looking back at the history.

9 The history needs to be finalized because
10 they're just allegations until they're finalized. So you
11 can't just go into history and say, "Oh, in the last five
12 years they've got five serious in -- in litigation that
13 haven't been decided." So it has to be final orders. We
14 want to make sure that's clear in the -- in the text here.

15 MS. WONG: Understood. Okay. Thank you for your
16 comment.

17 And we want to -- that was three comments in
18 person, so I'm just gonna go back to see if there's any
19 online comments at this time.

20 UNIDENTIFIED HELPER: At this time we have no hands
21 raised.

22 MS. WONG: Okay. And so it seems like we're -- okay.

23 MR. BLAND: I have one more. Under D, taken as a
24 whole, amounts to clear bad faith. I think we could use
25 some defining factors in that. What is -- what do [sic] we

1 considering bad faith. Is -- again, we're talking about
2 willfuls here. Is willful alone bad faith just
3 automatically become bad faith? If you're issuing a willful
4 and then it becomes egregious because that's bad faith.

5 So in the performance of their duties to
6 comply, does that mean no IIPP? This -- this thing is ripe
7 for a lot of ambiguity here 'cause I -- I -- that. In and
8 of itself, what does it mean, "bad faith"?

9 MS. WONG: Okay. Is there any further -- I think we
10 have one more -- yeah. Mr. Johnson?

11 MR. JOHNSON: Yeah. Steve Johnson.

12 I -- I agree with Kevin. I -- I -- if you --
13 if you have a carpool of Cal/OSHA inspectors, I think
14 there's gonna be three for four different opinions on -- on
15 what bad faith is.

16 MR. BLAND: There's only two in the car.

17 MR. JOHNSON: But I -- I think, you know, one thing
18 employers really need is clarity in the language.

19 MS. WONG: Okay. Thank you for your comment.

20 And given that we had some three in-person
21 comments, I want to -- we wanted to see if there's any
22 online comments in response.

23 UNIDENTIFIED HELPER: Currently no online commenters.

24 MS. WONG: Okay. So seems like we will now move
25 forward to the next sections for comment. And that is

1 sections 334(f)(2)(E), as in "Edward," through (G), as in
2 "God."

3 So we'll open this up for comments for those in
4 person -- or attending in person.

5 Oh, it's Mr. Donlon.

6 MR. DONLON: Mike Donlon.

7 The Labor Code had two sections dealing with
8 employer history. And that's why I think -- where two
9 sections got put in here. But this is both redundant with B
10 and conflicting with B. 'Cause they're both talking about
11 citation history. And so that's -- I -- I see that -- you
12 know, I think we just -- if we do a good job writing B, I
13 don't know that we even need E. 'Cause I -- they do tend to
14 have a major conflict in how you're calculating that
15 employer's citation history.

16 MS. WONG: Okay. Thank you for that comment.

17 Any further in-person comments?

18 MR. BLAND: Hi. Kevin Bland again.

19 I -- I agree with Michael Donlon. I think if
20 we get B nailed down, we don't need E. Needs to be just
21 deleted. And then if we go to F, "The violations resulted
22 in worker fatalities, worksite catastrophe, or five or more
23 injury." What is "resulted in" caused -- that needs -- that
24 needs to be a causal connection between the violation and
25 the fatality, catastrophe, or five or more injuries.

1 Because just "resulted in" is a little vague.
2 It doesn't even answer the question what is resulted in.
3 There's -- what's the connection with the serious and those
4 fatalities or the catastrophe or the five or more injuries?
5 I think that's just maybe a drafting slip there. 'Cause I
6 think there needs to be a causal connection, just like an
7 accident related.

8 MS. WONG: Okay. Thank you for that comment.

9 Oh, Mr. Wick?

10 MR. WICK: Bruce Wick.

11 I agree with Mike -- and -- and Kevin on those
12 two comments. On G, I think we need some size parameters
13 here because if you have a crew of five or ten at the
14 worksite, one injury says you've blown the ten percent. So
15 I -- I think some people have said 10 percent -- or I've
16 tried to work these things -- like 10 percent, if you have
17 100 or more employees or -- we need to have a way of saying,
18 if you have less than a hundred employees, one injury or
19 illness doesn't bring you into this.

20 MS. WONG: Okay. Understood. Thank you for your
21 comment.

22 I want to move on -- or we'll move on to any
23 online comments at this point. Again, it is for subsections
24 F -- oops.

25 UNIDENTIFIED HELPER: At this time there are no hands

1 raised online.

2 MS. WONG: Oh. Oh, sorry. Thank you.

3 So if there are no further comments for
4 subsections E through G, we'll move on to the next sections
5 for comments. And so that will be sections -- sorry. It's
6 just section 334(f)(3).

7 So we'll start with in-person comments. If
8 there are any. So (f)(3) -- sorry. If -- if we can just
9 put on the screen so everyone can see where (f)(3) is.

10 Oh, yeah. Sorry.

11 MS. BRILL: It -- it is on screen.

12 MS. WONG: It's already on screen.

13 MS. BRILL: I can highlight it more, but --

14 (Inaudible talking)

15 MS. BRILL: Nah, that's (f)(3).

16 UNIDENTIFIED: (F)(3).

17 MS. BRILL: Sorry. I know there's a lot.

18 (Inaudible talking)

19 UNIDENTIFIED: Mm-hmm.

20 MS. WONG: It's lower case "f" and then "3."

21 Oh, Mr. Johnson?

22 MR. JOHNSON: Yeah, hi. Steve Johnson.

23 The -- the problem I see with -- with, you
24 know, based on conduct occurring within the -- the --
25 with -- within five years, who -- who decides on what that

1 conduct is and how is that conduct defined? There's really
2 no criteria for -- for conduct. Just seems like the --
3 it -- it's fairly unclear to me. And I know it would be the
4 Division deciding what that conduct is; the particular
5 inspector, could be their opinion about good conduct or bad
6 conduct. And I just think that has some problems.

7 MS. WONG: Understood. Thank you for the comment.

8 I -- oh, Mr. Bland?

9 MR. BLAND: Yes, thank you.

10 Along those same lines, and does this mean that
11 this erodes the -- the six-month statute of limitation that
12 is in the Labor Code? Because right now we can't cite for
13 conduct unless it's during that -- you know, you have six
14 months to issue that citation. Now we're going back five
15 years of, quote-unquote, "conduct" where, in their interview
16 someone says, "Well, five years ago they did the same
17 thing." Well, what evidence is it? Is that just enough?

18 So I think that -- that -- the word -- the term
19 "conduct" is major. And the five years, what that does to
20 the investigatory powers of the government in -- in this
21 case.

22 MS. WONG: Okay. Understood. Thank you, Mr. Bland.

23 Mr. Wick?

24 MR. WICK: Bruce Wick.

25 I'm wondering, as Denise said before, this

1 is -- this is -- kind of comes after the fact of five years
2 that maybe this five years should go in two and -- and kind
3 of say the criteria, you know, the citation for an egregious
4 violation shall be based on any of the following subsections
5 or -- from five years prior to this violation.

6 MS. WONG: Just wanted to see if we understood that.
7 Is that correct as you're seeing -- Ms. Brill typed it up?
8 When you were referring to two, are you referring to (f)(2)?

9 MR. WICK: (F)(2), yes.

10 MS. WONG: Okay.

11 MR. WICK: That the criteria listed, it seems, is
12 what you're wanting to say any of those things happening in
13 the previous five years, that's the conduct.

14 MS. WONG: Yes.

15 MR. WICK: Is those specific criteria.

16 MS. WONG: Yes.

17 MR. WICK: So if we could get rid of the word
18 "conduct" maybe and just go to those -- what's listed in A
19 through G.

20 MS. WONG: Understood. That's in response,
21 Mr. Bland's concern. It wasn't just any conduct, it is
22 specific to --

23 MR. WICK: It's specific -- yeah.

24 MS. WONG: Yes. But Mr. Wick --

25 MR. WICK: It seems like our intent here is the

1 five-year limit, which is good -- which is -- seems right
2 but, yeah, make it specific to the criteria A through G.

3 MS. WONG: Understood. Okay. Thank you, Mr. Wick.

4 And I think we've had, already, three in-person
5 comments. So we'll move on to three online comments, if
6 there are any.

7 UNIDENTIFIED HELPER: We did have a hand raised, but
8 it's been lowered. So there are no online comments at this
9 time.

10 MS. WONG: Okay. And just wanted to make sure, we
11 are now receiving comments for section 334(f)(3). So seems
12 like we now have an in-person comment for Mr. Donlon.

13 MR. DONLON: Mike Donlon.

14 I think something that Kevin mentioned earlier,
15 it's got to be clear -- 'cause some of these criteria are
16 citations that they have been a final order, not just
17 accusations to be counted within that five-year period. You
18 know, 'cause otherwise, you know, I -- it just -- they're
19 not actually proven. So...

20 MS. CARDOSO: That's what four does. It's the same
21 as the repeat --

22 MR. DONLON: Right.

23 MS. CARDOSO: -- regulation.

24 MR. DONLON: We found that earlier when we were
25 talking.

1 MS. WONG: Thank you, Mr. Donlon, for your comment.

2 Any further in-person comments at this point in
3 time for section 334(f)(3)?

4 Okay. It seems like there is none. And I just
5 want to confirm, there's no online comments at this time; is
6 that correct?

7 UNIDENTIFIED HELPER: Correct. No online hands.

8 MS. WONG: And thank you. So we're gonna move on to
9 comments for sections 334(g), as in "good," 334(g), again,
10 "good," subsection 1. And also 2 at this time.

11 MR. BLAND: I think you skipped over 4.

12 MS. CARDOSO: We were supposed to be commenting on 4
13 earlier when we talked about --

14 MR. BLAND: We kept repeating 3, so -- all right.

15 MS. WONG: Oh, okay.

16 MR. BLAND: I was waiting until you said 4. I'll do
17 4 --

18 MS. WONG: No. Appreciate it. However, we did open
19 up for comments for 334(f)(4) earlier. But do you have a
20 comment?

21 MS. CARDOSO: Do you have a comment on 4?

22 MR. BLAND: On 4.

23 MS. CARDOSO: Sorry, you missed your chance.

24 (Laughing)

25 MS. CARDOSO: You even came in person.

1 MR. BLAND: And so my issue with G is 4. And so --

2 MS. WONG: Okay.

3 MR. BLAND: Kevin Bland.

4 I -- I just -- this says the "citation for an
5 egregious violation shall remain in effect for a period of
6 five years." What does "remain in effect" mean? What does
7 that -- I mean, you can have a repeat egregious? Does it
8 mean anything decided after that's egregious if you have a
9 citation? What does that mean? That's a question rather
10 than a comment how to fix it 'cause I need -- I can't figure
11 out exactly what --

12 MS. WONG: I'm sorry. Can you repeat your question
13 again?

14 MR. BLAND: So it says, "A citation for egregious
15 violation shall remain in effect for a period of five years
16 from the latest of the date of the final order affirming the
17 citation, or the date the citation becomes final by
18 operation of law."

19 So in other words, you have a serious. You got
20 the order. It -- it's done. Five years, it stays in
21 effect. What does "stays in effect" mean?

22 MS. WONG: I -- if, you know, everyone else can chime
23 in, but then this is regarding egregious violations. And so
24 if you look at (f)(2) -- I believe it's (f)(2) or (f)(1).
25 If you have a prior egregious, it can be a basis for another

1 egregious.

2 So I think this is actually referring to that
3 prior egregious violation. And so it specifies a citation
4 for an egregious violation. So it remains in effect for,
5 you know, whatever purposes in relation to an egregious. So
6 it's not in relation to any other violations.

7 MR. BLAND: Okay. All right.

8 MS. CARDOSO: So you can have a willful, and then if
9 you have a prior egregious.

10 MR. BLAND: They're both different categories. I get
11 that.

12 MS. CARDOSO: So you have an egregious within the
13 past five years and then employer gets willful. That
14 willful's now an egregious. And then if the will -- if the
15 employer has an egregious within the last five years from a
16 final order or when it becomes final by operation of law,
17 that conduct, which I know you had issues with that word
18 "conduct," the conduct could, you know -- I mean, but if
19 it's an egregious, it would meet that.

20 We would be under (f)(1). So it's more -- it's
21 automatic. There's no thinking involved. It's a willful
22 plus a prior final egregious.

23 MS. WONG: Yeah, it's --

24 MS. CARDOSO: After five years, it goes away.

25 MS. WONG: Yeah.

1 MS. CARDOSO: So then there has to be the criteria.

2 MR. BLAND: So maybe a thing to consider for cleaner
3 grafting -- cleaner drafting, instead of 1 referring to 4,
4 why don't you just say what you want in 4 -- in -- in 1.

5 "The employer has a prior egregious violation by operation
6 of law or final order within the last five years." So that
7 would be something -- so then it's clear as you're going
8 through these -- 'cause going back and forth, that -- you
9 know, and I haven't done this very long so I'm a little new
10 at it so I got confused. But --

11 MS. WONG: Understood. Understood. But just as a --
12 a quick point, the language is taken, obviously, from the
13 statutory language that came out of SB 606. And so (f)(1)
14 is really interpretation of the overall statutes and -- so
15 at this point (f)(4) --

16 MR. BLAND: But wouldn't that still interpret the
17 statute if the statute --

18 MS. WONG: Understood.

19 MR. BLAND: -- says five years, make it -- we have --
20 we do a better job of crafting regulatory language than --
21 I'm gonna go out on a limb -- than the Senate or the
22 assembly does most of the time. So if we can clear up and
23 still keep their intent, that would be helpful.

24 MS. WONG: Okay.

25 MS. CARDOSO: That's our --

1 MS. WONG: Understood.

2 MS. CARDOSO: -- our purpose -- that's what we're
3 here to do --

4 MR. BLAND: Yeah.

5 MS. CARDOSO: -- is implement the statute.

6 MR. BLAND: Yeah.

7 MS. WONG: Yes. Okay. Thank you for that comment.

8 And I believe -- I just want to see if there's
9 any further in-person comments?

10 And that's -- I -- we went out of order a
11 little. And that is for section 334(f)(4), since we kind of
12 returned back to comments for (f)(4).

13 Seems like there's no in-person comments, but I
14 wanted to provide an opportunity for any response from
15 online comments.

16 UNIDENTIFIED HELPER: We do have an online hand
17 raised. Megan Shaked --

18 MS. WONG: Okay.

19 UNIDENTIFIED HELPER: -- has raised her hand.
20 Shaked? Not sure. Sorry, Megan.

21 MS. SHAKED: Hi. Thank you --

22 UNIDENTIFIED HELPER: Sorry about that.

23 MS. SHAKED: Thank you so much. Yeah, this is
24 Megan Shaked, from Conn Maciel Carey. Thanks, everyone, for
25 your time and attention. I just wanted to -- so I -- I

1 wanted to clarify our understanding and see if there's still
2 area for further clarification on (f)(4).

3 As we were hearing from a few folks about the
4 importance of clarifying, you know, there's multiple basis,
5 or multiple criteria that you could use to be the basis for
6 egregious. One, I'm understanding is that you had another
7 egregious in the past five years but some of the other
8 criteria is based on criteria -- sorry for -- I'll just try
9 to keep it clear. And there isn't that same clarification.

10 And so when Mr. Donlon raised the point again,
11 reiterating what folks had said, that it needs to be clear
12 that if you're basing it on another prior violation, not an
13 egregious one, but another one, that there needs to be
14 clarification that that's based on a final order.

15 And I believe Ms. Cardoso answered, yes, that's
16 what (f)(4) does. But (f)(4) seems like it's talking about
17 a prior egregious. So I don't know if there's somewhere
18 else in the proposed regulation that addresses this or if
19 there's a need for clarification. But I think -- I think it
20 sounds like that would be important as well.

21 MS. WONG: Okay. Thank you for your comment,
22 Ms. Shaked.

23 Is there any other online comments with regard
24 to 334(f)(4)?

25 UNIDENTIFIED HELPER: At this time there are no

1 additional hands raised for comment.

2 MS. WONG: Okay. And I just wanted to return one
3 more time, any in-person comments with regard to (f)(4)?

4 Is that a no?

5 Okay. So we're gonna return back to the agenda
6 and move on to sections 334(g), as in "good." And -- sorry.
7 334(g)(1) and (g)(2).

8 So we'll start off with in-person comments.
9 And I believe that we have the -- those sections on your
10 screen for those attending in person and those attending
11 online. And they're being highlighted right now in
12 purple -- gray. I can't tell.

13 Okay. Oh, sorry. Mr. Donlon?

14 MR. DONLON: Mike Donlon.

15 I have a little bit of a problem with both 1
16 and 2. The employer has a written policy that violates, you
17 know, a standard. I've had CSHO say that if you don't write
18 in your heat illness standard that you are providing water
19 for free, that's a violation, even if you are providing
20 water for free.

21 So I don't think those kind of, like -- you
22 know, when you're writing these -- when you're writing your
23 programs for your employees, you're trying to make 'em as
24 clear and concise as possible. And you may not put every
25 detail in that you're doing as an employer, you're giving --

1 you're trying to write that as instructions for your
2 employees, not necessarily tell them all their rights. And
3 that's what -- good employers do it, anyway, 'cause that's
4 instruction.

5 So I think we need a -- you know, an adjective
6 in there, you know, "positively violates" or "definitively
7 violates." Something that -- so, you know, there's -- not
8 just some minor word missing or, you know, a page got torn
9 out and it's not there or something, you know, of that
10 nature.

11 And the same on number 2 where the Division has
12 "evidence." Well, again, I think we need, you know, per --
13 "persuasive evidence" or some kind of a thing there,
14 "substantial evidence." But, you know -- and I'm not a
15 lawyer, I'm an engineer, so my legal terms are garbage. So
16 that would be up to you lawyers to figure out, what would be
17 a good word to put in there.

18 MS. WONG: Okay. Appreciate your comments. Thank
19 you, Mr. Donlon.

20 Any other in-person comments with regard to
21 subsection 334(g)(1) and (2)? So G and 1 and 2.

22 MR. BLAND: This is kind of an overall comment. And
23 this is really a fairness argument because you have a
24 location that has 3,000 employees but they're at one
25 location. And they get a citation. They get one citation.

1 I have clients that may have ten at one location; they may
2 have a hundred locations, so 300 employees and 10 at each
3 location. They're going to get ten for the exact same thing
4 when they're only a hundred employees.

5 And so, somehow, we need to weave in this
6 fairness in -- in this. I don't know how exactly we'll do
7 that. But the way it's written now, there's a definite
8 miss. And I know we're part of the -- the -- the Senate
9 or -- I can't remember if there's a sen -- senate bill?
10 Yeah. Senate bill that kind of missed this. And if we can
11 have a way to fix that.

12 'Cause that's -- to me, that's huge. Small
13 employer that goes to different cites all of a sudden, now,
14 they're getting multiple citations; where a very large
15 employer that has one factory or two factories is getting
16 minimal compared. And so I think that's an issue that needs
17 to be -- and then maybe part of this gets into we have never
18 defined worksite. What does a worksite mean?

19 If you have four buildings on a campus, is each
20 campus -- each building on the campus a worksite or is the
21 entire campus a worksite? If I've got a construction site
22 where we have it in four phases, is each phase -- or if
23 there's a contract -- a main contract for, you know, these
24 ten houses and a main contract for these other ten,
25 are [sic] that two worksites although they're on the same

1 project site?

2 We need to get in to some of the -- the devil's
3 in the details on this when it comes to these
4 enterprise-wide violations, which I think needs to be
5 addressed.

6 MS. WONG: Thank you for your comment.

7 Mr. Wick?

8 MR. WICK: Bruce Wick.

9 This is an overall comment regarding the
10 enterprise-wide concept or issue. And I'm gonna read two
11 sentences out of the federal violation by violation
12 information. It says, "The large proposed penalties that
13 accompany violation-by-violation citations are not,
14 therefore, primarily punitive nor exclusively directed at
15 individual sites or workplaces. They serve a public policy
16 purpose, namely to increase the impact of OSHA's, federal
17 OSHA, limited enforcement resources. The criteria contained
18 in this instruction are intended to ensure that when they
19 are proposed, large penalties serve this public purpose."
20 Meaning we don't have a lot of enforcement people.
21 Therefore, we want large penalties to, so to speak, frighten
22 all over employers to say I -- "I better, you know, make
23 sure everything's right."

24 In California, we don't have this problem.
25 Funding by employers for Cal/OSHA's increased from

1 \$59 million in 2010 to \$217 million this year. Plus 30 more
2 million from federal OSHA.

3 Cal/OSHA does not have limited enforcement
4 resources. I understand there's some understaffing, but
5 they're ramping up. By the time this regulation would go
6 into effect, Cal/OSHA will have a much greater ability,
7 people, resources to enforce. So things like the rebuttable
8 presumption -- I know that was discussed in SB 606 quite a
9 bit.

10 You know, Cal/OSHA has the ability to -- to
11 look at things and that's part of, you know, Kevin's point.
12 If you're an HVAC contractor with 200 employees, you have
13 150 or more separate worksites. Well, do we multiply the
14 citation by 150 times?

15 So I -- I think we need to walk carefully in
16 enterprise-wide because, again, why Fed/OSHA pushed this
17 32 years ago, I think, they still have limited resources.
18 We don't. Employers have said, here's -- here's the money.
19 Do the job for enforcement.

20 Thank you.

21 MS. WONG: Thank you for your comment.

22 We'll now move on to any online comments.

23 UNIDENTIFIED HELPER: We do. We have three online
24 commenters. Brian Little has raised his hand.

25 Brian Little, please go ahead and make your

1 comments.

2 MR. LITTLE: Thank you. I appreciate that.

3 I just want to "me too" some of the comments
4 offered by Mike and Kevin and Bruce. And like Mike, I joke
5 with my lawyer friends that I am uncombered [sic] by a law
6 degree. So my legal drafting probably leaves a great deal
7 to be desired. But I'm looking at (g)(1) and (2) and
8 wondering you -- you essentially create conditions where a
9 finding of a written policy or procedure that violates
10 certain things or that the Division has evidence of a
11 pattern of practice.

12 Both of those seem to lack a criteria at which
13 they would become effective in order to demonstrate an
14 enterprise-wide violation. So perhaps it would make sense
15 in there to require that that written policy or procedure
16 that violates section 25910 or Chapter 6 or division -- or
17 Division 1, Division 5. That would have to be a -- a final
18 order, a finding of a violation.

19 And similar to violations used to establish a
20 pattern of practice under (g)(2), would need to be a -- a
21 final order entered against the employer, rather than
22 something that, you know, with the way 2 -- to me, the way 2
23 reads right now, a pattern of practice in the same violation
24 or violations involving one or more of the employers work --
25 that could be a little more than just an allegation or a

1 claim by an employee that this has happened elsewhere.

2 And so, you know, representing -- and I guess I
3 should have introduced myself at the top. I'm Brian Little
4 with California Farm Bureau.

5 We're going to have similar concerns about
6 multiple worksites as our -- as construction would have,
7 because the seasonal nature of agricultural employment. The
8 fact that a lot of our agricultural employers operate at
9 multiple locations, two to three, and then finally the
10 contractors will be operating at dozens of sites at various
11 parts of the -- in various parts of the state.

12 So thank you. And thanks for your time.

13 MS. WONG: Thank you for the comment.

14 Next comment.

15 UNIDENTIFIED HELPER: Yes. Online, we also have a
16 hand raised by Fred Walter.

17 MR. WALTER: Hi. Back again.

18 I -- I agree with Brian. I think reading
19 (g)(1) and (g)(2) together, I can see alleged violations of
20 paper policies -- IIPP, HIPPP, and now workplace violence --
21 that can be construed or -- or interpreted by acosha
22 (phonetic) as being a -- something worthy of a citation.
23 And the -- if it's [sic] occurs in a multiple worksite
24 company, then you're automatically into enterprise-wide
25 violation, if you read section 2 literally. The larger the

1 company is, the more worksites it has, the more vulnerable
2 it is to a -- an enterprise-wide citation.

3 I think -- I think we need to figure out a way
4 to write these two subsections with some clarity so that one
5 perceived mistake in a written program isn't going to result
6 in multiple violations and multiple penalties across an
7 entire industry for that matter.

8 Thank you.

9 MS. WONG: Thank you for your -- for your comment.

10 Just one more online comment before we return
11 to in-person comment.

12 UNIDENTIFIED HELPER: Yes, we have Jessie Grewal with
13 UFCW has raised her hand.

14 MS. GREWAL: Thank you.

15 So the beauty of this provision is that it's a
16 rebuttable presumption. And rebuttable means that the
17 employer gets an opportunity to rebut the presumption that
18 there is an enterprise-wide -- wide violation. So if -- if
19 the employer does not agree with Cal/OSHA's finding around a
20 policy or procedure being in violation with an established
21 health and safety law, then the employer can then rebut,
22 with evidence, that -- that that wasn't a perceived
23 violation and here's X, Y, and Z why.

24 So the beauty of this provision is that the
25 employer does get an opportunity to rebut the premise, with

1 evidence, that they are not enterprise-wide or that these
2 policies and procedures or patterns of practice are not
3 enterprise-wide. So I did just want to share that piece of
4 it.

5 And I think our members at UFCW would have a
6 different perception of Cal/OSHA enforcement and just
7 enforcement generally through our state is that it is a real
8 struggle. Workers take a very long time to come forward
9 with a violation and then Cal/OSHA takes a very long time to
10 actually deem a -- to come out and inspect, actually go
11 through the citation process and ultimately end up with an
12 abatement order.

13 And from our perspective, this is so necessary,
14 especially for worksites. Like, we represent large
15 employers that have hundreds of locations in California.
16 But our worksites have the same policies that are direct
17 conflict with health and safety orders. For Cal/OSHA to
18 come out and do an inspection at every single one of those
19 worksites and then go through the investigation, the
20 citation, and the abatement process takes a lot of resources
21 versus being able to actually hold an employer accountable
22 who is doing something multiple location-wide.

23 Our worksites can be small, five to ten people.
24 Our worksites can be larger, 75 to 100 people. So I don't
25 think it's necessarily a need to distinguish between small

1 employers, employers of multiple worksites. But if an
2 employer's doing something across all of their locations or
3 a good chunk of their locations, they should be held
4 accountable for those policies and procedures.

5 During the pandemic -- I just want to share an
6 example -- we had employers telling our workers they were
7 not allowed to wear masks, in direct conflict with the
8 requirements that were coming out of Cal/OSHA. They were
9 written on paper, "you are not allowed to wear a mask
10 because it scares the customers." Those are -- that is in
11 direct violation.

12 And so I just wanted to share an example of
13 what we are talking about when our workers are at multiple
14 locations across Southern California being told "don't wear
15 a mask" when health and safety arm is saying "wear a mask to
16 protect yourself." So those are the types of incidences
17 that we're talking about when we have a written policy or
18 procedure. So I just wanted to share that.

19 I just also wanted to express that we do like
20 this language. It models off of SB 606 really cleanly and
21 nicely. And so appreciate the way that the Division crafted
22 this language in the regulation.

23 Thank you

24 MS. CARDOSO: Thank you.

25 And the purpose of this, of SB 606 and this

1 regulation, the public policy is to secure enterprise-wide
2 abatement so that Cal/OSHA isn't going out to each of those
3 sites and have to open which -- with each of those sites and
4 then secure abatement individually. So with one site, if
5 there's evidence that shows enterprise-wide violations, we
6 issue one citation and we get abatement statewide.

7 MS. WONG: So, again, also thank you for your
8 comment.

9 I think we can move on to a third online
10 comment, if there is any at this time.

11 UNIDENTIFIED HELPER: There is. Yes, we actually
12 have three hands up. So we'll need to come back to online
13 commenters. At this time the next commenter is Eddie with
14 SoCalCOSH.

15 MR. SANCHEZ: -- everyone. Eddie Sanchez with
16 SoCalCOSH.

17 I just -- thank you Jessie for those comments.
18 I -- I was gonna try to say something similar. And I think
19 Jessie captured it masterfully. So I want to just uplift
20 Jesse's comments. Maybe I can offer additional context too
21 on, like, what we seen happen to work -- workers, try to
22 highlight challenges that are happening enterprise-wide.

23 And usually we see that, like, workers will
24 maybe include in the Cal/OSHA complaint or coordinate with
25 other workers at other sites through their friendships

1 and -- and just knowing other workers at other locations,
2 trying to address a very similar hazard or issue or problem
3 that's happening across enterprise and -- and experience.

4 It doesn't -- at least -- I'm not sure if other
5 folks have had this experience. It doesn't seem to work so
6 easily where -- where we can get, like, something that will
7 address the employer as a whole. So it almost feels like,
8 in practice, we have to do -- we have to start all over. We
9 have to go into the office, do a whole new Cal/OSHA
10 complaint while addressing the systematic problem that's
11 happening across employers -- across -- across worksites for
12 an employer.

13 So I -- I say that to say that I think this
14 language would help significantly to allow a worker to say,
15 "Hey, I have evidence." "I have, you know, complaints." "I
16 have testimony that shows that this is not just happening
17 here; it's happening elsewhere. It's happening in multiple
18 locations." You know, we have, you know, that documentation
19 in right now.

20 I -- I want to say right now, if I were to file
21 a complaint and include that documentation, it wouldn't
22 trigger -- it wouldn't trigger, you know, the opportunity to
23 do that. I -- I've had inspectors usually say, "Hey, you
24 know, that's -- you know, that -- you -- you're gonna have
25 to do a separate complaint for that one 'cause it's a

1 different location or different office." So I think having
2 the language in place that allows workers to address, like,
3 these bigger problems, I think, would -- would be amazing.

4 So I -- I'm -- I'm in the interest of seeing
5 this language remain flexible as it is right now and
6 allowing for workers and work organizations to -- to address
7 these challenges enterprise-wide.

8 Thank you once again, Jessie, for those
9 comments.

10 MS. WONG: Okay. Thank you for your comment.

11 I believe that was the third online comment.
12 We'll -- I -- we do understand there's additional online
13 comments, but we'll return back once we give those in person
14 an opportunity to comment.

15 Mr. Donlon? And then Mr. Johnson.

16 MR. DONLON: Mike Donlon.

17 I think what we're trying to do -- we
18 understand there's a rebuttable presumption. But we don't
19 want to make this guy rich going to hearings all the time.
20 You know, I think if we can improve the language, we're not
21 gonna have those, you know -- the hearings that the Division
22 may lose because the -- the CSHO didn't do their due
23 diligence and really looking at this. And I think that's
24 part of it.

25 The other thing is, you know, number of

1 worksites. In construction, specialty trade contractors,
2 one week may have a dozen worksites; the next week they may
3 have 30. And -- and what are we gonna base that number on?
4 'Cause it's always fluctuating 'cause they're finishing
5 jobs; they're starting new jobs. And so, you know, that --
6 in construction, that gets a little confusing on what is
7 that worksite or that jobsite, you know, and how many are
8 there really at today or, you know -- so...

9 MS. WONG: Okay. Thank you for your comment.

10 I think, Mr. Johnson, you had a comment as
11 well?

12 MR. JOHNSON: Yeah. Thank you. Steve Johnson.

13 I -- I -- my -- my -- my reading of G,
14 enterprise-wide violation and re -- rebuttable presumption,
15 is that my -- my understanding of that, as I read it, is
16 that if there's a -- a violation, then it's gonna be a
17 violation on multiple worksites. That -- that the employer
18 is guilty until proven innocent. That's -- that's my --
19 my -- my reading of it and my understanding of it is -- is
20 that, well, if there's a violation of one jobsite, then it
21 must be throughout every jobsite.

22 And one -- one of the thing -- this -- the
23 enterprise-wide violation really hits specialty contractors,
24 which ripping contractors are a specialty contractors.
25 Usually for commercial roofers there's -- they're generally

1 a subcontractor to a general contractor on a commercial
2 jobsite. And right now, in California, union roofing --
3 union roofers only represent about ten percent of the entire
4 roofing industry. So our association -- and then there's a
5 Southern California association that is -- that represents
6 union roofers.

7 And we're -- we're a small minority of the
8 roofing industry in California. And I -- I just think it
9 really -- it -- it hits contractors for -- for our
10 contractors we have small to medium size contractors. We
11 don't have large employers in our association. So to have
12 multiple job sites where there's a rebuttable presumption
13 that if there's one violation that it will be
14 enterprise-wide just doesn't seem fair to me.

15 MS. WONG: Just wanted to clarify. Actually, based
16 upon (g)(1) and (2) in the language, it's not a rebuttable
17 presumption that if there's one violation at one jobsite and
18 if you have multiple work sites that that's what the
19 presumption is, that there's also violations at the other
20 worksites. 1 and 2 specifies that written policy and
21 procedure that basically applies across the board to
22 other -- all worksites.

23 So, therefore, if there is a violation -- for
24 example, if we're used to having inspector at one jobsite,
25 we do see a written -- a policy and procedure violation and

1 we know that, essentially, this is a written policy and
2 procedure that is applicable across the board for all
3 worksites, then we may see, you know, this presumption. And
4 also same thing for (g)(2), which is a pattern and practice.

5 So it has to be at least two worksites where,
6 you know -- it can be any pattern where we find out that
7 there is a pattern and practice. So it's not based upon
8 just one jobsite for that one. So I just wanted to clarify.
9 I hope that helps.

10 MS. CARDOSO: So, like, with one, if you had an
11 IIPP -- if you had an IIPP that said "fall protection only
12 at 100 feet" and then we secured evidence that that applied
13 to all your worksites, then abatement would be "fix that."

14 And then with two, it'd be if Cal/OSHA secured
15 evidence that there was an unguarded saw that you use at all
16 of your worksites. Each worksite has that saw. There's a
17 pattern and practice of using this violative saw. Abatement
18 would be "put a guard on it, on all of 'em."

19 MS. WONG: Okay. I hope that clarifies your -- okay.
20 So I just wanted to say --

21 MS. CARDOSO: More question.

22 MS. WONG: -- that -- that, Mr. Johnson, that was the
23 second in-person comment. So, Mr. Wick, you'll be the third
24 and then we'll hop over to online comments.

25 MR. WICK: Thank you. Bruce Wick, Housing

1 Contractors.

2 I'd like to respond, maybe what Jessie and
3 Eddie and -- and Denise here talked about. Abatement is our
4 priority; right? 'Cause that's protecting workers. That's
5 why we pushed for the expedited serious appeal, so that
6 contractors, especially, couldn't come in out of state, walk
7 away, and pay a citation later and never have abated. We
8 wanted them to abate.

9 And maybe that's part of what could be, not
10 bifurcated, but worked on here. 'Cause I think a lot of our
11 concern is enterprise-wide. You have 150 HVAC employees out
12 there, somebody making a \$3,000 violation and suddenly it's
13 max or it's double max. Thus, the citation penalty's a real
14 concern.

15 But like the example Jessie gave, if an
16 employer said "you can't wear masks," we don't want Cal/OSHA
17 to have to go to all their sites and get that abated. We --
18 we have to have the ability to abate that now and relatively
19 simply. So I think maybe as -- as we go through, especially
20 when we talk about the penalties and then abatement, maybe
21 that can help inform that decision.

22 I'll speak for myself. You know, the -- the
23 multiple penalties is more the concern. A -- abatement, we
24 should be able to demonstrate that. That's why, you know,
25 putting "substantial evidence" in number 2 I think really

1 helps as well. So I think we can work our way through here
2 'cause we have examples in a -- in a sense, I think, both
3 ways.

4 The Division has to be able to move, especially
5 for abatement, fast when it's clearly, you know, like the
6 examples Denise gave. But the penalties issued and, I mean,
7 when it's multiples, that's -- that's a very big concern for
8 someone who made not a, you know -- I mean, people make
9 mistakes trying to get this thing done sincerely and how do
10 we deal with that. So that's my thought.

11 MS. WONG: Okay. Thank you for your comment.

12 And, Mr. Bland, we do understand you have a
13 comment, but then we will return to be fair, at this point,
14 to online comments before we come back to in-person
15 comments.

16 UNIDENTIFIED HELPER: Great. We have -- I think we
17 have two online commenters.

18 MS. WONG: Okay.

19 UNIDENTIFIED HELPER: Fred Walter is the first of the
20 two.

21 MS. WONG: Mr. Walter, if you'd like to comment.
22 This is for sections 334(g), (g)(1), and (g)(2). If you're
23 speaking, you're on mute.

24 MR. WALTER: Can you hear me now?

25 MS. WONG: Yes.

1 UNIDENTIFIED HELPER: Yeah.

2 MR. WALTER: Okay. Thank you. Sorry about that.

3 Want to go back to Denise's comment about all
4 of your worksites and get an idea about how (g)(1) and (2)
5 would work together as implemented by the Division. We can
6 leave aside rebuttable presumption for the most part for now
7 because we can -- we can assume that that has to do more
8 with litigation than -- than not.

9 But I'm curious, if an employer has a -- a
10 pattern or practice of something illegal or something
11 unregulatory going on at two out of ten worksites, does that
12 mean that the citation would be for all ten worksites or --
13 and would the penalties be calculated for all the employees
14 at all ten worksites or would it be limited, just the two
15 places where there was the same violation found?

16 MS. WONG: The interpretation is that if we find --
17 you're -- you're talking about ten, but all we need is at
18 least more than one, which is two, if we do find a pattern
19 and practice is across the board with regard to that
20 particular employer's job sites. And that's why we would
21 issue an enterprise-wide violation.

22 MR. WALTER: But that's not what the regulation says.
23 It says that it -- involving more than one. Not -- not
24 across the board.

25 MS. WONG: And you're talking about involving --

1 (mumbling).

2 MR. WALTER: Well, I'm wondering -- I'm wondering --

3 MS. WONG: Yes.

4 MR. WALTER: -- if an employer -- if an employer who
5 has somebody screw up in two worksites can lead to penalties
6 and an enterprise-wide violation --

7 MS. CARDOSO: So --

8 MR. WALTER: -- and penalties --

9 MS. CARDOSO: Fred --

10 MR. WALTER: -- that cover every employee and every
11 worksite.

12 MS. CARDOSO: We'll get to the penalties. But this
13 is just -- it's an enterprise-wide citation, if there's
14 evidence of a pattern or practice of the same violation or
15 violations involving more than one of the employer's
16 worksites. And then we'll get to penalties probably after
17 lunch.

18 But right now, yes. Like, if it -- if there's
19 two unguarded saws -- like, there's two worksites, two
20 unguarded saws, abatement will be at all your worksites, "if
21 you're using a saw, it needs to be guarded." If at the two
22 worksites -- I mean, (g)(1) wouldn't apply to your situation
23 because it would be an IIPP, a written policy that governs
24 all the worksites. An abatement would be "correct it and
25 have it" -- like, "have it apply to all your worksites."

1 So, really, your example is more under (f)(2).
2 And the abatement, if it's only two saws that the employer
3 owns at -- and it's just at those two worksites, the
4 abatement would be to put a guard on it.

5 MS. WONG: And also further, just to add to Denise's
6 response, if you're looking at only, let's just say two, and
7 it just happens to be a pattern and practice for only two
8 worksites, that's maybe where your rebuttable presumption,
9 your arguments are during litigation and not necessarily,
10 you know, a concern of the overall language that's being
11 presented here. It is a rebuttable presumption. You can
12 bring in facts, just like any other case.

13 I hope that helps in clarifying your concerns,
14 Mr. Walter.

15 MR. WALTER: Thank you. I -- I would hope that one
16 of our concerns would be to write these regulations so that
17 we don't need to go to the Appeals Board. I -- I think
18 we're going down that road at this time.

19 MS. WONG: Understood. I appreciate your comment.

20 Do we have a second comment?

21 UNIDENTIFIED HELPER: We do. Mitch Steiger has his
22 hand raised, with CFG.

23 Go ahead, Mitch.

24 MR. STEIGER: Thank you. Mitch Steiger with CFT.

25 Just really wanted to echo the comments of

1 Jessie and Eddie and their thoughts on this in a few ways.
2 The first is that I think Jessie mentioned something about
3 how this follows the -- the statute pretty well. It --
4 it -- as far as I can tell, it follows the statute pretty
5 much word-for-word. There's even some language in statute
6 that isn't in this.

7 So while I'm also like -- like Brian Little,
8 unburdened by a law degree, my understanding of the way this
9 works is that, since this is in statute, there's not really
10 much we can do here, even if we wanted to. Or I would argue
11 we shouldn't -- to weaken this, that this is pretty much the
12 law. This is just taking language that's already there and
13 moving it over here for clarity sake.

14 The second point I wanted to make was to this
15 question of where one worksite ends and the other begins.
16 That's an issue that already exists with every single
17 standard that Cal/OSHA enforces that is probably bigger than
18 this regulation here.

19 An inspector or an ALJ who's been around for a
20 while could probably tell you about how this has been
21 handled in the past, and it's probably gonna be a
22 case-by-case basis where you may have -- where you do have
23 four buildings on one site. There are probably some cases
24 where those are different worksites, given the size of it,
25 or there are probably cases where it's all one thing. And

1 there are probably too many variables involved for us to
2 come up with something here that could solve that problem
3 for all eternity in all cases. But I -- I'm sure it's come
4 up before and they -- they have found a way of dealing with
5 those.

6 And then, finally, the question of whether
7 there should be a small business exemption. We would argue
8 it's unnecessary because the Cal/OSHA penalty structure
9 already very much does account for employer size in
10 determining what a penalty is going to be.

11 And that from the perspective of those workers,
12 there -- you know, for every worker, that's the whole world.
13 And we don't need to -- we should be really careful that we
14 don't weaken the standard for those who are employed by
15 smaller employers. It's just as important that they're kept
16 safe on the job. So we would argue against any additional
17 language being put in on that front.

18 MS. WONG: Okay. Thank you for your comment.

19 I believe we have room for a third online
20 comment.

21 UNIDENTIFIED HELPER: At this time we have no further
22 hands raised for comment.

23 MS. WONG: Okay. Thank you.

24 And do we have any in-person comments?

25 Yes. Mr. Bland.

1 MR. BLAND: Thank you. Kevin Bland again.

2 So I know we've [sic] putting a lot of stock in
3 this rebuttal but -- presumption issue here, but let's kind
4 of talk about how that would work and where -- what are we
5 trying to rebut? It's rebuttable presumption that a
6 violation is enterprise-wide if an employer has multiple
7 worksites and either of the following are true; right? So
8 what does that mean?

9 We have to rebut -- number one, it says
10 "either." So it isn't both. So forget about number two.
11 Basically, you have two worksites. Yeah, you can try to
12 argue you don't have 'em, but construction company probably
13 has more than two jobs going in different cities, maybe. So
14 you can't rebut that.

15 And then you have an employer has a written
16 policy or procedure that violates sections, whatever. So
17 basically a Title 8 regulation; right? Now, that's all.
18 You're done. You're enterprise-wide violation. So what are
19 you rebutting? You have to rebut the violation itself,
20 frankly.

21 So if there wasn't a violation, then it's gone.
22 If there is, it's enterprise and you got 200 locations and
23 you got the same IIPP. Usually, you have one IIPP for a
24 company that regulates everything. So that's -- rebuttal
25 doesn't do us anything here, really.

1 I understand if this was "and pattern and
2 practice," the same type of violation or violations. If it
3 was an "and," that gives a little bit to rebut 'cause then
4 you can get into all these things we keep talking about, is
5 there substantial evidence of pattern and practice.

6 But I see, in my practice, almost every
7 citation package has "your IIPP was ineffective" because
8 something happened. "Your IIPP was ineffective because" --
9 so how -- rebutting whether it was effective or ineffective,
10 we're fighting that constantly. And now, all of a sudden,
11 it becomes enterprise; right?

12 And this doesn't distinguish between general
13 and serious, is my understanding; right? Even a general
14 violation; right? If -- and so in this context, the way
15 this is written and -- you know, it's a shame, I guess, if
16 it follows the Senate bill.

17 I don't -- I think someone doesn't -- didn't
18 understand exactly the long reach and figure -- they were
19 trying to capture these big issues. Like, "Hey, I've got,
20 you know, five places where everyone is supposed to, you
21 know, have this saw guard. They've got 'em in six different
22 factories and they're not -- they only fix it here and
23 they're leaving it open" -- I get that. But that -- this
24 captures any violation if you have more than one worksite.
25 And I don't think that was the intent.

1 And by the way, the abatement part's pretty
2 easy. If you have language that's missing -- let's say
3 you're missing an element in your IIPP, you fix that. It's
4 fixing them all because the IIPP applies. But should there
5 be this outrageous -- now, we're going to get to penalty in
6 a little bit because -- as you talk to Fred. But that's the
7 issue here, the way this is written. It is intended to fix
8 something bad, and it is going so far to punish folks that
9 are good. And that -- you know, it's like throwing people
10 in jail for jaywalking, you know, and that's an issue.

11 MS. WONG: And if I understood -- thank you for your
12 comments, Mr. Bland. Just to clarify, the presumption is
13 not simply if you have multiple worksites and we're done, we
14 can automatically -- we have that presumption. It's --

15 MR. BLAND: (Indiscernible)

16 MS. WONG: Oh, okay. I just want to make sure if
17 I -- I may have missed your statement.

18 MR. BLAND: That was one element.

19 MS. WONG: Okay.

20 MR. BLAND: Then the next element -- 'cause you only
21 have to do one or two. You don't have to do both.

22 MS. WONG: Mm-hmm.

23 MR. BLAND: And then you have a violation of a safety
24 order based on a written policy or procedure.

25 MS. WONG: But it is and/either. So we -- I

1 understand the second part, you know, it's one or the other.
2 But then for the presumption itself, it has to be both,
3 which is that you have to have multiple worksites and 1 or
4 2. So it's not simply, "Oh, I have multiple worksites, now
5 I'm vulnerable to" --

6 MR. BLAND: That isn't what I said.

7 MS. WONG: Okay. I just want to know -- clarify.

8 MR. BLAND: Look, first thing is multiple worksites.
9 You got two places. You're done there. Then you go on to 1
10 and 2. All you have to do is one. Once you issue a
11 citation, you've got one. So then we have to fight the
12 citation itself to overcome the rebuttal.

13 MS. WONG: Okay.

14 MR. BLAND: Both presumption.

15 MS. WONG: So that -- that's also a presumption on
16 number 1 that it -- the written policy is across the board.
17 So --

18 MR. BLAND: Well, it shifts the burden to us to prove
19 the violation doesn't exist. You guys are off the hook.

20 MS. WONG: Okay.

21 MR. BLAND: You know, that -- from -- from a
22 practical standpoint.

23 MS. WONG: Okay. Thank you. I appreciate your
24 comments.

25 Any other further in-person comments with

1 regard to subsection -- yeah -- so G, 334(g).

2 MR. DONLON: Mike Donlon.

3 Just one other thing I thought of is whether
4 multiple employer worksites -- and I had this happen to a
5 client a couple years ago. They hired a really horrible
6 subcontractor who ended up getting cited. They ended up
7 getting rid of them. Never gonna hire them again. But then
8 are you gonna presume that the other subcontractors or the
9 other sites are doing the same thing?

10 So there's a little glitch there that could
11 happen with multi-employer worksites where, you know, you
12 have different subcontractors at different sites performing
13 differently.

14 MS. WONG: Understood. Thank you for your comment.

15 Is there a third in-person comment with regard
16 to 334, subsection G, at this time?

17 And seeing none, I just want to make sure we
18 give an opportunity for online comments and response.

19 UNIDENTIFIED HELPER: At this time we have no
20 additional hands raised.

21 MS. WONG: Okay. So seems like this is perfect
22 timing. I don't know if that's because everyone's looking
23 at the -- the -- the clock. Oh, there is. There is an
24 online comment. Oh, Mr. Sommer. Okay.

25 So, Mr. Sommer, you have a comment?

1 MR. SOMMER: Yes, I did want to just follow up on
2 Kevin Bland's comment about (g)(1). And I didn't catch this
3 initially. I, you know, assumed that (g)(1) referred to a
4 written policy or procedure, that it was confirmed, would
5 apply across multiple worksites. But that's not stated
6 here.

7 I do think that needs to be clarified. I think
8 that's the intent that you're going to have a single policy,
9 it could be an IIPP or anything else in writing that it --
10 are -- are confirmed to apply across all operations. There
11 are businesses that might have different policies by
12 location. And those written policy, you know, shouldn't be
13 construed under those circumstances to trigger (g)(1).

14 MS. WONG: Understood. Okay. Thank you for your
15 comment.

16 Any other further online comments?

17 Okay. So we will now break for lunch from
18 12:00 to 1:00. Sorry, we lost five minutes. But please do
19 return at 1:00 o'clock. We will have maybe the -- the
20 agenda up so that people are ready to go at 1:00 o'clock for
21 the afternoon session for comments for the remainder of the
22 sections. And I think we'll see everyone at 1:00 o'clock.

23 (Lunch recess)

24 MS. CARDOSO: Hi. We're back from lunch. Thank you
25 for returning.

1 We did receive feedback during the break. And
2 the second session will be more -- there'll hopefully be
3 more dialogue between the stakeholders and the Division, the
4 various stakeholders. And when you provide comments, if you
5 could also, if you have proposed language or suggestions,
6 please also offer that as well. And we will be -- Rachel
7 will be taking notes on your comments. So please keep that
8 in mind when you're making your comments.

9 And, yeah. So we're ready to go. And this --
10 the second session will end at 3:00 o'clock because, you
11 know, a few of the people here in person have flights they
12 have to catch. So -- otherwise we would continue on.

13 MS. WONG: Oh --

14 MS. CARDOSO: So let -- let's go. I think we're
15 on --

16 MS. WONG: I forgot to check in.

17 MS. CARDOSO: -- calculations now.

18 MS. WONG: Oh.

19 UNIDENTIFIED: Your flight?

20 MS. WONG: Yeah. I hope they don't kick me off.

21 MS. CARDOSO: Are we ready or --

22 MS. WONG: Yes. Sorry.

23 MS. CARDOSO: Okay.

24 MS. WONG: So pursuant to agenda -- I apologize.
25 It's not on the screen. But we will move forward with

1 section -- comments for section 335(d).

2 MS. CARDOSO: Okay.

3 MS. WONG: Sorry. Something?

4 MS. CARDOSO: Okay. Yeah. We're good.

5 MS. WONG: Are we showing -- yes. And on the screen
6 is subsection D. That is actually 335(d). Can you
7 highlight?

8 MS. BRILL: Yeah. Sure.

9 MS. WONG: (Indiscernible)

10 MS. BRILL: Okay.

11 MS. WONG: So the comments for the section is
12 highlighted. So we'll start off with any comments from
13 in-person participants.

14 And just really quickly, this one really
15 changes the look-back period from three years to five years.
16 This is for 335(d). 335 are the factors of -- for the
17 classifications related to the citations. And subsection D
18 is in regard to the history of previous violations. So,
19 again, they -- the main amendments here are changing the
20 three-year look-back period to five.

21 Seeing no in-person comment, are there any
22 online comments?

23 UNIDENTIFIED HELPER: No online comments at this
24 time.

25 MS. WONG: Okay. So apparently that is not that

1 controversial. So we shall move forward.

2 MS. CARDOSO: Just kidding.

3 MS. WONG: Oh, oh, oh, Mr. Bland has a comment.

4 MR. BLAND: A question first. Was this changed based
5 on the Labor Code?

6 MS. WONG: Yes.

7 MR. BLAND: It was mandated to be changed?

8 MS. WONG: Well, this is to be consistent with the
9 language that is already in place. I think for some of the
10 regulations and statutes, Government Codes. And also, it is
11 consistent what the repeat language -- and I'm going off the
12 top of my head. I think repeat language and somewhere
13 elsewhere the look-back period is five years. So it's to
14 stay consistent.

15 Also Fed/OSHA has a look-back period of five
16 years. So, you know, I'm sure you're aware that Cal/OSHA
17 regulations have to be at -- at least as effective as
18 Fed/OSHA. So we are also being -- staying consistent with
19 Fed/OSHA.

20 MS. CARDOSO: This should have been changed with the
21 repeat regulation and it wasn't. I was part of the repeat
22 regulation team so...

23 MR. BLAND: And -- oh --

24 MS. CARDOSO: That's on me.

25 MR. BLAND: And --

1 UNIDENTIFIED: Clean up.

2 MS. CARDOSO: Yeah, this is clean up.

3 MR. BLAND: Okay.

4 MS. CARDOSO: This is --

5 MS. BRILL: That's correct.

6 MS. CARDOSO: That's exactly what it is.

7 MS. WONG: That was a short answer.

8 MR. BLAND: So I'm just trying to see, what is the

9 distinction between "good" and "fair"?

10 MS. CARDOSO: Oh, that seems wrong.

11 MR. BLAND: Yeah, something doesn't seem right. I

12 don't have the -- I don't have the --

13 MS. WONG: But it's always been like that.

14 MR. BLAND: -- online version that --

15 MS. WONG: It's always been like that.

16 MS. CARDOSO: Yeah. Also "poor," you know?

17 MS. WONG: Yeah.

18 MS. CARDOSO: It's all the same.

19 MS. WONG: Yeah, it's all the same language.

20 MR. BLAND: Yeah.

21 UNIDENTIFIED: Yeah, they're all the same.

22 (Inaudible talking)

23 MR. BLAND: A -- yeah, there is an "A" instead of

24 "no." So poor, if you only had one serious if you're over a

25 hundred employees. Which -- yeah. No, it doesn't say

1 "per." If you have more -- it says "within the last" --
2 sorry.

3 (Inaudible talking)

4 MS. WONG: That's weird. Did we copy that over
5 incorrectly? Let me just check --

6 MS. BRILL: I don't know.

7 MS. WONG: I'm checking online. Am I even online? I
8 forgot. I am online. Sorry. 335. 335(d).

9 MS. CARDOSO: Oh, yeah, it's --

10 MS. WONG: Yeah, I'm gonna do that too.

11 MS. CARDOSO: -- it's wrong. Yeah. It's wrong.

12 MS. WONG: I think we copied it over incorrectly.

13 MS. CARDOSO: So the regulation reads -- this is a
14 typo.

15 UNIDENTIFIED: Yeah, it's a typo.

16 MS. CARDOSO: So good is less than one general or
17 regulatory violation per 100 employees at the establishment.
18 Fair is less than 20. And then poor is more than 20. Yeah.

19 MS. BRILL: Is it okay if I just add this in?

20 MS. CARDOSO: Yeah.

21 MS. WONG: Yeah.

22 MS. BRILL: Yes, I'm -- I'm working on that --

23 MR. BLAND: Okay.

24 MS. BRILL: -- in just a second. Yeah.

25 (Inaudible talking)

1 MS. CARDOSO: Yeah, no.

2 MS. BRILL: There's some kind of formatting situation
3 going on here, the real problem.

4 (Inaudible talking)

5 MS. BRILL: Yes, it does. Yeah. There we go.

6 (Inaudible talking)

7 MS. BRILL: No, actually, I don't. Yeah. But I -- I
8 think it's because it was copied in as a table, actually.
9 If you want to go through the Microsoft Word of it all.
10 It's actually here.

11 MS. CARDOSO: Oh.

12 MS. BRILL: It was already there. It was just cut
13 off. There we go.

14 MS. CARDOSO: Oh, okay. All right.

15 MS. BRILL: There's some kind of formatting --

16 MS. CARDOSO: That's strange.

17 MS. BRILL: -- nonsense. But here's -- here's what
18 it's supposed to look like.

19 MS. CARDOSO: Okay.

20 MS. BRILL: Apologies.

21 MS. WONG: Thank you for pointing that out.

22 MS. CARDOSO: Good attention to detail, Mr. Bland.

23 MS. WONG: You get one brownie point.

24 (Inaudible talking)

25 MS. WONG: Well, I was gonna give you 0.5, so -- and

1 so thank you for that.

2 But any other further comments in person?

3 (Inaudible talking)

4 MS. WONG: Okay. No making up things.

5 MR. BLAND: The last five years, a serious
6 (indiscernible) does that mean one serious per 100 or just
7 any serious?

8 MS. CARDOSO: No serious repeat or willful violations
9 in less than one general (indiscernible).

10 MS. BRILL: As serious. Yeah.

11 Right. That's not super clear. It should
12 probably say one.

13 MR. BLAND: Yeah. In that section we have, remember,
14 earlier in our language (indiscernible) one (indiscernible)
15 very few employers at least in (indiscernible) that are less
16 than a hundred. Once in a while you have (indiscernible).

17 MS. WONG: Okay. Okay. So thank you for that -- for
18 catching that.

19 MS. CARDOSO: And this is how we calculate history
20 for the adjustment factor.

21 MR. BLAND: Yeah. Yeah. (Indiscernible)

22 MS. CARDOSO: Yeah.

23 MS. WONG: But if there are no further comments on
24 section 335, subsection D, we will move on to comments for
25 the next section. Sorry.

1 MR. WICK: What is it saying? We're not clear what
2 your --

3 MS. CARDOSO: It just change -- the only change we
4 made was three to five years and then Rachel put a comment
5 that --

6 MS. BRILL: It'd be good to clarify the --

7 MS. CARDOSO: Clarify that it's one.

8 MS. BRILL: -- "A" means one.

9 MS. CARDOSO: Yeah.

10 MR. BLAND: Okay. And then can we clarify the per
11 100? Is it --

12 MS. CARDOSO: This -- so how would you clarify it?

13 MR. BLAND: We would -- either put it in there twice
14 or put a period after 20 -- and then this is calculated per
15 100 employees at an establishment.

16 MS. WONG: So --

17 MR. BLAND: At --

18 MS. CARDOSO: "At each establishment"? No.

19 MR. BLAND: Yes. 'Cause it's per 100 employees at
20 the establishment; right?

21 MS. CARDOSO: At each establishment?

22 MR. BLAND: No.

23 MS. CARDOSO: No.

24 MR. BLAND: So this is only applying to one
25 establishment 'cause the citation would only apply to one, I

1 presume; right?

2 MS. CARDOSO: Right.

3 MR. BLAND: Okay. So "within the last five years,
4 one serious repeat or willful violation or more than 20
5 general or regulatory violations," period.

6 MS. CARDOSO: Oh.

7 MR. BLAND: This is calculated by -- per 100
8 employees at the establishment, or something to that effect.
9 So it's clear that it modifies both.

10 MS. BRILL: Yes, that's what I was gonna say.
11 You're -- you're -- suggesting clarifications to make it --

12 MR. BLAND: Modify -- make sure --

13 MS. BRILL: -- evident that -- yeah.

14 MR. BLAND: -- that -- yeah. Evident that it -- that
15 it applies to --

16 MS. WONG: Modifies to all of them.

17 MS. BRILL: It -- it approach -- it -- it looks back
18 at both of them.

19 MR. BLAND: Yes. And the same -- all of those could
20 be --

21 MS. CARDOSO: Yeah.

22 MR. BLAND: Yeah. And that was kind of what we're
23 talking about earlier when we're talking about --

24 MS. CARDOSO: Right. (Indiscernible)

25 MR. BLAND: Yeah. That -- that -- yeah.

1 MS. CARDOSO: So then we would have to see what
2 Fed/OSHA does in their FOM, their federal operations manuals
3 there.

4 MR. BLAND: Remember, it's "at least as effective
5 as," not "same as." We've been down that road for last --
6 unfull protections. Yeah.

7 MS. WONG: So thank you for those comments, again.
8 And so at this point -- unless there's online
9 comments?

10 UNIDENTIFIED HELPER: No -- no online comments at
11 this time.

12 MS. WONG: Thank you.

13 So we'll move on to comments for section 336,
14 subsection (d)(13). And we will have that on the screen for
15 everyone in a moment and we'll -- yeah. This is D --

16 MS. BRILL: Yep.

17 MS. WONG: Okay. And so we're highlighting that.
18 Again, underscored language means that we are proposing to
19 add this language.

20 So in-person comment, we'll start with that.

21 Mr. Wick.

22 MR. WICK: Bruce Wick --

23 MS. CARDOSO: Wait. I'm sorry. We skipped -- oh,
24 no. No. Those -- you're -- you're focusing only on the
25 substantive changes.

1 MS. WONG: Yeah.

2 MS. CARDOSO: Okay. Yeah.

3 MS. BRILL: Okay.

4 MS. CARDOSO: Oh, well, we should actually cover --

5 I'm sorry. We did another clean-up on (d)(5).

6 MS. BRILL: Of 335.

7 MS. CARDOSO: And this was the carcinogen

8 (indiscernible) --

9 MS. BRILL: Oh, no, 336.

10 MS. WONG: Yeah, 'cause --

11 MS. CARDOSO: Yeah.

12 MS. BRILL: Yeah.

13 MS. WONG: I think that was a section 100 and so

14 something was left off and so it's a continuation of section

15 100. Do you want to go through that?

16 MS. CARDOSO: I just wanted to simply notice, in case

17 anyone had comments of why we're making that change.

18 MS. BRILL: It -- it's -- sorry. My mouse is slow.

19 What's highlighted there is (indiscernible).

20 MS. WONG: And just really quickly for everyone's --

21 the language that has been stricken is because it's

22 referring to a subsection (C)(2) that no longer exists. It

23 was actually stricken back in 2017 to be in compliance with

24 the law that had changed at the time. So that is why this

25 has been changed. This is some housekeep -- cleaning --

1 keeping. Cleaning?

2 MS. CARDOSO: (C)(2) -- (C)(2) exists. It just --
3 it's -- the section that used to exist -- (C)(2) used to
4 refer to carcinogens and it had a cap, a penalty cap. And
5 there was a statute that passed in 2017 that eliminated that
6 cap. But we didn't make the change down here. So it's
7 created confusion in the calculation of carcinogen
8 penalties. So we're just doing housekeeping here.

9 MS. WONG: So --

10 MR. BLAND: Basically (indiscernible) change that
11 results in (indiscernible) serious (indiscernible).

12 MS. CARDOSO: No, not 21,000 --

13 MS. WONG: No.

14 MS. CARDOSO: -- at least 18,000.

15 MR. BLAND: Well --

16 MS. CARDOSO: Or not at least. There's no adjustment
17 factors; right? So to --

18 MR. BLAND: Yeah, but that means all adjustment
19 factors (indiscernible) and so the serious -- well, that's
20 (indiscernible).

21 MS. CARDOSO: Yeah, that's -- it's (d)(5).

22 MS. BRILL: Sorry. (Indiscernible) focus here. Here
23 it is.

24 UNIDENTIFIED: (Indiscernible) right?

25 MS. CARDOSO: Yeah.

1 UNIDENTIFIED: It bumped to 18.

2 MS. BRILL: Yeah.

3 MS. CARDOSO: It bumped to 18.

4 UNIDENTIFIED: (Indiscernible)

5 MS. CARDOSO: Yeah.

6 MS. BRILL: Yeah. And the numbering changed. So we
7 had to remove the cross-reference.

8 MR. BLAND: Can we say (indiscernible) \$18,000.

9 UNIDENTIFIED HELPER: Hey, guys. Just wanted to make
10 a quick interruption. The viewers online are having a hard
11 time hearing you. So when you speak, if you could please
12 just talk into the microphone and then --

13 MR. BLAND: (Indiscernible)

14 UNIDENTIFIED HELPER: And there you go. Thank you.

15 MR. BLAND: So what I was saying was maybe it would
16 be more -- clearer to say, "Serious violation respecting use
17 of carcinogen, the penalty for any serious violation
18 respecting the use of a carcinogen shall not exceed
19 \$18,000."

20 MS. CARDOSO: But if incent and likelihood is high,
21 then I think it would. So, yeah. But we'll -- we'll take
22 your comment down and --

23 MR. BLAND: Yeah. 'Cause I'm trying to figure out
24 what we're eliminating then.

25 MS. CARDOSO: Just the application of the adjustment

1 factors.

2 MR. BLAND: All of 'em?

3 MS. CARDOSO: Yeah.

4 MR. BLAND: So then if that's the case, the
5 adjustment factors, if you eliminate every adjustment
6 factor, that also includes (indiscernible) but it says the
7 penalty not -- shall not exceed 25. So 25,000 is your max.

8 MS. CARDOSO: But it says "reduced."

9 MR. BLAND: Right.

10 MS. CARDOSO: "Shall not be reduced." Okay. But
11 we'll look at it.

12 MR. BLAND: Yeah, take a look.

13 MS. CARDOSO: We'll (indiscernible) yeah. These
14 calculation regulations are tricky.

15 MR. BLAND: Mm-hmm.

16 MS. WONG: Okay. And then -- I just want to make
17 sure -- everyone gets a chance. So this was not on the
18 agenda originally. But then with regard to eliminating the
19 language earlier related to carcinogens, are there any
20 online comments?

21 There's no -- okay. So it seems like there are
22 no online comments. So we will just move on to comments for
23 section 336(d)(13).

24 It shrunk. Oh, sorry. We'll start with
25 in-person comment, with Mr. Wick.

1 MR. WICK: Thank you. Bruce Wick.

2 Again, this is what we alluded to earlier, the
3 difference with enterprise-wide penalties are kind of a
4 different consideration or perspective than abatement.
5 Because we really want abatement -- abatement and compliance
6 are how we protect workers. And I -- I -- as we have talked
7 about, enterprise-wide could be, I miss -- somebody says
8 three parts of my IIPP are not affected in the CSHO's
9 opinion. And now we have a penalty and we can't even get it
10 adjusted by 40 percent.

11 And as Kevin said, most of enterprise-wide are
12 gonna be a hundred employees or more. So someone gets zero
13 who made a mistake. We want to go over the bad actors who
14 aren't abating, you know. And we -- we don't want to chase
15 them down to abate for all locations. So I would suggestion
16 we remove 13 because an employer enterprise-wide for penalty
17 should get those credits if they are available.

18 MS. WONG: Okay. So thank you for that comment. And
19 just curious, would you eliminate it for all enterprise-wide
20 or just enterprise-wide general regulatory?

21 MR. WICK: (Indiscernible)

22 MS. WONG: Okay. Just curious.

23 And are there any further in-person comments?

24 MR. BLAND: To support that, you're gonna get the
25 money in the -- coming up when we start talking about F,

1 when its multiplier starts going in whatever it ends up
2 being. So kind of like a -- a double whammy. One, you
3 can't reduce it under this one if we don't eliminate 13.
4 And then, two, when we get to F, we'll talk about it, it's
5 gonna be separate penalty for each location, facing a
6 failure.

7 MS. WONG: Thank you for that comment.

8 Any other online -- in-person comments?

9 Okay. Mr. Johnson.

10 MR. JOHNSON: Steve Johnson.

11 Just to support what Bruce and Kevin are saying
12 and -- and I think I -- I agree wholeheartedly with the
13 abatement portion. The goal is for abatement to -- to have
14 the bad behavior to stop. And -- and then maybe give a bad
15 employer a chance to correct and do good business. Because
16 I think the goal should be to fix the bad behavior and abate
17 and not put the employer out of business.

18 MS. WONG: Thank you for that comment.

19 So we had three in-person comments.

20 (Indiscernible) section 33 -- sorry. 336(d)(13), any online
21 comments?

22 UNIDENTIFIED HELPER: No online comments at this
23 time.

24 MS. WONG: Okay. So -- unless there's any further
25 comment, we'll move on to the next section, which is

1 comments for sections 336(e), as in "Edward," 1, 2, and 3.
2 So it'll be displayed on your screen moment --

3 MS. BRILL: It's there.

4 MS. WONG: It's there. I know -- momentary --

5 MS. BRILL: (Indiscernible) I can can't show -- I
6 can't highlight the whole thing (indiscernible).

7 MS. WONG: Oh, okay. So it's 336(e), as in "Edward,"
8 1, 2, and 3. And it is now on your screen. So we'll open
9 it up for any in-person comments.

10 Mr. Wick.

11 MR. WICK: And maybe there's nothing we can do about
12 it, again, this -- you know, there's 1.4 million employers,
13 technically, who need to read this and understand it, and we
14 have a double negative for things not -- under (e)(2) for
15 things not listed, "the Division shall not grant unless." I
16 don't know if there's a way to make that easierly -- more
17 easily readable. I mean, it's fine, the intent. I'm just
18 saying we confuse people when we double negative it and then
19 given "unless."

20 MS. WONG: Okay.

21 MR. BLAND: How about no -- "50 percent abatement
22 credit is granted unless the employer has done one." That
23 may be a little bit cleaner language.

24 MS. WONG: Okay. Thank you for that suggestion.

25 Any other suggestions?

1 Oh, and Mr. Bland.

2 MR. WICK: Yeah. And also on one -- I just wanted to
3 say, we get this 'cause this is basically saying, hey, on
4 the general violations now -- okay. On the general -- on
5 the general violations now, if we get 13 eliminated, this
6 gives, also, further incentive.

7 So once they've abated -- either abated prior
8 to issuing the citation or abated within the time period on
9 the violation, kind of like what we end up in expedited now,
10 then that abatement credit would -- would be warranted. If
11 it's not abated, then there's none. Where the presumption
12 before, as it's about now in generals, is presumed.

13 So that's -- that makes sense in this context
14 if we get rid of 13, which takes all -- all analysis of the
15 reduction penalty away.

16 MS. WONG: Okay. So any other comments? In-person?

17 Okay. We'll move on to any online comments for
18 sections 336(e)(1) through (3).

19 UNIDENTIFIED HELPER: We have one online commenter,
20 Megan Shaked.

21 MS. WONG: Okay. Ms. Shaked.

22 MS. SHAKED: Hi, everyone. I apologize in advance if
23 I'm just reading this a little incorrectly, if my eyes are
24 going cross -- crosswise. But I'm seeing in the underlines,
25 under (e)(1), reference to enterprise-wide general and then

1 in the last sentence a reference to violations classified as
2 egregious general, repeat general, or willful general are
3 not subject to an abatement credit.

4 I don't know if that first one was
5 intentionally "egregious general" or should that be
6 "enterprise-wide general." What the -- I just was -- was
7 wanting to clarify what the intention of that was.

8 MS. WONG: Mr. Bland would like to respond to that --
9 that question.

10 MR. BLAND: I -- I can answer that, I think. The
11 reason it says "enterprise-wide general" is because there's
12 not an automatic abatement credit on seriouses. There has
13 been, traditionally, on generals. And so they're saying
14 when it's enterprise-wide general, you don't get that
15 automatic. You have to prove you abated it. I think that's
16 why that is written as only for the generals because it
17 doesn't apply in the context of serious.

18 And then under egregious below, they've added
19 to the list, which has traditionally been their repeat
20 general and willful general, you can't get abatement
21 credits. And now they've added if it's an egregious
22 general, then it's not. Which, really, I can understand
23 what you're saying, whoever the -- Megan. Because egregious
24 can't be general 'cause egregious is willful. So I don't
25 know why that's there.

1 MS. SHAKED: I guess -- yeah --
2 MR. BLAND: It makes no sense.
3 MS. SHAKED: -- I guess it was creating all my
4 confusion, but --
5 MR. BLAND: What?
6 MS. CARDOSO: You can have a willful --
7 MS. SHAKED: Thanks, Kevin.
8 MS. BRILL: Yeah. Yeah, I guess you can have it.
9 MS. CARDOSO: You can have a local general.
10 MR. BLAND: Yeah, I guess you can have willful
11 general. That's right. You just don't see 'em that often.
12 MS. WONG: (Indiscernible)
13 MR. BLAND: Yeah. Yeah.
14 MS. CARDOSO: Yeah.
15 MS. WONG: Okay. So, Ms. Shaked, does that answer
16 your question?
17 MS. SHAKED: I think so. Thank you.
18 MS. WONG: Okay. And so is there a second comment,
19 again, with 336, section (e)(1) through (3)?
20 UNIDENTIFIED HELPER: No other online commentators at
21 this moment.
22 MS. WONG: And we'll return back to an in-person
23 comments.
24 Seeing none, we will move on to comments for
25 section 336(f), as in "Frank." And it is now on your screen

1 for those attending online and in in-person, and it's being
2 highlighted at this point.

3 So again, the language is largely original, and
4 language underscored is what is being proposed to being
5 added.

6 So we'll start off with any comments in person,
7 with Mr. Wick.

8 MR. WICK: Just to confirm, based on this, that if
9 you appeal a citation, the abatement is stayed until the
10 final order. That's why we have the expedited under
11 serious.

12 MS. CARDOSO: It should be. Yeah.

13 MR. WICK: Just want to make sure --

14 MS. CARDOSO: Yeah.

15 MR. WICK: -- that doesn't fall through.

16 MS. WONG: Oh, sorry. Mr. Donlon --

17 MS. CARDOSO: So failure to abate is -- oh, sorry.
18 Failure to abate is a separate type of citation. Yeah. So
19 then we would have to then go back and issue a failure to
20 abate citation.

21 MS. WONG: And, Mr. Donlon, you had a comment.

22 MR. DONLON: Yeah, I have a little concern here
23 'cause, you know, sometimes these violations take a while to
24 abate. So what is timely -- and sometimes all the employer
25 can do is block off the area or lock out a piece of

1 machinery or do something. We're not really abating,
2 they're protecting their employees, but they're not getting
3 that final abatement done, necessarily, if they have to hire
4 a contractor to come in to do something or purchase a new
5 piece of machinery.

6 And so I think it's -- you know, we need to
7 have some language in here to recognize that, that, you
8 know, fail -- abate or make the area safe. Something to
9 that nature. 'Cause sometimes that's -- what you do
10 initially is you do an interim something --

11 MS. CARDOSO: Yeah. And we -- and we have a
12 regulation that governs, like, long-term abatement where we
13 put conditions in place while the employer is, like --
14 especially when the abatement requires engineering. So
15 we -- there are regulations, I want to say 340.4, that
16 govern, like, that situation --

17 MR. DONLON: Okay.

18 MS. CARDOSO: -- already that would account for that,
19 where you enter into, like, long-term abatement plans.
20 Where -- where you wouldn't be subject, you know, 'cause
21 you're -- we -- we're working together.

22 MR. DONLON: Yeah.

23 MR. BLAND: Just -- just to clarify, Michael -- Mike.
24 My understanding of the application of this, this isn't
25 during the inspection. Timely abatement is there's been --

1 by operation of law the -- it has become final and then
2 there was abatement period set forth that was -- usually
3 it's anywhere -- 10 days, 30 days, or by op -- or by final
4 order and it says within 30 days. And that's when -- and
5 after that 30-day window is when that -- let's say it's by
6 order, unless there's some other thing specified in the
7 order, that's when the failure to abate would start.

8 MS. WONG: 'Cause we do have a language -- just in
9 response to what you're saying, Mr. Bland, this is timely
10 abate. So it's not simply, you know, not abating, it's the
11 timing. So there's a time period they'll tend to languish.
12 I don't know if that -- that helps, Mr. Donlon. No?

13 MR. BLAND: What does "timely" mean? Timely means
14 based on the order or -- or based on the time set once a
15 citation's been finalized?

16 MS. WONG: Okay.

17 MR. BLAND: Right?

18 MS. CARDOSO: I think so.

19 MS. WONG: So, yeah, there's some interpretation
20 open. So we can maybe add a comment as note to clarify
21 maybe what timely means.

22 MR. BLAND: May -- maybe a sentence at the end that
23 says "timely abatement is based upon the time set forth in
24 the final order or by operational law." Something to that
25 effect.

1 MS. WONG: Okay. Appreciate that suggestion.

2 Any other in-person comments?

3 Okay. Seeing none, just want to make sure that
4 we don't have any online comments in response to the
5 discussion in person.

6 UNIDENTIFIED HELPER: No online comments at this
7 time.

8 MS. WONG: Okay. Thank you.

9 And so we will move on to comments for section
10 336(f), as in "Frank," (5). And that's being highlighted on
11 your screen. And, again, this whole entire section is
12 under -- underlined -- excuse me -- so that is being
13 proposed as additional language.

14 And we'll start off with any in-person
15 comments.

16 (Inaudible talking)

17 MS. WONG: Oh, oh, so there's -- sorry. Okay. So at
18 this point we don't have any in-person comments. So are
19 there any online comments with regard to section 336(f)(5)?

20 UNIDENTIFIED HELPER: We have one online commenter.

21 Fred Walter, if you could please unmute your
22 microphone.

23 MR. WALTER: Thank you. Thank you. I think I have.

24 I'm curious about this language "in proportion
25 to the extent that the enterprise-wide violation has been

1 abated." Are we talking about workplaces or are we talking
2 about machines? What are we talking about here?

3 MS. WONG: If I remember correctly, this is regarding
4 workplaces, worksite, not specific machines. So if there's
5 a guarding issue at a particular worksite and it does have
6 an impact of cost, you know, the board would like, you know,
7 certain worksites that are covered, then it would be by
8 worksite.

9 MR. WALTER: Good to know. We might want to add some
10 language to the section to say that more clearly.

11 MS. WONG: Okay. So we're just curious, any language
12 you would suggest?

13 MR. WALTER: I just throw in the word "workplace."
14 "In proportion to the extent that the enterprise-wide
15 violation has been abated by workplace," or something to
16 that effect.

17 MS. WONG: Okay. Thank you.

18 And I wanted to see if there's any further
19 online comments with regard to 336(f)(5).

20 UNIDENTIFIED HELPER: No other online commenters at
21 this moment.

22 MS. WONG: So in response to Mr. Walter's comment and
23 suggestions, are there any in-person comments?

24 MS. BRILL: Mr. Walter, did I get that right, what
25 you were suggesting?

1 MR. WALTER: Let me see if I can -- bear with me.
2 "Maybe at language to clarify that. Add the word 'workplace
3 in proportion to the extent that the establishment-wide
4 violation'" -- mmm, probably not. Yeah. It probably
5 should -- Kevin help me out here. You're better at this
6 than I am these days. "In proportion to the extent that the
7 workplace" --

8 MS. CARDOSO: For a month. Yeah.

9 MR. BLAND: Okay. One second. Sorry, Fred. I'll
10 try. I'm not that smart today.

11 MS. CARDOSO: See.

12 MR. WALTER: Neither am I (indiscernible).

13 MS. CARDOSO: It look -- harder than it seems.

14 MR. BLAND: The -- the -- we're -- we're talking
15 about here is "the daily penalty shall be calculated in
16 proportion to the extent that the enterprise-wide violation
17 has been abated per worksite." So in other words, if you
18 have ten worksites that were in it originally, now we're
19 down to two, its reduced by the proportion of 80 percent.
20 Maybe a note that provides that example.

21 MR. WALTER: Or change worksites to plural --
22 worksite to plural. Worksites.

23 MR. BLAND: Yeah.

24 MS. WONG: Okay. So an example or maybe changing the
25 term to a plural. Okay.

1 MR. BLAND: So -- so under the section, maybe put a
2 note that gives an example. If the -- if the
3 enterprise-wide -- "for example, an enterprise-wide
4 violation is based on ten worksites that has been abated at
5 eight of the ten worksites, then the penalty calculation
6 would be based on 20 percent of the total worksites as
7 opposed to" --

8 MR. WALTER: 100 percent.

9 MR. BLAND: -- "100 percent."

10 MS. WONG: Okay. Thank you for that suggestion.

11 MR. BLAND: Yeah.

12 MR. WALTER: Yeah.

13 UNIDENTIFIED: (Indiscernible)

14 MR. BLAND: No, a blind squirrel finds a nut here and
15 there.

16 MS. WONG: So given that discussion, I just wanted to
17 see, there is any online comments at this point.

18 UNIDENTIFIED HELPER: No other online comments at
19 this moment.

20 MS. WONG: And are there any in-person comments?

21 Seeing none, we will move on to the next
22 section, which is comments for section 336(i), as in
23 "independent." And we'll start off with any -- oh, let's
24 just get that on the screen first, make sure everyone can
25 see it.

1 So it is on your screen now. So basically it
2 is the calculation -- sorry -- penalty calculation for
3 egregious violation is completely underlined because this is
4 going to be a new proposed regulatory subsection.

5 So any comments in person at this moment?

6 Mr. Bland?

7 MR. BLAND: So this kind of goes to a question I had
8 at the beginning. When we've been referring to egregious
9 violation as a classification, is egregious its own separate
10 classification or is it a characterization of one? Because
11 here we've got regulatory general serious and you can have a
12 willful serious, you can have a willful general. But
13 it's -- it's its own. So if its own -- 'cause it says "if a
14 willful violation is determined to be egregious"; right? So
15 it's a --

16 MS. CARDOSO: It --

17 MR. BLAND: -- characterization --

18 MS. CARDOSO: It's like repeat.

19 MR. BLAND: But it's a characterization, then. It's
20 not a classification.

21 MS. CARDOSO: Repeat is under -- it's a
22 classification so -- like, repeat's under like --

23 MR. BLAND: But repeat --

24 MS. CARDOSO: -- under title --

25 MR. BLAND: Yeah, but you can --

1 MS. CARDOSO: But it is -- like, and when you think
2 about it, it's a characterization.

3 MR. BLAND: So -- so it's a characterization of a
4 type of willful. It has to be willful no matter what. And
5 a repeat, although we've referred to it all these years as a
6 classification, it's actually a characterization of either
7 general or serious or it could be a willful repeat.

8 MS. WONG: It can be framed that way. But --

9 MR. BLAND: That's --

10 MS. WONG: -- at the same time, egregious is its own
11 classification, which is related, you know, and tied to the
12 other existing classification, same as repeat, but
13 technically is its own classification. And we can issue
14 citations based upon that as a classification.

15 MS. BRILL: So based on that explanation, then this
16 is where the confusion lies with this. It says "the
17 Division shall issue a separate citation with a separate
18 proposed penalty calculated pursuant to subsection H,"
19 right, "in the instance." So if it's its own separate -- so
20 does that mean you get a willful for 3203 and then, oh, it's
21 egregious so now we get another citation that says egregious
22 for --

23 MS. CARDOSO: No.

24 MR. BLAND: -- 32 -- that's my point.

25 MS. CARDOSO: No.

1 MR. BLAND: That's my point; right? 'Cause this is
2 saying separate and separate. So that's my point. It
3 shouldn't be a separate -- if it's a willful that is
4 characterized as egregious, it would be one penalty
5 calculation; it would be one citation.

6 MS. WONG: Understood.

7 MR. BLAND: Right?

8 MS. WONG: So I think the -- I hope we can clarify
9 the confusion. So when we're separate citation, it's not
10 for classification base, it's -- we're going to have a
11 willful plus one of the, you know, A through G criteria. So
12 that, then, it becomes egregious. It's not willful plus
13 some sort of egregious. It's just plain ol' egregious.

14 And if there's an egregious citation, then
15 pursuant to -- this is actually interpretation N language
16 taking from the statute so that each instance becomes a
17 separate citation and, therefore, each citation is a
18 separate calculation. I -- does that --

19 MR. BLAND: Well, okay. So we don't have instances.

20 MS. CARDOSO: We do.

21 MS. BRILL: We -- we have -- you can have instances
22 within the alleged violative description; right? But we
23 have items. We have citation 1, item 1, 2, 3 --

24 MS. CARDOSO: It's an instance.

25 MR. BLAND: -- citation -- what's that?

1 MS. CARDOSO: It's an instance.

2 MR. BLAND: So in the allegations, in every
3 allegation alleged, violative description is going to be its
4 own --

5 MS. CARDOSO: Citation.

6 MR. BLAND: -- citation, even though it's the same
7 citation itself to where today -- so when it's egregious,
8 you have one willful for 3203, ineffective training. And,
9 like, we can have -- I've had this where it's, like, three
10 separate things of instances of -- of ineffective training
11 for one. One guy --

12 MS. CARDOSO: Right.

13 MR. BLAND: -- wasn't trained on the heat illness
14 effectively. The other guy wasn't trained on
15 acclimatization effectively. And the other -- it's all the
16 same citation of -- well, that's 3 -- 330(H), but -- or
17 three -- whatever the number. Heat illness, HIPPA. Now that
18 becomes three separate egregious citations and willfuls?

19 MS. WONG: And just to clarify, rule -- I don't think
20 willful will be in the picture because if we deem that
21 particular willful that you're talking about, that your --
22 example you're showing, it'll be deemed egregious and that's
23 it. It's not gonna be willful and egregious. It's just
24 gonna be an egregious citation.

25 And if there's, like, several instances, that

1 will be how it would be issued to let's just say, you know,
2 for -- oh, wait. Yeah. For that citation. For that
3 violation. But for each instance where there is an employee
4 exposure -- you know, for example, if there was, like, 50
5 employees, each exposure is going to be deemed one separate
6 citation --

7 MS. CARDOSO: Fifty citations.

8 MS. WONG: -- egregious -- yeah, and each 50 will
9 have their own penalty calculations. 'Cause this is the
10 purpose of egregious violation is being used to -- as a
11 deterrent, obviously, to increase the penalty calculations.

12 MS. CARDOSO: So --

13 MR. BLAND: So --

14 MS. CARDOSO: -- if -- if we issued a 3303(a)(7) --

15 MR. BLAND: Mm-hmm.

16 MS. CARDOSO: -- failure to train on --

17 MR. BLAND: Whatever.

18 MS. CARDOSO: -- two different things.

19 MR. BLAND: Okay.

20 MS. CARDOSO: Ten employees were -- were -- they
21 failed to -- employer failed to train ten employees on each
22 of those methods, that's 20 citations. And that's straight
23 out of the statute. That's under 5317.8(A).

24 MS. WONG: And that's for egregious violations.

25 MR. BLAND: I get that. So -- so it's saying

1 there's -- so if you had --

2 MS. CARDOSO: So --

3 MR. BLAND: -- five --

4 MS. CARDOSO: So be good.

5 MR. BLAND: Yeah. But this -- this is --

6 MS. CARDOSO: No. But, yeah --

7 MR. BLAND: I mean, 'cause I --

8 MS. CARDOSO: -- so -- and that's exactly the --

9 MR. BLAND: -- I'm going with real-world experience
10 here.

11 MS. CARDOSO: Yeah.

12 MR. BLAND: -- because lot of times we'll see the
13 alleged violative description where employees were not
14 trained. It doesn't say which one. It doesn't say what
15 one. It doesn't say "Tom wasn't and Sheila wasn't," it says
16 "employees."

17 MS. CARDOSO: It's -- yeah.

18 MR. BLAND: And then now, how -- they -- and how does
19 that get -- so this is a separate citation for each employee
20 that's been alleged. And if it's just claiming ineffective,
21 so we're gonna be fighting over, okay, we had all this
22 training but it was ineffective and it was egregious 'cause
23 we met one of the criteria. So, I mean, it's just --

24 MS. CARDOSO: What we have to show --

25 MR. BLAND: -- this thing gets crazy.

1 MS. CARDOSO: -- it's willful.
2 MR. BLAND: Mm-hmm.
3 MS. CARDOSO: Willful.
4 MR. BLAND: I understand that.
5 MS. CARDOSO: Like, willfully. Like, I know the law
6 requires me to train. You know, it's cheaper to hire
7 workers who are not train -- like, not to train them. I
8 know it's dangerous and I'm gonna still expose them --
9 MR. BLAND: Yeah.
10 MS. CARDOSO: -- to the hazard.
11 MR. BLAND: And maybe train's a --
12 MS. CARDOSO: I mean, it's -- it's --
13 MR. BLAND: Maybe training's a bad example --
14 MS. CARDOSO: You know --
15 MR. BLAND: -- because no one says it's cheaper to
16 not have trained employees 'cause they --
17 MS. CARDOSO: Oh, people do. People do.
18 MR. BLAND: Uh-huh.
19 MS. CARDOSO: Like, it's cheaper to get people who
20 aren't certified --
21 MR. BLAND: But no --
22 MS. CARDOSO: -- on how to -- how to drive a forklift
23 or like, you know, to just -- yeah.
24 MR. BLAND: Mmm, I -- because there's a lot more that
25 goes into it --

1 MS. CARDOSO: Trenching. I mean, it's -- there's
2 like, like -- you know, there's plenty of employers, the
3 underground economy, who don't train. And this is -- the
4 purpose is, like, the ones who know --

5 MR. BLAND: Okay.

6 MS. CARDOSO: -- that they're exposing workers to
7 hazards.

8 Yes. Mr. Wick.

9 MR. WICK: Just, again, sort of the balance part of
10 that. 'Cause that -- hopefully there's not plenty of them
11 but they're -- we know they are out there.

12 MS. CARDOSO: They exist.

13 MR. WICK: They exist.

14 MS. CARDOSO: Yeah.

15 MR. WICK: They operate and we want this to target
16 them. The -- the concern is, you know, somebody with 25
17 crews out there and one job supervisor says, "You know what?
18 Do it this way 'cause" -- for whatever reason. And they're
19 gonna fire that supervisor. But Cal/OSHA comes on site and
20 says, "That supervisor had ten employees. And it was -- the
21 supervisor willed it. It was willful for the supervisor, so
22 imputed to the employer."

23 How -- how does that -- how -- I mean, does
24 that employer, whose supervisor did their own thing but has
25 no defense for it; right? In reality, I mean, are they

1 gonna get ten separate citations? And if it's a serious --
2 you know? And -- and is there a limit, since it's a
3 separate citation, does the 158 limit apply to each one
4 or --

5 MS. CARDOSO: To each one. It would apply to each
6 one.

7 MR. WICK: So you -- you could -- one supervisor of
8 one crew who went off the rails for whatever reason for one
9 day or a -- you know, whatever, that could be a one and a
10 half million dollars --

11 MS. CARDOSO: That's right.

12 MR. WICK: -- citation?

13 MS. WONG: I -- I do -- we do hear your concerns.
14 But then if you look at the criteria from, like, A through
15 G, the seven criteria for egregious, it is employer. The
16 employer intentionally did this; employer has a history of
17 this. So we're not looking at this one jobsite.

18 I know sometimes we're mixing it into, like,
19 maybe enterprise-wide. So it's not, like, a particular
20 website -- I mean -- sorry, website -- worksite. We're
21 looking at employer as a whole. So if you look at the
22 language -- because we had -- we broke it down that some of
23 the criteria under A through G focuses on the employer and
24 the other is on, I think 3, it was on maybe history of some
25 sort.

1 But, yeah, it -- it specifies employer conduct,
2 employer intentionally dis -- disregarded. So, again, I
3 hope that addresses your concern that we're not really
4 looking at one rogue supervisor at one particular site.

5 MR. WICK: But -- but E, willful, does mean that --
6 that leads to that.

7 MS. CARDOSO: Right. But I -- the one thing -- like
8 I -- Mitch Steiger -- to quote Mitch Steiger earlier on, we
9 issue very few willfuls annually. So to issue an egregious,
10 it's a higher standard than even the willful. You know,
11 so --

12 MR. WICK: Okay.

13 MS. CARDOSO: -- it's a -- it's a high burden to meet
14 for us to issue the willfuls. But, yeah, if we did have --
15 if an employer had a rogue superintendent who sent five
16 workers into a trench that had, you know -- into a confined
17 space with, like, hazardous gas and they all died and, like,
18 he knew -- the workers were like, we -- "we shouldn't go
19 there. We were trained to not do this" and he -- the
20 superintendent says "go or, you know, you're fired," yeah.
21 Yeah. Then that -- that would be egregious.

22 MR. WICK: Okay.

23 MS. CARDOSO: Or -- I mean, if it met the factor --

24 MR. BLAND: And in that scenario, we wouldn't -- we
25 wouldn't disagree in that scenario.

1 MS. CARDOSO: Yeah.

2 MR. BLAND: I just see the -- the way this is
3 written, it's rife for some abuses on -- on there. But
4 not -- I think -- and you're saying that this is exact
5 language in the Labor Code.

6 MS. CARDOSO: It -- okay. So I don't know if it's --
7 I'll read the Labor Code.

8 MR. BLAND: Yeah.

9 MS. CARDOSO: The Labor Code, it says -- well, it's
10 kind of a long sentence. Not -- so 6317.8(A), I see that in
11 the beginning, Lisa.

12 MS. BRILL: Oh.

13 MS. CARDOSO: "Notwithstanding any other law if upon
14 inspection or investigation the Division believes that an
15 employer has willfully and egregiously violated an
16 occupation safety and health standard order, special order,
17 or regulation. The Division, with reasonable promptness,
18 shall issue a citation to that employer for each egregious
19 violation and each instance of an employee exposed to the
20 violation shall be considered a separate violation for
21 purposes of the issuance of fines and penalties."

22 So that's straight out of the Labor Code.
23 Like, there's -- we don't have a lot of --

24 MS. WONG: Leeway.

25 MS. CARDOSO: Yeah. There's not a lot of discretion

1 there of changing it. But, you know, we have to show that
2 it's an egregious. It's a pretty high standard.

3 MR. BLAND: Okay.

4 MS. WONG: So there's been a lot of in-person
5 dialogue. I wanted to give an opportunity for those who are
6 online. Are there any comments with regard to subsection I?

7 UNIDENTIFIED HELPER: No online commenters at this
8 moment.

9 MS. WONG: Sorry to interrupt. If there was, like,
10 more comments in person. This is, again, with regard to
11 section 336(i), as in "independent."

12 And seeing that there is no online or in-person
13 comments, we will go in to comments for section 336(k), as
14 in --

15 MS. BRILL: Kangaroo.

16 MS. WONG: -- "kangaroo." Sorry. Kangaroo.

17 MR. BLAND: Kevin.

18 MS. WONG: Oh, yeah. Sorry. Sure. Sure.

19 (Laughing)

20 MS. WONG: Okay. So we're gonna start off -- oh, oh,
21 let's just -- I think -- Rachel already has it highlighted
22 just to make it easier. So K for 1, 2 -- I think it's only
23 1 and 2.

24 MS. BRILL: Yep.

25 MS. WONG: Yeah. And with the cap at the end. So

1 that everyone knows what we're talking about. And this is
2 the penalty calculations for enterprise-wide violations.
3 And, again, you'll note that it is underlined. So this
4 whole entire section is being added to implement the
5 statute.

6 Are there any in-person comments at this time?

7 Oh, Mr. Wick.

8 MR. WICK: Bruce Wick. Again, double negatives. So
9 could you explain what this means?

10 MS. WONG: Okay.

11 MR. WICK: It says does -- you know, "credit that
12 does not apply should not be used," I mean --

13 MS. WONG: Let me pull that back up on mine.

14 MR. WICK: -- it seems -- it's just hard to read and
15 say I really understand that.

16 MS. WONG: So note that is a double negative. But
17 let's see if we'll respond to that question as well. So the
18 first part, you're not concerned with, but the second part,
19 is that -- okay. So...

20 MS. CARDOSO: That does.

21 MS. WONG: Wait. Wait. One at a time.

22 MS. CARDOSO: So yeah.

23 UNIDENTIFIED: Does not apply and shall not
24 (indiscernible)

25 MS. CARDOSO: So that's the -- you only get abatement

1 credit on the enterprise-wide citations if you abate
2 across -- you abate all of the hazards. Yeah. So like if
3 you -- if there -- if there is -- if there is three
4 worksites and the unguarded saw and one -- one saw is abated
5 and the other is not, you know, there's two unguarded saws,
6 three worksites. In order to get abatement credit, you
7 would have to abate all of them.

8 MR. BLAND: So "in order for abatement credit to be
9 applied, all worksites shall be abated." Something to that
10 effect.

11 MS. WONG: And just to clarify, actually, this is --
12 I think it's in response to the fact, in reality, is that
13 there's going to be multiple worksites and there's going to
14 be different factors. And so you -- if we did apply repeat,
15 which may not apply to another worksite -- for example, it
16 applies to one worksite but not the other -- there will be
17 confusion and cause issues.

18 So, therefore, we intentionally put in
19 subsection (k)(2) in order to avoid that confusion. Because
20 any -- when you call is characterization or actual
21 classification, repeat or willful or egregious, sometimes
22 all those, like, different --

23 MS. CARDOSO: Oh, that's right.

24 MS. WONG: -- factors -- yeah. Different factors
25 may, again, apply to one worksite but not to the next. So

1 that's going to cause, again, confusion.

2 MS. CARDOSO: Yeah.

3 MS. WONG: So to avoid that confusion, we eliminated
4 all that, including accident-related characterization or
5 anything that can be a different factor from causing issues.
6 We eliminated that. We're sticking to basic calculation
7 when we're calculating enterprise-wide violations because we
8 have to calculate for each. We have to multiple it by each
9 worksite that's covered.

10 I hope that's clear. Does that make sense?

11 MS. CARDOSO: Right. So the --

12 MR. BLAND: So --

13 MS. CARDOSO: -- enterprise doesn't have the
14 heightened penalty that would attach to, like, an
15 accident-related citation.

16 MR. WICK: So if you had the same violation at five
17 sites and at one it was accident related, the
18 enterprise-wide --

19 MS. WONG: Would not apply that accident-related to
20 heighten the -- or increase the -- the --

21 MR. WICK: So --

22 MS. WONG: -- penalty.

23 MR. WICK: Four of them would be regular, one -- the
24 accident-related would get the --

25 MS. CARDOSO: No adjustment.

1 MS. WONG: We wouldn't use that characterization.

2 MS. CARDOSO: Besides only -- yeah.

3 MR. WICK: That would be kind of on its own in the --

4 MS. CARDOSO: Yes.

5 MR. WICK: -- and the enterprise-wide would multiple
6 at, say, a -- a regular serious for the other four.

7 MS. WONG: Exactly.

8 MR. WICK: Okay. So is there -- is there a way to
9 say that without the double negative? I don't know --

10 MS. WONG: We'll take that into --

11 MS. CARDOSO: We tried.

12 MS. WONG: We did -- we did try to work on this one.

13 MR. WICK: I mean, I -- I get, now, what you're
14 saying and that -- that makes sense and that seems right,
15 just --

16 UNIDENTIFIED: Maybe (indiscernible).

17 MS. WONG: No. Understood. So, yeah, if anyone
18 here, super brilliant, can come up with some language, we
19 are open to it. However, we will -- we will -- we do hear
20 the -- the issue.

21 MR. BLAND: Yeah.

22 MS. CARDOSO: So, you know, and there's -- we're
23 gonna open -- we're gonna allow comments for one more month.
24 And then the goal is, two months from now, to -- to post new
25 text.

1 MS. WONG: Update.

2 MS. CARDOSO: Amended, updated text that reflects
3 these comments.

4 MR. BLAND: Okay.

5 MS. CARDOSO: And then we can have further comments.

6 MS. BRILL: Just keep commenting.

7 MS. CARDOSO: We'll just keep commenting.

8 MR. BLAND: That's the fear.

9 MS. CARDOSO: You know? Well, you know, to get it to
10 as close as workable and then be -- so that the formal
11 rulemaking goes by quickly. So, yeah, so if you have
12 comments within the next month, please e-mail them to our
13 e-mail address.

14 MS. WONG: Okay. Yeah. We'll share that information
15 a little later, especially because we did feedback for --
16 from the public where it needs to be a dialogue.

17 But I know, Mr. Wick, you were the first
18 in-person comments. Are there any other in-person comments?

19 Oh, okay. Mr. Bland?

20 MR. BLAND: Yeah, I'm still hung up on this worksite.
21 And I keep going back to. So I'll give you an example that
22 could really get crazy is, let's say a cable company. They
23 have employees on -- at ten different houses a day,
24 multiplied across 300. Each house is a worksite. Each day
25 the worksite -- we need to look at trying to define worksite

1 to eliminate some of these egregious interpretations it
2 could be.

3 'Cause, I mean, think of the multiplier. You
4 know, if you have, you know, 500 a day for six months,
5 'cause that's the time period, I mean, what is time -- you
6 know, how are we gonna do that? We really need to look at
7 that --

8 MS. CARDOSO: Like, it's -- it's easy when you think
9 of, like, a brick and mortar store.

10 MR. BLAND: Yeah.

11 MR. WICK: Yeah.

12 MS. CARDOSO: Like -- and it becomes --

13 MR. BLAND: Yeah. Yeah. But in the context of these
14 mobile things, it can be -- it can add -- I mean, it can
15 have 10,000 worksites in a day --

16 MS. CARDOSO: (Indiscernible) employees.

17 MR. BLAND: -- for a cable company.

18 MS. WONG: Understood.

19 MR. BLAND: Right? And you have one programmatic
20 issue that applies to everybody in the field that's at one
21 of those work -- now we got 10,000 citations.

22 MS. WONG: Okay. This is just me throwing it out
23 there. So just like our CSHOs, we have district offices.
24 So instead of, like, each CSHO going to a different, what we
25 would deem, worksite for the purposes of, you know,

1 enterprise-wide, would it help to then narrow it down from
2 which office they're from or something like that?

3 I'm just throwing it out there. I'm not saying
4 that that's -- I know that's --

5 MS. CARDOSO: Oh.

6 MS. WONG: I'm just saying. So, like, we have
7 Long Beach district office. We, like -- you know, Van Nuys.
8 So it'll --

9 MS. CARDOSO: Region.

10 MS. WONG: -- kind of come down to that -- yeah,
11 regional --

12 MS. CARDOSO: Each region.

13 MS. WONG: -- kind of like which office they're
14 actually from, being sent from so that not each workplace
15 that they happen to be working at is deemed a worksite,
16 which can add up to a billion. Well, you're not saying a
17 billion. But, you know, I -- I understand your concern.

18 MR. BLAND: (Indiscernible)

19 MS. WONG: Anything similar to that.

20 MR. BLAND: Southern California Edison
21 (indiscernible).

22 MS. WONG: Yeah.

23 MR. BLAND: (Indiscernible)

24 MS. WONG: Tighten up the definition. Okay. So
25 tighten up the definition --

1 MS. CARDOSO: So define "worksite" for purposes of
2 the enterprise-wide clarification. Okay.

3 MS. WONG: Okay. So I appreciate that comment.

4 So one more comment from in-person for 336(k),
5 as in "kangaroo."

6 Seeing none, we'd like to move on to any online
7 comments for 336(k), as in "kangaroo."

8 UNIDENTIFIED HELPER: We have one online commenter.
9 Andrew Sommer. If you could -- oh, you --

10 MS. WONG: Mr. Sommer.

11 MR. SOMMER: Yes, thank you. I can't see all the
12 text on the screen, so I'm just pulling up the PDF. But I
13 was similarly confused by (k)(2). And I think the issue
14 that -- you'll work this out, I'm sure, in the drafting.
15 But you're referring to "or any abatement credit that does
16 not apply." And so if you make that plural, "do not apply,"
17 reference it to all the prior items, maybe in plural, that
18 will clarify it.

19 But I -- I appreciate the clarity now. I -- I
20 understand what you are saying. It just needs to reflect
21 that here.

22 And then regarding (k)(1), I think the concern
23 is it's -- it's -- we're basically multiplying by the
24 worksite, the penalty, where it's enterprise-wide citation.
25 But my understanding, unless I'm not getting it here, is the

1 enterprise-wide citation does not need to be willful. So it
2 could be a benign -- a relatively benign citation but
3 applies across operations and we had stacking of -- of
4 penalties. Am I -- am I not following that?

5 MS. CARDOSO: Yeah. That's correct. That's correct.

6 MR. SOMMER: Okay. So, you know, it seems to be,
7 there may be a question about the Labor Code provision
8 that -- that was enacted. But I think what comes to mind
9 me -- to me is that there as an IIPP violation and it may be
10 an IIPP document and be fairly innocuous but apply across,
11 say, 20 locations. That's a fairly draconian penalty, in my
12 mind, in that situation.

13 MS. WONG: I'm just going to --

14 MR. SOMMER: And so --

15 MS. WONG: -- interrupt really quickly. Is there a
16 way you can maybe be further -- or closer to the mic? I
17 think we're -- some of us are having issues hearing you,
18 especially Ms. Brill, who has to type up your comments.
19 Because I -- I couldn't quite understand everything you were
20 saying. So I don't think Ms. Brill could -- can hear you.
21 Can you --

22 MR. SOMMER: Okay. Yeah. No, I can -- can you hear
23 me better now?

24 MS. CARDOSO: Yeah. Andrew, if you could repeat your
25 suggested change for (k)(2) regarding --

1 MS. BRILL: Can I --

2 MS. CARDOSO: -- (indiscernible) is that what you --

3 MR. SOMMER: Oh, okay.

4 MS. BRILL: That -- I'm sorry. Andrew, can I also
5 ask, just a teeny bit slower. Yeah.

6 MR. SOMMER: Oh, okay. Sure. I'll do both.

7 So for -- for (k)(2), I think the confusion is
8 that you have these enumerated items that are, you know,
9 separated by "or" and then it says "does not apply." So
10 when I read that, I thought you were saying that the
11 abatement credit does not apply, but it wasn't in reference
12 to the prior items.

13 So I think if you made it plural, for example,
14 I -- you know, then it would be clearer that you're
15 referring to all of the items. But I'm -- I'm sure there's
16 other ways that you could draft this. But it just needs to
17 be clarified.

18 And then for (k)(1), because there's no -- this
19 isn't willful, there's no state of mind component for
20 enterprise-wide violation. The concern here is for the
21 common employer, particularly those that aren't terribly
22 sophisticated, they may have an IIPP document with a -- a
23 relatively nominal violation, technically, in how it
24 captures the regulatory language under IIPP.

25 But then what -- it could be encounter -- they

1 could encounter here, you know, really significant stacking
2 of penalties based on how this is worded. So my -- my
3 recommendation would have some sort of threshold that if it
4 is going to be stacked, that it be willful.

5 I get that the -- the desire is for abatement
6 and so for enterprise-wide citations you -- you include all
7 the different worksites so you can abate all at once in one
8 enforcement proceeding. It doesn't seem warranted, in my
9 mind, to do the same with penalties and stack the penalties
10 regardless of whether it's willful.

11 MS. WONG: Okay.

12 MS. CARDOSO: I do -- it's been -- I do think that --
13 that the deterrent effect, the stacking was one of -- one of
14 the public policy reasons for why we -- we drafted the text
15 as we did. That that was one of the purposes, in addition
16 to abatement, was to deter, you know, violations that --
17 where there's a pattern and practice.

18 So we'll look into it. And -- and if you, you
19 know -- we'll definitely consider your comment.

20 MR. SOMMER: And -- and I -- and I get that.

21 MS. CARDOSO: Do you recall (indiscernible)? No?

22 MR. SOMMER: You know, I think that the deterrent's
23 effect would be accomplished, likewise, through an
24 enterprise-wide proceeding. That would be fairly onerous,
25 nonetheless. But I appreciate that (indiscernible).

1 MR. BLAND: We keep going back to -- we keep focusing
2 on pattern and practice. It doesn't need to have pattern
3 and practice.

4 MS. CARDOSO: It has --

5 MR. BLAND: It --

6 MS. CARDOSO: As long as it's a written policy.

7 MR. BLAND: Just a -- yeah.

8 MS. CARDOSO: Right?

9 MR. BLAND: Just a written policy 'cause it's either.
10 And that's where I think -- you know, I understand that
11 pattern and practice were there doing something --

12 MS. CARDOSO: And --

13 MR. BLAND: -- yeah. But just the -- because the
14 first paragraph, from this morning, that's where it gets
15 real muddled.

16 MS. CARDOSO: And in practice --

17 MR. BLAND: Yeah.

18 MS. CARDOSO: -- it'll be -- in our practice, it'll
19 be infrequent for us to issue pattern and practice
20 violations.

21 MR. BLAND: Yeah.

22 MS. CARDOSO: It's -- it's very uncommon to where we
23 learn that, you know, there's one employer who, at a
24 different site, has the same violation. It -- it'll be
25 more -- mostly based on a written policy, you know, that

1 says "masks are prohibited" or something like that, you
2 know? You know, it'll be --

3 MR. BLAND: Well -- yeah.

4 MS. CARDOSO: -- something fundamentally wrong with
5 the IIPP that -- then we secure evidence that this IIPP
6 applies to all of the worksites.

7 MR. BLAND: No, I -- I don't disagree with the design
8 (indiscernible) I think is intended.

9 MS. CARDOSO: Yeah.

10 MR. BLAND: I've had so many times, 20 years ago,
11 where we all sat in a room like this. We go, "This is what
12 we mean. Don't change the language. This is what we mean."
13 And now we're litigating things we never dreamed would be
14 the interpretation by the Division whenever we have a new
15 regime in or memories fail or people retire. And so we have
16 to be really cognizant. Yeah.

17 MS. CARDOSO: Well, that's the whole purpose of
18 having clear --

19 MR. BLAND: Yeah.

20 MS. CARDOSO: -- language.

21 MR. BLAND: Yeah. Yeah. So...

22 MS. CARDOSO: I mean, it'll be on the books after
23 we're --

24 MR. BLAND: Yeah, after we're dead and gone.

25 MS. CARDOSO: -- we're gone -- yeah.

1 MR. BLAND: Right.

2 MS. WONG: Well -- well, we appreciate the -- the
3 response from Mr. Bland. But --

4 MS. CARDOSO: Never know.

5 MS. WONG: -- want to be fair with online commenters.
6 I think we only had Mr. Sommer -- Summer.

7 UNIDENTIFIED HELPER: We have --

8 MS. WONG: Yeah. So we have a second comment online.

9 UNIDENTIFIED HELPER: One more online commenter.
10 Megan Shaked.

11 MS. WONG: Oh, Ms. Shaked.

12 MS. SHAKED: Thanks, Ms. Wong.

13 Yeah, just one other comment about kind of
14 we're hearing different things about what the kind of in --
15 intent or the incentive is supposed to be. And, you know,
16 realizing that the people who are in the room can kind of
17 decide how -- what the intention is of issuing the
18 citations.

19 But in the interest of, like, clarity,
20 understanding what the incentives should be, I -- I'm still
21 just struggling with the abatement credit and how that
22 factors in to the incentive to try to get abatement,
23 particularly for enterprise-wide abatement.

24 If you have, you know, something that maybe
25 the -- maybe the parties disagree about the -- about whether

1 there was a violation but, you know, there's an agreement
2 to, you know, enhance the written program document in some
3 way going forward, is the inability to issue a -- an
4 abatement credit in line with the incentives to get
5 abatement. And does it tie the Division's hands in a way
6 that doesn't make sense, you know, however many years down
7 the line when maybe we're not all involved in this in the
8 same way.

9 Just trying to understand what the intention of
10 the -- of the requirement is.

11 MS. WONG: Well, I -- I do need further clarification
12 with regard to your comment. Are you referring to (k)(2) in
13 reference to the abatement credit? Is that where you're --
14 you're referring to?

15 MS. SHAKED: I was -- I was speaking about the
16 abatement credit -- credit in general terms, but --

17 MS. WONG: Oh.

18 MS. SHAKED: -- yes, it is -- it is in that section
19 as well. I mean, it's kind of sprinkled throughout a couple
20 of the sections we've been talking about.

21 MS. WONG: Oh, are you referring to -- from your
22 prior comment where enterprise-wide general does not get the
23 50 percent abatement credit presumption. Is that what
24 you're referring to?

25 MS. SHAKED: Yeah. I -- I guess I'm just -- I'm

1 making the comment generally, in terms of when the abatement
2 credit is off the table for these -- these changes that
3 we've been discussing today.

4 MS. CARDOSO: Well, with respect to enterprise-wide,
5 Megan, or egregious?

6 MS. SHAKED: In -- well, for egregious it --

7 MS. CARDOSO: I think it makes sense for --

8 MS. SHAKED: -- it's for enterprise-wide.

9 MS. CARDOSO: -- egregious.

10 MS. SHAKED: For enterprise-wide, I -- I'll say.

11 MS. CARDOSO: Okay.

12 MS. SHAKED: Yeah.

13 MS. CARDOSO: And for enterprise-wide, how it's
14 written now, it's all or nothing to where we say "we'll give
15 you credit if you abate, but if you don't abate timely, then
16 you don't get the credit."

17 And so are you saying that abatement credit
18 should be, like, a percentage? Like if, you know, two of
19 the five -- let me make it easy. Two of the four hazardous
20 conditions are abated timely, then the Division should
21 provide 50 percent abatement credit?

22 MS. SHAKED: Well, maybe it's this (k)(2) language
23 that -- that is tripping me up about where the abatement
24 credit is -- how the abatement credit is going to be
25 applied; right? 'Cause it says "or any abatement credit

1 that does not apply to all worksites covered." So maybe you
2 can clarify when the abatement credit applies for
3 enterprise-wide violations.

4 MS. WONG: This, again, I -- I know may have caused
5 some confusion. We'll look into it.

6 MS. CARDOSO: Okay.

7 MS. WONG: But section (k)(2), again, was any factors
8 that can cause different calculations for each worksite
9 because this is for enterprise-wide, and we need,
10 essentially, one number to multiple across the board for,
11 like, however many number of worksites.

12 So sometimes one may have abatement credit and
13 one does not, or whatever it is. So these are just factors
14 that would cause different worksites to have different
15 calculations. So it's not really saying that we're going to
16 provide abatement credit or not. It really doesn't address
17 that under (k)(2). It's more like eliminates any factors
18 that causes each worksite to have a different penalty
19 calculation.

20 Does that help clarify? Make sense?

21 MS. SHAKED: Yeah. I think -- I think I understand
22 the intention of (k)(2). Thanks.

23 MS. WONG: Okay. But -- but if you think of anything
24 further that, you know -- please note, as Denise was saying,
25 our online e-mail address for comments will be open for a

1 month after the meeting. Because I understand, you know, in
2 a meeting or maybe you're multi-tasking, whatever it is,
3 something will come up later. So please feel free to --
4 maybe if something brilliant comes up, like, tonight or
5 tomorrow, please note that the e-mail address will be --
6 remain open and we will check it.

7 But I think you were the second online comment.
8 So I want to be fair and see if there's a third online
9 comment at this time for section 336(k), for "kangaroo."

10 UNIDENTIFIED HELPER: No other com -- no other online
11 comments at this moment.

12 MS. WONG: Okay. Just want to ping pong back to any
13 in-person comment. And it seems like there is -- there are
14 none.

15 So that was actually our last section with
16 regard to any substantive changes for comments. But I just
17 want to do kind of a review to make sure. Are there any
18 other sections that we don't have on the agenda that anyone
19 here would like to provide a comment for?

20 We'll start with anyone in person.

21 I see none. So are there any sections that we
22 have not discussed that you wanted to comment upon for those
23 attended online?

24 UNIDENTIFIED HELPER: No online comment at this
25 moment.

1 MS. WONG: Okay. So as stated, I want to emphasize
2 that we will keep our comment e-mail open. That's -- uh-oh.

3 (Inaudible talking)

4 MS. WONG: No. No. No. I forgot the e-mail
5 address. Let me just pull up...

6 I want to make sure that everyone knows the
7 e-mail address that we do have set up for comments. Again
8 for one month -- or 30 days after today, we will keep it
9 open. And the e-mail address -- oh, Ms. Shaked, you did
10 e-mail. So you know this e-mail address. But it is --
11 oopsy. Hmm. It is SB606rulemakingcomments@dir.ca.gov.

12 So that will remain open. That e-mail address
13 is on our website for advisory community meeting for this
14 SB 606 rulemaking, incase you do forget what the e-mail
15 address is.

16 So again, that's gonna be left open. We will
17 check it for the next 30 days for any comments. And -- and
18 in roughly two months after the 30 days, we hope to provide
19 an update as to any proposed or regulatory language in
20 response to the comments we have received.

21 And any further information will be posted on
22 the advisory committee --

23 UNIDENTIFIED HELPER: We do have one -- sorry to
24 interrupt. We do have one online commenter.

25 MS. WONG: Oh.

1 UNIDENTIFIED HELPER: Anastasia Wright (phonetic),
2 Work Safe. Can't read the rest of what that says.

3 MS. WRIGHT: Hi. I'm sorry. I just had a question.
4 Would you guys be sharing the edited draft that you worked
5 on today with all the comments from people?

6 MS. CARDOSO: Oh, yeah. We could --

7 MS. BRILL: I think --

8 MS. CARDOSO: -- we could post it.

9 MS. BRILL: We can. Yeah.

10 MS. CARDOSO: Yeah, we can post it on the website,
11 the SB 606 --

12 MS. BRILL: Oh, we have -- we'll have to get it
13 remediated.

14 MS. CARDOSO: Oh, really? Okay.

15 MS. BRILL: For posting it, yeah.

16 MS. CARDOSO: We can e-mail it?

17 MS. BRILL: The -- the answer is, yes, but give us a
18 second to figure out some of the --

19 MS. CARDOSO: Yeah, we will --

20 MS. BRILL: -- tech stuff.

21 MS. CARDOSO: The logistics.

22 MS. WRIGHT: Okay. Thank you.

23 MS. CARDOSO: We might be able to e-mail it.

24 MS. WRIGHT: Yeah, e-mail -- I think in the past
25 we've received some of the edited drafts via e-mail.

1 MR. BLAND: I think she's talking about what you had
2 up here working with the notes attached to it.

3 MS. CARDOSO: Yeah, what has happened to --

4 MS. BRILL: That was (indiscernible) that's what I
5 understood, but perhaps --

6 MR. BLAND: I haven't seen that. Generally what we
7 get back is what you guys do --

8 MS. CARDOSO: Oh, really? Okay.

9 MR. BLAND: -- as a result of all these. But we can
10 also get a copy of what ends up being the recorded
11 discussion. That's usually put into (indiscernible).

12 MS. BRILL: Yeah. There --

13 MR. BLAND: So (indiscernible)

14 MS. BRILL: -- there will be a transcript with this.

15 MR. BLAND: But yours are a mess now, so it's kind of
16 a hybrid. Yeah.

17 MS. WONG: Mr. Wick?

18 MR. WICK: Bruce Wick.

19 I just wanted to confirm -- and maybe that
20 would be a good thing to post or send out all the comments
21 that we are going to -- someone's going to push this out to
22 all the multiple links and ser -- list serves so that a --
23 the typical group of people get it who did not get it.

24 MS. CARDOSO: So on that con -- so everybody who's
25 online, did you receive -- did you receive an e-mail?

1 (Inaudible talking)

2 MS. CARDOSO: Or who didn't receive this notice --
3 e-mail notice of this Advisory Committee? Anybody?

4 UNIDENTIFIED HELPER: We have -- Megan would like to
5 speak.

6 MR. BLAND: Oh, maybe tell them (indiscernible).

7 MS. CARDOSO: Oh, yeah. Raise your hand, please.

8 UNIDENTIFIED HELPER: Megan Shaked would like to --

9 MS. BRILL: Like raise your Zoom hand.

10 MS. SHAKED: I'm so sorry. I was just trying to
11 indicate that I had not received notice of this via e-mail.

12 MS. CARDOSO: So is that -- how many people?

13 MS. BRILL: I would encourage anyone else who didn't
14 get the notice by e-mail to do what Megan did so that we can
15 count you, please.

16 MR. WICK: Andrew. So that's three there. And I
17 know talking earlier, there's another (indiscernible) that
18 only -- that Steven, Mike only got it from me. They would
19 not have known about this if I didn't forward to them.

20 So I -- I think -- that's -- if we're gonna --
21 I mean, it'll be great for 30 days. But we don't -- contact
22 the people who want -- who otherwise have been here, we're
23 gonna waste that 30 days so...

24 MS. WONG: Yeah. We'll look into better -- reaching
25 out, or outreach. We -- we -- we definitely hear the

1 concern.

2 But I just want to go back to posting the
3 comments based on today's Advisory Committee. And we will
4 have to remediate everything. And so I would like to
5 further just say that we'll keep, you know, the comments
6 maybe -- we may not post it because of the requirement to
7 remediate such postings. But like Mr. Bland said, I think
8 that we will most likely post any updated versions of the
9 proposed regulatory language.

10 But Ms. Wright, if you have any questions
11 regarding -- I think the comment we do have a -- we'll have
12 a transcript. This is being recorded.

13 MS. CARDOSO: Right.

14 MS. WONG: And so if you have any -- if you want to
15 review that, that is available to you. But I just want to,
16 again, kind of emphasize that we may not post the comments
17 that are being typed up today. Again --

18 UNIDENTIFIED HELPER: We do have two online public
19 con -- actually, just one now. Andrew Sommer.

20 MS. WONG: So -- okay. So we'll just go to the
21 online comment for now.

22 Mr. Sommer?

23 MR. SOMMER: Oh, I -- I don't think I put my hand
24 down from before. I have no comments.

25 MS. WONG: Oh, okay.

1 MS. CARDOSO: Oh, okay.

2 MR. DONLON: I had a comment, though.

3 MS. CARDOSO: Who? Michael.

4 MS. WONG: If you could introduce yourself.

5 MS. CARDOSO: Michael.

6 MS. WONG: Oh.

7 MS. CARDOSO: Yeah. Mike Donlon. Yes.

8 You'll -- when you look at these penalties,
9 because they could potentially put employers out of business
10 and have employees losing jobs, I really think it's
11 important we go back to, you know, what we talked about this
12 morning in 3334(f) and (g) to make sure we do tighten those
13 up so it is just the worst of the worst that we're doing
14 this to.

15 MS. CARDOSO: So (f) and (g), which -- under what
16 section?

17 MR. DONLON: 334(f) and (g).

18 MS. CARDOSO: 334.

19 MR. DONLON: Where we're defining what it takes to be
20 an egregious violation and what it takes --

21 MS. CARDOSO: Okay.

22 MR. DONLON: 'Cause that's what gets us to those
23 penalties. So that language is -- to me, through the whole
24 thing, is -- seemed the most critical.

25 MS. WONG: Understood.

1 MS. CARDOSO: Well, that -- and I -- I hear you, and
2 I understand you. But considering that, like, we issue so
3 few willfuls in general, also the enterprising, the stacking
4 that was raised earlier today --

5 MR. DONLON: Yeah.

6 MS. CARDOSO: -- that's also a concern.

7 MR. BLAND: I'll go on record now saying that I think
8 the stacking or the enterprise is going to be higher
9 penalties and more often by far. That's a big -- that's the
10 biggest. I know the egregious is a big issue. But that
11 stacking, when you start really doing the multiples on it,
12 it's crazy.

13 MR. DONLON: Mm-hmm.

14 MS. WONG: Understood. So we do appreciate the
15 comments. Just want to check, are there any -- at this
16 point because we're about to adjourn --

17 MS. CARDOSO: So one last thing. So we'll have --
18 we'll be accepting comments until September 18th. That's
19 30 days. So get your comments in and then it'll close
20 September 19th, midnight.

21 MS. WONG: Okay. So --

22 (Inaudible talking)

23 MS. CARDOSO: I don't know. September 19th is a
24 Thursday. So burn the midnight oil Wednesday,
25 September 18th.

1 MS. WONG: So for -- I can --

2 MS. CARDOSO: No, and, you know, like that's -- but
3 that's when we're gonna, like, close it to then concentrate
4 and try to get an updated draft that we'll post in about a
5 month after that.

6 MS. WONG: Okay. So again, that's September 18th is
7 the cutoff date for comments for this first round. And if
8 there's no further questions or concerns, we will adjourn
9 this Advisory Committee meeting.

10 MS. CARDOSO: One last question, 'cause -- I'm sorry,
11 Lisa -- 'cause I don't know. How -- how -- how have you --
12 I'm speaking to the stakeholders who are in person. When
13 you've requested transcripts of the advisory committees, how
14 have you received those? Have you ever requested them?

15 (Inaudible talking)

16 MS. CARDOSO: Transcripts.

17 (Inaudible talking)

18 MR. JOHNSON: Yeah, it's typically been a minutes
19 section from an Advisory Committee.

20 MS. CARDOSO: Oh, just the minutes get posted --

21 MR. JOHNSON: Yeah.

22 MS. CARDOSO: -- on -- okay. So that's what we'll be
23 doing. We'll be posting the minutes on the website.

24 MR. JOHNSON: And -- and I just had a question
25 about -- so the comments that -- the comments that we're

1 making in person today, they're being -- that's going to
2 be -- we don't need to provide additional comments, outline
3 the comments -- right.

4 MS. CARDOSO: No, they don't -- those are record --
5 in addition to the comments that you have. Or if you had
6 language that you proposed that you want us to look at, you
7 know, do e-mail -- e-mail that to us or if you have a
8 document today, hand it to us and we'll -- so we can work
9 from it.

10 MR. JOHNSON: Great. Thank you.

11 MS. CARDOSO: And we'll work on the double negatives.

12 MS. WONG: We like those.

13 MS. CARDOSO: And for lawyer --

14 MS. BRILL: Probably for lawyers too.

15 MS. CARDOSO: Yeah.

16 MS. WONG: So thank you, everyone, for attending. So
17 we will now adjourn the meeting.

18 MS. CARDOSO: Yeah. Thank you.

19 MS. WONG: Have a good afternoon.

20 (Meeting adjourned)

1 REPORTER'S CERTIFICATION

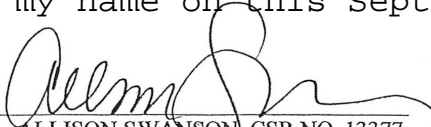
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3 I, Allison Swanson, CSR No. 13377, a
4 Certified Shorthand Reporter for the State
5 of California, do hereby certify:

6 That the foregoing transcript of
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10 were taken down by me in shorthand and
11 thereafter transcribed into typewriting
12 under my direction and supervision.

13 I hereby certify that the foregoing
14 transcript of electronically recorded
15 proceedings is a full, true, and correct
16 transcript to the best of my ability.

17 I further certify I am neither
18 financially interested in the action nor a
19 relative or employee of any attorney or
20 party to this action.

21 In witness thereof, I have hereunto
22 subscribed my name on this September 25, 2024.

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24 ALLISON SWANSON, CSR NO. 13377
25 CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA