

**In The Matter Of:**  
*PROTECTION OF WORKERS FROM WILD SMOKE  
COMMITTEE ADVISORY BOARD*

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*HEARING PROCEEDINGS  
August 27, 2019*

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PROTECTION OF WORKERS FROM WILDFIRE SMOKE

ADVISORY COMMITTEE MEETING

August 27, 2019

10:00 a.m. - 3:00 p.m.

1515 Clay Street, Room 1

Oakland, California

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PROCEEDINGS

10:02 A.M.

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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.

HEARING PROCEEDINGS

1 Oh, yeah. Kumani. Kumani Armstrong from  
2 Department of Industrial Relations is here as well. I  
3 thought he was here.

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

8 (Spanish dialogue.)

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

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

25 And separately from that, we have the red bold

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

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

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

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

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

22 (Inaudible audience member.)

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

25 (Inaudible audience member.)

1           ERIC BERG: These elevators are horrible.

2           So we should have the agenda in front of you.

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

5           So like I said, the black text is -- it will go  
6           through formal rulemaking as we do in any other  
7           rulemaking. Even though there's small changes, it will  
8           still go through the normal rulemaking process. A  
9           45-day formal comment period.

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

15          Chris will explain the process.

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

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

25          ERIC BERG: Less than a year, because it has to

1 be done by -- before July of next year.

2 CHRIS KIRKHAM: Yes. Before the emergency  
3 regulation expires.

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

9 Any other kinds of things we need to go over?

10 (Inaudible discussion among panel members.)

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

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

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

23 AMALIA NEIDHARDT: Yes.

24 CHRIS KIRKHAM: For written comments. And so  
25 that's also a great way to provide input. And you can

1 do both. You can provide verbal comments today and  
2 written comments. As long as we can get them before  
3 September the 30th. We'll put that up on the board at  
4 some point for you.

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

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

12 ERIC BERG: Yeah, that's the plan.

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

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

18 AUDIENCE MEMBER: Okay.

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

24 CHRIS KIRKHAM: So we have a court reporter,  
25 Joan. She's on the side there. We ask that you speak

1 clearly and articulate slowly, because she is working  
2 some magic on her computer to transcribe what is being  
3 said. So please always keep her in mind when you  
4 provide a verbal comment today. Please provide your  
5 name and your affiliation even if you've provided  
6 several previous comments today. Just keep doing that  
7 every time you come up to the podium.

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

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

13 Okay. Bruce is all ready.

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

17 BRUCE WICK: My name is Bruce Wick, CALPASC.

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

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

23 Are we allowed to bring up our own potential  
24 modifications to that in this discussion? Or do we have  
25 to focus only on that?

1           ERIC BERG: No. You can bring up anything. If  
2 we can't make it in the black, we'll do it for the more  
3 long-term. But feel free to comment on anything.

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

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

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

16           And the expectations of all those very small  
17 employers to take Appendix B and adapt it language-wise.  
18 We got on the day of the regulation two translations.  
19 The day the regulation took effect. We told all those  
20 employers, "We're not helping you implement a reg."  
21 That sends a message this reg maybe isn't important.  
22 And it is.

23           We complained about the (inaudible) that we  
24 come up here and give input, and then somebody goes off  
25 and massages things. When we are used to a very

1 effective regulation being stakeholders sit across the  
2 table and work their way through.

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

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

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

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

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

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

1 think we should talk about a second permanent regulation  
2 here today.

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

9 ERIC BERG: (Inaudible) dialogue.

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

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

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

24 So if we're willing to take that time, then  
25 let's do it. But that takes a back and forth of

1 significance. And I'm certainly willing to spend that  
2 time today.

3 So thank you.

4 (Speaker change.)

5 NICOLE MARQUEZ: Good morning. My name is  
6 Nicole Marquez. I'm the senior staff attorney with  
7 WorkSafe. And I wanted to speak to the issue of scope  
8 and the need for changing the threshold from 151 to 101.

9 You'll hear from other stakeholders from  
10 community organizations who have worked closely with  
11 workers during different fires in Southern California in  
12 2017. And other regions in Northern California in 2018.

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

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

23 Some workers already belong to a sensitive  
24 group and have occupational health conditions. And we  
25 feel that this is important to consider, especially

1 because the fire season is -- it's upon us.

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

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

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

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

19 Thank you.

20 (Speaker change.)

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

24 Thanks again for the opportunity to provide  
25 input. I think this is one of the most valuable aspects

1 of being a regulated entity and it being in the State of  
2 California, where we actually have an opportunity to  
3 provide input.

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

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

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

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

24 ERIC BERG: So you'd like us to have a separate  
25 meeting just on the health effects? Is that your

1 request? Or would you like us to write up a summary of  
2 the health effects based on all the scientific studies  
3 and post it? What exactly?

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

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

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

21 BRIAN HERAMB: I think a lot of companies or  
22 other entities might not have been present at that.  
23 Certainly, now, if we have a lot of people that are  
24 interested, and it seems like it would be something that  
25 would be very useful as we're moving forward towards the

1 permanent regulation to establish -- and especially in  
2 light of all the information that is coming to light  
3 now, especially with the number of fires and the  
4 severity of the exposures, more people are focusing on  
5 research. Thanks.

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

8 (Speaker change.)

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

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

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

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

23 Our members and low-wage-worker community in  
24 the area were obviously disproportionately affected by  
25 the Sonoma County fires. And as such, I'd like to

1 provide comments and support of the permanent standards  
2 to protect workers from wildfire smoke and urge the  
3 division to accept these comments so that we can have a  
4 strong wildfire smoke standard and ensure outdoor worker  
5 health and safety is not jeopardized again.

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

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

14 Whether working on vineyards, farms, or family  
15 ranches, on construction sites or landscaping projects,  
16 they're overwhelmingly working outdoors and in direct  
17 contact with environmental hazards, be they pesticides,  
18 heat exposure, et cetera. And as was the case in the  
19 2017 wildfires in Sonoma County, obviously smoke.

20 Day laborers, like manual wage income workers,  
21 exist in a permanent state of health decay. They have  
22 high levels of hypertension, asthma, and other  
23 respiratory and cardiac issues and chronic illnesses.  
24 They're also an aging population, as many day laborers  
25 are now in their fifties and sixties.

1           Given this context, within days of the fires,  
2 with AQI well over a 100 or even 200, workers were  
3 returning to work, cleaning up various sites at farms,  
4 ranches, single family homes, and other properties.

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

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

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

23           Day laborers have the highest rates of injury  
24 and death in the landscaping and construction  
25 industries, which themselves are two of the most

1 dangerous sectors to work in, in this country.

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

8 Thanks for your time.

9 CHRIS KIRKHAM: One question.

10 GABRIEL MACHOBANSKE: Yeah.

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

13 GABRIEL MACHOBANSKE: The changes that have  
14 been proposed.

15 CHRIS KIRKHAM: Proposed in the draft or --

16 GABRIEL MACHOBANSKE: Yeah. The highlighted  
17 and red.

18 CHRIS KIRKHAM: Thank you.

19 GABRIEL MACHOBANSKE: The temporary  
20 regulations.

21 (Speaker change.)

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

25 I just wanted to follow up, actually, on

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

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

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

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

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

25 And so it's just -- I think, from my

1 perspective, it was frustrating to see just a building  
2 on the temporary instead of kind of taking a step back.

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

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

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

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

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

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

20 ERIC BERG: It's not always a requirement.

21 GAIL BLANCHARD-SAIGER: Right. So I'm not  
22 necessarily disagreeing with that. My concern is the  
23 one size fits all. And our understanding from the  
24 beginning of this process was this was for outdoor  
25 workers.

1 I guess my point is, outdoor workers look very  
2 different depending on the circumstances, how long  
3 they're outside. And so I'm following up on Bruce's  
4 comments. A deeper dialogue about that is, I think,  
5 appropriate.

6 ERIC BERG: So you would like separate  
7 regulations?

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

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

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

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

25 It's more stepping back and saying, okay, if

1 we're going to do this on a permanent basis, what is the  
2 best way to do this when we're not under the time  
3 pressure. To just build on the emergency regulations  
4 that were developed during a very short period of time I  
5 think is inappropriate.

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

9 GAIL BLANCHARD-SAIGER: Definitely.

10 AMALIA NEIDHARDT: Thank you.

11 GAIL BLANCHARD-SAIGER: Okay.

12 (Speaker change.)

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

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

22 I wanted to speak to the issue of lowering the  
23 threshold to 100. We strongly support reducing the  
24 threshold for providing respirator masks from 150 to  
25 200.

1           A 150 threshold is intended as unhealthy for  
2 the general public. A day with such bad air quality  
3 that it poses a risk for any ordinary person walking to  
4 the store or going to the park.

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

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

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

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

20           Thank you.

21           (Speaker change.)

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

1 of the most in California.

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

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

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

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

22 And Eladio's story isn't extreme, but it  
23 happens. It happened in the Malibu area. And many more  
24 that we probably don't know of. So for us it's really  
25 important to think about this permanent standard. And

1 not just thinking about kind of specific industries, but  
2 also thinking about these extremes, because they have  
3 happened.

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

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

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

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

17 Thank you.

18 (Speaker change.)

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

25 In addition to working on policy and regulatory

1 changes to benefit farmworkers, we are also currently  
2 starting a dialogue with those farmworkers who are  
3 impacted by the fires.

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

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

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

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

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

1           CHRIS KIRKHAM:  Yes.

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

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

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

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

22           Because even me, living in this area where we  
23 were clouded by the smoke and ash for a while, I didn't  
24 really understand until about four or five days into it  
25 that I was actually starting to struggle to breathe.

1           And so unless there's some understanding, you  
2 don't really understand.  Somebody has to be explaining  
3 to the workers why this is so bad.  Even though they may  
4 not feel it initially, it's only going to get worse.  
5 Cumulative damage happening to their lungs.

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

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

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

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

25          Finally, this standard is really important to

1 me and the work that we do. Because farmworkers and all  
2 of these workers primarily are doing a service for all  
3 of us. Farmworkers are why we are able to eat. They're  
4 doing a service for everyone, even the workers who are  
5 building our roads.

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

11 So thank you.

12 (Speaker change.)

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

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

20 I represent 8,000 who actively are linemen,  
21 which I am myself for the last 22 years, or work under a  
22 substation. They work right alongside these first  
23 responders, clearing energized lines, making sure that  
24 the pumps that these firefighters are using to get water  
25 are operating.

1           But the exemption here is only for one hour.  
2           And we would ask that that exemption extend with those  
3           who are assisting in firefighting aid, as it does later  
4           on in the reg.

5           ERIC BERG:   Exemption from emergencies?

6           CHRIS PORTER:  No, no, no.  It says in  
7           emergencies including G4.  In emergencies including  
8           rescue evacuation, Subsection G and G2, 3, don't apply.  
9           And employer shall comply with Subsection 4.  
10          Emergencies -- this is it.

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

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

18          CHRIS PORTER:  No, I understand that.  But we  
19          would ask that that exemption, while they're -- instead  
20          of one -- like I said, as a journeyman lineman for the  
21          last 22 years, I've been in wildfires.  And you're  
22          assuming that we just show up.  That we don't have to  
23          look at circuit maps, that we don't have to figure out  
24          how to switch around load.  And then go in and actually  
25          make the mechanical either separation connections to

1 make it safe for the front line first responders, which  
2 are firefighters. It takes a bit of time.

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

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

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

13 CHRIS PORTER: Yes.

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

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

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

1 and 60 cal.

2 And I've had that conversation with you before.

3 ERIC BERG: Thank you.

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

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

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

23 ERIC BERG: Okay.

24 (Speaker change.)

25 STEPHANIE MEDINA: Good morning. My name is

1 Stephanie Medina. I am a staff attorney at Centro Legal  
2 de la Raza in Oakland, California. I have the honor of  
3 representing low-wage workers, specifically day  
4 laborers, construction workers, and those folks working  
5 in the landscaping industry.

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

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

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

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

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

1 only form of employment for the rest of the week.

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

6 Thank you.

7 (Speaker change.)

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

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

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

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

23 I've been through maybe 15 advisory committees  
24 in my career or more. The best regulations that come  
25 out of those is when you do have an effective dialogue

1 between labor and management and the division, of  
2 course, to come up with what an employer can comply  
3 with, what the division can enforce effectively, and  
4 what the employees can follow and understand.

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

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

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

23 The other issue that I think is important and I  
24 don't want to get lost here, is it's understanding the  
25 concept that the emergency reg, by not changing it

1 substantively, doesn't have a cost impact on the State  
2 of California and on the employers in the State of  
3 California to the effect of a -- do the math, just basic  
4 simple math.

5           In order to be prepared for an emergency, what  
6 do you have to do? You have to have N95s on hand,  
7 right? How many employers are there in California? A  
8 million? More? I don't know what the number is.  
9 Multiply that to say the average was nine. There's  
10 9 million. That's 9 million masks. What does that  
11 cost?

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

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

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

25           Here, we're trying -- it's a brand-new idea,

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

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

8 Before you come back, Eric.

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

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

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

22 I don't agree with you that this is simplified.  
23 I heard you do this with Gail earlier. I heard you do  
24 it with Bruce. We come up with something from the  
25 employers, talk to you about it, and you come back with

1 things to fill in, oh, this is wrong or that's wrong, or  
2 what about this and what about that.

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

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

10 ERIC BERG: And you're free to open.

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

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

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

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

24 With that being said, I don't know whether to  
25 comment on the issue of going from 151 to 100 in scope

1 or not. Is that really part of what we're here to talk  
2 about or not?

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

10 ERIC BERG: Feel free to do it now.

11 KEVIN BLAND: I know. But if I do it now, how  
12 does that change? Because that can't be changed, right?  
13 151 can't be changed to 100, right, today?

14 ERIC BERG: Not right now.

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

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

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

21 AMALIA NEIDHARDT: Kevin, I just want to make  
22 sure. In the event that we misunderstood or anything  
23 like that, I want to make sure and encourage everyone,  
24 please submit comments in writing on September 20th. By  
25 September 20. Oh, yes, 30. I was counting down the

1 days. Sorry, September 30th. September 30th. Thank  
2 you. We welcome them. Please.

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

8 (Speaker change.)

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

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

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

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

1 essentially all our employees.

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

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

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

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

23 So I just wanted to share that experience with  
24 you. And that's sort of the reason why we are concerned  
25 about lowering the AQI threshold, that it's going to

1 cause these huge runs on respirators and make them very  
2 difficult to get during the period of a fire.

3 AMALIA NEIDHARDT: Thank you.

4 (Speaker change.)

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

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

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

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

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

23 And as far as the process goes, we're  
24 encouraging you to just slow down. We started with the  
25 emergency regulations. And we all understood the

1 purpose of doing it as an emergency regulation. The  
2 State wanted them in place before the next rash of  
3 wildfires.

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

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

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

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

23 We feel that that's far too subjective of a  
24 trigger. Reasonably anticipate is not a really  
25 well-defined term. And we think it should be tied to

1 something more concrete. There are exemptions that are  
2 listed.

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

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

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

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

22 So I just wanted to put a pin in some of those  
23 finer points and express our interest in working with  
24 the division staff on these in an iterative process and  
25 having that dialogue so that we can really think about

1 the vast impact that these regulations would have on  
2 different segments of the economy.

3 AMALIA NEIDHARDT: Sorry. I have a question.

4 Could you tell me a little bit more about what  
5 you were saying, that you move the workers around and  
6 that they are not exclusively outdoors? Can you give me  
7 an idea of what exactly you're talking about, please.

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

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

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

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

23 CHRIS KIRKHAM: Similarly, do you have a  
24 suggestion? You said that A1B was too subjective. Do  
25 you have any recommendations for alternate language?

1           ERIN GUERRERO: Well, you know, at the  
2 beginning, when we were starting the emergency  
3 regulation, there was -- it was tied to a notice of some  
4 sort of a wildfire. And we did have concerns because it  
5 lacks specificity. It could have been an alert about a  
6 fire three states over. But we do think that having it  
7 tied to some sort of official proclamation of a fire.

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

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

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

14           (Speaker change.)

15          JAMES MACKENZIE: Thank you. My name is James  
16 MacKenzie. I'm with Southern California Edison.

17           I had a couple of points I wanted to go  
18 through.

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

25           We're not talking about sending people in

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

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

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

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

21 We're looking at the situations described,  
22 where we're helping firefighters get in so that they can  
23 fight the fire. We're moving power lines from the  
24 street, helping people evacuate so if the power lines  
25 were to fall down on the street as a result of a fire,

1 we can clear those lines and get people out of there.

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

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

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

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

25 So that's where we would look to your help to

1 guide us on the science aspects of it. And also looking  
2 at the HEAC processes. I'm curious as to why we're not  
3 following those as to this situation as well.

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

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

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

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

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

25 ERIC BERG: Okay. I understand. And as part

1 of administrative exemptions, you want exemptions to the  
2 training requirement in emergency?

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

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

11 Even a possible simpler solution that we've  
12 talked about, we had mentioned a while back, is to take  
13 5144, the voluntary use provisions, and add wildfire  
14 smoke as a mandatory component to that. That you  
15 will offer voluntary respiratory use in a wildfire  
16 situation.

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

21 So to circle back on the exemption piece, I  
22 don't want there to be any takeaway that we're  
23 supporting not protecting workers. We will do that.  
24 We've done that -- I've been with the company over  
25 16 years.

1           And one of my first jobs when I hired in into  
2 the safety department was to drive respirators, N95  
3 respirators, to a wildfire. And that was not a new  
4 practice then. We've been doing that for many years.  
5 We protect our workers in that sense.

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

15           Moving on to the sensitive group issue.

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

25           And then I think an appropriate question for us

1 and one that we can have in dialogue, I would hope, is  
2 it appropriate to apply the statewide regulation to  
3 whatever we send to that population that we're looking  
4 at? The answer may be yes. It may be a lower  
5 population.

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

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

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

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

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

24 ERIC BERG: We'll look at that.

25 JAMES MACKENZIE: Additionally -- well, I

1 mentioned the (inaudible).

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

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

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

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

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

1 communications standpoint.

2 ERIC BERG: Okay.

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

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

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

16 So thank you.

17 (Speaker change.)

18 BRUCE WICK: Bruce Wick, CALPASC.

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

1 substantive changes to that regulation.

2 ERIC BERG: Nonsubstantive.

3 BRUCE WICK: Nonsubstantive. Thank you.

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

7 ERIC BERG: Yes.

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

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

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

23 We have some small employers, and they'll have  
24 employees with three or four different languages  
25 depending on where they are in the state.

1           And we're saying you take employer, Appendix B,  
2           and each one of you 900,000 individual employers, you  
3           make it understandable to your employees. Why can't  
4           Cal/OSHA do that for every worker in the state and,  
5           actually, every person. That would go a long ways if  
6           we're off to 2021 or more before we get any significant  
7           changes to that.

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

13          I think we ought to take the time with this  
14          3.0, walking through, having a very seamless  
15          respiratory use program where employees have one  
16          appendix that they read. And they have a fact sheet on  
17          wildfire smoke and they know what that means. And even  
18          small employers, we hand them something they can  
19          implement readily.

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

22          So for major reg and, you know, how we've done  
23          it in the past, we've put a table in the middle and had  
24          people appointed representing all stakeholders. And  
25          it's still a public forum and anybody can speak, but

1 that group is tasked with going back and forth and  
2 discussing this.

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

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

14 Thank you.

15 (Speaker change.)

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

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

21 The first thing I have to say is that -- make  
22 some process comments. This meeting here is not going  
23 to become what is being asked for or required. That is  
24 just not going to happen by asking for suggestions or  
25 whatever.

1           The notice of this meeting was advertised as an  
2 input-only meeting. So I don't think anybody really  
3 came prepared to have that type of discussion. It  
4 wasn't advertised as a round table meeting. It wasn't  
5 advertised the way the board does it, which is  
6 discussion line by line, line items, et cetera, between  
7 the parties as well as to you.

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

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

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

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

25           ERIC BERG: There is no such alert.

1           DAN LEACOX: Good. So what didn't occur was  
2 coming back to those stakeholders with that concern,  
3 saying, you know, this doesn't work. What else can we  
4 do to address your concern. We only heard about it  
5 after all the comments at the day of the event.

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

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

14           Now, I will note, along with Bruce's comments,  
15 that in the first section of scope there are no proposed  
16 changes for the 2.0 version, what we're going to have to  
17 live with for the next probably two or three or  
18 four years, perhaps, if the permanent rule, the second  
19 3.0 version, ever really does get done.

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

24           The thought that I think most of us had when we  
25 began with approval of the petition was -- and I know

1 you and I had this discussion at the HEAC meeting, and  
2 we were talking about this before the petition was  
3 voted on, was the idea of allowing for voluntary  
4 respirator use and removing the requirements for that,  
5 the fit testing and the health evaluation requirements  
6 of that.

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

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

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

24           Well, I did a little research on the cost of  
25 that. And that's about a day's labor, a day's wages, it

1 sounds like, for a day laborer.

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

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

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

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

24 The other thing this rule does is it crosses  
25 into a territory of, you might call, conflict between

1 employers and employees. I know the division is tasked  
2 with safety only and thinks about that. But there's a  
3 lot more that enters in.

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

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

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

19 DAN LEACOX: Oh, yeah.

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

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

25 CHRIS KIRKHAM: How much more do you have?

1 DAN LEACOX: Oh, quite a bit. Probably about  
2 20 minutes.

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

5 DAN LEACOX: Okay. So the suggestion is  
6 well -- okay. Let me take a look at this here.

7 Oh, just one last point, and then I'll get back  
8 in line. I'll come back for more of it.

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

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

17 ERIC BERG: Which regulation?

18 DAN LEACOX: The ones that you're referencing.

19 ERIC BERG: 5144.

20 DAN LEACOX: And the other one?

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

23 DAN LEACOX: Yes, I understand that. In the  
24 adoption of that, the situation here that's very  
25 different than what is contemplated by those is --

1 there, what's being contemplated are workplace exposures  
2 that are limited to the workplace and not where the  
3 entire environment, all of the air.

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

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

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

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

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

22 Okay. See you later.

23 (Speaker change.)

24 WHITNEY PROUT: Good morning. I'm Whitney  
25 Prout with the California News Publishers Association.

1 Our association represents about 400 newspapers  
2 throughout the State of California, including all of the  
3 major daily newspapers in this state.

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

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

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

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

23 They're in all sorts of different situations  
24 where the employer, one, may not be able to anticipate  
25 where they'll be, but also doesn't have control over

1 those work sites.

2           And so the concerns I have with Subsection A  
3 and the changes proposed in the red and highlights  
4 specifically are: One, lowering the threshold to 100  
5 from 151 is concerning for us just because it's going to  
6 increase the incidence at which the regulation is going  
7 to be triggered.

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

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

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

23           One of the previous speakers mentioned that  
24 existing Fair Employment Housing laws do provide for  
25 accommodation for employees that have -- that may be in

1 a sensitive group. And I think that is something we're  
2 exploring. Whether those accommodations, where you have  
3 an employee that has asthma, for example, they could  
4 request a respirator at a lower threshold that might  
5 otherwise generally be applicable.

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

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

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

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

1 workable for employers.

2 Thank you.

3 (Speaker change.)

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

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

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

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

22 With regards to the levels, the proposed levels  
23 in the MERV filters, I think it's too early for me  
24 because I haven't had a chance to look at the science,  
25 which is what most of my comments are focused on.

1           This regulation creates sort of an implicit  
2 endorsement of the effectiveness of N95 masks on  
3 employees and also the lack of harm around them. I  
4 think it's important to be able to communicate that to  
5 employees.

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

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

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

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

24           I think one of the pieces that gets lost is  
25 that the science behind this is all over the place.

1 Most of the science has been focused. It's been out  
2 that what most people in occupational health look at are  
3 N95 in a controlled environment with a sealed face mask.

4 That's being extrapolated to workers who are  
5 outdoors in a changing environment with unknown airborne  
6 toxins.

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

16 And then we have associated epidemiologic  
17 studies that show anywhere from no improvement, maybe  
18 80 percent decrease in exposure for wearing this mask.

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

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

25 The final thing I'd like to add is that I think

1 we should provide training to health care providers. I  
2 think that probably would be best done through the  
3 California Department of Public Health.

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

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

17 Those are my comments.

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

22 TIMUR DURRANI: I think both. So I would say  
23 the limitations I saw are based around symptoms. So it  
24 says if you have symptoms and goes on to describe  
25 breathing difficulty. What I don't see in there is the

1 limitations that are recognized around a nonsealed face  
2 mask.

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

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

10 AMALIA NEIDHARDT: Thank you.

11 (Speaker change.)

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

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

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

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

25 So there's been a lot of work behind the scenes

1 between the BAAQMD, Bay Area Air Quality Management  
2 District, and the Associations of Bay Area Health  
3 Officials to come up with a uniform set of messages.

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

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

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

21 So that if Cal/OSHA changes their standard to  
22 that 101 value, we're going to have another major  
23 disconnect in messaging, where, for occupational  
24 purposes, we're going to be saying that we're going to  
25 kick in our voluntary respirator use at level 101.

1 Health officials are focusing on that 151  
2 value. And there's no indication that they're planning  
3 to drop that as their threshold.

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

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

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

19 So the message I'd really like you to take home  
20 here is that, if you move to 101, you're doing it in a  
21 vacuum. You're going to need to be coordinating that  
22 with the public health officials and the Bay Area Air  
23 Quality Management District. And since this is a  
24 statewide regulation, with other air quality management  
25 districts statewide. Otherwise, we're going to just

1 have this complete confusion again about messages.

2 Creates panic.

3 Thank you very much.

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

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

14 ERIC BERG: Thank you.

15 (Speaker change.)

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

18 Roy Vlaovich with Pacific Gas and Electric.

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

24 In the utility space I think it's important for  
25 those of us that are writing the standard to understand.

1           The utilities really work in typically three or  
2 four of those spaces. You've got the normal worker.  
3 For PG&E that's 70,000 square miles representing people  
4 in office buildings to service representatives to field  
5 personnel.

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

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

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

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

22           The utility industry has a long history of  
23 doing this. We met in advance of some of this effort to  
24 talk about what we've done in terms of voluntary use in  
25 providing the respirators.

1           The other impact of that, when we get to  
2 emergency space where we're side by side, clearing the  
3 way, if you will, for emergency response, fire trucks,  
4 firefighting efforts, we have to be able to engage with  
5 them side by side.

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

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

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

23           Roughly 60 percent of our employees --  
24 actually, it's 40 percent of our employees have beards.  
25 We decided that having a stockpile of 80,000 which we

1 currently have of N95 P100 respirators is not sufficient  
2 for more than three days.

3 And, typically, it's probably going to be one  
4 day worth of efforts. Because some of those lineman and  
5 gas men are going to throw away two or three during a  
6 regular service. That's a serious number, right?  
7 80,000 in this stockpile. We're going to have to go  
8 three or four times that amount, or go to a different  
9 device.

10 We talked about powered air purifying  
11 respirators. Those are about 1,000 bucks a piece right  
12 now. If you order 250, you get a back order from 3M.  
13 And we're in the process of seeing if we can get 4,000.

14 4,000 at a thousand is somewhere close to  
15 4 million just to ensure that we don't cause people to  
16 shave their beards off that have beards. And we've got  
17 a lot of history, a lot of pride in people that are  
18 supporting and support fire efforts and restoration  
19 efforts.

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

25 What we would like and what we support is an

1 ability for us to partner and maybe parse out for the  
2 utility industry a specific standard that is addressed  
3 to us that enhances or at least addresses all of the  
4 different components that we're having to deal with to  
5 comply with the effort.

6 Thank you.

7 (Speaker change.)

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

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

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

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

23 Now, I don't know of any existing PEL that is  
24 geared towards sensitive groups. So this is kind of  
25 something new on the safety orders that we're going to

1 gear an air measurement towards sensitive groups rather  
2 than towards the average employee, which is what PELs  
3 have. So I don't think we should lower it from the 151  
4 to the 101.

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

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

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

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

23 And so there is going to be a problem. There  
24 are not enough respirators in the state to comply  
25 with this regulation if we have another thing like the

1 Camp Fire. They're not here. And so how do we address  
2 that?

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

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

13 And so I wanted to just throw that out there.  
14 I don't know. I know that traditionally health  
15 standards have been done by division staff, safety  
16 standards by board staff. But this is kind of a unique  
17 situation that's just happened in the last week or so.

18 So that's what I have. Thanks.

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

21 (Speaker change.)

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

24 And I just wanted to, in the spirit of  
25 dialogue, address a couple of points that have been

1 raised, to follow up on them.

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

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

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

24 We do have some standards for things that are  
25 asthmagens. I think it's very legitimate to have this.

1 However, workers should not have to ask for a respirator  
2 at that point. They should be provided for voluntary  
3 use.

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

10 And then I'll be up again.

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

13 (Inaudible audience comments.)

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

16 (Lunch recess taken from 12:01 p.m. to  
17 1:03 p.m.)

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

21 (Speaker change.)

22 ANDREW KOSYDAR: Good afternoon. My name is  
23 Andrew Kosydar. I am the scientist and legislative  
24 advocate for the California Building Industry  
25 Association, CBIA.

1           We have 3,000 member companies, and we  
2 represent the home builders in California. Our member  
3 association companies built approximately 84 percent of  
4 all the homes in the State of California last year.

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

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

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

19           I do know that there has been no conversations  
20 between CBIA and any of the staff here at Cal/OSHA.  
21 There has been no outreach by Cal/OSHA to seek our  
22 input. And instead, we were alerted by other employers  
23 in the State of California to these regulations. CBIA  
24 would very much appreciate to be a part of this  
25 conversation.

1           Once again, as I stated when I was down in  
2 Pasadena for one of the board meetings, I find myself  
3 with many questions when it comes around to these  
4 regulations, and I don't have the answers.

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

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

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

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

22           As I stated in Pasadena, these regulations lack  
23 clarity, and it is difficult to decipher. I don't think  
24 I'm necessarily the smartest person in the world or in  
25 this room, but I don't think I'm the dumbest. I think

1 that if we're going to have these regulations, they  
2 should be simple, and there should be really clear  
3 boundaries and expectations.

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

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

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

25 And I know somebody earlier today who got up

1 and spoke to maybe the State should have some sort of  
2 trigger, or the State should alert employees. Maybe  
3 that's the solution. I don't know. But I do know this  
4 is not workable for employers. It's challenging. How  
5 do we implement this?

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

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

19           I think there are a lot of unanswered  
20 questions, as I mentioned. For example, people have  
21 mentioned, are their enough respirators in stock. I  
22 don't know. What happens if there's a shortage? Has  
23 anybody contacted the manufacturers to see if they keep  
24 enough in stock? Has anybody estimated the numbers of  
25 respirators, N95s respirators, that we need to supply

1 all of our workers here in the State of California?

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

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

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

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

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

23 ERIC BERG: I just have a quick comment on your  
24 questions. The explanation or the justification of the  
25 standard and the citations to the studies are in the

1 finding of emergency which is posted along with the  
2 regulation. So you might want to look at that and give  
3 us your feedback.

4 ANDREW KOSYDAR: I will. Thank you.

5 (Speaker change.)

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

9 (Discussion off the record regarding  
10 microphones.)

11 BRIAN LITTLE: Brian Little with California  
12 Farm Bureau Federation.

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

20 In doing that, we employ about 800,000 people  
21 throughout, at some point during the year, in  
22 agricultural production activity. And right now this  
23 month and probably next month, we'll be employing  
24 between 450- and 500,000 people doing agricultural  
25 production and finishing up the harvest season.

1           So we have a lot of people that we are required  
2 to take care of to do the things that Cal-OSHA and other  
3 agencies require us to do.

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

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

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

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

23           And I suspect that when we had wildfires over  
24 the last several years and agricultural that affected  
25 employees in agricultural areas, we might have had --

1 I'll go out on a limb and say we might have had a fair  
2 number of agricultural employers who provided N95  
3 respirators probably in violation of 5141, the voluntary  
4 use rules of 5141.

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

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

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

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

24 And that happens from time to time in Southern  
25 California. It happens from time to time in the

1 Sacramento Valley. So having that clarity that the  
2 smoke for which an employer is required to provide --  
3 the cause of which an employer is required to provide a  
4 respirator when the AQI reaches 150 as a result of the  
5 presence of PM2.5 would be very helpful as opposed to  
6 having to rely on an employer reasonably expecting that  
7 there might be some exposure to wildfire smoke.

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

16 (Inaudible audience comment.)

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

20 So the result -- that fire could have become  
21 problematic, and it would have been difficult for  
22 employers perhaps in Sacramento County or in Stanislaus  
23 County or in some of the other counties further south or  
24 even over toward the coast to know for sure whether the  
25 smoke they were experiencing might be from that fire in

1 Modoc County or might not be. It might be from some  
2 other source. So it would be very helpful to get that  
3 straightened out.

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

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

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

18 (Speaker change.)

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

25 So I just had some more technical questions on

1 the standards. So I think one question I had was also  
2 that --

3 (Discussion off the record regarding  
4 microphones.)

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

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

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

25 The other one is around Appendix A for the

1 direct reading instruments. Specifically, it's asking  
2 that the airborne particle sizes ranging from an  
3 aerodynamic of 0.1 microns, 2.5 microns.

4 I was curious why the 0.1. And the reason is  
5 that -- so at EPA they typically say wildfire smoke is  
6 from .4 microns and above. And then that's important  
7 because optical particle counters can only go down to  
8 300 nanometers. So .1 to .3 is actually very difficult.

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

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

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

22 And maybe -- I don't know if it would be  
23 possible to also address the upper limits as well.  
24 Because using PM10 or higher data to interpret PM2.5  
25 levels is not necessarily accurate.

1           So that was pretty much it, stuff that might  
2 need some clarification from my end as a sensor  
3 developer.

4           Thank you.

5           (Speaker change.)

6           MITCH STEIGER: Mitch Steiger with the  
7 California Labor Federation.

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

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

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

25           Essentially everybody who looked at this or

1 even tried to look at it came away with this sense of,  
2 this is so cumbersome, this is so long, this is so  
3 complicated. I'm not even going to pay attention to  
4 this. I don't even know how to make sense of this.  
5 Totally unreasonable to do medical evaluations and fit  
6 testing of everyone.

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

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

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

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

1 that definitely makes sense.

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

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

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

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

25 But overall, it seems like a lot of the

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

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

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

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

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

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

1 would be.

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

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

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

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

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

23 So, again, I don't know what, if anything, can  
24 be done with that, but it's important to remember that  
25 the goal here was to make the old standard something

1 that was easier to comply with. Something that  
2 employers wouldn't look at and just disregard and say,  
3 I'm just going to say the exposure wasn't harmful so I  
4 don't have to deal with this. That outcome is what  
5 we're really trying to avoid.

6 With respect specifically to the scope section,  
7 I think it looks good. I think going from 151 down to  
8 100 makes a lot of sense. The only way you could avoid  
9 something like that would be, again, to bifurcate it and  
10 make it more complicated and have some different  
11 standard for those that are a member of some sort of  
12 vulnerable community. But then how do you do that  
13 without having an employer ask someone, "Do you have  
14 asthma? Do you have COPD?" Asking these questions that  
15 we certainly don't want to answer to our employer. And  
16 employers probably don't want that information, I would  
17 assume, in those cases.

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

23 But overall, we very much appreciate the  
24 timeliness of all this language. We think that the  
25 basic structure looks good. Even the basic structure of

1 this process and having a simpler version that we're  
2 going to adopt quickly we think makes a lot of sense.

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

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

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

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

22 This is something that at some point we're  
23 going to need to deal with. There isn't this clear  
24 dividing line if you're in a building you're safe; if  
25 you're outside you're in danger. And so we haven't even

1 gotten to that yet. I'm not saying we get into it  
2 today.

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

10 (Speaker change.)

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

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

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

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

25 I think one of the things we heard today is the

1 assumption this applies to wildfire. And I think that's  
2 what people assume reading it, talking about it, voting  
3 on it, all of that.

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

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

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

19 The other place that comes into play -- I  
20 brought this up at the hearing before the board. If you  
21 look at the definition of wildfire smoke, I think this  
22 is one not well understood. And related to the scope  
23 issue, it says, "Emissions from fires in wildlands." It  
24 doesn't say what kind of fires, but fires in wildlands  
25 as defined in Title 8 or in adjacent developed area.

1 Well, what's a fire in an adjacent developed  
2 area? Sounds like a structural fire to me.

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

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

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

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

24 Now, I realize there's some following  
25 exceptions that will address some of what I'm saying.

1 But it seems, as a definition of scope, it should be  
2 something -- it's something meant to be something more  
3 than just everybody. But I don't know where that limit  
4 is.

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

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

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

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

23 Without any sort of threshold limit for the  
24 exposure, well, I could reasonably anticipate some  
25 wildfire smoke exposure that, you know, one particle per

1 billion somewhere in the future.

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

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

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

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

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

1 Okay. Yeah.

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

5 (Speaker change.)

6 BRUCE WICK: Bruce Wick, CALPASC.

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

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

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

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

23 But I'm concerned. Again, a couple of things.  
24 I really strongly feel that for the 3.0 major change  
25 reg, we should make sure we are seamless and we fix the

1 voluntary respirator use issue in 5144 and 5141.

2 There's no reason we can't and shouldn't take the time  
3 to do that.

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

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

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

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

25 But I think for 3.0, we need to have an

1 advisory committee, a true one, like the Standards Board  
2 does. And I've been in many where I've been around a  
3 table, one of 20 or 25 with 40 people sitting off to the  
4 side who can speak if they want to, but they know there  
5 are stakeholders representing everybody's part of it.

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

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

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

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

21 There are a couple of really good ones I'd like  
22 to see us implement. But many others of them we would  
23 be in the position of saying, you know, we've already  
24 said to people, Appendix B is really confusing. There  
25 are a lot of confusing parts about this reg.

1           And now we have the second 2.0 coming at you.  
2           And it changes, but it isn't much different or better.  
3           You'll just be confused in a different way. Don't  
4           worry. 3.0 will be coming down the way. So try and  
5           figure that out at the end.

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

12                       (Speaker change.)

13           KEVIN BLAND: I don't think I need that. Can  
14           you guys hear me? Kevin Bland still this afternoon.  
15           Western Steel Council, Residential Contractors  
16           Association, and the California Framing Contractors  
17           Association.

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

21           I understand there's an "and" there, but it  
22           doesn't address the issue of the PM2.5. It is not  
23           related to fire. Even though we have the "and," it  
24           doesn't relate to fire. It relates it to reasonably  
25           anticipated employees who may be exposed.

1           It doesn't say the presence of smoke. It  
2 doesn't say in an area of smoke. It doesn't give you  
3 that trigger that I think you're intending to get. And  
4 I think that's a downfall of this.

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

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

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

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

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

1 there is an existing emergency reg?

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

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

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

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

25 I have been on advisories where we have a

1 subcommittee of those folks that are interested in that.  
2 They can get together, come up with something. Then it  
3 comes back to the main committee. But usually it's  
4 resolved by those affected stakeholders in that group.

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

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

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

22 But on the most part, I think Bruce pointed  
23 out, and Mitch, we've been in some really tough  
24 situations before in these. And we've reached  
25 consensus.

1           Most of the time we figure out we're driving  
2 the car. We want to get to the same city. We're just  
3 trying to figure out what road we want to take. Maybe  
4 we end up on a road we weren't even thinking of. But we  
5 still want to get to the same city. So what's the  
6 official way to do it.

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

11           No more questions from the jury?

12           ERIC BERG: No questions. Thank you.

13           (Speaker change.)

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

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

24           ERIC BERG: I don't know if the regulation  
25 covers prescribed firefighters.

1           JAMES SAVAGE: Wildland firefighters, trained  
2 wildland firefighters not fighting wildland fires but  
3 lighting controlled burns for land management  
4 objectives.

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

8           JAMES SAVAGE: Cover them as well.

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

12          ERIC BERG: Want to come up here, Maryrose?

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

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

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

25          MARYROSE CHAN: For the federal portions,

1 they're not within our scope.

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

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

10 JAMES SAVAGE: Can you say that General Safety  
11 Order?

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

19 ERIC BERG: Thank you, Maryrose.

20 (Speaker change.)

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

24 One question that I haven't heard answered so  
25 far is the one in regards to our non-uniformed personnel

1 who are support features of fighting a wildland fire.

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

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

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

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

22 TODD RAUSSER: Our PP program requires a  
23 physical exam to be cleared in order to do a fit test.  
24 Without that physical exam clearance, we cannot fit test  
25 our non-uniformed employees. So that's where the

1 concern is.

2           Because now, if it's required -- and this goes  
3 with everyone in the room here. If it's required, then  
4 they're going to also have to do a medical examination  
5 after they're cleared from fit testing from the  
6 questionnaire in order to truly be fit tested in the  
7 requirements.

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

12           TODD RAUSSER: Perfect. Thank you.

13           (Speaker change.)

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

16           I just want to reiterate the importance of  
17 remembering low wage immigrant workers in the situation.

18           Wildfires are going to be an ongoing issue in  
19 California. And workers are responding to the need, to  
20 the rise of wildfires. And there is a need to protect  
21 all workers, including those that are most vulnerable.

22           My desire is for this regulation to take note  
23 of them and their voices. And employers have a duty to  
24 provide safe working conditions regardless. In fact,  
25 employers have been complying a lot with other safety --

1 with other safety standards. And this should not be any  
2 different.

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

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

11 Thank you.

12 (Speaker change.)

13 JAMES MACKENZIE: Hello again. James MacKenzie  
14 with Southern California Edison.

15 (Discussion off the record.)

16 JAMES MACKENZIE: James MacKenzie with Southern  
17 California Edison.

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

24 Maryrose, you were facilitating it. And we  
25 walked out of there with -- I don't think anybody got

1 exactly what they wanted, but we all walked out. It was  
2 good. And we solved for particular issues.

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

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

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

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

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

25 So that puts us into the -- (inaudible) enough

1 to spend -- we don't have exact numbers -- between 6-  
2 and \$800,000 on PAPRs.

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

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

12 And imagine a scenario where we started out  
13 with the most protective that we're looking at here.  
14 And then we look at it and say, I don't know if the  
15 science supports that, so we're going to peel that back.

16 And I'm going to walk up to Chris and say, "Can  
17 I have that? You don't need it anymore." After he's  
18 had it for six months or a year. That further damages  
19 the safety program itself.

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

23 And we may not land on everything I want, and  
24 I'm okay with that. But we can land on something where  
25 we understand the science behind it, we know that we're

1 protecting workers adequately, and we're doing it in a  
2 fast way where we can get ahead of -- kind of a false  
3 rollout, if you will, where we have a false start and we  
4 have to pull back.

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

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

14 That's all. Thanks.

15 (Speaker change.)

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

20 You have an exemption of sorts for emergencies,  
21 including rescue and evacuations and utilities for  
22 emergencies there, but with the real very specific point  
23 out of when operations are directly aiding firefighter  
24 and emergency response, we've run into issues as a water  
25 agency where we would have our employees needing to

1 respond during those high-smoke times where there is a  
2 lot of wildfire that's there. And our crews have to go  
3 out. They have to address those main leaks. We  
4 generally consider those emergency operations to address  
5 those types of leaks.

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

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

14 Thank you.

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

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

17 (Speaker change.)

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

24 And your response is, well, as I interpret it,  
25 and I think that everybody understands is, it's meant to

1 assure that this is a situation that involves wildfire  
2 smoke. It doesn't quite do that.

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

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

12 So I'll just leave it at that.

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

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

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

24 So it's a lot different when you discover  
25 something is going on or the need to do something one

1 day and then addressing it the next day is one thing.  
2 Addressing it in the middle of the work shift introduces  
3 all kinds of issues.

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

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

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

22 So to the extent one has to apply ahead of  
23 time, then that greatly magnifies the cost. Because now  
24 you're talking about every employer. And it would be  
25 good to see that taken into account, the economic and

1 fiscal analysis. Because one of the responses is just  
2 not going to work that day.

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

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

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

10 (Discussion off the record.)

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

15 (Speaker change.)

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

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

23 And certainly we need advisory groups like this  
24 so that we can hear each other's point of view and  
25 figure out what's going to work. But the goal is,

1 again, not consensus. It's worker protection.

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

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

10 (Discussion off the record regarding  
11 microphones.)

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

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

25 Also, as Eric clarified before, the medical

1 evaluation requirement is filling out a questionnaire  
2 that's reviewed by a health care provider who is not  
3 necessarily a physician. Everyone doesn't have to go  
4 and get a medical exam.

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

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

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

21 Thank you.

22 (Speaker change.)

23 NICOLE MARQUEZ: Nicole Marquez, senior staff  
24 attorney with WorkSafe. And just wanted to echo  
25 Anne Katten's comments with respect to the objective

1 being the safety of workers and not consensus within the  
2 statute, that that is the mandate. And so this, of  
3 course, is aspirational in terms of making sure that  
4 everyone's input is considered.

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

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

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

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

24 With respect to identification of harmful  
25 exposures, we feel that identification of harmful

1 hazards needs to be done before the shift so that  
2 employers can provide appropriate protection for  
3 workers.

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

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

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

19 The current law has its flaws, but we feel  
20 using the AQI as a benchmark for PM2.5 between 301 and  
21 500, 500 being the top of the chart of hazardous, is  
22 accurate and that the threshold should be set to 301 for  
23 respirators when you're required to do a fit test and  
24 medical evaluation. It's the best way to ensure that  
25 workers have access to the most effective protection.

1           And if -- federal law requires mandatory usages  
2 of a respirator where the workplace atmosphere is  
3 hazardous. And wildfire smoke at levels of above 300  
4 AQI create a workplace atmosphere that is hazardous.  
5 Then respirators with fit test and medical evaluation  
6 should be required.

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

10           Thank you.

11           (Speaker change.)

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

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

23           The draft regulation says that respirators will  
24 be provided upon request. Without any training or  
25 verbal instruction or requirement for employers to

1 monitor air quality conditions between 100 and 150 AQI,  
2 why would we want to use the opt-in rather than opt-out  
3 for basic safety equipment?

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

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

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

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

24           Furthermore, if employers are required to stock  
25 enough respirators for the employees and inform their

1 employees of the respirators, it won't save employers  
2 time or money only to provide respirators upon request.

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

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

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

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

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

1 end of the day as it became uncomfortable.

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

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

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

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

22 And then lastly, to Appendix B, Section G, we  
23 strongly support the recommendation to reduce threshold  
24 for required wearing of protective masks at 300 rather  
25 than 500. An AQI of 300 puts air quality in the highest

1 level of six different air quality categories. The deep  
2 red marker category is far beyond the red marker  
3 harmful.

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

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

13 Thank you.

14 (Speaker change.)

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

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

24 And that's where that consensus comes in, that  
25 you get all three of those things when you have that.

1           So I would like to suggest that we regroup at  
2 another day in a round-table-type setting and work on  
3 that consensus.

4           Thank you.

5           (Speaker change.)

6           BRUCE WICK: Bruce Wick, CALPASC.

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

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

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

25           Our employees, we train them, you have an

1 issue, you go to your supervisor and get immediate  
2 medical assistance or you call 911.

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

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

9 There appears to be a significant push for a  
10 3.0. I believe we should do that. And so if we're  
11 going to do that, let's not make 2.0 have a lot of  
12 changes that we have to retrain people and then retrain  
13 them yet again for a third time for something that is a  
14 temporary emergency regulation.

15 So that's my comments.

16 (Speaker change.)

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

21 First is on the issue of training. I think  
22 there needs to be greater clarity in Subsection F as to  
23 what exactly is required in the training. Right now  
24 it's a little ambiguous to say that at minimum the  
25 training needs to contain the information in Appendix B.

1           You know, to the extent that the training  
2 requires more than distributing Appendix B to employees,  
3 realistically, to actually have compliance, you're going  
4 to need to be proactively training employees. You can't  
5 wait until the AQI hits whatever the threshold is  
6 determined to be, to be providing that training.

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

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

18           The other issue I'd like to speak to is  
19 speaking in favor of maintaining the threshold at which  
20 mandatory respirator use becomes -- or respirator use  
21 becomes mandatory, I should say, maintaining that at  
22 500.

23           And part of that is, if you look at once  
24 respirator use becomes mandatory, the burden and cost on  
25 the employer goes up significantly because now you have

1 fit testing, and medical evaluations become mandatory,  
2 which, of course, like the training, you can't wait  
3 until the time that that threshold is met to start doing  
4 those things.

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

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

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

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

1 provided a respirator.

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

10           Thank you.

11           (Speaker change.)

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

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

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

23           And I feel that comment really -- we don't want  
24 to have a standard that is complicit with wage and other  
25 types of wage-and-hour violations. So when we're

1 talking about the cost that this could potentially have,  
2 what we are implicitly saying, then, is that workers  
3 basically have to choose between survival or their  
4 health, which is not, I believe, the intention of any  
5 health and safety standard.

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

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

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

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

23 In terms of the point on "upon request of the  
24 mask," I think it was mentioned earlier, right, about  
25 the power dynamics. And I don't think this is true only

1 for day laborers and domestic workers. I think this is  
2 probably true for a lot of non-unionized workers, that  
3 there are a lot of power dynamics at play thinking about  
4 if an employee really feels the freedom to request some  
5 type of protective equipment.

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

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

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

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

25 And we want to make sure their perspectives are

1 considered during these -- this process, whatever it  
2 might look like.

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

8 When we have talked with workers, we heard some  
9 of those concerns of, like, one, "the employer never  
10 told me I needed this. I just knew I didn't feel well."  
11 But then those that have used it have said, "Well, it  
12 gets really hot," or, "it's uncomfortable."

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

19 And then also, supporting the comments that  
20 CAUSE and WorkSafe have made around lowering the 500 to  
21 300 of the required fit test. Even though we know that  
22 it's very difficult, especially industries we support,  
23 the workers we support.

24 We also recognize, though, that these are the  
25 workers that also don't have access to health care,

1 don't have access to a regular doctor. We want to make  
2 sure in these emergencies or any wildfire that they do  
3 get the best, you know, equipment that they can to  
4 protect their health.

5 Thank you.

6 (Speaker change.)

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

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

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

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

25 Also, one of the other things that this

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

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

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

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

22           So if you just kind of bear with me.  
23 Currently, if an employee is exposed at 499 AQI,  
24 voluntary use is only required. Providing respirator  
25 for voluntary use is required. But if you go over 500,

1 respirator use is mandatory. And at that point the  
2 in-mask concentration has to be equivalent to 150.

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

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

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

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

1 the employees are protected.

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

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

15 Thanks.

16 (Speaker change.)

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

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

23 And I know that there's perhaps no perfect  
24 method for doing this, but the reliance on AQI and the  
25 presence of monitoring stations could be a difficult

1 thing for employers to comply with.

2 For example, if you've got a worksite that is  
3 20 miles from the nearest monitoring station and you've  
4 got topography and different climates where maybe smoke  
5 is not actually present at the worksite, but at the  
6 monitoring station they're picking up particulate matter  
7 above the 100 or 151 threshold, I think there's going to  
8 be some confusion to that employer about whether or not  
9 the regulations have kicked in.

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

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

20 (Speaker change.)

21 JAMES MACKENZIE: Hello. James MacKenzie,  
22 Southern California Edison.

23 And I wanted to just speak briefly on the  
24 comments related to taking breaks. And I wanted to make  
25 sure that there was clarity around some of the

1 activities that our workers may be doing, where a break  
2 every hour may not -- just doesn't work.

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

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

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

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

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

22 (Speaker change.)

23 RANDY JACKSON: Good afternoon. My name is  
24 Randy Jackson. I'm with the Los Angeles Department of  
25 Water and Power.

1 I've got a few comments, and I'm going to end  
2 with a couple of questions. It may be fairly easy for  
3 you to answer.

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

10 The environmental standards are typically  
11 intended for 24-hour-a-day exposure, seven days a week,  
12 365 days a year for 75 years.

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

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

24 In terms of communication, employers are being  
25 asked to inform employees of the current AQI. And as I

1 understand it, NowCast is updated hourly. So there's a  
2 question here.

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

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

11 RANDY JACKSON: Hourly would suffice?

12 ERIC BERG: Yeah, hourly would suffice.

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

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

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

25 ERIC BERG: Yes. Our HVAC systems or building

1 engineers will shut off the outside air during these  
2 conditions, and that would be defined. It's still  
3 filtering the air inside.

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

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

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

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

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

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

25 PM2.5 is the primary component of smoke,

1 wildfire smoke. But at close range for these  
2 firefighters, there's other contaminants.

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

12 RANDY JACKSON: Thank you.

13 AMALIA NEIDHARDT: No other comments?

14 (Speaker change.)

15 KEVIN BLAND: Kevin Bland still. Good  
16 afternoon. Western Steel Council, Residential  
17 Contractors Association, and California Framing  
18 Contractors Association.

19 Just for the record, on my associations, two of  
20 those three are all signatory, have a collective  
21 bargaining agreement with their employees. So I don't  
22 know -- folks in the room, that's for more informational  
23 purposes for everyone to know. It's not just -- I know  
24 there were some comments earlier about union and  
25 nonunion and all that. We have worked with both.

1 I'm going to take one more swing at this dead  
2 horse that we've been talking about all day. And I'm  
3 going to start with the words on the board back there,  
4 "written comments." The words "comments" again.  
5 There's a notice and comment period under the APA, the  
6 Administrative Procedure Act for California rulemaking.

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

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

17 Does everyone agree with that?

18 AMALIA NEIDHARDT: It's an informal process.

19 KEVIN BLAND: It's an informal process.

20 AMALIA NEIDHARDT: Correct.

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

25 And the idea of an advisory committee is to

1 have dialogue not only with the folks at this head table  
2 but amongst ourselves to try to provide a consensus for  
3 the folks at this table to go back with and put a  
4 proposal together based on that consensus that then goes  
5 to notice and official comment.

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

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

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

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

1 something employees understand.

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

5 Thank you.

6 (Speaker change.)

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

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

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

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

23 So we would like to see some additional  
24 language or guidance as far as whether it be rating the  
25 MERV filtration system or the specifications regarding

1 doors kept closed. Or at what point maybe we need to  
2 start doing some sort of air monitoring within the  
3 workplace.

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

7 Thank you.

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

11 Thank you.

12 Any other comments?

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

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

19 (Speaker change.)

20 DAN LEACOX: Just one last thing. Dan Leacox.

21 On the feasibility, the other aspect is the  
22 degree of compliance that we hit. Not mentioned is,  
23 there are no protections if the employer and the  
24 employee don't agree and think it's a good idea and go  
25 along. There's no way -- we heard about what percentage

1 are small employers that this can be enforced.

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

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

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

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

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

23 And the major changes that are in place there  
24 we can discuss later today. But lowering the mandatory  
25 respirator threshold from 500 to 300. We're looking at

1 this new Subsection C, which we've discussed pretty  
2 thoroughly today, that would require an employer to make  
3 available respirators at an AQI of 100.

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

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

12 So, again, these are not changes that are  
13 written in stone. They're concepts we are considering.

14 If you've got additional comments, we'd like to  
15 get them by September 30th.

16 And how can they submit those?

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

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

1 stakeholder e-mail process.

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

5 The only thing is, make sure you talk with your  
6 IT system or your system administrator to make sure you  
7 can accept e-mails from me. Because when we send out  
8 those e-mails, it's a massive amount. It could be up to  
9 300 at a time. With Wildfire we already passed 700  
10 people.

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

15 Okay, thank you.

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

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

24 AMALIA NEIDHARDT: No.

25 CHRIS KIRKHAM: Thank you for coming. Thank

1 you for your comments.

2 AMALIA NEIDHARDT: Thank you.

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

5 (Meeting concluded at 3:01 p.m.)

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1 I, JOAN GRIER, a Certified Shorthand Reporter  
2 for the State of California, do hereby certify:

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

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

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

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State of California

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