PROTECTION OF WORKERS FROM WILDFIRE SMOKE

ADVISORY COMMITTEE MEETING

August 27, 2019

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ERIC BERG: Thank you, everybody, for coming. I really appreciate everyone taking their time for the day on a workday to come here.

My name is Eric Berg. I'm the deputy chief of Cal/OSHA Research and Standards.

And to my right is Chris Kirkham, the principal engineer of Research and Standards Health.

Keummi Park, senior safety engineer, Research and Standards Health.

Amalia Neidhardt, senior safety engineer, Research and Standards Health.

And Valerie Royo.

VALERIE ROYO: Just analyst.

ERIC BERG: Analyst.

VALERIE ROYO: Yeah.

ERIC BERG: Government analyst for Research and Standards.

And then we have people from the Standards Board, Christina and Maryrose.

Thank you for coming.
Oh, yeah. Kumani. Kumani Armstrong from Department of Industrial Relations is here as well. I thought he was here.

And Michael Salen (phonetic spelling) in the back there is doing Spanish translation. We have the Spanish translation equipment. Does anyone need translation?

(Spanish dialogue.)

ERIC BERG: So we are here to discuss protecting workers from wildfire smoke. As you're aware, we had the emergency regulation that just became effective July 29th. So we're here to look at some changes to that to improve that regulation. So we have two different types of changes. And I apologize for having two separate changes, but the rulemaking process kind of requires this. Because it is an emergency regulation, it expires pretty quickly, less than a year.

And so we have some very minor to non-substantive changes that we can do in less than a year. And so those are in the black bold underlined text. You'll see those throughout. There's not too many. But those are non-substantive changes that we are planning on doing as quickly as possible so we can make this emergency regulation permanent.

And separately from that, we have the red bold
and highlighted text. Does everyone have the standard? That's where I'm looking at. So that has more substantive changes. So that is red. And that we'll -- we'll take those on after the black bold. So there will be two separate rulemakings. There's one to make minor changes, which are the black ones. And that will be done in less than a year.

And after that's all complete, then we'll move on to the red highlighted ones.

But we want to discuss both with you, just need your input on everything up front. I don't know if that is clear enough, but let me know if you have any questions on the different types of text we have in here and the changes.

But the language that's not highlighted at all is just the existing emergency regulations. So we'd like your comments on all this.

We'll start with -- we'll go subsection by subsection. And also when we start, some people might have to leave early. Feel free to talk in the first subsection.

(Inaudible audience member.)

ERIC BERG: Okay. There's bathrooms that way. And in an emergency, we should leave the building.

(Inaudible audience member.)
ERIC BERG: These elevators are horrible.

So we should have the agenda in front of you.

So we will -- first thing, I guess. Oh, the rulemaking process, I guess.

So like I said, the black text is -- it will go through formal rulemaking as we do in any other rulemaking. Even though there's small changes, it will still go through the normal rulemaking process. A 45-day formal comment period.

But after this, if we get any comments, if we make any changes to it. And then later on, it will start formal rulemaking. It will be a 45-day formal commentary. So the black one will be handled just like any other normal rulemaking.

Chris will explain the process.

CHRIS KIRKHAM: So you have a handout from the side table over there. In color it looks like this. You've probably seen it before. It summarizes the regular rulemaking process. We haven't started rulemaking yet. We're still gathering information. But the 45-day comment period is explained in this handout.

And we'll have a year to finalize the formal rulemaking once we begin that process, which hasn't begun yet.

ERIC BERG: Less than a year, because it has to
be done by -- before July of next year.

CHRIS KIRKHAM: Yes. Before the emergency regulation expires.

So we also have a second handout. It describes the many steps that are required to develop an occupational and safety health regulation, occupational health regulation. It's double-sided. I'm not going to go over it. You can read it at your leisure.

Any other kinds of things we need to go over?

(Inaudible discussion among panel members.)

ERIC BERG: We have the emergency regulation with no changes at all. We have added that as a separate handout.

And then when we do take comments, we'll start with Subsection A, like I was saying. And if people have to leave early, and if people could keep their comments at five minutes or less, we can get through everything, that will be really helpful.

CHRIS KIRKHAM: So you all will also have an opportunity to submit written comments. You certainly could submit them today to us if you'd like. But we'll be talking later about -- what, the September 30th?

AMALIA NEIDHARDT: Yes.

CHRIS KIRKHAM: For written comments. And so that's also a great way to provide input. And you can
do both. You can provide verbal comments today and written comments. As long as we can get them before September the 30th. We'll put that up on the board at some point for you.

ERIC BERG: And if you have any questions or need explanation, we'll try to provide feedback right now if we can. So try to provide some dialogue for this if we are able to.

AUDIENCE MEMBER: Are you expecting to accept written comments until September 30th for the black bold underlined text?

ERIC BERG: Yeah, that's the plan.

AUDIENCE MEMBER: So those documents have already been provided to the Standards Board as final and complete. Are you pulling them back?

ERIC BERG: No, we're not pulling them back. But we'll find out. We'll see what people have to say.

AUDIENCE MEMBER: Okay.

ERIC BERG: Hopefully -- I mean, none of the black ones are nonsubstantive. We know we can't do anything big on those. We can't have any impact on the economic assessment. We don't expect anything.

Anything significant in the black.

CHRIS KIRKHAM: So we have a court reporter, Joan. She's on the side there. We ask that you speak
clearly and articulate slowly, because she is working some magic on her computer to transcribe what is being said. So please always keep her in mind when you provide a verbal comment today. Please provide your name and your affiliation even if you've provided several previous comments today. Just keep doing that every time you come up to the podium.

We'll probably be taking a five-minute break in the morning and afternoon and lunch break for about an hour.

ERIC BERG: Yeah, we'll take a break about every hour for the stenographer.

Okay. Bruce is all ready.

Anyone wants to make a comment on Subsection A or anyone that has to leave early, feel free to come up now. Or do you have any questions on Subsection A?

BRUCE WICK: My name is Bruce Wick, CALPASC.

I do want to bring up a couple of issues, because I think we're off course already.

So somebody has made a decision we're going to be talking today about minor modifications to the emergency regulation. I understand that.

Are we allowed to bring up our own potential modifications to that in this discussion? Or do we have to focus only on that?
ERIC BERG: No. You can bring up anything. If we can't make it in the black, we'll do it for the more long-term. But feel free to comment on anything.

BRUCE WICK: So the long-term and how we're set up here today is my real question.

As you know, many of us have expressed real concern about this regulation. Not having one in place, but how little dialogue has actually taken place between stakeholders. How Appendix B goes for so long.

We were at the Cal/OSHA Appeals Board meeting last week, and, sadly, no one from the division was there for a meeting involving them. But it was stated by EDD statistics, 82 percent of California employers have less than nine employees. That's at least a quarter of our total workforce, if not more.

And the expectations of all those very small employers to take Appendix B and adapt it language-wise. We got on the day of the regulation two translations. The day the regulation took effect. We told all those employers, "We're not helping you implement a reg."

That sends a message this reg maybe isn't important. And it is.

We complained about the (inaudible) that we come up here and give input, and then somebody goes off and massages things. When we are used to a very
effective regulation being stakeholders sit across the table and work their way through.

There's a whole lot of very, very smart people in this room. And we basically have them giving input and one or two people saying, "Well, I'll decide what you all mean." And I don't think that's helpful.

This regulation is not very effective. And I'm here today to try and make it less ineffective because it can't be fixed.

The second permanent regulation or the third iteration of this needs to start all over.

So I don't think we should today sit here and talk about what's in the red underlined with yellow. I'd like to see, when the new chief comes in, Chief Parker, I'd like for him to sit down and tell us how to dialogue here.

There was very strong encouragement from the Cal/OSHA Standards Board members to change how we're doing this. And I believe those members are being disrespected by the way this is set up today. We're just following the same format.

So I'd like to talk about modifying the emergency regulation so that a year from now we have a permanent one that's hopefully less ineffective. And I'm certainly willing to go through that, but I don't
think we should talk about a second permanent regulation here today.

I'd like to see Chief Parker be in charge of telling the division. Because the Standards Board members can't tell the division what to do, I don't think. But there was strong encouragement at that meeting to have much more dialogue. And I don't appreciate the (inaudible).

ERIC BERG: (Inaudible) dialogue.

BRUCE WICK: You and me together, but the dialogue includes labor and management on both sides.

ERIC BERG: Again, that specific suggestion, you can write it down on the board, and people can comment on it.

BRUCE WICK: Okay. If you're willing to do that. That will be, quote-unquote, slower. And that's how we ought to spend today. That we go back and forth -- and that's how we've done it in the Standards Board -- and come up with a consensus regulation where labor says that's really the safest thing we can do, and management says, "We're in. This makes sense. This is efficient. We can implement this. Even the small employer."

So if we're willing to take that time, then let's do it. But that takes a back and forth of
significance. And I'm certainly willing to spend that time today.

So thank you.

(Speaker change.)

NICOLE MARQUEZ: Good morning. My name is Nicole Marquez. I'm the senior staff attorney with WorkSafe. And I wanted to speak to the issue of scope and the need for changing the threshold from 151 to 101. You'll hear from other stakeholders from community organizations who have worked closely with workers during different fires in Southern California in 2017. And other regions in Northern California in 2018.

We feel very strongly that time is of the essence. That this division should take an approach that is very quick and adopt the changes for permanent rule that are reflected in this kind of tiered approach that you have.

We feel that time is of the essence, and the permanent rule must have a lower threshold. Workers' health, especially for sensitive workers, who are part of a sensitive work group, their health is on the line. And we feel that it's important that that be recognized.

Some workers already belong to a sensitive group and have occupational health conditions. And we feel that this is important to consider, especially
because the fire season is -- it's upon us.

Workers also should not be allowed within a voluntary or mandatory evacuation zone, except work permitted by the authority which has ordered the evacuation.

We'll also hear from some of the organizations who work closely with workers during certain fires who had their experiences in doing work where they are crossing evacuation zones and putting their lives at risk.

So we feel that this is important to include in a permanent regulation. And I would be interested to hear kind of what format would be suggested for a dialogue from the division. We would welcome that.

And we're very confident in that this rule will move forward. We're hoping that you -- you will look at the changes that are reflected in this kind of a tiered approach and act with expediency to adopt those.

Thank you.

(Speaker change.)

BRIAN HERAMB: Good morning. I'm Brian Heramb with San Diego Gas and Electric. And I just wanted to offer one or couple, two -- couple comments.

Thanks again for the opportunity to provide input. I think this is one of the most valuable aspects
of being a regulated entity and it being in the State of California, where we actually have an opportunity to provide input.

One of the aspects of the comment process is to ensure that we have the latest information for the health effects and all. And I know that you've had a chance to review quite a few different studies and are relying on different sources of information.

I think one of the really effective aspects of the Lead Advisory Committee was the extensive amount of information that was provided to all the stakeholders.

And in one of the very first advisory committee meetings, there was a full-day symposium, basically, that was provided and gave an update on the health effects of lead. And it really, I think, standardized the understanding among the stakeholders. So I want to just bring that up. I think that's a very effective aspect.

And I was wondering what is the division's plan as far as introducing more information about the health effects as well as -- going forward, what's your proposal for other advisory committee meetings for the standards?

ERIC BERG: So you'd like us to have a separate meeting just on the health effects? Is that your
request? Or would you like us to write up a summary of the health effects based on all the scientific studies and post it? What exactly?

BRIAN HERAMB: I think that a lot of people are -- this is a brand-new area that we're trying to learn about. And that having a clear-cut presentation or series of presentations by experts in the field would be especially helpful so that all of the regulating community as well as labor and other technical specialists are all on the same wavelength. We'd all have the same understanding about what the health effects are and what may be the most effective way to regulate the exposures.

So that's a very fundamental aspect, I think, for long-term. I think that would be useful.

ERIC BERG: We did have something like that two years ago in the Health Effects Advisory Committee. We had people from the California Air Resources Board. Would you like something else similar to what we had before?

BRIAN HERAMB: I think a lot of companies or other entities might not have been present at that. Certainly, now, if we have a lot of people that are interested, and it seems like it would be something that would be very useful as we're moving forward towards the
permanent regulation to establish -- and especially in light of all the information that is coming to light now, especially with the number of fires and the severity of the exposures, more people are focusing on research. Thanks.

ERIC BERG: Okay. I'll take a look at that.

Thanks.

(Speaker change.)

GABRIEL MACHOBANSKE: Good morning. My name is Gabriel Machobanske. I'm the associate director of the Graton Day Labor Center, Sonoma County.

The Graton Day Labor Center is a worker-led organization for the last 16 years whose function is a hiring hall where our members can be hired for a day's work.

We provide approximately 500 members with access to linguistically and culturally relevant health and safety training and neighborhood workshops.

Additionally, the workers have collectively agreed upon their wages. And since the work is facilitated through the center, wage staff rates are significantly lower than in other jobs.

Our members and low-wage-worker community in the area were obviously disproportionately affected by the Sonoma County fires. And as such, I'd like to
provide comments and support of the permanent standards
to protect workers from wildfire smoke and urge the
division to accept these comments so that we can have a
strong wildfire smoke standard and ensure outdoor worker
health and safety is not jeopardized again.

I'd like to share a little bit about how the
wildfire smoke in 2017 impacted day laborers so as to
highlight the need that the AQI be changed to 101, as
opposed to further on down the line in rulemaking.

Day laborers are part of our state's working
core. They're among the most vulnerable workers in our
society, particularly as it relates to health and safety
in the workplace.

Whether working on vineyards, farms, or family
ranches, on construction sites or landscaping projects,
they're overwhelmingly working outdoors and in direct
contact with environmental hazards, be they pesticides,
heat exposure, et cetera. And as was the case in the
2017 wildfires in Sonoma County, obviously smoke.

Day laborers, like manual wage income workers,
exist in a permanent state of health decay. They have
high levels of hypertension, asthma, and other
respiratory and cardiac issues and chronic illnesses.
They're also an aging population, as many day laborers
are now in their fifties and sixties.
Given this context, within days of the fires, with AQI well over a 100 or even 200, workers were returning to work, cleaning up various sites at farms, ranches, single family homes, and other properties.

In the absence of adequate regulations to protect them, we at the center were distributing N95 masks and training workers as to their proper use, while also encouraging homeowners and other employers to ensure that their laborers were working under the conditions that only slightly mitigated the impacts of air quality and other hazards.

It goes without being said, but under these measures, no other regulations on the books prevented workers from returning from their cleanup work without complaints of nausea and respiratory issues.

More often than not, day laborers are also hired to complete a job in a day and therefore working at abnormally fast rates and using high levels of aerobic energy. This highlights the need for a respirator, not to mention the toll it takes on one’s body to work strenuous work for eight hours a day while wearing a respirator.

Day laborers have the highest rates of injury and death in the landscaping and construction industries, which themselves are two of the most
dangerous sectors to work in, in this country.

They are a prime example of invisibilized and excluded workforce in the State of California where conditions in which they encounter themselves working are shifting. They and all other excluded workers need these rules established as a bare minimum measure to protect them.

Thanks for your time.

CHRIS KIRKHAM: One question.

GABRIEL MACHOBANSKE: Yeah.

CHRIS KIRKHAM: If you urge us to adopt, did I hear you say the comments or the changes?

GABRIEL MACHOBANSKE: The changes that have been proposed.

CHRIS KIRKHAM: Proposed in the draft or --

GABRIEL MACHOBANSKE: Yeah. The highlighted and red.

CHRIS KIRKHAM: Thank you.

GABRIEL MACHOBANSKE: The temporary regulations.

(Speaker change.)

GAIL BLANCHARD-SAIGER: Good morning. Gail Blanchard-Saiger with the California Hospital Association.

I just wanted to follow up, actually, on
Bruce's comments. And I participated in this process, maybe not from the beginning, but significantly throughout. And I don't think I've heard any employer saying that we didn't think there was some type of protection that needed to be put in place. And from the hospital perspective, we care about our communities. And this is obviously a serious issue.

But the concern that I've had from the outset -- and unfortunately was not relieved when I saw the most recent discussion document -- was the treatment of, you know, one size fits all. And so day laborers and construction folks and landscapers are treated the same as first responders.

Obviously, the day laborers and construction folks, folks who are working outside every day, have obviously a different exposure situation than the first responders, who are working, obviously, very close to the fire but maybe for a shorter period of time.

And they have a different experience than the hospital workers, which are really only outside when they're evacuating a hospital because the fire is coming so close.

And at one of the last meetings, one of the people who spoke actually did that in very vivid detail.

And so it's just -- I think, from my
perspective, it was frustrating to see just a building
on the temporary instead of kind of taking a step back.

And, again, we heard from the Standards Board.
They really heard the employer concern. And I think
that's a major concern, is that all workers and all
employers are basically being treated the same, when the
situations are very different.

So I would urge you to kind of take a step back
and look at that again.

ERIC BERG: We do have an exception for
emergency workers for engineering and administrative
control that's in there.

GAIL BLANCHARD-SAIGER: I have to go back and
look. I'm not quite sure that that would address our
situation --

ERIC BERG: And the existing regulations do
require emergency workers be protected from respiratory
hazards.

GAIL BLANCHARD-SAIGER: Right. So I'm not --

ERIC BERG: It's not always a requirement.

GAIL BLANCHARD-SAIGER: Right. So I'm not
necessarily disagreeing with that. My concern is the
one size fits all. And our understanding from the
beginning of this process was this was for outdoor
workers.
I guess my point is, outdoor workers look very different depending on the circumstances, how long they're outside. And so I'm following up on Bruce's comments. A deeper dialogue about that is, I think, appropriate.

ERIC BERG: So you would like separate regulations?

AMALIA NEIDHARDT: That's what I was going to ask you. What would you propose? What is your recommendation? We want to hear it.

GAIL BLANCHARD-SAIGER: I would say that we need to have a dialogue. Not necessarily different regulations. But the scope should not be a one size fits all. There could be a subsection for -- I'm making this up. I'm not the expert at this.

That's why I think what Bruce is saying, there's a lot of people in this room that have a lot of good ideas. It could be subsections depending on how long you're outside. Or I don't know. I don't have the language drafted. It's more the concept of kind of starting.

We've got emergency regulations. We've got something in place. That's important. I think we all agreed on that.

It's more stepping back and saying, okay, if
we're going to do this on a permanent basis, what is the best way to do this when we're not under the time pressure. To just build on the emergency regulations that were developed during a very short period of time I think is inappropriate.

AMALIA NEIDHARDT: So, Gail, may I ask you, is that something you can send it in by at least September 30th? Please.

GAIL BLANCHARD-SAIGER: Definitely.

AMALIA NEIDHARDT: Thank you.

GAIL BLANCHARD-SAIGER: Okay.

(Speaker change.)

TANIA REYES: Good morning. My name is Tania Reyes. I'm here with the Central Coast Alliance United for a Sustainable Economy, better known as CAUSE. I'm also the 805 UndocuFund coordinator.

And what the 805 UndocuFund has been doing is helping the undocumented immigrant population in Ventura and Santa Barbara Counties that were affected by the Thomas Fire and the mudslide. And then more recently the Woolsey and Hills Fires in November of 2018.

I wanted to speak to the issue of lowering the threshold to 100. We strongly support reducing the threshold for providing respirator masks from 150 to 200.
A 150 threshold is intended as unhealthy for the general public. A day with such bad air quality that it poses a risk for any ordinary person walking to the store or going to the park.

A 100 threshold is considered unhealthy for sensitive groups. People who are more at risk of exposure to bad air quality than the general public.

Agricultural workers perform strenuous manual labor outdoors often up to ten hours per day. Breathing in sharply for many hours at a time while pushing their bodies to the limit, often to harvest crops as quickly as possible for piece-rate pay or by the box they pick.

Farmworkers are more likely to have preexisting respiratory conditions due to their exposure to pesticides, diesel engine, and dust from the work.

Outdoor workers should be considered a sensitive group that is uniquely sensitive to air quality, and the threshold for their protection should reflect that at 101 on the AQI scale.

Thank you.

(Speaker change.)

NANCY ZUNIGA: Good morning. My name is Nancy Zuniga from IDEPSCA, the Institute of Popular Education of Southern California. We are a worker center that operates four day laborer centers in Los Angeles. Some
of the most in California.

So I just wanted to support some of the comments that some other worker centers have shared around the threshold of going to 101, because in our experience, during the Woolsey and Hill Fires, and that affected Malibu, Calabasas, and parts of Ventura.

Speaking to workers, supporting them with N95 masks, we were able to collect different testimonies where we actually heard of workers, day laborers, and domestic workers, both undocumented and low-wage immigrant workers, actually doing first responder work.

We know the story. His name is Eladio. You can find his story on La Opinión. And Eli, he's been sharing his story of how he actually stayed overnight trying -- he was paid to pretty much make sure that the fire didn't spread to a certain employer's home.

And this was a day laborer. That's not something that he typically does, but he did for pay. Because, as you might know, day laborers work day by day. And so his economic circumstances push him to take on this work.

And Eladio's story isn't extreme, but it happens. It happened in the Malibu area. And many more that we probably don't know of. So for us it's really important to think about this permanent standard. And
not just thinking about kind of specific industries, but also thinking about these extremes, because they have happened.

And so a lot of the things that were already mentioned by the Graton Day Labor Center we completely support. That is the type of worker that we support in Southern California.

And I just wanted to add, in terms of the sensitive groups, many of the day laborers and domestic workers that we serve actually are part of the sensitive groups aging as well.

So we want to make sure that if these workers are to continue providing for the homes in these areas that they are protected.

And also want to just kind of applaud these efforts to make this happen as soon as possible.

Thank you.

(Speaker change.)

LAUREN ORNELAS: Hello. My name is Lauren Ornelas, and I'm the founder and executive director of Food Empowerment Project. Our headquarters is based in Sonoma County, which, as you've heard, was impacted by the fires a couple of years ago. And part of our mission is farmworker justice.

In addition to working on policy and regulatory
changes to benefit farmworkers, we are also currently
starting a dialogue with those farmworkers who are
impacted by the fires.

We'd like to provide comments and support the
permanent standard to protect the workers from wildfire
smoke and urge the division to accept these comments and
suggested changes in order to create strong wildfire
smoke standard to help protect our outdoor workers.

The first thing is going to be echoing a lot of
people as well, is how many people in these communities
are already impacted by negative pollutants, are
impacted by things such as environmental racism, which
means that everywhere they live and where they work,
they're impacted by the train depots.

Or, in the case of farmworkers, they're
impacted by things like pesticide drift. They're
working in fields where their immune systems are already
compromised. Breathing is already compromised. So when
you have smoke, it's just adding to the problem.

A lot of people -- a lot of farmworkers in the
Central Valley already are exposed to, you know, asthma,
because of all of the negative pollutants.

I am going to have to leave early, and so I'm
not sure if you would allow me to make comments on some
of the rest of this or not.
CHRIS KIRKHAM: Yes.

LAUREN ORNELAS: So some of the -- in terms of farmworkers or workers being allowed within the voluntary or mandatory evacuation zones, a lot of farmworkers that we've spoken to so far have indicated feeling like they were suffocating.

And I'm going to jump a little bit to another comment about the workers having -- the masks being given, being if it's going to be mandatory or not, or if the farms, the employers have to give the masks and -- to the workers.

Then we would say absolutely it should be something that's given to the workers. Otherwise, the workers are not going to understand if it's required or not. It's going to seem like it's optional, which then doesn't imply to them that it's for their actual health.

And also, just how there needs to be a lot done in terms of the employers communicating with the workers that there needs to be some type of right to know where the workers understand what it is and why the contaminants are bad for them.

Because even me, living in this area where we were clouded by the smoke and ash for a while, I didn't really understand until about four or five days into it that I was actually starting to struggle to breathe.
And so unless there's some understanding, you don't really understand. Somebody has to be explaining to the workers why this is so bad. Even though they may not feel it initially, it's only going to get worse. Cumulative damage happening to their lungs.

The workers -- when we talk about the communication, that the workers need to be treated with respect and as if they're on equal footing so that they understand what's in the best interest of their health.

The workers should not be fearing seeking medical attention. They should be getting this already as a part of their jobs.

And in terms of interactive and in person, I think that there needs to be understanding about various language barriers. Even doing our current surveying of farmworkers right now, we're finding that a lot of them don't speak Spanish either. They're speaking in their native dialects.

So there has to be a way to, you know, convey this information for the safety of the workers, whether it be cartoons, images. Well-understood images that -- this happens in other businesses globally. Cartoons that can be given. Or even some type of training, role playing so that they understand.

Finally, this standard is really important to
me and the work that we do. Because farmworkers and all of these workers primarily are doing a service for all of us. Farmworkers are why we are able to eat. They're doing a service for everyone, even the workers who are building our roads.

And I feel that our state owes it to them by creating strong and thoughtful policies and not just creating policies that are kind of good in word only, but it has some teeth to it in terms of workers actually understanding what they mean.

So thank you.

(Speaker change.)

CHRIS PORTER: Chris Porter with IBEW Local 47, assistant business manager.

I want to address the exemption and section of scope. For employees exposed to a current AQI, for PM2.5 of 100 or greater. That's the exemption for one hour or less during a shift. Under that is firefighters engaged in wildland firefighting.

I represent 8,000 who actively are linemen, which I am myself for the last 22 years, or work under a substation. They work right alongside these first responders, clearing energized lines, making sure that the pumps that these firefighters are using to get water are operating.
But the exemption here is only for one hour. And we would ask that that exemption extend with those who are assisting in firefighting aid, as it does later on in the reg.

ERIC BERG: Exemption from emergencies?

CHRIS PORTER: No, no, no. It says in emergencies including G4. In emergencies including rescue evacuation, Subsection G and G2, 3, don't apply. And employer shall comply with Subsection 4.

Emergencies -- this is it.

Emergencies include utilities, communication, emergency operations when such operations are directly aiding firefighting or emergency response.

ERIC BERG: So that means that respirators are still required. Exempts them from the engineering and administrative controls. So just the respiratory protection.

CHRIS PORTER: No, I understand that. But we would ask that that exemption, while they're -- instead of one -- like I said, as a journeyman lineman for the last 22 years, I've been in wildfires. And you're assuming that we just show up. That we don't have to look at circuit maps, that we don't have to figure out how to switch around load. And then go in and actually make the mechanical either separation connections to
make it safe for the front line first responders, which are firefighters. It takes a bit of time.

I thank you for the one-hour exemption, but whatever they need, we need to be there with them to ensure that they can effectively fight that wildfire.

And we would ask that that in E, that it also be those who are the exemption firefighting or those aiding in the firefighting efforts.

ERIC BERG: Okay. I understand that. There is a separate regulation for firefighters that's being developed separately. There is a separate regulation for firefighters.

CHRIS PORTER: Yes.

ERIC BERG: You want it included in that one instead? You want to be left out of both regulations?

CHRIS PORTER: No, no, no, no. We don't want to be left out. No, no. What we want is not to be, first of all, encumbered by this. Because I -- thank you for the evolution here.

However, I don't believe that -- understanding that there are no dielectrically approved or rated PAPR systems, it is a greater hazard to arc flash and FR requirements that we have to ultimately adhere to, to wear that balaclava, to wear an N95 mask, a balaclava, a full face shield, and hit the 25 cal ratings, the 40 cal
and 60 cal.

And I've had that conversation with you before.

ERIC BERG: Thank you.

CHRIS PORTER: With that -- in G4 there's the exception, right? Which is the burden on the employer. And we would like that changed to an exemption while conducting work within proximity of energized circuits and equipment above 600 volts as it does in GO 95, in any of the safety manuals of all the utilities, POU, that PP must be worn. Those exemptions help us to do our job safely.

I don't expect our members to do daily work in conditions that are above 300. I don't. I don't expect and don't condone having the utilities have our workers doing restoration work when it's not necessary until the fires are out. But they are necessary to help firefighting aids.

And I don't believe that this reg took that into consideration. And I ask that we make those changes to take that into consideration that, when they are in their primary, this is more of a hazard than it is a help.

ERIC BERG: Okay.

(Speaker change.)

STEPHANIE MEDINA: Good morning. My name is
Stephanie Medina. I am a staff attorney at Centro Legal de la Raza in Oakland, California. I have the honor of representing low-wage workers, specifically day laborers, construction workers, and those folks working in the landscaping industry.

I am here today to represent these workers in a legal capacity. With respect to the point about having different requirements when it's different, when the AQI is between 101 and 151, the section must have the same requirements as it would be triggered at 151.

This is especially true for sensitive groups and for those who might develop occupational health problems or sensitivities.

We also believe that workers should not be made to request a respirator, given the power dynamic, especially specific to the immigrant undocumented worker population.

Every day I'm encountered with workers who are scared and don't realize all of the worker violations that they have been experiencing for years on end.

And so I know that having workers having to come to their employer and ask for a respirator mask can come as a very scary and very threatening situation considering the power dynamic of being fired. And in the day laborer's working condition, that could be the
only form of employment for the rest of the week.

So it's important that we recognize the power
dynamic between an employer and a sensitive and -- a
sensitive worker population and make this a requirement
for employers to give respirators to their workers.

Thank you.

(Speaker change.)

KEVIN BLAND: Good morning. We're still
morning, right?

Kevin Bland, Ogletree Deakins. I'm
representing the Western Steel Council, the California
Framing Contractors Association, and the Residential
Contractors Association.

I don't want to get lost on what Mr. Wick said
earlier and Gail from the hospital association alluded
to. We've just sat through a lot of dialogue and
testimony on substantive changes to a permanent
regulation that S and P hasn't placed in a permanent
regulation yet.

If you call it the yellow highlighting, red
highlighting here. And I think this is confusing the
day and confusing the issue already.

I've been through maybe 15 advisory committees
in my career or more. The best regulations that come
out of those is when you do have an effective dialogue
between labor and management and the division, of course, to come up with what an employer can comply with, what the division can enforce effectively, and what the employees can follow and understand.

This didn't accomplish this. We kind of brought this -- I'm bringing it back home to where we very first started with the emergency regulation. What was it supposed to be.

This was supposed to be an opportunity for employees to have some protection in an emergency wildfire where there isn't a bunch of notice, something pops up, here's a wildfire. They have a job site adjacent to it. They're not the rescue workers. And some guideline to say, okay, we don't have to be shaven, I don't have to lose my beard all year round because there may be a wildfire that comes up. We don't have to go through an engineering. We don't have to go through administrative. And a threshold that makes sense.

Here, we're talking about changing the AQI whenever -- there isn't even a proposed change for an AQI in the emergency regulation. But yet we've been talking about it.

The other issue that I think is important and I don't want to get lost here, is it's understanding the concept that the emergency reg, by not changing it
substantively, doesn't have a cost impact on the State of California and on the employers in the State of California to the effect of a -- do the math, just basic simple math.

In order to be prepared for an emergency, what do you have to do? You have to have N95s on hand, right? How many employers are there in California? A million? More? I don't know what the number is. Multiply that to say the average was nine. There's 9 million. That's 9 million masks. What does that cost?

Now, forget about the training cost and all the things we would have. There's a lot that goes just for the emergency reg.

The other thing that I think Bruce pointed out, and I want to bring that back up, is the idea. We went through this heat illness regulations, right? We had an emergency reg. We saw how that worked.

Then we looked at, okay, what needed to be tweaked based on some track record of it working and not working. Did a tweak a few years later. And did another tweak where we have something, an outdoor heat illness, that's fairly workable now. I still don't like it completely, for the record, but it's workable.

Here, we're trying -- it's a brand-new idea,
brand-new concept that we're trying to enforce and comply with in a fashion. I don't even know if it's possible.

I said this the very first time I was up at the podium at the last one. I think it would be easier for us to make wildfires illegal than it will be to actually get this in place.

Before you come back, Eric.

ERIC BERG: This is much simpler than the existing regulation, 5144, that requires employers to evaluate all the respiratory hazards, determine if they're hazardous, and protect employees from harmful exposure.

We know the science shows that the exposure is harmful. So this should already be done under old regulation 5144 and 5141. This simplifies them drastically from the existing language.

KEVIN BLAND: First of all, Mr. Berg, I'm not here to argue and counter punch with you on things. If that was the case, we already have a reg, why do we have this one?

I don't agree with you that this is simplified. I heard you do this with Gail earlier. I heard you do it with Bruce. We come up with something from the employers, talk to you about it, and you come back with...
things to fill in, oh, this is wrong or that's wrong, or
what about this and what about that.

This goes back to the point of dialogue and
input as opposed to punch and counter punch.

And I would appreciate it if we have an open
mind like you have an open mind. I prefer you would
have an open mind with what we come up with as
suggestions, what we feel like is an issue with the
rulemaking process here. This isn't our first rodeo.

ERIC BERG: And you're free to open.

KEVIN BLAND: We can let the public decide how
it comes across. Or maybe I'm wrong here.

But at the end of the day, the confusion in
this has to be addressed. Because right now we're going
through a lot of discussions over substantive changes
that we're told that can't even be made in the emergency
regulation.

So I'm trying to figure out how do we get
there. How do we get past that idea.

What I thought we were here to talk about is
what we could do with the emergency reg in order to make
it a permanent reg. And so I'm confused, and I've been
doing this for a long time.

With that being said, I don't know whether to
comment on the issue of going from 151 to 100 in scope
or not. Is that really part of what we're here to talk about or not?

    On the record I will tell you, I don't think that is a good idea to drop that threshold based on what we have in front of us and based on the compliance factors and how that happened. But do I do that now, or do we do it when we're talking about the actual regulation that's in place at some point that we want to change?

    ERIC BERG: Feel free to do it now.

    KEVIN BLAND: I know. But if I do it now, how does that change? Because that can't be changed, right? 151 can't be changed to 100, right, today?

    ERIC BERG: Not right now.

    KEVIN BLAND: So we're talking about a future of a future that we may get to.

    ERIC BERG: We'd still like your input on everything.

    KEVIN BLAND: That's my point. It's very confusing. I'll leave it with that.

    AMALIA NEIDHARDT: Kevin, I just want to make sure. In the event that we misunderstood or anything like that, I want to make sure and encourage everyone, please submit comments in writing on September 20th. By September 20. Oh, yes, 30. I was counting down the
days. Sorry, September 30th. September 30th. Thank you. We welcome them. Please.

KEVIN BLAND: And I know you welcome the comments. I used to tell my constituents, because I've been doing this for many years. I said, we don't always hear a way that they'll listen. I just don't feel like it's that way anymore in the division. I'm sorry.

(Speaker change.)

MICHAEL HARRIS: My name is Michael Harris. I'm the safety officer at San Francisco General Hospital and Trauma Center.

Something that I just wanted to -- wanted you to consider as a potential unintended consequence, if you do indeed lower the AQI threshold from 150 to 100, is the availability of the respirators themselves.

And just speaking to our experience during the two wildfires last year, we actually followed -- we had to scramble to sort of come up with our own internal policy for the hospital and the health department as a whole.

And we actually came up with something kind of similar to this proposed permanent regulation that would lower the AQI threshold. Basically, when the air quality hit that unhealthy for sensitive groups level, we were offering voluntary use N95 respirators for
essentially all our employees.

The problem was, even though we had a stockpile of about 7,000 N95s, those went extremely quickly. And I think during the second larger fire in 2018, the health department as a whole used 20,000 N95s over the course of that 14-day period.

And so my concern is that we got very short on respirators that we actually needed to meet the aerosol transmissible disease standard requirements.

We, in our day-to-day role, work with a lot of patients who have tuberculosis and other respiratory diseases. And we were actually having a very hard time getting ahold of the respirators. Not just because of our use but because of the widespread use throughout the state. Everyone was buying up respirators, companies, private citizens. So the stocks were running really low.

And we were worried that if we got to some critical point for day-to-day operations, or, worse yet, if there were, like, some sort of pandemic situation or a widespread ACD outbreak that we would be left without really a good way to protect our employees from that.

So I just wanted to share that experience with you. And that's sort of the reason why we are concerned about lowering the AQI threshold, that it's going to
cause these huge runs on respirators and make them very difficult to get during the period of a fire.

AMALIA NEIDHARDT: Thank you.

(Speaker change.)

ERIN GUERRERO: Erin Guerrero on behalf of the California Attractions and Parks Association.

First of all, thank you for the opportunity to weigh in. We definitely appreciate being able to lodge our concerns with you.

I wanted to offer just a little bit of an alternate perspective. You're hearing from a lot of similar industries, but we represent something different.

We've got theme parks, amusement parks, water parks throughout the state. And by and large, our members have health and safety officers on hand. They're very concerned about the well-being of their employees under all sorts of circumstances. They focus on compliance. They work within all the Cal/OSHA guidelines.

So we just wanted to highlight that this does seem to be a one-size-fits-all approach to the problem.

And as far as the process goes, we're encouraging you to just slow down. We started with the emergency regulations. And we all understood the
purpose of doing it as an emergency regulation. The State wanted them in place before the next rash of wildfires.

Well, we've got those in place now. So to echo some of the other comments, now is the time for us to slow down and separate the different sectors within our economy and figure out how they will impact different sectors. As far as that's more of the process. But, you know, specifically I think we're on the scope section of the agenda.

So on the scope, we feel that it goes much further. I think we all know that the impetus for this was Petition 573. And that petition very clearly talks about outdoor workers. But then within the regulations, we look at what is an outdoor worker.

And, you know, this clearly impacts people who are not exclusively outdoor workers. So as far as the scope goes, we think it is far too expansive.

Right at the top, you know, the trigger. We've got AQI readings that an employer should reasonably anticipate his employees will be impacted by wildfire smoke.

We feel that that's far too subjective of a trigger. Reasonably anticipate is not a really well-defined term. And we think it should be tied to
something more concrete. There are exemptions that are listed.

To be not considered an outdoor worker, you'd have to make sure that an employee is not outdoors for more than one hour. We find that to be too low of a threshold, especially when you've got people like parks who are very good about accommodating their employees, moving them around to make sure their health and safety is a top priority.

I know that we'll talk about identification later in the agenda, but as far as the scope goes, the AQI thresholds for triggering these regulations.

During the emergency regulation process, we had concerns with the AQI thresholds that were determined there. So, obviously, we're even more concerned with the Version 3.0 that we're discussing down the road of lowering those AQI thresholds even further.

And then, finally, the little note about the MERV. Obviously, if we're talking about MERV, that far exceeds the original petition of dealing with outdoor workers. MERV is all about indoor filtration systems.

So I just wanted to put a pin in some of those finer points and express our interest in working with the division staff on these in an iterative process and having that dialogue so that we can really think about
the vast impact that these regulations would have on
different segments of the economy.

AMALIA NEIDHARDT: Sorry. I have a question.
Could you tell me a little bit more about what
you were saying, that you move the workers around and
that they are not exclusively outdoors? Can you give me
an idea of what exactly you're talking about, please.

ERIN GUERRERO: Sure. There are a lot of
employees that deal in a mixed environment. They don't
spend all day outdoors. They might move from one
station to another. Moving from station to station may
entail walking outdoors to get to another station.

So my point is that when you've got a one-hour
cumulative over a course of a shift, we think that there
needs to be a little bit more flexibility with that.

AMALIA NEIDHARDT: Do you have a suggestion?
Sorry. That's what I'm trying to gauge.

ERIN GUERRERO: These are the discussions we'd
love to continue to have with staff. At this point this
was our first foray into this. And we look forward to
having that conversation to try to find different ways
that employers could comply with the intent behind this.

CHRIS KIRKHAM: Similarly, do you have a
suggestion? You said that A1B was too subjective. Do
you have any recommendations for alternate language?
ERIN GUERRERO: Well, you know, at the beginning, when we were starting the emergency regulation, there was -- it was tied to a notice of some sort of a wildfire. And we did have concerns because it lacks specificity. It could have been an alert about a fire three states over. But we do think that having it tied to some sort of official proclamation of a fire.

It's all about -- people may want to comply, but if there's confusion about how to comply, then the regulations are ineffective.

ERIC BERG: Thank you. We'll take a five-minute, five, ten-minute break.

(Recess taken from 11:04 a.m. 11:12 a.m.)

(Speaker change.)

JAMES MACKENZIE: Thank you. My name is James MacKenzie. I'm with Southern California Edison. I had a couple of points I wanted to go through.

First, I do support the comments that Mr. Porter had made early from IBEW regarding level of exemption. And I wanted to talk about that for a little bit. Because as I replayed previous conversations in my mind, I think stopping short of talking about the exemption maybe left things a little wanting.

We're not talking about sending people in
without any protection. We're talking about an administrative exemption. I'll let -- I don't want to pretend to be speaking for you. So throw something at me if I'm off base here.

But an administrative exemption that would allow for the filtering facepiece respirators, N95s. And then you've got -- and for the situation that he described, these emergencies, where they come fast and furious at times.

We bring crews from out of state from -- maybe they come from Colorado or Texas or New York. And this is a California unique regulation. So the more complicated it is administratively, the more challenging it is for us as utilities to restore power to those areas.

And the restoration is one piece of it. If we're looking at lowering thresholds, that's where restoration could be a challenge. Right now, for the higher levels of respiratory protection, we're not looking at restoration.

We're looking at the situations described, where we're helping firefighters get in so that they can fight the fire. We're moving power lines from the street, helping people evacuate so if the power lines were to fall down on the street as a result of a fire,
we can clear those lines and get people out of there.

As I would hope you can appreciate,
administrative requirements in a setting like that are challenging.

I've heard comments from some of the division on, well, why wouldn't we just train everybody. Well, we don't know where the fires are going to break out. We don't know which crews are going to be responding at the time.

And based on some of the requirements that are in here, namely the requirement to have the inside of a mask be at 151 or lower, that puts us in a situation probably, with powered air purifying respirators, three grand a pop, keeping batteries charged on mobile crews over 50,000 square miles. There's a lot of administrative challenges with that. When all along, as we've been talking through this, we were talking in terms of N95 respirators.

So when we saw the language around the air quality inside the mask being at 151 or lower, at some levels that gets you out of N95. And I don't know if that was what was intended, and I don't know if the science is there to demonstrate that the N95 is not going to be helpful in that situation.

So that's where we would look to your help to
guide us on the science aspects of it. And also looking at the HEAC processes. I'm curious as to why we're not following those as to this situation as well.

    ERIC BERG: Yeah. As far as the N95s and the protection factor, it has an AQI 500 protection factor, whereas N95 respirator is 10. That gets you below 150.

    JAMES MACKENZIE: If you're looking at the particle count, when you get towards 550, there's no such thing as 550. When you follow that line, which is not linear, and you get towards 550, you're not there based on what we're looking at.

    ERIC BERG: So 550 you need a higher level of protection?

    JAMES MACKENZIE: Right. So that's -- and I don't know -- I've not seen where the science would support that we're typically in protection areas. We wear something to get us below a threshold that we put it on at. So if we put it on at 500, we want to get us below 500. So at 499, it's voluntary. I can choose to wear it or not. At 500, I'm in a higher level respirator. It has to be below 151.

    So employees are asking a lot of questions about the logic here. And it's hard to answer.

    ERIC BERG: Okay. I understand. And as part
of administrative exemptions, you want exemptions to the training requirement in emergency?

JAMES MACKENZIE: No. The basic training I'm comfortable with. I think that that's healthy to let people know personally why we're wearing these things, the N95 and whatnot.

The fit testing, the measurement, the communications, some of those aspects, where a much simpler scenario -- we talked about simplicity. And you made a comment about this being very simple.

Even a possible simpler solution that we've talked about, we had mentioned a while back, is to take 5144, the voluntary use provisions, and add wildfire smoke as a mandatory component to that. That you will offer voluntary respiratory use in a wildfire situation.

That to me -- and there certainly may be holes in that logic, but to me that seems like a very simple approach. We're not measuring. It's just, hey, when we have these situations, we'll offer these.

So to circle back on the exemption piece, I don't want there to be any takeaway that we're supporting not protecting workers. We will do that. We've done that -- I've been with the company over 16 years.
And one of my first jobs when I hired in into the safety department was to drive respirators, N95 respirators, to a wildfire. And that was not a new practice then. We've been doing that for many years. We protect our workers in that sense.

But these administrative aspects are very challenging. And part of that is because of the nature of our workforce. We're over 50,000 square miles. We have hundreds of facilities and mobile crews that don't -- they don't all have cell phones. They have radios and a means to communicate, but to get a clear, concise message is challenging in an emergency. We can communicate to them effectively, but it takes -- it can take a little time sometimes.

Moving on to the sensitive group issue.

I have a couple of questions there. And I don't know the answer, so they're sincere questions. But before we look at lowering AQI to affect sensitive groups, I would really hope that we understand what percentage of the population is considered sensitive. And I know that often children and elderly are considered in that group. So when we remove children, we remove retired population, what percentage are we looking at then?

And then I think an appropriate question for us
and one that we can have in dialogue, I would hope, is it appropriate to apply the statewide regulation to whatever we send to that population that we're looking at? The answer may be yes. It may be a lower population.

I would argue that we have disability regulations and laws that protect those folks in those situations as well.

Is it really helpful, is my question. And so that's something that I would hope would be looked at. And I would ask that that information be shared.

ERIC BERG: Okay, yeah. People over 65 are more sensitive. And there's a large percent of the people over 65 still working. People with asthma are also in the sensitive group and a large part of the workforce, current workforce.

And the labor code dictates that we protect all workers, not just healthy workers. That's why we want to protect everyone in unhealthy air.

JAMES MACKENZIE: But then are there disability laws and regulations that would provide accommodations for those workers rather than putting a blanket over the entire state?

ERIC BERG: We'll look at that.

JAMES MACKENZIE: Additionally -- well, I
mentioned the (inaudible).

On the alert system, monitoring AQI. We're a large corporation. And we're struggling with some of the details of how to track that. We're building an IT system to track AQI and communicate it out.

When we're asking -- I don't know the exact number -- I heard a million earlier -- of statewide employers, average employee count of nine, it seems very interesting to me that we would not be pushing a statewide alert system, versus having every employer monitor their own.

And I think we're going to have conflicting results. I think we're going to have communications where it's very common to look at the ozone versus the PM2.5. And maybe that creates some misleading situations at times as well.

So I would really advocate for something at the state level that would communicate an alert system that people could subscribe to that would let them know that there's wildfire smoke impacting the PM2.5.

It seems -- again, I'm challenged with us doing it as well as all the employers around us in this situation. So that's something I would hope you could advocate for as well. And it candidly seems something that could be appropriate for Cal/OSHA to offer from a
communications standpoint.

ERIC BERG: Okay.

JAMES MACKENZIE: And then my last point is that I do -- I was very encouraged at the Standards Board meeting when we talked about dialogue and having a forum where you can sit across the table. And maybe everybody doesn't leave with what they wanted, but they leave with what they can live with.

So I echo the comments provided earlier from Mr. Wick and Mr. Bland with regard to the need for real dialogue.

So I was a little discouraged when I saw the forum in the setup for today versus the ability to have some real feedback, real dialogue, and real discussion. And I hope we can move towards that.

So thank you.

(Speaker change.)

BRUCE WICK: Bruce Wick, CALPASC.

I asked Eric and Chris to put up on the board. I think they are doing so. I think there's a lot of confusion out there. We are under the current Emergency Reg 1.0. I am confident it will be readopted by the Standards Board and therefore will be in effect through July 29 of 2020, the current reg. No changes to it. Effective if we get through making minor
substantive changes to that regulation.

ERIC BERG: Nonsubstantive.

BRUCE WICK: Nonsubstantive. Thank you.

We'll have a 2.0 version of the permanent reg, a slight variation of this one, that will take effect July 30th of 2020 or something like that, right?

ERIC BERG: Yes.

BRUCE WICK: And then we'll begin this major change permanent regulation. The Standards Board has a lot to do. They have some regs coming down the pike. So they're going to be tied up developing a permanent regulation going through that process. So we can well be into 2021 or further before we make any significant adjustments to this regulation.

So I just want everyone to be aware of that timeline when we're talking about, you know, the 101 versus 151, et cetera.

And I would ask the division, keep asking this, that right now the division could say we will develop a fact sheet for all workers in this state on wildfire smoke. We could do that in 57 or whatever number of languages.

We have some small employers, and they'll have employees with three or four different languages depending on where they are in the state.
And we're saying you take employer, Appendix B, and each one of you 900,000 individual employers, you make it understandable to your employees. Why can't Cal/OSHA do that for every worker in the state and, actually, every person. That would go a long ways if we're off to 2021 or more before we get any significant changes to that.

Because -- and I want to follow up on James's comment, our voluntary respirator use is very confusing now. We've already made this commentary. This only adds to the confusion. Whether it gets Appendix D or Appendix B depending.

I think we ought to take the time with this 3.0, walking through, having a very seamless respiratory use program where employees have one appendix that they read. And they have a fact sheet on wildfire smoke and they know what that means. And even small employers, we hand them something they can implement readily.

If we really want to protect employees, that's how we're going to do it.

So for major reg and, you know, how we've done it in the past, we've put a table in the middle and had people appointed representing all stakeholders. And it's still a public forum and anybody can speak, but
that group is tasked with going back and forth and
discussing this.

   We've heard worker advocates that want to talk
about going down to 101. We should have that debate,
but it should be labor and management leading that
debate and that discussion. Because there's points to
be made for both sides.

   And we find a way to get through those things.
And as James said, we compromise. We say, this is the
best we can do. This provides the best protection in a
way that employers can translate it from a regulation to
the supervisor, to the employee themselves. And it's
consistent.

   Thank you.

   (Speaker change.)

   DAN LEACOX: Good morning. Dan Leacox, Leacox
& Associates.

   Commenting on the scope, it's going to touch a
little bit on the economic aspects of it. But I will
keep the bulk of that for the agenda.

   The first thing I have to say is that -- make
some process comments. This meeting here is not going
to become what is being asked for or required. That is
just not going to happen by asking for suggestions or
whatever.
The notice of this meeting was advertised as an input-only meeting. So I don't think anybody really came prepared to have that type of discussion. It wasn't advertised as a round table meeting. It wasn't advertised the way the board does it, which is discussion line by line, line items, et cetera, between the parties as well as to you.

An example of why it isn't really a discussion, you're demanding suggestions. I may have some, I may not. But I think that's a little bit unfair. But I'll give you one example of why this doesn't necessarily serve as a dialogue.

There was -- you heard a gentleman earlier that talked about we need an objective determination of a wildfire. There was -- I think, in an early draft, there was actually some language of some declaration of a wildfire, declaration of emergency.

So this was a suggestion made. And it was taken out. It didn't show up in the emergency rule.

Well, none of the stakeholders who had suggested that knew why. We heard at your briefing to the board on the day of the vote, after all of the public comment occurred, that you found it was unworkable or unreliable.

ERIC BERG: There is no such alert.
DAN LEACOX: Good. So what didn't occur was coming back to those stakeholders with that concern, saying, you know, this doesn't work. What else can we do to address your concern. We only heard about it after all the comments at the day of the event.

So this process, we make suggestions, and then it goes into a black box, and there's some thoughts about it, and then the next thing you see is the rule being voted on. It isn't dialogue. And that would be an example of why that doesn't really work for us.

I think one of the dialogue that needs to occur is what we're trying to accomplish with this rule in the first place.

Now, I will note, along with Bruce's comments, that in the first section of scope there are no proposed changes for the 2.0 version, what we're going to have to live with for the next probably two or three or four years, perhaps, if the permanent rule, the second 3.0 version, ever really does get done.

There is a suggestion for Version 3.0, but one of the discussions that needs to occur is why we're doing this in the first place. I'll give you an example.

The thought that I think most of us had when we began with approval of the petition was -- and I know
you and I had this discussion at the HEAC meeting, and we were talking about this before the petition was voted on, was the idea of allowing for voluntary respirator use and removing the requirements for that, the fit testing and the health evaluation requirements of that.

Very simple prospect. Make it easy for employers in these situations to just hand out respirators. That would have been a beautiful thing. My suggestion is do that. There would be a lot of workability in that.

So a lot else was written into this. And this gets a little bit at the economics, but I think it's not well understood. In talking about this, there's sort of the notion that the world will continue as it is. We're just now going to impose these additional rules on that behavior. But that's not how it works.

So we heard the day laborers, for example, wanting a lower threshold to require respirators. and that would trigger fit testing and health evaluation. This is something they want very much, to lower that trigger, to protect the workers when they go to work.

Well, I did a little research on the cost of that. And that's about a day's labor, a day's wages, it
sounds like, for a day laborer.

So this rule doubles the cost of what it would take for an employer to hire the day laborer. So what I think is they don't get hired. I think that's what occurs on these days. They don't go to work with protection, they don't get hired.

Now, if they're living in this environment with all this smoke, you know, the whole atmosphere around these folks are filled with this smoke. So they go home and do whatever they do besides go to work. But under that situation, there's no respirators being handed out by employers.

I know in Sacramento, when the smoke got really bad last year, that fire departments tried handing them out for a while, but the kibosh was put on that by, I believe, health services or somebody said, no, don't do that. So this is one of the factors being looked at.

When Bruce says this is less effective than it could be, I think you're going to just basically send people home without respirators at that point, whereas they could be working with them. So do you really want that?

The other thing this rule does is it crosses into a territory of, you might call, conflict between
employers and employees. I know the division is tasked with safety only and thinks about that. But there's a lot more that enters in.

Requiring somebody with a beard to shave or have to choose between working or shaving their beard, for example. Well, those involve a lot of choices that involve the reasons people have for living and working beyond safety.

You know, I think it's a fair statement to say people don't live for safety. They practice safety so they can live. There's a little bit of difference between the two. People go to work for all kinds of reasons. And it's important. Health and safety is important so they can come back and do it again. But it's not why they're working. We heard the day labor testimony.

CHRIS KIRKHAM: I hate to interrupt you. It's been a bit more than five minutes.

DAN LEACOX: Oh, yeah.

CHRIS KIRKHAM: We've got a lot of other people who want to comment.

DAN LEACOX: Yes. Well, this is another point. The type of dialogue you're suggesting can't happen with bits and pieces five minutes at a time.

CHRIS KIRKHAM: How much more do you have?
DAN LEACOX: Oh, quite a bit. Probably about 20 minutes.

CHRIS KIRKHAM: You can get to the back of the line.

DAN LEACOX: Okay. So the suggestion is well -- okay. Let me take a look at this here. Oh, just one last point, and then I'll get back in line. I'll come back for more of it.

I think the reference to already having to comply with this Section 5154, this goes to perhaps the economic analysis, but it's been used as a defense. That to me seems to be a little disingenuous.

I bet if we looked back at the rulemaking for that, there's no contemplation of this type of requirement in terms of scope and cost and burden of the thing.

ERIC BERG: Which regulation?

DAN LEACOX: The ones that you're referencing.

ERIC BERG: 5144.

DAN LEACOX: And the other one?

ERIC BERG: 5141. Those are all broad regulations that encompass all hazardous contaminants.

DAN LEACOX: Yes, I understand that. In the adoption of that, the situation here that's very different than what is contemplated by those is --
there, what's being contemplated are workplace exposures that are limited to the workplace and not where the entire environment, all of the air.

Those contemplate that there's fresh air all around except where you're putting the employee or making the employee do that creates an exposure.

It's such a different scenario that it just isn't contemplated by those rules. So it's unfair to say, oh, those already apply, because I don't think, if you look at the rule makers, there's any contemplation of this kind of situation.

It's more -- this is almost more in the context of a natural disaster. Yeah, we can say maybe the fires are man caused, but not necessarily.

ERIC BERG: The same would apply for naturally occurring asbestos or Valley Fever, things that aren't created by the job.

DAN LEACOX: Yes. Where you put the employee in there. But in all of those, there's lots of fresh air around. And that's not what we're dealing with here, right? Most of the air is good air.

Okay. See you later.

(Speaker change.)

WHITNEY PROUT: Good morning. I'm Whitney Prout with the California News Publishers Association.
Our association represents about 400 newspapers throughout the State of California, including all of the major daily newspapers in this state.

I'll keep it brief. I know there are a lot of people that want to speak.

We did speak at the Standards Board meeting and submitted a letter outlining some general concerns of the emergency regulations, so I won't rehash the same ground today.

But I do want to focus in the Subsection A, specifically on two concerns that I really see as workability issues for my members. And both of them arise out of what I see as an assumption that's kind of made in these regulations, which is that the worksite is generally relatively fixed, known in advance, and something that the employer can control.

And that's not always the case for all employers. It's certainly not the case for my members where we have journalists that are out working in their community. In the morning they might be at city hall. Then they're going to interview someone. They're going to an event in a park.

They're in all sorts of different situations where the employer, one, may not be able to anticipate where they'll be, but also doesn't have control over
And so the concerns I have with Subsection A and the changes proposed in the red and highlights specifically are: One, lowering the threshold to 100 from 151 is concerning for us just because it's going to increase the incidence at which the regulation is going to be triggered.

My concern is less with providing the respirators for voluntary use but with some of the other administrative requirements that were discussed earlier, particularly the monitoring requirement.

When you don't have a fixed worksite, if you need to monitor the AQI of PM2.5 for each worksite and you have a number of employees that are all working on different locations, maybe on different schedules, that quickly becomes an absolutely overwhelming administrative burden.

We made a few suggestions in our previous letter, which I'll brush up and resubmit by this September 30th deadline to try and address that, but I also think that those administrative burdens go in favor of maintaining that 151 threshold.

One of the previous speakers mentioned that existing Fair Employment Housing laws do provide for accommodation for employees that have -- that may be in
a sensitive group. And I think that is something we're exploring. Whether those accommodations, where you have an employee that has asthma, for example, they could request a respirator at a lower threshold that might otherwise generally be applicable.

That may be a workable solution to address the sensitive group issue without applying a generally applicable standard for the entire workforce.

And along those same lines, I also have concerns with requiring a minimum level of MERV filtration. This goes to what I was talking about before.

For my members, again, they may not know where their employees are going to be. They certainly aren't going to have information about what the MERV filtration level is at city hall or at the office building where their journalist is going to interview someone. They may be in filtered air. They're not outdoors. But because the employee doesn't know exactly what that MERV filtration level is, it becomes very difficult for them administratively to comply.

Our goal is really just to have a regulation that's workable. Our members want to comply. We want our employees to be safe. And so we'd love to come to a final regulation that protects employees but is also
workable for employers.

Thank you.

(Speaker change.)

TIMUR DURRANI: Good morning. My name is Timur Durrani. I'm the medical director for Lawrence Berkeley National Laboratory. I'm also an associate professor of medicine at UCSF in the Department of Occupational and Environmental Medicine. I'm a toxicologist with California Poison Control.

I want to start off just by thanking you for having this meeting. I've gotten a chance to look at the proposed changes, and I'm not prepared to discuss them or comment on them.

I would like to emphasize, and this is what I emphasize with the employers that I work with or patients that I see, is that although we talk a lot about the respirators, there are components in here about administrative controls and engineering controls.

And I think that's something that gets lost, and I'd just like to emphasize that.

With regards to the levels, the proposed levels in the MERV filters, I think it's too early for me because I haven't had a chance to look at the science, which is what most of my comments are focused on.
This regulation creates sort of an implicit endorsement of the effectiveness of N95 masks on employees and also the lack of harm around them. I think it's important to be able to communicate that to employees.

And to that I would say that in the communications, I think there should be explicit language about the limitations of N95 for employees to be able to understand. Currently, it's written that the employer is required to do this.

I would ask Cal/OSHA and/or the California Department of Public Health look at this language specifically so that it can be communicated in a way that employees understand.

I've noticed an absence of any crosswalk between this regulation and the heat standard and anything around work/rest cycles or hydration.

I think we know that these employees will not be working in isolation, but they will likely be working in a hot environment. They'll have something covering their mouths for long periods of time. And I don't see anything that has addressed that for them. So I'd ask that that be addressed somehow.

I think one of the pieces that gets lost is that the science behind this is all over the place.
Most of the science has been focused. It's been out that what most people in occupational health look at are N95 in a controlled environment with a sealed face mask. That's being extrapolated to workers who are outdoors in a changing environment with unknown airborne toxins.

I think that should be addressed and readdressed over time. I'm not saying because we don't have any science we shouldn't move forward. But I do think employees in some of the comments that I hear from the different groups is that there's an implicit endorsement that this is somehow going to save lives or reduce burdens. And I don't know that we have that information. I think a lot of what we have is being extrapolated from controlled studies.

And then we have associated epidemiologic studies that show anywhere from no improvement, maybe 80 percent decrease in exposure for wearing this mask.

And I think we need to address that so that employees who are going to volunteer to put this on have some understanding of that.

We do that for any other sort of thing that we prescribe before we prescribe something to someone so they understand the risks and the benefits.

The final thing I'd like to add is that I think
we should provide training to health care providers. I think that probably would be best done through the California Department of Public Health.

There are other examples of doing this. We do this with lead. We do this with pesticides. I think it's interesting that we can keep referring employees back to health care providers. And there's almost nothing for health care providers to go and look at to be able to advise employees.

So currently -- and I'll tell you that because we get these questions all the time from primary care providers to occupational health providers who don't have a one-hour basic explanation of the risks, the benefits, and the things that they would be able to tell employees and their patients about this current regulation.

Those are my comments.

AMALIA NEIDHARDT: Question. The limitations of the respirators is in Appendix E. Are you recommending that it be moved to the text of the regulation?

TIMUR DURRANI: I think both. So I would say the limitations I saw are based around symptoms. So it says if you have symptoms and goes on to describe breathing difficulty. What I don't see in there is the
limitations that are recognized around a nonsealed face mask.

AMALIA NEIDHARDT: Do you see on the second page limitations for respirators? That's what I was asking. Do you recommend that part be moved into the text?

TIMUR DURRANI: Yeah. I think it would be both, particularly in the communication to the employees, but also in the text of the regulation.

AMALIA NEIDHARDT: Thank you.

(Speaker change.)

ED OUCHI: Good morning. Ed Ouchi, San Francisco Department of Public Health where I'm the director of Occupational Safety and Health.

I'm actually going to spare the board for the moment or briefly for the moment from Ed getting his geek on and talking about the mechanics of the regulation. I will submit comments on that.

I did, however, want to focus on behalf of the Department of Public Health one major concern.

What we saw in the past couple air quality incidents, there was a major problem with messaging where different agencies were putting out different messages. It got very confusing.

So there's been a lot of work behind the scenes
between the BAAQMD, Bay Area Air Quality Management District, and the Associations of Bay Area Health Officials to come up with a uniform set of messages.

And I've been looking at their late draft -- they haven't issued it yet, but their late draft of a messaging tool kit, where they've done a beautiful job of coming up with standard messages that help officers, Bay Area Air Quality Management, issue at various wildfire conditions.

The problem we're having is that, if we're looking at, from an accommodation standpoint, changing from AQI 151 to 101, we are going to have a major disconnect, and we're going to blow that messaging out of the water.

Right now the health officials are focusing on that 151 value. They're using that as a threshold where they actually do not -- they talk about other health conditions, health concerns when our AQIs start rising. But they don't actually touch on N95s until that 151 value.

So that if Cal/OSHA changes their standard to that 101 value, we're going to have another major disconnect in messaging, where, for occupational purposes, we're going to be saying that we're going to kick in our voluntary respirator use at level 101.
Health officials are focusing on that 151 value. And there's no indication that they're planning to drop that as their threshold.

The other important part about that 151 value is they start talking about N95s, but they lead off with N95s can be worn if you feel comfortable. If it improves your comfort. But they follow up with six or seven conditions about considerations about why N95s are not appropriate for all people.

Now, this is for the public, the general public. So you talk about things about N95s not being available for children and the like. But they also talk about breathing resistance. They talk about health conditions that can be triggered by N95 respirators.

So they're doing a lot more of this sort of informed consent, warning people about what Dr. Durrani was talking about, the limitations of N95s that Cal/OSHA aren't hitting in the standard at present.

So the message I'd really like you to take home here is that, if you move to 101, you're doing it in a vacuum. You're going to need to be coordinating that with the public health officials and the Bay Area Air Quality Management District. And since this is a statewide regulation, with other air quality management districts statewide. Otherwise, we're going to just
have this complete confusion again about messages. Creates panic.

Thank you very much.

ERIC BERG: Could you share it when it's finalized, that communication you're talking about?

ED OUCHI: Yes. I will see if I can release that. Otherwise, what I was going to do was go back and ask our health officers in the San Francisco County Health Office about this concern about dropping numbers without coordination. That we're not talking yet about the merits of what number works, but we're talking about we're more concerned about the uniformity of messaging.

ERIC BERG: Thank you.

(Speaker change.)

ROY VLAOVICH: Good morning, Eric, Chris, rest of the team. Thank you for the opportunity.

Roy Vlaovich with Pacific Gas and Electric.

You've heard a lot this morning that we as a utility organization support, not the least of which in my mind that I'd like to reiterate is the necessity to perhaps parse out or pair out the different needs, different communities, or groups of workers.

In the utility space I think it's important for those of us that are writing the standard to understand.
The utilities really work in typically three or four of those spaces. You've got the normal worker. For PG&E that's 70,000 square miles representing people in office buildings to service representatives to field personnel.

We've got restoration efforts which happen as a result of either a power shutoff in advance of a fire or a fire may have started and so the effects of wildfire smoke may be impacting communities while the power is off.

This could be thousands, tens of thousands of customers that are also expected to create filtration systems in buildings that can no longer do that because they don't have power or gas to accomplish that.

While we remain sensitive to that, there has to be something addressed for the utility companies to actually go and execute their work, restore power, do it in a timely manner, and still protect their employees.

Understanding nothing we're talking about in the utility industry is attempting to diminish the protection that we provide for our employees.

The utility industry has a long history of doing this. We met in advance of some of this effort to talk about what we've done in terms of voluntary use in providing the respirators.
The other impact of that, when we get to emergency space where we're side by side, clearing the way, if you will, for emergency response, fire trucks, firefighting efforts, we have to be able to engage with them side by side.

And having me as an employee of the utility company standing next to a fire department that's dressed or appropriately protected from the environment differently suggests something to the employee. That's huge. We need to see if you can resolve that.

The bigger issues in terms of -- and I know this is going to come up later in a conversation with respect to costs. But a cursory effort to look at how many of our vehicles, 9,600 vehicles, 9,500 vehicles at PG&E, less than 35 percent of those have filtration systems, which means that the exemption that you provided doesn't really provide an exemption.

This person is going to go out in a vehicle unprotected. I can't necessarily, I guess, have them wear an N95 as they drive out to restore efforts or engage a customer or help the customer. That needs to be addressed.

Roughly 60 percent of our employees -- actually, it's 40 percent of our employees have beards. We decided that having a stockpile of 80,000 which we
currently have of N95 P100 respirators is not sufficient for more than three days.

And, typically, it's probably going to be one day worth of efforts. Because some of those lineman and gas men are going to throw away two or three during a regular service. That's a serious number, right? 80,000 in this stockpile. We're going to have to go three or four times that amount, or go to a different device.

We talked about powered air purifying respirators. Those are about 1,000 bucks a piece right now. If you order 250, you get a back order from 3M. And we're in the process of seeing if we can get 4,000. 4,000 at a thousand is somewhere close to 4 million just to ensure that we don't cause people to shave their beards off that have beards. And we've got a lot of history, a lot of pride in people that are supporting and support fire efforts and restoration efforts.

So the financial impact needs to be addressed. Again, what I don't want you to hear is that these are complaints. These are not complaints. They're real issues on our side we want to solve for. We're working hand in hand with IBEW to address those issues.

What we would like and what we support is an
ability for us to partner and maybe parse out for the utility industry a specific standard that is addressed to us that enhances or at least addresses all of the different components that we're having to deal with to comply with the effort.

Thank you.

(Speaker change.)

MIKE DONLON: Hi. I'm Mike Donlon, chief safety officer at the Department of Water Resources.

I want to say something that's already been said, but this does feel much more like a public hearing than an advisory committee where we have the language up on a screen and we're drafting rulemaking real time as a group, which is the way it's been done for many years.

So I think we need to get to that point at some time before we draft that final Version 3.0. I really think that needs to happen.

There's been a lot of talk about sensitive people. And according to the EPA's air quality site, that is -- sensitive groups are people with heart or lung disease, older adults, and children. So it's in there, and that's what they're talking about.

Now, I don't know of any existing PEL that is geared towards sensitive groups. So this is kind of something new on the safety orders that we're going to
gear an air measurement towards sensitive groups rather than towards the average employee, which is what PELs have. So I don't think we should lower it from the 151 to the 101.

This is also the first regulation I know that is requiring employers to protect EPA guidelines for the general public. So that's kind of different.

One other thing here that I've seen is that a lot of people are tasked by the Office of Emergency Services to go out in some of these areas while the firefighters are still fighting, while there's still smoke, and actually protect the watersheds, the aquatic life in the areas, and downstream. It could be really an environmental disaster if we're not doing that.

And I'm wondering now, does that count as directly aiding emergency response? It's not clear enough in the regulation for me to make that determination. And so what that actually means.

Couple other things. Just like the last gentleman said, we ran out of N95s. We went to Granger and bought their whole stock out. We ran out again. Luckily, by that point, the smoke started clearing.

And so there is going to be a problem. There are not enough respirators in the state to comply with this regulation if we have another thing like the
Camp Fire. They're not here. And so how do we address that?

And then on the MERV, a lot's been said about that. On cabin filters for vehicles, they don't have MERV.s. They're just filters. They're not that much different than the air filter on the engine. So you're not going to find a MERV listed in those specifications.

And one last thing that I wonder about is, since the petitioner, one of the petitioners, is soon going to be your boss and the chief of Cal/OSHA, should this rulemaking be done by board staff to avoid any appearance of conflict of interest.

And so I wanted to just throw that out there.

I don't know. I know that traditionally health standards have been done by division staff, safety standards by board staff. But this is kind of a unique situation that's just happened in the last week or so.

So that's what I have. Thanks.

ERIC BERG: After Anne speaks, we will take a lunch break.

(Speaker change.)

ANNE KATTEN: Good morning. I'm Anne Katten with California Rural Legal Assistance Foundation.

And I just wanted to, in the spirit of dialogue, address a couple of points that have been
raised, to follow up on them.

One is we think the idea of having a shorter document or some language in the regulation that specifies the training requirements in a briefer document would be a good idea. However, we don't think that should be a stand-alone document to hand to workers to substitute for training.

Workers need a training. They need a hands-on training in how you put on a respirator. They need an explanation of what the symptoms are of smoke inhalation, how to get help if you suffer symptoms and things like that. It does not have to be a long training, but it needs to be an in-person hands-on training.

Then also we, of course, also, along with the worker advocacy groups who have already spoken, we strongly support reducing the threshold to 101 and for the reasons that have been given, particularly many outdoor workers also have very limited access to health care, you know, so -- and they may not even know that they have asthma, or they may not have well-controlled asthma. So it's very important to protect these workers who are part of sensitive groups.

We do have some standards for things that are asthmagens. I think it's very legitimate to have this.
However, workers should not have to ask for a respirator at that point. They should be provided for voluntary use.

And also, yes, you know, with this standard as it is and if we reduce the threshold, we will need more N95s out there. But when there is a need, then people have to make arrangements to order ahead of time, to have supplies on hand. So I don't think that is a reason to not expand a requirement.

And then I'll be up again.

ERIC BERG: Thank you. We will take a -- can people come back in 45 minutes?

(Inaudible audience comments.)

ERIC BERG: One hour. Come back at 1:00 p.m., please.

(Lunch recess taken from 12:01 p.m. to 1:03 p.m.)

ERIC BERG: Thank you. Please introduce yourself, your name, and who you represent. And speak slowly for the transcriber. Thanks.

(Speaker change.)

ANDREW KOSYDAR: Good afternoon. My name is Andrew Kosydar. I am the scientist and legislative advocate for the California Building Industry Association, CBIA.
We have 3,000 member companies, and we represent the home builders in California. Our member association companies built approximately 84 percent of all the homes in the State of California last year.

So I'd like to say that promulgating regulations is a difficult process, and we really appreciate the time in order to provide some comments here.

I'd like to start to make clear the CBI supports workforce safety. And we also support protection from wildfire smoke.

I think I'd like to start by saying that, with all due respect, this has been a very confusing process. I have been personally a little bit dismayed to hear about the lack of dialogue from many of my colleagues. It sounds as though there hasn't been much of an outreach from this association and this group to some of our colleagues.

I do know that there has been no conversations between CBIA and any of the staff here at Cal/OSHA. There has been no outreach by Cal/OSHA to seek our input. And instead, we were alerted by other employers in the State of California to these regulations. CBIA would very much appreciate to be a part of this conversation.
Once again, as I stated when I was down in Pasadena for one of the board meetings, I find myself with many questions when it comes around to these regulations, and I don't have the answers.

I think what I'd like to do is start off by echoing some of the concerns of the toxicologist who was kind of enough to speak here earlier.

As a scientist it's very hard for me to evaluate these proposed regulations without having some sort of a citation or justification given. Instead, what I have is just purely a regulation with numbers that have been given.

It would be helpful to see the citations and the logic behind the regulation. And it's hard to understand the efficacy or the value of these regulations in the absence of citations or some sort of written justification.

I'm used to reading peer-reviewed publications that provide a logic, that allow you to understand why it is that something is being proposed, and why the conclusions have been drawn.

As I stated in Pasadena, these regulations lack clarity, and it is difficult to decipher. I don't think I'm necessarily the smartest person in the world or in this room, but I don't think I'm the dumbest. I think
that if we're going to have these regulations, they should be simple, and there should be really clear boundaries and expectations.

    I think in the construction community -- and I could get this number wrong -- there's around 800,000 people in the State of California that work in our industry. If we're going to expect all those people to comply with these regulations, it has to be really simple. I don't see that here today.

    One thing that I'm a little bit also dismayed to see on this agenda and in the discussion points is a lack of a discussion about wildfire. I know Erin had spoke earlier about what are the boundaries and what are the triggers. In particular, it states the employer should reasonably anticipate that the employee may be exposed to wildfire smoke.

    I'm not trying to -- let's see what I'm looking for. I'm not trying to come across with some sort of a small question here, but there are fires in the Amazon right now. Are those something that we need to take into consideration in California? I mean, they're massive fires. And we live on a globe that's encapsulated in one space. Where do we draw that boundary?

    And I know somebody earlier today who got up
and spoke to maybe the State should have some sort of trigger, or the State should alert employees. Maybe that's the solution. I don't know. But I do know this is not workable for employers. It's challenging. How do we implement this?

The other part that I point out is that written comments to this regulation are due on September 30th. We just promulgated a regulation. It just went into effect only days ago. Employers haven't had a chance to see how this works on the ground. There's no way that I can get you substantive comments by the 30th, from our member companies by the 30th of September.

So I think -- this has been mentioned a few times -- I would encourage you to slow down. You can extend an emergency regulation, as I understand it. There's no need in order to have to push forward immediately. Slow down. Wait to see how this works, and then move forward with trying to do the next round.

I think there are a lot of unanswered questions, as I mentioned. For example, people have mentioned, are their enough respirators in stock. I don't know. What happens if there's a shortage? Has anybody contacted the manufacturers to see if they keep enough in stock? Has anybody estimated the numbers of respirators, N95s respirators, that we need to supply
all of our workers here in the State of California?

How many days were there above an AQI of 101 on average in the last ten years? Does anybody know? Why is it 100 versus 150?

This is why I want to see the science. I want to see the publications. I want to see the justification. If it is 100 because that's in the best interests of our employees, then so be it. But I can't evaluate it as it's written. It takes a lot of time and effort for me to dig through the primary literature. I really need help.

I think I said this before, and so I'll repeat it one last time, and then I'll be done.

How does an employer differentiate between pollution and wildfire smoke? There are times when the AQI are going to spike above a given threshold, and it may or may not be due to wildfire smoke.

So thank you for taking my comments into consideration. I appreciate it. Again, CBIA supports workforce safety and protection from wildfire smoke. We would like to see regulations that work. And I hope that you all will work with us. Thank you.

ERIC BERG: I just have a quick comment on your questions. The explanation or the justification of the standard and the citations to the studies are in the
finding of emergency which is posted along with the regulation. So you might want to look at that and give us your feedback.

ANDREW KOSYDAR: I will. Thank you.

(Speaker change.)

BRIAN LITTLE: Good afternoon. My name is Brian Little. I'm representing the California Farm Bureau Federation.

(Discussion off the record regarding microphones.)

BRIAN LITTLE: Brian Little with California Farm Bureau Federation.

The Farm Bureau, as you may or may not know, is the largest agricultural organization in California. We represent about 30,000 agricultural producers in the state. And we produce a lot of different stuff. All the stuff that goes into a salad and everything else you eat, probably everything you ate today for lunch, was produced by a California farmer.

In doing that, we employ about 800,000 people throughout, at some point during the year, in agricultural production activity. And right now this month and probably next month, we'll be employing between 450- and 500,000 people doing agricultural production and finishing up the harvest season.
So we have a lot of people that we are required
to take care of to do the things that Cal-OSHA and other
agencies require us to do.

I wanted to start off -- and I'm going to
confine my remarks to 1.0 and 2.0.

As Bruce laid out earlier in the day today, so
we don't get any further confusion going on, and simply
say that you started off on a course of trying to avoid
letting the perfect become the enemy of the good by
allowing provision of N95 respirators when the air
quality index exceeds 150 as a result of presence of
PM2.5. And you continued on that course.

And you put us in a position where we can
provide respirators for people when respirators are
needed without having to do medical evaluation fit
testing and without having to ask a whole lot of people
with facial hair to shave every day throughout the
season.

The practicality of trying to medically
evaluate and fit test 800,000 people would have made it
extremely difficult to be able to do those two
functions.

And I suspect that when we had wildfires over
the last several years and agricultural that affected
employees in agricultural areas, we might have had --
I'll go out on a limb and say we might have had a fair number of agricultural employers who provided N95 respirators probably in violation of 5141, the voluntary use rules of 5141.

And I'm glad that, as of July 30th, we've cleared up that problem. So that when this occurs again, we'll have the ability to be able to provide N95 respirators to our employees without having to worry with violating 5144.

With that said, there are still some issues with the current reg/permanent reg, whenever that finally becomes final.

One is that it would be very useful to have a clear delineation as to the smoke that triggers the regulation is smoke from a wildfire. Some authoritative agency or nongovernmental organization or somebody could designate that this smoke is smoke from a wildfire. And thus you have a three-part trigger for the scope of the regulation. An AQI of 151, the presence of PM2.5 as a result of smoke, and that smoke comes from a wildfire.

That would be helpful because you can have PM2.5 as a result of some smoke of some kind that isn't necessarily related to a wildfire.

And that happens from time to time in Southern California. It happens from time to time in the
Sacramento Valley. So having that clarity that the
smoke for which an employer is required to provide --
the cause of which an employer is required to provide a
respirator when the AQI reaches 150 as a result of the
presence of PM2.5 would be very helpful as opposed to
having to rely on an employer reasonably expecting that
there might be some exposure to wildfire smoke.

The reason that's a problem is that I believe
right now we still have a wildfire burning in Modoc
County. It's not very big, and they're getting it under
control. Having gotten very much bigger, it's hard to
predict what the impact of that might be. The good news
is there's not a whole lot in Modoc County but sheep and
cattle. So it really didn't affect too many
agricultural workers. But --

(Inaudible audience comment.)

BRIAN LITTLE: Sorry? What's that? Sorry. I
apologize. Sheep, cattle, and sage grass. I should
have corrected myself.

So the result -- that fire could have become
problematic, and it would have been difficult for
employers perhaps in Sacramento County or in Stanislaus
County or in some of the other counties further south or
even over toward the coast to know for sure whether the
smoke they were experiencing might be from that fire in
Modoc County or might not be. It might be from some other source. So it would be very helpful to get that straightened out.

Lastly, the nature of the emergency red process I think is such that because it is truncated, that a lot of people have complained about the black box nature of that, that we gave feedback, and we don't know what happened to that feedback. And a regulation came out. And I think that maybe is partly a characteristic of the emergency regulation process.

But as we go forward, it would behoove you and it would behoove all of us stakeholders to have a more iterative and input-oriented process so we can come to a regulation that will protect employees that is going to be something that employers can actually do.

So I thank you for your time and your attention. And thank you.

(Speaker change.)

JIAXI FANG: Hi there. My name is Jiaxi Fang. I'm an aerosol scientist. I also work with Applied Particle Technology. And we're basically developing mobile monitoring solutions and wearables that can give location and concentration data on a personalized or hyper-local basis.

So I just had some more technical questions on
the standards. So I think one question I had was also that --

(Discussion off the record regarding microphones.)

JIAXI FANG: So we work with EPA, NASA, NIOSH on testing. But also that using EPA's NowCast or AirNow platforms, I wasn't too clear on kind of how the data should be interpreted. Specifically, it's measured on a real-time basis here. But also that I think data is reported hourly, if I'm not mistaken.

And are employers expected to use the data during the beginning or the day, or are they supposed to periodically monitor and make sure that the AQI is not fluctuating? Because if it's in between 190 or 110 during the day, how do they manage those types of situations?

And also, the EPA reference monitoring stations might not have enough resolution. There might be a lot of variances. How do workers, if they're stuck in between two area monitors, which area monitor do they really focus on when they try to make these decisions, because there can be a lot of differences based off of location. So I'm just kind of curious how that should be handled.

The other one is around Appendix A for the
direct reading instruments. Specifically, it's asking that the airborne particle sizes ranging from an aerodynamic of 0.1 microns, 2.5 microns.

I was curious why the 0.1. And the reason is that -- so at EPA they typically say wildfire smoke is from .4 microns and above. And then that's important because optical particle counters can only go down to 300 nanometers. So .1 to .3 is actually very difficult.

So I didn't know if it meant that has to be above .1 when you're doing those measurements, and how do you account for below .1? Or does it have to be everything below 2.5?

So I just wanted some clarification on the sensing, because that directly informs what types of technologies we need to use and how to interpret the data.

And then also, that when it says the employer may use a monitor that measures particle sizes beyond these limits and treats it as PM2.5, so I guess is that saying beyond either below or above the threshold as well?

And maybe -- I don't know if it would be possible to also address the upper limits as well. Because using PM10 or higher data to interpret PM2.5 levels is not necessarily accurate.
So that was pretty much it, stuff that might need some clarification from my end as a sensor developer.

Thank you.

(Speaker change.)

MITCH STEIGER: Mitch Steiger with the California Labor Federation.

First, I mainly just wanted to thank the division for putting together the language in such a timely fashion. Doing so so quickly I know is really, really tough, first of all, to do.

And given the urgency and this severity of this hazard and the fact that we're probably looking at a lot more of these coming up in the near future, as workers we definitely appreciate the quick attention to this and the quick action.

And overall, we think that this is very much -- it's probably helpful to take a little bit of a step back and to second the comments of Mr. Little from the Farm Bureau and think about what brought us all here, which was that what we had prior to the emergency reg, everyone kind of agreed didn't work. No one looked at this and said, "We don't need to change anything here. This all looks fine."

Essentially everybody who looked at this or
even tried to look at it came away with this sense of, this is so cumbersome, this is so long, this is so complicated. I'm not even going to pay attention to this. I don't even know how to make sense of this. Totally unreasonable to do medical evaluations and fit testing of everyone.

And so the end result was basically workers with nothing. Workers without N95s, workers without protection of any kind. And that's obviously the worst case scenario. That's what we wanted to avoid. And the emergency regulation did that. It did come out. It did clarify what to do when there is a wildland fire.

And it made things much easier for employers to know what to do to keep workers safe, workers to know what their rights are, and give us something that we can build on in the coming year.

And the language that's in this draft that's out right now for kind of temporary permanent regulation we think makes a lot of sense. It's better than what we have right now in the emergency reg. And we look forward to future conversation where we get more into the weeds of this.

There's been a lot of talk now about different directions that we can go in and different areas that need to be studied in a little bit more detail. And
that definitely makes sense.

The intent of all this -- not to speak on behalf of everyone else who participated in the Standards Board, but the intent was for something kind of short, the best that we can do with a short amount of time and go from there.

And there have been a lot of comments about changing the process somewhat to allow for more of a back and forth. We certainly don't have any opposition to that, and I've seen that process work well.

I will point out that there are at least 100 people in here. And having us all sit in a circle and try to debate this may be tough. The last Standards Board Advisory Committee I went to where that was the way that it was structured, there were about eight or nine people. And everybody had something to say about every section.

And it's hard. There would have to be some thought put into exactly how that -- we'd have to appoint some smaller group or something. And that's going to create its own set of headaches and probably have a lot of complaints about that too. But we definitely wouldn't object to that if there's some workable way of studying that.

But overall, it seems like a lot of the
comments present you with some pretty, I guess, mutually exclusive direction, where a lot of it has to do with this needs to be more specific; this as it stands right now is too one-size-fits-all; this needs to account for the needs of my industry better. And so we need to add a whole bunch of more things to it.

And then on the other hand, this is too long; this is too complicated; this needs to be more simple; this needs to be something that's easier to comply with.

I don't see how those two things can work together, but hopefully there's some way to do that.

And there isn't really a broader or overriding concept that you can come back to, like let's err on the side of putting more language in here, or let's err on the side of simplicity, because it seems like you really do have to take it on a case-by-case basis.

Looking through this standard section by section, the structure looks a lot like other regulations. It's got those same kind of four sections of training and communications and some sort of engineering control, some sort of personal protective equipment, something to help better protect workers.

And so if there is some great unexplored idea out there as far as a way to restructure this, everybody in the room is more than happy to examine whatever that
would be.

But given that this is a structure that has worked well with other hazards, I don't know that it's that important to reinvent the wheel and to start over with something.

Just going through it line by line, I've been trying to see, okay, is there anything that we could just take out? Is there anything that's unnecessary in here? At least to me nothing jumps out. There's nothing in here that you can take out without jeopardizing the health and safety of workers.

Maybe the appendices could be trimmed down a little bit. A lot of the complexity comes from that kind of founding principle of this whole effort, which was a temporary exemption from the medical evaluation and fit testing.

When you don't have a physician there examining everyone individually, you need to give the worker more training. You can't just throw a mask at them and not say anything. There needs to be some training there.

And so a lot of criticism of this standard comes from kind of the point of this standard.

So, again, I don't know what, if anything, can be done with that, but it's important to remember that the goal here was to make the old standard something
that was easier to comply with. Something that employers wouldn't look at and just disregard and say, I'm just going to say the exposure wasn't harmful so I don't have to deal with this. That outcome is what we're really trying to avoid.

With respect specifically to the scope section, I think it looks good. I think going from 151 down to 100 makes a lot of sense. The only way you could avoid something like that would be, again, to bifurcate it and make it more complicated and have some different standard for those that are a member of some sort of vulnerable community. But then how do you do that without having an employer ask someone, "Do you have asthma? Do you have COPD?" Asking these questions that we certainly don't want to answer to our employer. And employers probably don't want that information, I would assume, in those cases.

And so with the goal of making sure everyone is protected, no matter what their needs are, we need to err on the side of caution to make sure that that standard is there to protect everyone, regardless of what their needs may be.

But overall, we very much appreciate the timeliness of all this language. We think that the basic structure looks good. Even the basic structure of
this process and having a simpler version that we're going to adopt quickly we think makes a lot of sense.

We've seen this kind of a process drag out for years and years and years too many times. And in the meantime, we need something better than what we had prior to the emergency regulation.

And we would really strenuously argue that we can't take the risk of letting the emergency reg expire, us going back to the old system where basically no one ever did anything, and dealing with that for who know how many years until something else happens. That's kind of the most important thing to avoid.

And so the minor changes to make it a little bit more workable in the meantime and then something a little bit more permanent while we talk about -- I mean, we haven't even gotten into the issue of indoor workers. And that's another thing that at some point we need to consider.

If I'm not mistaken, most of the complaints that you've received are from inside rather than outdoor workers. And none of us are in air-tight buildings.

This is something that at some point we're going to need to deal with. There isn't this clear dividing line if you're in a building you're safe; if you're outside you're in danger. And so we haven't even
gotten to that yet. I'm not saying we get into it today.

But overall, we think the structure looks good. We don't oppose some sort of -- if it's in addition to this, where it's a smaller group that's more like dialogue where we all sit around and there's more of a conversation, we don't have any objection to that. But overall, we appreciate the language and think it's a great start.

(Speaker change.)

DAN LEACOX: Hello. Round 2. We good? Dan Leacox.

So just restricting to the scope section, getting a little bit more specific, there's no proposed changes for Version 2.0 to comment on.

But I think there are reasons for changes. It's a little hard to know what is substantive, what is not substantive when it's not really clear what the intention of the rule is. Let me just raise that.

I'm going to point out a couple of things and make a couple of suggestions, and that may sound substantive to somebody and not to somebody else, depending on what they think the scope of the rule is in the first place. And perhaps not entirely clear.

I think one of the things we heard today is the
assumption this applies to wildfire. And I think that's what people assume reading it, talking about it, voting on it, all of that.

But when I look at the scope section, the heading is "Protection From Wildfire Smoke," but this section applies to workplaces where AQI for PM2.5. It looks to me like a scope based on PM2.5. And this is what Brian was bringing up.

There was a suggestion there will also be a declaration of emergency establishing the fact that there's wildfire smoke involved. But when that was eliminated, you actually -- looks to me like it's a PM2.5 standard as far as that first item goes, wildfire smoke. But I haven't heard anybody talk about it that way or understand it that way.

So perhaps that can be clarified without a substantive change that this is about wildfire smoke being involved.

The other place that comes into play -- I brought this up at the hearing before the board. If you look at the definition of wildfire smoke, I think this is one not well understood. And related to the scope issue, it says, "Emissions from fires in wildlands." It doesn't say what kind of fires, but fires in wildlands as defined in Title 8 or in adjacent developed area.
Well, what's a fire in an adjacent developed area? Sounds like a structural fire to me.

So I don't know how this is limited to wildfires there. And I don't see where this is addressed. If you go to the exceptions in E, it provides exceptions for firefighters engaged in the wildland firefighting. What about firefighters engaged in fighting a fire in adjacent land, wildlands, structural fire?

So you just have some scope issues that I think could be addressed without changing the intent that people have when they voted on this rule and thought about it and developed it and wrote it. It's not exactly how we would go about it, but there you go.

So the other scope question, and it's very similar, is if you go to 1B, presumably this is here with some limited scope. It's defining in scope. Presumably, since it's there defining in scope, "The employer should reasonably anticipate that employees may be exposed to wildfire smoke."

Presumably there's some limit to that. If it's there to define scope, then there ought to be some clear limit to how far that scope goes.

Now, I realize there's some following exceptions that will address some of what I'm saying.
But it seems, as a definition of scope, it should be something -- it's something meant to be something more than just everybody. But I don't know where that limit is.

For example, exposed wildfire smoke. There's no limit. There's no concentration limit. There's no exposure limit. So it would be any wildfire smoke.

And so that's a pretty low threshold that creeps indoors very quickly. All of us in Sacramento or indoors I'm sure got exposed to wildfire smoke indoors. It may have been a low concentration, but there it is. I don't think that was the intent. But what's the limit of the scope issue?

And the other thing that's very troubling, and it's raised in coalition comments, is that it's based on a future possibility. It's not based on an actual. It's not based on anything you can measure now. It's a possibility that you will be exposed to wildfire smoke.

Well, boy, that's true, I think, for every employer and every employee in California right now. One could reasonably anticipate there's going to be a wildfire or that I could be...

Without any sort of threshold limit for the exposure, well, I could reasonably anticipate some wildfire smoke exposure that, you know, one particle per
billion somewhere in the future.

So it would appear that this unwittingly has a much broader scope than what was intended. And that without changing the intent of the rule, really what was meant to be the substance of it? This could be clarified. This begs for some clarity on that point.

And the last thing I would pose as a question, one, is can you articulate what the limits are of that scope? And also, how one would demonstrate in that context, right? If I'm an employer and I have some anticipation that this could happen, well, now the rule applies.

And how would I demonstrate I'm in compliance with the rule at that point? There doesn't need to be fire, right? So it gets a little confusing.

ERIC BERG: The scope, A1A and A1B, there's an "and." So both have to occur. They either have to or one -- as it is now, 151, and they have to anticipate exposure to wildfire smoke. So those both have to occur before the standard is triggered. I don't know if that helps at all.

DAN LEACOX: Sure. The engagement of some wildfire smoke. But still anticipating a future event. So there's a wildfire. But is that going to occur? And there's no limit on what the anticipated exposure.
Okay. Yeah.

Well, anyway. Okay, thank you. That clarifies. We're up to seven minutes? I'll come back for that. Thank you.

(Speaker change.)

BRUCE WICK: Bruce Wick, CALPASC.

Just a couple of thoughts. I do want to respond to, in the interest of dialogue, the comment about training.

And, yes, we certainly understand training is important. My suggestion of a fact sheet from Cal/OSHA in 40 or 60 languages, whatever we need, doesn't take away from training, but how much better that training would be if employees can read in their native language or a language they readily understand.

A consistent set of information and people aren't trying to figure out their way and translate it on the job site, I think we'd be a lot better off.

Mitch Steiger and I could sit across the table and, I think, come to a fair amount of agreement. We're not all that far off in a lot of what Mitch said. I appreciate that.

But I'm concerned. Again, a couple of things. I really strongly feel that for the 3.0 major change reg, we should make sure we are seamless and we fix the
voluntary respirator use issue in 5144 and 5141. There's no reason we can't and shouldn't take the time to do that.

So that we don't have differing regulations, we can take an employee all the way up through, into an exposure of the wildfire smoke, and they don't have differing appendices and all that kind of stuff. We should have one appendix that applies.

The size of the reg. 40 percent of it is Appendix B. A lot of it is duplicative of 3203 that I don't think needs to be restated. I would like, again, Appendix B can be made better. And I'd like us to just take the opportunity to do all of that.

We were, primarily, today, I thought, going to talk about making nonsubstantive changes to 1.0 so we get to 2.0. I agree with Mitch. Nobody wants us to hit the expiration date in July of next year and say, oh, my gosh, we didn't get a permanent reg done. We want to make sure a reg stays through.

I count, between what's proposed and what I would like to talk about, 25 different points. We don't have time to dialogue our way through that here. And I would suggest -- we have the time. We don't want to put a deadline on the Standards Board. They can't meet.

But I think for 3.0, we need to have an
advisory committee, a true one, like the Standards Board does. And I've been in many where I've been around a table, one of 20 or 25 with 40 people sitting off to the side who can speak if they want to, but they know there are stakeholders representing everybody's part of it.

I've been on the outside and know, okay, stakeholders are there representing me, and they're having that dialogue.

You can put a table together. You can do that. We've done it over and over with Standards Board reg over many, many years. It's entirely possible.

And I'd like to see us consider trying to do that within a fairly quick time frame where the people that show up know they are representing, they have a stakeholdership, and they are to come prepared and prepared to dialogue back and forth. Not just state their point and no discussion about it.

Because many of the suggestions here on this Version 1.0 will just change one set of confusion for another.

There are a couple of really good ones I'd like to see us implement. But many others of them we would be in the position of saying, you know, we've already said to people, Appendix B is really confusing. There are a lot of confusing parts about this reg.
And now we have the second 2.0 coming at you. And it changes, but it isn't much different or better. You'll just be confused in a different way. Don't worry. 3.0 will be coming down the way. So try and figure that out at the end.

We've got to minimize the changes from 1.0. There are some good ones that we can do, but we need to be in dialogue about that. And then really take the time to get 3.0 right. And especially match it up and fix voluntary respirator use. I think that's a goal that we should plan.

(Speaker change.)


I want to touch on what Mr. Leacox was talking about. He kind of stole a lot of my thunder coming up here. But it was the scope issue with 1A and B.

I understand there's an "and" there, but it doesn't address the issue of the PM2.5. It is not related to fire. Even though we have the "and," it doesn't relate to fire. It relates it to reasonably anticipated employees who may be exposed.
It doesn't say the presence of smoke. It doesn't say in an area of smoke. It doesn't give you that trigger that I think you're intending to get. And I think that's a downfall of this.

Also, the outdoor issue. I know some of it's identified in the exceptions, but it's not clear. And just during the canons of statutory construction, we've seen this long-time issue through DAR's decision to have reconsideration on appeals of citations.

We know titles don't matter. Just because it says "Protection from Wildfire Smoke" is the title, that can't be brought into the case as the governing factor of whether this applies to wildfire smoke.

The only portion is the part that I think Dan Leacox eloquently explained. I just wanted to put that little finer point on it.

Now, on a procedural matter, the concern that I have in 1.0 to go to 2.0, we're taking an emergency reg, and we're going to a permanent reg without substantive changes.

Now, my understanding, and I could be wrong, and this may be a question for the Standards Board folks, is that are we using the fact that we have an emergency reg to say there is no cost change to California, to the state, or to the employers because
there is an existing emergency reg?

Well, there wasn't a "SUR-EE-A" (phonetic) done on the emergency reg because it's the emergency reg. So if we're using that as the basis, I think we're missing that step. Because doing what we're doing in the emergency reg or the permanent reg 2.0 still has an economic impact.

So I don't know that we're saving on that analysis. I don't know what that analysis would be, but just what we're hearing, I gather, it would be substantial.

Not trying to slow down the process, but it is something we need to think about and address. Because it's going to come back and bite us if we want to try to do this efficiently and continue to protect workers. And that's another point of trying to jump to 3.0 today even compounds that.

The last point I'll make, while I'm up here at this point, is this dialogue that we've had or discussion or points we've had about the advisory committee processes. I think it would be pretty hard, but I do want to bring up one point that may be beneficial to some of the folks who do emergency work like the utility companies.

I have been on advisories where we have a
subcommittee of those folks that are interested in that. They can get together, come up with something. Then it comes back to the main committee. But usually it's resolved by those affected stakeholders in that group.

And as long -- and to me this is maybe an example where we could do that. They could dialogue in that context, bring it back to the rulemaking.

Also, we haven't heard this word yet today, "consensus." Most of the advisory committee -- although I know it's not required, the advisory committee, the goal has always been, at least for the last 20 years I've been in practice in dealing with this and as an ironworker when I was involved as a stakeholder on that side of the fence, before I went to law school, consensus was always the goal. The concessus between labor, management, and the stakeholders.

And that means in order to do that, we can't do the black box anymore. We have to be able to talk around a table. And if we don't meet consensus on a topic, then there has to be somebody that breaks the tie or says there's no consensus.

But on the most part, I think Bruce pointed out, and Mitch, we've been in some really tough situations before in these. And we've reached consensus.
Most of the time we figure out we're driving the car. We want to get to the same city. We're just trying to figure out what road we want to take. Maybe we end up on a road we weren't even thinking of. But we still want to get to the same city. So what's the official way to do it.

There's a consensus of how we want to get there. I think that's important. I think that's getting lost in this process, the way we've been approaching.

No more questions from the jury?

ERIC BERG: No questions. Thank you.

(Speaker change.)

JAMES SAVAGE: Hello. My names is James Savage. I'm with the Bureau of Land Management Fire and Aviation. I have a question about the exemption in the scope. Exemption E, firefighters engaged in wildland firefighting.

Is the intention or could that be clarified further to cover prescribed fire practitioners or not, or is the intention to have the other regulation covering wildland firefighting. Will that cover prescribed firefighter practitioners?

ERIC BERG: I don't know if the regulation covers prescribed firefighters.
JAMES SAVAGE: Wildland firefighters, trained wildland firefighters not fighting wildland fires but lighting controlled burns for land management objectives.

ERIC BERG: I believe intent would be similar to work done by wildland firefighters. This exemption would cover.

JAMES SAVAGE: Cover them as well.

AUDIENCE MEMBER: Eric, can we clarify that for a second with Maryrose, since she's working on the firefighter PPE?

ERIC BERG: Want to come up here, Maryrose?

MARYROSE CHAN: The proposal that I'm working on for PPE for firefighters is strictly to -- applies to firefighters that are actually fighting the fires. For structural and wildland firefighters. That also. So they have to be in a firefighting capacity. And also it covers private firefighters.

But if you are just -- it depends who is doing the prescribed fires, if it's going to be a firefighter or somebody else doing the prescribed fire.

JAMES SAVAGE: For a federal prescribed fire, it would certainly only be qualified wildland firefighters.

MARYROSE CHAN: For the federal portions,
they're not within our scope.

JAMES SAVAGE: Yes. We can exempt ourselves from the regulation. But current policy is we would follow it.

MARYROSE CHAN: So in the scope of this proposal, the term "firefighter" is defined. I believe it's Article 10.1 of the General Industry Safety Orders. So if you're within the definitions of what firefighter is, then you're exempt from this particular regulation.

JAMES SAVAGE: Can you say that General Safety Order?

MARYROSE CHAN: I think it's Article 10.1. It starts at -- I'd have to look it up, but I think that's where firefighters are. But there's other people. I think when they do this permanent or whichever version, they have to clarify, I guess, the portions of what they mean by support staff or firefighters. A little bit more clear definition for that.

ERIC BERG: Thank you, Maryrose.

(Speaker change.)

TODD RAUSSER: Todd Rausser, Cal Fire, Safety and EMS. And Lynn Heeb (phonetic spelling), Occupational Health.

One question that I haven't heard answered so far is the one in regards to our non-uniformed personnel
who are support features of fighting a wildland fire.

   One thing that we're concerned about is or we'd
like an answer of, is when it becomes from a voluntary
status to an involuntary status to wear the respirator.
We follow certain regulations, of course, you know, at
that point what's required. We have to do quantitative
fit testing, of course.

   With that quantitative fit testing, are we also
going to have to follow the rest of the regulation,
which would include us having a medical examiner process
and our medical examiner questionnaires in order to fit
test our non-uniformed personnel for, let's say, base
camp duty.

   Or can it just be a questionnaire in lieu of
going through the whole medical exam that's required to
do a fit test for the required number of...

   ERIC BERG: I guess right now, when the AQI is
over 500, respirators are mandatory. And the regulation
does not -- correct me if I'm wrong, Chris, but as I
recall, it only requires a questionnaire. It doesn't
require a physical exam.

   TODD RAUSSER: Our PP program requires a
physical exam to be cleared in order to do a fit test.
Without that physical exam clearance, we cannot fit test
our non-uniformed employees. So that's where the
Because now, if it's required -- and this goes with everyone in the room here. If it's required, then they're going to also have to do a medical examination after they're cleared from fit testing from the questionnaire in order to truly be fit tested in the requirements.

ERIC BERG: Yeah. Our regulation did not require that. Your policy may go beyond whatever your regulation requires. Right now it's just the questionnaire.

TODD RAUSSER: Perfect. Thank you.

(Speaker change.)

STEPHANIE MEDINA: Stephanie Medina for Centro Legal de la Raza in Oakland, California.

I just want to reiterate the importance of remembering low wage immigrant workers in the situation. Wildfires are going to be an ongoing issue in California. And workers are responding to the need, to the rise of wildfires. And there is a need to protect all workers, including those that are most vulnerable.

My desire is for this regulation to take note of them and their voices. And employers have a duty to provide safe working conditions regardless. In fact, employers have been complying a lot with other safety --
with other safety standards. And this should not be any different.

The cost of masks, medical evaluations are a necessity now in this changing climate, thanks to climate change. And you shouldn't be putting the cost of masks and medical evaluations with a high need versus the cost of a worker's health.

So a worker's life and their quality of life should be valued compared to the cost of masks that an employer may have to endure.

Thank you.

(Speaker change.)


(Discussion off the record.)

JAMES MACKENZIE: James MacKenzie with Southern California Edison.

I wanted to build upon the comments that Kevin Bland raised around the subgroup. And I think -- I've been part of some of those subgroups in the past where we worked on -- what did we work on? Qualified electrical worker issues. But it was very effective. And we had to solve for one small piece of it.

Maryrose, you were facilitating it. And we walked out of there with -- I don't think anybody got
exactly what they wanted, but we all walked out. It was
good. And we solved for particular issues.

I don't think we can do that for this whole
thing, but I think we can do that for little particular
issues.

So I propose, you know, looking at the chart up
there, maybe there's a 1.1, where we can quickly look at
the importance of exemptions for emergency situations.
Administrative exemptions. I need to change the way I
refer to that.

Where we can still provide worker protection.
Look at some of those administrative elements and figure
out what do we really need to do to protect workers and
what may be getting in the way of emergency response.
And try to solve for that quickly.

I'm fully on board with support, helping make
the right people available from our organization to try
and solve for that before we get too far down the road
on the implementation of this.

And the reason behind that -- there's a cost,
but I'm not talking about the cost. There's a very real
cost. As we move towards implementing some of these
requirements, I talked about the confusion around
getting the inside of the mask below 151.

So that puts us into the -- (inaudible) enough
to spend -- we don't have exact numbers -- between 6- and $800,000 on PAPRs.

That's not the biggest concern to me, though. The biggest concern is that we have to implement this. We get to implement this. It creates a safe environment for the workers.

But when we do Version 1, and then next year we do Version 2, and the year after we do Version 3, it just kills the credibility of the safety program. Workers look at this and think, why can't we figure this out? Why are we changing this?

And imagine a scenario where we started out with the most protective that we're looking at here. And then we look at it and say, I don't know if the science supports that, so we're going to peel that back. And I'm going to walk up to Chris and say, "Can I have that? You don't need it anymore." After he's had it for six months or a year. That further damages the safety program itself.

So I'd love to try to solve for that very quickly and try and get to a Version 1.1 here very quickly as well.

And we may not land on everything I want, and I'm okay with that. But we can land on something where we understand the science behind it, we know that we're
protecting workers adequately, and we're doing it in a fast way where we can get ahead of -- kind of a false rollout, if you will, where we have a false start and we have to pull back.

And then the workers really don't feel confident about the protections they have because of what feels like a takeaway, when it was never maybe necessary in the first place.

So I would really appreciate a sincere thought about that. To the extent that we can help support that from a timing standpoint, we're on board. And maybe it's a quick fix on there that leads to a better 2.0. Maybe we don't need a 3.0 based on that research.

That's all. Thanks.

(Speaker change.)

KATHLEEN ROBERTS: My name is Kathleen Roberts. I'm from the Alameda County Water District. I wanted to raise a concern around the controlled harmful exposures to employees, Section G.

You have an exemption of sorts for emergencies, including rescue and evacuations and utilities for emergencies there, but with the real very specific point out of when operations are directly aiding firefighter and emergency response, we've run into issues as a water agency where we would have our employees needing to
respond during those high-smoke times where there is a lot of wildfire that's there. And our crews have to go out. They have to address those main leaks. We generally consider those emergency operations to address those types of leaks.

And in those instances engineering controls and administrative controls would need to be exempt.

So I think it would be beneficial to potentially strike out that during "aiding firefighting or emergency response" because it may be emergency responses that are not directly related to that firefighting event but are still affected by the smoke that is there.

Thank you.

ERIC BERG: We'll take a five-minute break.

(Recess taken from 2:00 p.m. to 2:07 p.m.)

(Speaker change.)

DAN LEACOX: Dan Leacox. So just a fine point on the last point, that A and B. And I was a little thrown by your response. I just wanted to bring it back home. The point B is unlimited, and it's hard to find the limit on that. It doesn't then further limit point A.

And your response is, well, as I interpret it, and I think that everybody understands is, it's meant to
assure that this is a situation that involves wildfire smoke. It doesn't quite do that.

And I think in the end, this is -- what I'm making is an argument that that thing that was dropped out from earlier drafts about an advisory of a wildfire smoke or something like that could be added without it being a subsequent change. Could be added as 2.0.

That's what I was trying to get on the table for consideration. That might not be a subsequent change because it seems to be what everybody intends. But I don't quite see that.

So I'll just leave it at that.

And then the last comment I wanted to make is just about the economic analysis. One of the things I want to make sure are understood -- this is addressed in the coalition comments.

But a lot of the concern is that there's a big difference between the first 24 hours of an event and the second 24 hours in terms of what's triggered and what's required.

In other words, the way this rule is written, these things don't happen on the cycle -- these events don't happen on the cycle of a work shift, right?

So it's a lot different when you discover something is going on or the need to do something one
day and then addressing it the next day is one thing. Addressing it in the middle of the work shift introduces all kinds of issues.

And to a certain extent, the way this thing is written, it forces a lot of proactive compliance and let's this thing out of people's minds, the economic impact and the scope of all of the employees that are going to be directly affected and employers by a wildfire event.

But to the degree this forces one to comply by taking proactive action, now employers are having to do this proactively on the prospect of a possibility of it occurring. And that greatly magnifies the economic and potential physical impact as well. It's brought up that if the answer is -- for example, I gave this example at the standards board.

If you've got 25,000 farmworkers in Ventura County and there's an event, you aren't going to say -- you have a lower trigger. Something that's going to trigger the mandatory requirement. The only way you can possibly comply is proactively ahead.

So to the extent one has to apply ahead of time, then that greatly magnifies the cost. Because now you're talking about every employer. And it would be good to see that taken into account, the economic and
fiscal analysis. Because one of the responses is just not going to work that day.

And that's a fiscal impact on government as well as economic impact that should be taken into account.

AMALIA NEIDHARDT: Let's move right along, please.

CHRIS KIRKHAM: So we need to start moving over to some new subsections. How do you want to do that?

(Discussion off the record.)

CHRIS KIRKHAM: Go ahead. We're going to kind of systematically go through these. We only have so much time. If you've got comments on the remainder of the subsections, please go.

(Speaker change.)

ANNE KATTEN: Hi. I'm Anne Katten again from California Rural Legal Assistance Foundation.

And first, as an overall thing, I just wanted to address that we've heard that the goal should be and is required in statutory -- in statute. It is not consensus in developing regulations. It's protecting workers.

And certainly we need advisory groups like this so that we can hear each other's point of view and figure out what's going to work. But the goal is,
again, not consensus. It's worker protection.

And from my previous comments, another reason we need to reduce the threshold from 151 to 101 is because outdoor workers, they can't follow the public health advice you get during a fire or during bad air that sensitive people should avoid being outdoors. And that's why they need to be covered at a lower level.

And moving into new territory, we also support strongly reducing the threshold for requiring the --

(Discussion off the record regarding microphones.)

ANNE KATTEN: -- for reducing the threshold for requiring the full respiratory protection program from an AQI of 500 to 300. But we think this needs to be done sooner rather than in the time envisioned in the agenda. It needs to be done soon.

It needs to be done soon, because when workers are working in areas with hazardous levels of PM2.5, fit testing is needed so you know what level of protection they're getting and to ensure they get an adequate level of protection. And also to assure they're offered several types of respirators. Because not everyone can fit the standard N95. Some people need the duck-bill type if they have a thin chin.

Also, as Eric clarified before, the medical
evaluation requirement is filling out a questionnaire that's reviewed by a health care provider who is not necessarily a physician. Everyone doesn't have to go and get a medical exam.

The employers who are involved in the emergency response can and should plan for this. There might need to be some narrow exceptions. But they can plan for that. And the workers not involved in emergency response, it can be delayed, if needed, when the air levels get that high so that workers will be adequately protected.

And finally, we appreciate there were a few past comments about the importance of administrative controls, in addition to engineering controls, in addition to respiratory protection.

And one additional administrative control that's needed is above 151 is a ten-minute recovery period every hour. Because when people are working with respiratory protection, they need that extra time just to recover.

Thank you.

(Speaker change.)

NICOLE MARQUEZ: Nicole Marquez, senior staff attorney with WorkSafe. And just wanted to echo Anne Katten's comments with respect to the objective
being the safety of workers and not consensus within the
statute, that that is the mandate. And so this, of
course, is aspirational in terms of making sure that
everyone's input is considered.

But the objective, the legal requirement, is
that workers' health and safety be the objective
protection of that.

And with respect to the current process,
we're -- we are happy to participate in any type of
dialogue such that it includes all perspectives from
worker advocates, labor, labor rights, environmental
justice groups who do have a stake in the matter.

And so whichever process moves forward, we
would just encourage the division to ensure that that is
something that is implemented.

With respect to a couple of changes that we'd
like to see for the administrative controls, we
understand that when workers are outside and they are
under an additional amount of strain when the AQI
reaches a certain threshold that they be given a
recovery period or some type of relief period after each
hour of work. And this is because of the added strain
that the AQI places on workers.

With respect to identification of harmful
exposures, we feel that identification of harmful
hazards needs to be done before the shift so that employers can provide appropriate protection for workers.

With respect to training and instruction, we feel that the training and instruction should be interactive and in person and should also start at the first shift when the AQI is equal to 101 and no more than 151 in the language and manner that is appropriate. This ensures that the training is effective, and we would support that.

With respect to control by respiratory protective equipment, we feel that the current threshold of above 500 surpasses the highest level of hazardousness according to the AQI chart for this category.

We're concerned that if the threshold remains at above 500, then this would undermine current protections workers already receive under 5144.

The current law has its flaws, but we feel using the AQI as a benchmark for PM2.5 between 301 and 500, 500 being the top of the chart of hazardous, is accurate and that the threshold should be set to 301 for respirators when you're required to do a fit test and medical evaluation. It's the best way to ensure that workers have access to the most effective protection.
And if -- federal law requires mandatory usages of a respirator where the workplace atmosphere is hazardous. And wildfire smoke at levels of above 300 AQI create a workplace atmosphere that is hazardous. Then respirators with fit test and medical evaluation should be required.

And we have other comments to the other sections which we will be submitting in written comments.

Thank you.

(Speaker change.)

TANIA REYES: Hello again. Tania with CAUSE. So we, alongside with our local partners, distributed over 15,000 respirators to farmworkers during the Thomas Fire in 2017 in Santa Barbara and Ventura Counties. And we worked to educate the public about the dangers of wildfire smoke.

Given our firsthand experience with these -- doing this kind of work, we understand the needs and challenges in protecting workers from wildfire smoke. And one of the things that comes to attention that we want to bring up is the language around "upon request."

The draft regulation says that respirators will be provided upon request. Without any training or verbal instruction or requirement for employers to
monitor air quality conditions between 100 and 150 AQI, why would we want to use the opt-in rather than opt-out for basic safety equipment?

There's a reason we don't do this for other types of safety equipment, because it leads to far fewer people taking safety precautions and far more illnesses and injuries.

Farm work requires difficult working conditions, doing hard outdoor manual labor at fast pace, often exposed to pesticides and dust in the air. Many may be afraid to go up to the mayordomo, or their manager, to ask for a mask. They will be seen as not hardworking enough or not tough enough, et cetera, et cetera, and less likely to be hired back for the next season.

Many who primarily speak indigenous languages like (non-English words spoken) may not fully understand their crew supervisor's announcements about the dangers of smoke and the need for the masks.

Many see wildfire smoke as just one more discomfort on the job, not knowing the long-term risks such as cancer and thousands of premature deaths every year.

Furthermore, if employers are required to stock enough respirators for the employees and inform their
employees of the respirators, it won't save employers
time or money only to provide respirators upon request.

Having different requirements for 100 and 150
also just makes the rule more complex and difficult to
implement, especially, as in any given day, the levels
may fluctuate.

To Section D, the safety precautions and
changing conditions. Due to the constant fluctuation of
air quality throughout the day during the wildfires,
it's always better to be safer than sorry than -- yeah,
than trying to wait for the air quality to reach a high
threshold.

Employers should be advised to take necessary
safety precautions at the beginning of the work period
if they expect AQI may rise above the 101 points at any
point.

So replacing masks daily rather than the vague
replace as appropriate. It should be specified that
employers should provide enough respirators to be
changed at least daily. And that's at least. And
earlier upon request of the employee if need be.

Farm work is hard, sweaty labor. And by the
end of the day, the respirator mask becomes unpleasant
to wear. Yeah. During the fires in our region,
farmworkers would sometimes take off their mask by the
end of the day as it became uncomfortable.

Shift to Section E and F. Shifting immigration patterns in recent decades have resulted in many farmworkers coming from regions of Southwest Mexico, where people predominantly speak indigenous languages like the ones I mentioned before (non-English words spoken).

In some industries, like the strawberry industry on the central coast, indigenous communities actually make up the majority of the workers. These workers may speak some basic Spanish to communicate with their supervisors on a day-to-day basis but not enough to fluently comprehend instructions regarding wildfire smoke.

We recommend the regulations say the preferred language of employees rather than the language easily understood by employees.

And then sometimes written instructions are inadequate for the protection of many farmworkers because they won't be able to understand. Some can be illiterate.

And then lastly, to Appendix B, Section G, we strongly support the recommendation to reduce threshold for required wearing of protective masks at 300 rather than 500. An AQI of 300 puts air quality in the highest
level of six different air quality categories. The deep red marker category is far beyond the red marker harmful.

It is fairly uncommon, mostly limited to California's worst wildfires in history. And in these cases, it is extremely dangerous.

Overall, substantive changes that are being considered for a later time should be implemented sooner rather than later. As Nicole stated, moving forward, the standard process should include worker and labor rights advocates. Whether it's a round table or any kind of dialogue, workers should be present.

Thank you.

(Speaker change.)

MIKE DONLON: Mike Donlon, Department of Water Resources. I'll be real quick here. I just want to make a note on consensus.

For a regulation to be effective, it has to really have three things: It has to adequately protect employees; it has to be doable for the employers. They have to be able to make it happen. You can't set employers up to fail; and it has to be enforceable by the division.

And that's where that consensus comes in, that you get all three of those things when you have that.
So I would like to suggest that we regroup at another day in a round-table-type setting and work on that consensus.

Thank you.

(Speaker change.)

BRUCE WICK: Bruce Wick, CALPASC.

I would reiterate Mike's comment about doing that. But I will make two comments on the black line changes. Because one I think is good and worth doing. And that's on Appendix B, Page 9 of 10, Item 5 be changed.

Employees who have a heart or lung problem should ask their health care provider. I like that. I think that's a much better way than just saying their doctor, because some people have different ways of getting access to health care. So I would support that.

I still don't understand, don't like on Page 10, the last line of the Appendix B says, "If you have symptoms such as difficulty breathing," et cetera, I really think it should say, "If you have these symptoms, difficulty breathing, dizziness, or nausea," it should say, "Take off the respirator and get medical help." It shouldn't say try and find cleaner air or cleaner air if possible.

Our employees, we train them, you have an
issue, you go to your supervisor and get immediate medical assistance or you call 911.

    So I think that's something we really need to take out of there.

    All the other proposed comments, to me, just exchange one set of confusion with another or add something that doesn't need to be added or extends something out that we don't need.

    There appears to be a significant push for a 3.0. I believe we should do that. And so if we're going to do that, let's not make 2.0 have a lot of changes that we have to retrain people and then retrain them yet again for a third time for something that is a temporary emergency regulation.

    So that's my comments.

    (Speaker change.)

    WHITNEY PROUT:  Whitney Prout, California News Publishers Association again. I'll be submitting revised comments, but I'd just like to speak to two issues.

    First is on the issue of training. I think there needs to be greater clarity in Subsection F as to what exactly is required in the training. Right now it's a little ambiguous to say that at minimum the training needs to contain the information in Appendix B.
You know, to the extent that the training requires more than distributing Appendix B to employees, realistically, to actually have compliance, you're going to need to be proactively training employees. You can't wait until the AQI hits whatever the threshold is determined to be, to be providing that training.

Again, unless providing Appendix B is sufficient, which we think actually would make sense, because then you ensure that all employees are getting the same information. You're not relying on one interpretation or another of the information. So you make sure that what the division is putting out there is actually what employees are getting.

And I think Appendix B was intended to be written in a way that's pretty easy to understand. So it makes sense that that's a document that could be distributed to employees.

The other issue I'd like to speak to is speaking in favor of maintaining the threshold at which mandatory respirator use becomes -- or respirator use becomes mandatory, I should say, maintaining that at 500.

And part of that is, if you look at once respirator use becomes mandatory, the burden and cost on the employer goes up significantly because now you have
fit testing, and medical evaluations become mandatory, which, of course, like the training, you can't wait until the time that that threshold is met to start doing those things.

So the choice the employer is going to have is do I proactively fit test and medically evaluate all of my employees, or at least those that are outdoor workers, meaning outside for more than an hour, or do I send them home. And when you're looking at something like wildfire smoke, where this isn't -- this isn't an exposure that is particular to the workplace. Particularly, when you're looking at lowering the threshold to 300.

We have had, in downtown Sacramento, during the Camp Fire last year, you're looking at even indoor workers or people that are not going to -- have the burden on their systems reduced by going away from work, from not working.

It's unclear how the worker is really benefitting, how you're seeing an increase in safety by having a lower threshold for mandatory usage.

Because what's more likely is that, except for a small number of workers, the employers are going to send those people home. They're not going to be working. And in that case they're not going to be
provided a respirator.

Whereas, if you maintain a higher threshold for mandatory respirator use, the employers are still required to have respirators on hand for voluntary use. The employee still has the option to take advantage of that respiratory protection, but you're not increasing the cost significantly by requiring the employer to essentially fit test and evaluate all of their employees.

Thank you.

(Speaker change.)

NANCY ZUNIGA: Hello again. Nancy Zuniga, IDEPSCA Law Center in Los Angeles. I just have a few comments.

So I did want to just add a little bit of context to the comment that was made earlier about cost for day laborers.

So I have shared this in other meetings that IDEPSCA and I know other organizations that have done similar work of providing N95 masks to workers that have provided this during the different fires across the state.

And I feel that comment really -- we don't want to have a standard that is complicit with wage and other types of wage-and-hour violations. So when we're
talking about the cost that this could potentially have,
what we are implicitly saying, then, is that workers
basically have to choose between survival or their
health, which is not, I believe, the intention of any
health and safety standard.

So we need to be really careful about what it
is we're advocating for in this standard if we're going
to talk about the most vulnerable.

So really, we were able to provide about 200
masks. And this was -- again, these are not our
workers, right. We were fulfilling a gap that we saw in
a population that really was getting no support from
their employers and ending up at the ER.

And so thinking about costs, we also need to
think about what that is costing our medical system,
what that's costing in the larger picture of things if
we want to talk about cost. But, really, in terms of
people's humanity, we want to talk about the human cost
as well.

So I wanted to talk about that and make sure
that that doesn't get taken out of context when we're
talking about cost.

In terms of the point on "upon request of the
mask," I think it was mentioned earlier, right, about
the power dynamics. And I don't think this is true only
for day laborers and domestic workers. I think this is probably true for a lot of non-unionized workers, that there are a lot of power dynamics at play thinking about if an employee really feels the freedom to request some type of protective equipment.

There was comments around farmworkers, but I think this is not just for these industries. I think this is probably true for many different industries where they are not unionized or have some type of support that is worker focused.

Also, in terms of there have been a lot of comments about the process. I also support the comments around whatever the process looks like in a way that really is inclusive of all stakeholders.

We have been fortunate enough to have the support, to be able to be at these meetings. But if we wouldn't be, who would be speaking on the populations that some of us are representing? Right? I don't think anyone would be.

And a lot of those workers cannot be at these meetings, cannot give their own testimonies about the things that they have seen, the things they have lived, and they probably will live again. Because, again, wildfires will continue happening.

And we want to make sure their perspectives are
considered during these -- this process, whatever it might look like.

And then in regards to the recovery period in terms of administrative controls, I know there was a mention about heat standards. That's totally in line with what we also support. We would also like to see some kind of recovery period while working with masks.

When we have talked with workers, we heard some of those concerns of, like, one, "the employer never told me I needed this. I just knew I didn't feel well."

But then those that have used it have said, "Well, it gets really hot," or, "it's uncomfortable."

So we do see the importance, given the manual labor that people are doing, given the conditions in which they're working, that there should be some connection to the heat standard which talks about a recovery period so that there's some connection between these different standards, because they're connected.

And then also, supporting the comments that CAUSE and WorkSafe have made around lowering the 500 to 300 of the required fit test. Even though we know that it's very difficult, especially industries we support, the workers we support.

We also recognize, though, that these are the workers that also don't have access to health care,
don't have access to a regular doctor. We want to make
sure in these emergencies or any wildfire that they do
get the best, you know, equipment that they can to
protect their health.

   Thank you.

(Speaker change.)

BRIAN HERAMB: Good afternoon. Brian Heramb
with San Diego Gas and Electric. SDGE has been a strong
proponent of worker safety. And, in fact, it is to be
the first consideration in every project, the job that
we do. Some of the -- we definitely want to support
most aspects of the standard.

   So I just want to provide some comments more
related to technical aspects that are posed. However, I
did also want to respond to comments about recovery
periods.

   Filtering face pieces are typically considered
to be the least medically stressful respirators of any
that are used. And currently for respiratory protection
programs, there's not a recovery period.

   So if a recovery period is going to be
considered, then we want to make sure that it would be
consistent with any other respirator use that would be
required for employees.

   Also, one of the other things that this
standard has done is actually established perhaps a slightly different approach than most of us that are involved in industrial hygiene, where there may be an action level that's created at which employers need to take action to provide training and do monitoring.

And then when exposures are -- they exceed hazardous levels, any of the engineering, administrative, or personal protective controls can be used. If engineering and administrative controls are not effective or not feasible, PPE can be used.

But in this standard, there's a certain level. And currently at 150, proposed to be 100, where engineering and administrative levels controls are required. And then respirators are only required at higher concentrations.

So as you're probably aware, what that's sort of set up is, that mandatory use of respirators with an AQI of 150 being the in-mask protection level, actually ends up requiring employers who have higher exposures to protect their employees in masks at levels that are lower than the voluntary users.

So if you just kind of bear with me.

Currently, if an employee is exposed at 499 AQI, voluntary use is only required. Providing respirator for voluntary use is required. But if you go over 500,
respirator use is mandatory. And at that point the in-mask concentration has to be equivalent to 150.

So you have people that are provided respirators but don't have to wear them. And essentially have zero protection at, let's say, an AQI of only two points less.

So the approach here is a little bit different than, as I was mentioning, most other protections afforded respirator users. When the level of the exposure in the mask drops below the PEL, at that point the protection level is considered to be adequate. With this standard the level of protection has to drop far below what was the level triggering the use of respirators to begin with.

And I'm sure you're aware that it's just that it would be interesting to clearly understand the rationale for that and, going forward, to ensure that if the rationale is strong enough that it be clarified.

And should there be other permissible exposure moments that are similarly adjusted, or should we -- in this standard, going forward, should we try to make sure that we're using a standardized rationale, where the exposure level that triggers respirator use or any other engineering or administrative controls is the target that we're shooting for. And once you clear that, then
the employees are protected.

    So I think the issue is then that clearly understanding all of the data, the science related to the risks of exposure to smoke, are key to understand as well as assumptions related to worker protection.

    And that kind of goes back to earlier this morning why I think it's not only important, it's fundamental. It's critical to this, the permanent rulemaking process, that there be a period of time that -- or a means of communication, whether it's, let's say, a webinar that's broadcast or in-person symposium or a written documentation where the division can supply information about the scientific as well as the risk-management approach to worker protection.

    Thanks.

    (Speaker change.)

    ERIN GUERRERO: Erin Guerrero on behalf of the California Attractions and Parks Association.

    I just wanted to flag a couple of issues again, more on the technical side, more on the implementation and compliance side. And that is related to the identification provisions.

    And I know that there's perhaps no perfect method for doing this, but the reliance on AQI and the presence of monitoring stations could be a difficult
thing for employers to comply with.

For example, if you've got a worksite that is 20 miles from the nearest monitoring station and you've got topography and different climates where maybe smoke is not actually present at the worksite, but at the monitoring station they're picking up particulate matter above the 100 or 151 threshold, I think there's going to be some confusion to that employer about whether or not the regulations have kicked in.

Similarly, I think there's no clarity whatsoever on when the regulations cease to comply. So if you are now trying to comply with 151 AQI and PM2.5, and there's maybe a little bit of smoke in the air and you have that reasonable anticipation, but then the wind shifts, the smoke goes away, and the AQI drops, there doesn't seem to be a mechanism for triggering the -- for turning it off.

I just wanted to reply to those issues and speak to those things to consider.

(Speaker change.)


And I wanted to just speak briefly on the comments related to taking breaks. And I wanted to make sure that there was clarity around some of the
activities that our workers may be doing, where a break
every hour may not -- just doesn't work.

They could be an hour into a ride-away
assisting firefighters with downed line removal. And so
the feasibility of taking a break, which would require
them to drive out of that smoke area and go back in, is
challenging.

So I think to Brian's point, relying on break
times that are consistent with whatever respirator
they're using is appropriate.

Also, that issue may provide further
justification, as I started thinking about it, related
to the need for an emergency administrative exception,
that that work that I'm talking about is different than
a lot of the other things we're doing. It takes place
in different areas.

I think everything we talked about further
justifies the need for something a little different for
the work that is being done.

CHRIS KIRKHAM: Other comments on the remaining
 subsections, definitions through the Appendix B?

(Speaker change.)

RANDY JACKSON: Good afternoon. My name is
Randy Jackson. I'm with the Los Angeles Department of
Water and Power.
I've got a few comments, and I'm going to end with a couple of questions. It may be fairly easy for you to answer.

Comment No. 1. I have concerns about basing occupational exposure limits on environmental standards. That's been brought up before today. I wanted to go on the record that I don't know that that is an appropriate use of an environmental standard when we're looking at different target populations over different durations.

The environmental standards are typically intended for 24-hour-a-day exposure, seven days a week, 365 days a year for 75 years.

Occupational limits are eight hours a day, five days a week, for a 45-year working lifetime. They're a lot different.

Comments on Subsection D, identification of harmful exposures. This is all focused on checking AQIs. I believe the AQI is actually just an indicator of a level of health concern. It's not an indicator of exposure. Exposure is typically a function of dose, which is concentration that workers are exposed to over time. And I don't see a time element here except for the one-hour exposure to an AQI in excess of 100 or 151.

In terms of communication, employers are being asked to inform employees of the current AQI. And as I
understand it, NowCast is updated hourly. So there's a question here.

Is checking the AQI hourly going to satisfy the requirement to maintain employees' awareness of the current AQI?

ERIC BERG: Yes. That would be sufficient. You don't necessarily have to check every hour. If conditions seem to be stable, you wouldn't have to check every hour. But if it seems to be worsening, then you would want to check every hour.

RANDY JACKSON: Hourly would suffice?

ERIC BERG: Yeah, hourly would suffice.

RANDY JACKSON: If you like, you can stay here, because I'll move right into my next question.

My next question has to do with the exemptions and the scope, Section 2A, enclosed buildings or structures in which the air is filtered by a mechanical ventilation system.

A lot of times building -- mechanical building ventilation systems either shut down to make sure we don't draw embers in and light the building on fire. So in that case they are still being passively mechanically filtered. So would we still be captured in that exemption?

ERIC BERG: Yes. Our HVAC systems or building
engineers will shut off the outside air during these conditions, and that would be defined. It's still filtering the air inside.

RANDY JACKSON: And finally -- and this might go to you, because I didn't quite understand the answer to the question on 2E, firefighters engaged in wildland firefighting.

So for private employers who train their own employees to stand and defend their buildings. They're not necessarily fighting the fire, but they're going to stand there and put out embers in their buildings. Would we be captured by this exemption?

ERIC BERG: Maybe Maryrose can help me. But if they meet the definition of firefighters.

MARYROSE CHAN: All firefighters, as far as I understand, if you don't change your scope, all firefighters are under Article 10.1.

ERIC BERG: All firefighters under Article 10.1 would be exempt from this regardless if they're private or public.

MARYROSE CHAN: Yeah. Because they wear a different set of PPE. They wear SCBAs for structural firefighting. And currently, there's no respirators for firefighters that are fighting wildland fires.

PM2.5 is the primary component of smoke,
wildfire smoke. But at close range for these firefighters, there's other contaminants.

Currently, there is respirators that are being evaluated hopefully to -- that meet the FDA standards, but it's still in the R&D portion. And we've made amendments to -- it hasn't been noticed yet. We made amendments to the proposal so that it would encourage manufacturers to move toward developing a better respirator for firefighters. They have whole lists of other unknown contaminants being up in close range for the fires.

RANDY JACKSON: Thank you.

AMALIA NEIDHARDT: No other comments?

(Speaker change.)


Just for the record, on my associations, two of those three are all signatory, have a collective bargaining agreement with their employees. So I don't know -- folks in the room, that's for more informational purposes for everyone to know. It's not just -- I know there were some comments earlier about union and nonunion and all that. We have worked with both.
I'm going to take one more swing at this dead horse that we've been talking about all day. And I'm going to start with the words on the board back there, "written comments." The words "comments" again. There's a notice and comment period under the APA, the Administrative Procedure Act for California rulemaking.

The idea of an advisory committee, when it was thought of and put together and what we've done in the past over the years, was this idea of discussion. And there's a comment period. That's where we submit comments once it was proposed. And then the board, Standards Board, will give us the rationale for why they accept them or don't. It goes into a final state. Our comments become part of the official record.

Here, we're in a process. This isn't part of the official rulemaking record.

Does everyone agree with that?

AMALIA NEIDHARDT: It's an informal process.

KEVIN BLAND: It's an informal process.

AMALIA NEIDHARDT: Correct.

KEVIN BLAND: And so I want -- I think there's a lot of people in here that maybe aren't in these all the time and say what are we up here arguing about and pointing out.

And the idea of an advisory committee is to
have dialogue not only with the folks at this head table but amongst ourselves to try to provide a consensus for the folks at this table to go back with and put a proposal together based on that consensus that then goes to notice and official comment.

Comment just in and of itself means, okay, we send information in, and they do what they decide to do with it. The dialogue is so important. And I hope we haven't lost that in this idea. Just like the subcommittee knew what they were talking about with the emergency. That's an opportunity for those that are directly affected to have dialogue between themselves and the division.

So I just wanted to put that one last exclamation point. I'll shut up about it until the next meeting, our standards board meeting.

But I said my last comment. Second to the last comment was that.

My last comment is -- and I've heard this throughout the day. There hasn't been one employer get up here, including the folks I represent, that say we don't need a regulation in this context of a guide for us to be able to comply with it. We just want something that -- I think Mr. Donlon pointed out earlier something that's enforceable, something we can comply with, and
something employees understand.

And that's what we want, and that's for everybody, regardless of what side of the fence you think you sit on.

Thank you.

(Speaker change.)

JOE MOULTON: Joe Moulton, BSI EHS Services and Solutions, senior consultant.

I just wanted to, in the effort of continuing the dialogue, with the proposed language in the rule, the exemptions are kind of an area that we want to ensure there's a little bit more clarity on, particularly with indoor workers.

During the last fire season last year, we had multiple clients where employees were affected indoors by the wildfires. And this is very vague language in here as far as keeping windows shut as best you can. Keeping doors shut.

That's very difficult from a safety standpoint of enforcing or what type of guidelines we should, you know, either send our workers home or put our workers in N95 masks or other masks for their protection.

So we would like to see some additional language or guidance as far as whether it be rating the MERV filtration system or the specifications regarding
doors kept closed. Or at what point maybe we need to
start doing some sort of air monitoring within the
workplace.

And if there is a safe level of exposure, such
as identifying permissible exposure limits related
specifically to wildfire and publishing those.

Thank you.

AMALIA NEIDHARDT: And I just want to stress
again. We welcome any alternative suggestion language
that you have for that.

Thank you.

Any other comments?

ERIC BERG: We'll move on. I guess No. 5 is on
our agenda, feasibility cost and additional issues to
consider. Anyone else have comments on that? If not,
then we'll move ahead.

JOE MOULTON: May I just incorporate my earlier
comments in this section?

(Speaker change.)

DAN LEACOX: Just one last thing. Dan Leacox.

On the feasibility, the other aspect is the
degree of compliance that we hit. Not mentioned is,
there are no protections if the employer and the
employee don't agree and think it's a good idea and go
along. There's no way -- we heard about what percentage
are small employers that this can be enforced.

We'll get the most protection when it's something that seems reasonable to folks out in the field. And they'll go along instead of rolling the dice and just not getting caught.

That's the other aspect of feasibility. It's very important to actually obtaining protections. There's no protection unless somebody does something out there. The rule itself does not protect. Somebody has to comply and do it. And you need folks buying in and going along to do that. And that needs to be kept in mind.

CHRIS KIRKHAM: So we're coming to an end of our meeting here, and I'm moving on to Item No. 6.

So as a recap, again, we have the black bolded underlined text in the draft document. And these are changes to the current regulation that we're considering. Of course, we'll consider all of your Comments that we received today.

Then the red bolded text with the yellow highlight is language or changes that we're considering for the more distant future.

And the major changes that are in place there we can discuss later today. But lowering the mandatory respirator threshold from 500 to 300. We're looking at
this new Subsection C, which we've discussed pretty thoroughly today, that would require an employer to make available respirators at an AQI of 100.

And we didn't talk a lot about the MERV concept in the scope. But that's something that we've been thinking about for a while. And if you have comments that you want to send in writing, we'd love to hear them.

And then, of course, changing the scope. Something we're considering -- it's on the first page of the standard itself -- from 151 to 100.

So, again, these are not changes that are written in stone. They're concepts we are considering. If you've got additional comments, we'd like to get them by September 30th.

And how can they submit those?

AMALIA NEIDHARDT: My e-mail. So when you got the invitation, you got my e-mail. But if not, you can write down my e-mail, please. And if not, I can write it for you on a piece of paper so you can send me the comments, please.

CHRIS KIRKHAM: So in terms of the future and any future advisory committee meetings, we haven't scheduled anything. Anything is possible. And we will let you know about that, if it happens, through the
stakeholder e-mail process.

AMALIA NEIDHARDT: That's why it's very important that you please sign in. Because I send the e-mails out.

The only thing is, make sure you talk with your IT system or your system administrator to make sure you can accept e-mails from me. Because when we send out those e-mails, it's a massive amount. It could be up to 300 at a time. With Wildfire we already passed 700 people.

I just want to let you know, because sometimes they'll call me, and they'll say, "I didn't get the e-mail." I did send it. I don't know what's happening on the other side.

Okay, thank you.

CHRIS KIRKHAM: So at some point we do expect that we'll post the transcript of this meeting. I can't guarantee -- I can't give you a date on when that will happen, but we'll post that on our website. And we should be notifying you through the stakeholder e-mails when that happens.

Is there anything else? Well, anything else at all?

AMALIA NEIDHARDT: No.

CHRIS KIRKHAM: Thank you for coming. Thank
you for your comments.

AMALIA NEIDHARDT: Thank you.

CHRIS KIRKHAM: And please send us written letters. We'll read every word of it.

(Meeting concluded at 3:01 p.m.)
I, JOAN GRIER, a Certified Shorthand Reporter for the State of California, do hereby certify:

That the foregoing meeting was reported at the time and place therein stated by me, a Certified Shorthand Reporter, and thereafter transcribed under my direction.

I further certify that I am not interested in the outcome of said action, nor connected with, nor related to any of the parties in said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of September, 2019.

Certified Shorthand Reporter

Certificate No. 8958

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HEARING PROCEEDINGS

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Committee Advisory Board

Protection of Workers from Wild Smoke Hearing Proceedings

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