STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD
PUBLIC MEETING, PUBLIC HEARING AND BUSINESS MEETING

In the Matter of: )
April 21, 2022 OSH )
Standards Board Meeting )
______________________

IN-PERSON & TELECONFERENCE

Harris State Building
Auditorium
1515 Clay Street
Oakland, CA 94612

THURSDAY, April 21, 2022
10:00 A.M.

Reported by:
E. Hicks
APPEARANCES

BOARD MEMBERS:

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

BOARD STAFF PRESENT AT HARRIS STATE BUILDING IN OAKLAND:

Christina Shupe, Executive Officer
Steve Smith, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
Lara Paskins, Staff Services Manager
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant
Amalia Neidhardt, Senior Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Jennifer White, Regulatory Analyst

TKO STAFF:

Maya Morsi
John Roensch
Erik Kuether
Randall Thieban

ALSO PRESENT:

Eric Berg, Deputy Chief of Health, Cal/OSHA
Jeff Killip, Division Chief, Cal/OSHA

SPANISH INTERPRETERS:

Patricia Hyatt
Julia Elizarraz
APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony)

Dave Smith, Dave Smith & Company
Praveen Penmetsa, Monarch Tractors
Len Welsh, Western Steel Council
*Robert Moutrie, California Chamber of Commerce
*AnaStacia Nicol Wright, Worksafe
*Saskia Kim, California Nurses Association
Megan Shaked, Conn Maciel Carey
Rachel Conn, Nixon Peabody
Helen Cleary, Phylmar Regulatory Roundtable (PRR, OSH Forum)
*Michael McKinney, Construction Industry
*Brian Mello, Associated General Contractors of California
*Sandra Barreiro, California School Employees Association
Michael Miiller, California Association of Winegrape Growers
Bryan Little, California Farm Bureau
Dan Leacox, Leacox & Associates
*Pamela Murcell, California Industrial Hygiene Council
*Anne Katten, California Rural Legal Assistance Foundation
*Brian Kellogg, KLA United Food and Commercial Workers, Western States Council
Stephen Knight, Worksafe
Kevin Greene, California Professional Firefighters
Steve Johnson, Associated Roofing Contractors of BAC
*Anthony Brown, Bluebelly/Clay Pigeon
*Cynthia L. Rice, California Rural Legal Assistance, Inc.
Jake Winters, Monarch Tractors
Bruce Wick, Housing Contractors of California
Mitch Steiger, California Labor Federation
Brian K. Miller, Rudolph and Sletten, also representing Construction Employers Association
Kevin Bland, California Framing Contractors Association, Residential Contractors Association, Western Steel Council
Michael Strunk, Operating Engineers Local Union No. 3

PUBLIC HEARING COMMENTERS:

*AnaStacia Nicol Wright, Worksafe
Steve Johnson, Associated Roofing Contractors of BAC
Brian K. Miller, Construction Employers Association
Cassie Hilaski, Nibbi Brothers
APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony) (Cont.)

*Toli Mikell, PARC Environmental
Kevin Bland, California Framing Contractors Association, Residential Contractors Association, Western Steel Council
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    Meeting agenda are subject to such discussion and
    action as the Board determines to be appropriate.

    The purpose of the Business Meeting is for the Board
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Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code sections 11125 & 11125.7(a)).
E. CLOSED SESSION

Matters on Appeal

1. 22-V-023T Building Zone Industries, Inc. (BZI)

2. 22-V-054T Operating Engineers Local 3, District 80

Matters Pending Litigation

1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270

2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210

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Next Meeting: May 19, 2022
Rancho Cordova City Hall
Council Chambers
2729 Prospect Park Drive
Rancho Cordova, CA 95670
10:00 a.m.

Reporter’s Certificate 178

Transcriber’s Certificate 179
PROCEDINGS

April 21, 2022

10:03 A.M.

CHAIR THOMAS: Good morning. This meeting of the Occupational Safety and Health Standards Board is now called to order. I’m Dave Thomas, Chairman. I haven't done this for a while but we're going to do the flag salute. We haven't done it, so let's stand.

(Whereupon the Pledge of Allegiance was recited.)

CHAIR THOMAS: Thank you. The other Board Members present today are Ms. Barbara Burgel, Occupational Health Representative; Ms. Kathleen Crawford, Management Representative; Mr. Dave Harrison, Labor Representative; Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management Representative; Ms. Laura Stock, Occupational Safety Representative.

Also present from our staff for today’s meeting are Ms. Christina Shupe, Executive Officer; Mr. Steve Smith, Principal Safety Engineer; Ms. Autumn Gonzalez, Chief Counsel; Ms. Lara Paskins, Staff Services Manager; Mr. David Kernazitskas, Senior Safety Engineer; Ms. Sarah Money, Executive Assistant; and Ms. Amalia Neidhardt, Senior Safety Engineer who is providing translation services for our commenters who are native Spanish speakers.

Present from Cal/OSHA Division is Mr. Eric Berg,
Deputy Chief of Health.

Supporting the meeting remotely is Ms. Jennifer White, Regulatory Analyst.

Copies of the agenda and other materials related to today's proceedings are available on the table near the entrance to the room and posted on the OSHA website.

After two years of remote meetings we are pleased to be able to meet in person again, while maintaining teleconference and video conference attendance options.

I just want to say it's good to see everybody. It's good to be back except for a couple of people here that I didn't want to see again, but would you? (Laughter.) No, no, no, it is good to be back. I'm glad to see everybody out.

This meeting is also being live broadcast via video and audio stream in both English and Spanish. Links to the non-interactive live broadcast can be accessed via the “Standards Board Updates” section at the top of the main page of the OSHSB website.

If you are participating in today’s meeting via teleconference or web conference, please note that we have limited capabilities for managing participation during public comment periods. We’re asking everyone who is speaking to place their phones or computers on mute and wait to unmute until they are called to speak. Those who
are unable to do so will be removed from the meeting to avoid disruptions.

As reflected on the agenda, today's meeting will consist of three parts. First, we will hold a public meeting to receive public comments on proposals on occupational safety and health matters. Anyone who would like to address any occupational safety and health issue, including any of the items on our Business Meeting agenda, may do so when I invite public comment.

If you're participating via teleconference or video conference, the instructions for joining the public comment queue can be found on the agenda. You may join by clicking on public comment queue link in the “Standards Board Updates” section at the top of the main page of the OSHSB website, or by calling 510-868-2730 to access the automated public comment queue voicemail.

When public comment begins, we are going to alternate between three in-person and then three remote commenters and we'll see how this works. I think it'll be all right. For commenters attending via teleconference or video conference, please listen for your name and an invitation to speak. When it is your turn to address the Board, please unmute yourself if you’re using WebEx, or dial *6 on your phone to unmute yourself if you’re using the teleconference line.
We ask all commenters to speak slowly and clearly when addressing the Board. If you're commenting via teleconference or video conference, remember to mute your phone or computer after commenting.

Today's public comment will be limited to -- and I’m just going to say we're not going to limit it to two minutes, but we're going to try and keep it reasonable. I know a lot of people have a lot of things to say, so we're going to let you say them. And just try not to repeat too much what other people have already said. That portion of the meeting may go on for two hours, but we're going to do it like we did in the past and so that the Board may hear from many members of the public as is feasible. Individual speakers and total public comment time limits may be extended by the Board Chair if practical. And I'm extending it as long as we need to take to do it. And like I said, just try and not repeat somebody else's comments too much.

After the public meeting, we will conduct the second part of our meeting, which is the public hearing. At the public hearing, we will consider proposed changes to the specific occupational safety and health standards that were noticed for today's meeting.

Finally, after the public meeting is concluded, we will hold a business meeting to act on those items.
listed on the business meeting agenda.
We’re going to now continue with the public meeting. Anyone who wishes to address the Board regarding matters pertaining to occupational safety and health is invited to comment, except however, the Board does not entertain comments regarding variance decisions. The Board's variance hearings are administrative hearings where procedural due process rights are carefully preserved. Therefore, we will not grant requests to address the Board on variance matters.

At this time, anyone who would like to comment on any matters concerning occupational safety and health will have an opportunity to speak, and you can just line up over there.

For our commenters who are native Spanish speakers, we are working with Ms. Amalia Neidhardt to provide a translation of their statements into English for the Board.

At this time Ms. Neidhardt will provide instruction to the Spanish-speaking commenters, so that they are aware of the public comment process for today's meeting. So Amalia. (Silence on the line.)

MR. ROENSCHE: Christina, can you push the button there to unmute? Right, good. Okay. Amalia, go ahead and push your button. Stand by.
MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]

Public Comment Instructions.

“Good morning and thank you for participating in today’s Occupational Safety and Health Standards Board public meeting. Board Members present are Mr. Dave Thomas, Labor Representative and Chairman; Ms. Barbara Burgel, Occupational Health Representative; Ms. Kathleen Crawford, Management Representative; Mr. Dave Harrison, Labor Representative; Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management Representative; and Ms. Laura Stock, Occupational Safety Representative.

“After two years of remote meetings, we are pleased to be able to meet in person again while maintaining a teleconference and videoconference attendance option. We are asking for everyone’s patience as we coordinate both methods of attendance, so that all guests are able to participate.

“This meeting is also being live broadcast via video and audio stream in both English and Spanish. Links to these non-interactive live broadcasts can be accessed via the “Standards Board Updates” section at the top of the main page of the OSHSB website.

“If you are participating in today’s meeting via teleconference or videoconference, please note that we have limited capabilities for managing participation during
public comment periods. We are asking everyone who is not speaking to place their phones or computers on mute and wait to unmute until they are called to speak. Those who are unable to do so will be removed from the meeting to avoid disruption.

“As reflected on the agenda, today’s meeting consists of three parts. First, we will hold a public meeting to receive public comments or proposals on occupational safety and health matters.

“If you are participating via teleconference or videoconference, the instructions for joining the public comment queue can be found on the agenda. You may join by clicking the public comment queue link in the “Standards Board Updates” section at the top of the main page of the OSHSB website, or by calling 510-868-2730 to access the automated public comment queue voicemail.

“When public comment begins, we are going to be alternating between three in-person and three remote commenters. We ask you for your patience as we navigate this new process.

“If you would like to comment orally today, please line up at the podium when the Board Chair asks for public testimony. When it is your turn to speak, add your name and affiliation to the list on the podium and announce yourself to the Board prior to delivering your comment.
For our commenters attending via teleconference or videoconference, please listen for your name and an invitation to speak. When it is your turn to address the Board, please be sure to unmute yourself if you’re using Webex or dial *6 on your phone to unmute yourself if you’re using the teleconference line.

“Please be sure to speak slowly and clearly when addressing the Board, and if you are commenting via teleconference or videoconference, remember to mute your phone or computer after commenting. If you have not provided a written statement before today’s meeting, please allow natural breaks after every two sentences, so that an English translation of your statement may be provided to the Board.

“Today’s public comment will be limited to four minutes for speakers utilizing translation, and the public comment portion of the meeting will extend for up to two hours, so that the Board may hear from as many members of the public as is feasible. The individual speaker and total public comment time limits may be extended by the Board Chair, if practicable.

“After the public meeting, we will conduct the second part of our meeting, which is the public hearing. At the public hearing, we will consider the proposed changes to the specific occupational safety and health
standards that were noticed for review at today’s meeting.

“Finally, after the public hearing is concluded, we will hold a business meeting to act on those items listed on the business meeting agenda.

“Thank you.”

(Audio difficulties/Off-mic colloquy.)

CHAIR THOMAS: We have people in line who would like to comment, so we're going to begin with three in-person commenters, and then I'll ask Maya to give us three commenters that are online. So you may begin.

Please give your name and association, please.

MR. ROENSCH: Christina, there you go.

MR. SMITH: I'm good, right? Oh good.

Good morning. My name is Dave Smith. I'm a safety consultant. I'm here to support the first aid kit amendments that were prompted by Petition 519. I encourage the Board to vote yes on that proposed amendment. Although they're not perfect there are -- it's a big step forward.

I outlined several issues in my written comments -- I'm sorry. (Off-mic colloquy.) Oh, I'm sorry, so everything else that’s not on the agenda? (Indiscernible.) Oh, I'm sorry. I misunderstood. (Indiscernible.) Okay, great. So I’ll see you in a bit.

MR. PENMETSA: Hello, my name is Praveen Penmetsa. I'm the CEO of Monarch Tractor. We are based...
out here in Livermore, California where we build our smart-electric tractor. I'm here to comment on our Petition 596 with regards to the regulation on operations of agriculture equipment.

At Monarch Tractor, we've been working on technology to move the farm workers away from the hazard zone, namely the equipment. While we have made great strides in the last 25 to 30 years on ag equipment safety, moving the equipment operators away from the equipment is still very beneficial in terms of farm worker safety.

At Monarch Tractor we've been working since 2014 on this technology. And for the last two years we've been collaborating very closely with Cal/OSHA staff on the safe operation of our technology and our equipment, and we have also been subjected to rigorous inspections by Cal/OSHA staff. We now believe that the technology is ready for widespread deployment. We have had no accidents or close calls.

I'm here to advocate for continued collaboration with Cal/OSHA and Cal/OSHA staff and also all the other stakeholders, which is the beginning of our process. The stakeholders includes ag equipment manufacturers that we're working with, farmers that we're working with, and also farm workers that we're getting feedback from. We are at a unique point in time from a technology deployment
perspective. And if you were to lose this opportunity, both California farmers and farm workers will lose an opportunity to deploy new technology and see increased safety on our farms.

Again, I'm here to implore continued collaboration with Cal/OSHA and Cal/OSHA staff, specifically with regards to our petition so that we can remove the ambiguity that currently exists with regards to old technology that it referenced. Technology has progressed a lot and we want to take advantage of that and provide a new framework of regulations so that both equipment manufacturers, technology deployment, farms, farmers and farm workers can realize the benefits of increased safety. Thanks a lot for the opportunity for me to comment here. Thank you.

MR. WELSH: Good morning, everybody. So nice to see warm bodies here in person, it's been a long time. And I just want to say you folks on the Board have been through a lot. And please don't ever think it's not appreciated. I was on a board myself that used to go into the wee hours of the morning with these struggle sessions like you've gone through, I know it's not easy. I hope the public appreciates how hard it's been on you. I just want to make that clear how much I appreciate it and how much this system is appreciated that even gives us a
I want comment on Petition 5 -- oh by the way, Len Welsh, representing Western Steel Council; forgot the intro. I'd like to comment on Petition 594 by the Western Steel Council. And also, I don't know if it might be more appropriate to have a discussion when the matter comes up on the agenda, but I just thought I'd give it a shot right now.

I wanted to say first off that looking at the staff comments both by DOSH and by the Board, it does seem that some of the concepts in that petition have already been accepted. The idea of relying increasingly on the Department of Public Health for guidance on issues that they have the expertise on and that affect really not only the general public but employees as well. So it's good to see things moving in that direction and part of the strategy behind the petition was to generate thought and discussion about how the resources constituted by DPH, DOSH, and the Governor's Office can best be used in a coordinated fashion to get the best, most effective regulation we can of this hazard. So I appreciate the work DOSH has done by the way, looking at the big picture.

I do want to say that I don't think the discussion is finished. And I noticed that in staff comments and in the Board's proposed decision there is a
suggestion that these issues can be brought up when the
advisory committee on infectious disease is held. And I
find it a little bit contradictory that the idea of those
things coming up in that committee seems to be accepted and
yet the petition’s being denied.

And I wanted to ask you folks to consider whether
it would be more consistent not only with what's in the
staff comments themselves, but also the history of the
Board. Generally speaking when there's a petition that
addresses a live issue with concepts that are relevant
those get referred to an advisory committee. And the ones
that are denied usually are because the issue’s already
been addressed or isn't really an issue the Board should be
dealing with at the current time. So I wanted to ask you
folks to just take a second look at the idea of making
official referral to the advisory committee without passing
judgment on any of the ideas in the petition.

On that note, I would like to bring one point up.
The petition takes a slightly different approach than just
having a general infectious disease standard to handle
future disease issues that could either be a pandemic or
something lesser. The petition focused on the idea of a
pandemic. And I think it would be worth thinking in two
parts about the upcoming issues. One is how do we be ready
for a true pandemic, which is going to necessarily require
integration and coordination among the Governor's Office, DPH and DOSH to get it exactly right and be ready to stand up the moment that the pandemic hits. We all got caught with our pants down when this one hit.

When we did the ATD standard back in the first decade of this century we were worried mostly about ground zero, the health workers who get exposed not only to pandemics, not only to novel pathogens, but to anything, tuberculosis even, in a way that the general public doesn't. And so we left -- we didn't want to load up the boat too much, but we left the idea of general workplaces for discussion at another time.

One thing we were aware of though, and this issue has come up several times, is that there -- we got caught with our pants down on respirator supplies stocked by DPH. There was a general lack of preparedness even though we had seen in the past even with just upticks in tuberculosis, that the respirator supplies could be overcome by a sudden need for a lot of people to be protected. So I do hope that we think first in a priority sense about how do we deal with the next pandemic? We will have one.

And that's a slightly different -- I'm not a -- it's a very different issue from the idea of a general infectious disease standard that would cover pretty much anything else that comes along that needs regulatory
oversight. So I'd ask you to think about that.

I'm also trying to plant this idea for discussion when the advisory committee meetings begin on infectious disease. I think we should think seriously about a two-step process, get a pandemic reg in place first, then do the rest and take the time to get it right.

I just want to say one more thing. When a pandemic hits we can't do without Governor's Office intervention, and we can't do without flexibility that we have not seen with the regulatory process, even with an emergency regulation. It's just not set up to do that. It may not be a perfect plan to have DPH making pronouncements and then employers following them and to try to impose regulatory oversight and obligation on top of that. But the flexibility part is really important. And I noticed there was a comment in one of the staff evaluations that employers shouldn't be expected to respond within seven days, that's in the proposal. That if there's a DPH pronunciation employers should respond within seven days. That's what they were doing back when we didn't have a reg and everybody was on the edge of their seat listening to DPH. They were responding right away. They were listening every day. I know, I advised a lot of those people.

And one big thing happened in the summer of 2020 when all of a sudden DPH came out one day and said, “No,
masks should be mandatory. They shouldn't be recommended. They should be mandatory.” And a lot of employers the next day were doing it. Why were they doing it? Not because they wanted to please DPH, they wanted to keep their workforce. They wanted to stay in business. So we need to understand that there are a lot of businesses out there that actually want to comply with a regulation that makes sense. And too often in the regulatory process we lump all the employers together as one monolith and we assume they're all bad. When in fact we have underground economy employers who are true criminals. We have something in the middle of people who sort of want to get it right. And then we have employers at the other end of the spectrum who are almost desperate to get it exactly right, because they have a thriving business, and they want to keep it that way.

So I think we should be thinking more about how do we leverage coordination with that part of the regulated public that wants to work with us and give this valuable information, save the big guns for the employers in the underground economy, folks who really need attention and are not really getting enough of it. They’re harder targets to spot. They're harder targets to bring to justice. And frankly it's much easier to go after the low-hanging fruit, the visible employers who are right there
and who can be cited for just about anything if somebody
does an inspection. It's a waste of time a lot of the time
when those inspections are conducted. And they could be
conducted much more effectively and producing a whole lot
more benefit if they really were focused on the criminals.

That's all I have to say for now. Thank you
again for the hard work you folks have done. I really
appreciate it. And whatever you decide I may disagree with
you, but I'll defend with my life your right to say it and
to vote on it. We still have a democracy, let's keep it
that way.

CHAIR THOMAS: All right. Maya, now we're going
to go to online calls. So Maya, who do we have first? And
we'll do three.

MS. MORSI: Okay. First up is Daniel Kovacs
(phonetic), following with Ricardo Beas (phonetic) and
AnaStacia. So up next is Daniel Kovacs.

CHAIR THOMAS: Daniel, can you hear us? (No
audible response.) This happens every time, first guy
online. Daniel, unmute yourself if you can. I don't know
if you can see us or not, but if you can unmute yourself,
which he's trying.

Can you hear us, Daniel? (No audible response.)
I think we're going to go to the next caller,
Maya, and we'll come back.
MS. MORSI: Okay. Next up is Ricardo Beas with Independent Safety Consultant.

CHAIR THOMAS: Ricardo, can you hear us? (No audible response.) We still have a democracy, right? We're still --

MS. SHUPE: It looks like Rob Moutrie is ready to go.

CHAIR THOMAS: Yeah. Rob, why don't you go ahead and give it a shot?

MR. MOUTRIE: Thank you, Mr. Chair. You can hear me, right? This is working.

CHAIR THOMAS: Democracy is saved. Yes.

MR. MOUTRIE: I've not heard it said before the Chamber saved democracy, so thank you, sir. (Laughter.)

MR. MOUTRIE: Chair Thomas, Board Members, good morning, Robert Moutrie with the California Chamber of Commerce. Thank you for the opportunity to comment and I'm sorry I can't be there with you today. I felt a bit of a cold yesterday, thankfully tested negative, but it's still here this morning. I'd hate to be the one in the back coughing all meeting.

So as we look at this, the readoption, I want to acknowledge some of the places which we believe the Division has made good improvements and then flag some concerns. Among those updates I want to flag our -- we
appreciate the work regarding the removal of surface
cleaning requirements as outdated scientifically, the
clarification regarding self-administered testing and if
that's something that can be done without a proctor. Also
the clarification on masks that “allow light to pass
through,” and the reduction of face-covering requirements
in line with the Governor’s SMARTER transition. We
appreciate those updates and the work that went into them
and want to give them credit.

I also want to flag similar to something spoken
by Len, but with some other different points slightly. I
believe the Division made the right choice to incorporate
more flexibility with CDPH, given that what you passed
today will be locked in stone for seven months, right?
We've been revisiting this reg as often as possible, but
this will be locked May through December 31st for the rest
of the year. And so that flexibility really is necessary
keep up with scientific changes, so we think that's a wise
choice.

Despite those, I want to flag a couple of areas
of concern that continue for us. One, we're disappointed
to see exclusion pay maintained given the sick leave
legislation negotiated with the Governor, the Legislature
and all of the parties.

Second, I want to flag that there's some issues
with this version where we see more testing being required even for vaccinated people than are the prior version. We don't think that's the right use of resources given that we are seeing overall positive changes as we transition towards endemic, and our health system is more ready and more vaccinated.

And the third point I want to flag is that we have some concerns that will be more fully fleshed out by others, so I won't get deeply into them, that this version actually incentivizes employees to refuse testing.

MS. SHUPE: Mr. Moutrie?

MR. MOUTRIE: I'm sorry?

MS. SHUPE: Mr. Moutrie, I'm going to make a familiar request, would you please --

MR. MOUTRIE: Slower?

MS. SHUPE: -- slow down for the transcriptionist?

MR. MOUTRIE: I'm sorry. I was trying to keep time. I will do my best.

MS. SHUPE: You can take your time. Don't worry about time.

MR. MOUTRIE: To reiterate that last point a little slower, we have some concerns that this version incentivizes employees to refuse testing after they have been exposed, because they will receive more exclusion pay
after refusing. We have flagged that issue before, and we think it's maintained in this version, and we think that doesn't help policy. But I'll let others fill that out more fully.

I want to end with a large-picture look here. As a state we're more vaccinated than ever and our ability to respond to COVID-19 is better than it ever has been, thankfully. The Governor acknowledged as much implicitly in his February announcement of the SMARTER Plan and transition to endemic phase.

And whether individuals may say that we are about to be an endemic phase, or we are now, I think we all know that over the course of this reg in the next seven months we expect to be there. So I want to ask the Board to keep that transition in mind. And also the relatively high social spreads we've seen the last two Decembers, not workplace spread events, but mainly social spread spikes, as we look towards this version and also towards the potential permanent version in December.

So with that, I want to thank you all for your time on this and thank you for the work. And the meeting, which you are about to go through, which may be well, hopefully, will be very calm. So thank you, I appreciate the time.

CHAIR THOMAS: Thank you. Who do we have next,
Maya?

    MS. MORSI: Up next is AnaStacia Nicol Wright with Worksafe.

    MS. NICOL WRIGHT: I think I may have signed up for the queue wrong. I was hoping to comment specifically on Agenda Item 4b., and not just the general public comment. So should I do it now still or wait until the agenda item comes up, any thoughts on that?

    (No audible response.)

    MR. MOUTRIE: Chair Thomas, we can't hear your mic if you're speaking.

    MR. ROENSCHE: Chair Thomas is saying go ahead.

    CHAIR THOMAS: Go ahead, it’s all right.

    MS. NICOL WRIGHT: Okay, thank you. Sorry about that.

    So I’m AnaStacia Nicol Wright. I work with Worksafe and I'm here on their behalf. And we first just want to thank the Board because -- the Board and Cal/OSHA -- because the proposed standard is the necessary recognition that the Covid pandemic is still ongoing. That the future of it is unclear, and that we need workplaces to remain protected and prepared during this time, right? And that's going to include sick pay and job protections for workers if they get infected at work and they are sent home.
So we also just want to point out that obviously guaranteeing exclusion pay for positive COVID cases is necessary for worker safety and health. But as time goes on, employers and any other employee that may be burdened by the responsibility of exclusion pay will become minimal, because their absence can be covered by other sick leave. And also as the pandemic fades there'll be fewer cases at work anyways and exclusion pay won't be as relevant. But while it is relevant it's extremely important to have.

We also want to echo that we share Board Member Burgel’s concerns that he (sic) expressed at the recent meeting over the proposed standards heavy reliance on general public guidance and -- oh sorry, the general public health guidance in place of worker-focused safety rules. The general public can weigh risks and make informed decisions that are based on guidance. California frontline workers have no such choice as they must report to crowded workplaces in order to feed their families and to pay their rent. Our pandemic response must be able to distinguish with the families choosing to go out to dinner and a family member having no choice but to clock in and stand shoulder-to-shoulder washing dishes with other employees who may be sick.

We can expect the best while also keeping protections in place should the worst to occur. And we
think that the proposed standard is doing that, and
especially with the keeping of exclusion pay. So thank
you all.

CHAIR THOMAS: Thank you.

Maya, we'll take one more on the Webex, so Maya
who do we have next?

MS. MORSI: Up next is Saskia Kim with California
Nurses Association.

CHAIR THOMAS: Can you hear us, caller?

MS. KIM: Good morning, Saskia Kim with the
California Nurses Association. Thank you for the
opportunity to speak in support of the third readoption of
the COVID-19 ETS, and in opposition to Petition 594. And
thank you also those so much for allowing the ability to
testify remotely.

First, I'd like to quickly express CNA’s support
for the ETS. As noted in the coalition letter submitted to
the Board, the revised ETS before you today is not perfect,
but it still offers critical worker protection, and we
support its readoption today. We appreciate that the draft
retains requirements for recording and responding to cases
in the workplace, testing during paid work time at no cost,
and retention of exclusion pay, and protection of job
status for employees who have to quarantine, because they
were infected at work.
We are concerned however, that quarantine and exclusion pay for close contact has been eliminated. These protections are critical, because they ensure that workers who been exposed are not forced to make the impossible choice of going to work while potentially sick or staying home without pay.

As you know, CNA has concerns with the rollbacks in critical COVID-19 protections, including the expiration of the universal indoor masking requirements. And similarly, we are concerned that the draft ETS deletes the requirement that employers provide face coverings and ensure they're worn when indoors or in vehicles.

So like our colleagues, CRLA and CRLAF, we’re concerned that the draft deletes explicit employer responsibility for providing and requiring use of face coverings on employer-provided transportation. And we support the request which urges Cal/OSHA to update the FAQs to make clear that employers should comply with CDPH and local health department guidance for public transportation in order to minimize transmission in vehicles.

Finally, CNA requests that you deny Petition 594 as recommended by both Board and Division staff. CNA opposes this petition, which would designate CDPH as the single designated source for occupational safety and health requirements for the current and future pandemic. As noted
in the staff evaluations, the Board has already determined that relying on IIPP alone did not provide employers with the necessary information and regulatory structure to protect employees from COVID-19. Section 3203 should remain a general regulation so that it can encompass any and all current and future workplace hazards. CDPH guidance is directed at the general public, it does not necessarily address occupational hazards and will be difficult to enforce as workplace standards.

And finally, the Board has already tasked the Division with developing a general infectious disease standard to address future pandemics.

So for all those reasons, CNA respectfully requests that you deny Petition 594 and support the COVID ETS. Thank you again for the time today.

CHAIR THOMAS: Thank you.

At this time we will have in-person commenters, so you may -- wait, I've got mine on so it's not going to work -- so anyway, go ahead and step up to the mic, introduce yourself.

MS. SHAKED: Good morning, is that working?

Great.

Good morning, Chair Thomas, Board Members. My name is Megan Shaked, I'm from Conn Maciel Carey. I'm speaking on behalf of the California Employers COVID-19
Prevention Coalition on the third readoption. I want to echo the comments of Mr. Moutrie in terms of our appreciation for the updates that have added clarification and acknowledged our evolved scientific understanding of the virus. We appreciate the opportunity to highlight just a few additional concerns that we have at this point.

First is under the return-to-work criteria under certain circumstances. There is a longer period away from work for an employee who were to refuse to test, and exclusion pay would be required under those circumstances. There should not be a perverse incentive to avoid testing if our ultimate goal is to avoid spread in the workplace. At a minimum exclusion pay should not be available for an employee who were to refuse to test.

Second, we understand that DOSH was considering removing the exclusion pay requirement altogether. It's, of course, in the draft. We were in support of that change for a number of reasons. Currently there are overlapping schemes for paid leave under the ETS and the 2020 supplemental paid sick leave law. This is continuing to create incredible confusion for employers. And there are also significant restrictions on an employer's ability to use the paid sick leave to cover exclusion pay in certain circumstances.

Paid leave related to COVID is best leave to the
Legislature who has spoken on paid leave continually throughout the pandemic and can be better limited or expanded. Th Legislature has the ability to limit or expand the availability of paid leave as necessary, continuing to move forward.

A third point is that employers, we feel should not be required to provide respirators simply on request. Rather, an employee's request should be tied to a medical need. We feel this would address concerns about limited supply of N95 respirators for the healthcare sector as well as for purposes of wildfire smoke protection, especially as we draw closer to wildfire season.

Finally, we maintain that the IIPP standard is the appropriate way to address to address COVID-19 hazards in the workplace. It provides employers, employees, and DOSH an effective and comprehensive standard to address the hazards present in a given workplace, while providing the flexibility necessary to address the changing science and the evolving pandemic conditions.

I want to thank you for your time and consideration, appreciate it.

CHAIR THOMAS: All right, I don't know if this is Maya or the other -- John -- I think we need to kick the mics up just a little bit for the speakers, and also on the phone. We're hearing a little bit of -- I know it's you
guys in the back trying to call or talk to these people, but the louder the mics are down here the less we'll hear that, so if you could do that.

So go ahead next speaker.

MS. CONN: Hello. My name is Rachel Conn, and I am with Nixon Peabody. And I'm here not on behalf of one employer, but since I do get a lot of feedback from many employers, I thought it would be appropriate today to come and provide some of that to the Board. But thank you for the opportunity to be here and to speak.

While there's been many revisions to the ETS that have been incredibly helpful and have provided clarity, one of the areas that still could use some additional feedback and additional updates, is in the outbreak section. And that is still where employers tend to have difficulty with how practically it is being able to be applied and how effective.

And particularly the definition of “exposed group” is still far too broad and still needs to be updated to adhere to the latest CDPH guidance and other public health guidance, including the 14-day period to determine an outbreak should be narrowed to the 10-day period, which is what is considered to be the incubation period for public health currently.

As well as be in the exception portion of the
“exposed group” definition, it still maintains that one of the exceptions is if you're momentarily passing through as long as all the parties are wearing face coverings, those areas can be excluded. However, as we know the CDPH and other public health guidance has dropped the universal face covering indoors. And so that exception should be broadened to any momentarily passing. Currently, it’s just now there is very limited exceptions to that. And for outbreak purposes and exposed group purposes that makes it incredibly broad, and almost entire buildings are considered an exposed group. And it becomes incredibly unworkable. So thank you for your time and appreciate it.

MS. CLEARY: Good morning, again. I think I said hello to everybody. It's great to be here. So thank you to the staff for making this happen. It looks like a complex organization going on and it's going well, so it's nice to see you all. My name is Helen Cleary, and I am the director of PRR, we are an occupational safety and health forum. And we'd like to address a few points on the COVID-19 rules.

The changes that add clarity, remove redundancy and align with the recent updates we think is a huge improvement, so thank you to the Division for doing that. We agree with Rob Moutrie’s comments about the definitions that were changed and updated. “Return case” is another
great definition, so we support that. The new language in
the exclusion section, the more performance-based language,
we think that's much more flexible, and we support that
approach as well.

But we are disappointed with this draft, and we
think that it was a missed opportunity to try a new
approach. PRR, other stakeholders, the Board has asked for
an alternative solution to this complex 28-page rule. PRR
in September 2020 issued a draft of a regulation, the
performance-based regulation for COVID. We had the
discussion panel on it. We had a subcommittee to talk
about alternatives. But yet the third readoption remains
very similar to the June draft that the Board initially
opposed.

In our opinion, none of the revisions have done
enough to prepare us for future changes or have addressed
future pandemics or another pandemic. In December 2021,
PRR submitted a letter of support for Petition 594 from the
Western Steel Council, because it offered an alternative
solution for the rulemaking process that Cal/OSHA --
hinders their ability to move quickly.

We think we need an outside-of-the-box effective
solution to solve this challenge, because it is a huge
challenge. And hats off to the Division for trying to make
and trying to figure it out for every employer in all
industries. It’s just it's simply poor public policy to rely on executive orders for the next seven months to manage the shortcomings of the rule.

So COVID-19 remains a public health challenge and it's not just strictly an occupational hazard. It also does not pose the same level of risk at all work environments. And I don't -- we can't lose sight of this, and there needs to be a balance between the two. As communities roll back measures and public recommendations change, employers shouldn't be the only ones, or the primary ones, responsible for mitigating the risk. And that's starting, that’s what it’s feeling like; that’s what it's felt like actually.

Contact tracing is a great example of this. It’s no longer recommended by public health officials, yet the ETS still has it. And it requires extensive work and resources to do that contact tracing for large groups of employers. And so what is the added benefit of that right now? You know, what should we be focusing on? Those high-risk industries where the hazard is actually a major concern.

So in September, the Division proposed a nine-page draft and that illustrated a simpler form. It was nine pages. It was much clearer. It had more flexibility built in because of the performance approach. So today we
ask the Board to encourage the Division to engage in more actual discussions on true alternatives.

And also to share information on the strategy for the permanent rule that is coming. You know, that in seven months December is going to come fast. Specifically is the discussion draft that was proposed in September, is that still in play? It's our understanding that an accurate SRIA should be based or needs to be based on actual tests. And we've been told the SRIA is in process right now, so is that SRIA being based on the discussion draft that was posed in September? Or is it based on this third readoption draft that we have now? We have major concerns that third readoption draft, this third readoption draft becoming the permanent.

So again we're running against the clock here and we are concerned that the decisions that are being made behind the scenes the employers will be the ones that that have to handle this and implement this. And we just want to know what is coming and work together to try to find an alternative solution, because we've all voiced concerns with this.

And again, it is a huge challenge is that we're trying to address all industries with one rule, and I think that's where we kind of went wrong here. So thank you for your time and consideration today. Again, it's great see
everybody and thank you to the Division and the team for
all the work you’ve put in and the Board for being here and
doing your part as well. So thank you everybody.

CHAIR THOMAS: All right, now we're going to go
to three callers. So Maya, who do we have?

MS. MORSI: Up next is Michael McKinney with
Construction Industry, followed by Anthony Brown and Brian
Mello.

CHAIR THOMAS: So Michael are you there? Can you
hear us?

MR. MCKINNEY: Yes, I'm here. I can hear you.

Thank you, guys, for taking my comments. And I am with a
general engineering contractor. And this is my first time
to comment on any issue, so what I'm looking for is, or
what we wanted, would be a no-vote on the readoption of the
COVID-19 standard and an end to it.

As everything is opening up in in the public
workplaces are unable to prevent COVID-19 cases in the
workplace due to the relaxation of the rules and the social
spread that happens. And under the ETS, I feel workplaces
are unreasonably held responsible for something that's out
of their control. The general public is no longer under
hardly any restrictions, although there is guidance out
there for them for people to take personal responsibility
for themselves. Tracking and reporting cases adds an
unreasonable burden to employers, which punishes them since everyone will start to just blame their employers for all of their sicknesses to gain access to the monies that are available through other means.

It’s unreasonable to hold employers accountable for the COVID-19, even employers that follow the rules and recommendations will have COVID-19 come to their workplaces. They just can't stop it from coming there. I believe also I think it's been, was said previously, Cal/OSHA already addresses best practices for sanitation (indiscernible) in other rules and guidelines. I believe people will protect themselves when they're needed, as needed.

And I think that the rise in COVID cases is really a direct result of gatherings in the public as was said earlier about talking about social spread, and not really a result of workplace activities. Things like Easter, spring break, Fourth of July, Thanksgiving, Christmas, New Year's, those are all what causes these rises, these spikes, not the workplace. So when we -- our efforts should be more spent on educating the public on how they can protect themselves and their families. That would be more important than what I believe are unreasonable and kind of random working rules.

So the increase in cases followed by decrease in
cases is to be expected. I haven't seen that the workplace rules have prevented any of the increases nor have the workplace rules in my opinion attributed to contributing to any of the decreases.

So I again, I think a “no” vote on the readoption and at the end of -- and an end to the Emergency Temporary Standard is in order. Thank you.

CHAIR THOMAS: Thank you.

Who do we have next, Maya?

MS. MORSI: Up next is Anthony Brown with Bluebelly Clay Pigeon (phonetic).

CHAIR THOMAS: Anthony, are you with us? (No audible response.) Apparently not. All right let's go to our next caller.

MS. MORSI: Okay. The next caller is Brian Mello with Associated General Contractors of California.

MR. MELLO: Hi, can everyone hear me?

CHAIR THOMAS: Yeah. Go right ahead.

MR. MELLO: Perfect. Mr. Chairman, Members of the Board good morning. My name is Brian Mello, Director of Safety and Regulatory Affairs for the Associated General Contractors of California.

If you recall back to previous Standards Board meetings, the Board had asked the Division to provide a third readoption draft of the ETS with enough time
allocated to allow for stakeholders to provide input for
the Standards Board. And so that comments could be
reviewed with the opportunity to provide feedback to the
Division for a potential second draft of the third
readoption. The requirements set forth in APA are designed
to provide a public with a meaningful opportunity to
participate in the adoption of state regulations and to
ensure that regulations are clear, necessary, and legally
valid. If regulation is released just two weeks prior to a
vote by the Board how meaningful is our opportunity to
participate?

States have been shifting how they evaluate
COVID-19 from a pandemic to endemic. The term “endemic”
refers to a disease that is circulating in a community at
an expected or normal level minus an occasional outbreak.
Many states including the federal government have begun
treating COVID-19 as an endemic virus due to the declining
case and hospitalization rates as well as the increased
availability of vaccines, treatments, and tests. Currently
based on CDC data, as of April 19th 94 percent of the United
States is currently low for COVID-19 community levels.

AGC of California appreciates the Division’s
dedication and support for each and every worker in
California. During such an unprecedented time over the
past two years action was warranted, but AGC of California
urges the Standards Board and Division to reevaluate the situation.

In 2022, Legislative Session Senate Bill 114 COVID-19 Supplemental Paid Sick Leave was fast-tracked and enacted retroactively. This provided two buckets of 40 hours or 80 hours total of COVID-19 pay regardless of workplace exposure. It is our suggestion that the Division of Cal/OSHA utilize existing and/or new labor laws and legislation for paid leave rather than within the Emergency Temporary Standards.

Existing law under the emergency regulation requires, in part that the employer shall maintain records of the steps taken to implement the written COVID-19 Prevention Program in accordance with Section 3203(b) to the extent COVID-19 illness or exposure may or may not be considered a workplace exposure. And thus that OSHA log reportable illness, the variations recognized in the emergency regulation as to the locus and modality of exposure result in considerable ambiguity add to the application of OSHA log reporting requirements, especially as the regulation themselves prescribe specific procedures on different timelines for determination of a workplace-related nature of a particular illness.

Recognizing this, the regulation should reflect that that employer otherwise in compliance with the
regulation shall have a reasonable period of time in which to make a determination of an incident requiring reporting has occurred and existing time limits may not on their face (phonetic) apply and for enforcement purposes should be evaluated by Cal/OSHA on a case-by-case basis. Thank you.

CHAIR THOMAS: Thank you.

And we'll take one more caller. Who do we have up there, Maya?

MS. MORSI: Up next is Sandra Barreiro with California School Employees Association.

CHAIR THOMAS: Go ahead, caller.

MS. BARREIRO: Thank you. Good morning, Chair and Members. Sandra Barreiro on behalf of the California School Employees Association, representing nearly 250,000 classified school employees across the state.

We're glad to see exclusion pay included in the third readoption of the ETS because it's essential to stopping community spread, particularly among CSEA members and students. However, the elimination of exclusion pay for a close contact is concerning given the unpredictable nature of the virus. It's possible for someone to be infectious before testing positive. At-home rapid tests were less sensitive to Omicron and required multiple tests before producing positive results. We can't predict how the virus mutates and future variants could be infectious.
before individuals test positive or notice symptoms. So close contact exclusion pay remains essential to preventing infections.

Finally, we want to express the importance of adopting a permanent standard for respiratory illnesses. Schools are petri dishes for colds and viruses. They're also the nexus of community spread for these illnesses. A permanent standard for respiratory illnesses would minimize sick days for school staff, which impacts instruction and services. And would also help keep students healthy, which means less parents would have to take time off from their jobs to care for sick kids.

Lastly, we want to thank you for your continuing work to keep employees healthy as the pandemic evolves and shifts perspectives on how to prevent workplace illnesses. Thank you.

CHAIR THOMAS: Thank you.

Now we're going to go to in-person comments, so next up.

MR. MILLER: Good morning, Chair and Members. Michael Miller, California Association of Winegrape Growers. I also want to echo comments from previous speakers that it’s great to see you. It's wonderful to be in the same room with you and to talk with you and look you face-to-face to have a conversation with you. I thank you
so much for your public service. You've done a very
difficult job the last four years and I can't thank you
enough, so thank you.

I'm going to speak on three quick issues. First,
is the autonomous tractors, Petition number 596. Our group
is in support of that petition. You have to remember that
this petition was written 50 years ago, and it does not
reflect the world we live in today. I mean, 50 years ago
we had a shortage of gasoline, we had escalating inflation
and we were in conflict with Russia, the world was very
different back then. You’ve got to light it up a little
bit, right? But seriously though the regulation does not
reflect today's technology, it just doesn't. The
technology today wasn't even perceived back then.

And we support the regulation as a petition, and
we recognize that if the Board isn't ready to embrace that
petition, yet we do think that the issue deserves extended
greater conversation because it is a 50-year-old law that
just doesn't fit today's technology or workforce. Our
workers very much want to use that technology because it’s
a transferable skill, creates for some upward mobility, and
it's something that I think our employees will embrace.

Also, we support the Western Steel Council
Petition 594. We think that there are lessons that could
be learned from this last three -- two years of the
pandemic, and that is in part that we need to plan ahead, we need to be prepared, we need to think about how to react to this if and when it happens again, and we think the petition offers some opportunity for that. And we encourage some continued conversation about that as well.

We also very opposed to item 4(B) of the ETS, the third readoption. We're opposed for a variety of reasons, that predominantly we're opposed because we think it is simply the wrong approach. And I know we've said this before, but I think we can look back on how it's been applied over the last two years and recognize how it is a wrong approach. When you have an ETS or regulation in place with the strict guidelines that don't keep up with the science and don't keep up with the epidemiology and what's needed to properly react to COVID some of that has to require an executive order or has to require clarifications through FAQs from the Division. And then the public is confused about what they have to do.

From our perspective we are focused on saving lives in the workplace. We think we save lives by employers taking the due diligent effort to get people vaccinated, create testing opportunities, and work with our employees to make sure that the workplace is safe, and for our employees doing everything that they can to wear masks, social distancing, act appropriately, notify if you have
symptoms, notify if you've been exposed to COVID, all those kinds of things.

We think to the extent that the ETS creates confusion and ambiguity it actually threatens workplace safety. We think there's a much better way to go and that is through the IIPP. Specifically on two issues of the EPS and ETS that are problematic, one issue is relative to workplaces where you have three cases or more. For the return-to-work situation it requires a negative test or exclusion from work. In doing so because it's an “or” the employee can say, “I don't want to be tested,” and they can receive seven days of paid time off by refusing to get tested. I know that's not the intent of the test, but that is what it says.

As a strict reading of what the ETS says it is an or, “either test negative or be excluded from work.” And that even applies to a return-to-work case, somebody who's had COVID within the last 90 days. CDC, CDPH, all say for that person you don't need a test and elsewhere in the ETS it states that the employer is not required to make testing available. But in that case the person still, if it's a close contact, has to test negative or be excluded from work. From our perspective that makes no sense.

It can be addressed through FAQs. I'm sure that there is going to be a discussion later, but the ETS is the
law. The FAQs are not the law. The FAQs interpret the law that you create. And that's why we'd like to see the ETS be more accurate on what it's trying to accomplish. But we see that as a big problem. To an extent you’re encouraging people to not get tested. That is contrary to every epidemiologist in the world as well as CDPH, CDC and the Governor’s endemic approach, which is encouraging everybody to get tested.

The other issue that is problematic in the way that it's written with the third readoption, is that it states in the return-to-work criteria that the employer must demonstrate that it has met the return-to-work criteria. However, when you read the return-to-work criteria it doesn't require the employer to meet that criteria. That criteria is on the employee, not the employer.

For example, the employer - sorry, the employee must not have a fever and must not have used a fever-reducing medicine in determining if they have a fever. That's not a requirement on the employer, that's on the employee. So how is it then that the employer is supposed to demonstrate that it has done something, comply with something that doesn't apply to them? And we think that that's easily fixable too by just getting an attestation from the employee that the employee has met those criteria,
not the employer.

But again, the words of the regulation matter.

And to fix that it’s going to require additional FAQs or an executive order or something like that. And that's why we continue to be opposed to the ETS. We just think the ETS -- because it is a regulation, it is rigid, it is solid, you can't come back and fix it, you have to rely on other people to fix it later -- we just think that that's the wrong way to go. Especially given that there are other proven, effective means of protecting the workplace including the IIPP.

Again, thank you very much for your time. I appreciate it.

MR. LITTLE: Well good morning, Mr. Chair, Members of the Board, and staff of the Board and the agency. I'm Bryan Little with the California Farm Bureau Federation.

And I just want to open by saying that my friend Michael Miiller is really good at his day job, which is not standup comedy. But with all that said he is my ride back so I might want to be careful about what I say, because he might leave me walking all the way back to Sacramento.

I wanted to start by identifying myself with remarks offered by Len Welsh at the very beginning and his gratitude and all of our gratitude for all the hard work
that all of you put in, have put in over the last two years. COVID-19 has been the monster that ate 2019 and then 2020 and then 2021, and on and on and on. And so it’s something that has preoccupied all of us. And a lot of us have worked very hard with the employers that we represent and work with to try to help them make sure that they're keeping their employees as safe as they can be in the workplace.

And we appreciate both your hard work and your support for us in working to do that and all the hard work that you’ve put in. Hopefully a day is coming when we'll be able to do more of these meetings without having to all be little two-inch squares on our computer screens and we'll be able to be more effective in interacting with each other and trying to find a way forward on so many of these issues that we all disagree amicably on, but we can work together, and we can go forward.

The Farm Bureau and a large coalition of agricultural -- and forgive me for reading off my phone. I had prepared remarks, but my printer wouldn’t work this morning, the dog ate the magenta cartridge. As you know, the wonderful world that we live in where you got to try to figure out how to make these things work at the last minute, so I'm reading off my phone, forgive me if it's a little rough.
Farm Bureau, and large coalition of agricultural organizations have called on this Board by a recent letter, to eschew a third readoption of the COVID-19 ETS. The ETS is an ill fit for the current situation surrounding what is now a waning pandemic. The regulation the Board will likely adopt, readopt today will be out of date shortly after the Board readopts it, if it's not obsolete already.

It suffers from serious shortcomings such as requiring employers to furnish exclusion pay for employees who experience a COVID-19 exposure, but refuse to submit to COVID-19 testing. And features -- I lost my place because this is so small -- features confusing contradictions between the regulatory requirements that remain from the second readopted version and CDPH and CDC guidance adopted by order of the governor.

A good example of this is the regulatory requirement for employers to continue to conduct contact tracing in certain circumstances when CDC has recently dropped its recommendations for contact tracing in most instances.

To the credit of its creators, it's good that the third readoption draft belatedly recognizes the reality that COVID-19 is not transmitted by surface contact and eliminates requirements to disinfect surfaces and relax certain masking requirements.
It seems that the Board will soon embark on a discussion of a permanent infectious disease standard. I have serious doubts of the need for such a standard, but if the Board chooses to move in that direction, I suggest you consider an approach that relies much more on injury and illness prevention program principles based on GISO 3203. Or an approach that resembles the petition submitted by the Western Steel Council. That approach relies on expert guidance that can adapt readily to rapidly evolving reality without being trapped in overly prescriptive regulatory language that can only be changed by subsequent regulation or by order of the governor.

And last, I'd like to mention the petition for rulemaking -- pardon me -- last I'd like to mention the petition for rulemaking submitted by Monarch Tractor in December calling for regulatory revisions to allow for the use of autonomous agricultural tractors. The existing regulation is far too rigid to permit efficient and safe autonomous operation by tractors that have been thoroughly tested and feature highly sensitive sensors and machine-learning protocols that will cease operations in the presence of a person.

The current regulation is a discouraging use of technology that was not dreamed of when it was written in the mid-1970s. I urge the Board to submit the Monarch
Tractor petition to a stakeholder advisory committee so we can begin the process of updating the existing regulation from the era of bellbottom jeans, miniskirts, and pork chop sideburns. In short, the ‘70s called and they went their autonomous tractor policy back. And I hope that the Board and the Agency will be responsive to that call. Thank you.

MR. LEACOX: Good morning, Board and staff and stakeholders, it's really great to see you. It's tempting to end there for me, because that really is my overwhelming thought on this occasion. Nevertheless, I will take on a little bit of business. I'd like to address the subject of alternatives that you've heard mentioned from a couple of speakers.

Yes, sir? (Indiscernible.) Oh, I'm sorry, Dan Leacox with Leacox and Associates. Okay, I forget.

It's interesting to me when we pledge allegiance at the beginning of these meetings, what’s interesting to me is what are we all pledging allegiance to, yeah? And the comments I make I think are within the scope of things that we all agree on when we make that pledge about the way we conduct ourselves in the process of government. And it's at a kind of high level that I want to talk about alternatives and within the scope of what I think we all do agree on.

So it's to be expected that in the development of
a regulatory proposal that the agency doing that will inevitably skew the results in the service of objectives of the agency. That's neither shocking nor controversial and I’m told by folks who attended government schools it's a topic of conversation how do you deal with that.

I think the way that we deal with that, or one way is taking great care with due consideration of impacts on the regulated community. To the Board I put it this way a few times, when we make a law that would save lives, we should also consider what it will do to the reasons for living.

There are means for doing this. One is a real engagement of the regulated community in the making of a law. When so engaged they offer alternatives to achieve the safety objectives with less drag on their reasons for living and doing business and conducting themselves. The regulated community I work in never opposes the safety objective. They do protect their production of valuable products and services, so they offer alternatives, real engagement and care for the lives of those being regulated, build consensus, respect for the law and therefore safety.

The second is in the context of an economic assessment and an assessment of alternatives a real assessment, a real alternative, not alternatives picked to be dismissed. I believe the alternatives offered by the
regulated community should be among the alternatives assessed, they are based on boots on the ground experience of what a real alternative would be.

Economics can be a science that informs you well about the impacts of your actions. I think you should be so informed when you take action. I will say more on this topic in future meetings, I want to keep this at a high level and so I will transition to a close.

The last two years have been brutal to say the least. My last in-person comment to this Board before the shutdown -- I looked it up -- was a prediction the Board would have some tough decisions to make in the coming year. I had no idea how true that would be.

It's the toughest thing for me the last two years was the bit of divide that we got into. The things that good people said about good people on occasion were heartbreaking to me. I'm hoping that a healthy dose of personal contact will mend any wounds so that we might return to the level of mutual respect that we have traditionally enjoyed in this community.

CHAIR THOMAS: So, Maya, do we have any call-ins?
MS. MORSI: We have Pamela Murcell next.
CHAIR THOMAS: Pamela?
MS. MURCELL: Good morning.
CHAIR THOMAS: Good morning.
MS. MURCELL: Can you hear me? It caught me by surprise, I wasn't expecting to hear my name. So good morning, everyone. I appreciate still having the opportunity to participate with the other Webex option, especially given we have some extreme weather going on over here in Sacramento today, so driving would not have been the safe thing to do. I am Pamela Murcell, I'm representing the California Industrial Hygiene Council. I am the current President of the California Industrial Hygiene Council also known as CIHC.

We have some just very brief comments, the first of course is we always appreciate the opportunity to participate. And specifically today regarding the third readoption of proposed language for the COVID ETS. We have been involved in the process all along from the very beginning and again, we do appreciate that opportunity. We represent the occupational health and safety professionals in California. And we work very diligently to provide a voice for the professionals who do get heavily involved in any of the regulatory language that is put forward.

The version of the ETS that is being considered for the third readoption has incorporated language to default to the California Department of Public Health rules and/or orders on several challenging issues. We agree that this is a reasonable approach in an effort to keep up with
the rapid pace developments and changes related to this virus and subsequent disease.

As for the language itself, we really are not going to provide any additional specific comments because we know that there is not a forum for addressing those comments given the process related to emergency temporary standards. However, we do have a couple of comments regarding the path forward. It is our understanding that the third readoption of the COVID ETS, and we are assuming that the Board will adopt that language today, will be in effect through December of this year. So our comments really have to do with the path forward and we've heard some similar things, mine are very brief.

So basically, what has happened to the IIPP approach, the proposal that was put forward in September of 2021 that we had extensive advisory committee meetings about? So we would be interested to know what's happened with that approach and is that going to be proposed as the permanent COVID regulation? We do not have any information in that regard so far.

However, a more basic question is do we even need a permanent COVID regulation? CIHC supports letting the ETS expire at the end of this year and focus all the resources on moving expeditiously to address worker protection from aerosol transmissible diseases in all
industries that are not covered by the current 5199, the Aerosol Transmissible Diseases for Healthcare.

So with that I'm just going to leave it with our proposed questions and hopefully that we will be moving quickly on a path forward. So we appreciate the opportunity to participate, we look forward to further advisory committee participation to assist the Board and the Division with the language that will be coming up hopefully soon because the clock is ticking for something to happen by the end of this year. So again thank you, we appreciate everyone's hard work. We know it has been incredibly challenging and we are glad to have the opportunity. And I look forward to seeing everyone next month in person because you are going to be here in the Sacramento area. And so in the meantime have a great day.

CHAIR THOMAS: Thank you.
Do we have any other callers?

MS. MORSI: I'm circling back to Anthony Brown with Bluebelly/Clay Pigeon.

CHAIR THOMAS: Anthony, can you hear us? (No audible response.) Come on Anthony.

MS. MORSI: Anthony, you may need to press *6 to unmute yourself.

CHAIR THOMAS: I was just going to say that. Anthony, do we have you? Can you hear us? Do we have
another caller, Maya?

MS. MORSI: Yes, we have Anne Katten next with California Rural Legal Assistance Foundation.

CHAIR THOMAS: Anne, can you hear us?

MS. KATTEN: Yes, hi. Good morning, Chair Thomas and Board and Division staff and public. Anyway, thank you very much for taking my comment.

I first wanted to speak to Petition 596, the autonomous tractor petition. We remain opposed to this petition as in our comments submitted in February. We have commented that this petition, similar to Petition 571 submitted by (indiscernible), because the Board and the Division concurred that driverless operation was an emerging technology without a solid safety record. And this is still the case, because the experimental (indiscernible) the Petitioner (indiscernible) are under has been in effect less than a year in vineyards and general (indiscernible) track record of autonomous vehicles, cars and such, (indiscernible) so we are not ready for a change in the regulation.

We are particularly concerned that the petition envisions using these autonomous tractors to move equipment around in vineyards where employees are working on the ground, both during the day and nighttime operations, and to travel in autonomous mode on farm roads. Safe operation
of this type of tractor relies on AI safety rails that are programmed to deploy when a human is within seven feet of the moving tractor. But of course, if this technology fails it will put a worker in danger of serious injury or death if they fall or otherwise get into the tractor's path when they are loading or unloading bins or walking over or across a road. So we think it is just too soon and that the petition should be denied.

We are also, and I won't repeat, we support the comments of Worksafe and CSEA and CNA. We also urge you to readopt the third revision of the COVID ETS. It's very important that it retains the exclusion pay requirements to protect workers who work for small operations. Or are seasonal employees who are not covered by the supplemental paid sick leave. And that also the regulation includes other important infrastructure for documenting infections and outbreaks in the workplace.

That said, we are very concerned about the deletion of the requirement for masking in employer-provided transportation, which has analogous exposure to public transportation. And we think that there needs to be clearly-worded requirement in the FAQs to reflect that compliance with CDC or CDPH or local health department guidance for public transportation is the best way to comply with the regulation for employer-provided
transportation. And just in the interest of time I will leave it there.

So we oppose Petition 594 and concur with the Board and Division evaluation that it is just not protective or specific enough. Thank you.

CHAIR THOMAS: Thank you.

Do we have another caller, Maya?

MS. MORSI: Yes, we do. It's Brian with KLA.

CHAIR THOMAS: Brian, can you hear us?

MR. KELLOGG: Yes, can you hear me?

CHAIR THOMAS: Go ahead, Brian.

MR. KELLOGG: Great. I appreciate the Board's time and this opportunity to comment. My name is Brian Kellogg, I'm with KLA as their Director of Environmental Health and Safety. KLA is headquartered in Milpitas, California -- oh I'm sorry I'm here to comment on the revised ETS standard -- KLA is headquartered in Milpitas, California, and employs over 3000 Californians, most of them located in and around the Bay Area.

While COVID-19 has had a negative impact everybody on not just us but everybody we have managed to keep our employees safe, managed our cases through actions required of the ETS in addition to other actions taken voluntarily in accordance with the best science through this rapidly evolving pandemic.
I'm here today to represent KLA and provide comments on the company's behalf however, urging the Board to vote against the revised ETS and promulgate new guidelines and clarify existing ones that are in line with the science that reflects the reality of our current situation. Previous commenters with the Chamber, and one other individual whose name I did not get, also echoed some of these comments.

And the one I want to point out or expand a little more is the outbreak designation as written is not equitable and as a result biased against large employers. The current outbreak designation is considered a minor outbreak if you have 3 or more cases in a 14-day period, in a major outbreak if there are more than 20 in a 30-day period. And this designation disproportionately impacts large employers.

The example I would like to provide is a company like KLA with 3,000 employees would find it significantly easier to be pulled into an outbreak designation than a smaller company. And conversely, find it significantly harder to exit that outbreak situation which requires 0 cases in a 14-day period. For instance, a company with 30 employees that has 3 positive cases equates roughly a 10 percent positivity rate. A company with 3,000 employees and 3 positive cases is a .001 percent positivity rate.
Under this standard both companies would be considered in minor outbreak under the ETS and are required to take the associated actions within that standard. Clearly this example -- in this example one company has more of a COVID issue than the other. And the ETS makes no distinction between the population or positivity rate, thus discourages testing within a larger employee population.

We recognize there's opportunity for large employers to define the workplace. However, the definition of “exposed group” is extremely broad and inconsistent with CDC and other governmental regulations. This further negatively impacts large employers and disincentivizes the adoption of testing programs where they're not required.

“Exposed group,” mean all employees in a work area or common area like bathrooms, hallways, aisleways, break rooms, and eating areas. And the only way to exclude those common areas from the workplace is if people are wearing face coverings, which is no longer recommended by CDC, CDPH or county health departments. I believe another commenter had echoed these same sentiments.

And I appreciate the Board's time to comment and will close here. Thank you.

CHAIR THOMAS: Thank you. So was that three callers? I think it was, so we're going to go to in-person comments. So step up to the mic.
MR. KNIGHT: Good morning, Chair Thomas. I see Chief Killip here today. All the Board Members, thank you for your time, Stephen Knight with Worksafe.

I applied to do public comment during the public hearing, but it does seem like people are dropping in and a lot (indiscernible) okay. I’m in the right place?

So echoing my colleague Ana Stacia’s earlier comments we welcome and commend Cal/OSHA, and this proposed decision for the Board recommending maintaining specific COVID protections rather than relying on the unenforceably vague and general IIPP. To quote Dr. Robert Wachter, the Chair of the Medical Department at UCSA, “It is wishful thinking to believe we’re going to stay in this situation as good as right now.” And we’ve been here before, last June when the Board made changes to the ETS in the middle of what seemed like a very positive lull.

The Board has already considered and rejected relying on the IIPP alone. Employers are here again today urging that we continue down that path.

By adopting this pinned (phonetic) decision and rejecting Petition 594 you will put us on a path to an ATD standard for general industry, a path that California has been on as Mr. Welsh noted, since before the 2009 adoption of the ATD Healthcare Standard. And that work was done by people who saw COVID coming and did their best to try to
get as prepared. And instead as has been early earlier mentioned we were caught with our pants down just, nonetheless.

You know that exclusion pay, the debate doesn’t seem to be focused on exclusion but on exclusion pay, so where does the burden fall? And the cost to business of keeping infected workers on the job are significant.

So there's also a lot of frustration in the room which I share over the pandemic. It seems to often be expressed in a way to suggest that the Board or the Emergency Temporary Standard is responsible for the confusion. And I respectfully submit that getting rid of the ETS or switching to a general IIPP that's less specific, neither of those are a path to reduce confusion.

Moving through this pandemic has been frightening, challenging, confusing and frustrating for workers, business and government alike. But the healthcare standard pointed a path to follow. Doing nothing and letting employers do nothing has never seriously been contemplated by this Board. The Board has passed specific COVID protections, the clearest in the country, and Cal/OSHA has left a record of enforcement of those protections. We've seen them against all kinds of employers, national chains, car dealers, public agencies, you can scroll through the list online, and for all kinds
of violations and negligence in assuring worker safety in
the workplace, and that's really the point.

So where has that work left Californians? Well, numbers from the end of March show the 2-year death rate of 294 people out of every 100,000 across the United States. While in our state, it was 224 people out of 100,000. Now there is certainly a lot of factors at play in those numbers, but undeniably one of them is California's regulation of COVID-19 in the workplace led by this Board, and that work is contributing to saving lives by the thousands. Thank you.

CHAIR THOMAS: Thank you. Next up.

MR. GREENE: Thank you, Chair Thomas and Members of the Board, and staff. I'm going to change the subject briefly. My name is Kevin Greene. I'm the EMS Health and Safety Director for California Professional Firefighters. And I appreciate the opportunity to provide comments to the Standards Board regarding proposed updates to the Firefighters Personal Protective Clothing, Standard PPE.

California Professional Firefighters represent 30,000 career firefighting and emergency medical service personnel operating in California. Our members are actively engaged in responding to structure fires, wild land fires and fires in the wild and urban interface. CPF was pleased to sponsor AB 2146 in 2014. We've been very
actively involved in the advisory process to develop and help advise the Board in updating these standards.

We’ve provided a number of written comments before, and I just wanted to highlight a couple of items. We appreciate the engagement with the Standards Board staff in removing the provisions around wild and respiratory protection to allow for more discussion. And we look forward to having that discussion with the Division staff in the coming months as well as working with Standards Board staff on the other provisions of the PPE.

Additionally, we raised concerns that the regulations do not include more robust guard rails around the requirements to use self-contained breathing apparatus during overhaul and generally around the lack of explicit inclusion of firefighter labor organizations being involved during decision-making that will occur due to these regulations. Given this, we believe it is imperative of the Standards Board when considering this package include the following direction to staff.

I want to clearly articulate Purchase and Wear Standards, we continue to continue to request that guidance be developed that articulates the interaction of the Purchase and Wear Standards in the regulation to ensure that employers clearly understand the incentives to purchase PPE that is compliant with the most recently
Secondly, looking for robust firefighter and labor participation. We ask for clear processes for authorized labor representatives to be part of PPE decision-making. We ask for clear rules that provide a labor seat the table for determining standard operating procedures for determining how an incident commander determines that a SCBA should not be used during overall operations. And we're requesting clear documentation and reporting mechanisms when exclusions in the regulation are exercised. As representatives of the state's professional firefighters, the need to ensure firefighter voices are heard and the future considerations of this regulation, is critical.

We thank you for all your work on this proposal. And I urge your inclusion of enhanced firefighter labor participation, looking forward. Thank you.

MR. JOHNSON: Good morning, Chairman Thomas, members the Board, Division staff and Standards Board staff. My name is Steve Johnson. I am recently back with the Roofing Association, so made quite a few observations in my time away from the Roofing Association working for individual specialty contractors.

I can tell you that the emergency temporary standard, at least from my observation in the construction
industry, is not well received. It's hard to understand, it's complicated, confusing. And for that reason the Association opposes a readoption of a third temporary standard and supports Petition 594.

One of the things that employers really need is clear guidance. And I think a move toward supporting the IIPP guidance, a move toward easy-to-understand regulation, is a step in the right direction. And I think that it seems that temporary standards never really stay temporary. And if this is a third readoption of a temporary standard, I think it needs to go in a new direction.

I can tell you after a long career in safety as a safety director and manager, specifically more recently working with individual contractors in construction specifically, that anybody that's close to retirement is running for the door. Safety managers and directors, the burnout rate is extremely high. Employers are doing their best to try to implement and protect the workers. And it's just some personal observations that I wanted to throw out there.

But thank you for hearing me today and thank you for your hard work on where we've come so far.

CHAIR THOMAS: All right, so we're going to go to our callers. Who do we have, Maya?

MS. MORSI: Jassy Grewal with UFCW Western States
Council.

CHAIR THOMAS: Jassy -- is it Jassy? Are you with us?

Hello? (Indiscernible.) I hear something, I don't know if the caller hears us. Apparently not.

MR. BROWN: (Overlapping.) This is Anthony. I'm available.

CHAIR THOMAS: Hello?

MR. BROWN: This is Anthony. I'm available.

Hello?

CHAIR THOMAS: Hello, can you hear us? (No audible response.)

CHAIR THOMAS: Hello? Who’s the next?

MR. BROWN: (Indiscernible.)

CHAIR THOMAS: Are you on the line?

MR. BROWN: Yeah, I'm here. Are you there?

Hello?

CHAIR THOMAS: Make your comments, please.

MR. BROWN: Yes. This is Anthony Brown. Are you there?

MS. SHUPE: Anthony, please, if you could tell us your affiliation. Thank you.

MR. BROWN: Yeah, am I on the Board now?

MS. SHUPE: You are, we can hear you.

MR. BROWN: Okay. I appreciate that. Thank you
for your time. I'm an old man and I have trouble with the phones, so I apologize.

I'm not affiliated with anybody, I'm just an American citizen. Just real quick on my background, I'm a scientist from a Pacific Union College. I have a degree in religion, and I also have a master's in Government. So I've been doing this work for like twenty years. And the reason why I'm calling you, you hear some things you haven't heard before. I'm not necessarily privy to your field study or involved in your genre, but I have something to say, and I appreciate your time.

So really quick, the first thing I wanted to say is specifically to the science. Regarding the masks, first issue. The masks are known to not work and it's scientifically proven that somebody coughs or sneezes that the air is contaminated for 10 to 12 minutes. Whoever goes in that air space the virus goes in your eyes, you will be infected. And there's no question about it. It's a highly infectious virus. You're not going to run from it. You're not going to get away from it.

There's a lot of people that want to try and say that they could do things really good, and I respect that. There's a lot of people that say they could do things better and I respect that. Better than God even, but they can't. They can't do things better than God. So what I'm
trying to call you guys and make you aware of this, is a
lot of people that have done a lot of things and for the
betterment of humanity, and they failed.

The reason why we're all in this beautiful bliss
right now of not people dying, is because of Omicron. Not
because of the vaccines, not because of the six-foot rule,
not because of the mask, it’s because of the work of God.
I'll remind you that one of the symptoms when this vaccine
was created was not sneezing. The sneezing symptom came
out after the vaccine was created. So in essence, the
vaccine actually encouraged herd immunity.

So I'm just going to get back to the masks real
quick, and then the vaccine. The issue of, like, just
somebody going through a check stand, and somebody coughs
in front of you. And the public health orders and the
mandates and the regulations and the suggestions from the
authorities that be or everything that says that they're
telling these people that are old or sick -- and I'm going
to warn you about this -- the myeloid cell virus, which
this is -- in the history of science all pandemics have
been defined by a lymphatic system not a myeloid system, a
virus that infects the immune system, which is a flu.

But these people have claimed that they can
eradicate the flu and it's a lie. I want to know why
anybody ever said that they could eradicate the flu when
they couldn't, not possible. Every scientist will tell you that. But for some reason, these people with the myeloid cell virus, they knew that it was not containable. They knew the virus would not -- the vaccine would not work. They knew that.

So I'm going to get to the vaccine now. The vaccine causes changes in your DNA and your liver. It's a known fact. So you want to get the vaccine? That's your choice. I don't want to have my liver altered by some chemical that I don't know anything about.

The other thing is about the vaccine that you guys don't know, and I know you don't and probably everybody in the room doesn't know, is that when you inject the nano particles in the mRNA vaccine, have never been injected in the human body before. The studies they used on -- for the basis of injecting these viruses were 13 years old. And the thing is this --

CHAIR THOMAS: Caller, can you wrap it up? Can you wrap it up in, like, ten seconds, because I think we get the gist of your comments?

MR. BROWN: Yeah, yeah. Yeah, the main the main thing is like that -- well, I mean, I had quite a bit to say. But you know, the thing is that the injection of the virus if you don't aspirate the syringe, and these nanoparticles will go into -- they're using studies that if
you inject your arm, they’re claiming there's no blood in that arm. And it's not true, and that's the basis of not aspirating these syringes. And if you don't aspirate the syringe and this virus is injected into the blood any amount of mRNA vaccine that goes into the blood causes enlargement of the heart, inflammation symptoms --

CHAIR THOMAS: Thank you, caller, we appreciate your time.

Can we go to the next call? I think we've heard enough of that. Can we go to the next caller, please?

MS. MORSI: Next caller is Cynthia L. Rice with California Rural Legal Assistance.

CHAIR THOMAS: Cynthia, can you hear us?

MS. RICE: Yes. Good afternoon, Cynthia Rice.

And thank you. I'm sorry not to be able to attend in-person today, and I'm glad to see so many people who were able to. I live in a high-risk household. And I have the luxury both to be able to do my job, and thanks to the Standards Board, accommodation to appear at this hearing without risk of exposure.

That is of course not the case for my farmworker clients or my other clients who work in low-wage industries. And I appreciate the Board and staff’s consideration of the needs and limits that those workers have, to their flexibility about whether or not to enter a
workplace in what they perceive to be an unhealthy
condition.

We've submitted comments, CRLA and CRLA
Foundation, and we join in many of the other comments by
the workers advocates today thanking staff for the very
thorough and considered work on revising this standard.
We, of course, don't agree with all of it, but we do want
to acknowledge that staff did their utmost to address the
flexibility concerns raised by employers at the prior
hearings. And also to take into consideration further
results of research and observation about the impacts of
COVID-19 and health and safety measures that were taken.

We want to just remind everyone that the CDC's
charge is quite different from the charge of this Board.
This Board has a very specific charge to look out for the
welfare of workers, and that's what the ETS standard
strives to do.

Just a couple of comments mostly in response to
comments made today. Again, we are glad to see the
preservation of exclusion pay, at least with respect to
limited circumstances. We think it should have remained
applicable to broader situations, but urge the Board to
adopt the standard, which includes exclusion pay.

The current legislation does not protect all
workers as pointed out, workers who are employed in
workplaces with less than 25 people are not eligible for
the legislative sick pay, COVID-19 sick pay. They are
vulnerable, they do represent low-wage worker workforce.
And they also are a workforce that is likely not to have
personal health coverage. And so any disincentive to
seeking treatment because they have to go to work is
contrary to public health standards.

We also want to urge the Board to reject the
suggestion that there would be a change in the standard to
allow or to require employers only to provide masks when
requested and it’s based on a demonstrated health need.
That would obviously result in an invasion of the health
privacy of employees and create a much higher disincentive
for workers to ask for masks, either when they think
they're exhibiting symptoms that they're not sure of, but
they don't want to expose others to, or they're the guy
sitting next to them is exhibiting those symptoms.

The last comment I want to make is with respect
to the kind of persistent theme that the IIPP is the end-
all in terms of trying to deal with this particular issue
or any issue. The comments that the IIPP has proven to be
effective are just wrong. I think as reflected in staff’s
evaluation of the petition, but also enforced and
enforcement generally. The IIPP was not an effective
measure, either to provide employers with clear
instructions about what level of protection to provide or
to provide workers with an understanding of what
protections they could insist upon. So reversion to the
IIPP as an alternative to adopting this emergency
regulation is just not an option that should be considered.

Thank you all for your time. Thank you, staff,
for the work that you've done and the Board for coming back
to this issue over and over, with the mind of both
accommodating legitimate and reasonable suggestions made by
employers, but with the overarching goal of ensuring work
protection at the workplace. Thank you.

CHAIR THOMAS: Thank you.

We're going to have one more caller. And then
we're going to have a 15-minute break right around noon,
because I'm getting tired. I have to tell you I'm fine.
But anyway, we all need a break for 15 minutes.

So who do we have on the line, Maya?

MS. MORSI: I'm circling going back to those that
did not get to comment. So Daniel Kovacs?

CHAIR THOMAS: Daniel? Daniel, can you hear us?
(No audible response.) Guess not. Do we have any anybody
else?

MS. MORSI: I'm going to circle back to Ricardo
Beas.

CHAIR THOMAS: Ricardo, can you hear us? Are you
there?

MS. MORSI: Remember to press *7, oh I'm sorry, *6 to unmute.

CHAIR THOMAS: We should all know this by now.

MS. MORSI: Yeah.

CHAIR THOMAS: Right. Right, *6. (No audible response.) Okay, I don't think the caller is there.

So at this time we're going to take a 15-minute break. We'll reconvene at 12:15, so we're in recess.

(Off the record at 11:56 a.m.)

(On the Record at 12:15 p.m.)

CHAIR THOMAS: Can we start wandering back to our seats? We've got about two minutes and then we will start again.

All right we are going to reconvene at this time, and we are going to proceed with comments from the public, so you may go right ahead.

MR. WINTERS: Thank you. My name is Jake Winters. I am the Head of Impact at Monarch Tractor. We make fully electric, driver-optional compact tractors. I specifically deal in our environmental and social governance internally at Monarch Tractor and externally with government engagement.

I'm here to comment on our Petition 596, requesting the clarification of title 8, 3441(b) with
regard to the operation of agricultural equipment in California. It's unclear how this regulation applies to safety technology enhancements over the last 50 years as others have mentioned. Cal/OSHA staff has confirmed this in ambiguity for these technologies in their staff evaluation in 2019.

Some say they are not ready for driver-optional tractors; regardless, they are here. Without action and collaboration we will sleepwalk into an era of ambiguity where individual interpretations and their diverse conclusions will be the only guidance for farmers. To prevent this we have been working directly with Cal/OSHA staff for more than two years through a variance process and other means to provide Cal/OSHA staff access to technology experts, real-world operational and safety data over four seasons, as well as exposure directly to the technology to inspect and evaluate Monarch Tractors, specifically on how it impacts the safety of the workforce. We now have proven advancements capable of moving farm workers away from the hazard zone onboard a tractor while simultaneously increasing access to agricultural employment opportunities to those with disabilities and providing operators with skill, knowledge and experience applicable to advance technology that is becoming increasingly prevalent in a variety of industries.
The technology is here. Monarch Tractor has passed rigorous scrutiny by Cal/OSHA staff. And the result is a departure point for continued collaboration between a variety of groups, farm workers, equipment manufacturers, and safety experts so that these technologies can be deployed in an intentional and consistent manner.

I implore the Board to take advantage of this opportunity for collaboration. I thank you for your time.

CHAIR THOMAS: Thank you.

Next up.

MR. WICK: Thank you, Chair Thomas, Board Members. It is great to be here in person after all this time and we've all been through a lot over two years. I do want to welcome Chief Killip into our meeting here, thank you.

Bruce Wick, Housing Contractors. I’ll say a couple things. One, is just remember that since 2008, employers have funded almost all of DIR. This year that number is $1.37 billion that employers paid a fund to the Labor Commissioner’s Office, Division of Workers Comp. And of the $200 million Cal/OSHA budget, $170 million is funded by California employers as a surcharge above the amount they pay for Workers Compensation, so we do look for using that money wisely.

We want to greatly commend this Board, Christina
Shupe, her predecessor Marley Hart, Board staff. This is
good governance, you do great work, very professional with
the money that employers spend here. There is
transparency. There is respectful and helpful dialogue.
We appreciate that. Cal/OSHA Appeals Board does the same,
very similar. And the money we spend as employers is well
spent.

And there are some challenges though with the
Division. An example would be the First Aid that's here
today. We first started talking about this in 2006, Kevin
Bland was at the first advisory committee and there was
agreement. I was at the advisory committee in 2011 and
there was still the same agreement, and we are wondering
why it took five years to make these changes. And
something was sent to this Board in 2015, but it was not a
regulatory proposal. And we are here today for the public
hearing on that, that was agreed to 16 years ago.

Something is amiss. I know Chief Killip will
have a lot to do, but hopefully we can figure out what's
going on there. It's not a matter of under-resourced.
With a $200 million budget if something needs more money,
as Christina Shupe has said, there are more resources
needed here at the Standards Board and employers we say,
“Right. We know you used money and resources well.” So
that’s kind of a long intro to wherever we go from here.
On COVID, on pandemic regulations I would strongly urge this Board, I think you have the right and the legal ability to say, “We want to do future advisory committee meetings jointly with the Division as we look at a permanent standard, as we look at any permanent pandemic standard.” Because this Board and its staff has proven they can facilitate a discussion with respectful, passionate debate about the issues. And safety and occupational safety and health experts and labor and management sit across the table, and we work at it, sometimes two days in a row. And come out with a reg that everybody says, “This is right, this is good.” And it works. It doesn't just look good on paper; it translates out to the worker work that we're intending to protect. So I really would strongly suggest we do that.

I do think the petition, I do think the concept of the IIPP needs to be helped, needs to have a healthy debate. What is better? A reg like we have or the IIPP? The first year of COVID was IIPP was what we used and that we got there fast. And I do respectfully disagree with those who say the IIPP doesn't work or was a failure. I know how hard we all worked in construction fast to make guidance, it was provided, work under the IIPP.

Every death from COVID is a tragedy. We've had over 80,000 Californians die. But that number
occupationally in terms of workers comp claims or death --
and I don't think that number is underreported -- or of
fatality that number is 1400 out of over 80,000. And a
substantial number to those, sadly, were our heroic first
responders, our healthcare providers who are already
covered under the ATD. So I think we need to strongly look
at is that the IIPP could really be the right thing, and
especially for a future pandemic as we know. So I really
would like us to consider that.

And, again, I want to really commend Eric Berg
and staff. Division staff is very hardworking, and Eric
did a lot of great work early on in the pandemic when we
were under the IIPP saying, “Let's talk about education,
let's talk about compliance, and then we'll talk about
going out and enforcing.” And that was the right sequence
and I want to thank Eric for all the work that was done on
that.

I do want to ask one final question because I'm
one of those who will be a trained trainer. And it seems
the message of this regulation, the taking the vaccine part
out, the benefits to employees and employers for vaccinated
employees would be sending a message that vaccines have
lost their value. We know vaccines wane over time, but have
they really lost their value when in May we're saying
they're no longer effective? I'm fully vaccinated. I was
boosted in December, and I hope it's still valuable.

Today the state website says you're four and a half times greater to get COVID if you're not vaccinated.

But this reg took all those values away. And I know people are going to ask me, “So what's Cal/OSHA saying about vaccines? That it really was a short-term thing, that really doesn't have any value shortly after you get it?” I don't want to send that message to my people, so I'd like to ask what that is.

And again, that's part of the problem of this. We got this proposal late after having talked about alternative proposals before. We can't, we couldn't have the dialogue and the discussion about could we make what's in front of you today better? And why were some of these things done this way?

So again, I'm thankful for everyone who's here and for all we've done to work through the Covid, what a deal. And I want to thank Chief Parker who just came in and then turned around and here was Covid. And he did, I think, great leadership to get us through this thing. So thank you all.

CHAIR THOMAS: Thank you.

Go ahead.

MR. STEIGER: Thank you, Mr. Chair and Members, Mitch Steiger with the California Labor Federation. I
appreciate the opportunity to testify today. Nice to be
back in person mostly, and hopefully case rates stay low
enough for this to continue. But I think we would also
point out that if case rates do stay low enough for this to
continue, we definitely have things like the ETS there to
thank, in no small part, because of that. We really think
the control measures and other protections to offered
through the standard have a lot to do with why things have
been where they are in California and could have been much
worse, and part of why we so strongly urge the Board to
readopt the version that's before you today. We'll get
back to that in a second.

We have letters in on Petitions 596, 594, and the
ETS readoption, so we won't rehash all of that, but did
just want to quickly mention on 596 we strongly endorse all
of the different safety measures and machine-learning and
everything that can be on a tractor that can help keep
workers safe, whether they're the operator or someone
working near a tractor. We strongly support all of that.

But for us it's a big leap from that to taking the operator
off of the tractor. That workers, especially experienced
workers, who've been doing that for a long time, have a lot
of skills that can be used to keep workers safe. That
machines that malfunction all the time, that we log out
phones and we see -- you know, we've been dealing with this
technology now for two years. And it often works pretty
well, but it often doesn't. And having that be the last
line of defense against worker injuries, fatalities, really
makes us nervous. And we think the best option is to have
all of that safety equipment, but also have an operator
there who can intervene when the inevitable malfunctions
happen.

Related to 594, a lot of other speakers have
touched on their concerns there. We share all of those.
We really believe that employers, workers and everyone
benefit from the specificity and reliability of a standard
like the ETS that we've got now and very much believe that
that petition, were we to move more in that direction,
would risk the health and safety of a lot of workers in
California. And very much believe that it should be
rejected and the new version of the ETS be readopted.

And on that front, we do have some serious
concerns with what's before you today, particularly
removing exclusion pay for close contacts. We think it's
important to remember that we're dealing with a disease
that is orders of magnitude more transmissible than what we
started with. And everything that we thought we knew
about, "Well, you've got 15 minutes in close quarters next
to someone else who's been within 6 feet," that's all kind
of out the window now. We know now that it is much easier
to get it. It can happen much faster.

Vaccines offer a lot of really helpful protection against death and hospitalization, but don't do nearly as much as they once did to slow transmission. So at the same time that our ability to slow transmission of the virus has weakened the virus itself has gotten more transmissible. And that factor we think really needs to be brought into everything that we do in terms of coming up with ways to protect workers from this virus. And removing exclusion pay for close contacts really is a step away from that.

With that said, the protections, the disclosure, the training, the exclusion pay for COVID-19 cases that remain in the standard are critically important pieces of our response to this. They've been shown to work, we know they work. We've talked to workers about them who saw the big shift from when this was just the IIPP with guidance’s to when there was a specific standard. Things really changed for workers. We really think it would move backwards in a lot of really scary ways were this to not be readopted today, so we strongly urge the Board to do that.

Thank you.

CHAIR THOMAS: Thank you.

Before we go to our next in-person, we're going to go to callers. Do we have any callers?

MS. MORSI: We don’t any more public comment from
callers.

CHAIR THOMAS: All right. Then hang up right now, that’s it. (Laughter.)

MS. MORSI: You got it. (Overlapping colloquy.)

MR. MILLER: Real good, real quick --

CHAIR THOMAS: Just a joke, just a joke. Go ahead.

MR. MILLER: Real quick before I tell you I wanted to bring a black cardboard with BK on it, because that's what we see lot on the Zoom, the Webex calls, is just people talking with the BK up there.

Hi, I’m Brian Miller the Safety Director for Rudolph and Sletten. I’m here representing my employer. I’m also here representing myself because I am an employee first. And I'm also representing by the Construction Employers Association, CEA. CEA puts about $20 billion worth of public and private work on the books every year in California, so it’s a pretty big organization.

I would also like to thank Board staff and DOSH for all their hard work. Eric, I know it's been tough. You've been beat up a few times, I apologize. I could see the look on your face on the Webex, so you're just like, “Oh, man here it goes again.” So we did really appreciate your hard work.

I would like to extend an invitation to Chief
Killip to come to the CEA Safety Committee. I'm currently the CEA Safety Committee Chairperson. Cassie Hilaski is my Co-Chair, she's here today as well, so we'd like to extend that. And I'd also like to extend and offer you one of our Rudolph and Sletten challenge points.

I know you're going to want one too. I'll get you one next time. I only brought one. I know it, I only brought one.

UNKNOWN SPEAKER: I'm not (indiscernible.)

MR. MILLER: It's not a bribe, Dave. They're $7.00. They're pretty cheap.

CHAIR THOMAS: I got one of those about 30 -- (Overlapping colloquy.) I worked for them, good guys.

MR. MILLER: Yeah, you got one for a different reason. So at Rudolph and Sletten our job and safety coordinators carry these. Our superintendents carry these and actually carry an extra one. And so if they see anybody doing something above and beyond safety or they are brought a safety -- something safety to their attention, they can give them a challenge point going above and beyond safety. And then we ask them to carry it with them every day just to remind them to think outside of the box for safety, so I'm going to give you my challenge coin today. And it's got our little 60th anniversary on one side and our 10-10-10 slogan on the back, which is our 10-10-10
slogan is “every ten minutes look ten feet for ten seconds.” It's kind of an own-your-zone. It’s to encourage employees as we know in construction things can change quickly, so we encourage our employees to look around and make sure their zone is still safe.

I'd also like to encourage that if we can, this format stays. It is big-time inclusive. I mean, examples today, we had a person who was sick, and we don't want that person here. We had a person who felt the driving was unsafe. And we also have people that really want to reduce their carbon footprint, so they can attend via Zoom if it's a possibility. I know some venues won't have this nice setup, so won't be able to do. I just want to encourage you to keep doing that.

Briefly I'm going to comment on the readoption of the ETS and then also on Petition 594. I'm not going to repeat the comments previously stated. I agree with Helen Cleary, Rob Moutrie, and a few others, Len Welsh.

I wanted to kind of bring up a point, it’s kind of a confusing point for some of us. CDPH on April 6th issued a new guidance for a close contact, and it is now someone sharing the same indoor airspace, e.g. home, clinic, waiting room, airplane, etcetera for a cumulative total of 15 minutes for more than 24 hours. So it’s kind of, and can be confusing, is it 6-15-24?
So I’m standing next to Cassie and Kevin, that’s us, or is it the room? Because now the way this reads is it's all the employees working at Home Depot. They're all close contact with each other now. All the employees working at Costco, that's a huge building, they’re sharing in same airspace. Is that now they’re all in close contact?

And it’s kind of the same thing on a construction job site. Obviously, in the job trailers a little bit smaller, pretty much close contact. But out in the field when we're building these big buildings and we got 800, 900, 1,100 feet of space with a electrician on one side in close contact with the pipe fitter on the other side, so kind confusing there.

And then Petition 594, so first of all I have to say when I saw this come across the board and I saw Western Steel Council I'm like, “ Oh my God, is it more about the elevators? Is it another letter about the elevators,” right? So obviously, sometimes I’m on the other side of Western Steel Council. When I read this, I thought it's brilliant. It’s brilliant.

And it's brilliant because Cal/OSHA can't pivot, and we've seen that. Unfortunately, that's one of our biggest concerns and I guess complaint department about the ETS, is it doesn't pivot quickly enough. And we had to do
some executive orders to make sure that things were clear, right? And those executive orders still hold. I thought this was brilliant. Maybe this needs a little tweaking, but I thought it was brilliant to say, “Hey, these aren't guidances. You know, through the IIPP they're not guidances. You now have to do these. Employers have to do this.” Bam, and it just goes into place.

So I'd like you to consider either going against the denial opinion in accepting it or thinking of something we can do, because the ETS is going to become permanent. We know that on December 31st it's going to be certified in -- I can't remember what that process is called, I apologize -- and it's going to be permanent.

And unfortunately, Eric, I don't know if you had the resources. You've been working on a lot of stuff you've got a lot of stuff on your plate. This would be another thing on their plate, which means we're going to have this ETS for two, three, maybe four years. Hopefully not that long, Eric, I hope you get some people on your staff to have to be dealing with this. Basically, we are going to be recording COVID cases forever, which is I don't think that's the overall intent is to kind of treat it that way.

This is a real quick fun fact about it the Covid. Does anybody know what our current positivity rate is for
Covid right now as of the 17th in California? It’s 2.6. Does anybody know what the positivity rate for flu is as of 14th of April? The last time that reported today, 5.4. So we're lower than flu rates right now. In January, we at 21.5, in January of 2020 flu hit 59.5. So it's kind of a catch-all there, right? I mean, what do we want to record? What don't we want to record? So it’s kind of a catch-all.

In closing, I'm almost done -- and I apologize my voice is wavering, I get nervous because this is a lot of high-power people in here. And I get nervous when it's people that are way above my paygrade and way above my grade scale on the intelligence level, so I apologize. And I got this --

CHAIR THOMAS: Well, just relax. You’re in the state --

MR. MILLER: And I was just going to say, and I’ve got this guy hovering behind me. So he could snap me in half (indiscernible) --

CHAIR THOMAS: I would be more scared of that than anybody else.

MR. MILLER: I want to be clear, Rudolph and Sletten members care about their employees. Like I said, I'm an employee first. I care about myself first. I take care of me. And I hope I take care of a whole lot of people, I have 500 and some odd R&S employees, and I have
another 2,000 trade contractor employees that are on my sites right now we take care of. We care about their employees. So please don't take my comments out of context like I don't want anything. We wanted something. We just wanted something that could pivot quicker than a standard could pivot. We wanted something.

Rudolph and Sletton is a VPPC participant. For those who don't know it's a Voluntary Protection Program, and the C stands for Construction. We have been since 2013, since then. Before that we had a hard time getting in. We just didn't cut the mustard. Since then we've had nine projects go through the VPPC process including the Apple Campus Two, the Spaceship. And that job had three general contractors on it. That job had to have all three general contractors get VPPC before that site was considered VPPC.

And just a little nuance just so you know, to get VPPC we have to have a percentage of our trade contractors obtain the Golden Gate, which is another certificate that Cal/OSHA offers through their consultation firm. So it's not just the GC showing how great they are, they have to elevate trade contractors. So usually it's about a quarter of the trade contractors on site have to go through the Golden Gate process and then the GC can go through the VPPC process. It's a long process. We are only one of nine GCs.
in the state that are currently in the VPPC and we're the only GC that has three sites under that protection. And that's the maximum amount of sites you can have at one time out of the current program. So we get it, and we care about safety.

Why is that relevant? Okay 1) because we open our doors. We tell Cal/OSHA please come to our job sites and inspect our jobsites, please; 2) that means they also review our programs, okay. So they review our programs, which means we open up our books. Which means no less than four times during the pandemic we had Cal/OSHA review our IIPP, our pandemic response plan, and our COVID safety plan. Which for the record we had our pandemic response plan and our COVID-19 safety plan in play April of 2020, well before anything was done. Why did we do that? Because it was the right thing to do.

And before we had our pandemic plan in play, because as we all know in six Bay Area counties Appendix B-2 came out. We pivoted quickly on our essential jobs to make sure protection is in place while we're developing a written program, we put protections in place for our employees. So again, we care.

And that's not just us. With CEA we were getting on Zoom calls and going over an Appendix B-2 and anything else we could do with guidances, and helping our members
make sure they can keep their employees safe and keep those
essential job working.

And then it was about six weeks later, six or
eight weeks later, more jobs opened up and we were able to
get our non-essential jobs back up and running and working.
By the end we have a lot of great programs in play. So
we've been protecting people before the ETS and then had to
modify it. I'm on Version 6 of my COVID plan now because
of CDC changes and ETS changes and whatnot.

So anyway, well thanks again for the opportunity
to comment. Sorry again for my wavering voice, because of
the power in this room, and I hope you all have a great
day. Thank you.

CHAIR THOMAS: Thank you.

All right. This is going to be fun, but go
ahead. (Laughter.)

MR. BLAND: Good afternoon, Chairman Thomas,
Board Members and Board staff, Division staff. Kevin Bland
representing Western Steel Council, the California Framing
Contractors Association and the Residential Contractors
Association. Just out of tradition on Zoom, can you hear
me? We're all right? Okay.

So first I want to talk about Petition 594.

Obviously, Len Welsh already laid it out very nicely
earlier. But I want to pull back on some experience that
we've had in front of the Board probably nearly 20 years. And generally when a petition is denied it’s because there's a safety concern that's already addressed and an existing regulation. Or it's some device someone's admitted that they don't want to -- that they want to make exclusive for them, that's probably the most traditional. But generally when it's something that's an issue that the industry and labor have to deal with, and we're grappling with and we've been grappling this for two years, it's not a stamp of, “No. We're not going to talk about this and we're not going to use this as a basis or merge it with a topic that's already there.” I've seen this where we had two petitions for a very similar idea with some separate comments.

But at least send it to an advisory committee so that the discussion can be had, not just, “Oh well, we can talk about it but we're just we don't want you to talk about it because we're going to deny it.” So I think it's very important to recognize that I feel like the dialogue just got shut off for that potential option as a result of the decision that's being offered to you to make today is to deny the petition. I would urge you to consider not accepting the conclusion of the staff. And changing that to send it to the advisory committee, so we can have dialogue on that.
That's one thing that's been very difficult as we've gone through this process is to have good, meaningful dialogue. And tell me, what you guys went through the first couple of meetings of this, and the advisory committees on Zoom where we had a thousand people, and folks talking about whatever that hadn't -- wasn't it used to be in the front of this Board and in front of this rulemaking process, so I can understand the fatigue in advisory committees and that. But I think this is a very important topic.

And this has been brought up earlier too. The point is we're looking at this as a permanent pandemic idea, something -- because if this happens again, I mean, I'll be honest when this first happened, I got a call from my staff in a panic. And I said, “Don't worry. This is going to be over within two weeks, that it's going to pass. It's going to be over within two weeks,” and here we are two years later. Boy, was I wrong.

Now switching gears a little bit to the ETS that we have in front of us today for the third readoption -- oh, one last point on that -- also it's very important too to make sure we don't exclude options and potential options. We see there's even something in the SRIA that says, “What options did you consider?” So we need to make sure we kind of keep that in mind too, because that is an
essential option as far as 594 is concerned.

Now to the ETS today, one, I appreciate, and I think it's been discussed today, that there were some positive changes. And there are some things that are good. But the issue that I'm struggling with here is yeah, maybe the law says on an emergency standard you just have to notice it and you guys come and you vote and it's kind of an up or down. It's very hard to make, because we're at the expiration of the previous one. Well, we've seen that pattern repeat.

I think in this context it would have been helpful, and I know the barn doors closed and the horses are gone, because we're sitting here. But if we could have had this before the last meeting so we could talk about things, you guys could hear about these things, and maybe discuss some things that need be tweaked. Because what I have in my practice, a large part of my practice when it's related to COVID is trying to advise clients on how to comply. And what looks good on paper when you try to put it into action, when it's a real-world situation it's more complicated than what it sounds like on paper. And I've gone through that. We've spent hours.

I think we heard earlier like the exclusion, what happens if they won't test? What do we do? Do they just get to be excluded or can we make them test? Things like
that, that you don't really see it whenever you read it until you start putting it into action. I know you guys probably have to do that sometimes with some of your professions already sitting on the Board, but it is something until you start doing it. So that gives us an opportunity to ferret that out before we get to the Board Meeting like today where it's basically a thumbs-up or a thumbs-down.

But you guys are in a very difficult position, because what do you do? “If I vote no, then it looks like I don't care about Covid. If I vote yes, then we could just take the bad rule and we'll fix it in FAQs or we'll get an executive order.”

So I'm hoping and I'm urging if we’re ever in this situation again, so we can kind of learn from that. And I kind of gave us a pass on the first time this happened. I didn't really give a pass on the second time, but the third time now it's hard to give a pass on getting it kind of late in the game.

So anyway, I don't envy your job today trying to make a decision on what to do on the ETS. I do think you have an opportunity though to make a decision that's going to help safety in moving forward in California for future pandemics on the 594 Petition. And I think was it Mitch said he's scared? I ain't scared. (Laughs.) So thank you
very much.

CHAIR THOMAS: Thank you.

MR. STRUNK: (Indiscernible.)

CHAIR HOCHSCHILD: Go ahead.

MR. STRUNK: Good afternoon, now. My name is Michael Strunk, and I am the Director of Safety from the Operating Engineers Local Unit Number 3. Chair Thomas, Board and staff, look, I just really appreciate you folks being here and being here myself today. I'm here to speak in opposition of Petition 596. I think I'm not going to go through a whole lot of what Mitch Steiger said or Anne Katten said, but we have some real concerns. And some of the most vulnerable among us, farm workers, have concerns. And we really just want to see a process, if that goes forward, that's clear and transparent. And we agree that the operator in the seat is the absolute person that can control the outcome and troop (phonetic) to the best outcome. So thank you.

CHAIR THOMAS: Thank you.

Do we have any callers online? None?

MS. MORSI: We have two callers for public hearing.

CHAIR THOMAS: Okay. We'll wait for that then.

And we don't have any more for the meeting, so we're going to go -- the Board thanks you for your comments and
appreciates your testimony. And the public meeting is
adjourned, and the record is closed. Thank you very much.

We will now proceed to the public hearing.

During the hearing we will consider the proposed changes to
occupational safety and health standards that were noticed
for review today. The Standards Board adopts standards
that in our judgment are enforceable, reasonable,
understandable, and contribute directly to the safety and
health of California employees.

The Board is interested in your testimony on the
matters before us. Your recommendations are appreciated,
and they will be considered before a final decision is
made.

If you have written comments, you may read them
into the record, but it is not necessary to do so as long
as your comments are submitted via email to
oshsb@dir.ca.gov by 5:00 p.m. today. Board staff will
ensure that they are included in the record and forward
copies of your comments to each Board Member, and I assure
you that your comments will be given every consideration.

Please include your name and address on any written
material you submit.

I would also like to remind the audience that the
public hearing is a forum for receiving comments on the
proposed regulations, not to hold public debates. While
rebuttal comments may be appropriate to clarify a point it
is not appropriate to engage in arguments.

If you would like to comment orally today, please
line up at the podium when I ask for public testimony.
Please state your name and affiliation for the record and
identify what portion of the regulation you intend to
address each time you speak.

If you are participating remotely and would like
to comment, you may join the comment queue by clicking the
public comment queue links in the “Standards Board Updates”
section at the top of the main page of OSHSB website. Or
by calling 510-868-2730 to access the automated public
comment voicemail.

Once again, we are going to be alternating
between three in-person and three remote commenters. For
our commenters attending via teleconference or
videoconference, please listen for your name and invitation
to speak. When it’s your time to address the Board, please
unmute yourself if you are using Webex, or dial *6 -- if we
can remember that -- on your phone to unmute yourself if
you’re using the teleconference line.

We ask all commenters to speak slowly and clearly
when addressing the Board. And if you have any comments
via teleconference or videoconference, please remember to
mute your phone or computer after your comments.
After all testimony has been received and the record is closed, the staff will prepare a recommendation for the Board to consider at a future business meeting.

At this time Mrs. Neidhardt will provide instruction to the Spanish-speaking commenters, so that they are aware of the public hearing comment process for today's public meeting.

Ms. Neidhardt?

MS. NEIDHARDT: [SPANISH] PUBLIC COMMENT INSTRUCTIONS

“The Standards Board adopts standards that, in our judgment, are enforceable, reasonable, understandable, and contribute directly to the safety and health of California employees.

“The Board is interested in your testimony on the matters before us. Your recommendations are appreciated and will be considered before a final decision is made.

“If you have written comments, you may read them into the record, but it is not necessary to do so as long as your comments are submitted to staff, via email at oshsb@dir.ca.gov by 5:00 p.m. today. Staff will ensure that they are included in the record and forward copies of your comments to each Board Member, and we assure you that your comments will be given every consideration. Please include your name and address on any written materials you submit.
“We would also like to remind the audience that the public hearing is a forum for receiving comments on the proposed regulations, not to hold public debates. While rebuttal comments may be appropriate to clarify a point, it is not appropriate to engage in arguments regarding each other’s credibility.

“If you would like to comment orally today, please line up at the podium when the Board Chair asks for public testimony. When it is your turn to speak, add your name and affiliation to the list on the podium and announce yourself to the Board prior to delivering your comment.

“If you are participating via teleconference or videoconference and would like to comment orally today, you may join the public hearing comment queue by clicking the public comment queue link in the “Standards Board Updates” section at the top of the main page of the OSHSB website or by calling 510-868-2730 to access the automated public hearing comment queue voicemail.”

“Once again, we are going to be alternating between three in-person and three remote commenters. For our commenters attending via teleconference or videoconference, please listen for your name and an invitation to speak. When it is your turn to address the Board, please be sure to unmute yourself if you’re using Webex or dial *6 on your phone to unmute yourself if you’re
using the teleconference line. We ask all commenters to speak slowly and clearly when addressing the Board, and if you are commenting via teleconference or videoconference, please remember to mute your phone or computer after commenting.

“If you have not provided a written statement before today’s meeting, please allow natural breaks after every two sentences so that an English translation of your statement may be provided to the Board.”

“Thank you.”

CHAIR THOMAS: You heard me, right? Mr. Berg, will you please brief the Board?

MR. BERG: Thank you Board Chair Thomas, and all Members of the Board. The proposal before you will amend Title 8 First Aid requirement for general industry and for construction.

First, there are proposed changes to the Construction Safety Orders, section 1512 Emergency Medical Services. The proposed changes will update the required first aid supplies and remove unnecessary items.

Second, there are proposed changes to the General Industry Safety Orders, section 3400, Medical Services and First Aid. The proposal requires employers to evaluate and ensure they have the types of first aid materials and the proper quantities of first aid material.
It also provides an additional option for employers to maintain a first aid kit as a standardized set of items when appropriate for the workplace, in addition to the current requirement to maintain a first aid kit approved by a consulting physician. That portion remains unchanged in the regulation.

The rulemaking was initiated as a result of the Occupational Safety and Health Standards Board Petition, Petition Number 519.

The proposal was developed with the assistance of an advisory committee. The advisory committee decided that six items listed in the table of Construction Safety Orders, section 1512(c)(1) were no longer appropriate to include in first aid kits. And that four new items need to be added to the list.

The proposal leaves in place the existing option for a construction employer to use a physician to determine the contents to the first aid kit in lieu of using the list in the table.

With respect to the general industry change, section 3400, the advisory community rejected a recommendation to only contain a single prescriptive list of first aid items. A single prescriptive list of first aid items is not appropriate due to the variety of workplace hazards in different workplaces. Employers must
ensure they have the correct types of first aid materials specific to the workplace hazards.

There is a prescriptive list provided in the new proposal, which may be adequate for workplaces that do not have unique first aid needs, for example, such as office environments.

So thank you. That's my briefing.

CHAIR THOMAS: Thank you, Mr. Berg.

At this time we will accept public testimony. If there are in-person participants who would like to comment line up on this side over here and make your comment. And then we'll have three or four, or however many we have if it's less, comment online. So who's first up?

MS. MORSI: We have Stephen Knight with Worksafe.

(No audible response.)

CHAIR THOMAS: Okay, Stephen are you there?

MS. NICOL WRIGHT: Hi. Stephen might not be at his computer.

CHAIR THOMAS: Well, I -

MS. NICOL WRIGHT: Yes, he's occupied but I'm with him. I'm his coworker at Worksafe. However, I believe the issue was we wound up going there in the public comments instead of during the public hearing, so we've already expressed our points. But again we'd just stress that Worksafe's opinion is that the ETS be accepted as it's
proposed and that keeping exclusion pay is extremely imperative. Thank you.

CHAIR THOMAS: Okay. Well you're out of order, but we'll let the comments stand.

MS. NICOL WRIGHT: Oh, I'm so sorry. I'm so sorry. Sorry.

CHAIR THOMAS: No, it's okay.

So now are we lined up over here? So we'll have public testimony. Go ahead.

MR. JOHNSON: I’m Steve Johnson, back again, with the Associated Roofing Contractors. So I want to just limit my comments to 1512(c) just in the first aid kit contents. I was on the advisory committee in 2011. And one of the things that just with technology changes, with recent changes, I appreciate the six items being removed. Thank you for kind of keeping up with the times.

The one thing that I am concerned about is, so the American Heart Association now, an accepted form of CPR is hands-only CPR. And one of the items that's being added is a single-use disposable barrier for CPR. And if the American Heart Association is now accepting hands-only CPR as an effective method of conducting CPR, then that would eliminate the need for a disposable barrier, a breathing barrier. So that was one thing I wanted Cal/OSHA to take a look at is I would hate to have an employer cited for not
having a breathing barrier in their first aid kit when hands-only CPR is allowed by the American Heart Association. And it's one of the things that is being promoted.

And I think it's a fairly recent thing that's happened and I just wanted to make that distinction if that's going to be an item that's an employer could potentially be cited for, for not having a breathing barrier in their first aid kit.

And the eye-irrigation solutions, typically on a construction site that's one of the things that can happen is something can fly into a worker’s eye, just something in the air. And having the availability of just a portable eyewash will allow that worker to not flush the eye for 15 minutes, but remove something that flies into the eye with just a portable eyewash, eye irrigation solution. And I think that should be an option for employers.

I'm not saying they're -- I'm not saying I have the solution or the answer, I'm saying it should be an option for employers to have that availability and not be penalized if that is in their kit.

So those are just the things that I wanted to bring attention to. Thank you.

CHAIR THOMAS: Thank you.

Who do we have next?
MR. MILLER: Good afternoon.

(Overlapping colloquy.)

CHAIR THOMAS: You again?

MR. MILLER: Kevin set me straight on the rules. I was going to talk about this earlier, but I would have been out of order. I would have gotten the gallows, gotten the boot. So here I am again, Brian Miller with the Construction Employers Association. For the record we sent this into the Board, so I'm not going to read the entire thing I’m just going to read a little bit of it in regards to 1512.

"Presently CCR sections 1512(c)(1) specifies the minimum supplies of first aid kits shall be determined by an employer-authorized physician accordance with this prescribed table. Section 1512(c)(2) further requires that other supplies or equipment when provided shall be based on a documented recommendation of an employer-authorized licensed physician.

"Due the risk posed by heat, illness, or cuts to workers in construction industry the rationale requiring a doctor’s authorization to add instant cold compresses, hand sanitizer or even knuckle bandages, all common in first aid kits but not included in the table, is confusing and inconsistent with section 3400(c)(3)(b), the first aid kits requirements for general industry."
“Furthermore, CCR sections 6251 regarding a first aid kit for logging and sawmills, as well as CCR 3439 regarding first aid kits for agriculture operations, both high hazard industries, do not contain a physician to authorized authorization for the contents of the first aid kit. In fact, these regulations don't even include a minimum requirement for the contents of the first aid kit.

“In addition, it is bewildering that under the existing requirements of 1512 scissors are required. But as soon as this goes in if I want to have scissors in my first aid kits, which they all are going to want to have scissors because it makes easier to cut the tape if you have a cut, I'm going to have to get a physician’s authorization for that.

“We did include a recommendation. The recommendation was in section(c)(2), other supplies and equipment when provided shall be accordance with the American Red Cross, basic first aid guidelines, applicable to -- ” And I won't read the rest, but it allows more flexibility for each industry to kind of pick what they need to pick for their industry.

What I have in my first aid kit at Rudolph and Sletten as a GC, I have a huge first aid kits, because not only am I worried about my employees, but I also want to make sure I have adequate supplies for trade contractor
employees. So they have all have access to my kit even though they have their own kit. So I have a wide range of supplies based on all the trade contractors: electricians, pipefitters, cement masons, iron workers, rod busters, you name it we've got them, operating engineers. They all have different particular risks and sometime different particular needs.

And we do have a device, we call it our heat kit, or heat illness kit. It is a red bag. It's got cold compresses in it. It's got a cold towel in there, so you can wring some water on it. It's electrolytes in it. It's got a water bottle. And so if somebody is exhibiting heat illness symptoms, we can grab that bag and take it over that employee, get him in some shade, get him some rest, get him some water, get him some electrolytes, get him some coolants on the neck, start getting him into a recovery period, determine if we need to call EMS or not.

But now to have those kits on the job site I'm going to have to have a physician's note, because it's not authorized, right? So it’s just kind of confusing to me. So anyway that's my comments for today. And thank you again.

CHAIR THOMAS: Thank you.

Yes, go ahead.

MS. HILASKI: Cassie Hilaski with Nibbi Brothers.
As always, thank you for your service, Board, good to be back in person. But I did want to point out, I love that you've continued the virtual aspects and I hope that we can continue the virtual aspect, because I think it really increases the participation as we saw over the last two years hundreds of people joining rather than it used to be just a handful. So if we can do this dual thing, I strongly encourage that. So thank you for making it possible today.

I wanted to second the request that construction not be held to the limits of a doctor's approval if we want to put more things in our first aid kits. I believe that as long as the employer is providing the required items limit, the minimum in Table One, then the regulation shouldn't limit us to provide additional items without a doctor's approval. That flexibility is being proposed for general industry, and it makes no sense to me why construction would be limited in that way.

Similar to general industry, construction projects often have safety data sheets that we have to follow, and the safety data sheets may specify additional first aid items that are required. We should be able to add those items and not have to go get a doctor's approval.

In addition, construction employers are required to have first aid trained personnel immediately available.
to render first aid on our job sites. I think it's reasonable to expect that those personnel would be able to determine which supplies would be needed to address jobsite specific hazards on the job site and not have to seek out a doctor's approval. When they're expected to render first aid, they're expected to render CPR. It doesn't make sense to me that they wouldn't be competent enough to assess the hazards on the job site, anticipate what first aid supplies would be needed, and be able to add those without having to run to a doctor to get their approval.

Lastly, if access to the acetaminophen, ibuprofen other medicines is the concern here, Paragraph (c)(3) in the proposed regulation already requires a written physician’s authorization for drugs, inhalants, and medicines. Therefore, if employers following Table One and following paragraph (c)(3) a doctor's authorization to place additional first aid supplies in the kit is completely unnecessary.

Thank you for your time.

CHAIR THOMAS: Thank you.

Do we have any callers on the line, Maya?

MS. MORSI: Toli Mikell with PARC Environmental.

CHAIR THOMAS: All right. Caller, can you hear us?

MS. SHUPE: Sorry about that. Maya, can you
repeat the name a little louder please?

MS. MORSI: Toli Mikell with PARC Environmental.

MR. MIKELL: Can you hear me now?

MS. SHUPE: We can.

MR. MIKELL: Okay. So my name is Toli Mikell. I am the Director of Safety and Compliance with PARC Environmental. And I wanted to just echo some of the comments that some of the other commenters have provided with respect to the 1512(c)(3) items on the first aid kit.

The current ANSI Standard Z308, the 2015 Z308, 308.1, the 2015 version, if you look at some of the minimum required items on their standard, there are some items that are in addition to what is listed in the proposed regulation. And I would go the same concern that if we were to purchase a first aid kit that conforms to the latest version of this ANSI standard would I then need to go out and get a doctor's note to basically sign off on something that a standard, basically standard’s body has already deemed an essential item for a first aid kit?

Now, to include, for example, the ANSI standard still makes reference to eye and skin-wash materials, things such as hand sanitizer, etcetera, as being required elements but they are not explicitly listed in the Cal/OSHA standard. I would argue that there should be some allowance to conform it to an established standard, be it
Red Cross, be it the ANSI Standard that allows employers to flexibility to get things that are recognized to be of value without having to pursue getting a doctor's note to have those items in the first aid. Thank you.

CHAIR THOMAS: Thank you.

Who do we have next, Maya?

MS. MORSI: We do not have anyone else for public hearing. Unless you'd like me to circle back to those that didn't --

CHAIR THOMAS: Okay. Thank you.

Great. We'll go to in-person again, but -- go right ahead, sir.

MR. BLAND: Great. I'll turn it on just in case, is that better? Yeah?

CHAIR THOMAS: Yeah. (Laughter.)

MR. BLAND: You do. Actually this is by purpose of getting up here real quick, so in the Final Statement of Reasons maybe this can be addressed, the reading of the section regarding the physician, my understanding and from the advisory committee all the way back, I think 2006, was that the physician isn't required for adding things. So if you decide you want to add things it's only towards the minimum. So in the Final Statement of Reasons, maybe we can have clarity on that for the rulemaking package if that is in case our understanding is correct from that.
Because it does say the minimum is either a physician or -- I'm not reading from it -- or the table. But that says “minimum,” so I want to ensure that that is what is meant. And so if you want to add 50 more gauze or if you want to have hand sanitizer in there, then all the other physician issues dealing with drugs and some other proprietary items, so I don't think those would fall in. So maybe if you could answer those two questions, which I hope is in our understanding of the advisory committee what was intended by this is you can add -- well, you can't put codeine in there obviously because it's a drug, right, without a physician saying it's okay. Thank you.

CHAIR THOMAS: Thank you.

Do we have any other in-person commenters at this time? Do we have any other online commenters, Maya?

MS. MORSI: We do not.

CHAIR THOMAS: Okay.

MS. MORSI: I think I should just circle back to those that didn't get a chance to speak just in case they may be around.

CHAIR THOMAS: You know, I couldn’t really hear you. What was that?

MS. MORSI: I'm going to circle back to Stephen Knight from Worksafe.

CHAIR THOMAS: Go ahead.
MS. MORSI: Stephen Knight?

CHAIR THOMAS: Stephen, can you hear us?

MS. MORSI: Oh, yeah.

CHAIR THOMAS: Okay.

MS. MORSI: Okay. And then there's also a Dave Smith.

CHAIR THOMAS: Oh you have him on right now, Dave Smith? It probably took so long he decided to come over here instead of waiting online, but I don't know. So we don't have anybody else? Okay. So due to that, there being no other persons coming forward to testify on this matter the public hearing is closed. Written comments will be received until 5:00 p.m. today. So thank you very much.

Okay. Board Members comments, go ahead.

BOARD MEMBER BURGEL: I just wanted to thank DOSH for the language for us to review. I am a little concerned however about the use. I've never read a standard that that had so many references to a physician, like there must have been 50 times the word “physician” is in the standard. And in the 2006 committee hearing, Mary Kochie, who's a very well-respected occupational health nurse that’s been working at DOSH since 1980, brought up the fact that we should use our language of PLHCP, Physician or other Licensed Health Care Professional.

So that's one question I have, Eric, was why
wasn't that language integrated into this current version?

Is that right?

(Indiscernible.)

CHAIR THOMAS: Yeah, you better.

MR. BERG: Yeah, I don't know. Sorry. But if you're officially requesting that, that’ll be in the comments and then we can make that addition in a 15-day change.

BOARD MEMBER BURGEL: Thank you. But that, she mentioned it four or five times, in the 2006 committee hearing. And also Mary Jean Ryan who was the President of the California State Association of Occupational Nurses brought that up also, I think, in the 2006 committee. And Christie Petite (phonetic) I think, was also there. So it's fascinating to me.

And I also want to concur and support the comments made by the construction industry that flexibility should be encouraged. But I certainly recognize that if we're talking about anecdotes to cyanide, which was brought up, certainly physician consultation is appropriate. Pharmacy consultation is appropriate as well. The California Poison Control gets very involved with employers who call the California Poison Control, and that's manned primarily by toxicologists and pharmacists with some occupational physician consultation and pediatricians.
They get involved in the California Poison Control.

So I'm wanting to embrace -- it's kind of interesting, there's was also a comment that said, “Because there was an employer-authorized licensed physician in the California standard that that was better than the current federal standard, a higher level.

And I actually have a totally different viewpoint of that. I think we need to value pluralistic different talents when it comes to -- and I would consult with the pharmacist, a pharmacology colleague probably, before I would call an occupational medicine consultant around a cyanide anecdote.

But I just think that I would appreciate how many times “physician” was mentioned in this --

MR. BERG: Okay.

BOARD MEMBER BURGEL: -- and value the input of the committee hearing participants.

MR. BERG: Yes, sorry. I’m not sure why that language wasn’t included, but we can make that change.

BOARD MEMBER BURGEL: (Overlapping colloquy.)

Thank you. Thank you.

CHAIR THOMAS: You might as well stick around for minute, Eric. Anybody have any other questions? Go ahead.

MR. BERG: Sure.

(Off-mic colloquy.)
BOARD MEMBER CRAWFORD: Absolutely!

MR. BERG: Okay.

BOARD MEMBER CRAWFORD: Eric, can you just give us clarification on this point that has come up by the construction industry and Kevin regarding minimum requirements, and when physician oversight is required?

MR. BERG: Yeah, I think Kevin is right that you can add extra things. But there's certain things that require a doctor, which is like I think drugs, but we can clarify that I think. And if it's not correct we'll take a closer look and then we can make those changes to make it flexible like the ANSI Standard, or whatever.

BOARD MEMBER CRAWFORD: Okay.

MR. BERG: The standards that are out there, yeah. Can you hear me? I’m not sure if --

CHAIR THOMAS: Any other questions? (No audible response.) All right, Eric, you're excused at this time.

MR. BERG: Thank you.

CHAIR THOMAS: This is too complicated. We’ve got to fix this.

All right, So no other comments. There being no other persons coming forward to testify this matter this public hearing is closed. Written comments will be received until 5:00 p.m. today. Thank you very much.

We will now proceed with the business meeting.
The purpose of the business meeting is to allow
the Board to vote on the matters before it, and to receive
briefings from staff regarding the issues listed on the
business meeting agenda. Public comment is not accepted
during the business meeting unless a Member of the Board
specifically requests public input.

The first item is Proposed Safety Orders for
Adoption.

The first one is Title 8: General Industry Safety
Orders Article 10.1, section 3401, section 3402, new
sections 3402.1 - 3402.3, sections 3403 - 3410, new section
3410.1, and section 3411 Fire Fighters’ Personal Protective
Clothing and Equipment - AB 2146, 2014.

Mr. Smith, will you please brief the Board?

MR. SMITH: Chairman Thomas, and Members of the
Board, in 2014 Assembly Bill 2146 added new section 147.4
to the Labor Code regarding the occupational safety of fire
fighters’ personal protective equipment, or PPE. Labor
code section 147.4 required the Department of Industrial
Relations to convene an advisory committee to evaluate if
California safety orders pertaining to firefighter PPE
needed to be updated to align with standards promulgated by
the National Fire Protection Association, or NFPA.

The advisory committee was to present its
findings and recommendations to the Standards Board by July
Consequently, the Board staff initiated the advisory committee process in 2015 with representatives from city, county and state fire departments, manufacturers of personal protective equipment, labor unions, businesses in the fire protection industry, and of course the NFPA.

The committee met three times and concluded the advisory committee process in 2016. And at your June 2016 Board Meeting, Board staff provided a briefing of the advisory committee recommendations that the California firefighter standards needed to be updated. The advisory committee was able to reach consensus on necessity and assisted Board staff in developing a comprehensive proposal.

However, drafting of the supporting rulemaking documents was delayed primarily due to the extensive work needed to determine the cost of the proposal. The delay in the completion of the cost estimates caused the Board to miss the Labor Code section 147.4 deadline of July 1st, 2017, to render a decision regarding the adoption of the changes to Title 8 in order to maintain alignment with the NFPA requirements.

The proposal before you today for your consideration to adopt will meet that final Labor Code section 147.4 deadline by updating Title 8 General Safety
Orders, Article 10.1 Personal Protective Clothing and Equipment. The proposal will remove outdated terminology, design and performance criteria and incorporate by reference the more current NFPA standards regarding PPE for firefighters.

The Board held a public hearing on the proposal in March 2021 and minor modifications were made in response to comments during the public comment period and three additional fifteen-day notice periods in response to some comments about wildland firefighters and further NFPA updates.

Board and Division staff have already invited stakeholders to advisory committees in the next two months to develop follow-up rulemaking proposals on those issues. The Board staff at this time believe the proposal is now ready for the Board’s consideration and adoption.

CHAIR THOMAS: Thank you, Mr. Smith.

Are there any questions from the Board for Mr. Smith? Seeing --

BOARD MEMBER STOCK: I mean, I have a comment about the -- is this the time to provide our comments? It’s not necessarily a specific question.

CHAIR THOMAS: Do you want to comment?

BOARD MEMBER STOCK: Okay, yeah. So I guess I’ll go ahead. We're learning procedures as we go along. So,
yeah, I wanted to just make a couple of comments that I'm glad this is finally in front of us for a vote. That's one comment, it's taken a really long time.

I appreciate that the respiratory protection for wildland firefighting was removed, because that's clearly critical issues. And so I'm glad to hear that that will have special consideration.

And I want to specifically, since I hear that there's going to be advisory committees coming up shortly, I want to encourage an and request that those advisory committees look specifically about incorporating worker involvement language. I think we've seen how important that is in the PSM regulation. It's been great that that's been incorporated into many of the regulations that we've passed since I've been on the Board in other ways, like hotel housekeeping. Even the ETS has some worker engagement language there.

And I think it's really critical that workers and labor have a seat at the table specifically. And most importantly, when there's discussions about potential use of Personal Protection Equipment that is less effective. So I feel like those everybody needs to be at that table, so I want to just particularly request that that is discussed at that advisory committee and incorporate it into a future regulation. Thank you.
CHAIR THOMAS: Thank you, Laura.

Any other comments or questions? Go ahead, Barbara.

BOARD MEMBER BURGEL: I would also echo what Laura just said, specifically when the commenter from the firefighters group wanted and requested to clarify the incident commanders’ responsibility or process, the standard operating procedure by which they would say in the overhaul situation where an SCBA was not needed, and sort of drill down and provide a little bit more granularity. I think that's critical trust issue. And that it echoes Laura’s point and also the commenter’s points earlier around worker involvement. If we could make sure that that happens at the advisory committee, because there's an opportunity to revisit that, specific to the wildland urban interface folks. Thank you.

CHAIR THOMAS: Thank you, Barbara.

Any other comments? Go ahead.

BOARD MEMBER CRAWFORD: I think I missed it, what's the timetable for the advisory committee?

MR. SMITH: There are two. The Division is going to convene an advisory committee on the wildland firefighting respirator issues next month. And then our staff will hold an advisory committee in June on the updates of the NFPA standards. So there will be two
advisory committees coming up shortly. And those emails have already gone out to stakeholders and so the process is already underway.

CHAIR THOMAS: Thank you.

MR. SMITH: Okay.

CHAIR THOMAS: Any other questions, comments?

Hearing none do I have a motion to adopt the revisions as proposed.

BOARD MEMBER HARRISON: So moved.

BOARD MEMBER STOCK: Second.

CHAIR THOMAS: I have a motion. I have a second.

It's been moved and seconded that the Board adopt the revisions as proposed. Ms. Money, will you please call the roll?

MS. MONEY: Ms. Burgel?

BOARD MEMBER BURGEL: Aye.

MS. MONEY: Ms. Crawford?

BOARD MEMBER CRAWFORD: Aye.

MS. MONEY: Mr. Harrison?

BOARD MEMBER HARRISON: Aye.

MS. MONEY: Ms. Kennedy?

BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?
BOARD MEMBER STOCK: Aye.

MS. MONEY: Chairman Thomas?

CHAIR THOMAS: Aye. I don't know what all that was but that was interesting. Anyway the motion passes, thank you.

We'll move on to the next: Proposed Emergency Safety Order for Re-Adoption, Government Code section 11346.1; Executive Order N-23-21. Title 8: General Industry Safety Orders, Chapter 4, subchapter 7, new sections 3205, 3205.1, 3205.2, 3205.3, and 3205.4 COVID-19 Prevention.

Mr. Berg, will you please brief the Board?

MR. BERG: Thank you, Board Chair Thomas and Board Members. Chief Killip will make the brief introduction of the proposal and then I'll go through some of the technical details.

CHAIR THOMAS: Go right ahead.

MR. KILLIP: Thank you, Eric.

Yeah. My name is Jeff Killip, and I am thrilled and humbled to be in this capacity today, serving the people of the State of California. And it’s really amazing to be here, especially after two years of the pandemic that we've been talking about. We were sent home at Washington State DOSH in mid-March of 2020. And I got this calendar that I got at the Baseball Hall of Fame in Cooperstown that
you can kind of change manually, kind of like a scoreboard at Fenway. So I predicted, “Okay. We’re going to be back in eight weeks.” So the calendar said something like May 20th or something of 2020. And what, I was way off as we know. Anyway, it's great to be here.

Well thank you Board Chair Thomas, all Board Members for considering the third readoption of the COVID-19 ETS. It's important for worker protections to remain in place as the COVID-19 pandemic continues and the new variants emerge and subvariants, such as Omicron and BA.2, BA.2.12, and BA.2.12.1. Although cases have been reduced from their peak in January there's still over 2,500 cases and about 20 deaths a day. And we know from past experience that we’re likely to see future surges in COVID-19 and possibly new variants. So we must not let workers go unprotected.

COVID-19 transmission in the workplace is a major concern because workers and others can be together indoors in close proximity for long periods of time. We’ve talked about this before. And this means much higher potential exposures for certain workers than the general public.

For airborne diseases such as COVID-19 certain workplaces represent some of the highest risk settings in California. Most workers do not have the option other than being at work in order of feed and house their families.
Workers must continue to be at the workplace even if it means risking serious health dangers such as getting COVID-19 infections. Workers should not bear all the costs for doing what is needed to prevent the spread of infection in the workplace, including staying at home, getting tests and receiving necessary treatments. Workers have a right to protection in the workplace and the ETS provides these protections against one of the greatest workplace hazards we've seen since the establishment of Cal/OSHA nearly fifty years ago.

So we appreciate all the energy that's going into consideration of this important proposal. And thank you Chair Thomas and the Members of the Board and everyone else that's here today. I'll hand it back over to Eric Berg.

CHAIR THOMAS: Thank you.

Eric, go ahead.

MR. BERG: Oh, okay. I’ll go through some of the details of the proposal. The majority of the proposed revisions for this third readoption are consistent with the latest science and CDPH recommendations, or the California Department of Public Health I should say.

In addition, the third readoption allows for more flexibility if there are updates from CDPH in the future.

Different requirements for vaccinated and unvaccinated employees were removed in this revision.
consistent with CDPH.

The original ETS took effect November 2020 and was readopted with changes in June 2021 and then January 2022.

Like the current proposed changes the previous changes were made in response to the latest science and recommendations from the California Department of Public Health.

Since the original ETS we have moved away from the use of barriers, partitions and 6 feet of physical distancing since we know that COVID-19 is an airborne disease that can be spread much farther than 6 feet and can spread around barriers and partitions. It moved towards more effective strategies, such as improving outside air supply, ventilation, and improved air filtration.

Some requirements such as face coverings have been relaxed.

Protections during outbreaks have been improved to concentrate efforts where the risks are the greatest.

So some of the important revisions include changes to definitions. So we have “close contact,” and “infectious period.” Those definitions are pretty much the same, but we added a phrase saying that the CDPH and Department of Public Health changes their definitions in a regulation order then that definition will replace what's
in the ETS. That's for added flexibility in case there are changes from CDPH.

And the definition of “COVID-19 test” was simplified to make it easier to use self-administered and self-read tests. Previously like a video of the test being done was needed or someone to observe it remotely or in-person and that will no longer be necessary. The update will just require a daytime stamped photo of the test result, so much simpler for that.

The definition of “fully vaccinated” has been deleted from this proposal as the term “fully vaccinated” is no longer in use.

Everyone gets the same protections regardless of vaccination status in this proposal.

Face coverings, previously subsections (c)6)(A), which required face coverings for all unvaccinated people indoors, that's been deleted. So now it says, “face coverings required where CDPH requires face coverings by a CDPH order.” So right now CDPH orders requires face coverings in emergency shelters cooling and heating centers, healthcare settings, correctional facilities, detention centers, homeless shelters, long-term care settings, and adult and senior care facilities. So that's what CDPH right now mandates face coverings, and so the ETS copies that and is the same as that.
The next part was cleaning and disinfecting.

That has been deleted from the proposal, it is no longer in there, because we learned more about the mode of transmission of COVID.

Personal protective equipment, previously respirators had been provided for voluntary use or unvaccinated people that request them. Now it's any employee, it doesn't matter on their vaccination status. So any employee can request a respirator to use voluntarily at the workplace.

And similarly, testing of symptomatic employees. Before that testing only had to be offered to unvaccinated employees. Now that testing is to be offered to any employee with symptoms.

Next is exclusion of employees who had close contact. So before we had a detailed, prescriptive requirement that was quite lengthy and complex. And it's been much simplified and now the employers must review the CDPH guidelines on close contacts and then implement policies and procedures that effectively prevent transmission in the workplace. So this allows for greater flexibility when CDPH changes their guidelines.

Next is an exclusion of employees who are positive for COVID-19 or COVID-19 cases. They have been updated to reflect the latest CDPH guidelines from April.
So regardless of vaccination status, positive employees can return work after five days if the employee has a negative test and symptoms are improving. And then they can work and wear a face covering for an additional five days.

And our FAQs will have -- and I think we've already posted them, I'm not sure -- but will have details on what CDPH requires and what's in the ETS.

Next, we have outbreaks. We added a section on additional testing for close contacts must be tested negative or we consider the case, and the case would be during outbreaks. And we've had this on our FAQs for a long time. But the Department of Fair Employment and Housing does say that employers can mandate employees take the test. So this is under the Department of Fair Employment and Housing Law and Regulation. So it's not specifically stated in this regulation, because it's another agency's position or jurisdiction. But employers may require employees to take a test if it's job-related or a job necessity. So we've had that in our FAQs for a long time. I know people mentioned it here, but it's something we addressed a long time ago.

And next in outbreaks, employers no longer need to consider the use of barriers or partitions. So every reference to barriers and partitions has been deleted.

Next, we have major outbreaks. We have
additional testing as well on major outbreaks where all employees in the exposed group must test negative or be assumed to be a case and excluded as the case would be expected. And again, the partitions and barriers have been deleted for major outbreaks.

And then we have employer or COVID-19 prevention employer-provided housing. The exceptions regarding fully vaccinated have been deleted. So all residents get the same protections regardless of vaccination status.

And now the clean and disinfecting requirements have been deleted.

And then the last thing is the employer-provided transportation. An exception regarding fully vaccinated employees has been deleted. Mandatory face coverings for everyone in vehicles has been deleted. It currently says to review CDPH guidelines and then implement measures that prevent transmission in accordance with those guidelines.

And then also employers must train employees on the CDPH and local health department guidelines.

And again, the cleaning and disinfecting requirements in that transportation section were also deleted, just like they were deleted in other parts of the proposal.

So that's it for my briefing. Thanks. Okay, I'll stay here.
CHAIR THOMAS: Thank you, Eric.

Are there any questions for Mr. Berg?

BOARD MEMBER BURGEL: In regards to the COVID test, I couldn't find a definition that that's referencing, an antigen test. Is that in the Frequently Asked Questions?

MR. BERG: I think so, yeah, because we say any FDA-approved or any FDA --

BOARD MEMBER BURGEL: Yeah, I couldn't --

MR. BERG: -- test with the EUA.

BOARD MEMBER BURGEL: Yeah. I couldn't find it in the definition, so maybe I'm missing it. I'm searching for it.

MR. BERG: Oh well, let me look at it. COVID tests --

(Overlapping colloquy.)

BOARD MEMBER BURGEL: -- what it's referencing, because, of course, when the return -- I like the "return cases" definition and then the clarification.

MR. BERG: So on Page 2 of mine it says, “COVID Test.” It says, “cleared, approved or authorized, including Emergency Use Authorization by the United States Food and Drug Administration.”

BOARD MEMBER BURGEL: Ah, I see. Okay. So it doesn't specifically say that could be a PCR or an antigen
MR. BERG: Yes. Anything that's got a FDA EUA, which delineates emergency.

BOARD MEMBER BURGEL: So that would be crazy if someone after testing positive five days later took a PCR, because it would most likely be positive. They would only be able to take a rapid antigen test that would show negative.

MR. BERG: Yeah, CDPH recommends the antigen test as it's less sensitive. And so if someone has a low viral load and is not in infectious the antigen test doesn’t pick it up, whereas the PCR test would pick it up.

BOARD MEMBER BURGEL: Yes, exactly.

MR. BERG: So that antigen test is better for infectivity.

BOARD MEMBER BURGEL: Of course, yeah.

MR. BERG: And it's fast, you get it right away.

BOARD MEMBER BURGEL: Yeah, right.

MR. BERG: So it has a couple of advantages in it.

BOARD MEMBER BURGEL: Great. Thank you.

CHAIR THOMAS: Thank you. Next.

BOARD MEMBER LASZCZ-DAVIS: Can you hear me?

MR. BERG: Yes.

BOARD MEMBER LASZCZ-DAVIS: Okay, great. As I
read through the regulation, the proposal, I kept on asking myself, “What if we truncated the ETS and didn't vote it to move forward till December?” And the response was pretty simple, we wouldn't have any guidelines. I mean, you could argue that both ways, but we wouldn't have any guidelines on the books. So it makes practical sense to go ahead and readopt it. I'm not speaking for anybody else, but if you just look at it practically.

The concern that I have just moving forward is that this regulation in its present form, as much of an upgrade as it is from where we started and there been some incredibly good changes to it, I would hate to see this be a permanent regulation. And if you go back historically within Cal/OSHA as to emergency regs that eventually became a permanent regs, they're often one and the same. So I think there needs to be great care taken in having the right advisory committee process to ensure that we're clear about what we're going to do in the permanent regulation. Is it an infectious disease regulation? Is it going to be a pandemic regulation? Is there going to be greater reliance on that IIPP?

My big concern is let's not make this the permanent regulation, simply, because there have been several years’ worth of work put behind it. Because we keep on hearing while it's got -- while we've embraced
upgrades it's too long, it's not understandable, there is confusion. But it's just something to consider as we move forward.

I heard a recommendation today that I've -- and I forget who made it, but I thought it was excellent. I know right now we have advisory committee process hearings that are either held by the Division or the Standards Board staff. Why can't we moving forward on the permanent regulation consider a joint -- I mean, assuming that we have the bandwidth -- a joint Standards Board staff and Division staff advisory committee meeting? It might get the regulated community more involved in the decision-making on a permanent regulation.

And the only other thing you didn't say much about the paid leave. And I'm not suggesting it be eliminated by any stretch, but I know there are other infrastructure ways to deal with paid leave. And I wonder whether or not they've been explored that would allow the employer to leverage options that already exist within their organizational infrastructures. I don't know whether or not that becomes part of a regulation, but for the regulated community it's something to consider. And it's something to consider for the proposal too in terms of leveraging what else exists.

So that's it. So thank you.
CHAIR THOMAS: Thank you.

Go ahead, Laura.

BOARD MEMBER STOCK: Yeah, thank you. And thank you for your comments too, Chris.

So a couple of things, I want to first of all thank Eric, you, and I want to thank Chief Killip for your introductory remarks, which I agree with 100 percent. And I appreciate your support and acknowledgment of the importance of moving forward.

And Eric, I think the team there has done an amazing job of sort of threading the needle and trying to be responsive and then build in flexibility but maintain protection. So want to thank you for all your hard work.

I mean, I think there's a lot of really positive improvements. I also continue to feel like that we wish it is over. It’s not, the pandemic is still going on. And I hope that we will vote this through and continue to be a state that acknowledges that and preserves protections for workers even as things are being rolled back.

I am concerned a little bit about -- I mean, there's a lot of talk about CDPH guidelines. And I do just feel like it's important to say, as numbers of people have said, our mission is to look at the workplace and to protect workers. That is not the primary mission of CDPH and therefore they are not analogous, and they don't take
the same kind of attention. And I'm concerned. I understand the reason for deferring to CDPH guidelines in the case of close contacts, but I'm concerned about the fact that we're not blocking off that root of transmission. And I'm glad to see that at least in outbreak circumstances, there's stronger protections and stronger requirements for people who are exposed.

Similarly in transportation. In ag settings it refers to CDPH guidelines. But again, there are places where people are in enclosed spaces, and I don't feel like CDPH guidelines are going far enough. And we're seeing that in many places across the country, that rolling back mask mandates in airplanes, in other places. And I think that there needs -- I've appreciated the Board has been able to go further.

So I know when I was looking at the -- this is a question that I have for you -- that the CDPH guidelines about close contact, which is now being referred to, and correct me if I'm wrong, but I saw there that it does say that if somebody has been exposed it doesn't recommend exclusion. I saw that that is true, but it does recommend -- and I guess, again, the keyword is “recommend” that people who have close contact wear masks.

And so that's an example of where it seems to me that the practical and the most protective thing to do
would be that if a close contact is not going to be excluded that people be wearing masks. And so I'm just wondering about your comments on that and whether there is an ability to clarify that in the FAQ.

And it's a similar issue now with transportation, which now some of the rules are being rolled back around transportation by CDPH. Again, not because they're looking at people in the workplace who, as many people had pointed out, have no choice but to be there. So now we are relying on an agency where that the protections for workers are being rolled back. So do you have any comments on whether that's something that can be addressed in this, in the FAQ?

MR. BERG: Yeah. We've been working on the FAQs and then anticipation of this. And plus with the changes that CDPH did April 6th to the isolation and quarantine guidance, which automatically prevails over the ETS because of an executive order, so we've been working on those. We've submitted those, hopefully those be posted soon.

But we also have been working on FAQs for this third readoption including “isolation” and “quarantine” in the definitions. So like the definition of “close contact,” our regulation says 6 feet, which at CDPH says it should be much broader, it should be the indoor air space. But their definition will not prevail over all of ours or ETS unless they put it in a regulation or order.
But right now they haven't put it in a regulation or order, so the definition in the ETS would still stay until they do that.

BOARD MEMBER STOCK: Yeah. It just reinforces the difference and the important role that the Division and the Board plays to really be able to have the most effective regulations for workers, and that's the mission that we have here. So that's a concern that I have.

So I think I'll stop there. I had one other point which I don't remember, but to give others a chance to --.

CHAIR THOMAS: Sure.

And any other comments from Board Members?

BOARD MEMBER CRAWFORD: I just want to make an exclamation point on this comment that one of the stakeholders made earlier, and that is about the public confusion related to executive orders and the FAQs. We depend on these things to be, and assume that they're clear, and they're not.

It is a hard way to regulate when your entity doesn't understand what they’re supposed to do. I don't think that we've served our workers well when everyone is confused on what they're supposed to do. And so it's just kind of a general comment. I'm completely supportive of worker safety and being protective of our employees. But
when they are confused, employers are confused, you have
not achieved the goal.

So I just need to say that even though it's not a
popular opinion.

MR. BERG: Yes, this latest version is -- I mean
the ETS -- I mean the executive orders wouldn’t change
anything that's in the current version, because we've
already made all the changes. So it is already consistent
with CDPH, so they won't have to go back and forth, such as
isolation and quarantine. Where for close contacts it
basically refers to CDPH, so the executive order won’t ever
have to interfere with that again. But employers will be
directed to look at CDPH guidance, which it'd be nice to
have the actual requirements in the regulation itself, so
you don't have to jump to different documents. But that's
given the circumstances that’s the best that can be done.

CHAIR THOMAS: All right, any other --

BOARD MEMBER STOCK: I just had one last comment.

I just wanted to comment on the whole discussion of input
from the regulated community and from workers. I actually
feel like in the course of the two years, we -- I want to
just thank the Board and the Division for doing as much as
they can to allow public to participate. And I just want
to remind that some of us were part of the subcommittee
that was set up specifically to allow more input.
And I want to say in particular on the subject of whether the IIPP was a better approach than the ETS. That was extensively discussed in that subcommittee and there were presentations from many different entities that led to certain conclusions. As a result we continued to pass that adoption that we had, our last adoption. So I just want to underline that there was a lot of discussion about a lot of these issues and so I want to thank the staff for making that happen.

And I also want to acknowledge that it is frustrating when we get drafts to see so late in the process that there is not really the opportunity to be able to comment, either from the Board or from others. And so I do think going forward, looking at that system to try to see what we can do, what are the reasons that it takes so long to get drafts to come forward. How can we be sure that they are provided for review, at least in time for there to be a meeting and a discussion prior to a vote. I think if we can look at changes in the system that facilitate more input and from Board Members and others, I think that's positive.

And I do think we are going to have this opportunity going forward with developing a new infectious disease standard. As well as considering changes as you're mentioning, Chris, in what might be a permanent COVID reg.
So I just want to kind of support the idea that the more that we can see drafts sooner, the greater all of us will have an opportunity to participate.

CHAIR THOMAS: Christina?

MS. SHUPE: With the Chair’s leave, Laura, I just want to put a fine point on what you just asked for. And that what we're talking about right now is an emergency regulation, which is very different from our regular regulations.

A lot of times there's a desire from the public, from the government itself, to move these regulations forward very, very quickly to meet the immediate hazard and need and to protect workers. And when we do something like that, there is a tradeoff. There's a tradeoff in the public input, there is a tradeoff in the ability to participate and review. And so what you've experienced, what we've all experienced, over the last two years is in an emergency regulation period. We don't have the same sort of timeframes to provide the back and forth, to really dig into matters, to be able to provide language far in advance that can then be commented on and changed.

And so I want to really be clear to everybody that these are unique situations for an emergency regulation.

When we are talking about our regular
regulations, though, when we're talking about something like firefighter PPE, when we're talking about lead regulations, or indoor heat, those will be going through the regular rulemaking process. You will see that language ahead of time. There will be plenty any of time to review it, and to comment, and make changes and incorporate them.

And the proposal that the Division is working on that we expect will come to the Board for an adoption in December, we will look to see that language as quickly as possible. There will be a public hearing no later than November. But it's a continuation of this emergency process. So we hear you. We want to be able to incorporate all of that, but I also want to just put a fine point on that for everybody, the difference between emergency regulations and our regular regulations.

CHAIR THOMAS: Great.

BOARD MEMBER STOCK: Thank you, Christina. I understand your points and appreciate that. And to that end I feel like there's been actually a lot of effort trying to provide opportunities for input, which I appreciate.

CHAIR THOMAS: Barbara?

BOARD MEMBER BURGEL: I just wanted to thank again Eric, and certainly the Division staff. I do plan to vote for the extension of the ETS today.
I actually love the ventilation focus of this standard. I’ve said that at prior meetings, I think it's critically important and I think that level of detail is not possible using the IIPP process.

I also wanted just to respond to Bruce, I think it was Bruce Wick’s comments, about the whole issue of removal of vaccinations in the standard. Initially, I was a little -- I understand fully why you did that. Certainly vaccination remains very important. I think employers play a critical role in encouraging and making, providing support for their employees to become vaccinated. We still are sitting and hovering around 85 percent who are fully vaccinated in California. I think we need get -- and in certain counties that's much lower. I’m surprised to see Imperial County. Imperial County has the highest in Calif -- 95, 96 percent.

CHAIR THOMAS: There's only three people.

BOARD MEMBER BURGEL: Oh, yeah. (Laughter.) That's probably true, followed by Marin County in the vaccinations in the state of California.

But I do think that messaging, “Why was the vaccination removed from the standard?” It certainly plays into the close contacts. And if you are able to come back to work, I mean, unvaccinated individuals who have close contacts who have to stay home and test. And so there's
various decision points that's based on symptoms and vaccination status, how long you have to quarantine, or if at all after a close contact to an employee, that has Covid and was at the workplace during their infectious period. But I think it's really important for us to message that. And I think that employers, and vaccination remains important. I think that's (indiscernible).

MR. BERG: Thank you.

CHAIR THOMAS: Yeah, I was just going to make a couple comments. I'm voting for this to extend it. And I don't want the employers to take this the wrong way. I understand a lot of your concerns. But I think that Mr. Berg, you and your staff have done a really good job of clarifying and cutting the clutter out of a lot of this. And it could be good, could be bad. I mean, I don't think we're done with this yet. I'd like to think that we are, but I've been here too many times before when we get right to the edge. And I know there's going to be a surge in a week or so. I mean, I was in church like a good Baptist and on Easter so --

But I think this is the best, I don't want to say remedy, but the best protection we have. And I understand this. But I'm not like the regular person. I've been involved in this since March of 2020 when this first happened and we were setting up along with employers,
trying to put this together so that since we were essential workers, are people going to work? And we wanted to provide the best protection for our particular employees. But our charge up here is for every employee in California to have that same kind of protection.

And I know it's burdensome, nobody likes to be regulated. Employers are -- I love employers and they put our people who work, they put my people to work, Dave's (phonetic), all of our people. They work because we have employers that are willing to take a chance. And most of the time they're well-rewarded for that. But to those who receive much, much is expected. And I think employers have to take that burden on themselves when these things happen, where we have a pandemic.

And it really is a matter of life and death. And I don't think this whole pandemic -- until something happens to someone that is close to you, it's hard to realize how severe it is. I mean, my next-door neighbor who we knew for just a short period of time, the whole time we knew her we knew she had cancer. And she went to the hospital to have some treatments done and she got COVID, she died. She survived two years and probably would have survived a lot longer with the cancer treatment she was receiving, but that one time that she went -- So it's affected me differently.
But I think everybody now knows somebody who has been through this, many people who have gotten it and survived. But the unfortunate ones -- and we don't know who we are, we don't know who the unfortunate ones are going to be -- that can't fight this. They may not be able to survive.

And we're approaching a million. I think we're gonna get there. I think we're going to go past that. But I think what we've done in California, the numbers that we look at, the amount of fatalities are less than what was expected for this population only because employers, employees, unions. You know, we banded together to put this whole thing together, so that we can make a living for our family and support our loved ones. And my opinion is at this point, this is the way we have to go. I don't think this is going to be the permanent one. It won't be, it shouldn't be. But for what we're dealing with right now I think this is what we have to do.

Thank you. Any other comments? All right, then I'll ask for a motion to adopt the revision.

BOARD MEMBER STOCK: So moved.
CHAIR THOMAS: Do I have a second?
BOARD MEMBER LASZCZ-DAVIS: Second.
CHAIR THOMAS: I have a motion and a second. Is there anything else on the question? Hearing none, Ms.
Money, will you please call the roll?

MS. MONEY:  So the motion was made by Laura Stock. And second was Chris Laszcz-Davis. Is that correct?

CHAIR THOMAS:  Yeah.

MS. MONEY:  Ms. Burgel?

BOARD MEMBER BURGEL:  Aye.

MS. MONEY:  Ms. Crawford?

BOARD MEMBER CRAWFORD:  No.

MS. MONEY:  Mr. Harrison?

BOARD MEMBER HARRISON:  Aye.

MS. MONEY:  Ms. Kennedy?

BOARD MEMBER KENNEDY:  Aye.

MS. MONEY:  Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS:  Aye.

MS. MONEY:  Ms. Stock?

BOARD MEMBER STOCK:  Aye.

MS. MONEY:  Chairman Thomas?

CHAIR THOMAS:  Aye. And the motion passes.

Thank you very much Board. This isn't an easy one. This is a hard one. But I do appreciate, and I know everybody up here voted their conscience, and I have no problem with any of it.

So we’ll move on. Proposed Petition Decisions for Adoption, Greg McClelland, Petition File No. 594.

Petitioner requests to amend Title 8, General Industry
Safety Orders, section 3203(a) to include procedures to implement applicable, published California Department of Public Health, CDPH, guidelines following a declaration of a state of emergency and an executive order directing CDPH to publish workplace guidance to mitigate “aerosol transmissible pathogens” spread in the workplace.

Ms. Shupe, will you please brief the Board?

MS. SHUPE: Thank you, Chair Thomas.

As you noted, Petition 594 was filed by Greg McClelland, Executive Director for the Western Steel Council in November of 2021. The petition requests amendment to Title 8, General Industry Safety Orders, section 3203(a) the IIPP Standard, to include procedures to implement applicable published California Department of Public Health guidelines following a declaration of a state of emergency and an executive order directing CDPH to publish workplace guidance to mitigate aerosol transmissible pathogen spread in the workplace.

The Division and Board staff have both submitted evaluations for the proposal, which are in your Board packets and also available online on our website.

Both are in agreement that Petition 594 should be denied, and I'll be quoting some from the proposed decision here: “As noted by Cal/OSHA CDPH recommendations are generally directed to the public and do not always address
occupational hazards. As such, they do not provide employers with needed specific occupational health guidance.”

Cal/OSHA also recommends against modifying section 3203 from a general performance standard to address specific hazards to prevent diluting the intent of the IIPP and its role in our occupational safety and health scheme in California.

Board staff notes that instead of modifying section 3203 to address a future pandemic Petitioner and supporters should seek to participate in the advisory committee that will be convened as a result of the Board's decision on Petition 583, which requested Cal/OSHA to consider the need for permanent infectious disease standard for employers not covered by section 5199.

For these reasons, the proposed decision before you recommends denial and the decision is now ready for your consideration and vote.

CHAIR THOMAS: Thank you, Ms. Shupe.

Are there any questions for Ms. Shupe?

Go ahead (indiscernible).

BOARD MEMBER LASZCZ-DAVIS: Just real quickly, Chris, and I'm not sure I understand. Is there any reason why this wasn't sent -- and you've read the recommendation a couple of times today -- was there any reason why this
particular process or the request wasn't held? Wasn't sent
to an advisory committee for deliberation versus staff
reviewing it and rendering an opinion?

MS. SHUPE: So you'll note that the denial was
recommended by both the Division and Board staff. And part
of the reasoning there is that this Board has jurisdiction
over occupational safety and health matters. And the
petition specifically suggests that you should abdicate
that role and concede it to CDPH. That is not a position
that either Cal/OSHA or Board staff recommended that this
Board take.

CHAIR THOMAS: Did you have a question, Kate? Go
ahead. (Indiscernible.) While she's working on it does
anybody else have a question or a comment?

BOARD MEMBER HARRISON: So I'd just like to make
a comment. I love the fact that the ETS, which was adopted
was a streamlined version.

And I looked at 594 and I actually talked to a
couple of folks that worked on that and I love the idea of
a streamlined version. However, I do respect what Ms.
Shupe just said that delegating our authority to another
body, I can't support. I do love the idea of the
streamlining and really trying to focus on the regulation
and how the regulated community reacts to the pandemic.
But I just wanted to say that. Yeah, I love the
streamlined idea. I just can't support it today.

BOARD MEMBER STOCK: And I just wanted to --

CHAIR THOMAS: Go ahead.

BOARD MEMBER STOCK: I think when I read the decision, the idea of discussing the issues that were raised is sort of the main concern that people are saying, “Why are we not having an advisory committee so who we can fully discuss it?” And so first I just want to feel like we -- you know, the issue of the IIPP and the role of the IIPP has been thoroughly discussed.

And I also think I read in the decision, which I'm not looking at right at the moment, there is going to be advisory committees set up for the infectious disease regulation. So there is an opportunity there to look at all of the creative ideas that people have, to look at making it clearer and more understandable for the regulated public, and more protective of workers. So I don't see this is cutting off discussion. I see this is as channeling discussions into the appropriate mechanism, which an advisory activity that’s specifically set up by the Board and the Division that recognizes our authority to regulate in this area. So I just want to highlight that there will be discussion. That's not being cut off.

BOARD MEMBER CRAWFORD: I love discussion. I love the fact that this petition allowed for a different
framework, an alternate approach. That was part of the
great, intrinsic value of it.

I think that it merits its own advisory
committee. I think that there is another way to do it.
And so I (indiscernible) conversation as well.

CHAIR THOMAS: Yeah. I was going to say I agree
with -- and I didn't really get to that in my comments
regarding the ETS -- but I agree with Chris that we need to
have a joint advisory committee on issues that are
particularly argumentative. I mean, there's no doubt in my
mind that that's necessary. And I've heard it from you
guys, and I agree. Because the Division does it one way,
the Board does it another way, but it really merits an
airing out of issues. And not just hearing something and
writing it down. I really think the give-and-take is it
gets you to a better place in the end.

And not necessarily -- not for this. But I think
when we when we get to a permanent -- if we get to a
permanent order that may come it won't be this year, it
won't be next year. It's going to take a while to do that.
And it may not be for a pandemic, it may be for just
infectious disease in general, which is I think probably
where we're at.

But for purposes of this, I just don't agree.

And the CDPH, or the California Department of Public Health
-- whatever that is, yeah -- they're not given the
authority to regulate the health of employees in the
workplace, we are. That's our job. And I think with some
of the limits that we have, we've done a very good job.
And not that anything's perfect here, but the very good
should not be the -- how do you say that? Whatever is
perfect, right? Or the other way around, whichever way
that is.

So that's my comment. Does anybody else have any
comments? Go ahead.

BOARD MEMBER KENNEDY: I really found Petition
594 refreshing. I sort of wanted to thank the Petitioners
for submitting it because one of the things I've always
said is, "Let's look for other solutions, other options.
Let's try to find an elegant way to approach the problem."
And so I felt that it was an effort to say, "Hey, this is
another way."

(Audio cutting out throughout discussion.)

I understand the worries about ceding our
authority (indiscernible) another environment. But I still
really want advisory processes. We've moved definitely
(indiscernible) to include the use of a more performance-
based to creating a standard. And I just think it has
value. That's it.

CHAIR THOMAS: Oh go ahead, Chris.
BOARD MEMBER LASZCZ-DAVIS: We're on a roll now.
Yeah, the way I viewed the petition -- and actually I'd
have agree with Nola, I thought it was refreshing for all
kinds of reasons. It's going to be a tough one to support
today. But what I will say is that I don't perceive that
petition as is, truly is an effort to have one organization
take over another's role, scope, and authority. What I
really saw was perhaps a cry for help or a cry for a
hearing, the fact that we needed closer alliances and
discussions amongst the key federal -- the key state
agencies that we have. That's not always been evident, but
we probably had more on this issue than I've ever seen.
And if that petition did nothing more than accomplish that
it's been successful.
CHAIR THOMAS: I agree, Chris, because I think a
lot of the streamlining of the ETS was due to that
particular petition and some of the language that was in
there. That I think we try very hard to be agile when it's
very hard to be agile with any kind of a standard or
temporary standard, it's hard. But I think, Eric, you did
a good job with threading the needle on it. But I think
probably this helped that quite a bit.
Any other comments? All right then I will
entertain a motion to adopt the petition decision, which is
to deny. Do I have a motion?
BOARD MEMBER BURGEL: So moved.

BOARD MEMBER STOCK: Second.

CHAIR THOMAS: I have a motion and second. Is there any other further discussion?

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

MS. MONEY: So the motion was made by Barbara Burgel. And second was made by Laura Stock, correct?

CHAIR THOMAS: Correct.

BOARD MEMBER STOCK: If we want to agree to vote to deny, I mean what's the vote? I just want to clarify the vote if you --.

MS. SHUPE: My understanding is that you’re voting to adopt the proposed decision as presented.

BOARD MEMBER STOCK: Okay. So if we agree with the proposed decision our vote would be --

CHAIR THOMAS: To deny the “aye.”

(Overlapping colloquy.)

BOARD MEMBER STOCK: Got it. Okay, thank you for that clarification.

CHAIR THOMAS: That just screwed everything up, because now you --

BOARD MEMBER KENNEDY: Thank you, Laura.

No, go ahead. Go ahead, Ms. Money.

MS. MONEY: Ms. Burgel?
BOARD MEMBER BURGEL: Aye.

MS. MONEY: Ms. Crawford?

BOARD MEMBER CRAWFORD: Aye.

MS. MONEY: Mr. Harrison?

BOARD MEMBER HARRISON: Aye.

MS. MONEY: Ms. Kennedy?

BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?

BOARD MEMBER STOCK: Aye.

MS. MONEY: Chairman Thomas?

CHAIR THOMAS: Aye. And the motion passes.

We’ll now proceed to Variance Decisions for Adoption as listed in the Consent Calendar. Ms. Gonzalez, will you please brief the Board?

MS. GONZALES: Thank you, Chair Thomas. And it's nice to see all the Board Members in person today. This is my first public meeting in person, so I’m happy to be here. Thank you.

Today we have proposed decisions, 1. through 40., ready for your consideration and proposed adoption.

I’d just like to point out to you that proposed decision 40 has two typographical corrections on page 6 and 7, D2 and D6 should read “4.7 bar”, not 4.8. And then
deletion of the words “Revision Two” on page 10, which is D38. So with those amendments.

CHAIR THOMAS: Thank you.

Do I have a motion to adopt the Consent Calendar with those amendments?

BOARD MEMBER BURGEL: So moved.


CHAIR THOMAS: I have a motion and a second. Is there anything on the question? Hearing none, Ms. Money, will you please call the roll?

MS. MONEY: I have a motion from Barbara Burgel and a second from Chris Laszcz-Davis. Is that correct?

CHAIR THOMAS: Correct.

MS. MONEY: Okay. Ms. Burgel?

BOARD MEMBER BURGEL: Aye.

MS. MONEY: Ms. Crawford?

BOARD MEMBER CRAWFORD: Aye.

MS. MONEY: Mr. Harrison?

BOARD MEMBER HARRISON: Aye.

MS. MONEY: Ms. Kennedy?

BOARD MEMBER KENNEDY: Aye.

MS. MONEY: Ms. Laszcz-Davis?

BOARD MEMBER LASZCZ-DAVIS: Aye.

MS. MONEY: Ms. Stock?

BOARD MEMBER STOCK: Aye.
MS. MONEY: Chairman Thomas?

CHAIR THOMAS: Aye. The motion passes.

So we have the Division Update. Mr. Berg, will you please brief the Board?

And before Eric briefs the Board, I just want to give a shout-out to the media crew back here. I think they did a great job for the first time we've ever tried this.

MR. KILLIP: Great job, guys. Thank you.

MR. BERG: All right, thank you. Steve Smith mentioned this already, so I’ll be brief.

DOSH, or Cal/OSHA is going to do an advisory committee for firefighters deployed to wildland fires and wildland urban interface, respiratory protection specifically. California is again anticipating a serious wildfire season and many thousands of wildland firefighters will be deployed in incidents without respiratory protection. At these incidents firefighters involved in rescues, evacuation, structural protection, cutting fire lines and other work, all of which exposes them to high levels of toxic combustion products for many days on end and many hours per day.

The use of self-contained breathing apparatus, which is a tank carried on the firefighter’s back, cannot be used in these incidents, because SCBA tanks only lasts for about 30 minutes or maybe 45 at the max. Whereas
wildland firefighting shifts can last 12 hours or sometimes 24 hours. And this equipment is also very heavy and impractical in wildland fire conditions.

The toxicity of these large fires is made much worse by burning structures and vehicles and the contents of those structures and vehicles, which occur in the wildland urban interface making the need for respiratory protection urgent.

In the absence respiratory protection firefighters currently resort to the use of a bandanas over their mouth and nose, which of course is completely ineffective and useless, that they have no protection.

At the request of stakeholders the wildland respiratory protection elements remove from the current PPE proposal, which you voted on today. And the Standards Board staff and Cal/OSHA staff agree to move these elements and other rulemaking matters that pertain to firefighter respiratory protection, to Cal/OSHA’s Research and Standards Health Unit.

Labor Code section 147.1(c) requires Cal/OSHA to determine the necessity for occupational health standards and develop and present proposed occupational health standards to the Standards Board. Cal/OSHA is moving ahead very quickly with expedited rulemaking on respiratory protection for wildland firefighting, again, with the
advisory committee set for May 25th.
Committee meeting members will consist of experts from NIOSH, CALFIRE, the International Association of Firefighters, California Professional Firefighters, the L.A. County Fire Department, several other fire departments, frontline firefighters and officers, and other state agencies such as the Occupational Health Branch, the California Department of Public Health, UCSF.

And then we also have it on the agenda to specifically look at, I guess, worker involvement in decision-making. But something we definitely have a top priority as well as the priority, top priority for the safety and health of firefighters.

And this will be the first type of in the regulation in the nation. So we'll keep you up to date on development then. That's it for the DOSH Update.

CHAIR THOMAS: Any questions for Mr. Berg?

MR. BERG: Yeah. For wildland firefighters’ protection or firefighters deployed to wildland fires and wildland urban interface respiratory protection for those firefighters.

CHAIR THOMAS: Any others? Thank you, Eric.

Hello?

BOARD MEMBER KENNEDY: Sorry, I have a question. Sorry, Eric, I just wanted to ask if DOSH has started
MR. BERG: Yeah. We have worked on language, specific language and I've been working with the Occupational Health Branch, the California Department of Public Health, and also with the Cal/OSHA Medical Unit, the doctors, nurses and other healthcare professionals in the Cal/OSHA Medical Unit. So all those agencies have been involved in providing input and changes to the language. So we're working on that language now with these other groups.

BOARD MEMBER KENNEDY: And that (indiscernible).

MR. BERG: Yeah, I don't know. I'd have to get back to you on that. I'll have to consult.

BOARD MEMBER STOCK: If I may?

CHAIR THOMAS: Go ahead.

BOARD MEMBER STOCK: To a follow-up on Nola’s comment, maybe next month, if it's possible at our next Board Meeting, if there's any more information you can provide on the steps and whether there's advisory committees, etcetera towards that goal of the infectious disease regulation that would be great to --

MR. BERG: Okay. Sure.

BOARD MEMBER STOCK: -- have a report on that.

Thank you.
CHAIR THOMAS: One more. Go ahead, Barbara.

BOARD MEMBER STOCK: I just (indiscernible).

MR. BERG: Yeah. The Standards Board staff gave us back all their comments and we’re working on those and hope to get to them in June. I mean, that's the plan right now is to get back to the Standards Board staff in June, so we'll do that.

And I think you gave that back to us too, if I recall, Christina?

MS. SHUPE: Yeah. We've been in active engagement with the Division on review.

MR. BERG: Yeah. Both of those we've been working back and forth regularly.

CHAIR THOMAS: Go ahead, Nola.

BOARD MEMBER KENNEDY: And as long as our (indiscernible) violence. And I know it's a difficult one.

(Audio issues with sound cutting in and out.)

MR. BERG: Okay. Yeah, we have some rough language, I guess we should just work on getting that posted, just so people can look at it and give comments so we can -- because it's kind of a difficult topic to address.

CHAIR THOMAS: Other questions for Eric?

Thank you, Eric, I appreciate your time.

The Legislative Update, Ms. Gonzalez.
MS. GONZALEZ: So just quickly I don't have any things signed into law to report on in the Legislative Update, but bills are definitely moving along and there's some interesting things happening. And in particular of interest might be AB 1643, which has been amended to require the Labor Agency to establish an advisory committee on extreme heat and issue findings by January 2025. So that's one of the ones we're keeping an eye on and that is moving along.

CHAIR THOMAS: Questions for Ms. Gonzalez? Thank you.

Executive Officer’s Report, Ms. Shupe.

MS. SHUPE: Thank you, Chair Thomas. Normally when our meetings run this long, I try to give a very brief Executive Officer's Report. I noticed we've already lost a lot of our local folks. I don't know how many are --

CHAIR THOMAS: Well, make it quick or we might have some workplace violence here. (Laughter.)

MS. SHUPE: There are a couple of things I need to make very clear to the Board and to our stakeholders as well though.

First, I'd like to thank everyone who's joined us for an inaugural hybrid meeting today, both in-person and remotely. And I'd like to thank my staff and the TKO staff for just the tremendous amount of work that went into
making this happen today.

CHAIR THOMAS: Thank you, guys.

MS. SHUPE: And I think this Board's commitment to transparency and public engagement has really been on full display over the last two years. We've gone above and beyond. We were the first state agency to hold a remote meeting. And this Board has gone, I believe, well over 30 years without canceling a single meeting. So I just want to say that that's something that I care very much about. And I know each of the Board Members here does.

And this hybrid meeting today was in part because of our agenda, which really focused and showcased the varied and critical health and safety matters that this Board contemplates. We had Firefighter PPE, First Aid, and then, of course, our COVID ETS and petitions. These impact not just those of us here in the room and those on Webex and those watching the livestream, but they impact 19 million Californians and their employers. And then by extension the people they go home to each day.

We've seen participation over the Covid crisis peak at over 12,000 participants in a single meeting, 12,000, 12,000 in a single meeting. And as we look around this room, this is what we -- this is a typical participation, maybe another dozen people here for a Board meeting. So our world has changed dramatically. It's been
a seismic shift in just the interest in the Board’s work and the ability for public to participate. And we want to continue that as much as possible.

I do need to point out though that funding remains a very real and practical constraint. So over the last two years we took the funds that we had for in-person meetings and the resources we had for in-person meetings and the funds that we had for travel in general, and we've redirected them to hosting our remote meetings. We were able to capitalize some of our resources from unfilled positions to bolster that funding. And so that's what you'll see today and that's where that funding comes when we do this again in May and when we do it in June.

Beyond June, I can’t guarantee that hybrid meetings will continue. Board staff are actively looking at things that we can do to continue the expanded services that we've adopted over the past two years, such as our live Spanish and English webcasts, our Spanish language translation, our meeting transcription, remote participation options, and of course our recorded video archives, which have been incredibly useful for those that want to go back and take a look at what happened during the meeting.

I'll be reporting to the Board again in June with an update on those services that we’ll be able to complete.
We’re also looking at legislation that would require hybrid meetings to continue or providing a funding analysis for those. And also, we've submitted budget change proposals to help bolster our resources so we can continue to provide and meet the level of stakeholder engagement that we know is there.

And so 12,000 might have been a peak but I want to just point out that today we had well over 600 remote participants. Sometimes it's hard to remember that when we look around and we just see the folks that are here in the room. But yeah, over 600 people called in, took time out of their day, gave us public comments. They write in. They call and they talk to staff, because they know that the work of this Board is very important. So your staff will continue to do everything we can to make sure that we're meeting the needs of those stakeholders going forward.

BOARD MEMBER STOCK: So --

CHAIR THOMAS: Go ahead.

BOARD MEMBER STOCK: Yeah. I wanted to thank you for that. And I feel like it has hugely increased the access of workers themselves to participate. Because when they can call from home, they can step out to a break or on their lunch period or whatever else. And otherwise, we're only hearing from voices, a very limited slice of the
voices, who kind of can be able to travel and spend all day at a meeting like this.

So along the way as you're advocating for the funding for this, if there's any way we can support those requests, or anything we can do to try to support the effort to continue that access going forward let us know. But I think we probably would all want to speak up towards the need for resources for that.

MS. SHUPE: Thank you.

CHAIR THOMAS: Any other questions for Christina?

I think that’s it, because there is no closed session, right? So to get to the last page of this, so I could (indiscernible).

Our next meeting, the next regular Standards Board meeting, will be on May the 19th, 2022 in Rancho Cordova and teleconference and video conference. Please visit our website and join our mailing list to receive latest updates.

We thank you for your attendance and your patience today. And I’d like to thank the Academy and the 12,000 people that watched us today. Thank you for your support. (Laughter.)

Anyway, there being no further business to attend to this meeting is adjourned. Thank you very much.

(The Business Meeting adjourned at 2:34 p.m.)
CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 2022.

ELISE HICKS, IAPRT CERT**2176
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IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 2022.

_________________
Myra Severtson
Certified Transcriber
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