

1
2
3
4
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PUBLIC MEETING AND BUSINESS MEETING
OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

IN THE MATTER OF THE)
PUBLIC AND BUSINESS MEETING:)
I. CALL TO ORDER AND INTRODUCTIONS)
II. PUBLIC MEETING)
III. BUSINESS MEETING)
_____)

TRANSCRIPT OF PROCEEDINGS
Via WebEx Videoconferencing
Thursday, December 16, 2021

Reported by:
SHELLY COFFEY
CSR #6808

Job No.:
34874DIR-DOSH (REV)

1 PUBLIC MEETING AND BUSINESS MEETING
 2 OF THE
 3 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 4 DEPARTMENT OF INDUSTRIAL RELATIONS
 5 STATE OF CALIFORNIA
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 11)
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 17 TRANSCRIPT OF PROCEEDINGS

18 taken via WebEx videoconferencing, commencing
 19 at 10:03 a.m. and concluding at 3:06 p.m. on
 20 Thursday, December 16, 2021, reported by
 21 Shelly Coffey, CSR No. 6808, a Certified
 22 Shorthand Reporter in and for the State of
 23 California.
 24
 25

1 APPEARANCES:

2 BOARD MEMBERS:

3 DAVE THOMAS, CHAIRMAN

4 BARBARA BURGEL, OCCUPATIONAL HEALTH REPRESENTATIVE

5 KATHLEEN CRAWFORD, MANAGEMENT REPRESENTATIVE

6 DAVE HARRISON, LABOR REPRESENTATIVE

7 NOLA KENNEDY, PUBLIC MEMBER

8 CHRIS LASZCZ-DAVIS, MANAGEMENT REPRESENTATIVE

9 LAURA STOCK, OCCUPATIONAL SAFETY REPRESENTATIVE

10

11 BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

12 Christina Shupe, Executive Officer

13 Autumn Gonzalez, Chief Counsel

14 Michael Nelmidia, Sr. Safety Engineer

15

16 BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

17 Lara Paskins, Staff Services Manager

18 David Kernazitskas, Sr. Safety Engineer

19 Jennifer White, Regulatory Analyst

20 Cathy Dietrich, Regulatory Analyst

21 Amalia Neidhardt, Sr. Safety Engineer

22

23 TKO Staff:

24 Brian Monroe

25 Erik Kuether

1 APPEARANCES (Con't.):

2 TKO Staff (Con't.):

3 Maya Morsi

4 John Roensch

5

6 ALSO PRESENT:

7 Eric Berg, Deputy Chief of Health, Division of Occupational
Safety and Health (Cal/OSHA)

8

9 SPANISH INTERPRETERS:

10 Patricia Hyatt

11 Estela Moll

12

13 PUBLIC COMMENTERS:

14 Ricardo Beas, Independent Safety Consultant

15 Saskia Kim, California Nurses Association

16 Michael Miiller, California Association of Winegrape Growers

17 Melissa Patack, Motion Picture Asociation

18 Melissa Hyzdu, Family Winemakers of California

19 Bryan Little, California Farm Bureau

20 Sofia Lima, Fight for \$15 and a Union

21 Brian Mello, Associated General Contractors of California

22 Bruce Wick, Housing Contractors of California

23 Robert Moutrie, California Chamber of Commerce

24 Dan Leacox, Leacox and Associates

25 John-Paolo, Alano, LLC

1 APPEARANCES (Con't.):

2 PUBLIC COMMENTERS (Con't.):

3 Jenifer Kienle, Kienle Law

4 Anne Katten, California Rural Legal Assistance Foundation

5 Andrew Sommer, Conn Maciel Carey, representing the

California Employers COVID-19 Prevention Coalition

6 AnaStacia Nicol Wright, Worksafe

7 Sandra Barriero, California School Employees Association

8 Mitch Steiger, California Labor Federation

9 Eric Frumin, Strategic Organizing Center

10 Jassy Grewal, UFCW Western States Council

11 Matthew Allen, Western Growers Association

12 Gabriela Facio, Central California Environmental Justice Network

13 Cassie Hilaski, Nibbi Brothers General Contractors

14 Michael Young, California Federation of Teachers

15 Blanca Correa, Papa Cantella's

16 Bethany Miner, HR Professional

17 Kevin Bland, Ogletree Deakins, representing the California

Framing Contractors Association, the Residential Contractors

18 Association, and the Western Steel Council

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22

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24

25

I N D E X

PAGE

1

2

3 Call to order and introductions 7

4 Public meeting 10

5 Business meeting 69

6 A. Proposed Emergency Safety 69

7 Order for Readoption

8 (Government Code Section 11346.1.)

9 B. Proposed Variance Decisions for 74

10 Adoption

11 C. Reports 76

12 D. Panel Discussion 87

13 Public Comment 179

14

15

16

17

18

19

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21

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1 Via WebEx videoconferencing, December 16, 2021

2 10:03 a.m.

3
4
5 CHAIRMAN THOMAS: Good morning. This meeting of
6 the Occupational Safety and Health Standards Board is now
7 called to order. I'm Dave Thomas, Chairman.

8 And the other Board Members present today are
9 Ms. Barbara Burgel, Occupational Health Representative;
10 Ms. Kathleen Crawford, Management Representative;
11 Mr. David Harrison, Labor Representative; Ms. Nola
12 Kennedy, Public Member; Ms. Chris Laszcz-Davis,
13 Management Representative; Ms. Laura Stock, Occupational
14 Safety Representative.

15 Also present from our staff for today's meeting
16 are Ms. Christina Shupe, Executive Officer; Ms. Autumn
17 Gonzalez, Chief Counsel; and Mr. Michael Nelmda, Senior
18 Safety Engineer, who is providing technical support.

19 Supporting the meeting remotely are Ms. Lara
20 Paskins, Staff Services Manager; Mr. David Kernazitskas,
21 Senior Safety Engineer; Ms. Jennifer White, Regulatory
22 Analyst; Ms. Cathy Dietrich, Regulatory Analyst; and
23 Ms. Amalia Neidhardt, Senior Safety Engineer, who is
24 providing translation services for commenters who are
25 native Spanish speakers.

1 Via teleconference, we are joined today by
2 Mr. Eric Berg, Deputy Chief of Health, representing
3 Cal/OSHA.

4 Today's agenda and other materials related to
5 today's proceedings are posted on the OSHSB website.

6 In accordance with Section 11133 of the
7 Government Code, today's Board Meeting is being conducted
8 via teleconference with an optional video component.

9 This meeting is also being live broadcast via
10 video and audio stream in both English and Spanish.
11 Links to these non-interactive live broadcasts can be
12 accessed through the What's New section at the top of the
13 main page of the other OSHSB website.

14 We have limited capabilities for managing
15 participation during the public comment period. So,
16 we're asking everyone who is not speaking to place their
17 phone on mute and wait to be unmuted so that they can be
18 called to speak. Those who are unable to do so will be
19 removed from the meeting to avoid disrupting the
20 proceedings.

21 As reflected on the agenda, today's meeting will
22 consist of two parts. First, we will hold a public
23 meeting, receive public comments or proposals on
24 occupational safety and health matters. Anyone who would
25 like to address any occupational safety health issues,

1 including any of the items on our business meeting
2 agenda, may do so at that time.

3 Members of the public who have submitted
4 requests to be placed in the public comment queue via the
5 online form or automated voicemail system will be called
6 on in turn. Please be advised that the instructions for
7 joining the public comment queue have changed and can be
8 found on the agenda for today's meeting. You may join by
9 clicking the public comment queue link in the What's New
10 section at the top of the main page of the OSHSB website
11 or by calling 510-868-2730 to access the automated public
12 comment queue voicemail. Please be sure to provide your
13 name as you would like it to be listed, your affiliation
14 or organization, if any, and the topic you would like to
15 comment on.

16 When public comment begins, please listen for
17 your name and an invitation to speak. When it is your
18 turn to address the Board, please be sure to unmute
19 yourself if you're using a WebEx or Dial Star 6 on your
20 phone to unmute yourself if you're using the telephone
21 conference line.

22 Please be sure to speak slowly and clearly when
23 addressing the Board and please remember to mute your
24 phone or computer after commenting.

25 Today's public comment will be limited to two

1 minutes per speaker, and we're being lenient. So, we're
2 not going to try and rush, but we will enforce if it gets
3 a little too long. And the public comment portion will
4 be extended for up to two hours so that the Board may
5 hear from as many members of the public as is feasible.
6 The individual speaker and total public comment time may
7 be extended by the board chair, if practicable.

8 After the public meeting has concluded, we will
9 conduct the second part of our meeting, which is the
10 business meeting, to act on those items listed on the
11 business meeting agenda. The Board does not accept
12 public comment during its business meeting unless a
13 member of the board specifically requests public input.

14 We will now proceed with the public meeting.
15 Anyone who wishes to address the Board regarding matters
16 pertaining to occupational safety and health is invited
17 to comment, except, however, the Board does not entertain
18 comments regarding variance decisions. The Board's
19 variance hearings are administrative hearings where
20 procedural due process rights are carefully preserved.
21 Therefore, we will not grant requests to address the
22 Board on variance matters.

23 At this time, anyone who would like to comment
24 on any matters concerning occupational safety and health
25 will have an opportunity to speak.

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

5 At this time, Ms. Neidhart will provide
6 instructions to the Spanish-speaking commenters so that
7 they are aware of the public comment process for today's
8 meeting.

9 Ms. Neidhart.

10 (Ms. Neidhart speaking in Spanish.)

11 CHAIRMAN THOMAS: Thank you, Ms. Neidhart.

12 Erik, do we have any commenters in the queue?

13 MR. KUETHER: Yes, Chair Thomas. We have -- the
14 first three coming up is Johnny Pow, Ricardo Beas, and
15 Saskia Kim.

16 First up is Johnny Pow, as a concerned private
17 citizen.

18 CHAIRMAN THOMAS: John, are you with us? Can
19 you hear us, John?

20 MR. KUETHER: Star 6, if you're on the phone, to
21 unmute yourself.

22 CHAIRMAN THOMAS: Hello?

23 MR. KUETHER: Okay.

24 CHAIRMAN THOMAS: Go to the next.

25 MR. KUETHER: Okay. Next up is Ricardo Beas

1 with the -- independent safety consultant.

2 MR. BEAS: Can you hear me?

3 CHAIRMAN THOMAS: Yes. Go right ahead, Ricardo.

4 MR. BEAS: Thank you.

5 To all Board Members.

6 In your June meeting regarding the COVID-19
7 Emergency Rule, you heard a majority of comments,
8 probably about 90 percent, that were against the
9 emergency rule because it is unconstitutional; masks
10 don't work or make a difference; those that are
11 vaccinated are still catching the disease and are the
12 primary cause of the spread of the virus and make up the
13 majority of hospitalizations related to COVID.

14 You were told that natural immunity works better
15 than vaccines and that there is no need for the
16 unvaccinated to get a jab if you already had the disease.
17 And you were told that PCR tests don't actually detect
18 COVID and are giving false positives. In other words,
19 we're in a pandemic based on inaccurate PCR tests.

20 Yet in your subsequent discussion, you ignored
21 all the comments and pretended that the only concerns
22 that were voiced had to do with whether there would be
23 enough N95 masks for employers to comply.

24 Your actions are contrary to the purpose of
25 having public comments. You should be ashamed of

1 yourselves. Court after court has ruled against
2 Mr. Biden and his administration's COVID orders,
3 including their attempt to use OSHA to force vaccinations
4 on employees, noting that such orders are
5 unconstitutional, with rulings that clearly explain why
6 that is. And yet you persist in imposing the same
7 regulations on California employers and employees.

8 And worst. What Mr. Biden and you are ignoring
9 is extremely -- the extremely large number of COVID
10 vaccine injuries and deaths being reported to the CDC's
11 run Vaccine Adverse Event Reporting system.

12 CHAIRMAN THOMAS: Thank you for your comments.

13 If we can move on to the next caller. Erik, can
14 you go to the next caller. I think we've heard enough of
15 that.

16 MR. BEAS: You had almost two million deaths
17 that are related to that.

18 MR. KUETHER: I'm sorry.

19 MR. BEAS: It's unreasonable for --

20 CHAIRMAN THOMAS: Please mute this guy and go to
21 the next.

22 MR. KUETHER: Next caller is Saskia Kim, with
23 the California Nurses Association.

24 CHAIRMAN THOMAS: Hello. Can you hear us?

25 MS. KIM: Good morning.

1 Saskia Kim, with the California Nurses
2 Association. Thank you for the time today to comment on
3 the second readoption of the COVID-19 ETS to help protect
4 frontline workers from workplace exposure to the virus.

5 The CNA appreciates that the proposed readoption
6 draft recognizes that fully-vaccinated individuals can
7 transmit SARS-CoV-2 and no longer contains various
8 exemptions for these workers. This change recognizes the
9 science that vaccinated people can transmit the virus,
10 and early reports show that to be especially true with
11 Omicron.

12 Moreover, as we've testified before, vaccination
13 is a critically important part of a comprehensive
14 infection control program, but it's only one part.

15 The CNA also requests that the Board revert to
16 the original definition of "outbreak" consistent with the
17 CDPH definition, which simply states that three or more
18 COVID cases constitute a workplace outbreak. Instead,
19 the June readoption of the ETS significantly limited the
20 definition of an outbreak to three or more employee
21 COVID-19 cases. By not recognizing the possibility of
22 positive cases involving non-employees, including
23 students, customers or contractors, this revision
24 significantly limited protections for employees and
25 increased the likelihood of workplace spread of COVID-19.

1 We also appreciate that the current readoption
2 draft maintains exclusion pay protections to workers who
3 are exposed to or infected with COVID-19. These
4 protections ensure that workers are not forced to make
5 the impossible choice of going to work while sick or
6 staying home without pay.

7 Exclusion pay ensures that workers who cannot
8 afford to endure such a devastating loss of income will
9 still get tested and contagious workers will stay home
10 rather than potentially infecting other employees or
11 members of the public and worsening the pandemic.

12 We're also interested in an update on progress
13 of compliance where SRIA is needed for the two-year
14 standard. That process can be a lengthy one, and it's
15 critical that the analysis be well underway to prevent
16 any interruption or delay in COVID workplace protections.

17 As we've testified before, most of our nurses
18 are covered by the ATD standard, but we do have
19 call-center nurses who are covered by the ETS, and
20 workers who are less protected against COVID could very
21 well become our patients in the hospital.

22 Thank you for the time today.

23 CHAIRMAN THOMAS: Thank you. I appreciate your
24 comments.

25 Next, Erik.

1 MR. KUETHER: The next three commenters we have
2 is Michael Miiller, Melissa Patack, and Melissa Hyzdu.

3 First up is Michael Miiller, with the California
4 Association of Winegrape Growers.

5 CHAIRMAN THOMAS: Michael, can you hear us?

6 MR. MIILLER: Good morning, Chair, Members.

7 CHAIRMAN THOMAS: Good morning.

8 MR. MIILLER: Can you hear me?

9 CHAIRMAN THOMAS: Yes.

10 MR. MIILLER: Good morning.

11 Thank you, Board Members, Chair, and staff.

12 My name is Michael Miiller. I'm with the
13 California Association of Winegrape Growers. The Family
14 Winemakers of California has also asked me to make a few
15 remarks on their behalf. I thank you for giving me an
16 additional minute or two to cover all the issues. I
17 would like to address the second readoption of the ETS,
18 and I assure you I will be very brief.

19 We associate our comments with the comments that
20 were submitted by the Agricultural Coalition and the
21 Chamber of Commerce in their comment letter, you should
22 all have.

23 While we continue to believe the ETS is entirely
24 unnecessary, we recognize that past comments from Board
25 Members have made it clear that the second readoption of

1 the ETS will be approved. Consequently, my comments
2 don't ask you to reject the second readoption, as I know
3 you intend to approve it. Instead, I would raise a few
4 issues for the ETS and rely on the U.S. lawmakers to
5 figure out the best way to resolve those glaring
6 problems.

7 I have a hard time accepting that the Board's
8 only options today are a straight-up or straight-down
9 vote on what is before you. If that is truly all you can
10 do, this will reduce the Board to having a role that is
11 largely perfunctory and administrative and not the
12 policy-making role envisioned when this Board was created
13 in the Labor Code.

14 You have all received our Coalition letter which
15 lays out the corrections that are needed. This morning I
16 will briefly explain those changes in priority order.

17 One, beginning on page 14 of the second
18 readoption, courtesy regulatory language, please clarify
19 that when a vaccinated close-contact employee refuses to
20 wear a mask the employer is not obligated to provide two
21 weeks of paid leave.

22 Yesterday, CDPH said that for the next four
23 weeks Californians must wear masks indoors including in
24 workplaces. Today, you are considering a regulation that
25 would give two weeks of paid leave to vaccinated

1 close-contact employees who refused to wear a mask at
2 work. If that is not your intent, please make it clear
3 in the regulation.

4 Number two, again, beginning on page 14, the six
5 feet of distancing for vaccinated close-contact employees
6 is just not needed, especially when the vaccinated
7 employee is testing negative, has no symptoms, and is
8 wearing a mask. This requirement is over the top.
9 Please strike the six-feet-of-distance requirement for
10 close-contact vaccinated employees.

11 Three, on page 8, the phrase "on the premises"
12 needs to be defined or stricken. This is because the
13 broad, common-use definition of "premises" is, quote,
14 "land and buildings together considered as a property,"
15 end quote. Consequently, a strict reading of the new
16 language would require that a truck driver who comes into
17 a vineyard property must receive the notice from the
18 grower even though the driver never exited the truck or
19 even rolled down the window. Please either define "on
20 the premises" or strike that phrase altogether.

21 Finally, our fourth concern is with the
22 definition of face coverings on page 3. This definition
23 would make it illegal to use a cloth face covering at
24 work if any light can come through the mask. However, in
25 the CDPH mask mandate that took effect yesterday, they

1 refer to their face covering Q&A which makes no mention
2 whatsoever of the light test.

3 There is no question that the light test is good
4 advice in determining the efficacy of a cloth face mask.
5 The CDC recommends this light testing to determine the
6 efficacy of a mask, but keep in mind that this regulation
7 is law. It's not a recommendation. It's not casual
8 advice. It is law. Consequently, this regulation will
9 make it illegal to use of millions of face coverings that
10 are currently allowed by Cal/OSHA and CDPH.

11 This is the mask that I use. This mask would be
12 illegal in the workplace under this regulation. This
13 means that employees and employers will need to
14 immediately purchase millions of new masks to replace the
15 cloth masks that are in use today but fail in the
16 flashlight test. Keep in mind that Cal/OSHA and CDPH can
17 recommend the light test without putting a requirement
18 into the --

19 UNIDENTIFIED FEMALE SPEAKER: Thirty seconds.

20 MR. MIILLER: Consequently, the ETS should be
21 appealed to strike the light test.

22 Thank you for your time, your public service,
23 and your due diligence. The problems identified today
24 are easily fixable. As Board Members discuss the issues
25 later today, please don't rely on generalities or intent.

1 Those comments are dismissive excuses and not a prudent
2 way to write law. I urge you all to find a way to
3 resolve the concerns I have raised, as they are fixable.
4 Again, thank you very much for your time and attention.
5 Have a great day.

6 CHAIRMAN THOMAS: Thank you, Michael.

7 Who do we have next, Erik?

8 MR. KUETHER: Next up is Melissa Patack, with
9 the Motion Picture Association.

10 MS. PATAK: Thank you. Can you hear me?

11 CHAIRMAN THOMAS: Yeah, Melissa. Go right
12 ahead.

13 MS. PATAK: Thank you so much for the
14 opportunity to provide comments to the Standards Board
15 meeting concerning the revised emergency temporary
16 standard.

17 My name is Melissa Patack. I'm vice president,
18 senior counsel with the Motion Picture Association, the
19 trade association whose members are the leading producers
20 and distributors of filmed entertainment content across
21 all platforms. Our members include Disney, NBCU,
22 Universal, Netflix, Paramount Pictures, Sony Pictures
23 Entertainment, and Warner Brothers.

24 We have submitted a letter earlier this week on
25 Monday that sets forth our concerns, and I will just

1 summarize them here. And I also want to note that we
2 associate ourselves and support the letter that was filed
3 by the California Chamber of Commerce. And I think Rob
4 Moutrie is in the queue, and we associate ourselves also
5 with the issues that he will be raising.

6 We are very concerned by the provision regarding
7 vaccinated employees who become close contacts who do not
8 necessarily need to be excluded from the workplace but
9 who are required to be masked and remain at a six-foot
10 distance from others, similar to what the previous
11 individual testified to, Mr. Miiller from the winegrowers.

12 As you are familiar with from our previous
13 participation in these proceedings, actors cannot wear
14 masks while performing. And those who work closely with
15 actors, such as those who style hair, those who apply
16 makeup, and those who place microphones on the actor,
17 cannot maintain six feet of distance from the actor when
18 doing their work.

19 As provided in our Return to Work Collective
20 Bargaining agreement that was negotiated with the
21 entertainment unions and guilds, testing for COVID-19 is
22 performed regularly, at least three times a week for
23 actors and those working around them. This testing
24 continues each and every week for productions, at a great
25 investment of time by both the employees and the

1 producers, and at significant additional costs by the
2 producers.

3 The testing regime has ensured that productions
4 are safe and that those who work on productions are not
5 spreading COVID, either at the workplace or into the
6 community.

7 We would greatly appreciate Cal/OSHA's
8 recognition of the effort motion picture, television, and
9 streaming production has made to ensure a safe workplace
10 for employees. We strongly urge that Cal/OSHA include a
11 regular testing protocol as an alternative to the
12 six-foot distance requirement for employees who become
13 close contacts or allow for an exception for those who
14 cannot perform their job while keeping a six-foot
15 distance. Without this accommodation, there is great
16 risk that Cal/OSHA's ETS could result in the shutdown of
17 of many productions.

18 We also request that an exception -- we also
19 request an exception for those who have become close
20 contacts and are allowed under this ETS to return to work
21 before the required 14-day exclusion period. An employee
22 who is fully vaccinated and tests negative after five
23 days from the time the employee became a close contact
24 should not be required to maintain the six feet of
25 distance for the full 14-day period, recognizing the

1 testing regime that's being utilized on productions.

2 We also have concerns about the provisions on
3 employer-provided housing. In the production business,
4 the employer may provide or reimburse employees for hotel
5 accommodations when the production is filming outside a
6 sound stage on location. It would be extremely rare for
7 a production to fill up an entire hotel or motel and,
8 therefore, the employer would not have control of the
9 facility. It would be virtually impossible for a
10 production company to fulfill all the requirements
11 imposed by 3205.3.

12 For example, a production company could not
13 provide face masks for all patrons of a hotel and require
14 that the masks be worn. The production company cannot
15 oversee the hotel's cleaning and maintenance staff. The
16 production company will not know if someone who is a
17 hotel patron or employee becomes ill with COVID and
18 whether any employees have -- any of the production
19 employees have been so exposed as to be considered close
20 contact. And the production company will have no control
21 over the ventilation system at a particular hotel or
22 motel.

23 We urge that these provisions be re-worked,
24 recognizing that --

25 UNIDENTIFIED FEMALE SPEAKER: Thirty seconds.

1 MS. PATACK: -- employers do not have control
2 over accommodations and facilities that are used for
3 business.

4 MR. KUETHER: Thirty seconds.

5 MS. PATACK: I'm going to conclude right now.

6 We appreciate the role of Cal/OSHA, your role to
7 protect workers in the workplace. However, every
8 workplace is not the same. There are unique
9 circumstances that pertain to production worksites. We
10 believe that partnership with the entertainment guilds
11 and unions, producers, have established a very safe work
12 environment during this pandemic. And we ask that you
13 recognize the extraordinary measures taken on productions
14 to keep employees safe and provide us with the ability to
15 continue motion picture, television, and streaming
16 production.

17 Thank you so much for the opportunity to provide
18 these comments.

19 CHAIRMAN THOMAS: Thank you, Melissa.

20 I think we have next up another Melissa; is that
21 correct, Erik?

22 MR. KUETHER: That is correct. Her name is
23 Melissa Hyzdu. Sorry if I mispronounce her name, but the
24 Family Winemakers of California.

25 CHAIRMAN THOMAS: Melissa, can you hear us?

1 MR. MIILLER: She was unable to attend, and I
2 made comments on their behalf.

3 CHAIRMAN THOMAS: Go right ahead, Mike.

4 MS. SHUPE: He already did.

5 CHAIRMAN THOMAS: Oh, okay. Okay. Let's go on
6 to the next.

7 MR. KUETHER: Moving on, we're -- the next three
8 will be Bryan Little, Sofia Lima, and Brian Mello.

9 First up is Bryan Little, with the California
10 Farm Bureau.

11 CHAIRMAN THOMAS: Bryan, are you with us?

12 MR. LITTLE: I am. Can you hear me?

13 CHAIRMAN THOMAS: Yeah. Go right ahead.

14 MR. LITTLE: Excellent. Thank you,
15 Mr. Chairman, and, Members of the Board.

16 Good morning. I'm Bryan Little, representing
17 California Farm Bureau, California's largest organization
18 for farmers and ranchers, representing more than 30,000
19 farmers and ranchers in 53 California counties. I
20 appreciate the opportunity to comment on several aspects
21 of the text for the second readoption of the COVID-19
22 ETS, the standards this Board will consider today.

23 Let me begin by associating myself with comments
24 offered by Michael Miiller, with the California
25 Association of Winegrape Growers, as well as comments

1 that, I believe, will be offered by Rob Moutrie of
2 CalChamber, and the letters offered by the Agricultural
3 Coalition and by the Coalition led by CalChamber.

4 We continue to have concerns with the direction
5 the agency and the Board have taken with COVID-19 ETS, as
6 we believe it's unnecessary, and a suboptimal response to
7 the COVID-19 pandemic for two reasons.

8 First, it's insufficiently flexible to meet the
9 constantly changing circumstances surrounding the
10 pandemic. This was starkly illustrated in June of this
11 year when the Board first readopted a version of the
12 November 20 ETS that took no consideration of the growing
13 number of people who had been vaccinated; later rescinded
14 that action and adopted a subsequent version that, in
15 fact, took consideration of the availability of vaccines.

16 If anything, the number of vaccinated persons
17 has grown tremendously since June, and yet the version of
18 the ETS the Board will consider today in many ways
19 backtracks on recognizing that many have been vaccinated;
20 a decision employers will have to cope with until April
21 of 2022, when circumstances are as likely to be as
22 different from today as the situation today is as
23 different as that in June.

24 Second, the ETS is simply unneeded to protect
25 our workforce from COVID-19 since the agency has issued

1 and continues to issue far more citations to employers
2 under its Injury and Illness Prevention Program standard
3 than under the ETS. The standard citation -- this
4 citation history clearly illustrates that the agency has
5 struggled, as much as employers have, to understand and
6 apply the requirements of the ETS, and that the agency
7 continues to rely on the longstanding regulatory
8 obligation of employers to assess and respond to
9 workplace hazards with guidance from the agency, the
10 CDPH, and from others.

11 The requirement of the second readoption that
12 vaccinated employees who have experienced a close contact
13 need not be excluded and must wear a face covering and
14 maintain six-foot distance from others is unclear whether
15 it applies to employees working outdoors and may require
16 employers to furnish exclusion pay to employees who
17 refuse to comply with directives to use face coverings.

18 We all know that face covering has been
19 controversial and difficult to enforce in a variety of
20 settings, and these questions should be addressed with
21 clarifying regulatory language.

22 The addition of on-the-premises language with
23 respect to notice requirements, apparently, intended to
24 furnish clarity, seems redundant and unclear. If
25 employees, independent contractors, and employers are at

1 the worksite, are they not by definition on the premises?
2 Further explanation on the intent in adding "on the
3 premises" is needed.

4 The addition of new criteria to the effect that
5 face coverings must be made of fabrics that do not allow
6 the passage of light is, simply put, inexplicable. Since
7 no guidance is offered as to how much light the light
8 source used to evaluate must emit, to evaluate the light
9 permeability of cloth face coverings, no matter how much
10 light passage, if any, is permissible, this new criteria
11 is unworkable.

12 In fact, many, if not, most cloth-based
13 coverings cannot meet this standard, which is sure to set
14 off a mad scramble as employers seek to ensure that face
15 coverings used in the workplace meet this new and vague
16 standard that will become effective nearly two years into
17 the pandemic. Imposing this new and unclear requirement
18 for face coverings after nearly two years of
19 face-covering practice will ensure another round of
20 frustration, confusion, and head-scratching as the
21 regulatory community tries to discern the agency and the
22 Board's intentions with respect to acceptable face
23 covering.

24 I would identify myself with Michael's comment
25 about the flashlight test. I thought that was a very apt

1 way to put this issue with regard to light penetration of
2 masks.

3 This is the mask I've been using today and for
4 the last several weeks. My wife and I own several of
5 these, and we use them every day. They do not prevent
6 the passage of light through the fabric. To the extent
7 that we've just decided that we're going to add this
8 criteria about passage of light through cloth masks, we
9 either need some further explanation or we need to
10 reconsider that requirement.

11 So, with that, I would thank you for your time
12 and for your attention.

13 CHAIRMAN THOMAS: Thank you, Bryan.

14 Who is up next, Erik?

15 MR. KUETHER: Next up is Sofia Lima, and it
16 looks like she's requiring a Spanish interpreter. She's
17 with the Fight For 15 and a Union.

18 UNIDENTIFIED FEMALE: Hi. Good morning.

19 (Ms. Neidhart speaking Spanish.)

20 UNIDENTIFIED FEMALE: Sofia was having a hard
21 time getting into the meeting. And, so, anyways, I have
22 her here on the phone. So, she's going to say her
23 remarks through here.

24 Sofia.

25 (Ms. Neidhart speaking Spanish.)

1 CHAIRMAN THOMAS: Hold on one second. She's
2 going to make comments over the phone, and you're going
3 to translate, Amalia?

4 MS. NEIDHART: Yes, that's correct,
5 Chairman Thomas, but if you'd like someone else to
6 translate, let me know.

7 CHAIRMAN THOMAS: No. No. That's fine. I just
8 wanted to make -- I just wanted to make sure I knew what
9 was going on.

10 MS. NEIDHART: Absolutely. Thank you.

11 (Ms. Neidhart speaking Spanish.)

12 MS. LIMA: Good morning. My name is Sofia Lima.
13 I work for McDonald's, and I'm a leader with the Fight 15
14 and unions.

15 She came down with COVID on the first week of
16 January, and it was not good. She was not allowed to
17 take time off. She requested the time off to her
18 manager, and she was not allowed to take it. When she
19 got the call two to three days later from the doctors
20 that she was COVID positive, then she was told to go
21 home. Even then she was -- she was working for two to
22 three days, even though she was sick, with her
23 co-workers. She says it was very hard to come back after
24 her quarantine.

25 MS. NEIDHART: And one moment.

1 MS. LIMA: And they took away three days. She
2 says that when she went back to work, some of the
3 co-workers or people wouldn't talk to her. They got mad
4 with her. And with her co-workers, she filed a
5 complaint.

6 On the first day she came down with COVID, the
7 first -- in the morning the symptoms were that her eyes
8 were hurting and she felt that her eyes had been pulled
9 out. That was in the morning. In the afternoon, she
10 started with a headache. On the second day, she started
11 with fever, body aches, and she lost sense of taste and
12 smell.

13 CHAIRMAN THOMAS: We're getting close to two
14 minutes. So, I think you're going to have to wrap it up.

15 MS. NEIDHART: Chairman Thomas, I thought that
16 with translators, they're allowed four minutes.

17 CHAIRMAN THOMAS: Yeah. But I think we've
18 already -- okay. I'm letting you know.

19 MS. NEIDHART: Absolutely.

20 MS. LIMA: She was affected by becoming sick
21 with COVID, by not getting her salary, not being able to
22 pay for rent, not being able to get food, or not being
23 able to be with her family.

24 What she's asking is she's asking for your
25 support to support any of the workers that come down

1 sick. It's not that it was their fault they came down
2 sick.

3 What she's saying is that it is very difficult
4 to pay all the things that they need without their
5 salaries. So, she wants to make sure that you support
6 and continue to pass regulations that will protect
7 workers and keep them safe.

8 MR. KUETHER: Please wrap up. Thirty seconds.

9 MS. LIMA: She wants to make sure no other
10 worker goes through what she went through or comes down
11 with COVID.

12 CHAIRMAN THOMAS: Thank you, Sofia.

13 Thank you, Amalia.

14 CHAIRMAN THOMAS: Who do we have up next?

15 MR. KUETHER: Next up is Brian Mello with the
16 Associated General Contractors of California.

17 CHAIRMAN THOMAS: Thank you.

18 MR. MELLO: Thank you.

19 Mr. Chairman, Members of the Board, good
20 morning. My name is Brian Mello, safety manager for
21 Associated General Contractors of California. AGC is a
22 member-driven organization with around 900 companies
23 statewide, specializing in commercial construction.

24 The proposed second readoption draft expanded
25 post-case testing for vaccinated individuals with no

1 symptoms. There's been nationwide press on the coming
2 shortage of COVID-19 tests which included specific
3 acknowledgment from the White House. Given the
4 anticipated supply issue and added cost on employers, AGC
5 of California feels expanding testing to vaccinated
6 individuals with no symptoms after close contact is an
7 inefficient use of testing supply.

8 Furthermore, this expansion of requirements will
9 hit employers who committed to vaccination after the June
10 17th amendment particularly hard. The current ETS does
11 not require testing of vaccinated individuals who are in
12 close contact with a positive case unless they develop
13 symptoms. AGC of California urges the Division to
14 maintain that provision within the second readoption.

15 The second readoption draft also requires
16 reinstatement of social distancing for vaccinated
17 individuals after exposure. Changing social distancing
18 requirements on and off is not something that can easily
19 be done, especially with many of the unique construction
20 tasks that contractors are presented with on a daily
21 basis. Implementing social distancing for some, when the
22 criteria within the draft is met, may cause further
23 unsafe acts and diminish a culture of safety even more.

24 AGC of California would also like to comment on
25 the ambiguity found within Section 3205(C) (9) (C),

1 exclusionary pay. This section being proposed requires
2 employees to either be excluded for 14 days with pay or
3 comply with social distancing and masking requirements.
4 Clarity is needed under circumstances when an employee
5 refuses to comply with those additional requirements.

6 If the proposed second readoption draft passes
7 today, AGC of California urges the Division to update
8 FAQs to provide clarity on this matter.

9 We appreciate your time and consideration around
10 these comments, as well as the detailed written comments
11 that were previously submitted.

12 Thank you.

13 CHAIRMAN THOMAS: Thank you.

14 Erik, who do we have next?

15 MR. KUETHER: Yes. The next three we have is
16 Bruce Wick, Robert Moutrie, and Dan Leacox.

17 First up is Bruce Wick with the Housing
18 Contractors of California.

19 CHAIRMAN THOMAS: Bruce, are you there?

20 MR. WICK: Yes. Thanks very much. Appreciate
21 the opportunity. I won't repeat what's been said by many
22 others, but there's a concern of what messages are being
23 sent.

24 I think sometimes the drafters of changes are
25 looking through a microscope, saying, wow, that would be

1 a nice change if that actually took place out in the
2 workplace.

3 But you're asking 1.1 million employers, who are
4 not covered by the ATD, covering 17 million employees who
5 are not covered by the ATD, we're going to make these
6 changes for three months. You're going to have to
7 refigure, retrain.

8 And why isn't there, kind of, a big-picture look
9 to say for that three months of the readoption are the
10 changes we need important enough or serious enough to
11 make all this disruption? We're going to have to do a
12 new Q&A. And is it worth it?

13 You've heard enough ambiguities that employers,
14 you know, who have been keeping up with this thing
15 through the IIPP since March of 2020, are having to do
16 yet another series of changes and retrainings and then
17 have to go into April and completely rewrite it yet
18 again. And that will be helpful because, hopefully, that
19 will be a two-year period where we do one set of things.

20 The other part is what message are we sending to
21 employees about vaccinations. We know vaccinations do
22 weaken somewhat over time, but this readoption says to
23 workers: We're really discounting the value of
24 vaccinations. When on the CDPH website, as of this
25 morning still, it says, if you're vaccinated, you're

1 seven -- or unvaccinated, you're 7.1 times more likely to
2 get COVID; 12.8 times more likely to get hospitalized;
3 and 15.8 times more likely to die. That's a message to
4 get vaccinated.

5 I'm vaccinated. I encourage people to be
6 vaccinated. This readoption during this three months
7 says to people: Well, vaccinations aren't maybe that
8 important because it won't carry that much weight.

9 I really wish the Board would have said to the
10 Division: Look, if there aren't important, serious
11 enough changes to make for this 90-day period, leave the
12 current ETS in place.

13 Be careful of the message we're sending
14 especially as regards vaccinations.

15 Thank you for your time.

16 CHAIRMAN THOMAS: Thank you, Bruce.

17 Next, Erik.

18 MR. KUETHER: Next up is Robert Moutrie, with
19 the California Chamber of Commerce.

20 CHAIRMAN THOMAS: Robert, are you there?

21 MR. MOUTRIE: Good, morning, Mr. Chair, Members.
22 Can you hear me okay?

23 CHAIRMAN THOMAS: Yeah. Go ahead.

24 MR. MOUTRIE: Thank you. Robert Moutrie for the
25 California Chamber of Commerce.

1 You know, I'll try to get right into it here.
2 We certainly recognize the importance of the ETS,
3 particularly when we're watching the Omicron variant
4 closely and, kind of, watching (inaudible) and seeing how
5 that comes. But I want to really focus on two specific
6 issues in this readoption package that we believe are
7 counter-productive and will create considerable issues
8 without really accomplishing anything.

9 First, the second readoption text as applied by,
10 I believe, Brian Mello, it, basically, treats vaccinated
11 and unvaccinated individuals the same. This comes firmly
12 in the context of post-exposure testing where even
13 vaccinated individuals who are showing no symptoms
14 (inaudible).

15 Our concerns here, first and foremost, is there
16 is a considerable cost for the employers across
17 California and is, I think, an incorrect allocation of
18 resources, given the increasing scarcity in rapid tests
19 that we're seeing across the nation as consumption
20 arises. So, you know, considering that scarcity, we
21 don't see the allocation towards vaccinated individuals
22 who are showing no symptoms being the ideal use of
23 (inaudible) resources.

24 Second, I want to focus on the exclusion
25 provisions in this readoption text. The readoption text,

1 essentially, moves us to a situation where employees can
2 return post close contact under a set of conditions.
3 Though, they must be excluded or if they'd like to work
4 (inaudible) 14 days or if they'd like to return before 14
5 days, they must socially distance and wear a mask. That
6 social-distancing order was really problematic
7 particularly for smaller employers, who realized that you
8 can't social distance certain jobs: a waitress, a cook in
9 a small restaurant or in a manufacturing space. You
10 can't move a piece of equipment six feet necessarily,
11 which is what the incentivization towards vaccination was
12 early in the pandemic. We think this is particularly
13 important to keep in mind when you realize, combined with
14 the testing division, we're talking about excluding
15 vaccinated individuals who have tested negative for two
16 weeks. That's a disruption to workplaces across
17 California, especially in terms of the labor shortage,
18 that we don't really see the benefit, if we believe in
19 testing and vaccination, which we do. All right. That's
20 not something that we are here to dispute.

21 MR. KUETHER: Thirty seconds remaining.

22 MR. MOUTRIE: Thank you. I'll try to wrap up.

23 To the point flagged by Bruce, I'd like to echo
24 that. I think it's really important the Board consider,
25 if not in today's version, moving forward, that, you

1 know, we really want the regulation to incentivize
2 vaccinations. And we really want to rely on the
3 dependability of testing. I mean, we're concerned that
4 these changes don't do that, and as a result aren't
5 really health and safety but will certainly increase
6 costs for businesses.

7 Thank you.

8 CHAIRMAN THOMAS: Thank you.

9 Who do we have next, Erik?

10 MR. KUETHER: Next up is Dan Leacox, with
11 Leacox & Associates.

12 CHAIRMAN THOMAS: Dan, are you with us?

13 MR. LEACOX: I am. Good morning, Board Members
14 and public staff. Thank you. I have a brief comment.
15 It's a little shift of attention. It wasn't clear to me
16 if that's something to do here or later. But regarding
17 the panel discussion later, and just to note that the
18 Board has an obligation to consider the merits of
19 alternative approaches to accomplish regulatory
20 objectives, and only that way can it pass optimized
21 regulations. You know, we heard that word earlier today,
22 right? There is -- it's one thing to regulate; it's
23 another thing to regulate well. And process can be used
24 to facilitate a due consideration of alternatives and
25 their merits. It can also be used to block it.

1 So, I applaud the Board for doing what it must
2 to inform itself on the merits of alternative approaches
3 to a permanent rule to address pandemics and wish the
4 Board well in obtaining an optimized result, and that's
5 all.

6 CHAIRMAN THOMAS: Thank you, Dan. Appreciate
7 your comments.

8 Erik, who do we have up next?

9 MR. KUETHER: Next three commenters are John
10 Paolo, Jenifer Kienle, and Anne Katten.

11 First up is John Paolo with Alano, LLC.

12 CHAIRMAN THOMAS: John, can you hear us.

13 Hello, John?

14 UNIDENTIFIED MALE SPEAKER: I don't see him on
15 the list.

16 CHAIRMAN THOMAS: Is that him?

17 UNIDENTIFIED MALE SPEAKER: No. That was me.
18 Sorry. Sorry, Chair Thomas.

19 MR. KUETHER: Let's go with the next one. The
20 next is Jenifer Kienle with Kienle Law.

21 CHAIRMAN THOMAS: Jenifer, can you hear us?

22 (Pause in proceedings.)

23 CHAIRMAN THOMAS: Remember to unmute yourself,
24 Jenifer.

25 I think we're going to have to go to our next...

1 MR. KUETHER: Our next one is Anne Katten with
2 CRLAF.

3 MS. KATTEN: Hi. Good morning, Chair Thomas,
4 Board Members, and Board and Division staff. I'm Anne
5 Katten with California Rural Legal Assistance Foundation,
6 and I'm here today to urge you to vote in support of the
7 ETS second readoption.

8 We are very relieved to see that this proposed
9 revision retains exclusion pay which is vital to the
10 function of the regulation and well-being of employees
11 and also that it includes modest but key revisions that
12 recognize the need to control the spread of breakthrough
13 infections in vaccinated employees, especially given the
14 emergence of the Omicron variant.

15 The changes we think are particularly positive
16 include the requirements for testing and isolating sick
17 or exposed --

18 (Audio transmission breaking up.)

19 MS. KATTEN: Pardon? You can't hear me?

20 CHAIRMAN THOMAS: We missed part of it. So, go
21 back about a paragraph in and start over.

22 MS. KATTEN: Okay. Well, I urge the Board
23 Members to support the readoption of the COVID ETS.
24 Changes, we feel, are particularly positive include the
25 requirements for testing and isolating of sick or exposed

1 residents of employer-provided housing and for providing
2 HEPA filtration units in bedrooms of employee-provided
3 house if there are any residents who aren't fully
4 vaccinated. This is critical because of the crowded
5 sleeping situations that are allowed in this housing.

6 We are also very glad to see the requirement for
7 face coverings in employer-provided transportation where,
8 again, this is a very small work space, and bus rides and
9 van rides can last many hours.

10 Looking forward to the regulation to be voted on
11 in April. We urge you to retain exclusion pay with its
12 requirements to maintain earnings, seniority, and job
13 status, because essential workers should not be left
14 without pay or risk their job status. And this is just
15 crucial for the proper function of the regulation.

16 It's also critical to retain enough specific
17 requirements in the regulation to ensure that both
18 employers and employees have an adequate roadmap for
19 preventing infection spread. And specific requirements
20 for controlling outbreaks will, in time, reduce the
21 burdens of compliance because there will be less need for
22 testing and exclusion.

23 Thank you very much for your attention to the
24 needs of California's workers in these difficult times.

25 CHAIRMAN THOMAS: Thank you, Anne.

1 Who do we have next, Erik?

2 MR. KUETHER: The next three we have is Andrew
3 Sommer, AnaStacia Nicol Wright, and Lee Sandahl.

4 First up is Andrew Sommer, with Conn, Maciel,
5 Carey, counsel for the California Employers COVID-19
6 Prevention Coalition.

7 MR. SOMMER: Good morning, members of the Board.
8 I am Andrew Sommer, from Conn, Maciel, Carey, counsel for
9 the California Employers COVID-19 Prevention Coalition.
10 I wanted to focus on two provisions in the proposed
11 revised COVID-19 ETS.

12 Our Coalition members are troubled by this draft
13 removing the exception for the exclusion requirement for
14 fully-vaccinated employees having close contact. The
15 proposed carve-out requires that employees despite being
16 fully vaccinated, wearing face coverings and not
17 experiencing COVID-19 symptoms maintain six feet of
18 distance from one another in the workplace, which just is
19 not feasible in virtually all work places.

20 For example, workers in retail stores, whether
21 they be at the check-out area, on the floor assisting
22 customers, or stocking shelves, cannot maintain
23 distancing at all times, despite their best efforts; nor
24 can restaurant workers, who similarly have close contact
25 at times with the general public or others. And what

1 happens to office workers who may be working in separate
2 work areas but have momentary contact with one other
3 throughout the day? Aside from being unfeasible, the
4 distancing requirement is unnecessary given the lower
5 risk for the fully vaccinated being infected and
6 transmitting the virus and that the vaccinated employee
7 critically does not have COVID-19 symptoms and is wearing
8 a face covering.

9 Given labor shortages, the goal is to
10 incentivize employees' vaccinations, and that the
11 modified exemption for fully vaccinated employees is
12 unachievable as written. We urge the Board to strike the
13 distancing requirement from this exclusion exception for
14 fully-vaccinated employees.

15 Otherwise, there's been some comment about the
16 face coverings provision in the revised ETS. The
17 reference to the face covering not allowing light to pass
18 through when held up to a light source has received
19 notable attention. It's ambiguous, inconsistent with CDC
20 guidance, and is completely unworkable for both employers
21 and the division compliance officers to determine the
22 types of face coverings that are compliant. We encourage
23 the Board, as a result, to strike that language.

24 Lastly, the proposed permanent COVID-19 rule,
25 which is really a two-year term as written, we believe

1 it's going in the wrong direction. The IIPP, the ATD
2 standards, the local public health orders have been
3 effective in addressing COVID-19 hazards in a way that is
4 fluid, adopting to change in circumstances and based on
5 current scientific knowledge.

6 We have found that the IIPP has been an
7 effective tool, affording that flexibility, and we do not
8 want to revert to the situation we had with the first
9 iteration of the COVID rule that just was unworkable from
10 the get-go. And we felt we were locked in with something
11 that just wasn't serving the public and employers and
12 workers' interests here.

13 Thank you for the opportunity to comment.

14 CHAIRMAN THOMAS: Thank you.

15 Who do we have next, Erik?

16 MR. KUETHER: Next up is AnaStacia Nicol Wright
17 with Worksafe.

18 CHAIRMAN THOMAS: AnaStacia, are you with us?

19 MS. WRIGHT: Yes, I am here. Thank you all.

20 So, first off, good morning to the members of
21 the Board and everybody in attendance.

22 My name is AnaStacia, and I'm a staff attorney
23 with Worksafe, and I'm here today to briefly comment on
24 the proposed standards for workplace protection from
25 COVID-19, both the ETS and the two-year.

1 So, first off, we want to thank the Division for
2 its dedicated focus on science-driven standards in these
3 proposed updates to mandatory workplace standards that
4 are helping California workers in COVID-19.

5 I'd briefly like to stress the importance of
6 maintaining an impartial enforcement agency such as
7 Cal/OSHA Standards Board in times like this. It's
8 imperative to keeping workers and employers safe.

9 With respect to the second readoption of the
10 COVID-19 ETS, Worksafe would kindly urge the standards
11 board to vote yes for the readoption of the temporary
12 emergency standard for COVID-19. It should be employees
13 over profits, and any technicalities or issues in
14 enforcing the rules should be -- should be dealt with and
15 accommodated in order to keep employees safe and their
16 employers.

17 As it relates to exclusion pay and the two-year
18 permanent standard, Worksafe would like to emphasize how
19 important this provision is to retaining jobs. Many of
20 the frontline workers that this provision most strongly
21 affects are also workers who are in underpaid jobs. And
22 without exclusion pay, we risk increasing the
23 transmission of COVID-19 by, essentially, encouraging
24 these underpaid workers to show up at work when they're
25 sick with COVID for fear of losing income or their jobs.

1 As such, including this provision in the two-year
2 permanent standard is imperative to how effective the
3 two-year standard can even be.

4 Additionally, the issues we face with our
5 reactionary response to COVID-19 in the workplace only
6 highlights the importance and the need to mandate a
7 general infectious disease standard.

8 Lastly, we are interested in the update on the
9 progress to our compliance with the SRIA, or the
10 Standardized Regulatory Impact Assessment, for the
11 two-year permanent COVID standard. Again, given the long
12 delays this has brought to numerous other standards and
13 the severity of the ongoing risk California workers face
14 with COVID, it's imperative that this analysis be well
15 underway at this point to prevent any avoidable
16 interruption, delay, or reduction in COVID workplace
17 protection.

18 So, that's all I have today, and, again, just
19 want to urge the Board to vote yes for the readoption of
20 the second -- or the second readoption of the COVID ETS
21 standard.

22 Thank you all.

23 CHAIRMAN THOMAS: Thank you, AnaStacia.

24 Appreciate your comments.

25 Who do we have next, Erik?

1 MR. KUETHER: Next up is Lee Sandahl with the
2 International Longshore Warehouse Union Northern
3 California District Council.

4 CHAIRMAN THOMAS: Lee, can you hear us?
5 Lee, are you there?

6 MR. KUETHER: Please press star 6 to unmute
7 yourself, if you're on the phone.

8 CHAIRMAN THOMAS: Lee?

9 I think we're going to have to go to the next
10 and reconnect Lee.

11 MR. KUETHER: The next one will be Sandra
12 Barreiro, the California School Employees Association.

13 CHAIRMAN THOMAS: Sandra, can you hear us?

14 MS. BARREIRO: Yes. Can you hear me?

15 CHAIRMAN THOMAS: Yes. Go right ahead.

16 MS. BARREIRO: Thank you. Good morning. My
17 name is Sandra Barreiro on behalf of the California
18 School Employees Association.

19 We urge the Board to re-adopt the emergency
20 COVID standard, particularly because of exclusion pay.

21 Symptomatic and asymptomatic people will come to
22 work rather than lose pay, especially people whose
23 families depend on them. And if you consider that in the
24 context of worker shortages, an excluded worker under
25 financial pressure could find shifts with a different

1 employer.

2 I also want to point out the new outbreak
3 language. It doesn't align with current CDPH standards.
4 You can exclude positive non-employee cases, especially
5 in schools. Our members have sustained contact with
6 students and parents indoors. Schools are particularly
7 vulnerable to worksite outbreaks. CSEA is not only
8 dedicated to our members but also the communities we
9 serve. So, we want to emphasize that exclusion pay is an
10 essential piece to keeping sick workers home and keeping
11 schools open. We respectfully ask the Board to vote for
12 the readoption of the ETS with exclusion pay.

13 Thank you.

14 CHAIRMAN THOMAS: Thank you.

15 Who do we have next, Erik?

16 MR. KUETHER: The next three we have is Mitch
17 Steiger, Eric Frumin, and Jassy Grewal.

18 And first up is Mitch Steiger with the
19 California Labor Federation.

20 CHAIRMAN THOMAS: Mitch, are you there?

21 MR. STEIGER: Yes.

22 CHAIRMAN THOMAS: Go right ahead.

23 MR. STEIGER: Thank you, Chair Thomas, and
24 members. Mitch Steiger with the California Labor
25 Federation. We would like to entirely echo the comments

1 of CRLA and Worksafe and CSEA and encourage the Board to
2 approve the second readoption language for COVID-19
3 prevention.

4 Obviously, we very much wish that the language
5 was stronger in a lot of different ways, particularly
6 with respect to exclusion pay; that while it does try to
7 in some way account for some of the criticisms that have
8 been raised, we do think there are plenty of cases where
9 there are unvaccinated, asymptomatic workers who are
10 positive with COVID-19 who can easily spread the virus.
11 And even with a lot of masking and keeping distance away,
12 that face masks are not a hundred percent; that this is
13 an aerosol transmissible disease that can hang in the air
14 for a lot longer than 15 minutes; that it should just be
15 a total exclusion pay for all workers in close contacts
16 affected.

17 And we'd also really like to focus on the issue
18 of Omicron. There hasn't been much debate about it
19 today. There hasn't been much discussion about it so
20 far, but we really think that it's hanging over every
21 word of this discussion and should really be at the front
22 of everyone's mind.

23 There's also been a lot of talk about fully
24 vaccinated and that the standard, according to a lot of
25 commenters, does not sufficiently account for vaccinated

1 status. So far, the indications are that Omicron is far
2 more able to get around the vaccination and the
3 antibodies produced by it than other variants. I've seen
4 a lot of scary numbers, that it's 30 percent, 35 percent.
5 Sorry. That the vaccinations are 30 to 35 effective
6 against Omicron if you haven't been boosted and that
7 rises if you have been boosted, but most workers haven't.
8 We still have 30 percent of the state that hasn't been
9 vaccinated at all. Numbers so far are incredibly scary
10 about the winter surge that's coming, and most of that
11 doesn't even reflect Omicron. We could really be looking
12 down the barrel of a totally uncontrollable surge that
13 starts soon and could continue well past January.

14 We very much think exclusion pay should be
15 stronger, should cover everyone, but what is in this
16 language right now is far better than nothing, and
17 something that should be approved.

18 And we have a whole lot to say to respond to
19 this concept of enforcement via the standard versus
20 guidances enforced through the IIPP, but we'll save that
21 for the panel and just really focus on urging the Board
22 to approve the second readoption language as drafted;
23 that we do wish it was stronger. We think it's very much
24 a good step that we should take and urge approval.

25 Thank you.

1 CHAIRMAN THOMAS: Thank you, Mitch.

2 Who do I have next, Erik?

3 MR. KUETHER: Next up is Eric Frumin with the
4 Strategic Organizing Center.

5 CHAIRMAN THOMAS: Mr. Frumin?

6 MR. FRUMIN: Can you hear me okay?

7 CHAIRMAN THOMAS: We can. Go right ahead.

8 MR. FRUMIN: Good. So, I'm calling you from a
9 moving train. Hopefully, we won't go in a tunnel.

10 So, I wanted to -- I wanted to encourage the
11 Board to vote today, Chair Thomas, and other members, to
12 re-adopt the standard because we're putting well-meaning
13 employers at a terrible disadvantage if we expect them to
14 just to rely on good-faith efforts of employers involved.
15 This is not to take away from the good-faith efforts that
16 have been made, albeit in very difficult circumstances,
17 but there are bad actors out there who continue to be a
18 problem.

19 We heard from the sister today from the Fight
20 For 15 about the food industry. And in the finding of
21 emergency, the food industry and the transportation
22 logistics industry were the top two industries for excess
23 deaths from COVID. It's a very frightening scenario for
24 workers in those industries, but these are not just small
25 employers like the franchisee of McDonalds or other fast

1 food companies. The biggest employer in the logistics
2 industry in the state is Amazon.

3 As the Los Angeles Times reported on October
4 30th, we recently analyzed the reports that Amazon has
5 made to OSHA about cases of respiratory disease among its
6 employees for 2020, and on October 1st of 2020 they
7 announced that they had 20,000 positive test cases
8 nationwide of their employees and claimed that everything
9 was fine, that the rates were lower than they were in the
10 community. But somehow out of those 20,000, they only
11 investigated enough cases and did contact tracing among
12 enough cases, among their own employees, to determine
13 that seven were work-related, that there was workplace
14 transmission for seven cases out of 20,000. That's a
15 simply ludicrous finding. And it conflicts with the
16 hundreds and hundreds and hundreds of cases that they
17 have reported from individual warehouses in California to
18 CDPH, to the LA County Health Department, and other
19 health departments which release their data.

20 This is a shameful dereliction of their duty as
21 an employer. Cal/OSHA finally went and examined these
22 practices in November of 2020 --

23 MR. KUETHER: Thirty seconds remaining.

24 MR. FRUMIN: -- that they issued only regulatory
25 violations for the failure to investigate these cases

1 among their own employees. And in May they started
2 another inspection in San Diego. And they just a few
3 weeks ago issued yet more violations for Amazon, not only
4 failure to do contact tracing but failure to have social
5 distancing and comply with --

6 MR. KUETHER: Ten seconds remaining.

7 MR. FRUMIN: It's urgent that you readopt the
8 ETS so that even big companies like Amazon don't put
9 other employers in their industry at a disadvantage.

10 Thank you very much.

11 CHAIRMAN THOMAS: Thank you.

12 Who do we have next, Erik?

13 MR. KUETHER: Next up is Jassy Grewal with the
14 UFCW Western States Council.

15 MS. GREWAL: Good afternoon, Board, and members
16 of the public. My name is Jassy Grewal, here on behalf
17 of UFCW Western States Council and our 180,000 frontline
18 essential workers.

19 UFCW respectfully requests that the Standards
20 Board vote in support of the second readoption of the
21 COVID-19 ETS today and urges the Standards Board to add
22 exclusion pay back into the proposed two-year standard up
23 for readoption in April.

24 For the sake of time, I just want to say I echo
25 the comments of previous speakers such as CRLA, Worksafe,

1 CNA, CSEA, and the California Labor Federation.

2 And to highlight, we are not out of this
3 pandemic. There is a new variant that is threatening
4 workers' health and safety at the workplace. Some of the
5 data from our union alone -- which is significantly
6 underreported because there is no transparency around
7 employers having to publicly report exposure infections
8 and worksite outbreaks at specific worksites in
9 California and across the nation.

10 From June 2021, we have seen an 11 percent
11 increase in deaths of our grocery store workers. We've
12 also seen a 17 percent increase since June of 2021 of
13 COVID-19 infections amongst our workplaces. So, we are
14 not out of this pandemic. Our workers are still dying
15 and falling ill from this pandemic, from this virus. And
16 we respectfully urge that you all adopt the second
17 adoption today of the ETS and really look at the April
18 two-year standard and include exclusion pay, which is
19 just so fundamental to workers coming forward when they
20 are infected at the workplace, ensuring that they have a
21 safety net when they need to go home and quarantine or
22 recover from the virus.

23 So, those are my comments today. Thank you for
24 the time.

25 CHAIRMAN THOMAS: Thank you. Appreciate it.

1 Erik, who did he have next?

2 MR. KUETHER: The next three are Matthew Allen,
3 Riddhi Patel, and Gabriela Facio.

4 First up is Matthew Allen with the Western
5 Growers Association.

6 CHAIRMAN THOMAS: Go ahead, Matthew.

7 MR. ALLEN: Good morning, Mr. Chair, members of
8 the Board.

9 All for the interests of time, I won't go and
10 repeat the comments that have already been made, but I
11 would associate Western Growers' comments with those made
12 by Bryan Little of the Farm Bureau, Michael Miiller at the
13 Winegrape Growers, and I would also like to highlight the
14 comments made by Bruce Wick.

15 We are concerned about this second readoption of
16 the ETS and more significantly concerned that we are
17 discounting the value of vaccinated employees in the
18 workplace. So, I would request that the Board revisit
19 those provisions, as well as the provision regarding some
20 light through masks.

21 Thank you for your time.

22 CHAIRMAN THOMAS: Thank you.

23 Who do we have next, Erik?

24 MR. KUETHER: Next up is Riddhi Patel, a
25 concerned Kern County citizen.

1 CHAIRMAN THOMAS: Riddhi?

2 MR. KUETHER: Riddhi Patel, I saw her earlier.

3 CHAIRMAN THOMAS: Are you there, Riddhi?

4 Star 6, if you're on the phone.

5 MR. KUETHER: It looks like she's no longer on
6 the list.

7 CHAIRMAN THOMAS: Okay. We can move on.

8 MR. KUETHER: Next up is Gabriela Facio, with
9 the Central California Environmental Justice Network.

10 CHAIRMAN THOMAS: Gabriela? Are you there?

11 MS. FACIO: Hello.

12 CHAIRMAN THOMAS: Yes. Go ahead.

13 MS. FACIO: Can you hear me?

14 CHAIRMAN THOMAS: Yes. Go ahead.

15 MS. FACIO: Hi. Actually, Riddhi Patel is a
16 good friend and, like, also a resident in Bakersfield,
17 California here. She's, actually, working right now.
18 So, that's why she couldn't be on the line any longer,
19 and I want to remind the Board also it's really hard for
20 folks to hop onto these meetings.

21 I'm here, again, to comment briefly on the
22 proposed standards for workplace protection from
23 COVID-19, both the emergency temporary standards and the
24 two-year standards.

25 As it relates to exclusion pay, I would like to

1 emphasize, or CCEJN, Central California Environmental
2 Justice Network, would like to emphasize how important
3 this position is to retaining jobs. Many of these
4 frontline workers that this provision most strongly
5 affects are also workers who are in underpaid jobs,
6 including my own family. This is something we've seen
7 throughout the pandemic. And without exclusion pay, we
8 are risking -- we are increasing the risk of the
9 transmission of COVID-19 by, essentially, encouraging
10 these workers to show up when they're sick, when they
11 have been exposed, and that is in fear of losing their
12 income and their jobs. As such, including this provision
13 in the two-year permanent standard is imperative to how
14 effective the two-year standard will be.

15 Additionally, these issues we've faced with our
16 reactionary response to COVID-19 workplace safety only
17 highlights the importance that needs to mandate a general
18 infectious disease standard.

19 CHAIRMAN THOMAS: Thank you.

20 Erik, who do we have next?

21 MR. KUETHER: Next up we have John Paolo Alano
22 with Alano LLC.

23 CHAIRMAN THOMAS: John, can you hear us? Hello,
24 John?

25 MR. ALANO: Yeah. Can you hear me?

1 CHAIRMAN THOMAS: Yeah. Go right ahead.

2 MR. ALANO: Thank you. Good morning. Thank you
3 for having this opportunity for us to speak to you.

4 I do have a conflict of interest disclosure.
5 I'm a direct sales representative for Surgically Clean
6 Air. However, my findings and personal position on the
7 topic does not reflect the official position and/or
8 company policies of Surgically Clean Air regarding the
9 topics of my representation of my position. Please allow
10 this conflict of interest disclosure to relieve
11 Surgically Clean Air of any liabilities stemming from my
12 statements, expressed or written, from Cal/OSHA,
13 affiliated governing bodies, including but not limited to
14 OSHA, CDC, NIOSH, and the United States Department of
15 Public Health and Human Services.

16 Here are my findings: Under the current
17 Cal/OSHA ETS, Cal/OSHA does not expressly specify the
18 need for portable, high efficiency particulate arrestor
19 or HEPA units.

20 On September 20, the American Industrial
21 Hygienists Association published a position document
22 entitled Reducing The Risk of COVID-19 Using Engineering
23 Controls --

24 Sorry, guys. Excuse me.

25 Engineering controls in the workplace as a major

1 form of reducing the risk and/or exposure to SARS-CoV-2
2 and its variants.

3 The main focus of the AIHA at the time was to
4 increase air change via mechanical and/or natural means.
5 With engineering controls, up to 90 percent exposure
6 reduction can be achieved. Standalone HEPA filtration
7 units are recommended to localize the efficacy -- again,
8 to localize the efficacy of this type of reduction.

9 On November 31, 2020, Cal/OSHA published and
10 announced the ETS, effective immediately December 2020.

11 On January 6th, ASHRAE published core
12 recommendations for reducing exposure to airborne
13 infectious aerosols, and this document asked for a
14 following of public health guidance but expressly
15 specifies the role of a well-run HVAC system that is up
16 to code as well as the use of portable PACs.

17 The current OSHA and CDPH's interim guidance for
18 ventilation and filtration also highly recommends the use
19 of HEPA filtration.

20 On August 19th, 2021, the AIHA published an
21 announcement entitled AIHA Backs Vaccination As A Control
22 Strategy. This document highlights the current
23 recommendations of the AIHA upon which a multilayered
24 approach, focusing on vaccinations. In this announcement
25 it states, AIHA -- this is -- I'm sorry -- quote, "AIHA

1 voices its support for employers to find innovative ways
2 to encourage vaccination among the workers to develop
3 workable programs to mandate vaccination in the workforce
4 where warranted," end quote.

5 The issue on hand here, ladies and gentlemen, is
6 that there's a possible conflict of interest arising from
7 the fact that John Mulhausen, the current president of
8 the AIHA, who co-authored the August 19th, 2021
9 announcement, is a former 3M executive of 31 years.

10 If, indeed, the August 19th AIHA announcement
11 influenced and shaped the vaccine mandates at the
12 federal, state, and local municipalities, the public
13 health guidance focusing on mandating the vaccines and
14 masks must be --

15 MR. KUETHER: Thirty seconds.

16 MR. ALANO: -- be questioned. In fact, it is
17 being vehemently denied in court. If, indeed, there is
18 an attempt to raise the status of vaccines from
19 susceptibility reduction to exposure reduction, both of
20 which fall into primary prevention and general public
21 health goals, then any guidance falling under this
22 premise should be highly reconsidered for revision.

23 Furthermore, according to the PO of the AIHA, he
24 states, "Thinking of vaccines as a form of engineering
25 controls is inappropriate."

1 I have this in an email.

2 So, I'm requesting a consideration --

3 MR. KUETHER: Ten seconds.

4 MR. ALANO: Yes. At this time, I highly
5 recommend a consideration of the facts on hand to reform
6 any and all Cal/OSHA policies and regulations to ensure
7 that both exposure reduction and susceptibility reduction
8 in that specific order to be consistently expressed in
9 future publications and regulations.

10 Thank you.

11 CHAIRMAN THOMAS: Thank you very much.

12 Erik, who do we have next?

13 MR. KUETHER: Next three commenters are Cassie
14 Hilaski, Michael Young, and Greg McClelland.

15 First up is Cassie Hilaski with Nibbi Brothers.

16 CHAIRMAN THOMAS: Cassie.

17 MS. HILASKI: Can you hear me?

18 CHAIRMAN THOMAS: We can.

19 MS. HILASKI: All right. I really just briefly
20 wanted to demonstrate what people are talking about in
21 terms of the masks, and to ask that if the second
22 readoption is voted on, that we, obviously, are --
23 Cal/OSHA issues some clarifications and Q&A.

24 And, so, this is an N95 mask. It's the one I
25 use often. It fails the light test. I don't know if you

1 can see that. But depending on where I put the light
2 from my simple iPhone, you can see the light through the
3 mask. I, obviously, don't think that's the intention of
4 Cal/OSHA.

5 MR. KUETHER: (Inaudible) Michael Young and Greg
6 McClelland.

7 CHAIRMAN THOMAS: I don't know where that came
8 from. Is that you, Erik? We're fine. I think that
9 was -- that was a --

10 MR. KUETHER: That was a technical default. So,
11 please, scratch that. Sorry.

12 CHAIRMAN THOMAS: I'm erasing it from my mind
13 right now. Just give me two seconds. Okay. Done.

14 Okay. Cassie, please continue.

15 MS. HILASKI: All right. So, I just want to
16 point out that, obviously, it's not the intention of the
17 Division to make N95s not compliant. So, the Division
18 will, obviously, need to issue FAQs for what that light
19 test actually means, because I'm sure you want me to
20 continue to wear my N95, which I prefer.

21 And then just, in general, I think the comments
22 made today continue to show the problem with chasing an
23 active pandemic with prescriptive regulation. So, I
24 think we'll continue to have this problem as long as we
25 have a COVID-specific regulation, instead of relying on a

1 performance standard like the IIPP, and that is all.

2 Thank you.

3 CHAIRMAN THOMAS: Thank you, Cassie.

4 Who do we have next, Erik?

5 MR. KUETHER: Next up is Michael Young with CFT.

6 CHAIRMAN THOMAS: Michael, can you hear us?

7 MR. YOUNG: Yes, I can hear you. Can you hear
8 me?

9 CHAIRMAN THOMAS: Yeah. Go right ahead.

10 MR. YOUNG: Hi. This is Michael Young with the
11 CFT, the California Federation of Teachers. We represent
12 teachers and classified employees in California, both in
13 higher education, K-12, and early childhood education.
14 We support the readoption of the ETS, but we do have some
15 concerns that, hopefully, can be taken into consideration
16 when we start considering factors related with the
17 permanent standard.

18 One is that -- just related to the exclusion
19 pay, I think this has been stressed. I think we want to
20 stress it more, saying that it's important that exclusion
21 pay be included in the permanent standard, particularly
22 when we're talking about the precedent that it was set
23 for, Cal/OSHA.

24 When we talk about a worksite exposure and an
25 employee required to be excluded from that worksite but

1 the employer no longer has to pay them because of a
2 worksite exposure, that, to me, sets a really terrible
3 precedent for Cal/OSHA.

4 Secondly, when we talk about the definition of
5 "outbreak," that's just another major concern that we
6 have. Right now the ETS has been changed to say that you
7 only need to consider employee cases; whereas, that's not
8 consistent with the CDPH definition of outbreak,
9 particularly when we're talking about classrooms. This
10 has been stated before. When we're talking about
11 population, whereas some folks aren't vaccinated, and I
12 think there is no scientific evidence to suggest that an
13 employee who has COVID is more dangerous than someone
14 from the general population who has COVID. I think those
15 should be treated the same.

16 There is no rationale for, let's say, a
17 community classroom that has 15 cases of COVID, for that
18 not to be considered an outbreak just because those
19 students aren't employees.

20 If there is a scenario where there are multiple
21 COVID cases, three or more, which is the definition under
22 CDPH, I think that same criteria should be in place for
23 Cal/OSHA.

24 So, I think when we talk about the readoption,
25 that's one of the factors that should be considered

1 strongly. And, again, including the exclusion pay factor
2 for workers that have to be excluded because of a
3 worksite exposure, I think it's critical and should be
4 changed for the permanent readoption.

5 Thank you.

6 CHAIRMAN THOMAS: Thank you, Michael.

7 Erik, who do we have next?

8 MR. KUETHER: At this time, we have reached the
9 end of our list. However, I'D like to give the
10 opportunity for the commenters who were unable to make a
11 comment. So, I'm starting from the top.

12 First up will be Johnny Pow, who is a concerned
13 private citizen.

14 CHAIRMAN THOMAS: John, are you there?

15 MR. POW: Can you hear me?

16 CHAIRMAN THOMAS: Yes. Go ahead.

17 MR. POW: Yeah. I spoke already. I didn't know
18 that I was going to be called on, but I'm the same person
19 as John Paolo. I do work for Surgically Clean Air, and I
20 did express my conflict of interest and I disclosed that.
21 What I really wanted to do is summarize what I said.

22 If there is, indeed, an attempt to raise the --

23 CHAIRMAN THOMAS: We have your comments, and we
24 need to leave it up open to people that haven't commented
25 yet.

1 So, Erik, can you -- we have to go to the next.

2 MR. KUETHER: The next commenter will be Jenifer
3 Kienle with Kienle Law.

4 CHAIRMAN THOMAS: Jenifer, can you hear us now?

5 MS. KIENLE: Can you hear me?

6 CHAIRMAN THOMAS: Yes, we can. Go ahead.

7 MS. KIENLE: Thank you. Actually, this is
8 Jenifer Kienle with Kienle Law. I just had a procedural
9 question. Could you just elaborate a bit on what will
10 happen after this meeting in terms of how the Standards
11 Board will work on taking these industry comments into
12 account and then what is scheduled following this?

13 MS. SHUPE: Ms. Kienle, this is an opportunity
14 for public comment, not a question session. What you can
15 do is email your question to oshsb@dir.ca.gov, and staff
16 will provide a response to you.

17 MS. KIENLE: Perfect. Thank you so much.

18 CHAIRMAN THOMAS: Thank you.

19 So, do we have anyone else, Erik?

20 MR. KUETHER: Yes, Chair Thomas. We have -- the
21 next commenter will be Lee Sandahl with the International
22 Longshore and Warehouse Union Northern California
23 District Council.

24 CHAIRMAN THOMAS: Lee, are you with us? Hello,
25 Lee?

1 Can you direct him, Erik? It's either got to be
2 Star 6 or something else that he's not unmuting.

3 MR. KUETHER: Let me see if he's on the
4 participant list. I do not see him on the participant
5 list. If he's a call-in user, please press star 6 to
6 unmute yourself.

7 CHAIRMAN THOMAS: Can you hear us, Lee?

8 Well, I think -- I think we're going to have to
9 move on at this point, Erik. Do we have any other
10 commenters?

11 MR. KUETHER: At this time, we have no further
12 commenters.

13 CHAIRMAN THOMAS: All right. So, we've gone
14 through the list, and we don't have anybody else.

15 I'm sorry, Lee. If you hear us, I'm sorry we
16 didn't get to get your comments, but we can't hear you.

17 So, the Board thanks you, and we appreciate
18 your testimony. The public meeting is now adjourned, and
19 the record is closed. And we are going to -- before we
20 proceed any further, we're going to take a -- let's see.
21 Let's do a ten-minute break. We'll be back at 11:35,
22 11:36, and so we are adjourned for ten minutes.

23 Thank you.

24 (A recess was taken.)

25 CHAIRMAN THOMAS: Thank you, Erik, and we are

1 back in session. We'll now proceed with the business
2 meeting. The purpose of the business meeting is to allow
3 the Board to vote on the matters before it and to receive
4 briefings from staff regarding the issues listed on the
5 business meeting agenda. Public comment is not accepted
6 during the business meeting unless a member of the board
7 specifically requests public input.

8 A. Proposed Emergency Safety Order for
9 Readoption (Government Code Section 11346.1.)

10 Mr. Berg, will you, please, brief the Board.

11 MR. BERG: Yes. Thank you, Chairman Thomas, and
12 thank you, Board Members, for taking up the second
13 readoption of the COVID-19 emergency temporary
14 regulations, or the ETS.

15 It is critically important for worker
16 protections to remain in place as the COVID-19 pandemic
17 continues and new variants, such as Omicron, emerge.
18 COVID-19 transmission in the workplace is a major concern
19 because workers and others can be together indoors for
20 extended periods of time. For an airborne disease such
21 as COVID-19, workplaces represent some of the
22 highest-risk settings in California. Workers have a
23 right to protection in the workplace, and the ETS
24 provides these protections against one of the greatest
25 workplace hazards we have seen since the establishment of

1 Cal/OSHA nearly 50 years ago.

2 The majority of the proposed revisions for a
3 second readoption are intended to be consistent with
4 regulations, orders, or recommendations from the
5 California Department of Public Health, also known as
6 CDPH.

7 Some of the important revisions including the
8 following:

9 First, in Section 3205, COVID-19 prevention,
10 under definitions, the definitions of COVID-19 test, face
11 coverings, and fully vaccinated are revised to be more
12 consistent with Federal OSHA definitions.

13 Next, in definitions, exemptions were added to
14 the definition of worksite to exclude the employee's
15 private residence, locations where employees work alone,
16 and remote work locations chosen by the employee.

17 Next, the subsection on investigating and
18 responding to COVID-19 cases in the workplace, there
19 are -- nonsubstantive revisions were made to the
20 subsections that include investigating and responding to
21 COVID-19 in the workplace, and these are to improve
22 clarity and to make it easier for employers to implement.

23 On face coverings, there were also
24 nonsubstantive revisions made to clarify the exemptions
25 to these face-covering requirements.

1 Testing exclusion, the following items were
2 revised to make the ETS consistent with current CDPH
3 recommendations:

4 Exemptions from certain testing requirements for
5 fully vaccinated, asymptomatic employees were removed to
6 be consistent with current CDPH guidelines and to
7 increase protection, given the Delta, Omicron, and
8 possible future variants of concern.

9 After close contact, asymptomatic, recently
10 recovered COVID-19 cases and asymptomatic, fully-
11 vaccinated employees are completely exempt from any
12 exclusion requirements in the existing ETS.

13 For this follow-up second readoption, they're
14 still exempt from exclusion but must wear a mask and
15 practice six feet of physical distancing for 14 calendar
16 days. This is to be consistent with the current CDPH
17 guidelines and to increase protection given the Delta,
18 Omicron, and possible future variants of concern.

19 Next, on the part on return-to-work criteria,
20 the period of time before an employee can return to work
21 after close contact with COVID-19 infection has been
22 revised to be consistent with current CDPH guidelines,
23 and these timelines will automatically update as CDPH
24 updates their guidelines pursuant to the governor's
25 executive order.

1 Next, on the section on outbreaks, 3205.1, some
2 minor revisions were made in that section to be
3 consistent with Section 3205.

4 3205.2, major outbreaks, there are no changes.

5 And Sections 3205.3, COVID-19 prevention
6 employer-provided housing, and 3205.4, COVID-19
7 prevention employer-provided transportation, there are
8 minor revisions also to be consistent with Section 3205.

9 We urge the Board to approve this proposal.

10 Thank you.

11 CHAIRMAN THOMAS: Thank you, Eric.

12 Are there any questions from the Board for
13 Mr. Berg?

14 I don't see any.

15 MS. STOCK: I have a quick question.

16 Are you -- I assume that -- this is Laura.

17 Thank you, Eric. I assume that the Division is
18 developing updated FAQs; is that correct?

19 MR. BERG: Yes. We are working on FAQs now for
20 this.

21 MS. STOCK: And through those FAQs, you would
22 then have the opportunity to provide clarification to
23 some of the issues -- excuse me -- to some of the issues
24 that were raised during public comment testimony today;
25 is that your intention?

1 MR. BERG: Yeah, that's correct.

2 MS. STOCK: Thank you.

3 CHAIRMAN THOMAS: Any other questions from the
4 Board?

5 Seeing none, do I have a motion --

6 MS. CRAWFORD: Dave, I've got a quick question.
7 Hi, Eric. It's Kate.

8 When do you anticipate having your evaluation
9 and report done on Petition 594?

10 CHAIRMAN THOMAS: You know, we can't talk about
11 it at this time, Kate. We're going to go forward with
12 this motion. That's a question that's out of order at
13 this time. Sorry.

14 MS. CRAWFORD: Okay.

15 CHAIRMAN THOMAS: We're taking care of some
16 business here.

17 So, are there any other questions regarding
18 the -- for Mr. Berg?

19 Seeing none, do I have a motion to readopt the
20 proposed emergency safety order?

21 MS. STOCK: So moved.

22 MS. BURGEL: I second.

23 MR. HARRISON: Second.

24 CHAIRMAN THOMAS: I have a second. Anything
25 else on the question?

1 MS. SHUPE: I'm sorry. Who was the second?

2 CHAIRMAN THOMAS: I think it was Barbara.

3 All right. So, Christina's going to call the
4 roll because...

5 MS. SHUPE: Because she will.

6 CHAIRMAN THOMAS: Go ahead, Christina.

7 MS. SHUPE: Barbara Burgel?

8 MS. BURGEL: Aye.

9 MS. SHUPE: Kathleen Crawford?

10 MS. CRAWFORD: No.

11 MS. SHUPE: Dave Harrison?

12 MR. HARRISON: Aye.

13 MS. SHUPE: Nola Kennedy?

14 MS. KENNEDY: Aye.

15 MS. SHUPE: Chris Laszcz-Davis?

16 MS. LASZCZ-DAVIS: Aye.

17 MS. SHUPE: Laura Stock?

18 MS. STOCK: Aye.

19 MS. SHUPE: Dave Thomas?

20 CHAIRMAN THOMAS: Aye.

21 And the motion passes.

22 And now we're going to move to variances,
23 proposed variances decisions for adoption. The proposed
24 variance decisions for Adoption are listed on the
25 consent calendar.

1 Ms. Gonzalez, will you please brief the Board?

2 MS. GONZALEZ: Of course. Good morning,

3 Chair Thomas, and, Board Members.

4 Today we have items A through M ready for your
5 consideration and your possible adoption.

6 CHAIRMAN THOMAS: Thank you.

7 Are there any questions from the Board for
8 Ms. Gonzalez?

9 MR. HARRISON: Motion to approve.

10 CHAIRMAN THOMAS: Thank you. Do I have a
11 second?

12 MS. LASZCZ-DAVIS: Second.

13 MS. STOCK: Second.

14 CHAIRMAN THOMAS: I have a motion and second. I
15 think it was Chris that made the second.

16 MS. LASZCZ-DAVIS: I second, yes.

17 CHAIRMAN THOMAS: And it was -- all right. So,
18 there being no further questions, will you, please, call
19 the roll, Christina?

20 MS. SHUPE: Yes.

21 Barbara Burgel?

22 MS. BURGEL: Aye.

23 MS. SHUPE: Kathleen Crawford?

24 MS. CRAWFORD: Aye.

25 MS. SHUPE: Dave Harrison?

1 MR. HARRISON: Aye.

2 MS. SHUPE: Nola Kennedy?

3 MS. KENNEDY: Aye.

4 MS. SHUPE: Chris Laszcz-Davis?

5 MS. LASZCZ-DAVIS: Aye.

6 MS. SHUPE: Laura Stock?

7 MS. STOCK: Aye.

8 MS. SHUPE: Dave Thomas?

9 CHAIRMAN THOMAS: Aye.

10 The motion passes.

11 We will now proceed to -- excuse me here --

12 Division Update.

13 Mr. Berg, will you, please, brief the Board.

14 MR. BERG: Sure. Thank you, Chairman Thomas.

15 On December 15th, just yesterday, the California
16 Department of Public Health updated its face-covering
17 requirements. CDPH requires face coverings to be worn in
18 all public indoor settings irrespective of vaccination
19 status for the next four weeks; so, December 15th through
20 January 15th.

21 And then CDPH states the following in their FAQ
22 on the face covering requirement:

23 It has the question, "Does this guidance apply
24 to all workplaces?"

25 And their answer is "Yes. The guidance applies

1 to all workplaces regardless of whether they serve the
2 public or are open to the public. Masks may be removed
3 for the exemption noted below. If the workplace consists
4 of a single employee or may be removed when an employee
5 is alone in a closed office or room."

6 The CDPH order is enforced in the current
7 Cal/OSHA COVID-19 Emergency Temporary Standard, per
8 Title 8, Subsection 3205(c)(6)(B), which says, "Employers
9 shall provide face coverings and ensure they are worn by
10 employees when required by orders from the CDPH."

11 So, that's in the existing one.

12 And also the language in the proposed second
13 readoption, now adopted second readoption of the ETS is
14 identical and has not changed.

15 That is it. Thank you.

16 CHAIRMAN THOMAS: Are there any questions from
17 the Board for Mr. Berg?

18 MS. BURGEL: I just wanted to highlight the
19 point that was made during the comment period and also,
20 Eric, you made the point around the fact that the Omicron
21 is definitely more transmissible than the Delta variant.
22 I mean, the R naught looks like it's 3 to 3.5, which
23 means the secondary transmission of this COVID variant is
24 to -- you know, one person's infected can infect three to
25 three and a half people. So, that's double what Delta

1 is. So, it's much more transmissible. And I'm pleased
2 that the California Department of Public Health has
3 reinstated masking.

4 Fifty percent of the counties in California did
5 not have a masking requirement when entering buildings,
6 and, so, this is a good change.

7 So, thank you for that update.

8 CHAIRMAN THOMAS: And then, Kate?

9 MS. CRAWFORD: So, I just want to double-check
10 real quick. Is this the time I can ask about his
11 evaluation for Petition 594?

12 CHAIRMAN THOMAS: You can ask Eric. Sure.

13 MS. CRAWFORD: Sure.

14 So, Eric, when do you anticipate having the
15 evaluation in the report complete on Petition 594? I
16 think the clock started on November 15th. So, I just
17 wanted to check in on that when we might expect it.

18 MR. BERG: Yeah. I mean, the Labor Code
19 requires we do our evaluation in 60 days. So, we plan on
20 meeting that Labor Code requirement.

21 MS. CRAWFORD: So, we would have this before the
22 next Board Meeting?

23 MR. BERG: I am not sure of the exact date of
24 the next Board Meeting.

25 MS. CRAWFORD: I think it's January 20th, isn't

1 it, Christina?

2 MS. SHUPE: It is.

3 MR. BERG: Yeah. I don't have the exact date,
4 but we plan on meeting the Labor Code requirement.

5 MS. CRAWFORD: Okay.

6 CHAIRMAN THOMAS: Christina -- I'm sorry. Not
7 Christina. Chris.

8 MS. LASZCZ-DAVIS: Too many Chrises on the Board
9 here involved in the Board deliberations.

10 You know, just stepping back and listening to a
11 lot of the public commentary, I think the struggle that
12 we have -- this is a hybrid workplace community issue.
13 It doesn't make it easy, but I think on balance -- I
14 mean, I think we have found ourselves in a situation
15 where we're trying to chase an active pandemic with
16 specific regulations, and it's not clean. It's very
17 little that's black and white. And there were a number
18 of comments raised during the public comment that made me
19 think that clarity, simplicity, and more flexibility is
20 still very much needed.

21 And it's maybe just a comment to Eric and the
22 staff, who've done an incredible amount of work, I think
23 those FAQs need to be clear. And they need to take into
24 consideration some of the concerns that have been
25 expressed during the public comment. Because at the end

1 of the day, regulations are okay, but implementation is
2 not what it needs to be. Those FAQs need to be very,
3 very clear as to what employers and organizations can and
4 cannot do.

5 Just a comment.

6 MR. BERG: Yeah. We're working right now on the
7 FAQs. That's already started.

8 And as you've seen, some provisions like the
9 masking one, it does change. It is flexible as CDPH
10 changes. That's just one example where it's already
11 flexible.

12 MS. LASZCZ-DAVIS: Thank you, Eric.

13 MS. CRAWFORD: Eric, I have another question.
14 This is Kate.

15 This rulemaking has gone on for quite a period
16 of time. And what I am curious about and would like you
17 to bring back to the Board is what that rulemaking
18 calendar had been for 2020 and 2021. Prior to the
19 pandemic, what had been on the books to work on and what
20 was planned for 2022 and even potentially 2023, and what
21 the staff allocation, the staff resources that are --
22 that were required for each of those. Because I think
23 that there's this other piece that's missing. That
24 there's other pieces of rulemaking that are just
25 languishing while there's been all of this focus on this

1 problematic rulemaking of the ETS.

2 So, can you bring back to this group the history
3 on the rulemaking calendar, what was initially supposed
4 to be done in 2020 and 2021 --

5 CHAIRMAN THOMAS: You know, I'm going to stop
6 you right there.

7 MS. CRAWFORD: Okay.

8 CHAIRMAN THOMAS: We have an epidemic that we're
9 dealing with. So, whatever time and resources that we
10 need to go over to take care of that, that's where those
11 resources are going to go. Yes. There are other things
12 that are going to be done at some point, but the problem
13 is this is the overriding issue in our country and in the
14 world right now.

15 MS. CRAWFORD: And --

16 CHAIRMAN THOMAS: We have over 800,000 deaths.
17 We have almost 80,000 deaths in California. So --

18 MS. CRAWFORD: And I --

19 CHAIRMAN THOMAS: Let me finish.

20 MS. CRAWFORD: I, essentially, agree with your
21 point.

22 CHAIRMAN THOMAS: I'll let you talk when I'm
23 done. You know, that's why these resources are being
24 allocated. We have to -- we have to figure out how to
25 best protect employees from the number one issue in the

1 country right now, and that's what we're doing. And
2 other things probably are moving, but they're going to be
3 moving much slower until this issue is somehow ended.
4 And I don't see that coming in the near future.

5 Go ahead if you have a comment.

6 MS. CRAWFORD: So, Dave, and the Board Members
7 and everybody on the call, I actually agree with that.
8 My point is that there's a tremendous amount of resources
9 that's been put into this over the last couple of years
10 now, and we haven't actually been very successful moving
11 forward. So, I understand completely, and I -- and the
12 intent of everybody on this call is to be protective of
13 the workplace. There are different ways that we all
14 believe that that can be done, but it isn't meant in a
15 disrespectful way. My comments are intended to be
16 moderate and respectful of the entire conversation. The
17 point was simply there's a tremendous amount of resource
18 that's been devoted to this, but we haven't actually been
19 able to keep up.

20 And a couple of times I've heard people refer to
21 chasing a regulation, chasing a pandemic, and so that was
22 the spirit of my comments, not to be disrespectful, but
23 to try to frame it in a way that points to the fact that
24 we need to begin to seriously talk about other
25 alternatives.

1 I'm done, Dave. Thanks.

2 CHAIRMAN THOMAS: I don't disagree with that.

3 MS. STOCK: Dave, I had a comment. Could I add
4 something?

5 CHAIRMAN THOMAS: Sure.

6 MS. STOCK: So, a couple of things, you know, to
7 build on, well, at least part of the point of what you're
8 saying, Kate.

9 I do think we all know that Cal/OSHA, Division
10 and the Board is very under-resourced, and staffing has
11 been a huge problem, both in enforcement units. I assume
12 that's a problem in the Board, in the research and
13 standards development unit. And I think there's been
14 general concern in California about the impact of that
15 staffing crisis on the ability of this government agency
16 to do the critical job that it needs to do. And I think
17 that understanding the impact of that, you know, and
18 being able to provide whatever, kind of, support we can
19 for the call for increasing resources would be really
20 appropriate because, you know, as you point out, a
21 pandemic like this requires a huge amount of resources.

22 I agree with you, Dave, that they were warranted
23 and necessary, but, you know, they, essentially, take
24 away from other issues that are probably also important.

25 So, I was going to suggest for a future agenda

1 item from the Division, if there's any comment on, you
2 know, your thoughts of how staffing, you know, impacts
3 the ability of the Division to do enforcement or, you
4 know, or develop standards. So, I think that's something
5 that we should continue to shine a light on, and so
6 that's one comment I wanted to make.

7 And the other is just -- I mean, I think we're
8 going to be hearing from a bunch of people shortly, but I
9 I would -- I would disagree, Catherine, [sic] I think
10 with what you're saying is that I actually feel like the
11 ETS, though, it's definitely not perfect, nor is any reg
12 perfect, I think it has had a huge impact. I feel that
13 California, in general, has been doing much, much better
14 in terms of our metrics than many other states. And I
15 credit, you know, our attention to looking at workplaces
16 as such a huge -- as Eric said, one of the primary places
17 where things are being -- where COVID was being
18 transmitted.

19 And I do think -- and I think we'll have an
20 opportunity to ask some of the stakeholders shortly to
21 see, you know, how they think that things changed, what
22 was it like in trying to get protections before and
23 since. And I do -- I want to just highlight the
24 incredible importance of exclusion pay which is something
25 that the ETS includes, which allowed sick workers to be

1 able to stay home and not continue to come to work and
2 infect others.

3 So, I feel more, you know, grateful for the
4 changes that the ETS was able to provide. And, clearly,
5 the pandemic is not over. So, we're certainly not at the
6 point where less protections are indicated, but I look
7 forward to hearing more of this discussion shortly.

8 Thank you.

9 CHAIRMAN THOMAS: Okay. Any other comments?

10 And I didn't mean to be that critical, but I am
11 protective of staff and the resources that we have or
12 don't have to try and -- you know, this is quite an
13 undertaking. People are not at work. People are at
14 home. It's difficult, you know. It would be difficult
15 just to do the regular work, but under these
16 circumstances, trying to control the pandemic and trying
17 to get to other issues, not that they're not important,
18 but under the circumstances, it's difficult.

19 Are there any other comments from the Board for
20 Mr. Berg?

21 All right. I don't see any.

22 So, we're going to go to the Legislative Update.

23 Ms. Gonzalez, can you, please, brief the Board?

24 MS. GONZALEZ: Sure. We don't really have a
25 legislative update this month. We're waiting for the

1 legislature to come back into session in January.

2 CHAIRMAN THOMAS: Any questions for

3 Ms. Gonzalez?

4 And I have to read that. It's on the script.

5 So, I guess not.

6 So, Executive Officer's Report, Christina?

7 MS. SHUPE: Thank you, Chair Thomas. Let's see

8 if I can switch the video. Just one second.

9 CHAIRMAN THOMAS: Get it off me. That's not a
10 good look.

11 MS. SHUPE: Thank you.

12 So, I have just a very brief Executive Officer's
13 Report for today, obviously. We've working hard to bring
14 you not only the second ETS but also the panel discussion
15 that will be happening shortly. But I also want to let
16 you know that we have on the agenda for next month
17 proposed decisions for Petition 592 and Petition No. 593,
18 and those will -- those proposed decisions will be posted
19 with our agenda a minimum of ten days prior to the
20 meeting date.

21 Thank you.

22 CHAIRMAN THOMAS: Thank you, Christina.

23 Now, before we go onto our panel discussion, I
24 know it's noon right now. And I know we just had a short
25 break, but I figured we might as well have a 20-minute

1 break before we start that so people can have time to
2 get some -- we can make it a half hour. Let's do until
3 12:30, so people have a chance to eat and hydrate and
4 refresh themselves. And then after that, at 12:30 we'll
5 go into the panel discussion.

6 So, thank you very much. We're going to adjourn
7 for the next half hour, and I'll see you back here at
8 12:30.

9 Thank you.

10 (A lunch recess was taken.)

11 CHAIRMAN THOMAS: And we're back. I hope
12 everybody had time to grab a little something to eat and
13 hydrate. We've got to hydrate.

14 And we're going to start our panel discussion of
15 COVID-19 prevention permanent regulation options. And
16 this panel will be moderated by Ms. Christina Shupe.

17 I just wanted to inform you that there will be a
18 30-minute comment period following the panel discussion
19 where the public can address questions about the items
20 discussed during the portion of this meeting.

21 So, I'm going to turn it over to Christine. Go
22 right ahead.

23 MS. SHUPE: Thank you, Chair Thomas.

24 Before I begin, Erik, can you, please, check and
25 make sure that all of our panel members are still

1 co-hosts? I believe Mr. Knight especially needs to be
2 added back in as a co-host.

3 MR. KUETHER: Give me one moment to confirm.

4 MS. SHUPE: While you're doing that, I'd like to
5 open by welcoming our panel members. Our panel is
6 comprised of labor, management, and technical
7 representatives. And with us today, in no particular
8 order, are:

9 Pamela Murcell, from the California Industrial
10 Hygiene Council.

11 Kevin Riley, from UCLA Labor Occupational Safety
12 and Health Program.

13 Jassy Grewal, from UFCW Western States Council.

14 Mitch Steiger, from the California Labor
15 Federation.

16 Rob Moutrie, with CalChamber.

17 Helen Cleary, with the Phylmar Regulatory
18 Roundtable.

19 Frances Schreiber, National Lawyers Guild.

20 Stephen Knight, Worksafe.

21 Cassie Hilaski, Nibbi Brothers.

22 And Len Welsh, Baker & Welsh, LLC.

23 As listed on our agenda, the purpose of today's
24 discussion is exploration of topics that have the
25 potential to impact non-emergency COVID-19 prevention

1 regulations, including recent Occupational Safety Health
2 Appeals Board decisions, possible alternate approaches to
3 regulation and roles and responsibilities.

4 Today we're specifically interested in
5 discussing options that allow for responding quickly to
6 new scientific developments, providing clarity for
7 workers and management alike, and effective enforcement
8 mechanisms.

9 As moderator, I'll open the discussion and begin
10 by posing a question from our Board and invite a response
11 from one of our panelists.

12 I want to respect everyone's time. So, I ask
13 that you keep comments succinct and on topic.

14 We'll be utilizing a roundtable format, with
15 participation welcome from all panelists and Board
16 Members.

17 And to facilitate an orderly discussion, when
18 you have a point to share, please raise your hand and
19 wait to be called on.

20 And with that, Erik, do we have all of our panel
21 members listed as co-hosts?

22 MR. KUETHER: Yes, we do.

23 MS. SHUPE: Fantastic. Thank you.

24 So, our opening question today: In your
25 opinion, what are the advantages or downsides of the

1 following regulatory approaches:

2 One, a permanent COVID standard with a two-year
3 term of effectiveness.

4 Two, a standalone aerosol transmissible disease
5 standard for non-5199 work.

6 Or, three, reliance on existing IIP standards
7 and guidance.

8 And then do I have someone from our panel who
9 would like to open the discussion?

10 Okay. So, I am not seeing hands. So, I'm going
11 to go ahead and call on -- Helen, would you like to open
12 our discussion?

13 MS. CLEARY: Sure. Thank you. Hi, everybody.
14 Thank you for this opportunity. I'm really looking
15 forward to having an open, honest discussion about this.
16 Obviously, it's really important to all of us. So, thank
17 you for putting it together.

18 So, you know, for us, for PRR, the number one
19 concern is flexibility, and I think looking at -- to
20 group these together, to try to keep this answer concise,
21 the two options of a permanent two-year standard and a
22 standalone transmission standard, both of them, we have
23 concerns about the flexibility that's going to be allowed
24 within those.

25 The two-year COVID standard, the way it's

1 written and proposed right now, it's the triggers that's
2 the issue. So, what are the triggers? How do you change
3 it quickly enough to keep up with the changing, you know,
4 guidance and scientific -- the Omicron's out there right
5 now. And I think we keep going back and forth.

6 It feels like we are in a position where things
7 are -- they're not changing as much as they used to, but
8 we don't know what's going to happen in two years. And
9 we don't know what's going to happen with antiviral
10 medications and immunity and testing and vaccines and
11 more variants. And, so, we can't expect that if it's not
12 working now, how's it going to work later.

13 And, so, throughout all of this our number one
14 issue is not the mitigation measures. It's not doing the
15 things we need to do to protect employees. It's the lack
16 of flexibility of being able to respond quickly enough,
17 and I think the only way to do that is through the
18 existing IIPP and allowing employers to create procedures
19 that follow their operations, their facilities, and their
20 experience. And having the Division be able to come in
21 and force them to come in and to take a look and say,
22 okay, what have you put together for a plan? How does
23 that apply? And how does that match up with what the
24 expectation is in the community?

25 So, as for the -- let me touch on the ATD

1 standard really quick. I think the biggest challenge
2 with the --

3 MS. SHUPE: Helen?

4 MS. CLEARY: Yeah.

5 MS. SHUPE: And I'm sorry. I don't want to
6 interrupt too much, but this is a new format for all of
7 us.

8 MS. CLEARY: Yeah. Okay.

9 MS. SHUPE: And I think you've raised an
10 interesting point. You said that you think that the
11 flexibility of the IIPP standard is the only way to move
12 forward and that, I think, is something that would be
13 open for discussion with our panel.

14 Does anybody else have any thoughts on that?

15 MS. SCHREIBERG: Do we need to chime in or
16 just --

17 MR. MOUTRIE: Maybe we should ask -- a point of
18 order. Would you prefer that we -- I saw Mitch, like,
19 physically raising his hand. Would you prefer we speak
20 up or raise our hands or use the raise-hands function so
21 we can be polite?

22 MS. SHUPE: I appreciate that. And, you know, I
23 was thinking we might be able to do the raised hands.
24 That's turning out to be a little infeasible. So, I'm
25 going to ask folks to just go ahead and chime in.

1 Fran, I think I heard you first, so.

2 CHAIRMAN THOMAS: You need to unmute, Fran.

3 MS. SCHREIBERG: I'm not sure.

4 (Audio transmission breaking up.)

5 MS. SHUPE: So, it looks like we're having some
6 technical difficulties.

7 MR. KNIGHT: Yeah. I saw Mitch's hand was up,
8 or I could go, but I'd be happy to defer to Mitch.

9 MS. SCHREIBERG: That --

10 (Audio transmission breaking up.)

11 MS. SHUPE: David [sic], would you, please,
12 chime in, and we'll see if we can improve our bandwidth
13 issues here.

14 MR. KNIGHT: Sure. I mean, I think my starting
15 point is that specific requirements save lives, and
16 having a standard let's everybody know their specific
17 responsibilities through a transparent and open process
18 for developing those requirements.

19 So, we have some issues and questions around
20 any -- significant concerns really around, kind of, the
21 agency that's responsible for workplace safety,
22 delegating that authority to the California Department of
23 Public Health. And I'm sure we'll come back to that, but
24 a permanent, a semi-permanent standard, continuing along
25 the path that the state has been on is far from perfect.

1 And we've been all airing out lots of issues and tweaks
2 and things that need to be addressed, but the -- those,
3 kind of, specifics that we're providing is the optimal
4 tool for COVID because it is clear. It can be used by
5 Cal/OSHA to issue citations. It can decrease the
6 discretionary nature of citing employers who violated
7 those protections.

8 So, we just heard about, like, letting employers
9 do their thing. And then Cal/OSHA comes in and, kind of,
10 has to match up what the employer thought was appropriate
11 with public health rules and then under the IIPP would
12 have to do a whole, kind of, proof, have to prove up
13 their case on appeal. And even in the first instance, in
14 order to make the case that what Cal/OSHA saw actually
15 doesn't rise to the level of what that employer should
16 have been doing.

17 So, if you want some clarity, then you've got to
18 list them out in a specific standard so the employers
19 know what to do, so you can tell employers how to meet
20 the standards so workers can be safe. And, you know,
21 reliance on the IIPP is the weakest and most unreliable
22 by comparison because it is very general, and it's not
23 optimal for worker protection.

24 So, I'm going to just pause there.

25 MR. MOUTRIE: If I may, if no one else minds?

1 CHAIRMAN THOMAS: Go ahead.

2 MR. MOUTRIE: Can you all hear me better than
3 earlier today, by the way? Is that better? Thank you.
4 I changed locations. Okay.

5 CHAIRMAN THOMAS: Thank you.

6 MR. MOUTRIE: Obviously, Rob Moutrie,
7 CalChamber.

8 I think I would -- I think Stephen said
9 something important there about, you know, different
10 situations and different -- you know, different
11 situations, different tools are proper. Right. We're
12 contrasting three methodologies between, kind of, an IIPP
13 model, the ATD standard, a permanent two-year reg. And I
14 think what we have to -- I also want to separate one
15 discussion, as, I think, Stephen appropriately did, that
16 the discussion of whether it's CDPH guidance that
17 underlies an IIPP mechanism or not, I think, is a
18 separate discussion that we're going to have
19 subsequently. But I think we should keep those clear
20 intellectually, you know, as we -- as we step forward
21 here.

22 To that point, I think -- to the issue of the
23 IIPP, I think the point about the IIPP-based-enforcement
24 mechanism not allowing for or being a weaker enforcement
25 tool, I think that that's something that we can't, kind

1 of, accept. At least I would disagree with. I mean, we
2 have Valley Fever as a recent example.

3 Valley Fever is, again, a contagious disease
4 that does not have a specific regulation, but the Appeals
5 Board has been upholding citations based on Valley Fever
6 under the IIPP. And I can give citations to those -- I
7 think Christina has circulated them. So, I think
8 everyone on the panel at least has seen them. But that
9 is happening. So, it's not, kind of, a given that, oh,
10 no, enforcement can't work.

11 I think is there an issue where this may lead to
12 different -- different protective measures at different
13 workplaces? Yes. But I think we have to -- that
14 flexibility has a value, and the value is, one, different
15 workplaces do things differently.

16 I mean, we talked earlier today in comments at
17 least -- I'm not sure you could hear me. But one of the
18 issues with the second readoption text that was adopted
19 today is that some of the spacing measures it deals with
20 are going to hit a small restaurant or a small workplace
21 very differently. A small employer very differently than
22 they hit a larger one.

23 And the IIPP allows for that to be something
24 that is considered, and it also allows for changes in
25 science to be dealt with more quickly.

1 I mean, we were all, I think, at the June
2 meeting glad to see vaccination brought into the
3 regulation. And we were probably also glad to see, you
4 know, changes to disinfecting, which were things that we
5 had known for months were outdated, but due to the
6 regulatory constraints of timing, we just couldn't get to
7 them.

8 You know, if you look at an IIPP-based system,
9 you have to also consider the benefit of being flexible
10 to changing science sooner than a regulation, and that's
11 something that I think is often not discussed but should
12 be considered as we look at those mechanisms broadly.

13 I'll close -- briefly, I'll just touch on the
14 ATD, and then I'll be off. I realize everyone needs
15 time.

16 I think the ATD as a mechanism isn't ideal here
17 because I think more prescriptive regulations shine best
18 when you have a clearer circumstance. Right. A set of
19 workplaces that have similar circumstances, similar
20 resources, where you can really say: Okay, this is the
21 population. Here's what they have. Here's what we need
22 to do.

23 ATD makes sense applying to healthcare because
24 there are some layers amongst hospitals we can draw.
25 Right. Here are the hazards. Here are the resources

1 they have. Here's the solution. Here's how this fits.
2 I think that makes a more prescriptive regulation make
3 more sense. I think in the sense of different keys for
4 different locks, when we have a regulation that's going
5 to apply much more broadly to very different working
6 spaces, I would say the ATD -- you know, that model
7 doesn't work as well as an IIPP because of the huge
8 diversity in workplaces and resources that you're looking
9 at.

10 Thank you.

11 MS. SHUPE: Thank you, Rob.

12 Fran, did I see your hand go up or was it --

13 MS. SCHREIBERG: I think that Mitch is going to
14 speak, Mitch and Jassy are going to speak.

15 (Audio transmission breaking up.)

16 MS. SHUPE: Thank you.

17 MS. SCHREIBERG: It perhaps makes some sense to
18 have one comment from the labor side and one comment from
19 the management side so that we can each have a chance to
20 answer these questions.

21 MS. SHUPE: I'm sorry, Fran. I didn't catch
22 that request.

23 MS. SCHREIBERG: I'm sorry. Can you not hear
24 me?

25 MS. SHUPE: We can hear you. It just stuttered

1 on this side for a minute.

2 MS. SCHREIBERG: Okay. I was just suggesting
3 that we have one person from the labor side and then one
4 person from management side and go through the panelists
5 so that we each have a chance to answer the first
6 question. And I said that I would wait until Mitch and
7 Jassy were able to respond.

8 MS. SHUPE: Understood. Thank you.
9 Mitch.

10 MR. STEIGER: So, should I go?

11 MS. SHUPE: Yeah.

12 MR. STEIGER: Mitch Steiger with California
13 Labor Federation, and I think -- well, first, I would
14 really want to echo the comment that Stephen made about,
15 for us, the first and always most important point to make
16 here is the goal that we're trying to achieve is keeping
17 workers alive, keeping workers healthy. Whatever does
18 the best job of doing that is the one that we need to
19 adopt, is the one that we need to focus on.

20 And this debate over should we do a specific
21 standard or should we go to some sort of IIPP model, this
22 is not the first time this has come up. This comes up
23 over and over and over again, and it's raised, to my
24 knowledge, every single time that we petition the
25 Standards Board or done a bill to require a new

1 regulation.

2 There is always this argument that: Oh, we
3 don't need to do this because we have the IIPP, and
4 employers can just use that as a way to keep workers safe
5 and that will just work, even though we would argue the
6 need for a new standard is there because it hasn't
7 worked. That's the point that's always made.

8 And the reason that perspective is rejected is
9 exactly the same reason why it should be rejected with
10 this case, and there are, actually, several reasons. The
11 first one that, I think, we should really focus on is
12 that it's better for workers when there is clear
13 regulatory language that employers have to follow. When
14 employers can look at something and say, oh, I've got to
15 keep people this many feet away or I've got to keep the
16 shade trailer this far away or the water this far away,
17 the more clarity we can put in a standard, the more an
18 employer knows what to do to keep a worker safe.

19 We just can't assume that every single employer
20 of the more than a million employers out there knows
21 exactly what to do all the time to protect workers from
22 all the different hazards that are out there. It's just
23 not realistic. We need to give them science-based
24 direction and suggestions on this is what you should do
25 to help keep workers safe. And then that should be in a

1 clearly enforceable regulation, where we have these
2 different levels of penalties based on the severity of
3 the violation.

4 And that is why we have a Standards Board so
5 that there is a forum where we can bring all of the
6 science in. Cal/OSHA can come in. The Standards Board
7 staff can come in.

8 And Board Members can say: Okay. This is what
9 we need to do. This is what the regulation needs to say.
10 We're going to adopt it or we're going to tweak it and
11 then we're going to adopt it.

12 And that's the model that has worked, and, of
13 course, it hasn't worked perfectly. Of course, plenty of
14 employers don't want to follow the law, but we encourage
15 them to follow the law by having that enforcement
16 structure there. It, kind of -- I mean, I was going to
17 say it breaks down.

18 It definitely is diminished when we try to do it
19 through the IIPP because, especially -- even if we have
20 guidances, it's going to be a lot less clear. It's going
21 to be much more: Here are a bunch of things we, kind of,
22 suggest you do, and we hope you put it in the IIPP, and
23 that's going to do a lot to keep workers safe.

24 (Audio transmission breaking up.)

25 That is very fundamentally -- here's a list of

1 things that you need to do to keep workers safe.

2 And if we go down the road of saying, well,
3 because this one has changed, because it's complicated,
4 we're going to, as the Standards Board, just decide to
5 not do anything with it, I mean, it really raises the
6 question of why do we even have a Standards Board. Why
7 do we even have Cal/OSHA regulations if we're going to
8 just kick it to CDPH to do guidances enforced through
9 through the IIPP everytime something new or complicated
10 comes up? Because that's the argument that we always
11 hear. That's always the road that many want to go down,
12 and we just don't think that that makes sense either,
13 from the worker perspective.

14 If we're trying to keep them safe, we need clear
15 standards and we need clear language on what's going to
16 keep them the most safe. But we also have a Standards
17 Board for a reason: So that everyone knows what to do.
18 And that's what the Standards Board is supposed to do.

19 If we were to go down this road of putting it in
20 an IIPP, enforced through guidances, it really does, kind
21 of, defeat the whole point of a Standards Board. And we
22 think the Standards Board has a point. We think it's a
23 very important body, and this is the way that we enact
24 clear, concise, specific regulations that keep workers
25 safe. And we lose that if we go down the road of

1 guidances enforced through the IIPP.

2 So, I know that doesn't specifically answer the
3 question of pros and cons of each one of those, but I
4 think, generally speaking, we think --

5 (Audio transmission breaking up.)

6 It makes a whole lot more sense to have a clear
7 regulation that's enforced through the normal regulatory
8 process rather than guidances or whatever enforced
9 through the IIPP.

10 MS. SHUPE: Cassie.

11 Thank you, Mitch.

12 MS. HILASKI: So, what I'd like to contribute is
13 Mitch is right. Specifics are the best, and we want
14 Cal/OSHA to provide science-based direction. Right. But
15 the problem in an active pandemic is that you can only
16 get specificity that's accurate to science in one moment
17 in time, and the regulatory process doesn't allow for the
18 change in flexibility that's needed.

19 And, also, I'd like to remind everyone that in
20 the first eight months of the pandemic, the guidance,
21 actually, worked. CDPH and Cal/OSHA came together and
22 issued guidance documents for the employers. And those
23 who actually wanted to comply, you know, the good
24 actors -- you're always going to have bad actors. We
25 heard it even today. McDonald's is still not complying.

1 That's not because there's not an ETS. It's not because
2 there's not specifics. That's because there's bad
3 actors, and there's always going to be bad actors.
4 Right.

5 But those employers who actually want to comply,
6 we didn't feel like we had a lack of direction or a lack
7 of specificity in the beginning. We had guidance that
8 was provided that also allowed flexibility. And I think
9 regulations -- the intent of regulations that are
10 specific to a particular hazard is for when that hazard
11 doesn't keep changing, the target doesn't keep changing.
12 So, as long as the target is changing, we need
13 flexibility.

14 And let me also share that quite often in my
15 company I've had to go above and beyond the ETS because
16 the ETS hasn't kept pace. And, so, it's provided more as
17 an anchor for me in implementing safeguards for my
18 employees of: Okay. The science has moved. There's new
19 guidelines out there. What do I now need to do to
20 protect my employees? Oh, and, by the way, let me go
21 back and make sure I'm not violating something in the ETS
22 that's outdated.

23 You know, the ETS should be a leader or, you
24 know, the regulations from Cal/OSHA should be a leader,
25 not an anchor.

1 That's all I'll say for now.

2 MS. SHUPE: Thank you, Cassie.

3 Jassy.

4 MS. GREWAL: Yes, I'd love to go, but I also
5 wanted to just point out that we do have a data group,
6 and I don't want to miss the information that they have
7 shared. So, I know Kevin had raised his hand.

8 So, Kevin, I'm happy to go next unless you would
9 like to go. Okay.

10 MS. SHUPE: Jassy, you bring up a great point.
11 The Board Members as well, Board Members, if you'd like
12 to jump in, please raise your hands.

13 MS. GREWAL: So, I have a few things to share.
14 So, sorry if I'm a little all over the place, but there's
15 a lot of comments that were stated that I'd like to just
16 to respond to.

17 So, first of all, I'd just like to share --
18 Sorry. Jassy Grewal with the United Food and Commercial
19 Workers Western States Council.

20 Our 180,000 members, minus our subset of Disney
21 workers, since the beginning of the pandemic were
22 frontline, essential workers. They were deemed
23 frontline, essential workers. They went to work without
24 any sort of protections.

25 And we knew as a union, as an organization that

1 represents these members, that we really needed to step
2 in and play a role and figure out what can we do to
3 protect our workers. So, we engaged heavily with
4 Cal/OSHA on drafting these guidance documents. We
5 engaged heavily with CDPH on drafting guidance documents
6 about what needs to be in each sector of our industry, in
7 the meatpacking worksites, in the grocery industry, in
8 the cannabis industry, for delivery drivers. What was
9 the specific protections that needed to be in place for
10 these workers.

11 And what ultimately ended up happening is that
12 guidance is just guidance. It's not enforceable. And
13 even through the IIPP, it was not doing what it needed to
14 do, and that meant our workers having no protections in
15 the workplace, even with the union fighting the employer
16 to put in physical-distancing barriers, to give workers
17 masks, to give them sanitation -- or hand sanitizer, to
18 have the opportunity to go wash their hands. And we were
19 fighting our employers every single day to do these
20 things, but they were not doing it.

21 And you'll see that in terms of the citations
22 that we have been able to get on employers pre-ETS and
23 post-ETS, the most common citation in the work that we
24 have done as a union is, one, employers don't allow
25 access to the IIPP. Our employers got cited for not

1 giving workers access to the IIPP. How is a worker
2 supposed to know what protections are in the workplace if
3 they can't even read the IIPP?

4 I'll also acknowledge not all of our workers can
5 read, not all of our workers know English. And so even
6 having these documents in a language that they can
7 understand is extremely difficult to do since there's no
8 requirement really to do that. And, so, I just wanted to
9 touch on that point.

10 Two, the other citation that was really common
11 was an employer not having an IIPP. How are we going to
12 roll a COVID-19 standard into the IIPP if employers
13 aren't even keeping an IIPP?

14 After the ETS was adopted, we still saw just so
15 many citations when it came to employers not having a
16 COVID-19 prevention program in June of 2021, a year and a
17 half after the pandemic and employers still do not have a
18 COVID prevention program.

19 The other citation they're getting is they're
20 not offering training to workers on their prevention
21 program and the hazards in the workplace that COVID
22 presents.

23 We, as a union, along with worker centers were
24 able to give training to our workers, union and nonunion,
25 on what does the COVID ETS have.

1 And when you have specific standards, you can
2 train workers on what those specific standards are so
3 they can then be empowered in their workplaces to enforce
4 what these requirements are.

5 If workers in the IIPP don't even know what
6 protections they are afforded, they can't even get access
7 to it. They're not being trained on it. How do we get
8 access to those documents to then train workers and
9 empower them in their workplaces? So, by having a
10 specific standard, we were able to tell workers what
11 their rights were, what protections they were afforded
12 and be able to train them to then be able to go into
13 their workplaces and be enforcers.

14 Cal/OSHA staff does a great job, but you all are
15 very severely understaffed. And, so, relying on our
16 workers in the workplace to be those enforcers, to raise
17 those issues has been just pivotal in being able to save
18 lives throughout this pandemic.

19 Specific standards, I know we've -- previous to
20 this panel, a lot of comments were made about how the ETS
21 is unsuccessful. I would argue that the ETS has been
22 successful. It's not perfect, but it has been
23 successful. It has saved numerous lives in our
24 workplaces. It has saved the family members' lives of
25 our workers, especially the exclusion pay provision.

1 Workers were able to stay home and take care of
2 themselves, not spread COVID.

3 And I'm really not exaggerating here. Our
4 workers lives were saved because there is an ETS in
5 place, because there were specific standards in place.

6 We are seeing an uptick in cases. And to think
7 about rolling this into the IIPP and workers losing those
8 protections is huge.

9 Also just want to state that we talked about bad
10 actors here. Bad actors need an enforcement mechanism,
11 and that enforcement mechanism is the ETS. Without that,
12 we have no enforcement mechanism through the IIPP, and
13 that is very clear in the citations you'll see when there
14 wasn't an ETS and when there was an ETS. We were able to
15 actually specify what was wrong in the workplace, like,
16 lack of physical distancing, lack of masks, lack of PPE,
17 and have that be part of the citation and that helps the
18 enforcement officers to know what am I looking for in
19 these workplaces and be able to narrow that down.

20 And, I mean, every workplace is different, but
21 there's a hierarchy of controls where there are certain
22 protective measures that are relevant to all workplaces
23 and making sure we are really looking at that hierarchy
24 of control and implementing that.

25 There might be some nuance, but at the end of

1 the day, there are standards or protective measures that
2 should be in place at all workplaces when there's an
3 aerosol transmissible disease in that workplace.

4 MS. SHUPE: Can --

5 MS. GREWAL: Really quickly on cannabis. So, we
6 represent cannabis employees. They're a new industry.
7 Without having a specific standard, they don't know what
8 to do. They don't have -- they don't know what an IIPP
9 is. So, we're having to walk their hands through what
10 does it mean to have an IIPP, what does it mean to have a
11 specific standard. And so new industries, new employers,
12 not-well-resourced employers need that specificity to be
13 able to implement that.

14 I apologize. I went really over, but I will
15 pass it off to the next panelist.

16 MS. SHUPE: Thank you, Jassy.

17 CHAIRMAN THOMAS: Okay. You're getting a
18 demerit for that, but that's okay.

19 MS. SHUPE: Kevin, please.

20 MR. RILEY: Okay. Thanks, everyone. Good
21 afternoon.

22 Yeah. I've got a couple of things I can add to
23 this discussion. Let me say by way of starting off that
24 my comments are informed in large part by the role that
25 our organization has been playing over the last year and

1 a half, two years, to provide training to workers, to
2 worker representatives, to unions, to businesses around
3 both the ATD standard, prior to the pandemic, and then in
4 the last couple years, specifically around COVID and the
5 ETS and the changes that the ETS has brought with it over
6 that time period.

7 So, we have, kind of, a broader perspective, I
8 suppose you could say. Not only are we reaching a
9 variety of different audiences, but we also have folks
10 that reach out to us with questions and technical
11 assistance requests.

12 I would say one of the things we saw really
13 early on as the pandemic was first unfolding and when
14 effectively for most employers, for most worksites, it
15 was the IIPP, a tremendous amount of confusion coming our
16 way. A tremendous number of questions about how to --
17 how to implement controls in the workplace, how to think
18 about this new hazard, what guidance people needed.

19 I think, you know, from that experience, that
20 really struck home to me how in the face of such a broad
21 and widespread hazard like COVID, it's not effective
22 enough to simply rely on the IIPP, which is so general.

23 Workers and employers want clear guidance, as
24 we've heard, in terms of what measures they need to take
25 in their workplaces. I think the guidance documents from

1 CDPH and Cal/OSHA were helpful in that regard.

2 One of the things, though, that's important to
3 remember is that public health guidance documents
4 typically aren't thinking about occupational exposures
5 per se. So, when these guidance documents are coming out
6 from CDPH or CDC or other places, there's still that next
7 level of uncertainty about: So, how do we apply that
8 specifically in a workplace? How does this relate to the
9 hierarchy of controls which we're all expected to follow?

10 And that's where, I think, a standard like the
11 ETS can come in, because what that's doing is, basically,
12 translating guidance into the, kind of, framework, a
13 controlled framework, that we're all familiar with in the
14 occupational health realm. So, I wanted to, sort of,
15 toss that in there.

16 I think I will echo Jassy's point. I think it
17 is also really important from, sort of, an enforcement
18 point of view. You know, it is true, of course. You've
19 got good employers and bad employers. It's much easier
20 really to deal with those bad employers if you have a
21 clear standard in place that can be used to enforce
22 specific measures in those worksites. So, I want to echo
23 that because I think it's a really important thing to
24 keep in mind here.

25 And I know we're going to talk about the ATD

1 standard shortly. So, I won't say too much, but I do
2 want to at least start off by saying that my perspective
3 on the ATD standard is that, in fact, that standard is
4 tremendously flexible. You know, that standard is
5 written not just for healthcare but for several key
6 sectors. It's written to cover a whole variety of
7 diseases, including non-pathogens. In a lot of ways it
8 was very well written to deal with COVID in those
9 settings.

10 And, so, from my point of view, I actually think
11 the ATD can serve as a really good framework to start --
12 for starting to think about a more general infectious
13 disease standard that could be crafted for general
14 industry. I'll be happy to say more about that when we
15 get to that point in the discussion.

16 MS. SHUPE: Dave.

17 MR. HARRISON: I'm sorry. I missed. Kevin, who
18 are you representing?

19 MR. RILEY: My name's Kevin Riley. I'm with a
20 program at UCLA called LOSH, the Labor Occupational
21 Safety and Health Program.

22 MR. HARRISON: Very good. Thank you.

23 MS. SHUPE: Okay. I believe that Len Welsh has
24 his hand up.

25 MR. WELSH: Can you hear me okay?

1 MS. SHUPE: We can.

2 MR. WELSH: Great. I want to just back up a
3 little bit before getting into the specific standard
4 versus 3203 controversy and say, number one, when we
5 adopt a permanent standard, we need to not just address
6 COVID. We need to address other pandemics that can come
7 along, and that's the spirit in which the ATD standard
8 was written, and that's why it's functioning so well now.

9 When we adopted that standard, we had to make a
10 political choice about how far we would go in covering
11 workplaces. We wanted to cover the belly of the monster.
12 We had just been through an awfully long era where we
13 couldn't even get a standard through to address
14 tuberculosis. So, when Avian flu came around in 2003 and
15 people were terrified that was going to become a
16 pandemic, that was our chance. That one, by the way, has
17 a 60-percent-fatality rate. So, if we were to get a
18 pandemic like that, it would be a totally different
19 ball game.

20 But we drew the line at what we considered to be
21 those workplaces most intensely exposed. We left a
22 couple out, like nursing homes, for example. And we did
23 try to tailor the reg to the level of sophistication of
24 the workplace and the kinds of resources they could be
25 expected to marshal. However, we had had quite a lot of

1 success before that in issuing tuberculosis citations and
2 citing 3203.

3 It looks, to me, now like -- I haven't seen any
4 evidence that 3203 citations that were issued before the
5 COVID standard came out were any less effective than the
6 citations that came out afterwards. A lot of them were
7 very specific about what was not done. And I have to
8 say, you know, this is not rocket science we're talking
9 about here. We're talking about masks, social
10 distancing, cleaning high-touch surfaces, dealing with
11 potential exposure, and vaccinations later on when they
12 became available.

13 The problem with a big, long, over-specific
14 standard, like the current COVID standard, is it's too
15 dense. You know, it takes away from the basics, and I
16 did a lot of training on that. I know people are totally
17 confused by that standard. I had to do as much
18 explanation under that as I did under 3203 and what you
19 should be expected to do under 3203 given Department of
20 Health advice. So, you know, there is -- there is real
21 necessity to be gauging the complexity of what you write
22 to the complexity of the task that you're trying to get
23 done. And, to me, the fact that the COVID standard is
24 over-detailed on those very simple concepts and the fact
25 that it's hardwired and it can't change -- and I can

1 think of an example. In June 2020 when DPH was
2 recommending the wearing of masks and then one fine day
3 with new information from the CDC, they said, no, we
4 think they should be required.

5 And employers who were paying attention -- and
6 they were much more likely to pay attention to DPH than
7 Cal/OSHA, by the way. Employers who were paying
8 attention, the next day started requiring their employees
9 to wear masks. The COVID standard can't do that. It
10 can't change like that, and so that's why a lot of us
11 think that we need some sort of regulatory structure that
12 depends on the experts in question.

13 And we're not talking about all occupational
14 hazards here. Cal/OSHA is well-structured to be dealing
15 with the lion's share of almost all occupational hazards.
16 Infectious disease is an issue unto itself. It's not
17 something DOSH has expertise in. They have a couple of
18 occupational positions and some occupational nurses and
19 industrial hygienists and, I think, one toxicologist, but
20 none of these people are connected to the deep bench of
21 expertise worldwide on infectious diseases like the
22 Department of Health is.

23 And that's why in this particular case a lot of
24 us think that the main engine of recommendations and
25 requirements should be DPH. That doesn't mean there's no

1 role for DOSH. it just means that DOSH should be
2 advising DPH when it's getting into an occupational
3 environment that is fundamentally different than a
4 general public health issue, and there aren't too many of
5 those, by the way.

6 Most workplaces have the same exact issues as
7 the public does when it comes to infectious disease, but
8 there are some like meatpacking that need special
9 attention, and that, in my view, is where DOSH should be
10 focused, those kinds of workplaces.

11 The advice DPH issues to the general public,
12 that's people who ride buses, people who congregate in
13 local areas in high concentration, people going to
14 restaurants, those exposures that are exactly the same as
15 the workers who are in those environments. The workers
16 may be there a little bit longer and more exposed in a
17 particular day than, say, a customer coming in and out,
18 but it's still the same kind of exposure and that
19 exposure demands the same kinds of measures.

20 There might be a few extras that DOSH would
21 recommend to DPH that should be tacked on. Fine. But
22 it's just -- you know, hardwiring these things into a reg
23 that can't be changed when new information comes in is a
24 losing proposition, and we've seen that.

25 There's been a tremendous amount of confusion.

1 People don't know whether to look to DPH or to Cal/OSHA
2 when things change, like vaccinations.

3 So, I'm just going to come back and reiterate
4 one thing: We need to have a permanent standard that
5 addresses all pandemics, not just COVID; one could
6 consider that an extension of the ATD standard to all
7 those workplaces it doesn't cover. The question is how
8 detailed should that extension be and what kind of
9 paradigm should that follow in terms of making employers
10 able to respond to a hazard that comes along that they
11 haven't seen before.

12 I'll finish there for now. Thank you.

13 MS. SHUPE: Fran.

14 MS. SCHREIBERG: Yeah. Thank you.

15 So, I also want to say, before I even address
16 the first question, that although I definitely appreciate
17 being asked to be on this panel and being asked for my
18 opinion -- and I'll give you a little sense of my
19 background in a moment -- I'm wondering whether this
20 panel is even entirely appropriate, in the sense that the
21 essence of the law, which is the backbone that we look to
22 for our regulatory proceedings and for the work that the
23 Standards Board does, is transparency.

24 And what that entails for me is two different
25 issues. One is that the law itself requires health

1 matters brought before the Standards Board to be given to
2 the Division for their evaluation. And I feel like, in
3 some ways, this kind of a panel preempts that because
4 they are, by law, the folks who are supposed to have the
5 first crack at doing this, and they do have that
6 expertise.

7 MS. SHUPE: I just want to really clarify for
8 not just all of the panel members but for the public as
9 well. This discussion is not for the petition. It is
10 specifically for issues raised by the Board Members and
11 issues that they would like to explore. And it may have
12 been -- their questions may have been sparked by that
13 petition, but...

14 MS. SCHREIBERG: I understand that, and I accept
15 that. I'm just saying to you that -- you know, the very
16 first comment that was made by Steve Knight, Stephen
17 Knight, was we have this argument about specification
18 standards, performance standards every single time. So,
19 I'm not talking about a specific, you know, petition
20 before the Board. I'm talking in general that the
21 process by which we go through involves -- for everything
22 involves looking first by law to the Division's advice on
23 health-related standards. Okay.

24 And the second thing is that our opinions
25 again --

1 (Audio transmission breaking up.)

2 CHAIRMAN THOMAS: We lost you, Fran. I don't
3 know what happened.

4 MS. SCHREIBERG: Somebody muted me.

5 CHAIRMAN THOMAS: There you go.

6 MS. SCHREIBERG: So, I'm back.

7 The process is that this should be a completely
8 public process, and we do have painstaking -- bless you
9 all for this morning's public meeting that did not make
10 us all crazy. But the public does have the right to
11 chime in on all these things. And then the Board itself,
12 because it is appointed by the Governor, has to look at
13 and evaluate everybody's opinions. So, you know, we're
14 not more important. You can look at our background, you
15 can look at our expertise, and then you can make a value
16 judgment based on that.

17 So, those are, kind of, my prefaces.

18 Let me just introduce myself -- and I'm here not
19 as a representative of the National Lawyers Guild. I am
20 here, I think, because I spent four years at Cal/OSHA
21 running the Bureau of Investigations, which did the
22 criminal prosecutions; that I spent seven years working
23 for the State Building and Construction Trades Council of
24 California with their health and safety program
25 representing the unions and the building trades.

1 And I want to say, combining those two
2 experiences, one of the things that I did as the BOI head
3 was I read every single fatality in the State of
4 California for those years running, the four years that I
5 was there. And it was shocking to me that someone ahead
6 of time -- after reading the Cal/OSHA 4, which is what
7 the accident reports used to be called, somebody ahead of
8 time knew that that so-called "accident" was going to
9 happen. And either they spoke up and were told: Hey,
10 it's none of your business what's going on, this unsafe
11 condition. Or they were actually afraid to speak up.

12 And as a result of that experience, when I went
13 to work for the building trades, what I wanted to do was
14 to create labor-management committees in the building
15 trades so that folks could, in fact, have a place where
16 they could communicate with each other and raise issues
17 that were coming up in the workplace.

18 And the reason that I know that it works is
19 because we implemented those programs, and they brought
20 down the horrendous rates of deaths in the building
21 trades among our union contractors. So, I know that
22 labor management is the way to go on this stuff, and it
23 works when you have a union because that's the only way
24 that it works. You have to have people on both sides of
25 the table who talk to each other.

1 But I will say that, now answering the specific
2 questions on what makes sense, whether it's a specific
3 standard or a general IIPP standard, the thing that makes
4 the most sense is our good employers should not be in a
5 position of having unfair competition from those
6 employers who do not follow the law. And it is
7 extraordinarily important to me that with a specification
8 standard we can fairly compete, and, I mean, we, the
9 union contractor community. And it was the union
10 contractor community along with the union workers that I
11 represented in developing those kinds of programs.

12 To me, specificity is the only way you can
13 create any kind of level playing field for the good
14 employer. So, I'm coming at it from that angle.

15 And then I'm going to backtrack and say one more
16 thing, which is from the angle where I ran a criminal
17 investigation system, we need to have some level of
18 deterrence against the employers who won't comply with
19 the law, who consistently won't comply. It can be
20 administrative. It can be civil. It can be criminal.

21 But if you don't have a specific regulation,
22 every time you go to the administrative agency, the civil
23 court or the criminal court, you have to prove with an
24 unbelievable amount of resources, and that means
25 Cal/OSHA, the Division also has to prove, with resources

1 with expert witnesses, what is considered the standard of
2 care. The standard of care is the baseline. And when
3 you have a specific regulation, the standard of care is
4 established. When you don't have it, there isn't a
5 standard of care established.

6 And every time the Division issues a serious
7 citation using IIPP instead of a specific regulation,
8 they have to have expert testimony, and they have to
9 prove all over again what is necessary for the industry
10 and that employer to be doing.

11 And, Len Welsh, you know this as well as I do
12 how much those resources cost, because we were both at
13 the agency, and we know that that is an unbelievable
14 expense. And it makes no sense. It creates unfair
15 competition. It completely eliminates the ability to
16 have deterrent effect. And, to me, it's just unfair.

17 So, you know, this is, kind of, where I'm coming
18 from. It makes no sense to me at all to go towards an
19 IIPP.

20 MS. SHUPE: Thank you, Fran. I appreciate it.
21 I'm going to move on.

22 I see several hands up. Pam, I know you've had
23 your hand up for a while.

24 MS. MURCELL: I was thinking I was invisible.
25 Can you guys hear me?

1 MS. SHUPE: Yes. And we can see you, I promise.

2 CHAIRMAN THOMAS: Yes. Yes.

3 MS. MURCELL: Okay. No matter.

4 I'm the tenth of ten panelists now to talk
5 supposedly on question number one. And I just want to,
6 kind of, make some observations, I guess more than
7 anything.

8 We're having our usual discussion of
9 specification standards versus performance standards, and
10 I think we can all appreciate that specification
11 standards work in some cases. They do not work in all
12 cases. Performance standards provide the greatest
13 flexibility, and given that we have an unbelievable
14 variety of workplaces out in our State, flexibility
15 really is incredibly important on a variety of issues.

16 And I should introduce myself a little better.
17 I am not representing labor nor management. I'm with the
18 California Industrial Hygiene Council, and I believe I
19 was invited to participate based on being more of, kind
20 of, on the technical side.

21 So, just by observation, there is no one size
22 fits all, and it doesn't matter if we're talking about a
23 performance standard or a specification standard.

24 One thing, I think, we really do need to get
25 clarity on as a regulated community is the mixed messages

1 that we have been hearing from the Standards Board on
2 using the Injury and Illness Prevention Program. There
3 have been times where the IIPP has been used to address
4 certain specific issues, saying that the IIPP is
5 appropriate for those. And then we've also heard that
6 the IIPP is not appropriate because we need something
7 more specific. So, that's really some mixed messaging
8 that's been coming across for the last several years.

9 Something else that I am hearing and also
10 observing, and Jassy mentioned this, you know, there are
11 companies who still after 30 years do not have an injury
12 and illness plan.

13 She also mentioned that there are companies
14 that, even though we have a COVID ETS that requires a
15 written COVID prevention plan, there are companies that
16 do not have a COVID prevention plan.

17 So, I think the problem is not a lack of
18 regulation in whatever form one would like it to be; the
19 problem is communication. Why are there employers in the
20 State of California after 30 years that do not have an
21 injury and illness prevention plan? The bottom line,
22 why? Because they don't know. And I think that no
23 matter what approach we take, there's still going to be
24 that communication problem.

25 I would like to see resources dedicated to

1 reaching out, to getting the word out, and I don't mean
2 just on the Cal/OSHA website. Something much more
3 proactive. Public servant announcements on television.
4 Public service announcements on social media. Wherever
5 and whenever that message can get out there: Listen,
6 regulated community, there are requirements, and the
7 basis of the requirements is an injury and illness
8 prevention program, and here are some resources that can
9 help you. So, I think we really need to focus on getting
10 that basic problem solved, in addition to the one that
11 we're facing right now.

12 CIHC has been a proponent all along from the
13 very beginning of dealing with the COVID emergency
14 temporary standard of having this issue addressed through
15 the Injury and Illness Prevention Plan requirements.

16 And I understand that folks are talking about
17 CDPH guidance and the potential concerns with those, that
18 they are addressing public health as opposed to
19 occupational health. I think it's important to
20 recognize, though, that CDPH also has the legal authority
21 to be a resource for occupational health standards. And,
22 so, perhaps the answer is that we have CDPH as a resource
23 to help with guidance through the IIPP but is
24 occupational-health focused as opposed to public-health
25 focused, and that certainly would be within their

1 purview. And it's something that the CDPH is already
2 legally bound to provide to the Cal/OSHA program.

3 So, I think that's all I'll comment on for right
4 now. I'll have more later.

5 MS. SHUPE: Laura.

6 MS. STOCK: Hi. Thank you. Thank you,
7 everyone, for your testimony. I have just a couple
8 comments and, you know, maybe a question for another
9 meeting. I want to just -- I definitely want to push
10 back on the idea that the Division doesn't have the
11 expertise that is needed to address this issue; I think
12 it clearly does. It has -- it has the expertise to
13 develop -- since the formation of Cal/OSHA, has been
14 helping to develop health regulations in a huge range of
15 workplaces on many issues, including infectious diseases.

16 I also want to say that it's not a new idea that
17 CDPH provides guidance to the rulemaking process. We've
18 seen that very closely with COVID where the Division has,
19 you know, very much connected with CDPH and written and
20 read what their alerts are, consulted with people from
21 that department, and included in language in the
22 adoption, you know, in the ETS, a deference to when there
23 are local ordinances or CDPH guidelines that go beyond.
24 So, I think -- I just want to push back a little bit on
25 this idea that it, sort of, takes a new approach to

1 incorporate the expertise that CDPH has.

2 They are there to provide guidance and
3 information and expertise, but they are not an
4 enforcement agency. And they are not, you know, as
5 versed as the Division is in understanding what it takes
6 to enforce rules within a workplace. So, I just wanted
7 to make that comment.

8 I also -- I know that the Division is not part
9 of this panel, but I do know that -- I just want to
10 second what a number of people have said about this issue
11 of whether we need a specification standard or a
12 performance based standard, as somebody said.

13 In the seven years or so that I've been on the
14 Standards Board, it is absolutely correct that that has
15 come up each and every time with every single specific
16 regulation that was considered in the time at least I've
17 been on the Board. So, I think it's not a new question,
18 and I think it definitely, definitely came up with the
19 ETS, including in November of 2020 where that precise --
20 those same issues were discussed, and we turned -- I know
21 I personally was very much influenced by the entity that,
22 I think, is the expert in what is needed to enforce
23 regulations, which is the Division. They are the people
24 who are out in the workplace needing to determine what
25 does it take to both inspect, enforce, and hold up on

1 appeal.

2 And they spoke -- I know Eric spoke at our
3 meeting or in a meeting prior to the vote in November,
4 where they laid out very specifically about why they
5 believed that an IIPP approach did not work and what was
6 needed was a specification regulation. So, I think I
7 look forward to having more input from the Division,
8 which I think can provide the most useful information to
9 help us figure out what the most effective way to proceed
10 is. And, so, I encourage us to continue to get that
11 input as we make these decisions.

12 Thank you.

13 MS. SHUPE: Chris and Cassie, I see your hand
14 up, but I'm going to go -- I'm going to defer to Chris
15 first.

16 MS. LASZCZ-DAVIS: I got up first, Cassie.

17 The only comment I want to make, to dovetail
18 Laura's comment, the overarching comment I keep on
19 hearing, whether it's specific standard versus
20 performance, is flexibility to reflect the ongoing
21 challenge. And I'm still not hearing, quite frankly,
22 which of the two is better and why.

23 MS. SHUPE: Cassie, are you ready? Cassie,
24 thank you.

25 MS. HILASKI: So, to address that question, I

1 feel like it's been answered in that what you just said,
2 flexibility; that the ETS is specific in a moment in time
3 and does not provide the most protection for the workers
4 as the science evolves. As I've already stated, I've had
5 to -- in the last few months, you know, since June as
6 science evolved, I have had to do more than the ETS in
7 order to best protect my workers because the ETS could
8 not evolve with the science. And, therefore, I, as a
9 good employer, had to do more than what Cal/OSHA was
10 putting out because the ETS just didn't keep up.

11 I did want to point out some statistics because
12 the question keeps coming up about enforcement and what's
13 more effective and can you really enforce the IIPP or
14 not. So, I actually went to Cal/OSHA's website where
15 they list all COVID-related citations that have been
16 confirmed to date. And if you look at pre-ETS, 183
17 citations were issued, totaling almost \$1.7 million in
18 fines, and that was for a three-month period because
19 Cal/OSHA didn't really resume inspections until August.
20 So, it was August 25th through the end of November prior
21 to the standard taking effect in early December.

22 So, to look at a comparable three months, I
23 looked at, you know, from December 1st through the three
24 months following, and in that period 140 citations were
25 issued totaling \$2.1 million. So, quite comparable,

1 although, in fact, there are fewer citations issued
2 post-ETS than before in terms of looking at those
3 three-month periods. But then I considered, well, what
4 about healthcare? Because the ATD was already in effect.
5 So, maybe those pre-ETS citations were primarily
6 healthcare and the -- you know, the logic doesn't follow,
7 but I went through and I counted all the healthcare-
8 related organizations. And, so, out of 164 inspections
9 that were completed, only 40 of them were healthcare
10 related.

11 So, to me -- and, clearly, and I looked, there
12 were non-healthcare-related citations issued before the
13 ETS, obviously, continued after the ETS. So, it looks,
14 to me, like Cal/OSHA has been utilizing what they had in
15 place to try to enforce and hold employers accountable.

16 Secondly, Fed OSHA has no ETS in place. But
17 since September of 2020, they were still able to cite
18 over 700 employers for COVID-19 violations. Again, this
19 is off the Fed OSHA website, totaling \$4 million in
20 fines. The vast majority of those were in healthcare,
21 but still the emergency healthcare's ETS that they do
22 have in place now was only cited 61 out of those 700
23 times. So, again, it seems like without an ETS, Fed OSHA
24 was also able to hold employers accountable.

25 And, finally, in this week's Cal/OSHA's News

1 Digest -- actually, just yesterday morning, it was in the
2 News Digest. There's a report that 108 citations have
3 been issued by Fed OSHA in Missouri. According to data
4 received, there were nearly 500 COVID-19 complaints from
5 Missouri employees over the last 21 months. Fed OSHA
6 determined just over 400 of those were valid and issued
7 108 citations, resulting in fines of more than \$760,000.

8 So, again, just pointing out that while a
9 specific regulation is appropriate in many, many, many
10 cases, even though it's argued every time it's brought up
11 and I get that, that doesn't mean that it's never the
12 right answer that the IIPP isn't the right answer.

13 I'm not sure if that made sense. I'm sorry.

14 What I'm trying to say is just because it's
15 argued every time doesn't mean that the cites -- that the
16 specific regulation is always the right answer. This may
17 be one of those times when, because we want to keep up
18 with science, that it makes most sense to actually give
19 Cal/OSHA the flexibility to issue guidance. And it
20 doesn't have to be CDPH issuing the guidance. Cal/OSHA
21 could clearly get feedback from CDPH and issue their own
22 guidance on their own website to employers to say, hey,
23 under the IIPP we're expecting you to --

24 MS. SHUPE: Cassie --

25 MS. HILASKI: -- the science of this pandemic.

1 MS. SHUPE: -- I'm going to -- I'm going to pass
2 the mantel now.

3 Stephen, you had your hand up for a while. Are
4 you...

5 MR. KNIGHT: I'm going to defer to Fran.

6 MS. SHUPE: Okay. Fran.

7 MS. SCHREIBERG: I'm just going to say that the
8 statistics -- and, Cassie, I appreciate you having gone
9 through them -- but those are not statistics of final
10 cases or final decisions. There isn't one case that has
11 gone before the OSHA Appeals Board yet with this. And I
12 called the Appeals Board and I asked that specific
13 question. And until these cases make their way through
14 the legal system, the numbers that you're throwing out
15 mean very little because of the way cases are settled, as
16 you know, and that does not create a level of deterrence.

17 I think that the folks who are on this panel
18 representing both labor and management are in a terrific
19 position because we have people that we can advise and
20 we're knowledgeable about these situations. The
21 management representatives can tell the employers that
22 they represent. They can give them good advice. They
23 can do better than the baseline, maybe, that a Cal/OSHA
24 regulation can create.

25 But, again, for those employers who are not

1 interested in protecting their workers, and there are
2 those employers who are out there, and those are the
3 employers that Cal/OSHA really does have to look to.
4 Those are the employers that unfairly compete. They take
5 bids in construction away from employers who build safety
6 into their bids and pay for it and protect their workers.
7 You cannot expect those other employers to do the kind of
8 work that you-all are doing with your own employers.

9 And you can have a level of flexibility in a
10 specification standard. You can even go beyond what's in
11 a specification standard and do better for the workers in
12 your workplace. But you cannot look at the number of
13 citations and the total penalties that have been issued
14 and take any single thing away from that, because every
15 time those cases are going to go in front of an ALJ and
16 ultimately in front of the OSHA Appeals Court, they are
17 going to apply legal standards.

18 And I guess, Chris, you were the one that said:
19 What is it? What proves that the specification standard
20 is better? What proves it is that you have a baseline
21 that when you take that case up in a legal system, you
22 can actually prove a case because you do not have to
23 bring in a ton of expert witnesses every single case, in
24 every single case to prove the same thing over and over
25 and over again, which is what happens when you have a

1 performance-based standard. You must prove the standard
2 of care in that legal proceeding.

3 And we don't even have a finding yet by the OSHA
4 Appeals Board, not one, and the Valley Fever cases do not
5 uphold the notion that you can do this with an IIPP.
6 They had to turn themselves into pretzels to get those
7 decisions out because the facts were so horrendous. They
8 are not proof that that IIPP works.

9 So, wait. Let's -- you know, we're not there.
10 And I'll tell you that if you ask the OSHA Appeals Court
11 for an advisory opinion on this, I am sure they would say
12 to you that it is so much better for them to have
13 specifics that they can look to in order to figure out
14 whether a case should be upheld. In fact, you all can
15 ask them.

16 MS. SHUPE: Fran, thank you very much. I
17 appreciate it.

18 And as we're moving forward -- we're over an
19 hour now -- I'm going to ask everybody who speaks next to
20 keep your comments limited down to one minute. I'll go
21 ahead and give you a ten-second warning, just let you
22 know when we're at that one minute. But I want to make
23 sure that everybody has an opportunity to speak. And we
24 do have a large number of panelists.

25 So keeping with our model, I'm going to go ahead

1 and go to Rob Moutrie and then after that Mitch Steiger.

2 Rob, we can't hear you.

3 MR. WELSH: Christina, it's Len. I can't raise
4 my hand anymore, but when it's my turn, can I speak,
5 please?

6 MS. SHUPE: Yes. So, I apologize, Len. I can't
7 see your hand raised. So, we'll go Rob and then Len.

8 MR. MOUTRIE: I think Mitch was between Len and
9 I, to be -- to be fair to the balance.

10 MS. SHUPE: Thank you. I appreciate that.

11 MR. MOUTRIE: I can wait. I can wait to the end
12 of the queue there.

13 MS. SHUPE: So, Rob, Mitch, and then Len. Thank
14 you.

15 MR. MOUTRIE: Thank you. So, I'll try to be
16 quick, and also I'm going to do my best to only express
17 novel points and not reiterate things that were said, for
18 purposes of moving forward.

19 To respond to the need for people -- I think
20 there's one discussion that's getting ignored here that
21 we need to separate, which is there are enforcement
22 issues and there are drafting issues. And a lot of times
23 we hear about issues of enforcement, like, hey, this
24 employer did this wrong. And we're not here to defend
25 that, right? They should get cited. That's not the -- I

1 think -- we can't let that change our discussion of what
2 is the right rule. I always liken it to criminal law,
3 you know. We have a law against theft or murder. We
4 don't rewrite the law every time as it happens. We do
5 the punishment. We make sure they get punished. And I
6 think that's -- we should separate those two issues here.

7 I would like to just deal with the idea that
8 specificity hurts -- or specificity is better for good
9 employers. I, actually, think that is, kind of, not
10 accurate here. Specifically, I'll deal with the draft
11 that was adopted today.

12 The second-read option ETS, right, has this
13 change to exclusion where someone must be excluded for 14
14 days or have social distancing and wear a mask. That
15 exclusion provision, right, does not involve testing at
16 all. So, if I am a good employer and I'm perfectly
17 compliant, I can have a vaccinated employer who tests
18 negative on day five and I'm going to keep them out for
19 another week, right, because I'm doing the right thing.
20 Like, that's hurting me. And I think that we need to
21 respect it. Like, if we want this to -- if we want this
22 to be accurate -- I may have misunderstood the point, but
23 if we want this to -- if we want to weigh the value --
24 sorry. I'll be quick. Weigh the value of IIPP versus
25 specific and tie it in for two years, we have to also

1 realize that issues like that, which are ignoring science
2 and small mistakes -- and I don't mean to hold that
3 against the Division. They're working very hard. But I
4 would say that's an element that doesn't make sense.

5 We have to consider the possibility of
6 enshrining elements that don't make sense in for years
7 when we're weighing permanent standards to the IIPP. And
8 that's why I think -- Pam Murcell's point -- you have to
9 look at this as different keys for different locks. And
10 the question is really is is this a lock which we want to
11 use a performance-based standard for, and that's, I
12 think, where we have to be.

13 Thank you

14 MS. SHUPE: Thank you.

15 Mitch.

16 MR. STEIGER: Yes. So, I just wanted to make a
17 few quick points about flexibility.

18 The first is that, yes, going to an IIPP model
19 would be faster, but that's because it takes out all of
20 the public comment and all the stakeholder comment. And
21 we think that's a really important part of the process.
22 And feedback from both workers and employers is really
23 important in making sure that we have something that
24 works.

25 Also, I wanted to really mention that

1 flexibility matters much less if no one is clear on how
2 to comply. If flexibility is good, far more important is
3 a clear standard where employers know what to do. If
4 they don't have a clear idea of what to do, things like
5 flexibility are just really irrelevant because they don't
6 even know what direction they're supposed to be headed
7 in.

8 And in the past where we've been flexible, where
9 we've changed it, we've, with very few exceptions, gone
10 in the wrong direction. When this thing started to get
11 worse, we took face coverings off in June, and that led
12 to a massive influx of cases in July. We assumed the
13 vaccines were going to work better than they have, and
14 now we're -- you know, we've addressed some of that in
15 the new version, but so far where we've learned that this
16 thing is about to get worse, we've gone in the opposite
17 direction. So, I think this concept is good, but the
18 reality of it is pretty different.

19 And then, finally, I just wanted to mention that
20 the best way to address the problem of maybe the standard
21 being "too strict" in some places is to achieve fewer
22 cases, and to keep a strong standard in place so that
23 there are fewer cases and there's less for an employer to
24 do.

25 MS. SHUPE: Thank you, Mitch.

1 We have a request from our Chair, Dave Thomas.

2 CHAIRMAN THOMAS: Hello, I was going to -- I
3 didn't want to follow -- I'll just say what I'm going to
4 say. I agree with that as far as the flexibility part.
5 I tend to be a little more -- I want to be a little more
6 inflexible because every time we've gotten more flexible
7 or anybody's gotten, the CDC, the CDPH, we've just gone
8 in the wrong direction. You know, this thing was over
9 last June, right? Or this June it was done. You know,
10 we didn't have to worry about anything anymore. And as
11 soon as we said that, what happened? Boom. Right back.
12 And we started -- and look at us right now. Two thousand
13 deaths a day. We haven't done -- really, the flexibility
14 has hurt us. It's hurt our -- and we're charged to
15 protect employees in California. And this has done
16 nothing but hurt them. When we try and be too flexible,
17 people die.

18 And that's all I have to say.

19 MS. SHUPE: Thank you.

20 Len.

21 MR. WELSH: Just a quick comment.

22 I have to respectfully disagree with that, and I
23 think it can go both ways. And I still think it's better
24 coming from the true infectious disease experts.

25 DPH said in June 2020 masks should be required.

1 Cal/OSHA didn't have the ability to do that. Cal/OSHA
2 could issue a 3203 citation after that, and it did many
3 times, saying employer didn't require employees to wear a
4 mask. And they were substantiating that allegation by
5 citing DPH.

6 And, you know, Fran's point, this does not take
7 a whole bunch of experts testifying. It's not something,
8 like, you know, asbestos exposure and how is a
9 measurement taken or anything like this. This is did
10 they wear a mask or didn't they. Did they enforce
11 six-foot distancing or didn't they? Did they clean
12 high-touch surfaces or didn't they? These are very, for
13 the most part, very simple concepts.

14 You know, the exclusion pay and all that, those
15 are worth talking about. But even DPH could say, we
16 recommend or our guidance is that employees who are
17 potentially infectious should be excluded from work and
18 they should be -- have their salary maintained because
19 it's a public health hazard for them not to do that.
20 They're going to be as sensitive to that as any other
21 agency.

22 So, I just think -- you know, this is not --
23 we're not saying in general -- at least I'm not saying in
24 general use 3203 instead of a specific standard. But in
25 a case like this where the information does change quite

1 often and most of the requirements we're talking about
2 are quite simple, the question is is the employer doing
3 it or aren't they. And you can go out there -- I go out
4 routinely into stores and see people not wearing masks.
5 A 3203 would hold up just as well as a COVID citation for
6 that. They're not doing it. The issue is enforcement,
7 and that's what we're not getting enough of. That's what
8 fails to level the playing field. When we have all these
9 wonderful specifications, beautiful language in place,
10 and nobody is doing it because it's not being enforced.
11 That's been the promise haunting Cal/OSHA from the very
12 beginning was how can we get the resources out there and
13 actually get people to do what we're saying they need to
14 do.

15 Thank you.

16 MS. SHUPE: Thank you, Len.

17 So, I have Stephen and then Dave Harrison.

18 MS. STOCK: Sorry. I just wanted to say Kevin,
19 Kevin Riley I think that is, has his hand up, as well.

20 MS. SHUPE: Thanks. Kevin Riley, as well.

21 MR. KNIGHT: I'll just briefly point the Board
22 to Paragraph 26 of the Finding of Emergency, which you
23 had in front of you regarding the vote for the second
24 re-adopt, in which it says, "While existing regulations
25 such as the IIPP require employers to protect workers

1 from harmful exposures, they do not necessarily identify
2 specific measures that must be taken to fight the spread
3 of a novel, infectious disease. Instead, the
4 responsibility is placed on employers, given their
5 intimate knowledge of the hazards at issue and the
6 workings of the place of the employment, to devise such
7 message or procedures. Investigations in the field over
8 the summer, along with rising positivity rates, showed
9 that employers are struggling to address novel hazards."

10 So, that's the opinion of the agency on the --
11 to some extent on this question of flexibility in the
12 IIPP.

13 MS. SHUPE: Dave Harrison.

14 MR. HARRISON: Yeah. I was going to -- I wanted
15 to wait to go last. But I just wanted to say that in the
16 short time I've been on the Board, we passed standards,
17 worked hard on standards like heat illness, hotel
18 housekeeping, workplace violence in healthcare settings.

19 If, in fact, 3203 was enough, my opinion would
20 be that the rest of Title 8 would be insignificant. We
21 have an entire Title 8 that every employer in the State
22 of California is required to live by. There's a lot more
23 in there, if you read through it, than 3203. And if the
24 argument is that 3203 is enough and then a specific
25 standard is not needed, then the rest of that Title 8, in

1 my opinion, would be insignificant.

2 And I'd also like to say that I don't know that
3 anybody on this call or who has been engaged in this
4 conversation has ever seen a hazard in the workplace as
5 serious as COVID-19.

6 So, just my comments.

7 MS. SHUPE: And, Helen, I see your hand. We're
8 going to go Kevin and then Helen.

9 MR. RILEY: Thanks. I wanted to chime in here
10 because I think there's something else. There seems to
11 be some, maybe, kind of an underlying assumption here
12 that the infection control community or CDPH, there's a,
13 kind of, infallibility in terms of the recommendations
14 they're putting out or that they are, sort of, a gold
15 standard. But I think it's important for us to remember
16 that for many, many months in this pandemic CDPH,
17 following CDC and other public health agencies, refused
18 to acknowledge the airborne nature of COVID. And, you
19 know, employers and others who were following those
20 guidelines were effectively not being protective enough
21 of their workers or whatever settings that they were in.
22 That stood in stark contrast to what our ATD standard
23 says.

24 I mean, the ATD standard has language built in
25 to say that in a case of a novel pathogen when we can't

1 rule out the possibility that that novel pathogen is
2 transmitted through airborne routes, that it's required to
3 treat that disease as airborne and to take the
4 appropriate controls. So, if employers were actually
5 following that standard, they would have been much more
6 protected than had they simply followed CDPH guidance for
7 many months during the pandemic.

8 We know that a lot of employers didn't follow
9 that. There was a lot of confusion about ATD versus
10 CDPH. But the fact of the matter is that I think that's
11 a very good example of a case in which the Cal/OSHA
12 standards actually provided a much stronger level of
13 protection for workers overall. The employers were
14 following that. You had workers who were much better
15 protected than had they had employers just, sort of,
16 falling back on the guidance that was coming from the
17 state agency, public health agency.

18 MS. SHUPE: Thank you, Kevin.

19 And, Helen, thank you for your patience.

20 MS. CLEARY: Yeah. Thank you.

21 And I wanted to just circle back and touch on
22 Chris's question about, you know, the differences and
23 what's better.

24 And I think one thing we can't lose sight of is
25 COVID is a very different situation. So, you know, I

1 keep hearing we talk about every rule, that the IIPP
2 should cover that, and, you know, I haven't been around
3 historically with you-all for that long a period of time.
4 But in this situation, the fluidity is so important to be
5 able to protect workers, as Cassie had said. You know, I
6 have members as well who have dialed up and dialed back
7 based on the changes, and they've done more than what the
8 ETS requires. So, a hazard-specific standard works and
9 is effective when the hazard is static. You know what it
10 is. You know what the concern is. You know what the
11 exposure levels are, and you can design measures to
12 respond to that from an occupational perspective, from an
13 occupational health and safety perspective, which is why
14 the Division is poised to handle that.

15 In this situation, COVID, it doesn't originate
16 in the workplace. It originates in the community. So,
17 it makes sense that it comes from CDPH, and we're working
18 together to follow that.

19 I mean, I think Len said it well earlier. Where
20 when you -- you have an inside situation at the
21 workplace. You have an inside situation in the public.
22 Those measures should be the same. What you do in the
23 community, you should be able to do at your workplace as
24 well, and those cross over.

25 When it's different with meat packing or with

1 unique situations, the Division comes in and has that
2 expertise of the workplace that they can build on top of
3 that, and you focus on where those gaps are. But we
4 should be consistent across the board in the community
5 and in the workplace, and the separation of that causes
6 more confusion and more challenges from a management
7 perspective of how do you get people to follow this when
8 they hear something different when they go home and they
9 come to the workplace and they question it. So, that
10 lack of consistency between the two actually can hurt the
11 health and safety of the worker and of the workplace.
12 So, it's an alignment that, I think, is still important
13 in addition to the flexibility.

14 And I'll stop there.

15 MS. SHUPE: Thank you.

16 Chris.

17 MS. LASZCZ-DAVIS: Yeah. Let me unmute myself.

18 I mean, this is a very worthwhile discussion,
19 but this is what I'm hearing presently, and correct me if
20 you're hearing something differently.

21 We've really got -- we've got two platforms that
22 we're discussing. One is the specific standard, which
23 appears to be the trajectory that we're on for now. And
24 we've heard a number of examples where there are
25 provisions in the ETS that just aren't practical, and

1 they don't make sense if you look at day-to-day work, and
2 certainly a perception of lack of flexibility.

3 On the other hand, we're talking about the IIPP,
4 kind of an overarching platform, that requires that
5 employers and community leaders be knowledgeable. At the
6 end of the day, you do need specific criteria in a
7 performance-based standard.

8 So, then the question is what mechanism do we
9 have to ensure that the change agency, employers and the
10 community leaders, union leaders and others, are, in
11 fact, imparting the kind of knowledge that's critical so
12 that specific criteria can be applied.

13 You know, at the end of the day, I look at both
14 of them. Either one could work, but we've got issues
15 with both.

16 Let me go back to the specific standard.

17 We heard several examples today, and we passed
18 for readoption a standard for another three months, some
19 aspects of which that I don't agree with. But I think I
20 want ahead and agreed with it because it's three months.
21 We're not going to shift gears at this point in time.
22 And there were a couple of additional provisions that
23 made sense. Having said that, there were a few that I
24 certainly could have tossed out the window.

25 So, let's assume we go the route of the specific

1 standard. At the end of the day, how do we embrace the
2 need for more practicality and implementation so we don't
3 continue to get this? Employers are confused. People
4 don't know what to do. This goes overboard. It's
5 misaligned with CDPH guidelines.

6 How do we have those things come together so we
7 get the right deliverable for our employers, for our
8 workers, for the public? I struggle with that.

9 MS. SHUPE: I see Laura and then Kevin.

10 MS. STOCK: Yeah. You know, I think, as we've
11 all acknowledged, this conversation is guiding -- you
12 know, is one of the inputs to the work that's going to be
13 happening, you know, the Division is engaged in now to
14 develop a model for a regulation that could be voted on
15 in April. And we saw an original version. We haven't
16 seen -- at least I haven't seen the latest version. I
17 don't know how it shifts from what was first presented at
18 the advisory committee. So, I think we do have a
19 process.

20 As people said, you know, with the Standards
21 Board there is a process where a draft is developed and
22 input is provided. And then we hope that the drafters of
23 the regulation will be able to weigh that input and make
24 changes to try to improve it.

25 And, obviously, there's a frustration in a

1 situation like today where we voted on something. People
2 didn't have a lot of time to comment on it. There was a,
3 sort of, speed part of this process where certain
4 specific comments that they made, there wasn't time to
5 address it, which we hope that it will be addressed in
6 the FAQ, which they have, you know, committed to doing.

7 But between now and April, I continue to trust
8 in the process, which is that we're going to have a draft
9 that they will develop, that there will be an opportunity
10 for public input, and that there will continue to be an
11 effort to make a regulation.

12 You know, in my mind, I'm persuaded that what is
13 needed is a specific regulation, and I think that within
14 a specific regulation some of the issues around
15 flexibility and being able to be responsive to changing
16 conditions can be addressed. And it hasn't been perfect,
17 but I think it is -- even we've seen that in the
18 regulation that we have now by, for example, the CDPH has
19 just issued a statewide masking mandate, which is not
20 what it is in the Cal/OSHA reg, but there is language in
21 there that says we're going to follow that. So, that's
22 an example of where flexibility has been built into this
23 specification regulation.

24 So I think, as somebody said early on, I forget
25 who, our goal is to have an effective regulation that

1 protects workers and that can be enforced and provides
2 clarity to employers and workers about what they need to
3 do and what their rights are. And, so, I think those are
4 the -- you know, those are the goals we're continuing to
5 aim for. And I hope that the process that we're now
6 going to be engaged in in developing this regulation will
7 lead us to a regulation that will address the issues that
8 we have.

9 And I do think that we've got the benefit, by
10 the way, of the ATD standard which has a number of years
11 of experience. It has certain models for how to apply
12 specifics, as well as flexibility. So, I think we have
13 the tools at our disposal to get where we need to go.

14 MS. SHUPE: Thank you, Laura.

15 Kevin.

16 MR. RILEY: Yeah. I apologize for jumping back
17 in again, but I just want to quickly push back on one
18 suggestion here, that the idea that it's not appropriate
19 for Cal/OSHA to regulate hazards that don't emanate for
20 the work itself.

21 I think you all have a number of good examples
22 of standards, thinking about outdoor heat or workplace
23 violence where, you know, you've deemed it appropriate,
24 and I think it is appropriate, to regulate those hazards
25 that workers encounter in the course of their work. So,

1 I think -- I think -- I just want to make sure that
2 it's, kind of, clear here that, you know, it's not just
3 about hazards that emanate from the work process itself,
4 but just the context of where the work's happening and
5 the fact of the work activities themselves putting
6 people at risk. I think it's appropriate for Cal/OSHA
7 to step in and provide standards for employers to
8 follow.

9 MS. SHUPE: Thank you.

10 Dave Thomas.

11 I see a number of hands. I see Rob Moutrie,
12 Jassy, Mitch, and Pam.

13 Dave.

14 CHAIRMAN THOMAS: Oh, is it me?

15 Well, I was going to say that everything that
16 Laura said, only not as good, you know. And I agree with
17 Dave. You know, he's right. I mean, everything -- every
18 regulation we've passed, and I look at the (inaudible)
19 one, you know, it's probably the simplest document to
20 look at and understand exactly what you need to do in
21 those situations. And everybody said we don't need it.
22 And it took ten years, I believe, to get that thing
23 passed. And, you know, you can look right at that
24 document, say do this and this and this. When it gets
25 this temperature or if somebody is not feeling good, I'm

1 going to do this.

2 I think that Laura's right, that we can write a
3 regulation that will be flexible. I don't see the
4 difficulty in that. I don't think everybody's going to
5 agree with it. The people that are regulated rarely like
6 to be regulated. I get that. And that's understandable.
7 But we're talking about the lives of California
8 employees.

9 And the other part of the CDPH is that the
10 public can take their selves out of the situation. They
11 can just go home. They don't have to go to work, you
12 know. They don't have to go to a place of employment and
13 do what the employer says they have to do and depend on
14 them to protect them. The general public can just go
15 home. And whatever they do on their own is -- you know,
16 we're all guilty of a little bit of that. But I just --
17 that's the comment I wanted to make.

18 Go ahead.

19 MS. SHUPE: Thank you, Dave.

20 And then, Jassy.

21 MS. GREWAL: I believe Rob was before me, but I
22 don't know who the last speaker was, so, order-wise, but
23 I wanted to make sure that...

24 MS. SHUPE: We're jumping back and forth with
25 the Board Members.

1 MR. MOUTRIE: If you want to go ahead, Jassy,
2 that's fine.

3 MS. GREWAL: Okay. I'll be really quick. I
4 promise I'll stay in my minute.

5 But I just wanted to just bring us back to the
6 fact that -- I mean, I'm talking about a unionized
7 workplace where there's oversight. In nonunion work
8 settings, it's all so different in how protections are
9 ruled out. And our current system is a complaint-based
10 system. But in a nonunion worksite, workers have no
11 incentive to come forward with complaints when there's
12 something wrong in the workplace. They face retaliation.
13 Oftentimes, that's the only job that they can get. They
14 need to feed their families and put a roof over their
15 heads. And, so, the incentive to come forward is so
16 little, even though it means working in a hazardous
17 condition.

18 And without having a specific standard, workers
19 can't go to their employer and say: Look, this is the
20 law. This is what you need to do.

21 And then the IIPP is just so general. You can
22 fight for things, but the employer can say, no, we don't
23 want to do that. But in a standard, it is the law. That
24 is a regulation. They need to comply. And they can go
25 to their employer and say this is what needs to happen.

1 And that's all because we're a complaint-based system
2 when it comes to fielding complaints to Cal/OSHA. And
3 workers in nonunion worksites don't have the protection
4 of a union to come forward and say their piece.

5 And, so, I just wanted to flag that because when
6 we're talking about workers, you have nonunion workers
7 and you have union workers, and the majority of our
8 workforce is nonunion. And, so, we need to consider,
9 sort of, the working conditions they're working under
10 outside of COVID and the lack of incentive they have to
11 come forward.

12 MS. SHUPE: Thank you.

13 Rob.

14 MR. MOUTRIE: Thank you. So, again, I'll try to
15 only do only novel points.

16 One thing that hasn't been discussed that I
17 think we need to keep in mind is -- and this is speaking
18 to, as Fran did, the resources of the Division. We have
19 been moving on an emergency footing pretty steadily,
20 right? We've had meetings more often than ever before.
21 We've discussed this topic and changes more often than
22 ever before. And we need to realize that this pace isn't
23 sustainable, not just by the Division, but legally,
24 right?

25 An emergency regulation has limited duration.

1 We will move to a permanent footing at some point in some
2 way, right? And, so, I think we need to be realistic
3 about our ability to make those constant changes because
4 right now the emergency process has allowed us, in a way,
5 to try to keep up with science better than we would have
6 under permanent. But when we have to move to a permanent
7 regulation, the need to use a performance-based standard,
8 I think, is even more clear to some degree. And I would
9 say, having not been inside the brain of the Division,
10 that is likely why the Division's proposed draft
11 incorporates performance-based elements, because they
12 realize if you're going to write something that sits for
13 two years, we can't rewrite every couple months like we
14 have been. We need to let it live and breathe with
15 science, and that's why it was there in their proposed
16 draft that they previously released.

17 So, I think that difference and what we're
18 looking at and the uniqueness of our present moment
19 compared to where we will be in three months needs to be
20 considered in this talk.

21 I'll just flag briefly, retaliation. I
22 completely agree, Jassy, that is terrible. I'm thankful
23 that retaliation is already illegal, and to try to
24 separate that, the substantive text versus the
25 enforcement discussion, because certainly that should be

1 enforced against.

2 Thank you.

3 MS. SHUPE: Pam.

4 MS. MURCELL: Can you guys hear me? Am I
5 unmuted?

6 MS. SHUPE: You are. We can hear you.

7 MS. MURCELL: Okay. Thank you. So, a couple of
8 follow-up comments.

9 So, we have -- sorry. My phone is talking with
10 me -- the proposed COVID permanent regulation that I
11 think most of us present today were involved with. We
12 had a preliminary advisory committee meeting on that,
13 that, actually, is, for the most part, a performance
14 standard. And I agree with what Rob just said.

15 And I think in the Division's defense in order
16 to get something that could be adopted in a relatively
17 timely manner, they went down that road.

18 What I would recommend and might be a good
19 hybrid approach, because I understand there's a lot of
20 push-back on using the IIPP 3203 approach, is to take
21 that proposed COVID permanent regulation and make it the
22 infectious disease regulation, make it broader in terms
23 of its application to other potential infectious disease
24 issues, some we know already, others completely unknown,
25 but make it while we're doing this rulemaking. And we do

1 need to do something permanent relative to the fact that
2 the COVID-19 ETS is going to expire in April. You know,
3 perhaps use that mechanism where we can go ahead and
4 perhaps move a little quicker to something that would be
5 more palatable to the majority. We're not going to make
6 everybody happy. So, just as a thought, I've been
7 listening to this discussion go forward.

8 The other thing on the IIPP, and what my group
9 CIHC had proposed some time back in some of our comments,
10 was -- I know folks are saying that, you know, the IIPP
11 is too general, and it's performance oriented and that it
12 doesn't give the force of the workers having something to
13 fall back on to say in a specific situation, this is the
14 law and, you know, you need to provide, you know, XYZ
15 masks, for example --

16 MS. SHUPE: Ten seconds.

17 MS. MURCELL: -- for COVID protection.

18 My point is is that there can be an appendix to
19 the IIPP that's made mandatory, and a mandatory appendix
20 has the impact of a regulation and that mandatory
21 appendix could address the specifics or some of the more
22 appropriate measures that need to be considered.

23 And then, lastly, I just want to make one quick
24 comment. Someone said along the way -- I'm sorry. I
25 forgot who -- that if the IIPP is changed there's no

1 opportunity for stakeholder input. I don't believe
2 that's correct. I think any regulatory action, whether
3 it's an amendment or proposed changes to something that
4 exists, still has to go through the rulemaking process.
5 So, there would be notice and public commentary
6 requirements and obligations along those lines.

7 MS. SHUPE: Thank you, Pam.

8 MS. MURCELL: So, that's my comments.

9 MS. SHUPE: Mitch.

10 MR. STEIGER: Thank you.

11 I just wanted to quickly follow up on the points
12 raised by Board Member Laszcz-Davis and say that from our
13 perspective we would definitely agree that there's some
14 room for improvement in what's proposed for final
15 adoption in April. And I thought employers and workers
16 raised a lot of good points today. Obviously, the big
17 change we'd like to see is exclusion pay, something like
18 what was just adopted today, put back in the final
19 regulation, but I think there is definitely still room
20 for improvement in what is slated for final adoption, if
21 that happens.

22 And also just wanted to say that, you know, I
23 think we're happy to commit to walking arm in arm with
24 the employer community if the problem here is that
25 employers are confused by what's out there, and in trying

1 to find ways to help them understand and help them
2 comply, get them better access to the information about
3 how to best comply with the regulation, because it's not
4 nothing. I mean, it is long. It is, kind of,
5 complicated. There's a lot in there. We can understand
6 how some might be struggling with it. We, obviously,
7 don't think the answer is to just get rid of it or take
8 big chunks out of it. The answer is to always do a
9 better job at getting that information to the employer
10 community, whether it's more money for the consultation
11 unit or better communication or more communication or
12 whatever it is, you know. I think we're always happy to
13 join with the employer community in finding ways to help
14 that communication and help that work better so the
15 employers have a better sense of what their
16 responsibilities are under the law.

17 MS. SHUPE: Thank you, Mitch.

18 At this time, I said I would be respectful of
19 everybody's time and your participation. We're at an
20 hour, 40 minutes, and we have covered many of the
21 questions already that I had prepared. So, what I'd like
22 to do at this time is take the next 20 minutes to allow,
23 one, for the Board Members, who specifically asked for
24 this discussion, if you had any points that you'd like to
25 raise or questions that you'd like to have resolved, I'd

1 like to give you the opportunity to do that now before we
2 wrap. And then also we'll just go with final thoughts.

3 MR. KNIGHT: Who are you going to start with?

4 MS. SHUPE: Well, I was hoping somebody would
5 raise their hand.

6 Chris, I saw your hand move.

7 MS. LASZCZ-DAVIS: My hand just moved. I'm
8 thinking.

9 MS. SHUPE: Laura?

10 MS. STOCK: I guess I'll just help you out to
11 get the ball rolling because I think I've had an
12 opportunity to say -- you know, I appreciate all the
13 different points of view. And I guess I would just --
14 you know, I think we have time now between now and when
15 that permanent reg is adopted to be able to take into
16 account a lot of things that we saw.

17 And as Mitch said, I think probably all the
18 stakeholders have concerns about the version that we have
19 just adopted. And all stakeholders probably have
20 concerns about the draft that was presented a couple of
21 months ago for the permanent reg, myself included, was
22 specifically -- I agree. I'm greatly concerned about the
23 removal of exclusion pay because I think that the need to
24 be able to make it possible for infected workers to not
25 come in and infect others seems like a critical

1 underpinning to the success of that regulation.

2 So, I think there's room -- there's room for
3 improvement and discussion. And I just hope -- I hope
4 that the Division and others will be able to schedule
5 opportunities for that, to release drafts with sufficient
6 time for the stakeholder community to see it and comment.

7 And the last thing -- it was not a subject of
8 our conversation, but I also want to just echo what some
9 stakeholder said earlier during the public comment about
10 the SRIA process, because I think that issue of being
11 able to do -- the economic analysis that is needed in
12 order to allow us to move forward in April is really
13 essential. So, I hope that that is underway. And
14 whatever resources we can advocate for in order to be
15 sure that that will not be a barrier to us implementing
16 the most effective regulation that we can. So, I do hope
17 maybe in our next Board Meeting we might be able to
18 have a discussion or a report on that process.

19 Thank you.

20 MS. SHUPE: Thank you, Laura.

21 Barbara.

22 MS. BURGEL: I wanted to also -- I appreciate
23 all the wide range of viewpoints that were presented,
24 obviously, through the panel and also during the public
25 comment today.

1 I wholeheartedly support keeping a specification
2 standard and not going towards an injury-and-illness-
3 prevention-program approach.

4 I think -- I disagree with Len Walsh. I do
5 think these are complicated issues, specifically around
6 ventilation and the need to continue to use a hierarchy
7 of controls, as we tackle this horrific infectious
8 disease and pandemic.

9 I also -- I agree that depending solely on the
10 CDC and the California Department of Public Health, you
11 know, to Kevin's Riley point, on the fact that people
12 were using droplet precautions when this was quite
13 clearly an aerosolized infectious disease, you know, is
14 important to recognize.

15 So, I do think that workers and the role of
16 Cal/OSHA has been critical, critical in protecting
17 vulnerable workers. Workers do not have the power and
18 the choice to implement ventilation controls in their
19 workplace, which, I think, remain incredibly important as
20 we approach this continued infectious disease.

21 So, thank you, for -- you know, I'm looking
22 forward to the permanent standard process.

23 I also support keeping in exclusion pay. I
24 think it's important critically to -- I mean, people have
25 to work, and they will come in with symptoms unless there

1 are incentives to allow people to accurately report their
2 symptoms and stay home.

3 I'm looking forward to more home testing. I'm a
4 big home-testing proponent. And, so, I hope that home
5 testing becomes cheaper, much more reliable. Well, it is
6 reliable. We just need access so that we can test every
7 morning before we go to work.

8 So, thank you.

9 MS. SHUPE: Thank you.

10 Stephen -- oh, I'm sorry. Kate.

11 Stephen, I'm going to ask you to pause.

12 And then, Kate, are you --

13 MS. CRAWFORD: I didn't mean to overtalk
14 somebody. I just wanted to say a couple of things.

15 And the first one is I'm really appreciative of
16 all this discussion, this panel discussion, today. I
17 think that it's important to, you know, reground in the
18 intention to be responsive and protective in all of this
19 conversation.

20 One of my big concerns is that we have really
21 lost a lot of public trust in this process, and that is a
22 grave concern to me. I think that it is -- it's, kind
23 of, clear as we're listening to the different speakers
24 today where everybody lands. But I think we owe the
25 public, we owe the Governor, we owe everyone involved

1 here weighing all of these conversations on their merits.
2 If we can set aside what some of our preconceived motions
3 or positions are and simply listen to what -- and in some
4 cases what we don't even actually have all of the
5 information on, I think that we will do a much better
6 job.

7 I think we have an obligation to hear out all of
8 the advantages of the petition that was proposed. And I
9 understand this conversation is not specific to that
10 petition, but I think that we have an obligation and an
11 opportunity to regain some public trust in this process.

12 So, I liked, quite a lot, when Laura said she
13 trusted in the process, because I happen to trust in the
14 process, as well. I think we may come to it from
15 different perspectives, but we both trust in the process.

16 And, so, I would like to suggest here that for
17 January we have an action item where the Board actually
18 votes on whether we should move forward with this
19 proposed regulation.

20 MS. SHUPE: Chris.

21 MS. LASZCZ-DAVIS: Yeah, just quickly. And I
22 may be reiterating some of the comments already made.

23 I would agree that as we move forward on a
24 permanent standard we need an all-pandemic standard, not
25 one that is COVID-specific.

1 I still think that the existing -- and I realize
2 it's an incredible amount of work that's been put into it
3 and there's, apparently, an articulated need for a
4 specific criteria. I still think that what we have in
5 the written word is too dense. It's over-detailed. And
6 because of its hardwiring and the timing of issuances, it
7 appears to be inflexible, and I don't know how you get
8 around that.

9 The one question that I had -- it remains a
10 question in my own mind. I realize the most recent
11 readoption certainly considers CDPH input and guidance as
12 a default when things don't align. But I'd certainly be
13 curious to hear what the head of CDPH would have to say
14 or opine on the discussions we've had in terms of how
15 best CDPH weighs in on these issues and what they might
16 do or suggest to modify the process as we presently have
17 it, to make sure that what we issue is, in fact, in line,
18 lock and step, with what is being issued in the public
19 domain so that there's less misalignment in regulation
20 and guidance that's being given.

21 And that's all I really have to say at this
22 point.

23 MS. SHUPE: Thank you.

24 Laura, final thoughts.

25 MS. STOCK: Yeah. I just wanted to comment a

1 little bit on the process in response to your comments,
2 Kate, relative to the petition.

3 I think what we heard is there's a very well
4 set-out procedure and deadlines, and I think what we
5 heard from Eric is that they are following that, where
6 they will do an analysis and the Board staff will do an
7 analysis. And then we get an opportunity to review and
8 vote on it. I think, you know, that will come up
9 when that -- if that deadline is by our next board
10 meeting, then that sounds like what we'll be doing; and
11 if not, it would have to be the next one. So, I just
12 want to reiterate that we will be following the
13 procedures that are laid out, you know, by law about how
14 to proceed with that petition, just like every other
15 petition.

16 And the only other thing, I completely agree
17 with the need for a general infectious disease standard,
18 and, in fact, that was something that we formally agreed
19 to as part of accepting the initial petition. And, so, I
20 very much agree with everybody who said that, and it
21 seems like people on both sides have said that.

22 The one thing just that I am also aware of is
23 that what we've been told is in order to do a general
24 infectious disease standard, there's a completely
25 different timeline that could be taking years. And, so,

1 I just want to not -- which is why I think that we're
2 going to need to go forward in April and so as to not
3 have a gap in coverage to address the current epidemic
4 that we're facing now, which is COVID.

5 So, if there is some other process that we're
6 not aware of that could somehow align those that we could
7 have that for a vote by April, that would be amazing, but
8 I think we've heard the opposite of that. So, I just
9 want to be sure that we don't lose the need for something
10 now while we move forward on the need for an infectious
11 disease standard. So, maybe we could get -- that's
12 another future agenda item, to get a report on a little
13 bit more clarity about what is the process to get towards
14 an infectious disease regulation and how could we move as
15 quickly as possible towards that goal.

16 MS. SHUPE: Thank you.

17 Kate.

18 MS. CRAWFORD: I just want to be clear on
19 something. It's my understanding as a Board Member I can
20 ask for an action item for the agenda, as can any of the
21 other Board Members; is that correct?

22 CHAIRMAN THOMAS: You can ask. It just depends
23 on if the Division and the Standards Board have had a
24 chance to review the document before it's voted on, and
25 that that's going to -- that takes as long as it takes.

1 There's no -- I don't have a timeline on that. But there
2 is a six-month period where it will go before the Board.

3 MS. CRAWFORD: Well, all right. Well, I would
4 like to make an action item that we are putting this
5 topic on the agenda again for January.

6 CHAIRMAN THOMAS: That's not going to be enough
7 time. There has to be review. They have 60 days to
8 review the document. That's just the Division. Then it
9 goes to the Standards Board. They have to have time to
10 review and then after --

11 MR. WELSH: May I speak?

12 MS. CRAWFORD: Please.

13 MR. WELSH: Please, Chair Thomas?

14 CHAIRMAN THOMAS: Yes.

15 MR. WELSH: There is no law or regulation that
16 says you have to follow the process that you're talking
17 about for six months. There's a Labor Code provision and
18 there's a published procedure on your website, but
19 there's no law saying that you can't take this up at any
20 pace you want. I just want to be clear on that. Laura
21 seemed to think there's a law that forces you to do that.
22 It's not true. It's totally up to --

23 MS. STOCK: Just to clarify, six months. I
24 think I'm responding to what Eric said at our meeting
25 earlier that they had a deadline of 60 days I think is

1 what I heard. And, so, they are moving to be compliant
2 with that deadline. And my concern is that we have a
3 process of how we deal with petitions that we've had, you
4 know, at least as long as I've been on the Board, if not
5 longer. And I'm concerned about equity and public trust
6 and fairness, just like everyone has said; that we are
7 going to be giving every petition that comes in front of
8 us the same kind of treatment. And, so, in that line,
9 I'm going by what Eric said. They have 60 days to
10 prepare that, and, so, I strongly recommend that we
11 continue with that process.

12 And I don't know. Christina, can you comment on
13 whether that -- when -- Eric said it would be in 60 days.
14 Do you know what that would mean in terms of our next
15 Board Meeting?

16 MR. WELSH: Can I just say something real quick?
17 That's what Eric wants to do. That's not a legal
18 requirement.

19 (Multiple cross-talk occurring.)

20 MS. SCHREIBERG: There is a requirement. It's
21 in 147.1(d).

22 CHAIRMAN THOMAS: I think let's let Christina
23 talk.

24 MS. STOCK: Christina, could you respond to your
25 sense of the timeline now?

1 MS. SHUPE: Yes. Absolutely. I'm happy to
2 respond to a request from one of my Board Members. Thank
3 you.

4 The question was will we be able to get to this
5 by January 20, and my answer is I find that highly
6 unlikely. We are currently dealing with a pandemic.
7 We're dealing with emergency regulations. We're in the
8 middle of the holiday season, among very many other
9 things. We have several staff that have already
10 requested time off, and I'm not just talking about the
11 Standards Board.

12 And, so, I appreciate that this is a pressing
13 need for the Board. I absolutely want you to have every
14 opportunity to be able to discuss the issues that are
15 before you. But when we talk about the 60 days that are
16 in the Labor Code that are provided to the Division,
17 they're in there right now because it recognizes the
18 workload that goes into accurately and efficiently and
19 thoroughly evaluating a petition that comes before this
20 Board. It's not just there for the Division.

21 We also have a Board staff evaluation that this
22 Board has requested and required for every single
23 petition since I have been a member of its staff. And,
24 so, we prioritize things that the Board directs us to
25 prioritize. We'll do our best to absolutely bring you

1 everything that you ask for, but at this time I find it
2 highly unlikely that I could wring those hours out of the
3 day to get this to the Board by January.

4 CHAIRMAN THOMAS: But just so you know, we're
5 not treating this any different than the other petition.
6 This is the same treatment that they all get.

7 So, who's next to comment or final comment?

8 MS. CRAWFORD: So, can I ask a question? This
9 is Kate.

10 MS. SHUPE: Yes, Kate.

11 MS. CRAWFORD: I'm still forming my question.
12 But I feel like -- so, it's a statement first. I feel
13 like we're marching towards only one regulatory approach
14 here. And I also feel like, as Board Members, it's our
15 job, it's our obligation -- I said this earlier, and I
16 truly believe this. It's our obligation to look at all
17 of the options that are out there and weigh them on the
18 real, true merits.

19 One thing I would like to know -- here's my
20 question: How is it that we can develop an alternate
21 regulatory approach quickly, immediately so that we are
22 not set with simply one option?

23 CHAIRMAN THOMAS: I don't know that I have an
24 answer for that.

25 MS. SHUPE: Well, I -- and with -- you know, I

1 don't get involved in these conversation because that's
2 not my role. But I think that what I've heard today is
3 this request for transparency from both Board Members and
4 stakeholders, an opportunity to engage on the language.

5 And, Kate, you're asking for a solution. We
6 have that built into our process. It's frustrating, I
7 know a lot of times, because we have to balance the need
8 to move quickly with the need to provide thorough
9 evaluations and the type of robust engagement that we've
10 had here today, and that is definitely a balancing act.

11 MS. CRAWFORD: So, Christina, how do we continue
12 this conversation from today in an equitable manner that
13 keeps trust in the process and redevelops, reestablishes
14 public trust?

15 CHAIRMAN THOMAS: Well, you know, first, I
16 disagree that there's a distrust from the public. I
17 mean, maybe the people you talk to distrusts this Board.
18 I don't know. I don't think so. But I would say, you
19 know, there's a -- there's a competition here, I think,
20 in one is trying to be pushed ahead of another. And
21 we're just trying to do due diligence, and that's what
22 we're doing. We're doing due diligence because I don't
23 know what's going to come out of the Division or the
24 Board regarding the petition. That's why we have due
25 diligence. We just don't throw it out there and vote on

1 it.

2 MS. STOCK: And if I could just -- one thing
3 quickly. I mean, when I was talking about the process,
4 we have a process which involves the Division or the
5 Board's staff, you know. And there's a whole process of
6 how we get petitions, et cetera. They develop a proposal
7 and it is available to the public for comment, and that
8 is where the transparency -- one of the places where the
9 transparency is in place. And sometimes there are
10 advisory committee meetings, which potentially there
11 would be for this new regulation, which gives even more
12 opportunity for the public to comment.

13 And I would say in the last six months we had
14 the subcommittee structure which gave even more
15 opportunity for the public to comment.

16 So, I feel like the Board and the Division have
17 bent over backwards to provide as much input opportunity,
18 much more than I've typically seen, and, so, it seems
19 like that that's the way it works is that there's going
20 to be proposals and then there's going to be an
21 opportunity for stakeholders to comment. Then there's
22 going to be work on the Division and the Board staff to
23 try to come up with a proposal, and often that happens
24 several times. And then we get the proposal that is a
25 result of all of that to vote on. So, that's where I

1 feel like we're going to be seeing -- you know, the
2 different alternatives that people have been presented,
3 those are going to be now -- that part of what people
4 have asked is going to be part of the discussion that the
5 Division will be going through as they develop their
6 regulation. And then there will be more opportunity for
7 input from the public before it's voted on.

8 I guess I'm a little -- trying to see the
9 problem that you're concerned about that is not being
10 addressed by the process that we currently have.

11 MS. CRAWFORD: Well, this is an infectious
12 disease problem or situation, and I think if you just go
13 back to first principles, that is how we are going to be
14 able to address this particular pandemic and pandemics in
15 the future.

16 Chris raised a good point a little while ago
17 about hearing from the head of CDPH. I think that would
18 be an outstanding development if we could get the head of
19 CDPH in front of this group on the agenda to talk about
20 this with us. Again, I think that there's more to be
21 done, not to work to that timeline, but there is more to
22 be done.

23 MS. SHUPE: Chris -- I'm sorry, Dave. I'm going
24 to hand the reins over to you.

25 CHAIRMAN THOMAS: Oh, you want me to...

1 MS. LASZCZ-DAVIS: Can Chris talk?

2 MS. STOCK: Go ahead, Chris.

3 MS. LASZCZ-DAVIS: All right. I didn't if I had
4 the floor or not.

5 Basically, the elephant in the room is this:
6 Right now we're on a trajectory for a very specific
7 specification standard. I mean, we've been working
8 towards that for close to two years. It's got its
9 issues. It's got its strengths. But what we keep on
10 hearing is why don't we consider the IIPP? Why don't we
11 consider an IIPP with a set of guidance documents that
12 have the enforcement of law?

13 Have we made a decision that this is a
14 specification standard versus an opportunity to look at a
15 regulatory approach that embraces the IIPP? Is that what
16 we're saying? Or do we have to make that decision at
17 some meeting in the future?

18 CHAIRMAN THOMAS: Well, those decisions will be
19 made at some meeting in the future. I know you're
20 specifically talking about something that happened when I
21 wasn't here, and that's fine. You know, I saw it. I
22 looked through it, but it's going to go through its steps
23 and then it's going to get voted on at some point within
24 certain timelines. And then there's going to be a
25 permanent regulation at some point in time that will be

1 voted on, too. So, I'm not sure what -- other than
2 trying to push one thing in front of another, which
3 nobody is doing any of that, it's going to go through its
4 steps, and then it will come before the Board.

5 MS. STOCK: But, Chris, just to respond to how,
6 I think, I understand your question. I think that the
7 process is that there's a lot of public comment about the
8 pros and cons of different approaches. We've discussed
9 it at the subcommittee. We've discussed it today, and
10 we've discussed it practically at every meeting for the
11 last year and a half. And so that is the conversation.
12 You know, the process gives the Division the
13 responsibility to listen to public comment and to develop
14 a proposal using their expertise in regulating health
15 issues, with all of the access to CDPH and their own
16 experts, to look at all of the pros and cons with their
17 experience of enforcement and everything else, and to
18 come up with a proposal that we will then have an
19 opportunity to comment on and then vote on.

20 We have not seen yet what they're going to
21 propose. I think there are those who have said that the
22 draft that we saw for an advisory committee a month or so
23 ago was a draft. There were things -- and I think a
24 number of people had pointed out that it did, in fact,
25 draw on a lot of the structure of the IIPP, and it also

1 had other things that other stakeholders are concerned
2 about, myself included; that it did not include exclusion
3 pay. So, I am suspecting that they are taking -- or I'm
4 hoping that they're taking all of that input, including
5 the input that happened today, and then we're going to
6 see another draft where they're going to give their best
7 judgment with all of the issues about what they think is
8 going to create the most effective regulation. Then we
9 will have an opportunity to comment on it. It might
10 involve further changes, and eventually we will vote on
11 it.

12 So, I think that the structure that we have
13 does, you know, lead us -- I think that is going to be
14 trying to answer the question you're raising, Chris,
15 about are we going to do IIPP or not. I'm waiting to
16 hear what they are going to propose based on all of this
17 input and their own expertise.

18 MS. LASZCZ-DAVIS: So, it's a stay-tuned process
19 at this point in time?

20 MS. STOCK: That's how I see it, but meanwhile
21 they've heard a lot of really important comments that
22 will, hopefully, be driving what they do.

23 CHAIRMAN THOMAS: Okay. You know what, guys?
24 It's been two hours and some odd minutes. And we said
25 that at that point we would end this conversation, and we

1 would hear comments from the public.

2 And right now we have, what, nine?

3 MS. SHUPE: Nine.

4 CHAIRMAN THOMAS: And, so, it's been a long day.

5 So, we're going to try -- we're going to go to the

6 comments from the public.

7 So, Erik, you have commenters onboard?

8 MR. KUETHER: I sure do. The first three
9 commenters will be Saskia Kim, Brian Mello, and Anne
10 Katten.

11 First up is Saskia Kim with the California
12 Nurses Association.

13 CHAIRMAN THOMAS: I'm sorry. What?

14 Go ahead. Go ahead.

15 MS. KIM: Good afternoon, Saskia Kim, with the
16 California Nurses Association.

17 CHAIRMAN THOMAS: Okay. Try and keep it at two
18 minutes.

19 MS. KIM: Can you hear me okay?

20 CHAIRMAN THOMAS: Yeah. Go ahead.

21 MS. KIM: Okay. Will do.

22 CNA supports a COVID-19-two-year permanent
23 standard that does not rely on the IIPP and instead
24 contains specific measures that must be taken to protect
25 workers from COVID-19 and reduce occupational spread.

1 As the finding of emergency for today's hearing
2 on the ETS second readoption stated, a specific
3 regulation provides, "clear instructions to employers
4 and employees on what needs to be done to protect
5 workers from COVID-19, eliminating any confusion and
6 enhancing compliance."

7 The IIPP, on the other hand, is general,
8 nonspecific and leaves discretion to Cal/OSHA inspectors
9 making it hard for both employers and workers to know
10 what's required, but specificity is critical.

11 The ATD standard covers most of our nurses
12 during their work and, while not perfect, has provided
13 significant, specific protections to safeguard them from
14 exposure to the virus. Cal/OSHA has issued citations
15 against our employers for violation of the ATD standard's
16 specific provisions on respiratory protection, training,
17 recordkeeping, exposure control plans, and exposure
18 incidences.

19 When employers kept PPE under lock and key so
20 that it was inaccessible even in emergency situations,
21 the specific provisions of the ATD standard protected our
22 nurses by ensuring that the PPE was immediately
23 accessible. The ATD standard also protected our nurses
24 when hospitals had them using surgical masks during
25 high-hazard procedures or wearing garbage bags instead of

1 cover-alls or isolation gowns.

2 All of these examples point out the need for
3 specific requirements to protect workers. There are many
4 other protective regulations in place, as Board Member
5 Harrison and Chair Thomas pointed out during the
6 discussion. So, it's clear that an IIPP is not enough by
7 itself to protect workers; if it were, then why have all
8 these other protections?

9 And, finally, it would also be unprecedented to
10 cede responsibilities to CDPH, as some have requested.
11 The Labor Code clearly provides the Division with
12 jurisdiction over occupational health standards.

13 For all these reasons, CNA requests that you
14 maintain the highest level of protection for workers
15 and ensure that an actual standalone regulation for
16 COVID-19 be in place to protect workers who are not
17 protected by the ATD standard.

18 Thank you.

19 CHAIRMAN THOMAS: Thank you.

20 Who do we have next, Erik?

21 MR. KUETHER: Next on the list is Brian Mello
22 with the Associated General Contractors of California.

23 CHAIRMAN THOMAS: Brian, can you hear us?

24 MR. MELLO: Thank you.

25 As stated previously, my name is Brian Mello,

1 safety manager for Associated General Contractors of
2 California.

3 While a permanent two-year COVID-19 standard
4 would provide consistency for employers and employees, it
5 would not easily or quickly be changed to allow for
6 changes in evidence and science. As discussed at the
7 advisory committee, a framework is needed for such a
8 permanent standard to sunset, utilizing sound data and
9 metrics. Hazard-specific standards are appropriate in
10 some cases. They provide clarity where clarity is
11 possible and exist outside of regulations. When intended
12 to address a rapidly-changing situation, a hazard-
13 specific regulation may not be the best option. Public
14 health guidance has changed and will continue to change,
15 as we saw Monday with a new CDPH order. A permanent
16 hazard specific regulation, unless simple in
17 requirements, will not have the ability to address such
18 changes.

19 AGC of California members have done an
20 extraordinary job complying and keeping employees safe,
21 but when the rules of the ETS differ from state and local
22 public health directives, it becomes confusing for both
23 employers and employees and makes compliance difficult,
24 and in some cases leads to fatigue. Workers do not
25 benefit from changing rules and rules that are not

1 consistent with public health directives.

2 In conclusion, we need to find consistency and
3 transparency. There have been cases where enforcement
4 policies have openly rejected CDC and CDPH guidance, and
5 in return damages public trust.

6 When relying on existing IIPP standard and CDPH
7 guidance, the Division would need to maintain consistent
8 and transparent communication with CDPH and the public to
9 avoid lack of clarity. As CDPH orders arise, the
10 Division would need to include clarity for the workplace.

11 As we saw Monday, we had a new CDHP order. On
12 Wednesday, CDPH issued FAQs for the workplace. But we
13 did not see more clarity and guidance from the Division.
14 When we're discussing consistency and transparency, the
15 Division has the opportunity to make such guidances, and
16 I would suggest to the Division that we do so moving
17 forward with any CDPH order.

18 Thank you.

19 CHAIRMAN THOMAS: Thank you.

20 Erik, who's up next?

21 MR. KUETHER: Next up is Anne Katten with CRLAF.

22 CHAIRMAN THOMAS: Anne, go ahead.

23 MS. KATTEN: Good afternoon. (Inaudible).

24 (Audio transmission breaking up.)

25 CHAIRMAN THOMAS: I'm having a little trouble

1 hearing you, Anne.

2 MS. KATTEN: (Inaudible).

3 (Audio transmission breaking up.)

4 CHAIRMAN THOMAS: You know, we have a bad
5 connection. Go ahead, Anne.

6 (Audio transmission breaking up.)

7 CHAIRMAN THOMAS: We've got a bad connection.
8 You're going in and out.
9 Can you have -- did she call in, Erik?

10 MS. KATTEN: It's okay.

11 CHAIRMAN THOMAS: Sorry about that.
12 Erik, can you go to the next caller, please.
13 (There was a pause in the proceedings.)

14 CHAIRMAN THOMAS: Erik? I think we've lost
15 Erik.

16 MR. KUETHER: Okay. I'm back. Sorry. Next
17 three up are Greg McClelland, John Alano, and Jennifer
18 Kienle.
19 First up is Greg McClelland with Executive
20 Director Western Steel Council.

21 CHAIRMAN THOMAS: Greg, go right ahead.
22 (There was a pause in the proceedings.)

23 CHAIRMAN THOMAS: Greg? Star 6 if you're on a
24 phone.
25 We'll give you the opportunity to call back in.

1 Erik, but can we go to the next caller?

2 MR. KUETHER: Next up would be John Alano with
3 Surgically Clean Air.

4 CHAIRMAN THOMAS: John?

5 MR. ALANO: Good afternoon, everybody. Thanks
6 for giving us this opportunity to speak to the Board.
7 There's a few things that came up when I listened. I
8 tried to get on the video portion, but I guess I was not
9 able to participate in that. So, I just went ahead and
10 called back.

11 I appreciate Kate Crawford's comment. One of
12 the things that we need to consider is that -- again, I
13 mentioned it earlier during public comment -- that AIHA
14 published a position document back in September of 2020.
15 Initially, that document also guided ASHRAE. ASHRAE and
16 AIHA both focused on engineering controls and dilution
17 for the viral load indoors.

18 From my findings -- I'm a former teacher and I
19 really became a scholar of indoor air quality. If I had
20 to turn it back 20 years ago, I would have gone back and
21 become an industrial hygienist because of my passion for
22 what I'm doing now. But one of the things that I'm
23 finding as an indoor air quality specialist for
24 Surgically Clean Air is I do have meters that quantify
25 the results of investments put in by restaurant owners

1 and business owners who are doing their due diligence in
2 following the ETS. They are out there. Unfortunately,
3 there are others out there -- like somebody said in
4 previous sections in the public comment, there are some
5 bad apples or bad actors out there.

6 But I think most of those people not complying
7 are, basically, tired of being, basically, pushed around.
8 They feel like they're being pushed around. They're
9 being told to do this, do this. They were shut down for
10 three months, six months.

11 MS. SHUPE: Twenty seconds.

12 MR. ALANO: Yeah. So, what I'm finding out is
13 that in different type of businesses, what I'm really
14 concerned about is the ones that actually need additional
15 filtration and additional ventilation, they don't have it
16 because right now, as it stands, the California ETS is
17 too vague, too loose on some of the, I guess, verbiage
18 that should clarify -- it should be more clear exactly,
19 for example, how many air changes is required of a
20 restaurant. A gym, for example, I walk in there and it's
21 just a mixed bag of whatever they feel complying with.

22 A lot of them are, basically, putting their
23 business outside, especially in a poor air quality day,
24 with no real scientific data or nothing really
25 quantifiable to base their decisions on, and that, to me,

1 is a huge concern.

2 I think we need to do a better job of guiding
3 these businesses in terms of how exactly and what exactly
4 to look for that will help them determine how to safely
5 operate and reduce exposure of our employees and workers
6 out there who, basically, are --

7 MS. SHUPE: That was two minutes.

8 MR. ALANO: -- exposed to high levels of
9 particulate matter and pollution. I don't think it's
10 right.

11 CHAIRMAN THOMAS: Thank you for your comments.

12 Erik, who do we have up next?

13 MR. KUETHER: Next three commenters are Jenifer
14 Kienle, Bryan Little, and Dan Leacox. First up is
15 Jenifer Kienle.

16 CHAIRMAN THOMAS: Jenifer, are you with us?

17 MS. KIENLE: Thank you. I'm passing my
18 comments. Thank you, everybody.

19 MR. KUETHER: Next up is Bryan Little with CAFB.

20 CHAIRMAN THOMAS: Bryan.

21 MR. LITTLE: Good afternoon. Bryan Little,
22 California Farm Bureau. Thank you for the opportunity to
23 offer a brief comment.

24 This roundtable is one of the best things that
25 the Standards Board has done in years. It has allowed

1 for a much more freewheeling and thorough discussion
2 about an important issue that the Standards Board is
3 going to have to deal with and all of us in the
4 stakeholder community are going to have to figure out how
5 to deal with. And to the extent you can do more of this
6 sort of thing, I think it would be a terrific use of your
7 time to be able to really fully illuminate a lot of
8 issues that sometimes really don't get fully illuminated
9 in the normal regulatory process.

10 A word about the permanent standard. I guess it
11 shouldn't come as a surprise to anyone here that we'd
12 advocate for a more standards-based standard, like the
13 industrial hygienists and a lot of the other
14 representatives of employers on this panel did today.
15 The reason for that, I think, is just illustrated by our
16 experience with the ETS, when even the emergency
17 temporary standard process can't move fast enough to keep
18 up with the evolving science and the evolving
19 circumstances surrounding the COVID-19 epidemic.

20 If we adopt a permanent standard similar to what
21 we're looking at trying to do, we're going to be right
22 back in the same soup again. Next time we have something
23 like this happen -- hopefully, nothing as bad as this
24 will again. Hopefully, this is a once-in-a-lifetime
25 event. But to the extent that another pandemic occurs in

1 the future, if we have a permanent standard in place, it
2 will be very -- that doesn't take account of the changing
3 circumstances and how rapidly they will evolve, it will
4 be very difficult for the agency to be able to evolve and
5 the Board to be able to evolve that standard to meet the
6 changing circumstances.

7 So, thank you.

8 CHAIRMAN THOMAS: Thank you, Bryan. And I
9 wouldn't mind doing these all the time except they don't
10 pay me enough yet. So, that's -- who do we have next,
11 Erik?

12 MR. KUETHER: Next up is Dan Leacox with
13 Leacox & Associates.

14 MR. LEACOX: All right. Am I registering?

15 CHAIRMAN THOMAS: Go ahead.

16 MR. LEACOX: Good. Okay. So, just quickly two
17 points. I heard a very -- it sounded to me like a, kind
18 of, confused discussion about the proposed action item.
19 And it seems, to me, there's a difference between the
20 notion of the Board weighing in on what it wants to see
21 in April, right, versus a decision on the petition. I
22 don't think those are the same things. And, you know,
23 what I referred to earlier in the day about using
24 process -- you know, so, sometimes we hear the argument
25 of, well, we've heard all we need to hear to act. And

1 then we hear, well, we need to go through a process to be
2 fully informed. And it seems -- that opinion, you know,
3 is that based on the outcome we want or whether or not
4 the information is there?

5 And it seems to me, the Board, you know, has an
6 opportunity as the policy board to weigh in and provide
7 some direction for what it wants to see. I'm not clear
8 on how that equals a decision on the petition and why a
9 petition process should delay the Board expressing itself
10 as a policy board, and that was the disconnect that I
11 heard. And that's all.

12 CHAIRMAN THOMAS: Thank you, Dan.

13 How many calls do we have left, Erik?

14 MR. KUETHER: We have two more callers on the
15 list. And if you want to give Ann Katten and Greg
16 McClelland another chance to respond.

17 CHAIRMAN THOMAS: Sure.

18 MR. KUETHER: Okay. So, let's go with Mike
19 Miiller.

20 CHAIRMAN THOMAS: Mike, are you there?

21 MR. MIILLER: Good afternoon, Chair Thomas and
22 Members. Thank you.

23 And I just want to associate myself with the
24 comments from Mr. Mello, Bryan Little, and Dan Leacox. I
25 think your panel discussion was spot on. It's a great

1 thing to do. It's good to bring stakeholders together
2 and have that, you know, conversation.

3 In that panel conversation, there were a couple
4 of issues I just wanted to address. Somebody had
5 mentioned the process whereby the Division holds
6 meetings, brings people together, works out issues, comes
7 up to a final solution, and then presents those to the
8 Board, and then the Board takes the action on it, and
9 that is, indeed, the process. However, there's a bit of
10 a disconnect relative to the public role.

11 The Division doesn't have the responsibility and
12 the duty of the role to accept public comments. When
13 something is submitted for public review and evaluation,
14 we comment to the Board. We don't comment to the
15 Division. We comment to the Board, and the Board has
16 those comments for consideration.

17 And this morning when those comments were
18 submitted to the Board, the Board -- not one Board Member
19 pressed the Division for clarification or answers to the
20 questions.

21 For the ag coalition, we were not opposed to
22 adoption -- the second readoption of the ETS, but we did
23 have questions, and nobody pursued resolving those
24 questions. FAQs are not laws. FAQs are FAQs. The Board
25 creates the law. You don't create FAQs, and that's

1 where -- when somebody said something about but the
2 public doesn't trust this Board and a Board Member
3 disagreed, I would have to say that that -- I don't want
4 to use the word "trust." But I think we can all say with
5 a high level of confidence that the public does not have
6 a level of confidence with this Board. The public is
7 concerned, the public is engaged, but the public isn't
8 being heard, and that's a problem that I don't know how
9 to resolve because of the process whereby if you just let
10 the Division write it and then you guys accept it
11 straight-up or straight-down and don't pursue resolution
12 of concerns and comments, then how do we fix things?
13 What's the process whereby we're able to resolve problems
14 and concerns? Because the second ETS had major problems
15 and they were not addressed this morning.

16 And if we go forward with a permanent regulation
17 with that same level of uncertainty, it's going to create
18 a problem going forward. And I urge the Board to engage
19 in public comment, really understand that we're not the
20 enemy. We are trying to work with everybody. Our
21 work -- our employers work diligently to protect our
22 employees and that is a benefit to everybody, and that is
23 something that we need to consider that we're a partner
24 and we need to work together on this.

25 And, again, I thank you for your public service

1 and your time. I know you've got an incredible job to
2 do, and I appreciate all you do.

3 Thank you.

4 CHAIRMAN THOMAS: Thank you. I'm going to
5 disagree that we don't listen to the public. We've spent
6 hours and hours in meetings, in meetings, and I've
7 listened to every comment that has come through. And
8 I've paid attention to every one of them. I know all the
9 other Board Members have, too. And, yeah, we could go up
10 and down California and get everybody's comment, but
11 there's -- you know, there's not time. But to say that
12 we don't listen to the public is just -- in my opinion,
13 it's, kind of, ridiculous.

14 But, Erik, who's next?

15 MR. KUETHER: Next up is Kevin Bland with
16 Ogletree & Deakins.

17 MR. BLAND: Good afternoon, Chair Thomas, Board
18 Members, the general public, representing California
19 Framing Contractors Association, Residential Contractors
20 Association.

21 Also, Greg McClelland texted. He had to jump.
22 He didn't realize that it was going to go this long,
23 which I don't think any of us did exactly, but here we
24 are. And, so, he won't be able to comment, but he wanted
25 to defer his comments to Len Welsh if Len Welsh is able

1 to jump in for him at the end here. I don't know if he's
2 in the queue or not.

3 I just wanted to, kind of, talk just briefly
4 about, kind of, an overarching thing. As those of you on
5 the Board and many of you out in the public know, I've
6 been doing this for a lot of years. And I was an
7 ironworker, Local 433, back in the day, then the crane
8 business, and became an attorney. And, so, I've seen a
9 lot of different sides. I've been involved in rulemaking
10 for 20 or something -- granted, we have not had a
11 pandemic in those 20 years. So, that upset the apple
12 cart, and it's made it very difficult for the Board.
13 It's been very difficult for the stakeholders, very
14 difficult for the Division, and I get all that.

15 And the next step in this -- so, whatever
16 happened with the emergency rulemaking, to me, that's
17 water under the bridge now. I get it. Whether I like it
18 or don't like it, irrelevant at this point because what
19 we're looking at now is a permanent regulation of some
20 form or some fashion. And it's going to have to go
21 through the regular rulemaking process, as we've talked
22 about earlier. And there's been discussion of is 60 days
23 the ceiling or is that the floor for Eric to review it?
24 Is it six months of ceiling to floor? And with all of
25 that, what I'm hoping we can do -- and I think today was

1 a good step with this panel discussion.

2 But any time we've had a great regulation come
3 out of this Board, in my experience, is where labor and
4 management and Division, we sat down, and we had
5 consensus. We may not agree.

6 I mean, Fran Schreiber -- I don't know if she's
7 still on here. She and I -- I think if you put our
8 voting ballots next to each other, it would be exactly
9 the opposite probably. And when we have been in these
10 advisory committees, we never really agreed necessarily
11 on the road we're going to take, but we almost always
12 agreed on the goal. The goal is workplace safety,
13 whether you're an employer rep or a labor rep or the
14 Division. So, we at least agree on the goal. I'm hoping
15 that we can get back into this process and try to work
16 through these details together in a fashion that
17 resembles -- not everybody is going to get their way. I
18 get that. Because an employer rep, like myself, maybe
19 has a different idea.

20 MS. SHUPE: Time.

21 MR. BLAND: It doesn't mean we don't want to be
22 regulated or hate regulations or trying to get away with
23 something. And because labor says they want this doesn't
24 mean that we can't do another avenue that may be in
25 between.

1 But I feel like we've, kind of, lost our way a
2 little bit in the process because of the pandemic and
3 everything. So, what I'm hoping we can do -- and I think
4 this panel discussion today was a step in that direction,
5 but we spent a lot of time on anecdotal stories and bad
6 things that employers do and bad things that employees do
7 and bad things that happen in a union and bad things that
8 happen in nonunion and all that. If we could get back to
9 the nuts and bolts --

10 CHAIRMAN THOMAS: Wrap it up.

11 MR. BLAND: -- and try to reach some consensus
12 on maybe what something would look like going forward
13 with the -- whether it's a specificity standard or a
14 performance standard or a combination or what was
15 proposed by Western Steel Council or somewhere in
16 between. But I think we've, kind of, lost it. We've
17 been arguing so much about things. And I know I'm out of
18 time. And I appreciate it. But I just hope we can try
19 to get ourselves back on the rulemaking track to get what
20 happens on whatever the next permanent regulation is.

21 There. So, I appreciate it. I'm sorry. I went
22 over my time. I didn't speak this morning. So, I just
23 brought my time in now. So, thank you.

24 I forgot. Usually every year at this time I
25 always wish everybody Happy Holidays. So, I'll do that

1 as my closing. Happy Holidays to everyone. I appreciate
2 everyone's service throughout the year and thanks for the
3 opportunity to speak now.

4 Thank you.

5 CHAIRMAN THOMAS: Thanks, Kevin.

6 And I was going to say, on Kevin's note, yeah,
7 you know what? We have our little disagreements here
8 between each other. We have different perspectives. But
9 if you go back to the very first phone call today, the
10 very first one that I kicked him off, because they were
11 lying. They were saying things that were just not true:
12 Don't wear a mask. Masks are bad.

13 That's what we're fighting against. I think
14 we'll come to a consensus at some point, but that's what
15 we're fighting against. That's the 40 percent that
16 aren't vaccinated yet. That's what causing a lot of
17 this. So, just remember back to them. We have small
18 disagreements. They don't even think it exists. Okay.

19 Who do we have left, Erik?

20 MR. KUETHER: We have two more, and I have Anne
21 Katten, who had network issues earlier.

22 MS. SHUPE: And before you start, I need to make
23 a quick request of our court reporter. Just to let you
24 know that we would like you to extend your time to the
25 end of the meeting. Thank you.

1 Anne.

2 MS. KATTEN: Good afternoon. Can you hear me?

3 It's okay. I don't need to testify.

4 CHAIRMAN THOMAS: Where did you go, Anne?

5 MS. KATTEN: I thought you weren't able to hear
6 me.

7 CHAIRMAN THOMAS: Go ahead.

8 MS. KATTEN: Great. I just wanted to briefly
9 reiterate that, you know, as has been said, specific
10 requirements save lives and make the regulation clear for
11 workers and employers, and I think that's our way out of
12 this pandemic.

13 And then I just want to address one specific
14 point that I believe it was Mr. Moutrie raised that
15 referenced the IIPP Valley Fever citations. And the way
16 I read those, they're based on failure of employers to
17 follow through on requirements that they had put in their
18 IIPPs. So, that does not help for employers who have not
19 put specific protective requirements that were already
20 needed in the IIPP.

21 Thank you.

22 CHAIRMAN THOMAS: All right. Do we have anybody
23 left, Erik?

24 MR. KUETHER: The last one on the list is Greg
25 McClelland. Are you online, Greg?

1 CHAIRMAN THOMAS: Greg?

2 MR. WELSH: Greg is not available. Kevin said
3 that he asked me to speak on his behalf. So, if I could
4 have a minute, that would be great.

5 CHAIRMAN THOMAS: Go right ahead.

6 MR. WELSH: You know, for all the criticism you
7 folks hear, don't think for a second that we don't
8 understand the pressure you're under. And, actually, I
9 think, you know, most of the folks I've been agreeing
10 with today, and even the ones I disagree with, understand
11 that you folks are the rulemaking authority. You're the
12 last word and what you do makes law, and we all
13 appreciate that.

14 The one thing I wanted to say about this whole
15 issue about the petition, the Labor Code sets deadlines
16 for action, but it doesn't say that you have to take all
17 the time those deadlines provide. So, if you decide that
18 you want to operate taking all the time the deadlines
19 give you, that's your decision, and nobody can question
20 you making that. But it needs to be clear that you're
21 making that decision because that's the decision you make
22 not because it's required by law that you wait.

23 That's all I wanted to say.

24 CHAIRMAN THOMAS: Thank you.

25 MR. WELSH: And thanks again for your listening

1 for hours and hours and hours and days and days and days.
2 Don't think it's not appreciated.

3 CHAIRMAN THOMAS: You were all here for most of
4 this. Listen, I want to thank -- before we adjourn, I
5 want to thank everybody for their comments. I learned a
6 lot. I mean, I appreciate everybody's perspective in
7 this. And if I offended anybody, I'm sorry that you
8 don't agree with me, but that's just -- I'm just kidding.
9 Just a joke.

10 Anyway, I really appreciate everybody's
11 comments. I appreciate all of you. I know most of you
12 are here all the time for every meeting, and all of this
13 is going to be taken into consideration. And I just want
14 you to know this is not hide the ball or any of that
15 stuff. We have timelines we go through. And I give the
16 Division, I give the Standards Board time to go through
17 each of these petitions. They do it. I mean, we know
18 how that works. And when it comes up, it will come up,
19 but it's going to come up. Make no mistake. It will
20 come up for a vote. So, I just want you to know.

21 And with that, this Board Meeting -- let's see.
22 We have no closed session. So, the next Standards Board
23 meeting --

24 MS. STOCK: Dave is raising his hand, Dave. I
25 just wanted to be sure you saw that.

1 CHAIRMAN THOMAS: I'm sorry, Dave. Go ahead.

2 MR. HARRISON: I was going to ask about closed
3 session. Thank you.

4 CHAIRMAN THOMAS: Oh, we don't. We don't.
5 Sorry.

6 MS. SHUPE: We do have one thing we absolutely
7 must do before you can adjourn the meeting, though.

8 CHAIRMAN THOMAS: Well, you better tell me what
9 it is.

10 MS. SHUPE: We need to wish Mr. Mike Manieri a
11 Happy Birthday.

12 CHAIRMAN THOMAS: Oh, yes. I'm not going to
13 sing Happy Birthday because I can't sing, but Happy
14 Birthday to Mike.

15 And just one shout out, my son and
16 daughter-in-law had twins the 14th at 8:10 and 12 p.m.
17 and everything was fine. And thank God. Man, thank God.

18 MR. MOUTRIE: As a twin, I will say that twins
19 are the best people. So, congratulations.

20 CHAIRMAN THOMAS: Man, I tell you.
21 Congratulations to them because they're the ones that are
22 going to need it for the next 18 years especially and
23 then forever.

24 But, anyway, the next Standards Board regular
25 meeting is scheduled for January 20th, 2022, via

1 teleconference and video conference. Please visit our
2 website and join our mailing list to receive the latest
3 updates. We thank you for your attendance today, and I
4 really do appreciate it. It was a really good
5 discussion.

6 And there being no further business to attend
7 to, this business meeting is adjourned. And thank you
8 for your attendance, and we will see you next month.

9 Thank you.

10 (Proceedings concluded at 3:06 p.m.)

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1 REPORTER'S CERTIFICATION

2 I, the undersigned, a Certified Shorthand Reporter
3 of the State of California, do hereby certify:

4 That the foregoing proceedings were taken before me
5 at the time and place herein set forth; that any
6 witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand, which
9 was thereafter transcribed under my direction; that the
10 foregoing transcript is a true record of the testimony
11 given.

12 I further certify I am neither financially
13 interested in the action nor a relative or employee of
14 any attorney or party to this action.

15 IN WITNESS WHEREOF, I have this date subscribed my
16 name.

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19
20 _____
21 Shelly Coffey, CSR #6808

22 Dated: January 15, 2022
23
24
25