

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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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)).

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Rancho Cordova City Hall	
Council Chambers	
2729 Prospect Park Drive	
Rancho Cordova, CA 95670	
10:00 a.m.	
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1 P R O C E E D I N G S

2 April 21, 2022

10:03 A.M.

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

8 (Whereupon the Pledge of Allegiance was recited.)

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

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

25 Present from Cal/OSHA Division is Mr. Eric Berg,

1 Deputy Chief of Health.

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

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

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

10 I just want to say it's good to see everybody.
11 It's good to be back except for a couple of people here
12 that I didn't want to see again, but would you?

13 (Laughter.) No, no, no, it is good to be back. I'm glad
14 to see everybody out.

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

20 If you are participating in today's meeting via
21 teleconference or web conference, please note that we have
22 limited capabilities for managing participation during
23 public comment periods. We're asking everyone who is
24 speaking to place their phones or computers on mute and
25 wait to unmute until they are called to speak. Those who

10

1 are unable to do so will be removed from the meeting to
2 avoid disruptions.

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

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

17 When public comment begins, we are going to
18 alternate between three in-person and then three remote
19 commenters and we'll see how this works. I think it'll be
20 all right. For commenters attending via teleconference or
21 video conference, please listen for your name and an
22 invitation to speak. When it is your turn to address the
23 Board, please unmute yourself if you're using WebEx, or
24 dial *6 on your phone to unmute yourself if you're using
25 the teleconference line.

1 We ask all commenters to speak slowly and clearly
2 when addressing the Board. If you're commenting via
3 teleconference or video conference, remember to mute your
4 phone or computer after commenting.

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

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

24 Finally, after the public meeting is concluded,
25 we will hold a business meeting to act on those items

1 listed on the business meeting agenda.

2 We're going to now continue with the public
3 meeting. Anyone who wishes to address the Board regarding
4 matters pertaining to occupational safety and health is
5 invited to comment, except however, the Board does not
6 entertain comments regarding variance decisions. The
7 Board's variance hearings are administrative hearings
8 where procedural due process rights are carefully
9 preserved. Therefore, we will not grant requests to
10 address the Board on variance matters.

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

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

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

23 MR. ROENSCH: Christina, can you push the button
24 there to unmute? Right, good. Okay. Amalia, go ahead and
25 push your button. Stand by.

1 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]
2 Public Comment Instructions.

3 "Good morning and thank you for participating in
4 today's Occupational Safety and Health Standards Board
5 public meeting. Board Members present are Mr. Dave Thomas,
6 Labor Representative and Chairman; Ms. Barbara Burgel,
7 Occupational Health Representative; Ms. Kathleen Crawford,
8 Management Representative; Mr. Dave Harrison, Labor
9 Representative; Ms. Nola Kennedy, Public Member; Ms. Chris
10 Laszcz-Davis, Management Representative; and Ms. Laura
11 Stock, Occupational Safety Representative.

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

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

23 "If you are participating in today's meeting via
24 teleconference or videoconference, please note that we have
25 limited capabilities for managing participation during

1 public comment periods. We are asking everyone who is not
2 speaking to place their phones or computers on mute and
3 wait to unmute until they are called to speak. Those who
4 are unable to do so will be removed from the meeting to
5 avoid disruption.

6 "As reflected on the agenda, today's meeting
7 consists of three parts. First, we will hold a public
8 meeting to receive public comments or proposals on
9 occupational safety and health matters.

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

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

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

1 For our commenters attending via teleconference or
2 videoconference, please listen for your name and an
3 invitation to speak. When it is your turn to address the
4 Board, please be sure to unmute yourself if you're using
5 Webex or dial *6 on your phone to unmute yourself if you're
6 using the teleconference line.

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

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

22 "After the public meeting, we will conduct the
23 second part of our meeting, which is the public hearing.
24 At the public hearing, we will consider the proposed
25 changes to the specific occupational safety and health

1 standards that were noticed for review at today's meeting.

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

5 "Thank you."

6 (Audio difficulties/Off-mic colloquy.)

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

11 Please give your name and association, please.

12 MR. ROENSCH: Christina, there you go.

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

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

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

24 MR. PENMETSA: Hello, my name is Praveen
25 Penmetza. I'm the CEO of Monarch Tractor. We are based

17

1 out here in Livermore, California where we build our smart-
2 electric tractor. I'm here to comment on our Petition 596
3 with regards to the regulation on operations of agriculture
4 equipment.

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

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

19 I'm here to advocate for continued collaboration
20 with Cal/OSHA and Cal/OSHA staff and also all the other
21 stakeholders, which is the beginning of our process. The
22 stakeholders includes ag equipment manufacturers that we're
23 working with, farmers that we're working with, and also
24 farm workers that we're getting feedback from. We are at a
25 unique point in time from a technology deployment

1 perspective. And if you were to lose this opportunity,
2 both California farmers and farm workers will lose an
3 opportunity to deploy new technology and see increased
4 safety on our farms.

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

16 MR. WELSH: Good morning, everybody. So nice to
17 see warm bodies here in person, it's been a long time.

18 And I just want to say you folks on the Board
19 have been through a lot. And please don't ever think it's
20 not appreciated. I was on a board myself that used to go
21 into the wee hours of the morning with these struggle
22 sessions like you've gone through, I know it's not easy. I
23 hope the public appreciates how hard it's been on you. I
24 just want to make that clear how much I appreciate it and
25 how much this system is appreciated that even gives us a

1 board where we can have discussions like this.

2 I want comment on Petition 5 -- oh by the way,
3 Len Welsh, representing Western Steel Council; forgot the
4 intro. I'd like to comment on Petition 594 by the Western
5 Steel Council. And also, I don't know if it might be more
6 appropriate to have a discussion when the matter comes up
7 on the agenda, but I just thought I'd give it a shot right
8 now.

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

23 I do want to say that I don't think the
24 discussion is finished. And I noticed that in staff
25 comments and in the Board's proposed decision there is a

1 suggestion that these issues can be brought up when the
2 advisory committee on infectious disease is held. And I
3 find it a little bit contradictory that the idea of those
4 things coming up in that committee seems to be accepted and
5 yet the petition's being denied.

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

18 On that note, I would like to bring one point up.
19 The petition takes a slightly different approach than just
20 having a general infectious disease standard to handle
21 future disease issues that could either be a pandemic or
22 something lesser. The petition focused on the idea of a
23 pandemic. And I think it would be worth thinking in two
24 parts about the upcoming issues. One is how do we be ready
25 for a true pandemic, which is going to necessarily require

1 integration and coordination among the Governor's Office,
2 DPH and DOSH to get it exactly right and be ready to stand
3 up the moment that the pandemic hits. We all got caught
4 with our pants down when this one hit.

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

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

22 And that's a slightly different -- I'm not a --
23 it's a very different issue from the idea of a general
24 infectious disease standard that would cover pretty much
25 anything else that comes along that needs regulatory

1 oversight. So I'd ask you to think about that.

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

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

24 And one big thing happened in the summer of 2020
25 when all of a sudden DPH came out one day and said, "No,

1 masks should be mandatory. They shouldn't be recommended.
2 They should be mandatory." And a lot of employers the next
3 day were doing it. Why were they doing it? Not because
4 they wanted to please DPH, they wanted to keep their
5 workforce. They wanted to stay in business. So we need to
6 understand that there are a lot of businesses out there
7 that actually want to comply with a regulation that makes
8 sense. And too often in the regulatory process we lump all
9 the employers together as one monolith and we assume
10 they're all bad. When in fact we have underground economy
11 employers who are true criminals. We have something in the
12 middle of people who sort of want to get it right. And
13 then we have employers at the other end of the spectrum who
14 are almost desperate to get it exactly right, because they
15 have a thriving business, and they want to keep it that
16 way.

17 So I think we should be thinking more about how
18 do we leverage coordination with that part of the regulated
19 public that wants to work with us and give this valuable
20 information, save the big guns for the employers in the
21 underground economy, folks who really need attention and
22 are not really getting enough of it. They're harder
23 targets to spot. They're harder targets to bring to
24 justice. And frankly it's much easier to go after the low-
25 hanging fruit, the visible employers who are right there

1 and who can be cited for just about anything if somebody
2 does an inspection. It's a waste of time a lot of the time
3 when those inspections are conducted. And they could be
4 conducted much more effectively and producing a whole lot
5 more benefit if they really were focused on the criminals.

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

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

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

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

23 Can you hear us, Daniel? (No audible response.)

24 I think we're going to go to the next caller,
25 Maya, and we'll come back.

1 MS. MORSI: Okay. Next up is Ricardo Beas with
2 Independent Safety Consultant.

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

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

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

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

12 CHAIR THOMAS: Democracy is saved. Yes.

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

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

22 So as we look at this, the readoption, I want to
23 acknowledge some of the places which we believe the
24 Division has made good improvements and then flag some
25 concerns. Among those updates I want to flag our -- we

1 appreciate the work regarding the removal of surface
2 cleaning requirements as outdated scientifically, the
3 clarification regarding self-administered testing and if
4 that's something that can be done without a proctor. Also
5 the clarification on masks that "allow light to pass
6 through," and the reduction of face-covering requirements
7 in line with the Governor's SMARTER transition. We
8 appreciate those updates and the work that went into them
9 and want to give them credit.

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

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

25 Second, I want to flag that there's some issues

1 with this version where we see more testing being required
2 even for vaccinated people than are the prior version. We
3 don't think that's the right use of resources given that we
4 are seeing overall positive changes as we transition
5 towards endemic, and our health system is more ready and
6 more vaccinated.

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

11 MS. SHUPE: Mr. Moutrie?

12 MR. MOUTRIE: I'm sorry?

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

15 MR. MOUTRIE: Slower?

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

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

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

22 MR. MOUTRIE: To reiterate that last point a
23 little slower, we have some concerns that this version
24 incentivizes employees to refuse testing after they have
25 been exposed, because they will receive more exclusion pay

1 after refusing. We have flagged that issue before, and we
2 think it's maintained in this version, and we think that
3 doesn't help policy. But I'll let others fill that out
4 more fully.

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

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

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

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

29

1 Maya?

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

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

9 (No audible response.)

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

12 MR. ROENSCH: Chair Thomas is saying go ahead.

13 CHAIR THOMAS: Go ahead, it's all right.

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

16 So I'm AnaStacia Nicol Wright. I work with
17 Worksafe and I'm here on their behalf. And we first just
18 want to thank the Board because -- the Board and Cal/OSHA -
19 - because the proposed standard is the necessary
20 recognition that the Covid pandemic is still ongoing. That
21 the future of it is unclear, and that we need workplaces to
22 remain protected and prepared during this time, right? And
23 that's going to include sick pay and job protections for
24 workers if they get infected at work and they are sent
25 home.

1 So we also just want to point out that obviously
2 guaranteeing exclusion pay for positive COVID cases is
3 necessary for worker safety and health. But as time goes
4 on, employers and any other employee that may be burdened
5 by the responsibility of exclusion pay will become minimal,
6 because their absence can be covered by other sick leave.
7 And also as the pandemic fades there'll be fewer cases at
8 work anyways and exclusion pay won't be as relevant. But
9 while it is relevant it's extremely important to have.

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

24 We can expect the best while also keeping
25 protections in place should the worst to occur. And we

1 think that the proposed standard is doing that, and
2 especially with the keeping of exclusion pay. So thank
3 you all.

4 CHAIR THOMAS: Thank you.

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

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

9 CHAIR THOMAS: Can you hear us, caller?

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

16 First, I'd like to quickly express CNA's support
17 for the ETS. As noted in the coalition letter submitted to
18 the Board, the revised ETS before you today is not perfect,
19 but it still offers critical worker protection, and we
20 support its readoption today. We appreciate that the draft
21 retains requirements for recording and responding to cases
22 in the workplace, testing during paid work time at no cost,
23 and retention of exclusion pay, and protection of job
24 status for employees who have to quarantine, because they
25 were infected at work.

1 We are concerned however, that quarantine and
2 exclusion pay for close contact has been eliminated. These
3 protections are critical, because they ensure that workers
4 who been exposed are not forced to make the impossible
5 choice of going to work while potentially sick or staying
6 home without pay.

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

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

21 Finally, CNA requests that you deny Petition 594
22 as recommended by both Board and Division staff. CNA
23 opposes this petition, which would designate CDPH as the
24 single designated source for occupational safety and health
25 requirements for the current and future pandemic. As noted

1 in the staff evaluations, the Board has already determined
2 that relying on IIPP alone did not provide employers with
3 the necessary information and regulatory structure to
4 protect employees from COVID-19. Section 3203 should
5 remain a general regulation so that it can encompass any
6 and all current and future workplace hazards. CDPH
7 guidance is directed at the general public, it does not
8 necessarily address occupational hazards and will be
9 difficult to enforce as workplace standards.

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

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

16 CHAIR THOMAS: Thank you.

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

21 MS. SHAKED: Good morning, is that working?
22 Great.

23 Good morning, Chair Thomas, Board Members. My
24 name is Megan Shaked, I'm from Conn Maciel Carey. I'm
25 speaking on behalf of the California Employers COVID-19

1 Prevention Coalition on the third readoption. I want to
2 echo the comments of Mr. Moutrie in terms of our
3 appreciation for the updates that have added clarification
4 and acknowledged our evolved scientific understanding of
5 the virus. We appreciate the opportunity to highlight just
6 a few additional concerns that we have at this point.

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

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

25 Paid leave related to COVID is best leave to the

1 Legislature who has spoken on paid leave continually
2 throughout the pandemic and can be better limited or
3 expanded. Th Legislature has the ability to limit or
4 expand the availability of paid leave as necessary,
5 continuing to move forward.

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

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

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

22 CHAIR THOMAS: All right, I don't know if this is
23 Maya or the other -- John -- I think we need to kick the
24 mics up just a little bit for the speakers, and also on the
25 phone. We're hearing a little bit of -- I know it's you

1 guys in the back trying to call or talk to these people,
2 but the louder the mics are down here the less we'll hear
3 that, so if you could do that.

4 So go ahead next speaker.

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

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

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

25 As well as be in the exception portion of the

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

13 MS. CLEARY: Good morning, again. I think I said
14 hello to everybody. It's great to be here. So thank you
15 to the staff for making this happen. It looks like a
16 complex organization going on and it's going well, so it's
17 nice to see you all. My name is Helen Cleary, and I am the
18 director of PRR, we are an occupational safety and health
19 forum. And we'd like to address a few points on the COVID-
20 19 rules.

21 The changes that add clarity, remove redundancy
22 and align with the recent updates we think is a huge
23 improvement, so thank you to the Division for doing that.
24 We agree with Rob Moutrie's comments about the definitions
25 that were changed and updated. "Return case" is another

1 great definition, so we support that. The new language in
2 the exclusion section, the more performance-based language,
3 we think that's much more flexible, and we support that
4 approach as well.

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

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

22 We think we need an outside-of-the-box effective
23 solution to solve this challenge, because it is a huge
24 challenge. And hats off to the Division for trying to make
25 and trying to figure it out for every employer in all

1 industries. It's just it's simply poor public policy to
2 rely on executive orders for the next seven months to
3 manage the shortcomings of the rule.

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

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

22 So in September, the Division proposed a nine-
23 page draft and that illustrated a simpler form. It was
24 nine pages. It was much clearer. It had more flexibility
25 built in because of the performance approach. So today we

40

1 ask the Board to encourage the Division to engage in more
2 actual discussions on true alternatives.

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

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

22 And again, it is a huge challenge is that we're
23 trying to address all industries with one rule, and I think
24 that's where we kind of went wrong here. So thank you for
25 your time and consideration today. Again, it's great see

1 everybody and thank you to the Division and the team for
2 all the work you've put in and the Board for being here and
3 doing your part as well. So thank you everybody.

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

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

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

11 MR. MCKINNEY: Yes, I'm here. I can hear you.
12 Thank you, guys, for taking my comments. And I am with a
13 general engineering contractor. And this is my first time
14 to comment on any issue, so what I'm looking for is, or
15 what we wanted, would be a no-vote on the readoption of the
16 COVID-19 standard and an end to it.

17 As everything is opening up in in the public
18 workplaces are unable to prevent COVID-19 cases in the
19 workplace due to the relaxation of the rules and the social
20 spread that happens. And under the ETS, I feel workplaces
21 are unreasonably held responsible for something that's out
22 of their control. The general public is no longer under
23 hardly any restrictions, although there is guidance out
24 there for them for people to take personal responsibility
25 for themselves. Tracking and reporting cases adds an

1 unreasonable burden to employers, which punishes them since
2 everyone will start to just blame their employers for all
3 of their sicknesses to gain access to the monies that are
4 available through other means.

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

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

25 So the increase in cases followed by decrease in

1 cases is to be expected. I haven't seen that the workplace
2 rules have prevented any of the increases nor have the
3 workplace rules in my opinion attributed to contributing to
4 any of the decreases.

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

8 CHAIR THOMAS: Thank you.

9 Who do we have next, Maya?

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

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

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

17 MR. MELLO: Hi, can everyone hear me?

18 CHAIR THOMAS: Yeah. Go right ahead.

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

23 If you recall back to previous Standards Board
24 meetings, the Board had asked the Division to provide a
25 third readoption draft of the ETS with enough time

1 allocated to allow for stakeholders to provide input for
2 the Standards Board. And so that comments could be
3 reviewed with the opportunity to provide feedback to the
4 Division for a potential second draft of the third
5 readoption. The requirements set forth in APA are designed
6 to provide a public with a meaningful opportunity to
7 participate in the adoption of state regulations and to
8 ensure that regulations are clear, necessary, and legally
9 valid. If regulation is released just two weeks prior to a
10 vote by the Board how meaningful is our opportunity to
11 participate?

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

22 AGC of California appreciates the Division's
23 dedication and support for each and every worker in
24 California. During such an unprecedented time over the
25 past two years action was warranted, but AGC of California

1 urges the Standards Board and Division to reevaluate the
2 situation.

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

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

24 Recognizing this, the regulation should reflect
25 that that employer otherwise in compliance with the

1 regulation shall have a reasonable period of time in which
2 to make a determination of an incident requiring reporting
3 has occurred and existing time limits may not on their face
4 (phonetic) apply and for enforcement purposes should be
5 evaluated by Cal/OSHA on a case-by-case basis. Thank you.

6 CHAIR THOMAS: Thank you.

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

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

11 CHAIR THOMAS: Go ahead, caller.

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

16 We're glad to see exclusion pay included in the
17 third readoption of the ETS because it's essential to
18 stopping community spread, particularly among CSEA members
19 and students. However, the elimination of exclusion pay
20 for a close contact is concerning given the unpredictable
21 nature of the virus. It's possible for someone to be
22 infectious before testing positive. At-home rapid tests
23 were less sensitive to Omicron and required multiple tests
24 before producing positive results. We can't predict how
25 the virus mutates and future variants could be infectious

1 before individuals test positive or notice symptoms. So
2 close contact exclusion pay remains essential to preventing
3 infections.

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

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

17 CHAIR THOMAS: Thank you.

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

20 MR. MIILLER: Good morning, Chair and Members.
21 Michael Miiller, California Association of Winegrape
22 Growers. I also want to echo comments from previous
23 speakers that it's great to see you. It's wonderful to be
24 in the same room with you and to talk with you and look you
25 face-to-face to have a conversation with you. I thank you

1 so much for your public service. You've done a very
2 difficult job the last four years and I can't thank you
3 enough, so thank you.

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

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

23 Also, we support the Western Steel Council
24 Petition 594. We think that there are lessons that could
25 be learned from this last three -- two years of the

1 pandemic, and that is in part that we need to plan ahead,
2 we need to be prepared, we need to think about how to react
3 to this if and when it happens again, and we think the
4 petition offers some opportunity for that. And we
5 encourage some continued conversation about that as well.

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

19 From our perspective we are focused on saving
20 lives in the workplace. We think we save lives by
21 employers taking the due diligent effort to get people
22 vaccinated, create testing opportunities, and work with our
23 employees to make sure that the workplace is safe, and for
24 our employees doing everything that they can to wear masks,
25 social distancing, act appropriately, notify if you have

1 symptoms, notify if you've been exposed to COVID, all those
2 kinds of things.

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

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

24 It can be addressed through FAQs. I'm sure that
25 there is going to be a discussion later, but the ETS is the

1 law. The FAQs are not the law. The FAQs interpret the law
2 that you create. And that's why we'd like to see the ETS
3 be more accurate on what it's trying to accomplish. But we
4 see that as a big problem. To an extent you're encouraging
5 people to not get tested. That is contrary to every
6 epidemiologist in in the world as well as CDPH, CDC and the
7 Governor's endemic approach, which is encouraging everybody
8 to get tested.

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

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

1 not the employer.

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

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

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

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

23 I wanted to start by identifying myself with
24 remarks offered by Len Welsh at the very beginning and his
25 gratitude and all of our gratitude for all the hard work

1 that all of you put in, have put in over the last two
2 years. COVID-19 has been the monster that ate 2019 and
3 then 2020 and then 2021, and on and on and on. And so it's
4 something that has preoccupied all of us. And a lot of us
5 have worked very hard with the employers that we represent
6 and work with to try to help them make sure that they're
7 keeping their employees as safe as they can be in the
8 workplace.

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

18 The Farm Bureau and a large coalition of
19 agricultural -- and forgive me for reading off my phone. I
20 had prepared remarks, but my printer wouldn't work this
21 morning, the dog ate the magenta cartridge. As you know,
22 the wonderful world that we live in where you got to try to
23 figure out how to make these things work at the last
24 minute, so I'm reading off my phone, forgive me if it's a
25 little rough.

1 Farm Bureau, and large coalition of agricultural
2 organizations have called on this Board by a recent letter,
3 to eschew a third readoption of the COVID-19 ETS. The ETS
4 is an ill fit for the current situation surrounding what is
5 now a waning pandemic. The regulation the Board will
6 likely adopt, readopt today will be out of date shortly
7 after the Board readopts it, if it's not obsolete already.

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

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

21 To the credit of its creators, it's good that the
22 third readoption draft belatedly recognizes the reality
23 that COVID-19 is not transmitted by surface contact and
24 eliminates requirements to disinfect surfaces and relax
25 certain masking requirements.

1 It seems that the Board will soon embark on a
2 discussion of a permanent infectious disease standard. I
3 have serious doubts of the need for such a standard, but if
4 the Board chooses to move in that direction, I suggest you
5 consider an approach that relies much more on injury and
6 illness prevention program principles based on GISO 3203.
7 Or an approach that resembles the petition submitted by the
8 Western Steel Council. That approach relies on expert
9 guidance that can adapt readily to rapidly evolving reality
10 without being trapped in overly prescriptive regulatory
11 language that can only be changed by subsequent regulation
12 or by order of the governor.

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

23 The current regulation is a discouraging use of
24 technology that was not dreamed of when it was written in
25 the mid-1970s. I urge the Board to submit the Monarch

1 Tractor petition to a stakeholder advisory committee so we
2 can begin the process of updating the existing regulation
3 from the era of bellbottom jeans, miniskirts, and pork chop
4 sideburns. In short, the '70s called and they went their
5 autonomous tractor policy back. And I hope that the Board
6 and the Agency will be responsive to that call. Thank you.

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

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

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

25 So it's to be expected that in the development of

1 a regulatory proposal that the agency doing that will
2 inevitably skew the results in the service of objectives of
3 the agency. That's neither shocking nor controversial and
4 I'm told by folks who attended government schools it's a
5 topic of conversation how do you deal with that.

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

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

22 The second is in the context of an economic
23 assessment and an assessment of alternatives a real
24 assessment, a real alternative, not alternatives picked to
25 be dismissed. I believe the alternatives offered by the

1 regulated community should be among the alternatives
2 assessed, they are based on boots on the ground experience
3 of what a real alternative would be.

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

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

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

21 CHAIR THOMAS: So, Maya, do we have any call-ins?

22 MS. MORSI: We have Pamela Murcell next.

23 CHAIR THOMAS: Pamela?

24 MS. MURCELL: Good morning.

25 CHAIR THOMAS: Good morning.

1 MS. MURCELL: Can you hear me? It caught me by
2 surprise, I wasn't expecting to hear my name. So good
3 morning, everyone. I appreciate still having the
4 opportunity to participate with the other Webex option,
5 especially given we have some extreme weather going on over
6 here in Sacramento today, so driving would not have been
7 the safe thing to do. I am Pamela Murcell, I'm
8 representing the California Industrial Hygiene Council. I
9 am the current President of the California Industrial
10 Hygiene Council also known as CIHC.

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

21 The version of the ETS that is being considered
22 for the third readoption has incorporated language to
23 default to the California Department of Public Health rules
24 and/or orders on several challenging issues. We agree that
25 this is a reasonable approach in an effort to keep up with

1 the rapid pace developments and changes related to this
2 virus and subsequent disease.

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

14 So basically, what has happened to the IIPP
15 approach, the proposal that was put forward in September of
16 2021 that we had extensive advisory committee meetings
17 about? So we would be interested to know what's happened
18 with that approach and is that going to be proposed as the
19 permanent COVID regulation? We do not have any information
20 in that regard so far.

21 However, a more basic question is do we even need
22 a permanent COVID regulation? CIHC supports letting the
23 ETS expire at the end of this year and focus all the
24 resources on moving expeditiously to address worker
25 protection from aerosol transmissible diseases in all

1 industries that are not covered by the current 5199, the
2 Aerosol Transmissible Diseases for Healthcare.

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

16 CHAIR THOMAS: Thank you.

17 Do we have any other callers?

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

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

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

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

1 another caller, Maya?

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

4 CHAIR THOMAS: Anne, can you hear us?

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

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

21 We are particularly concerned that the petition
22 envisions using these autonomous tractors to move equipment
23 around in vineyards where employees are working on the
24 ground, both during the day and nighttime operations, and
25 to travel in autonomous mode on farm roads. Safe operation

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1 of this type of tractor relies on AI safety rails that are
2 programmed to deploy when a human is within seven feet of
3 the moving tractor. But of course, if this technology
4 fails it will put a worker in danger of serious injury or
5 death if they fall or otherwise get into the tractor's path
6 when they are loading or unloading bins or walking over or
7 across a road. So we think it is just too soon and that
8 the petition should be denied.

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

18 That said, we are very concerned about the
19 deletion of the requirement for masking in employer-
20 provided transportation, which has analogous exposure to
21 public transportation. And we think that there needs to be
22 clearly-worded requirement in the FAQs to reflect that
23 compliance with CDC or CDPH or local health department
24 guidance for public transportation is the best way to
25 comply with the regulation for employer-provided

1 transportation. And just in the interest of time I will
2 leave it there.

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

6 CHAIR THOMAS: Thank you.

7 Do we have another caller, Maya?

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

9 CHAIR THOMAS: Brian, can you hear us?

10 MR. KELLOGG: Yes, can you hear me?

11 CHAIR THOMAS: Go ahead, Brian.

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

20 While COVID-19 has had a negative impact
21 everybody on not just us but everybody we have managed to
22 keep our employees safe, managed our cases through actions
23 required of the ETS in addition to other actions taken
24 voluntarily in accordance with the best science through
25 this rapidly evolving pandemic.

1 I'm here today to represent KLA and provide
2 comments on the company's behalf however, urging the Board
3 to vote against the revised ETS and promulgate new
4 guidelines and clarify existing ones that are in line with
5 the science that reflects the reality of our current
6 situation. Previous commenters with the Chamber, and one
7 other individual whose name I did not get, also echoed some
8 of these comments.

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

17 The example I would like to provide is a company
18 like KLA with 3,000 employees would find it significantly
19 easier to be pulled into an outbreak designation than a
20 smaller company. And conversely, find it significantly
21 harder to exit that outbreak situation which requires 0
22 cases in a 14-day period. For instance, a company with 30
23 employees that has 3 positive cases equates roughly a 10
24 percent positivity rate. A company with 3,000 employees
25 and 3 positive cases is a .001 percent positivity rate.

1 Under this standard both companies would be considered in
2 minor outbreak under the ETS and are required to take the
3 associated actions within that standard. Clearly this
4 example -- in this example one company has more of a COVID
5 issue than the other. And the ETS makes no distinction
6 between the population or positivity rate, thus discourages
7 testing within a larger employee population.

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

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

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

23 CHAIR THOMAS: Thank you. So was that three
24 callers? I think it was, so we're going to go to in-person
25 comments. So step up to the mic.

1 MR. KNIGHT: Good morning, Chair Thomas. I see
2 Chief Killip here today. All the Board Members, thank you
3 for your time, Stephen Knight with Worksafe.

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

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

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

20 By adopting this pinned (phonetic) decision and
21 rejecting Petition 594 you will put us on a path to an ATD
22 standard for general industry, a path that California has
23 been on as Mr. Welsh noted, since before the 2009 adoption
24 of the ATD Healthcare Standard. And that work was done by
25 people who saw COVID coming and did their best to try to

1 get as prepared. And instead as has been early earlier
2 mentioned we were caught with our pants down just,
3 nonetheless.

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

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

15 Moving through this pandemic has been
16 frightening, challenging, confusing and frustrating for
17 workers, business and government alike. But the healthcare
18 standard pointed a path to follow. Doing nothing and
19 letting employers do nothing has never seriously been
20 contemplated by this Board. The Board has passed specific
21 COVID protections, the clearest in the country, and
22 Cal/OSHA has left a record of enforcement of those
23 protections. We've seen them against all kinds of
24 employers, national chains, car dealers, public agencies,
25 you can scroll through the list online, and for all kinds

1 of violations and negligence in assuring worker safety in
2 the workplace, and that's really the point.

3 So where has that work left Californians? Well,
4 numbers from the end of March show the 2-year death rate of
5 294 people out of every 100,000 across the United States.
6 While in our state, it was 224 people out of 100,000. Now
7 there is certainly a lot of factors at play in those
8 numbers, but undeniably one of them is California's
9 regulation of COVID-19 in the workplace led by this Board,
10 and that work is contributing to saving lives by the
11 thousands. Thank you.

12 CHAIR THOMAS: Thank you. Next up.

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

20 California Professional Firefighters represent
21 30,000 career firefighting and emergency medical service
22 personnel operating in California. Our members are
23 actively engaged in responding to structure fires, wild
24 land fires and fires in the wild and urban interface. CPF
25 was pleased to sponsor AB 2146 in 2014. We've been very

1 actively involved in the advisory process to develop and
2 help advise the Board in updating these standards.

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

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

20 I want to clearly articulate Purchase and Wear
21 Standards, we continue to continue to request that guidance
22 be developed that articulates the interaction of the
23 Purchase and Wear Standards in the regulation to ensure
24 that employers clearly understand the incentives to
25 purchase PPE that is compliant with the most recently

1 published NFPA standard.

2 Secondly, looking for robust firefighter and
3 labor participation. We ask for clear processes for
4 authorized labor representatives to be part of PPE
5 decision-making. We ask for clear rules that provide a
6 labor seat the table for determining standard operating
7 procedures for determining how an incident commander
8 determines that a SCBA should not be used during overall
9 operations. And we're requesting clear documentation and
10 reporting mechanisms when exclusions in the regulation are
11 exercised. As representatives of the state's professional
12 firefighters, the need to ensure firefighter voices are
13 heard and the future considerations of this regulation, is
14 critical.

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

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

24 I can tell you that the emergency temporary
25 standard, at least from my observation in the construction

1 industry, is not well received. It's hard to understand,
2 it's complicated, confusing. And for that reason the
3 Association opposes a readoption of a third temporary
4 standard and supports Petition 594.

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

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

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

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

25 MS. MORSI: Jassy Grewal with UFCW Western States

1 Council.

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

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

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

8 CHAIR THOMAS: Hello?

9 MR. BROWN: This is Anthony. I'm available.
10 Hello?

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

13 CHAIR THOMAS: Hello? Who's the next?

14 MR. BROWN: (Indiscernible.)

15 CHAIR THOMAS: Are you on the line?

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

17 Hello?

18 CHAIR THOMAS: Make your comments, please.

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

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

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

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

25 MR. BROWN: Okay. I appreciate that. Thank you

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1 for your time. I'm an old man and I have trouble with the
2 phones, so I apologize.

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

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

21 There's a lot of people that want to try and say
22 that they could do things really good, and I respect that.
23 There's a lot of people that say they could do things
24 better and I respect that. Better than God even, but they
25 can't. They can't do things better than God. So what I'm

1 trying to call you guys and make you aware of this, is a
2 lot of people that have done a lot of things and for the
3 betterment of humanity, and they failed.

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

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

23 But these people have claimed that they can
24 eradicate the flu and it's a lie. I want to know why
25 anybody ever said that they could eradicate the flu when

1 they couldn't, not possible. Every scientist will tell you
2 that. But for some reason, these people with the myeloid
3 cell virus, they knew that it was not containable. They
4 knew the virus would not -- the vaccine would not work.
5 They knew that.

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

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

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

21 MR. BROWN: Yeah, yeah. Yeah, the main the main
22 thing is like that -- well, I mean, I had quite a bit to
23 say. But you know, the thing is that the injection of the
24 virus if you don't aspirate the syringe, and these
25 nanoparticles will go into -- they're using studies that if

1 you inject your arm, they're claiming there's no blood in
2 that arm. And it's not true, and that's the basis of not
3 aspirating these syringes. And if you don't aspirate the
4 syringe and this virus is injected into the blood any
5 amount of mRNA vaccine that goes into the blood causes
6 enlargement of the heart, inflammation symptoms --

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

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

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

13 CHAIR THOMAS: Cynthia, can you hear us?

14 MS. RICE: Yes. Good afternoon, Cynthia Rice.
15 And thank you. I'm sorry not to be able to attend in-person
16 today, and I'm glad to see so many people who were able to.
17 I live in a high-risk household. And I have the luxury
18 both to be able to do my job, and thanks to the Standards
19 Board, accommodation to appear at this hearing without risk
20 of exposure.

21 That is of course not the case for my farmworker
22 clients or my other clients who work in low-wage
23 industries. And I appreciate the Board and staff's
24 consideration of the needs and limits that those workers
25 have, to their flexibility about whether or not to enter a

1 workplace in what they perceive to be an unhealthy
2 condition.

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

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

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

24 The current legislation does not protect all
25 workers as pointed out, workers who are employed in

1 workplaces with less than 25 people are not eligible for
2 the legislative sick pay, COVID-19 sick pay. They are
3 vulnerable, they do represent low-wage worker workforce.
4 And they also are a workforce that is likely not to have
5 personal health coverage. And so any disincentive to
6 seeking treatment because they have to go to work is
7 contrary to public health standards.

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

18 The last comment I want to make is with respect
19 to the kind of persistent theme that the IIPP is the end-
20 all in terms of trying to deal with this particular issue
21 or any issue. The comments that the IIPP has proven to be
22 effective are just wrong. I think as reflected in staff's
23 evaluation of the petition, but also enforced and
24 enforcement generally. The IIPP was not an effective
25 measure, either to provide employers with clear

1 instructions about what level of protection to provide or
2 to provide workers with an understanding of what
3 protections they could insist upon. So reversion to the
4 IIPP as an alternative to adopting this emergency
5 regulation is just not an option that should be considered.

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

12 CHAIR THOMAS: Thank you.

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

17 So who do we have on the line, Maya?

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

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

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

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

1 there?

2 MS. MORSI: Remember to press *7, oh I'm sorry,
3 *6 to unmute.

4 CHAIR THOMAS: We should all know this by now.

5 MS. MORSI: Yeah.

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

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

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

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

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

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

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

24 I'm here to comment on our Petition 596,
25 requesting the clarification of title 8, 3441(b) with

1 regard to the operation of agricultural equipment in
2 California. It's unclear how this regulation applies to
3 safety technology enhancements over the last 50 years as
4 others have mentioned. Cal/OSHA staff has confirmed this
5 in ambiguity for these technologies in their staff
6 evaluation in 2019.

7 Some say they are not ready for driver-optional
8 tractors; regardless, they are here. Without action and
9 collaboration we will sleepwalk into an era of ambiguity
10 where individual interpretations and their diverse
11 conclusions will be the only guidance for farmers. To
12 prevent this we have been working directly with Cal/OSHA
13 staff for more than two years through a variance process
14 and other means to provide Cal/OSHA staff access to
15 technology experts, real-world operational and safety data
16 over four seasons, as well as exposure directly to the
17 technology to inspect and evaluate Monarch Tractors,
18 specifically on how it impacts the safety of the workforce.

19 We now have proven advancements capable of moving
20 farm workers away from the hazard zone onboard a tractor
21 while simultaneously increasing access to agricultural
22 employment opportunities to those with disabilities and
23 providing operators with skill, knowledge and experience
24 applicable to advance technology that is becoming
25 increasingly prevalent in a variety of industries.

1 The technology is here. Monarch Tractor has
2 passed rigorous scrutiny by Cal/OSHA staff. And the result
3 is a departure point for continued collaboration between a
4 variety of groups, farm workers, equipment manufacturers,
5 and safety experts so that these technologies can be
6 deployed in an intentional and consistent manner.

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

9 CHAIR THOMAS: Thank you.

10 Next up.

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

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

25 We want to greatly commend this Board, Christina

1 Shupe, her predecessor Marley Hart, Board staff. This is
2 good governance, you do great work, very professional with
3 the money that employers spend here. There is
4 transparency. There is respectful and helpful dialogue.
5 We appreciate that. Cal/OSHA Appeals Board does the same,
6 very similar. And the money we spend as employers is well
7 spent.

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

18 Something is amiss. I know Chief Killip will
19 have a lot to do, but hopefully we can figure out what's
20 going on there. It's not a matter of under-resourced.
21 With a \$200 million budget if something needs more money,
22 as Christina Shupe has said, there are more resources
23 needed here at the Standards Board and employers we say,
24 "Right. We know you used money and resources well." So
25 that's kind of a long intro to wherever we go from here.

1 On COVID, on pandemic regulations I would
2 strongly urge this Board, I think you have the right and
3 the legal ability to say, "We want to do future advisory
4 committee meetings jointly with the Division as we look at
5 a permanent standard, as we look at any permanent pandemic
6 standard." Because this Board and its staff has proven they
7 can facilitate a discussion with respectful, passionate
8 debate about the issues. And safety and occupational
9 safety and health experts and labor and management sit
10 across the table, and we work at it, sometimes two days in
11 a row. And come out with a reg that everybody says, "This
12 is right, this is good." And it works. It doesn't just
13 look good on paper; it translates out to the worker work
14 that we're intending to protect. So I really would
15 strongly suggest we do that.

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

24 Every death from COVID is a tragedy. We've had
25 over 80,000 Californians die. But that number

1 occupationally in terms of workers comp claims or death --
2 and I don't think that number is underreported -- or of
3 fatality that number is 1400 out of over 80,000. And a
4 substantial number to those, sadly, were our heroic first
5 responders, our healthcare providers who are already
6 covered under the ATD. So I think we need to strongly look
7 at is that the IIPP could really be the right thing, and
8 especially for a future pandemic as we know. So I really
9 would like us to consider that.

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

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

1 boosted in December, and I hope it's still valuable.

2 Today the state website says you're four and a
3 half times greater to get COVID if you're not vaccinated.
4 But this reg took all those values away. And I know people
5 are going to ask me, "So what's Cal/OSHA saying about
6 vaccines? That it really was a short-term thing, that
7 really doesn't have any value shortly after you get it?" I
8 don't want to send that message to my people, so I'd like
9 to ask what that is.

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

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

22 CHAIR THOMAS: Thank you.

23 Go ahead.

24 MR. STEIGER: Thank you, Mr. Chair and Members,
25 Mitch Steiger with the California Labor Federation. I

1 appreciate the opportunity to testify today. Nice to be
2 back in person mostly, and hopefully case rates stay low
3 enough for this to continue. But I think we would also
4 point out that if case rates do stay low enough for this to
5 continue, we definitely have things like the ETS there to
6 thank, in no small part, because of that. We really think
7 the control measures and other protections to offered
8 through the standard have a lot to do with why things have
9 been where they are in California and could have been much
10 worse, and part of why we so strongly urge the Board to
11 readopt the version that's before you today. We'll get
12 back to that in a second.

13 We have letters in on Petitions 596, 594, and the
14 ETS readoption, so we won't rehash all of that, but did
15 just want to quickly mention on 596 we strongly endorse all
16 of the different safety measures and machine-learning and
17 everything that can be on a tractor that can help keep
18 workers safe, whether they're the operator or someone
19 working near a tractor. We strongly support all of that.
20 But for us it's a big leap from that to taking the operator
21 off of the tractor. That workers, especially experienced
22 workers, who've been doing that for a long time, have a lot
23 of skills that can be used to keep workers safe. That
24 machines that malfunction all the time, that we log out
25 phones and we see -- you know, we've been dealing with this

1 technology now for two years. And it often works pretty
2 well, but it often doesn't. And having that be the last
3 line of defense against worker injuries, fatalities, really
4 makes us nervous. And we think the best option is to have
5 all of that safety equipment, but also have an operator
6 there who can intervene when the inevitable malfunctions
7 happen.

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

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

1 to get it. It can happen much faster.

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

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

22 CHAIR THOMAS: Thank you.

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

25 MS. MORSI: We don't any more public comment from

1 callers.

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

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

5 MR. MILLER: Real good, real quick --

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

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

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

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

25 I would like to extend an invitation to Chief

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

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

9 UNKNOWN SPEAKER: I'm not (indiscernible.)

10 MR. MILLER: It's not a bribe, Dave. They're
11 \$7.00. They're pretty cheap.

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

14 MR. MILLER: Yeah, you got one for a different
15 reason. So at Rudolph and Sletten our job and safety
16 coordinators carry these. Our superintendents carry these
17 and actually carry an extra one. And so if they see
18 anybody doing something above and beyond safety or they are
19 brought a safety -- something safety to their attention,
20 they can give them a challenge point going above and beyond
21 safety. And then we ask them to carry it with them every
22 day just to remind them to think outside of the box for
23 safety, so I'm going to give you my challenge coin today.
24 And it's got our little 60th anniversary on one side and
25 our 10-10-10 slogan on the back, which is our 10-10-10

1 slogan is "every ten minutes look ten feet for ten
2 seconds." It's kind of an own-your-zone. It's to
3 encourage employees as we know in construction things can
4 change quickly, so we encourage our employees to look
5 around and make sure their zone is still safe.

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

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

19 I wanted to kind of bring up a point, it's kind
20 of a confusing point for some of us. CDPH on April 6th
21 issued a new guidance for a close contact, and it is now
22 someone sharing the same indoor airspace, e.g. home,
23 clinic, waiting room, airplane, etcetera for a cumulative
24 total of 15 minutes for more than 24 hours. So it's kind
25 of, and can be confusing, is it 6-15-24?

1 So I'm standing next to Cassie and Kevin, that's
2 us, or is it the room? Because now the way this reads is
3 it's all the employees working at Home Depot. They're all
4 close contact with each other now. All the employees
5 working at Costco, that's a huge building, they're sharing
6 in same airspace. Is that now they're all in close
7 contact?

8 And it's kind of the same thing on a construction
9 job site. Obviously, in the job trailers a little bit
10 smaller, pretty much close contact. But out in the field
11 when we're building these big buildings and we got 800,
12 900, 1,100 feet of space with a electrician on one side in
13 close contact with the pipe fitter on the other side, so
14 kind confusing there.

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

22 And it's brilliant because Cal/OSHA can't pivot,
23 and we've seen that. Unfortunately, that's one of our
24 biggest concerns and I guess complaint department about the
25 ETS, is it doesn't pivot quickly enough. And we had to do

1 some executive orders to make sure that things were clear,
2 right? And those executive orders still hold. I thought
3 this was brilliant. Maybe this needs a little tweaking,
4 but I thought it was brilliant to say, "Hey, these aren't
5 guidances. You know, through the IIPP they're not
6 guidances. You now have to do these. Employers have to do
7 this." Bam, and it just goes into place.

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

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

24 This is a real quick fun fact about it the Covid.
25 Does anybody know what our current positivity rate is for

1 Covid right now as of the 17th in California? It's 2.6.
2 Does anybody know what the positivity rate for flu is as of
3 14th of April? The last time that reported today, 5.4. So
4 we're lower than flu rates right now. In January, we at
5 21.5, in January of 2020 flu hit 59.5. So it's kind of a
6 catch-all there, right? I mean, what do we want to record?
7 What don't we want to record? So it's kind of a catch-all.

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

14 CHAIR THOMAS: Well, just relax. You're in the
15 state --

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

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

21 MR. MILLER: I want to be clear, Rudolph and
22 Sletten members care about their employees. Like I said,
23 I'm an employee first. I care about myself first. I take
24 care of me. And I hope I take care of a whole lot of
25 people, I have 500 and some odd R&S employees, and I have

1 another 2,000 trade contractor employees that are on my
2 sites right now we take care of. We care about their
3 employees. So please don't take my comments out of context
4 like I don't want anything. We wanted something. We just
5 wanted something that could pivot quicker than a standard
6 could pivot. We wanted something.

7 Rudolph and Sletton is a VPPC participant. For
8 those who don't know it's a Voluntary Protection Program,
9 and the C stands for Construction. We have been since
10 2013, since then. Before that we had a hard time getting
11 in. We just didn't cut the mustard. Since then we've had
12 nine projects go through the VPPC process including the
13 Apple Campus Two, the Spaceship. And that job had three
14 general contractors on it. That job had to have all three
15 general contractors get VPPC before that site was
16 considered VPPC.

17 And just a little nuance just so you know, to get
18 VPPC we have to have a percentage of our trade contractors
19 obtain the Golden Gate, which is another certificate that
20 Cal/OSHA offers through their consultation firm. So it's
21 not just the GC showing how great they are, they have to
22 elevate trade contractors. So usually it's about a quarter
23 of the trade contractors on site have to go through the
24 Golden Gate process and then the GC can go through the VPPC
25 process. It's a long process. We are only one of nine GCs

1 in the state that are currently in the VPPC and we're the
2 only GC that has three sites under that protection. And
3 that's the maximum amount of sites you can have at one time
4 out of the current program. So we get it, and we care
5 about safety.

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

17 And before we had our pandemic plan in play,
18 because as we all know in six Bay Area counties Appendix B-
19 2 came out. We pivoted quickly on our essential jobs to
20 make sure protection is in place while we're developing a
21 written program, we put protections in place for our
22 employees. So again, we care.

23 And that's not just us. With CEA we were getting
24 on Zoom calls and going over an Appendix B-2 and anything
25 else we could do with guidances, and helping our members

1 make sure they can keep their employees safe and keep those
2 essential job working.

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

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

14 CHAIR THOMAS: Thank you.

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

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

23 So first I want to talk about Petition 594.
24 Obviously, Len Welsh already laid it out very nicely
25 earlier. But I want to pull back on some experience that

1 we've had in front of the Board probably nearly 20 years.
2 And generally when a petition is denied it's because
3 there's a safety concern that's already addressed and an
4 existing regulation. Or it's some device someone's
5 admitted that they don't want to -- that they want to make
6 exclusive for them, that's probably the most traditional.
7 But generally when it's something that's an issue that the
8 industry and labor have to deal with, and we're grappling
9 with and we've been grappling this for two years, it's not
10 a stamp of, "No. We're not going to talk about this and
11 we're not going to use this as a basis or merge it with a
12 topic that's already there." I've seen this where we had
13 two petitions for a very similar idea with some separate
14 comments.

15 But at least send it to an advisory committee so
16 that the discussion can be had, not just, "Oh well, we can
17 talk about it but we're just we don't want you to talk
18 about it because we're going to deny it." So I think it's
19 very important to recognize that I feel like the dialogue
20 just got shut off for that potential option as a result of
21 the decision that's being offered to you to make today is
22 to deny the petition. I would urge you to consider not
23 accepting the conclusion of the staff. And changing that
24 to send it to the advisory committee, so we can have
25 dialogue on that.

1 That's one thing that's been very difficult as
2 we've gone through this process is to have good, meaningful
3 dialogue. And tell me, what you guys went through the
4 first couple of meetings of this, and the advisory
5 committees on Zoom where we had a thousand people, and
6 folks talking about whatever that hadn't -- wasn't it used
7 to be in the front of this Board and in front of this
8 rulemaking process, so I can understand the fatigue in
9 advisory committees and that. But I think this is a very
10 important topic.

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

19 Now switching gears a little bit to the ETS that
20 we have in front of us today for the third readoption --
21 oh, one last point on that -- also it's very important too
22 to make sure we don't exclude options and potential
23 options. We see there's even something in the SRIA that
24 says, "What options did you consider?" So we need to make
25 sure we kind of keep that in mind too, because that is an

1 essential option as far as 594 is concerned.

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

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

23 I think we heard earlier like the exclusion, what
24 happens if they won't test? What do we do? Do they just
25 get to be excluded or can we make them test? Things like

1 that, that you don't really see it whenever you read it
2 until you start putting it into action. I know you guys
3 probably have to do that sometimes with some of your
4 professions already sitting on the Board, but it is
5 something until you start doing it. So that gives us an
6 opportunity to ferret that out before we get to the Board
7 Meeting like today where it's basically a thumbs-up or a
8 thumbs-down.

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

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

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

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1 very much.

2 CHAIR THOMAS: Thank you.

3 MR. STRUNK: (Indiscernible.)

4 CHAIR HOCHSCHILD: Go ahead.

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

19 CHAIR THOMAS: Thank you.

20 Do we have any callers online? None?

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

23 CHAIR THOMAS: Okay. We'll wait for that then.
24 And we don't have any more for the meeting, so we're going
25 to go -- the Board thanks you for your comments and

1 appreciates your testimony. And the public meeting is
2 adjourned, and the record is closed. Thank you very much.

3 We will now proceed to the public hearing.
4 During the hearing we will consider the proposed changes to
5 occupational safety and health standards that were noticed
6 for review today. The Standards Board adopts standards
7 that in our judgment are enforceable, reasonable,
8 understandable, and contribute directly to the safety and
9 health of California employees.

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

14 If you have written comments, you may read them
15 into the record, but it is not necessary to do so as long
16 as your comments are submitted via email to
17 oshsb@dir.ca.gov by 5:00 p.m. today. Board staff will
18 ensure that they are included in the record and forward
19 copies of your comments to each Board Member, and I assure
20 you that your comments will be given every consideration.
21 Please include your name and address on any written
22 material you submit.

23 I would also like to remind the audience that the
24 public hearing is a forum for receiving comments on the
25 proposed regulations, not to hold public debates. While

1 rebuttal comments may be appropriate to clarify a point it
2 is not appropriate to engage in arguments.

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

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

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

22 We ask all commenters to speak slowly and clearly
23 when addressing the Board. And if you have any comments
24 via teleconference or videoconference, please remember to
25 mute your phone or computer after your comments.

1 After all testimony has been received and the
2 record is closed, the staff will prepare a recommendation
3 for the Board to consider at a future business meeting.

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

8 Ms. Neidhardt?

9 MS. NEIDHARDT: [SPANISH] PUBLIC COMMENT
10 INSTRUCTIONS

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

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

18 "If you have written comments, you may read them
19 into the record, but it is not necessary to do so as long
20 as your comments are submitted to staff, via email at
21 oshsb@dir.ca.gov by 5:00 p.m. today. Staff will ensure that
22 they are included in the record and forward copies of your
23 comments to each Board Member, and we assure you that your
24 comments will be given every consideration. Please include
25 your name and address on any written materials you submit.

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1 "We would also like to remind the audience that
2 the public hearing is a forum for receiving comments on the
3 proposed regulations, not to hold public debates. While
4 rebuttal comments may be appropriate to clarify a point, it
5 is not appropriate to engage in arguments regarding each
6 other's credibility.

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

12 "If you are participating via teleconference or
13 videoconference and would like to comment orally today, you
14 may join the public hearing comment queue by clicking the
15 public comment queue link in the "Standards Board Updates"
16 section at the top of the main page of the OSHSB website or
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24 Board, please be sure to unmute yourself if you're using
25 Webex or dial *6 on your phone to unmute yourself if you're

1 using the teleconference line. We ask all commenters to
2 speak slowly and clearly when addressing the Board, and if
3 you are commenting via teleconference or videoconference,
4 please remember to mute your phone or computer after
5 commenting.

6 "If you have not provided a written statement
7 before today's meeting, please allow natural breaks after
8 every two sentences so that an English translation of your
9 statement may be provided to the Board."

10 "Thank you."

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

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

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

21 Second, there are proposed changes to the General
22 Industry Safety Orders, section 3400, Medical Services and
23 First Aid. The proposal requires employers to evaluate and
24 ensure they have the types of first aid materials and the
25 proper quantities of first aid material.

1 It also provides an additional option for
2 employers to maintain a first aid kit as a standardized set
3 of items when appropriate for the workplace, in addition to
4 the current requirement to maintain a first aid kit
5 approved by a consulting physician. That portion remains
6 unchanged in the regulation.

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

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

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

20 With respect to the general industry change,
21 section 3400, the advisory community rejected a
22 recommendation to only contain a single prescriptive list
23 of first aid items. A single prescriptive list of first
24 aid items is not appropriate due to the variety of
25 workplace hazards in different workplaces. Employers must

1 ensure they have the correct types of first aid materials
2 specific to the workplace hazards.

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

7 So thank you. That's my briefing.

8 CHAIR THOMAS: Thank you, Mr. Berg.

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

14 MS. MORSI: We have Stephen Knight with Worksafe.
15 (No audible response.)

16 CHAIR THOMAS: Okay, Stephen are you there?

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

19 CHAIR THOMAS: Well, I -

20 MS. NICOL WRIGHT: Yes, he's occupied but I'm
21 with him. I'm his coworker at Worksafe. However, I
22 believe the issue was we wound up going there in the public
23 comments instead of during the public hearing, so we've
24 already expressed our points. But again we'd just stress
25 that Worksafe's opinion is that the ETS be accepted as it's

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1 proposed and that keeping exclusion pay is extremely
2 imperative. Thank you.

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

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

7 CHAIR THOMAS: No, it's okay.

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

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

17 The one thing that I am concerned about is, so
18 the American Heart Association now, an accepted form of CPR
19 is hands-only CPR. And one of the items that's being added
20 is a single-use disposable barrier for CPR. And if the
21 American Heart Association is now accepting hands-only CPR
22 as an effective method of conducting CPR, then that would
23 eliminate the need for a disposable barrier, a breathing
24 barrier. So that was one thing I wanted Cal/OSHA to take a
25 look at is I would hate to have an employer cited for not

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1 having a breathing barrier in their first aid kit when
2 hands-only CPR is allowed by the American Heart
3 Association. And it's one of the things that is being
4 promoted.

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

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

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

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

24 CHAIR THOMAS: Thank you.

25 Who do we have next?

1 MR. MILLER: Good afternoon.

2 (Overlapping colloquy.)

3 CHAIR THOMAS: You again?

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

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

19 "Due the risk posed by heat, illness, or cuts to
20 workers in construction industry the rationale requiring a
21 doctor's authorization to add instant cold compresses, hand
22 sanitizer or even knuckle bandages, all common in first aid
23 kits but not included in the table, is confusing and
24 inconsistent with section 3400(c)(3)(b), the first aid kits
25 requirements for general industry.

1 "Furthermore, CCR sections 6251 regarding a first
2 aid kit for logging and sawmills, as well as CCR 3439
3 regarding first aid kits for agriculture operations, both
4 high hazard industries, do not contain a physician to
5 authorized authorization for the contents of the first aid
6 kit. In fact, these regulations don't even include a
7 minimum requirement for the contents of the first aid kit.

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

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

22 What I have in my first aid kit at Rudolph and
23 Sletten as a GC, I have a huge first aid kits, because not
24 only am I worried about my employees, but I also want to
25 make sure I have adequate supplies for trade contractor

1 employees. So they have all have access to my kit even
2 though they have their own kit. So I have a wide range of
3 supplies based on all the trade contractors: electricians,
4 pipefitters, cement masons, iron workers, rod busters, you
5 name it we've got them, operating engineers. They all have
6 different particular risks and sometime different
7 particular needs.

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

18 But now to have those kits on the job site I'm
19 going to have to have a physician's note, because it's not
20 authorized, right? So it's just kind of confusing to me.

21 So anyway that's my comments for today. And
22 thank you again.

23 CHAIR THOMAS: Thank you.

24 Yes, go ahead.

25 MS. HILASKI: Cassie Hilaski with Nibbi Brothers.

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

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

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

24 In addition, construction employers are required
25 to have first aid trained personnel immediately available

1 to render first aid on our job sites. I think it's
2 reasonable to expect that those personnel would be able to
3 determine which supplies would be needed to address jobsite
4 specific hazards on the job site and not have to seek out a
5 doctor's approval. When they're expected to render first
6 aid, they're expected to render CPR. It doesn't make sense
7 to me that they wouldn't be competent enough to assess the
8 hazards on the job site, anticipate what first aid supplies
9 would be needed, and be able to add those without having to
10 run to a doctor to get their approval.

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

19 Thank you for your time.

20 CHAIR THOMAS: Thank you.

21 Do we have any callers on the line, Maya?

22 MS. MORSI: Toli Mikell with PARC Environmental.

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

25 MS. SHUPE: Sorry about that. Maya, can you

1 repeat the name a little louder please?

2 MS. MORSI: Toli Mikell with PARC Environmental.

3 MR. MIKELL: Can you hear me now?

4 MS. SHUPE: We can.

5 MR. MIKELL: Okay. So my name is Toli Mikell. I

6 am the Director of Safety and Compliance with PARC

7 Environmental. And I wanted to just echo some of the

8 comments that some of the other commenters have provided

9 with respect to the 1512(c)(3) items on the first aid kit.

10 The current ANSI Standard Z308, the 2015 Z308,

11 308.1, the 2015 version, if you look at some of the minimum

12 required items on their standard, there are some items that

13 are in addition to what is listed in the proposed

14 regulation. And I would go the same concern that if we

15 were to purchase a first aid kit that conforms to the

16 latest version of this ANSI standard would I then need to

17 go out and get a doctor's note to basically sign off on

18 something that a standard, basically standard's body has

19 already deemed an essential item for a first aid kit?

20 Now, to include, for example, the ANSI standard

21 still makes reference to eye and skin-wash materials,

22 things such as hand sanitizer, etcetera, as being required

23 elements but they are not explicitly listed in the Cal/OSHA

24 standard. I would argue that there should be some

25 allowance to conform it to an established standard, be it

1 Red Cross, be it the ANSI Standard that allows employers to
2 flexibility to get things that are recognized to be of
3 value without having to pursue getting a doctor's note to
4 have those items in the first aid. Thank you.

5 CHAIR THOMAS: Thank you.

6 Who do we have next, Maya?

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

10 CHAIR THOMAS: Okay. Thank you.

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

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

15 CHAIR THOMAS: Yeah. (Laughter.)

16 MR. BLAND: You do. Actually this is by purpose
17 of getting up here real quick, so in the Final Statement of
18 Reasons maybe this can be addressed, the reading of the
19 section regarding the physician, my understanding and from
20 the advisory committee all the way back, I think 2006, was
21 that the physician isn't required for adding things. So if
22 you decide you want to add things it's only towards the
23 minimum. So in the Final Statement of Reasons, maybe we
24 can have clarity on that for the rulemaking package if that
25 is in case our understanding is correct from that.

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1 Because it does say the minimum is either a
2 physician or -- I'm not reading from it -- or the table.
3 But that says "minimum," so I want to ensure that that is
4 what is meant. And so if you want to add 50 more gauze or
5 if you want to have hand sanitizer in there, then all the
6 other physician issues dealing with drugs and some other
7 proprietary items, so I don't think those would fall in.
8 So maybe if you could answer those two questions, which I
9 hope is in our understanding of the advisory committee what
10 was intended by this is you can add -- well, you can't put
11 codeine in there obviously because it's a drug, right,
12 without a physician saying it's okay. Thank you.

13 CHAIR THOMAS: Thank you.

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

16 MS. MORSI: We do not.

17 CHAIR THOMAS: Okay.

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

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

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

25 CHAIR THOMAS: Go ahead.

1 MS. MORSI: Stephen Knight?

2 CHAIR THOMAS: Stephen, can you hear us?

3 MS. MORSI: Oh, yeah.

4 CHAIR THOMAS: Okay.

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

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

14 Okay. Board Members comments, go ahead.

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

25 So that's one question I have, Eric, was why

1 wasn't that language integrated into this current version?
2 Is that right?

3 (Indiscernible.)

4 CHAIR THOMAS: Yeah, you better.

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

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

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

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1 They get involved in the California Poison Control.

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

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

13 But I just think that I would appreciate how many
14 times "physician" was mentioned in this --

15 MR. BERG: Okay.

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

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

20 BOARD MEMBER BURGEL: (Overlapping colloquy.)

21 Thank you. Thank you.

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

24 MR. BERG: Sure.

25 (Off-mic colloquy.)

1 BOARD MEMBER CRAWFORD: Absolutely!

2 MR. BERG: Okay.

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

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

13 BOARD MEMBER CRAWFORD: Okay.

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

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

18 MR. BERG: Thank you.

19 CHAIR THOMAS: This is too complicated. We've
20 got to fix this.

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

25 We will now proceed with the business meeting.

1 The purpose of the business meeting is to allow
2 the Board to vote on the matters before it, and to receive
3 briefings from staff regarding the issues listed on the
4 business meeting agenda. Public comment is not accepted
5 during the business meeting unless a Member of the Board
6 specifically requests public input.

7 The first item is Proposed Safety Orders for
8 Adoption.

9 The first one is Title 8: General Industry Safety
10 Orders Article 10.1, section 3401, section 3402, new
11 sections 3402.1 - 3402.3, sections 3403 - 3410, new section
12 3410.1, and section 3411 Fire Fighters' Personal Protective
13 Clothing and Equipment - AB 2146, 2014.

14 Mr. Smith, will you please brief the Board?

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

24 The advisory committee was to present its
25 findings and recommendations to the Standards Board by July

1 1st, 2016.

2 Consequently, the Board staff initiated the
3 advisory committee process in 2015 with representatives
4 from city, county and state fire departments, manufacturers
5 of personal protective equipment, labor unions, businesses
6 in the fire protection industry, and of course the NFPA.

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

15 However, drafting of the supporting rulemaking
16 documents was delayed primarily due to the extensive work
17 needed to determine the cost of the proposal. The delay in
18 the completion of the cost estimates caused the Board to
19 miss the Labor Code section 147.4 deadline of July 1st,
20 2017, to render a decision regarding the adoption of the
21 changes to Title 8 in order to maintain alignment with the
22 NFPA requirements.

23 The proposal before you today for your
24 consideration to adopt will meet that final Labor Code
25 section 147.4 deadline by updating Title 8 General Safety

1 Orders, Article 10.1 Personal Protective Clothing and
2 Equipment. The proposal will remove outdated terminology,
3 design and performance criteria and incorporate by
4 reference the more current NFPA standards regarding PPE for
5 firefighters.

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

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

17 CHAIR THOMAS: Thank you, Mr. Smith.

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

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

23 CHAIR THOMAS: Do you want to comment?

24 BOARD MEMBER STOCK: Okay, yeah. So I guess I'll
25 go ahead. We're learning procedures as we go along. So,

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1 yeah, I wanted to just make a couple of comments that I'm
2 glad this is finally in front of us for a vote. That's one
3 comment, it's taken a really long time.

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

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

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

1 CHAIR THOMAS: Thank you, Laura.

2 Any other comments or questions? Go ahead,
3 Barbara.

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

17 CHAIR THOMAS: Thank you, Barbara.

18 Any other comments? Go ahead.

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

21 MR. SMITH: There are two. The Division is going
22 to convene an advisory committee on the wildland
23 firefighting respirator issues next month. And then our
24 staff will hold an advisory committee in June on the
25 updates of the NFPA standards. So there will be two

1 advisory committees coming up shortly. And those emails
2 have already gone out to stakeholders and so the process is
3 already underway.

4 CHAIR THOMAS: Thank you.

5 MR. SMITH: Okay.

6 CHAIR THOMAS: Any other questions, comments?

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

9 BOARD MEMBER HARRISON: So moved.

10 BOARD MEMBER STOCK: Second.

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

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

15 MS. MONEY: Ms. Burgel?

16 BOARD MEMBER BURGEL: Aye.

17 MS. MONEY: Ms. Crawford?

18 BOARD MEMBER CRAWFORD: Aye.

19 MS. MONEY: Mr. Harrison?

20 BOARD MEMBER HARRISON: Aye.

21 MS. MONEY: Ms. Kennedy?

22 BOARD MEMBER KENNEDY: Aye.

23 MS. MONEY: Ms. Laszcz-Davis?

24 BOARD MEMBER LASZCZ-DAVIS: Aye.

25 MS. MONEY: Ms. Stock?

1 BOARD MEMBER STOCK: Aye.

2 MS. MONEY: Chairman Thomas?

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

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

12 Mr. Berg, will you please brief the Board?

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

17 CHAIR THOMAS: Go right ahead.

18 MR. KILLIP: Thank you, Eric.

19 Yeah. My name is Jeff Killip, and I am thrilled
20 and humbled to be in this capacity today, serving the
21 people of the State of California. And it's really amazing
22 to be here, especially after two years of the pandemic that
23 we've been talking about. We were sent home at Washington
24 State DOSH in mid-March of 2020. And I got this calendar
25 that I got at the Baseball Hall of Fame in Cooperstown that

1 you can kind of change manually, kind of like a scoreboard
2 at Fenway. So I predicted, "Okay. We're going to be back
3 in eight weeks." So the calendar said something like May
4 20th or something of 2020. And what, I was way off as we
5 know. Anyway, it's great to be here.

6 Well thank you Board Chair Thomas, all Board
7 Members for considering the third readoption of the COVID-
8 19 ETS. It's important for worker protections to remain in
9 place as the COVID-19 pandemic continues and the new
10 variants emerge and subvariants, such as Omicron and BA.2,
11 BA.2.12, and BA.2.12.1. Although cases have been reduced
12 from their peak in January there's still over 2,500 cases
13 and about 20 deaths a day. And we know from past
14 experience that we're likely to see future surges in COVID-
15 19 and possibly new variants. So we must not let workers
16 go unprotected.

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

22 For airborne diseases such as COVID-19 certain
23 workplaces represent some of the highest risk settings in
24 California. Most workers do not have the option other than
25 being at work in order of feed and house their families.

1 Workers must continue to be at the workplace even if it
2 means risking serious health dangers such as getting COVID-
3 19 infections. Workers should not bear all the costs for
4 doing what is needed to prevent the spread of infection in
5 the workplace, including staying at home, getting tests and
6 receiving necessary treatments. Workers have a right to
7 protection in the workplace and the ETS provides these
8 protections against one of the greatest work-place hazards
9 we've seen since the establishment of Cal/OSHA nearly fifty
10 years ago.

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

15 CHAIR THOMAS: Thank you.

16 Eric, go ahead.

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

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

24 Different requirements for vaccinated and
25 unvaccinated employees were removed in this revision

1 consistent with CDPH.

2 The original ETS took effect November 2020 and
3 was readopted with changes in June 2021 and then January
4 2022.

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

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

16 Some requirements such as face coverings have
17 been relaxed.

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

20 So some of the important revisions include
21 changes to definitions. So we have "close contact," and
22 "infectious period." Those definitions are pretty much the
23 same, but we added a phrase saying that the CDPH and
24 Department of Public Health changes their definitions in a
25 regulation order then that definition will replace what's

1 in the ETS. That's for added flexibility in case there are
2 changes from CDPH.

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

10 The definition of "fully vaccinated" has been
11 deleted from this proposal as the term "fully vaccinated"
12 is no longer in use.

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

15 Face coverings, previously subsections (c)6(A),
16 which required face coverings for all unvaccinated people
17 indoors, that's been deleted. So now it says, "face
18 coverings required where CDPH requires face coverings by a
19 CDPH order." So right now CDPH orders requires face
20 coverings in emergency shelters cooling and heating
21 centers, healthcare settings, correctional facilities,
22 detention centers, homeless shelters, long-term care
23 settings, and adult and senior care facilities. So that's
24 what CDPH right now mandates face coverings, and so the ETS
25 copies that and is the same as that.

1 The next part was cleaning and disinfecting.
2 That has been deleted from the proposal, it is no longer in
3 there, because we learned more about the mode of
4 transmission of COVID.

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

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

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

23 Next is an exclusion of employees who are
24 positive for COVID-19 or COVID-19 cases. They have been
25 updated to reflect the latest CDPH guidelines from April.

1 So regardless of vaccination status, positive employees can
2 return work after five days if the employee has a negative
3 test and symptoms are improving. And then they can work
4 and wear a face covering for an additional five days.

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

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

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

25 Next, we have major outbreaks. We have

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

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

10 And now the clean and disinfecting requirements
11 have been deleted.

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

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

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

24 So that's it for my briefing. Thanks. Okay,
25 I'll stay here.

1 CHAIR THOMAS: Thank you, Eric.

2 Are there any questions for Mr. Berg?

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

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

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

10 MR. BERG: -- test with the EUA.

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

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

16 (Overlapping colloquy.)

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

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

24 BOARD MEMBER BURGEL: Ah, I see. Okay. So it
25 doesn't specifically say that could be a PCR or an antigen

1 test.

2 MR. BERG: Yes. Anything that's got a FDA EUA,
3 which delineates emergency.

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

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

13 BOARD MEMBER BURGEL: Yes, exactly.

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

16 BOARD MEMBER BURGEL: Of course, yeah.

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

18 BOARD MEMBER BURGEL: Yeah, right.

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

21 BOARD MEMBER BURGEL: Great. Thank you.

22 CHAIR THOMAS: Thank you. Next.

23 BOARD MEMBER LASZCZ-DAVIS: Can you hear me?

24 MR. BERG: Yes.

25 BOARD MEMBER LASZCZ-DAVIS: Okay, great. As I

1 read through the regulation, the proposal, I kept on asking
2 myself, "What if we truncated the ETS and didn't vote it to
3 move forward till December?" And the response was pretty
4 simple, we wouldn't have any guidelines. I mean, you could
5 argue that both ways, but we wouldn't have any guidelines
6 on the books. So it makes practical sense to go ahead and
7 readopt it. I'm not speaking for anybody else, but if you
8 just look at it practically.

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

22 My big concern is let's not make this the
23 permanent regulation, simply, because there have been
24 several years' worth of work put behind it. Because we
25 keep on hearing while it's got -- while we've embraced

1 upgrades it's too long, it's not understandable, there is
2 confusion. But it's just something to consider as we move
3 forward.

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

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

25 So that's it. So thank you.

1 CHAIR THOMAS: Thank you.

2 Go ahead, Laura.

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

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

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

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

20 I am concerned a little bit about -- I mean,
21 there's a lot of talk about CDPH guidelines. And I do just
22 feel like it's important to say, as numbers of people have
23 said, our mission is to look at the workplace and to
24 protect workers. That is not the primary mission of CDPH
25 and therefore they are not analogous, and they don't take

1 the same kind of attention. And I'm concerned. I
2 understand the reason for deferring to CDPH guidelines in
3 the case of close contacts, but I'm concerned about the
4 fact that we're not blocking off that root of transmission.
5 And I'm glad to see that at least in outbreak
6 circumstances, there's stronger protections and stronger
7 requirements for people who are exposed.

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

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

24 And so that's an example of where it seems to me
25 that the practical and the most protective thing to do

1 would be that if a close contact is not going to be
2 excluded that people be wearing masks. And so I'm just
3 wondering about your comments on that and whether there is
4 an ability to clarify that in the FAQ.

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

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

19 But we also have been working on FAQs for this
20 third readoption including "isolation" and "quarantine" in
21 the definitions. So like the definition of "close
22 contact," our regulation says 6 feet, which at CDPH says
23 it should be much broader, it should be the indoor air
24 space. But their definition will not prevail over all of
25 ours or ETS unless they put it in a regulation or order.

1 But right now they haven't put it in a regulation or order,
2 so the definition in the ETS would still stay until they do
3 that.

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

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

12 CHAIR THOMAS: Sure.

13 And any other comments from Board Members?

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

20 It is a hard way to regulate when your entity
21 doesn't understand what they're supposed to do. I don't
22 think that we've served our workers well when everyone is
23 confused on what they're supposed to do. And so it's just
24 kind of a general comment. I'm completely supportive of
25 worker safety and being protective of our employees. But

1 when they are confused, employers are confused, you have
2 not achieved the goal.

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

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

17 CHAIR THOMAS: All right, any other --

18 BOARD MEMBER STOCK: I just had one last comment.
19 I just wanted to comment on the whole discussion of input
20 from the regulated community and from workers. I actually
21 feel like in the course of the two years, we -- I want to
22 just thank the Board and the Division for doing as much as
23 they can to allow public to participate. And I just want
24 to remind that some of us were part of the subcommittee
25 that was set up specifically to allow more input.

1 And I want to say in particular on the subject of
2 whether the IIPP was a better approach than the ETS. That
3 was extensively discussed in that subcommittee and there
4 was presentations from many different entities that led to
5 certain conclusions. As a result we continued to pass that
6 adoption that we had, our last adoption. So I just want to
7 underline that there was a lot of discussion about a lot of
8 these issues and so I want to thank the staff for making
9 that happen.

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

22 And I do think we are going to have this
23 opportunity going forward with developing a new infectious
24 disease standard. As well as considering changes as you're
25 mentioning, Chris, in what might be a permanent COVID reg.

1 So I just want to kind of support the idea that the more
2 that we can see drafts sooner, the greater all of us will
3 have an opportunity to participate.

4 CHAIR THOMAS: Christina?

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

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

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

25 When we are talking about our regular

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

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

16 CHAIR THOMAS: Great.

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

22 CHAIR THOMAS: Barbara?

23 BOARD MEMBER BURGEL: I just wanted to thank
24 again Eric, and certainly the Division staff. I do plan to
25 vote for the extension of the ETS today.

1 I actually love the ventilation focus of this
2 standard. I've said that at prior meetings, I think it's
3 critically important and I think that level of detail is
4 not possible using the IIPP process.

5 I also wanted just to respond to Bruce, I think
6 it was Bruce Wick's comments, about the whole issue of
7 removal of vaccinations in the standard. Initially, I was
8 a little -- I understand fully why you did that. Certainly
9 vaccination remains very important. I think employers play
10 a critical role in encouraging and making, providing
11 support for their employees to become vaccinated. We still
12 are sitting and hovering around 85 percent who are fully
13 vaccinated in California. I think we need get -- and in
14 certain counties that's much lower. I'm surprised to see
15 Imperial County. Imperial County has the highest in Calif
16 -- 95, 96 percent.

17 CHAIR THOMAS: There's only three people.

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

21 But I do think that messaging, "Why was the
22 vaccination removed from the standard?" It certainly plays
23 into the close contacts. And if you are able to come back
24 to work, I mean, unvaccinated individuals who have close
25 contacts who have to stay home and test. And so there's

1 various decision points that's based on symptoms and
2 vaccination status, how long you have to quarantine, or if
3 at all after a close contact to an employee, that has Covid
4 and was at the workplace during their infectious period.
5 But I think it's really important for us to message that.
6 And I think that employers, and vaccination remains
7 important. I think that's (indiscernible).

8 MR. BERG: Thank you.

9 CHAIR THOMAS: Yeah, I was just going to make a
10 couple comments. I'm voting for this to extend it.

11 And I don't want the employers to take this the
12 wrong way. I understand a lot of your concerns. But I
13 think that Mr. Berg, you and your staff have done a really
14 good job of clarifying and cutting the clutter out of a lot
15 of this. And it could be good, could be bad. I mean, I
16 don't think we're done with this yet. I'd like to think
17 that we are, but I've been here too many times before when
18 we get right to the edge. And I know there's going to be a
19 surge in a week or so. I mean, I was in church like a good
20 Baptist and on Easter so --

21 But I think this is the best, I don't want to say
22 remedy, but the best protection we have. And I understand
23 this. But I'm not like the regular person. I've been
24 involved in this since March of 2020 when this first
25 happened and we were setting up along with employers,

1 trying to put this together so that since we were essential
2 workers, are people going to work? And we wanted to
3 provide the best protection for our particular employees.
4 But our charge up here is for every employee in California
5 to have that same kind of protection.

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

15 And it really is a matter of life and death. And
16 I don't think this whole pandemic -- until something
17 happens to someone that is close to you, it's hard to
18 realize how severe it is. I mean, my next-door neighbor
19 who we knew for just a short period of time, the whole time
20 we knew her we knew she had cancer. And she went to the
21 hospital to have some treatments done and she got COVID,
22 she died. She survived two years and probably would have
23 survived a lot longer with the cancer treatment she was
24 receiving, but that one time that she went -- So it's
25 affected me differently.

1 But I think everybody now knows somebody who has
2 been through this, many people who have gotten it and
3 survived. But the unfortunate ones -- and we don't know
4 who we are, we don't know who the unfortunate ones are
5 going to be -- that can't fight this. They may not be able
6 survive.

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

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

21 BOARD MEMBER STOCK: So moved.

22 CHAIR THOMAS: Do I have a second?

23 BOARD MEMBER LASZCZ-DAVIS: Second.

24 CHAIR THOMAS: I have a motion and a second. Is
25 there anything else on the question? Hearing none, Ms.

1 Money, will you please call the roll?

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

4 CHAIR THOMAS: Yeah.

5 MS. MONEY: Ms. Burgel?

6 BOARD MEMBER BURGEL: Aye.

7 MS. MONEY: Ms. Crawford?

8 BOARD MEMBER CRAWFORD: No.

9 MS. MONEY: Mr. Harrison?

10 BOARD MEMBER HARRISON: Aye.

11 MS. MONEY: Ms. Kennedy?

12 BOARD MEMBER KENNEDY: Aye.

13 MS. MONEY: Ms. Laszcz-Davis?

14 BOARD MEMBER LASZCZ-DAVIS: Aye.

15 MS. MONEY: Ms. Stock?

16 BOARD MEMBER STOCK: Aye.

17 MS. MONEY: Chairman Thomas?

18 CHAIR THOMAS: Aye. And the motion passes.

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

23 So we'll move on. Proposed Petition Decisions
24 for Adoption, Greg McClelland, Petition File No. 594.
25 Petitioner requests to amend Title 8, General Industry

1 Safety Orders, section 3203(a) to include procedures to
2 implement applicable, published California Department of
3 Public Health, CDPH, guidelines following a declaration of
4 a state of emergency and an executive order directing CDPH
5 to publish workplace guidance to mitigate "aerosol
6 transmissible pathogens" spread in the workplace.

7 Ms. Shupe, will you please brief the Board?

8 MS. SHUPE: Thank you, Chair Thomas.

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

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

22 Both are in agreement that Petition 594 should be
23 denied, and I'll be quoting some from the proposed decision
24 here: "As noted by Cal/OSHA CDPH recommendations are
25 generally directed to the public and do not always address

1 occupational hazards. As such, they do not provide
2 employers with needed specific occupational health
3 guidance."

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

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

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

19 CHAIR THOMAS: Thank you, Ms. Shupe.

20 Are there any questions for Ms. Shupe?

21 Go ahead (indiscernible).

22 BOARD MEMBER LASZCZ-DAVIS: Just real quickly,
23 Chris, and I'm not sure I understand. Is there any reason
24 why this wasn't sent -- and you've read the recommendation
25 a couple of times today -- was there any reason why this

1 particular process or the request wasn't held? Wasn't sent
2 to an advisory committee for deliberation versus staff
3 reviewing it and rendering an opinion?

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

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

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

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

1 streamlined idea. I just can't support it today.

2 BOARD MEMBER STOCK: And I just wanted to --

3 CHAIR THOMAS: Go ahead.

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

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

24 BOARD MEMBER CRAWFORD: I love discussion. I
25 love the fact that this petition allowed for a different

1 framework, an alternate approach. That was part of the
2 great, intrinsic value of it.

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

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

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

24 But for purposes of this, I just don't agree.
25 And the CDPH, or the California Department of Public Health

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

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

11 BOARD MEMBER KENNEDY: I really found Petition
12 594 refreshing. I sort of wanted to thank the Petitioners
13 for submitting it because one of the things I've always
14 said is, "Let's look for other solutions, other options.
15 Let's try to find an elegant way to approach the problem."
16 And so I felt that it was an effort to say, "Hey, this is
17 another way."

18 (Audio cutting out throughout discussion.)

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

25 CHAIR THOMAS: Oh go ahead, Chris.

1 BOARD MEMBER LASZCZ-DAVIS: We're on a roll now.
2 Yeah, the way I viewed the petition -- and actually I'd
3 have agree with Nola, I thought it was refreshing for all
4 kinds of reasons. It's going to be a tough one to support
5 today. But what I will say is that I don't perceive that
6 petition as is, truly is an effort to have one organization
7 take over another's role, scope, and authority. What I
8 really saw was perhaps a cry for help or a cry for a
9 hearing, the fact that we needed closer alliances and
10 discussions amongst the key federal -- the key state
11 agencies that we have. That's not always been evident, but
12 we probably had more on this issue than I've ever seen.
13 And if that petition did nothing more than accomplish that
14 it's been successful.

15 CHAIR THOMAS: I agree, Chris, because I think a
16 lot of the streamlining of the ETS was due to that
17 particular petition and some of the language that was in
18 there. That I think we try very hard to be agile when it's
19 very hard to be agile with any kind of a standard or
20 temporary standard, it's hard. But I think, Eric, you did
21 a good job with threading the needle on it. But I think
22 probably this helped that quite a bit.

23 Any other comments? All right then I will
24 entertain a motion to adopt the petition decision, which is
25 to deny. Do I have a motion?

1 BOARD MEMBER BURGEL: So moved.

2 BOARD MEMBER STOCK: Second.

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

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

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

9 CHAIR THOMAS: Correct.

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

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

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

17 CHAIR THOMAS: To deny the "aye."

18 (Overlapping colloquy.)

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

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

23 BOARD MEMBER KENNEDY: Thank you, Laura.

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

25 MS. MONEY: Ms. Burgel?

1 BOARD MEMBER BURGEL: Aye.

2 MS. MONEY: Ms. Crawford?

3 BOARD MEMBER CRAWFORD: Aye.

4 MS. MONEY: Mr. Harrison?

5 BOARD MEMBER HARRISON: Aye.

6 MS. MONEY: Ms. Kennedy?

7 BOARD MEMBER KENNEDY: Aye.

8 MS. MONEY: Ms. Laszcz-Davis?

9 BOARD MEMBER LASZCZ-DAVIS: Aye.

10 MS. MONEY: Ms. Stock?

11 BOARD MEMBER STOCK: Aye.

12 MS. MONEY: Chairman Thomas?

13 CHAIR THOMAS: Aye. And the motion passes.

14 We'll now proceed to Variance Decisions for

15 Adoption as listed in the Consent Calendar. Ms. Gonzalez,

16 will you please brief the Board?

17 MS. GONZALES: Thank you, Chair Thomas. And it's

18 nice to see all the Board Members in person today. This is

19 my first public meeting in person, so I'm happy to be here.

20 Thank you.

21 Today we have proposed decisions, 1. through 40.,

22 ready for your consideration and proposed adoption.

23 I'd just like to point out to you that proposed

24 decision 40 has two typographical corrections on page 6 and

25 7, D2 and D6 should read "4.7 bar", not 4.8. And then

1 deletion of the words "Revision Two" on page 10, which is
2 D38. So with those amendments.

3 CHAIR THOMAS: Thank you.

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

6 BOARD MEMBER BURGEL: So moved.

7 BOARD MEMBER LASZCZ-DAVIS: Yeah, second. Aye.

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

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

13 CHAIR THOMAS: Correct.

14 MS. MONEY: Okay. Ms. Burgel?

15 BOARD MEMBER BURGEL: Aye.

16 MS. MONEY: Ms. Crawford?

17 BOARD MEMBER CRAWFORD: Aye.

18 MS. MONEY: Mr. Harrison?

19 BOARD MEMBER HARRISON: Aye.

20 MS. MONEY: Ms. Kennedy?

21 BOARD MEMBER KENNEDY: Aye.

22 MS. MONEY: Ms. Laszcz-Davis?

23 BOARD MEMBER LASZCZ-DAVIS: Aye.

24 MS. MONEY: Ms. Stock?

25 BOARD MEMBER STOCK: Aye.

1 MS. MONEY: Chairman Thomas?

2 CHAIR THOMAS: Aye. The motion passes.

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

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

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

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

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

22 The use of self-contained breathing apparatus,
23 which is a tank carried on the firefighter's back, cannot
24 be used in these incidents, because SCBA tanks only lasts
25 for about 30 minutes or maybe 45 at the max. Whereas

1 wildland firefighting shifts can last 12 hours or sometimes
2 24 hours. And this equipment is also very heavy and
3 impractical in wildland fire conditions.

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

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

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

20 Labor Code section 147.1(c) requires Cal/OSHA to
21 determine the necessity for occupational health standards
22 and develop and present proposed occupational health
23 standards to the Standards Board. Cal/OSHA is moving ahead
24 very quickly with expedited rulemaking on respiratory
25 protection for wildland firefighting, again, with the

1 advisory committee set for May 25th.

2 Committee meeting members will consist of experts
3 from NIOSH, CALFIRE, the International Association of
4 Firefighters, California Professional Firefighters, the
5 L.A. County Fire Department, several other fire
6 departments, frontline firefighters and officers, and other
7 state agencies such as the Occupational Health Branch, the
8 California Department of Public Health, UCSF.

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

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

17 CHAIR THOMAS: Any questions for Mr. Berg?

18 MR. BERG: Yeah. For wildland firefighters'
19 protection or firefighters deployed to wildland fires and
20 wildland urban interface respiratory protection for those
21 firefighters.

22 CHAIR THOMAS: Any others? Thank you, Eric.
23 Hello?

24 BOARD MEMBER KENNEDY: Sorry, I have a question.
25 Sorry, Eric, I just wanted to ask if DOSH has started

1 working yet (indiscernible) it's going to end up standard
2 or (indiscernible) --

3 MR. BERG: Yeah. We have worked on language,
4 specific language and I've been working with the
5 Occupational Health Branch, the California Department of
6 Public Health, and also with the Cal/OSHA Medical Unit, the
7 doctors, nurses and other healthcare professionals in the
8 Cal/OSHA Medical Unit. So all those agencies have been
9 involved in providing input and changes to the language.
10 So we're working on that language now with these other
11 groups.

12 BOARD MEMBER KENNEDY: And that (indiscernible).

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

15 BOARD MEMBER STOCK: If I may?

16 CHAIR THOMAS: Go ahead.

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

23 MR. BERG: Okay. Sure.

24 BOARD MEMBER STOCK: -- have a report on that.
25 Thank you.

1 CHAIR THOMAS: One more. Go ahead, Barbara.

2 BOARD MEMBER STOCK: I just (indiscernible).

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

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

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

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

14 CHAIR THOMAS: Go ahead, Nola.

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

17 (Audio issues with sound cutting in and out.)

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

23 CHAIR THOMAS: Other questions for Eric?

24 Thank you, Eric, I appreciate your time.

25 The Legislative Update, Ms. Gonzalez.

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

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

12 Executive Officer's Report, Ms. Shupe.

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

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

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

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

1 making this happen today.

2 CHAIR THOMAS: Thank you, guys.

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

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

20 We've seen participation over the Covid crisis
21 peak at over 12,000 participants in a single meeting,
22 12,000, 12,000 in a single meeting. And as we look around
23 this room, this is what we -- this is a typical
24 participation, maybe another dozen people here for a Board
25 meeting. So our world has changed dramatically. It's been

1 a seismic shift in just the interest in the Board's work
2 and the ability for public to participate. And we want to
3 continue that as much as possible.

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

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

24 I'll be reporting to the Board again in June with
25 an update on those services that we'll be able to complete.

175

1 We're also looking at legislation that would require hybrid
2 meetings to continue or providing a funding analysis for
3 those. And also, we've submitted budget change proposals
4 to help bolster our resources so we can continue to provide
5 and meet the level of stakeholder engagement that we know
6 is there.

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

18 BOARD MEMBER STOCK: So --

19 CHAIR THOMAS: Go ahead.

20 BOARD MEMBER STOCK: Yeah. I wanted to thank you
21 for that. And I feel like it has hugely increased the
22 access of workers themselves to participate. Because when
23 they can call from home, they can step out to a break or on
24 their lunch period or whatever else. And otherwise, we're
25 only hearing from voices, a very limited slice of the

1 voices, who kind of can be able to travel and spend all day
2 at a meeting like this.

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

9 MS. SHUPE: Thank you.

10 CHAIR THOMAS: Any other questions for Christina?

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

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

19 We thank you for your attendance and your
20 patience today. And I'd like to thank the Academy and the
21 12,000 people that watched us today. Thank you for your
22 support. (Laughter.)

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

25 (The Business Meeting adjourned at 2:34 p.m.)

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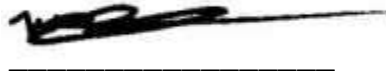
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IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 2022.



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