BEFORE THE

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PUBLIC MEETING, PUBLIC HEARING )
AND BUSINESS MEETING OF THE )
OCCUPATIONAL SAFETY AND HEALTH )
STANDARDS BOARD )
_________________________________)  

VIRTUAL TRANSCRIPT OF PROCEEDINGS

Via Webex

Thursday, January 20, 2022

Reported by:

SHELBY K. MAASKE

Hearing Reporter

Job No.:

35222DIR–DOSH(REV)
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VIRTUAL TRANSCRIPT OF PROCEEDINGS,
taken via Webex Videoconference commencing
at 10:00 a.m. and concluding at 11:53 a.m.
on Thursday, January 20, 2022, reported by
Shelby K. Maaske, Hearing Reporter.
APPEARANCES:

BOARD MEMBERS:

DAVE THOMAS, Chairman
BARBARA BURGEL, Occupational Health Representative
KATHLEEN CRAWFORD, Management Representative
DAVID HARRISON, Labor Representative
NOLA KENNEDY, Public Member
CHRISS LASZCZ-DAVIS, Management Representative
LAURA STOCK, Occupational Safety Representative

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

CHRISTINA SHUPE, Executive Officer
STEVE SMITH, Principal Safety Engineer
AUTUMN GONZALEZ, Chief Counsel
MICHAEL NELMIDA, Senior Safety Engineer

BOARD STAFF ATTENDING VIA WEBEX AND/OR TELECONFERENCE:

LARA PASKINS, Staff Services Manager
DAVID KERNAZITSKAS, Senior Safety Engineer
JENNIFER WHITE, Regulatory Analyst
CATHY DIETRICH, Regulatory Analyst
AMALIA NEIDHARDT, Senior Safety Engineer

ALSO PRESENT:

ERIC BERG, Deputy Chief of Health
TKO STAFF:
  BRIAN MONROE
  ERIK KUETHER
  MAYA MORSI
  JOHN ROENSCH

SPANISH INTERPRETERS:
  PATRICIA HYATT
  JULIA ELIZARRAS

PUBLIC COMMENT:
  HELEN CLEARY, Phylmar Regulatory Roundtable
  STEPHEN KNIGHT, Worksafe
  ZENA DELLING, California Dental Assistants Association and the California Association of Dental Assisting Teachers
  ANA BERGERON, United Nurses Association of California
  ROB MOUTRIE, California Chamber of Commerce
  ANTHONY SANTOS, Safety and Work Comp Manager
  BRIAN MACEJKO, The Equity Engineering Group, Inc.
  MITCH STEIGER, California Labor Federation
  CASSIE HILASKI, Nibbi Brothers General Contractors
  MICHAEL MIILLER, California Association of Winegrape Growers
  BRYAN LITTLE, California Farm Bureau
  BRUCE WICK, Housing Contractors of California
KEVIN BLAND, Ogletree Deakins

DAN LEACOX, Leacox & Associates, Representing

National Elevator Industry, Inc.
Remote Proceedings; Thursday, January 20, 2022

10:00 a.m.

CHAIR THOMAS: Good morning. This meeting of the Occupational Safety and Health Standards Board is called to order. I'm Dave Thomas, Chairman. The other Board Members present today are Ms. Barbara Burgel, Occupational Health Representative; Ms. Kathleen Crawford, Management Representative; Mr. David Harrison, Labor Representative; and Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management Representative; Ms. Laura Stock, Occupational Safety Representative.

Also present from our staff at today's meeting, Ms. Christina Shupe, Executive Officer; Mr. Steve Smith, Principal Safety Engineer; Ms. Autumn Gonzalez, Chief Counsel; and Mr. Michael Nelmida, Senior Safety Engineer who is providing technical support.

Supporting the meeting remotely are Ms. Lara Paskins, Staff Services Manager; Mr. David Kernazitskas, Senior Safety Engineer; Ms. Cathy Dietrich, Regulatory Analyst; Ms. Amalia Neidhardt, Senior Safety Engineer, who is providing translation services for our commenters who are native Spanish speakers.

Via teleconference, we have Mr. Eric Berg, Deputy
Chief of Health representing Cal/OSHA.

Today's agenda and other materials related to today's proceedings are posted on the OSHSB website. In accordance with Section 11133 of the Government Code, today's Board meeting is being conducted via teleconference with an optional video component. This meeting is also being live broadcast via video and audio stream in both English and Spanish. And links to these non-interactive live broadcasts can be accessed via the "Standards Board Updates" section at the top of the main page of the OSHSB website.

We have limited capabilities for managing participation during the public comment period, so we are asking everyone who is not speaking to place their phones on mute and wait to unmute until they are called to speak. Those who are unable to do so will be removed from the meeting to avoid disrupting the proceedings.

As reflected on the agenda, today's meeting consists of three parts. First, we will hold a public meeting to receive public comments or proposals on Occupation Safety and Health matters. Anyone who would like to address any Occupational Safety and Health issues, including any of the items on our business meeting agenda, may do so at that time.

Members of the public who have submitted a
request to be placed in the comment queue via the online forum or automated voicemail system will be called on in turn.

The instruction for joining the public comment queue can be found on the agenda for today's meeting. You may join by clicking the Public Comment Queue link in the "Standards Board Updates" section at the top of the main page of the OSHSB website or by calling (510) 868-2730 to access the automated public comment queue voicemail. Please be sure to provide your name as you would like it to be listed, your affiliation or organization, if any, and the topic you would like to comment on.

When public comment begins, please listen for your name and an invitation to speak. When it is your turn to address the Board, please be sure to unmute yourself if you using WebEx, or *6 on your phone to unmute yourself if you are using the teleconference line.

Please be sure to speak slowly and clearly when addressing the Board. Please remember to mute your phone or computer after comment. Today's public comment will be limited to two minutes per speaker or less, and the public comment portion of the meeting will be extended up to two hours so that the Board my hear from as many of the members of the public as is feasible.

The individual speaker and total public comment
time limits may be extended by the Board Chair. You guys know I'm pretty easy with that, but don't abuse it, because I might cut you off.

After the public meeting, we will conduct the second part of the meeting, which is the public hearing. At the public hearing, we will consider proposed changes to specific Occupational Safety and Health Standards that were noticed for review at today's meeting.

Finally, after the public hearing is concluded, we will hold a business meeting to act on those items listed on the business meeting agenda. The Board does not accept public comment during its business meeting unless a member of the Board specifically requests public input.

Before we begin the public meeting and receive comments, I will note for the record that the previously agendized Horcher proposal, which was to adopt Federal OSHA vaccination and testing standards, will not be considered at today's meeting.

We will now proceed with the public meeting. Anyone who wishes to address the Board regarding matters pertaining to Occupational Safety and Health is invited to comment. Except, however, the Board does not entertain comments regarding variance decisions. The Board's variance hearings are administrative hearings where procedural due process rights are carefully preserved;
therefore, we will not grant requests to address the Board on variance matters.

At this time, anyone who would like to comment on any matters concerning Occupational Safety and Health will have an opportunity to speak.

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

At this time Ms. Neidhardt will provide instructions to the Spanish-speaking commenters so they are aware of the public comment process for today's meeting.

Ms. Neidhardt?

(The proceedings were translated into Spanish.)

CHAIR THOMAS: Thank you, Ms. Neidhardt.

Maya, who do we have in the queue?

MS. MORSI: We have Veronica as the first commenter in the queue, followed by Helen. Then after Helen, will be Michelle. But first up is Veronica.

CHAIR THOMAS: Hello, Veronica. Can you hear us? Press *6 if you are on a phone.

It seems like we have this problem every time. Do you want to move to the next one, Maya, and we'll try to come back to Veronica?
MS. MORSI: No problem. So the next person in queue is Helen Cleary, and she is affiliated with Phylmar Regulatory Roundtable, PRR.

CHAIR THOMAS: Helen, are you hearing us?

MS. CLEARY: Good morning, everybody. Thank you. I'm Helen Cleary, the director of Phylmar Regulatory Roundtable. I thank you for the opportunity to speak today. And thank you, again, for the panel discussion at last month's Board meeting. Off of that, we would like to know, where does it go from here? And, specifically, when will the next draft from the ETS be released? Will there be additional stakeholder meetings? It's anticipated the Board will vote in March, and it's approaching quickly.

PRR appreciates Cal/OSHA's alignment with CDPH on isolation and quarantine; however, it needs to be said that this change, like many others, created a lot of confusion. Last Tuesday, our COVID-19 task force, over 2,500 EHS professionals, spent over an hour discussing the new recommendations from CDPH, Cal/OSHA, FAQs, County health orders, and doing a comparison to figure out how to comply with each of them.

Clear guidance did come out from Cal/OSHA on Friday, and that's much appreciated. PRR members understand the importance of protecting their workers, and they are doing it. But they are frustrated, and they know
it doesn't need to be this complicated.

Meeting compliance requirements and maintaining compliance is a very fine balance between the written requirements, the ability for the organization to implement them, and the ability of the individual to understand and follow them.

If that balance tips, the risk of noncompliance naturally increases. The COVID-19 ETS, we believe, continues to tip those scales. Unfortunately, once the patience and willingness to jump through those hoops has been exhausted, many people do just what they want and what they think is best, and that's human nature.

Based on recent conversations and experience, it seems natural that this is where many employers and workers are in California and where they are headed. And to say the root cause is our employers are bad or they don't care or there's a lack of enforcement would be disingenuous or naive.

To truly mitigate this risk, there needs to be a holistic strategy. So who has the ultimate responsibility and authority to impose COVID-19 mitigation measures in California? Right now, it's coming from multiple authorities, and it's not helping people comply. Does the Board, the state leaders, public health officials see the concern and need to course correct? Because we do. And
we hope to continue to have an honest discussion around this so we can solve this together. Thank you for your time today. It's nice to be back. Happy New Year.

CHAIR THOMAS: Thank you, Helen.

Who do we have up next?

MS. MORSI: We have Michelle Dubois next for commenting.

CHAIR THOMAS: Michelle, can you hear us? Michelle, are you with us? Looks like we are having a problem. Why don't we move on to the next three, and we can have them circle back?

Maya, who do we have up next?

MS. MORSI: We have Stephen Knight with Worksafe up next, followed by Zena and Ana. Right now will be Stephen Knight.

CHAIR THOMAS: Stephen, can you hear us?

MR. KNIGHT: Yes. Hi. Thank you, Chair and Board Members. Stephen Knight with Worksafe. It's not a surprise that the National OSHA Vaccinator Test Rule for large employers was struck down, so now no such rule is set to take effect and protect workers in California. It's unfortunate the State was not prepared for that by drafting a similar approach for California and having that ready.

Worker protection in California should not be
1 constrained by the anti-public health politics across the
2 country. This is not who we are. In contrast, California
3 courts have supported this Board's recognition that COVID
4 is a workplace emergency and upheld your work proving the
5 emergency standards against legal claims from the Business
6 Roundtable, Western Growers, et cetera.
7
8 Reports on COVID metrics by Politico and UCLA
9 show that California has done better than other big states
10 through the pandemic, particularly on health. We can be
11 proud of the role the ETS played.
12
13 On the lines of California leadership, however,
14 it was disappointing to see the Governor's executive order
15 that our state will follow the federal CDC's
16 highly-criticized shortening of quarantine to five days.
17 This cuts Cal/OSHA and this Board's recommended exclusion
18 period and any exclusion pay for workers in half.
19
20 This sends workers back among their colleagues
21 when they may well be highly contagious. I want to
22 acknowledge that agency staff must be up to their necks
23 and are doing amazing work with all of the pandemic
24 challenges, but there is a lot in the pipeline for this
25 new year.
26
27 We looked forward to a science-based,
28 worker-protected proposal for continued emergency COVID
29 standards beyond April 2022. Workers need to receive pay
when required to quarantine. Workers need specific enforceable rules for employers to follow.

We want to see progress on a permanent general industry standard for aerosol-transmissible diseases already approved by this Board. And there are overdue standards like indoor heat where we hear repeated assurances that are about to move forward and then they do not. Thank you for your time.

CHAIR THOMAS: Thank you.

Who do we have up next, Maya?

MS. MORSI: Thank you. We have Zena Delling next with California Dental Assistants Association and the California Association of Dental Assisting Teachers.

CHAIR THOMAS: Zena?

MS. DELLING: Good morning. Can you hear me?

CHAIR THOMAS: Yes.

MS. DELLING: Okay. Good morning. My name is Zena Delling. I'm here to speak to Petition File No. 592. Due to unforeseen circumstances, the designated representatives of both CDAA and CADAT are unable to attend this morning, so I have been asked to provide information to you on their behalf.

Should there be any additional questions or discussion regarding our statement, we would welcome and request a follow-up meeting. On behalf of the California
Dental Assistants Association and California Association of Dental Assisting Teachers, I'd like to thank you for the opportunity to address you here today.

We appreciate the time spent by the Board to review this issue; however, there are three areas of concern that we would like to address here today.

First, according to the Proposed Petition Decision Letter, the Board's staff acknowledged that, quote, Dental employers have a lack of knowledge or compliance with a Bloodborne Pathogen Standard, and some fail to implement required policies and protocols necessary to prevent occupational exposure to Bloodborne Pathogens, end quote, and must be addressed.

The letter goes on to state that this would be more effectively addressed by, one, educating employees on their rights under the Bloodborne Pathogen Standard. Two, educating employers on their responsibility under the Bloodborne Pathogen Standard. Three, more scrupulous enforcement of existing regulations.

Our organization had begun to actively address this. We have scheduled a Cal/OSHA speaker at our upcoming annual educational conference in April to begin the education of the employees on their rights under the Bloodborne Pathogen Standard. We look forward to continuing that process in the near future; however, that
will only address the employees.

So our question to you, then, is, what will Cal/OSHA do relative to ensuring that employers better understand and fulfill their responsibility? And, two, related to that, how does Cal/OSHA verify that annual training is taking place?

Secondly, according to the Proposed Petition Decision Letter, page 4, the Board shares our concerns which, quote, point to a lack of implementation for the very measure that Cal/OSHA and DBC established to protect employees and patients alike, end quote.

Our question to you, then, is, what is the Board's plan to rectify this? What suggestions do you have for us to move ahead in wanting to educate and protect the dental assistant community as employees? And, three, what are your recommendations so we can protect workers in dental practices from injury and illness relative to the Bloodborne Pathogen Standard?

Lastly, we would like to clarify our request as it appears there may have been some misinterpretation as to our intent.

On page 1 of the Proposed Petition Decision Letter, it states that, quote, The petitioners request the Board take the following course of action, amend section 5193(g)(2)(B) to require unlicensed, on-the-job trained
dental assistants to complete a DBC-approved infection
control training prior to performing any basic supportive
dental procedures involving potential exposure to blood,
saliva, or OPIM, end quote.

However, our request of this Board is that the
current training required by Cal/OSHA be done prior to
performing any basic supportive dental procedure by an
on-the-job trained dental assistant which would align with
the Dental Board's requirements but not be duplicated.

To underscore the importance of this request, we
are attaching letters of support that were submitted by
the American Dental Assistant Association, Dental
Assistant National Board, Eloise Reed Seminars, Dental
Assisting Educators through the California Dental Hygiene
Association CADAT, and CDAA.

These letters were submitted to the Dental Board
of California regarding a similar request by us regarding
Business and Professional Code 1750 that infection control
education takes place prior to exposure to blood, saliva,
and oral PIM, and reflect that any education related to
infection control, whether it be via the Dental Board of
California or Cal/OSHA, should be done prior to performing
any basic supportive dental procedures that could expose
the dental employee to risk of injury or infection.

Thank you for listening to our concerns, and we
look forward to a response to our questions presented here today and ask for the Standards Board to reconsider our petition.

CHAIR THOMAS: Thank you, Zena.

Who do we have next, Maya?

MS. MORSI: We have Ana with UNAC/UHCP next.

Following Ana will be Rob and then Anthony. So Ana is next.

CHAIR THOMAS: Ana, can you hear us?

MS. BERGERON: Yes, I can hear you. Can you hear me?

CHAIR THOMAS: Yes. Go ahead.

MS. BERGERON: Good morning. My name is Ana Bergeron. I'm a registered nurse, and I'm also the president for our local affiliate, United Nurses Association and United Registered Nurses Association. My employer is not complying with AB 685, which requires employers to disclose to their bargaining union representative when an exposure has happened.

In other hospitals, notifications are occurring, especially now with Omicron in surge. With COVID exposures happening more frequently in hospitals, including outbreaks, it is hard to work safely and confidently when your employer is not following the law. Our ask is that Cal/OSHA help us in getting Prime
Healthcare to go ahead and follow the law by enforcing the regulations that are in place.

Thank you very much.

CHAIR THOMAS: Thank you. Did you say "Prime"?

MS. BERGERON: Prime Healthcare, yes.

CHAIR THOMAS: Thank you.

MS. BERGERON: You are very welcome. The hospital is St. Francis Medical Center.

CHAIR THOMAS: Thank you.

Who do we have next, Maya?

MS. MORSI: We have Rob Moutrie with California Chamber of Commerce up next.

CHAIR THOMAS: Rob, can you hear me?

MR. MOUTRIE: Yes, I can, Chair. Can you hear me all right?

CHAIR THOMAS: Yes. Go right ahead.

MR. MOUTRIE: Thank you.

Good morning, everyone. Happy New Year. I would like to first echo Ms. Cleary's comment regarding we appreciate Cal/OSHA staying consistent with CDC and CDPH guidance over the holidays. I know that was a lot of work for CDPH and the Division, so I appreciate the time you all put in over the holidays as well as the last two years.

We think it strikes a good balance between acting
upon its employees who are truly at risk and dangerous and excluding them with testing and allowing those who are not dangerous to return. I am hearing from across the state over the last couple of weeks from employers a ton of confusion about exactly how these new guidance outlines under the FAQs -- which I know are being worked on -- connects with the regulation on specific pieces.

How does this connect related to exclusion pay? How does it connect related to social distancing? How, exactly, do those pieces work out? So I know the Division is working hard on those FAQs. But I must say, on behalf of employers large and small, the confusion has been widespread. We really look forward to seeing them so we can make sure we are getting into compliance as we should.

One specific piece I want to highlight is the issue around testing. This is not related the CDPH changes, but, rather, the text approved by the Board in December. The text approved in December makes a change to the testing language which seems to suggest that at-home tests can't be used to check if an employee is positive or negative before they come back to work. That's a huge concern and burden for employers across the state right now, particularly for the small ones.

Because the simplest way to keep an unhealthy and potentially contagious employee out of the workplace is to
provide them a test they can take at home before they come in. As soon as you bring that employee to the workplace or involve workplace personnel, you run an increased risk. So we really hope we can find a way to make that testing feasible, because it really is the simplest and safest way, particularly for small employers, to do the testing and keep the unsafe employees out.

We also think in line with President Biden's recent announcement of the shipping at-home tests, which we are glad to see -- and I hope everyone is aware of and signed up for. You know, we really see at-home tests as a critical safety tool that should not be disfavored. So with that, we eagerly await the FAQs revision and thank you all for your time.

CHAIR THOMAS: Thank you, Rob.

Who do we have next, Maya?

MS. MORSI: We have Anthony Santos with Safety and Work Comp Manager followed by Brian and then Mitch.

Next is Anthony Santos.

CHAIR THOMAS: Anthony, can you hear us? Unmute yourself if you haven't already. Anthony, can you hear us? I think we are having trouble. All right. We are going to have to move on.

Maya, you can come back in with Anthony and get him back in the loop. Who do we have next?
MS. MORSI: We have Brian -- forgive me for the last name -- Macejko, with the Equity Engineering Group, Inc.

CHAIR THOMAS: Brian, are you with us?

MR. MACEJKO: Yes, I'm here.

CHAIR THOMAS: Thank you. Go ahead.

MR. MACEJKO: Thank you for giving us an opportunity to speak here. So this is in reference to Petition 593. My name is Brian Macejko. I work with Equity Engineering Group. We're an employee-owned engineering group. I have a couple of my colleagues on my phone as well, David Osage, who is the president and CEO for Equity Engineering and Phil Prueter, who is a principal engineer with the firm as well.

The petition was in regards to California Code of Regulations, title 8, chapter 4, subchapter 15, article 18, section 6857 which references an out-of-date standard, API 579 Fitness for Service Recommended Practice, First Edition, January 2000. The petition was to modify the language to reference the latest edition of the API 579 Standard.

There has been multiple revisions since the initial 2000 edition. With those revisions, there has been a number of updates and enhancements with technology and, also, corrections to errors that were present in the
It's our understanding that the intent is to update and refer to the 2016 edition of the 579 Standard; however, the next edition is actually scheduled to be out by the end of February. So if the update goes to the 2016 edition, then within a month here or so, you are already going to be out of date.

So the preference, again, would be to refer to the latest edition of the standard. If that's not feasible, then, at least, referencing the 2022 would be a preferred secondary option.

CHAIR THOMAS: Is that it?

MR. MACEJKO: Yes.

CHAIR THOMAS: Thank you, Brian. We appreciate your comments.

MR. MACEJKO: Thank you. I appreciate your time.

CHAIR THOMAS: Who do we have next, Maya?

MS. MORSI: We have Mitch Steiger with California Labor Federation up next, followed by Cassie, and then Michael Miiller. First up, Mitch Steiger.

CHAIR THOMAS: Mitch, can you hear us?

MR. STEIGER: Yes.

CHAIR THOMAS: Go ahead.

MR. STEIGER: Thank you, Chair Thomas and Members. Mitch Steiger with California Labor Federation.
At the risk of stating the painfully obvious, the Omicron surge has put us in a really bad place -- a nightmarish place for a lot of workers -- where case rates are through the roof. Test positivity rates are through the roof shattering all of the previous records. This really came out of nowhere.

If I remember right, we heard about Omicron on a Thursday, and by Sunday, it had taken over entire countries. And as this moves forward, there's some early indications that we have hit the peak, and if we haven't, we are probably close to it, and it will gradually decline, hopefully, quickly, but we don't know.

We think the really important lesson to learn from this is that this is not going away, and something like this is likely to happen again. If you look at the history with this virus, it just does this, up and down and up and down, and that will probably continue for the foreseeable future.

With that in mind, as we decide what we are going to do in April and what, kind of, a standard we will readopt for the rest of the year, it's important to remember that it can always get much worse with virtually no warning. And should case rates happen to be low and should we be in a relatively good place as the coming months happen, in no way does that mean we should relax
the standard.

For example, this new order related to the duration of exclusion pay where it was cut, roughly, in half, we would argue, did not follow the science that when you look at the virus clearance rates, it's roughly five and a half days and unvaccinated it's about seven and a half days. I think those numbers are from Delta. I don't know about Omicron. But that would mean that most people, if they go back to work in five days, are going back to work while still infectious.

Now, CDPH did take a better step beyond CDC in requiring negative testing requirements, but it's still something that workers are going back to work sick. And we definitely share the employers' concern about this being complicated. It is very complicated. I spent a lot of time on the phone with someone yesterday trying to explain it. And every time I do, I realize just how hard this is.

I definitely sympathize with struggles people are having understanding how all of these different pieces fit together, but we feel the best way to both follow the science and ease compliance for employers is to keep the standards strong.

Even if things do look better as the months move forward in the next few months, we can't give in to that
temptation to relax the standards and say, "Well, things are better. Let's do this to exclusion pay," or, "Let's do this to testing. Let's relax the standard in any number of ways."

The only consistent thing so far is it can suddenly get much worse out of nowhere. We could find out before the weekend, and by Monday, we are in a new nightmare.

We would just really urge the Board to keep that in mind as we move forward and think about what the rate option is going to look like in April. And just keep in mind, we need to follow the science, and we need to keep the standard strong, not just to protect the workers, but to keep it something that employers can comply with.

Thanks a lot.

CHAIR THOMAS: Thank you, Mitch.

Maya, who is next?

MS. MORSI: Cassie Hilaski with Nibbi Brothers is next.

CHAIR THOMAS: Cassie, can you hear us?

MS. HILASKI: Yes. Can you hear me?

CHAIR THOMAS: Yes. Tell Larry "Hi" when you see him.

MS. HILASKI: Will do. All right. Happy New Year, everyone. As usual, thank you for your service. No
surprise I agree with Helen Cleary and Rob Moutrie's comments so I won't reiterate those. I did want to address one thing. At the last meeting, one of the Board Members commented that if it was up to the regulated community, there would be no standards and only the IIPP. I just wanted to clarify that I don't believe that's true.

I know in my own company's experience, that is definitely not true. We welcome the opportunity for clarity whenever we can get it. In fact, I can think of a few standards I'd like written, like naturally occurring asbestos and excavations, rather than relying on asbestos standards that really doesn't apply very neatly to that situation.

But when we're talking about COVID, the key for employers with COVID is flexibility, i.e., the ability of the standard to keep up with the changing conditions of the ongoing pandemic. Even with the second readoption, confusion was created when the executive order was issued directing employers to switch to the CDPH guidelines.

On top of that, my own company moved to transition to the second readoption early to best protect our workers, only to have to pivot again when clarifications were issued regarding the executive order. So suffice it to say, trying to best protect our workers while not accidentally misstepping has not been an easy
task. We've have had to deal with a lot of confusion, especially until January 14th. And we still continue to deal with some confusion. So it's really flexibility that we want and need.

Our primary request is that flexibility be built into ETS as much as possible. Putting language in the IIPP could do that, putting language into the current ATD standard to apply it to outside the health care community could do that. But it seems that trying to continuously update the ETS seems to be an ongoing challenge that creates more confusion than it solves.

We are really trying to ask for as much flexibility so we can keep up with the changing dynamic of the different variants for COVID. And with that, I will just thank you all for your service again. Thank you.

CHAIR THOMAS: Thank you, Cassie.

Maya, who do we have next?

MS. MORSI: We have Michael Miiller with the California Association of Wine Grape Growers.

CHAIR THOMAS: Michael, are you with us?

MR. MIILLER: Yes. Thank you.

Good morning, Chair and Members and Staff. Thank you all very much for all you are doing on this really difficult issue. I appreciate your diligent work and effort and time and public service. I also appreciate the
staff at Cal/OSHA and congratulate them on the leadership reappointment. Congratulations.

If I can echo the comments from Helen and Rob, I think they have said it well -- and Cassie as well. There needs to be clarity. And to the extent that there's not clarity, it creates problems over what to do. Our associations are working diligently to make employers aware of what the requirements are, but when the requirements are confusing, you have a compliance issue because people don't know what to do.

I want to highlight a few issues. One issue is testing. Some of the growers are working through community programs that are authorized under the CDPH. They have either a CLIA certification or they have a waiver of CLIA requirements. And right now, the testing requirements in the regulation aren't clear on how that all works together.

To the extent that you can make that clear, that would be appreciated. Because those programs have all nonprofits. They involve health centers in communities, CDPH, as well as the community. We all come together to increase testing availability. That program works quite successfully. So I'd appreciate that.

Relative to masking, it does appear that we are moving towards moving away from cloth face coverings. To
the extent to give people some notification in advance, if
you are moving in that direction where you are going to
require surgical masks or others, give people time to find
that. If you do move in that direction, please provide
some, kind of, exemption where people who can't get that
have some other way of complying.

We are going to be seeing supplier problems
really soon if everybody is required to use those kinds of
the face coverings. Thank you very much for your time. I
appreciate it. Have a good day.

CHAIR THOMAS: Thank you, Michael. I appreciate
your comments.

Who do we have next, Maya?

MS. MORSI: Up next is Bryan Little with
California Farm Bureau.

CHAIR THOMAS: Bryan, can you hear us?

MR. LITTLE: I can. Can you hear me?

CHAIR THOMAS: Yes, I can. Go ahead, Bryan.

MR. LITTLE: I just wanted to repeat Michael's
appreciation for all the hard work that the agency and the
Board staff have put into coping with this issue over the
last two years. I'm still a little surprised we are still
talking about it two years on, but I guess this is the way
it's all going.

I would like to align myself with the comments
offered by Helen, Rob, Cassie, and Michael. Particularly in Michael's case with his comment concerning testing and clear requirements, that's a potential problem that we need to address in some way, shape, or form. I'm not sure how to go forward with that as well as the availability of masks when LA County Department of Health mandated that employers provide N95 respirators for people working in indoor settings.

We have seen this movie before. We have had problems with availability of N95 respirators for agricultural employers who use them for early-season crop protection chemical applications. And to the extent that we are adding, inadvertently perhaps, to the confusion about what, sort of, face masks need to be used by talking about -- even just recommending potentially using N95 respirators, we are creating potential problems with availability of those things. We need to be mindful of that as we go forward.

Just one comment -- I'm not sure anybody has brought this all the way full circle yet -- is that it seems like the evolution of this virus, and many other viruses that, over time, it evolves and mutates and become less virulent and more contagious. I think that's pretty obviously what COVID-19 is doing.

To the extent that we don't have flexibility with
respect to the regulatory requirements of the regulation, it makes it difficult for everybody else to figure out what they have to do in the workplace, out of the workplace, and everywhere else with respect to how we cope with this.

The CDC made reasonable, commonsense accommodations to the fact that the Omicron variant is different than the variants that preceded it. To the extent that people are concerned about that, well, you know, we will work it all out. But we need to recognize the fact that the situation evolves.

The problems with the regulatory approaches we've taken and why an IIPP approach might be better is because the regulatory approaches taken up to this point lack the flexibility to be able to recognize that as Omicron changes, the reality of what we have to deal with changes, and we need to be able to do things differently and accordingly.

Thank you for your time and your attention. I appreciate the opportunity to be able to comment.

CHAIR THOMAS: Thank you, Bryan.

Who do we have next?

MS. MORSI: We're going to circle back to Veronica.

CHAIR THOMAS: Veronica, are you there?
Veronica, you either need to unmute yourself or do *6 on your phone.

Do you know what the problem is, Maya?

MS. MORSI: No. I'm just circling back to those that did not speak earlier. It looks like Veronica is not participating in the meeting today. Now we will circle back to Michelle Dubois.

CHAIR THOMAS: Michelle, can you hear us?

Let's go to the next. The last one for public commenting will be Anthony Santos with Safety and Work Comp Manager.

Anthony, can you hear us? I don't think so. Is there anybody else?

MS. MORSI: I see Anthony Santos in the WebEx. But that's the only person I have.

CHAIR THOMAS: Anthony, you are muted right now. Can you unmute? He must not be there.

MR. SANTOS: Anthony Santos here. Sorry for the technical difficulties.

CHAIR THOMAS: Go ahead.

MR. SANTOS: I had just a couple of requests for clarifications, one on the FAQs regarding testing. When Cal/OSHA released the 11422 two-pager, at the bottom of definitions under "COVID test," it says, "Now includes specific instructions for workers using a test at home
with self-read results. The employee or telehealth professional must observe the test results."

Does that imply that the employer only needs to see the end result, or do they have to watch the full 15-minute test either by phone or in person?

The second part is under "Close contacts," and then section 5144. Close contacts, there's an exception that states that if an employee is wearing a respirator pursuant to 5144, they don't define -- they're not defined as a close contact.

When you go to section 5144, there's a caveat where there's a voluntary program for employers where -- I assume, if they are allowed to wear a respirator, which has been defined as a N95 or KN95 -- so if we allow our employees a voluntary policy to wear an N95, does that eliminate the regulations? I just would like to hear that addressed, maybe, later. That's all.

Thank you, Board.

CHAIR THOMAS: Thank you.

MS. SHUPE: Thank you, Mr. Santos.

This is Christina Shupe. I'd like to remind all of our participants today that Cal/OSHA has a consultation service. Their telephone number (800) 963-9424.

CHAIR THOMAS: Thank you, Christina.

Do we have any other callers, Maya?
MS. MORSI: We have two more. Shawn is next, and he is labeled "safety specialist."

CHAIR THOMAS: Shawn, can you hear us? Remember to unmute yourself. If you are called in, press *6 to unmute yourself.

Was it Shawn or Ron?

MS. MORSI: Yes, it's Shawn.

CHAIR THOMAS: Are you there, Shawn? We don't see Shawn on here. Can you hear us, Shawn?

Let's move on the next.

MS. MORSI: Next up is Bruce Wick with Housing Contractors of California.

CHAIR THOMAS: You know the drill, Bruce.

MR. WICK: Yes, sir. Thank you, Chair Thomas.

Thanks everybody. Happy New Year.

I do want to reiterate how important it is that the permanent regulation that we looked at really does allow flexibility. We have seen so many changes and so many differences go in, and we need a reg that allows us to adapt quickly and that has an early -- you know, when COVID hits -- we just need to avoid by being hamstrung by a reg that puts anything in place that we can't unwind or adapt or improvise very quickly so that, hopefully, we get through this pandemic.

We know there are many twists and turns. Thank
you for that. I appreciate the opportunity, and I look forward to seeing the draft.

CHAIR THOMAS: Thank you, Bruce. I appreciate your comment.

Maya, anybody else?

MS. MORSI: No one else for public comment.

CHAIR THOMAS: All right. Thank you, Maya.

MR. BLAND: Chairman Thomas, I was trying to get into the queue, and I wasn't fast enough on my end.

CHAIR THOMAS: I would think, by now, you would have figured this out. I may just ban you from this comment, but I'm not going to do that because I'm a nice guy.

MR. BLAND: Thank you. My apologies, Chair Thomas. Thank you for your leniency on my slow-thumb typing.

Chairman and Members of the Board, thank you for the opportunity to speak this morning. And I want to just say that I know this has been a very difficult couple of years now for everyone. I appreciate that and the hard work that's gone into it. I incorporate my references with my esteemed and learned colleagues, Helen Cleary, Rob Moutrie, Bryan Little, and Bruce Wick, so I won't reiterate that.

I do want to emphasize one point -- that I want
to make sure we are looking at -- is when we are looking
at the permanent reg in this, I am hoping we are
recognizing all the ups and downs, all the things we have
talked about, all the science changes, and all that, so we
have some flexibility to be able to move with the tides as
they go.

I think that's a very important thing to keep in
the forefront that sometimes we get hung up on these
details of what's happening now or what is happening
tomorrow or what happened yesterday. So I just hope we do
that moving forward with the permanent reg when that time
comes. So I appreciate your time. Happy New Year,
everyone. Hopefully, we can dig ourselves out of this
thing before 2022 is over.

CHAIR THOMAS: Thank you, Kevin. I appreciate
your comments.

The Board appreciates all the comments and
testimony today. The public meeting is now adjourned, and
the record is closed.

(The public meeting adjourned at 10:51 a.m.)

CHAIR THOMAS: We will now proceed with the
public hearing. During the hearing, we will consider the
proposed changes to the Occupational Safety and Health
Standards that were noticed for review today.

The Occupational Safety and Health Standards
The Board adopts standards that, in our judgment, will provide such freedom from danger as the nature of the employment reasonably permits and that are enforceable, reasonable, understandable, and contribute directly to the safety and health of California employees.

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

If you have written comments, you may read them into the record, but it is not necessary to do so as long as your comments are submitted to Sarah Money, Executive Assistant, via e-mail at oshsb@dir.ca.gov by 5:00 p.m. today. Ms. Money will ensure they are included in the record and forward copies of your comments to each Board Member --

MS. SHUPE: Dave, I apologize. This is 100 percent on me. The portion of the meeting that you have been introducing is for a public hearing, and the ETS will not be considered at this one. We won't be holding a public hearing -- I'm so sorry. You know what? It's been a very, very long couple of weeks, maybe couple of years. Disregard everything I just said and go right ahead. You're right on schedule. I'm so sorry.

CHAIR THOMAS: Okay. Now, I've got to find out where I was at.
But I assure you, your comments will be given every consideration. Please include your name and address on any written materials that you submit.

I would like to remind the audience that the public forum is for receiving comment on the proposed regulations and not for public debates. While rebuttal comments may be appropriate to clarify a point, it is not appropriate to engage in arguments regarding each other's credibility.

If you would like to comment orally today, you may join the public meeting comment queue by clicking the public comment queue link at the "Standards Board Update" section at the top of the main page at the OSHSB website or by calling (510) 868-2730 to access the automated public hearing comment queue voicemail.

Please be sure to provide your name as you would like it to be listed and your affiliation or organization, if any.

When I open the teleconference line for public comment, please listen for your name and invitation to speak. When it's your turn to address the Board, please be sure to unmute yourself if you are using WebEx or dial *6 on your phone to unmute yourself if you are using the teleconference line.

Please be sure to speak slowly and clearly when
addressing the Board. Please remember to mute your phone or computer after commenting. After all of the testimony has been received and the record is closed, staff will prepare a recommendation for the Board to consider at a future business meeting.

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

So Ms. Neidhardt, you may go ahead.

(The proceedings were translated into Spanish.)

CHAIR THOMAS: Thank you, Ms. Neidhardt. I just wanted to inform you that we were hacked, we don't know what that was, but we will let that pass.

Anyway, we will now turn to the proposal scheduled for today's public hearing, title 8, chapter 3.5, subchapter 1, section 411, Applications for Permanent Variances.

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

MS. GONZALEZ: Good morning, Board, Chair and Members. As you know, the Board has a set of regulations that govern the permanent variance process and appeals from temporary variances from the occupational safety and health standards. The regulations give the public
guidance on how an appeal is filed and the various steps
taken for the Board to render a decision in the matter.

We have determined that one of these regulations,
section 411, related to filing of the variance
application, requires change in order to modernize and
simplify the permanent variance application process.

Currently, the regulation requires the parties
send in one original and six copies of their variance
application. Each application may range in size from two
pages up to hundreds of pages. As you can imagine, this
can lead to very significant costs of printing and
shipping for the applicants. It also poses an issue for
Board staff who are tasked with processing these
applications.

The proposal before you is to amend section 411
by allowing employers to file only one variance
application instead of the original and six copies, and
one copy of any photographs, blueprints, or other
illustrative materials instead of six.

Rather than mailing out the physical copies of
applications mailed in by an applicant to the various
parties that are involved in a variance hearing, nowadays,
the Board may scan a single copy and provide those scanned
copies to the parties by e-mail or by other means.

The elimination of this six-copy requirement will
save everyone on printing costs, shipping costs, and will
also save us storage and filing space. Thank you.

CHAIR THOMAS: Thank you, Ms. Gonzalez.

At this time we will accept public testimony.

Maya, do we have any commenters in the public

hearing comment queue?

MS. MORSI: Yes, we have one. It is

Daniel Leacox with NEII.

CHAIR THOMAS: Daniel, can you hear us?

MR. LEACOX: Good morning. Am I coming through?

CHAIR THOMAS: Yes.

MR. LEACOX: We are good if you can hear me.

Good morning, Board and staff and public. So I'm

commenting on behalf of the National Elevator Industry,

Inc. It's the major manufacturers and others and the

folks who process many of the permanent variance

applications in California. So I just wanted to weigh in

in support of the change and applaud what might be called

a big paperwork reduction act here. Anything that makes

the process simpler and easier is much appreciated.

I'd also like to take a moment to do something I

have usually done in December meetings, and that is just

applaud staff at the Board and at the Division for the

work they do throughout the year to move all of the

elevator variances through the process and get them timely
considered and approved.

There were some tremendous challenges this year that the executive officer managed well. I know there was a lot of staff extra work and so forth. But we have gotten through the year. I just wanted to applaud all the extra effort and the fact that it didn't all collapse under the staff strain in the middle of the year. And just say thank you for that on behalf of myself as a practitioner in the industry and a lot of folks who rely on that process working well and timely.

I'll just make a special request that someday I can get an insider tour on where all that paper went that we have been sending the last year. I'd love to see that room or that containership or wherever it is, if that would be available?

CHAIR THOMAS: I can tell you where a lot of it went but not at this meeting. We get huge filing books. Thank you. I appreciate your time.

Do we have any other commenters, Maya?

MS. MORSI: We do not at this time.

CHAIR THOMAS: All right. If there are no other comments, then the public meeting will now be closed.

Written comments will be received until 5:00 p.m. today. We do thank you for your comments.

(The public meeting adjourned at 11:10 a.m.)
CHAIR THOMAS: At this time we will take a 5-minute break and reconvene at 11:15.

Did you get that, Maya?

MS. MORSI: Yes, sir.

CHAIR THOMAS: Okay. So we will take a small break until 11:15, and see you back then. Thank you.

(There was a pause in the proceedings.)

CHAIR THOMAS: Thank you for letting us take a little break here. We will continue with the business meeting.

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

As noticed via our mailing list on Monday, the Board’s consideration of the Horcher proposal to adopt regulations substantially similar to the federal OSHA vaccination and testing, VTS, as required by 29 CFR 1953.5(b) has been delayed until more information from the US Court of Appeals litigation develops; therefore, I am removing that item from the agenda and moving on.

The proposed petition decisions for adoption, one, Kelly Thomas -- no relation -- CDA, RDA; Susan Dahn,
RDA, Petition File No. 592. Petitioners request to amend title 8, General Industry Safety Orders, GISO, section 5193(g)(2)(B), to add a requirement clarifying that on-the-job trained dental assistants must receive a California Dental Board-approved course in infection control prior to performing any basic supportive dental procedures.

Additionally, the petitioners asked that language be added to define and specify what constitutes "Knowledgeable in the subject matter" as referred to in subsection 5193(g)(2)(H).

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

MR. SMITH: Chairman Thomas and Members of the Board, petitioners requested amendments to the Bloodborne Pathogen Standard regarding the initial and annual training requirements of subsection 5193(g)(2)(B) and (H).

The first request is to require the completion of the infection control course approved by the Dental Board of California prior to performing any task that exposes dental assistants to blood or other potentially infectious materials. The second request is to define what constitutes "Knowledgeable in the subject matter" for trainers of dental assistants.

Both the Division and Board staff reviewed the bloodborne pathogen regulation and concluded that the
section 5193 requirements for initial training and
continued annual training provides sufficient regulatory
guidance in a performance-orientated manner for all
employers exposed to bloodborne pathogens including dental
assistants.

Both staff also concluded that an amendment to
section 5193(g)(2)(B) to include the Dental Board of
California requirements would reduce the performance or
nature and possibly call into question the federal
equivalency of the training requirement of Bloodborne
Pathogen Regulation.

The Division and Board staff, in their review of
the phrase "Knowledgeable in the subject matter," noted
that the regulatory guidance is clear and consistent with
the language of the federal standard and how the phrase is
used in other title 8 standards.

In addition, guidance from the Division's
frequently asked questions posted online and the Federal
OSHA Compliance Directive provided even more clarity on
who the employer should use to provide training.

Therefore, staff did not see a need for restricting the
pool of individuals who can train on bloodborne pathogen
hazards to those specified by the Petitioner.

For these reasons, the Division and Board staff
recommended that Petition 592 be denied, and the proposed
decision is now ready for your consideration and adoption.

CHAIR THOMAS: Thank you, Steve.

Are there any questions for Mr. Smith? Hearing none, do I have a motion to adopt the petition decision which is to deny?

MS. BURGEL: So moved.

MR. HARRISON: I second.

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

MS. SHUPE: I have a motion from Barbara Burgel and a second from David Harrison.

CHAIR THOMAS: Thank you. I have a motion and a second.

If there's nothing else on the question, I'll have Christina call the roll.

MS. SHUPE: Barbara Burgel?

MS. BURGEL: Aye.

MS. SHUPE: Kathleen Crawford?

MS. CRAWFORD: Aye.

MS. SHUPE: David Harrison?

MR. HARRISON: Aye.

MS. SHUPE: Nola Kennedy?

MS. KENNEDY: Aye.

MS. SHUPE: Chris Laszcz-Davis?

MS. LASZCZ-DAVIS: Aye.

MS. SHUPE: Laura Stock?
Next, we have Brian Macejko, P.E.; Phillip E. Prueter, P.E.; and David A. Osage, ASME Fellow, P.E., Petition File No. 593, Petitioner's Request to Amend Title 8, Petroleum Safety Orders - Refining, Transportation and Handling, section 6857(c)(1) to incorporate by reference the latest edition of American Petroleum Institute (API) 579, Fitness-for-Service Assessment Standard.

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

MR. SMITH: Chairman Thomas and Members of the Board, petitioners request the Board modify all references in section 6857(c)(1) related to the execution of Fit-for-Service, or FFS, Assessments to refer to the latest edition of the API 597 Fitness-for-Service Standard as opposed to the current reference to the 2000 edition.

The petitioner goes on to state that the 2000 edition is no longer consistent with the latest edition of API codes. The Division and Board staff both agree that the 2000 edition of the API 579 does not address many of the common damaged mechanisms that affect equipment in the petroleum industry.
The Division noted that its pressure vessel unit has been involved in many FFS assessments involving damaged mechanisms not covered in the 2000 edition of API 579. The Division, therefore, recommends the petition be granted to the extent that the 2016 edition of API 579 be incorporated into section 6857 in place of the 2000 edition.

The Board staff additionally noted that API 579 is intended to be used in conjunction with the other incorporated standards referenced in section 6857, including API 510, 570, and 653, all of which have undergone periodic updates. Therefore, all consensus standards incorporated by reference in section 6857 should be reviewed to see if they all require updating.

Other editions of these API standards are also referenced in other sections of Title 8. For these reasons, the Board staff recommends the petition be granted to the extent that an advisory committee be convened by the pressure vessel unit to review section 6857 and related sections of Title 8 to consider incorporation of the most appropriate and up-to-date API codes.

Finally, regarding the petitioner's request to add a reference to the latest edition of API 579, the California Administrative Procedures Act requires that all
documents incorporated by reference must be date-specific. Therefore, replacing the 2000 edition to the term "latest edition" is not possible.

For these reasons, the proposed petition decision recommends Petition 593 be granted to the extent that the Division's pressure vessel unit be requested to convene an advisory committee to review sections 6857 and related sections of Title 8 to consider incorporation of the most appropriate and up-to-date API codes. The proposed decision for Petition 593 is now ready for your consideration and adoption.

CHAIR THOMAS: Thank you, Mr. Smith.

Are there any questions for Mr. Smith from the Board? Hearing none, do I have a motion to adopt the petition decision which is to have an advisory committee put together to go over 6857?

MR. HARRISON: Motion to approve.

MS. LASZCZ-DAVIS: Second.

CHAIR THOMAS: We have a motion and a second. Is there anything else on the question? Hearing done, Ms. Shupe, will you, please, call the roll?

MS. SHUPE: Barbara Burgel?

MS. BURGEL: Aye.

MS. SHUPE: Kathleen Crawford?

MS. CRAWFORD: Aye.
MS. SHUPE: Dave Harrison?

MR. HARRISON: Aye.

MS. SHUPE: Nola Kennedy?

MS. KENNEDY: Aye.

MS. SHUPE: Chris Laszcz-Davis?

MS. LASZCZ-DAVIS: Aye.

MS. SHUPE: Laura Stock?

MS. STOCK: Aye.

MS. SHUPE: Chairman Thomas?

CHAIR THOMAS: Aye.

The motion passes. Thank you.

And now we will have Division update.

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

MR. BERG: Thank you, Chairman Thomas. The Division has no update at this time. Thank you.

CHAIR THOMAS: Okay. Any questions for Mr. Berg?

MS. STOCK: I have some questions.

Hi, Eric. I just wondered if you could give a little bit more information about the work that you are all doing to clarify some of the issues related to the changed ETS and CDPH guidelines. I'm hearing what people said, and I have done my own research to try to keep up to speed on this.

It seems like there's now multiple places people need to go, the fact sheets, the FAQs, and the language
that was adopted in December, but there's not one -- you
have to go to all of those places. If you go to the
language that was adopted in December, you won't see
reference to the other things, I don't think.

I'm just wondering. It is very confusing. Is
there any plan to create one document where all the
changes are incorporated? That's one question -- and any
other input or update you can give on the changing
regulations and what's coming up?

MR. BERG: Sure. On the regulation itself, I
think there's a reference to the executive order -- the
Governor's executive order that changes quarantine
isolation periods.

MS. STOCK: But you have to go from there to
there. I am just wondering if it's possible to create
something where it's all in one place?

MR. BERG: The FAQs has detailed explanation of
the CDPH requirements that, because of the executive
order, replace what's in the regulation. That's in the
FAQs they put out. And as you mentioned, there's also a
fact sheet there. It's not as detailed as the FAQ. The
FAQ has the most-detailed explanation of the isolation and
quarantine requirements which is from CDPH. It
automatically replaces what's in the regulation. That's
in the FAQ.
MS. STOCK: So to get the fullest picture, the place that people would go to is the FAQ? Because I was just looking at the regulatory language, for example -- maybe I'm not looking at the latest version of what was passed in December. For example, it still has the language about 10 days of exclusion, et cetera.

So in order to know that there's a change, you would have to go from there to the fact sheet or the FAQ. Am I right on that?

MR. BERG: Right. The fact sheet has a link at the top of the FAQ which is more detailed. And if you look at the top of 3205, there's a note to the executive order and 8420, which suspends certain provisions related to the exclusion of COVID-19 cases in the workplace and also close contacts. It doesn't have a link. It's the very beginning of the notes.

That portion of the regulation don't apply because of the executive order, and then we have that explained in the FAQ, the details of that. It has the three tables for the different situations which was taken from CDPH.

CHAIR THOMAS: Chris, do you have a question?

MS. LASZCZ-DAVIS: A question, perhaps, a comment. You know what I heard during our Standards Board meeting today? People are tired. The Standards Board is
tired. State Division staff is tired. Our stakeholders are tired. This has been a tough two years all around. And I think everybody has the same intent, to provide some guidance that stakeholders can use to mitigate the risk that COVID presents. It's a tough situation.

But what I keep on hearing, even today, is we certainly have a broad contingency that suggests that we are short on flexibility, and we are short on clarity. And, of course, I do know that Eric and the staff and the others have been working hard to meet some of those goals. What are we missing? What process do we need to put in place to ensure we have more alignment between both perspectives? I'm at a loss right now.

MS. STOCK: Can I just make one other comment? Thanks, Chris. I wanted to respond to that issue around flexibility that we heard a lot of.

In my mind, the issue is not a lack of flexibility. I feel like we have a structured regulation, as we've seen, that is able to be changed when new information comes in, for better or worse. There was a change in the CDPH guidelines and CDC guidelines, and there's language in the reg that allows it be superseded by that.

So, to me, I'm not seeing the issues of flexibility as an issue. The clarity, I do see. I have
had my own difficulties in trying to put all the different pieces together, so I very much appreciate the work that the Division is doing to try to make that as clear as possible. I look forward to -- I'm sure you are going to continue to do that.

The flip side of flexibility is something we heard from some of our commenters about the remaining challenges that are faced by a lot of workers where protections are not in place. They're having to go back to work while they're still infectious or protections that are in the ETS are not there.

I think there is a sense that clear guidelines that make it clear this is what an employer must do to protect people rather than just, you know, saying, "Do whatever you think makes sense." I think there's a call for really clear and specific provisions. I think that's the balance that we are trying to create, and I guess we still will.

And I don't know if, Eric, you have more comments on that in terms of whether you feel like there's more that can be done by the Division to enhance clarity or any plans you have on that or any reactions you have to some of the questions we heard this morning during the public comment period?

MR. BERG: We have been working hard on the FAQs
to address all the situations and, also, at the same time, the second readoption was approved. Because the week right after Christmas -- between Christmas and New Year's, the new CDC and CDPH guidelines came out.

We simultaneously worked on those two FAQs. We had those up and rolling, and we are always, continuously trying to improve on those as we request questions and comments. So we are continuing to work on those FAQs. They're pretty comprehensive now. But we will continue on that.

As Christina mentioned, employers can always call the Cal/OSHA Consultation Service for any assistance they may need on different issues related to COVID or any other Cal/OSHA Title 8 issue. Just to reiterate, we are continuously working on those FAQs trying to improve them.

CHAIR THOMAS: David?

MR. HARRISON: I want to switch gears here a little bit and talk about the -- I want to talk about the experimental variance process with the Division. I have got a few questions around the process. I don't want to get into any particular experimental variance. I don't know if that is appropriate here. But I want to ask you some questions.

When an experimental variance application is submitted, is it a common practice for the Division to
reach out to the stakeholders for input on these variances or applications? -- especially applications that this Board has previously denied? Maybe not exactly the same, but very, very similar, if not, exactly the same. I have concern over one, specifically, and I'm asking this.

Once a temporary experimental variances is approved by the Division, it could go for as long as five years. I personally have serious concerns over this particular application. Is there a process to challenge that and delay or reintroduce that to the approval process and encourage more stakeholder input?

MR. BERG: Yes, there is a process to challenge it. It goes to the Standards Board when it's challenged by a third party or employees or unions. There is an appeal process that if anyone is in disagreement with the denial or grant of the temporary variance, experimental or otherwise, there is an appeal process that's in the Labor Code. But it goes to the Standards Board.

MR. HARRISON: Okay. I'll work with the executive officer and the Board staff to address this issue.

MR. BERG: Sure. We have had a couple hearings before the Standards Board on these issues in the past. That's pretty uncommon.

MR. HARRISON: Thank you, sir.
CHAIR THOMAS: Any other questions? 
Laura?

MS. STOCK: Maybe this goes into future agenda items also. I do know the workload must be crushing to deal with COVID, so I want to thank you all and recognize that.

At the same time, there are other regulations, as we have heard from some stakeholders today, that are out there without forward progress. Indoor heat, for example, is one. Workplace violence in the general industry is another, not to mention the effort to try to do a broader infectious disease regulation for future pandemics.

It would be great if we could get a clearer sense of the status of those now, or if we can ask for it at the next meeting with something more specific about where they are in the process and when they may be able to be moved forward.

MR. BERG: In construction and lead in general industry, we have completed the work on that and submitted those packages.

MS. SHUPE: I can address indoor heat and lead for Laura, because I know your group has submitted those to us. We have been working with the Division back and forth, so it's not accurate to say that forward progress is not being made on these packages. There, actually is
and quite significantly. The lead package will probably be ready to be noticed in a couple of months.

We are almost done with the review and that needs to go through the course. Indoor heat, we have received, and we have assigned an engineer who is working on the peer review right now. It's already reached Division to get those initial questions answered. We expect that will conclude as well in the first half of next year.

So, absolutely, we are making forward progress on both of those. But the one that I can address and, Eric, you will need to talk about it, is the broad infectious disease standard.

MS. STOCK: Before Eric answers that -- thank you, Christina. Glad to hear that. I just want to follow up with the indoor heat. When you said "next year," do you mean 2023?

MS. SHUPE: Every review is very dependent on the package itself. So for lead, it's a significant package. A lot of pieces went into that. We have been working on the review for that one for several months. We do our initial review, and we send it back to the Division. They respond, and they send us back comments. It's very much a collaborative process. That one is much farther along.

Indoor heat, we just received in October. It was assigned to an engineer right away. It's treated as a
priority project. She's actively working on that.

MS. STOCK: I just was a little confused because I thought I misheard you in terms of the time frame for indoor heat. You said we expected to see something next year. I just wanted to be clear what was -- next year was. Is that 2023 or this year that we are currently in?

MS. SHUPE: So we haven't even finished the initial review on indoor heat, so it would be premature to start giving you guidelines for that. What I can tell you is it's being treated as a priority project. It's absolutely continuing to move forward. It's something that we talk about. I talk with my leadership team with Steven Smith and Lara Paskins. We follow up on that one on every single one of our workload meetings.

MS. STOCK: Thank you for that report. I want to go back to infectious disease, Eric, to see where that stands.

MS. BURGEL: And workplace violence.

MS. STOCK: And workplace violence. Thank you, Barbara.

MR. BERG: Workplace violence is still in the drafting stage, so we still need to complete a draft and post it for comments.

MS. STOCK: Do you have any time frame on that at all? -- this period in the spring? Or is there any way
you could estimate when that might be completed and ready
to be posted?

MR. BERG: I will have to consult with my staff
that is working on that and get back to you. And that
same staff is also working on infectious disease,
particularly the changes to 5199, where we did the
advisory meeting in October. The staff is also working on
a rule-making package for that.

MS. STOCK: Great. So maybe next month, if you
can check back in to see if you have gotten more clarity
on a time frame for those?

MR. BERG: Okay.

CHAIR THOMAS: Any other questions for Mr. Berg?

Legislative update, Ms. Gonzalez, will you,
please, brief the Board?

MS. GONZALEZ: Thank you, Chair Thomas.

In your legislative updates and your Board
packages, we have added another bill, SB 832, Firearm
Safety in Entertainment Productions. So that's on our
watch list now. The bill, as it currently stands, it's
very new so it could change -- would require the Division
to propose a standard to protect employees with regard to
storage, handling, and use of firearms on entertainment
production sets. That's it.

CHAIR THOMAS: Thank you.
Executive Officer's Report, Christina?

MS. SHUPE: Thank you, Chair Thomas. I would like to start off by extending a formal welcome to Steven Smith who has agreed to serve as our principal safety engineer for the Board until a permanent recruitment can be completed.

Mr. Smith brings a wealth of experience. You saw how well he performed in his briefing at his very first Board meeting. He comes to us from the Division where he was a principal safety engineer for a number of years as well as his prior experience working directly for the Board.

So being able to hit the ground running, having that wealth of knowledge with title 8 and the broader Cal/OSHA program but also regulations and our processes, has been invaluable. It's really great to have him on Board.

We have had a number of items that have had activity in the last month including two executive orders from the Governor's office that have impacted Board operations as well as the California Appellate District Court of Appeal decision.

So the first one I'd like to talk about is the Appeals Court decision on December 21, 2021, the First
Appellant District California Court of Appeal denied the Western Growers Association request for preliminary injunction of California's Emergency Regulations for COVID-19. The Court agreed the Board has the authority to adopt emergency regulations and that decision was published by the Court on January 12th of 2022 -- so just last week -- and is now a citable precedent.

The other item that I'd like to address is Executive Order N-23-21. This authorizes the Board to use a third readoption for COVID-19 ETS. So the Board will recall, we are normally limited to two readoptions of an emergency regulation before it needs to be made permanent.

I went through this with the wildfire smoke regulation, which just became permanent early last year. This changes our time line a bit. We had originally expected to consider a certificate of compliance at the April Board Meeting. Because this is a readoption, the Board will be expected to hear this at your March 17, 2022, meeting. This will be a readoption that will then be in effect up until December 31st of 2022. That allows almost a full year for work to continue on a permanent standard.

Also, I'd just like to go over housekeeping that Executive Order N-1-22 extends the Board's ability to meet remotely and not hold in-person meetings. That extension
will last through March 31st of 2022. And we expect that there will be an update, if one is needed, around mid March that will either extend that or let it expire.

At this time, we have a place reserved in Oakland for our April meeting; however, if the situation warrants, we will continue to meet remotely in April and on.

Are there any questions from the Board?

One last thing I wanted to address, just because it is the end of the year. I did just have a momentary moment -- and this never happens. But earlier in the meeting, as Dave said, somebody hacked into the meeting and pretended to be me.

I want to highlight for the Board and our stakeholders some of the accomplishments from the past year. We held 14 Board meetings last year. 12 regular and two special meetings. We held six subcommittee meetings specifically on COVID-19. Board staff participated in five advisory committee meetings. We passed regulations for COVID-19, wildfire smoke prevention, and commercial and technical diving.

We have made significant progress of packages for lead, cranes and derricks, firefighter personal protective equipment protect, and also first aid. So I just wanted to highlight that for everybody. And, also, let you know that in addition to all of that, the staff has also
completed over 750 variance applications. A stark
increase from the year before.

Something that one of our public speakers noted
is we had a number of staffing issues early on in June of
last year. We were able to recover, do a lot of work, but
we were also looking to grow that team because we don't
expect the variance work to change. It will continue to
increase.

We also brought on more staff and hired
Amalia Neidhardt, who has been an amazing addition to our
team. We had a retirement from a long-time principal
safety engineer, Mike Meniere, whom we all miss, and we
were also able to bring on Steven Smith, who has just been
an amazing asset as well.

At this time, I would like say thank you to all
of the Board staff and thank you to all of the Division
staff as well as those who have worked really hard to
collaborate with us to move these packages forward over
the past year.

MS. STOCK: I just want to jump in, Christina,
and add my thanks to you for leading all of that
incredible effort to the staff at the Board and at the
Division. It's been an amazing year. It's incredible how
diligently everybody has worked and the accomplishments
you just described. So thank you so much for all of the
hard work.

MS. LASZCZ-DAVIS: I would ditto that as well, Christina. Your quarterbacking efforts are quite evident, and we all appreciate them.

MR. HARRISON: Hear. Hear.

MS. SHUPE: Thank you.

Back to you, Dave.

CHAIR THOMAS: New business and future agenda items, I think we have covered all of that unless somebody has any other questions? I don't see any. There's no closed session today.

MS. SHUPE: The need for closed session has not arisen.

CHAIR THOMAS: Before we adjourn, I just wanted to make a comment that I'm hugely disappointed in the Supreme Court for not upholding the mandate. It just is going to -- COVID-19 is going to last a lot longer. There is no doubt in my mind it will be through this year into next year. We are at 858,000 as of today. Yesterday, 3,376 people died from COVID.

I don't see an end to this. I think it was a huge swing and miss. It didn't help anybody. I think it really hurt the working public that the vaccine mandate was not upheld. For all of us that have gotten vaccinated and boosted and, you know, basically, did the right thing,
were are now at the mercy of those who are not vaccinated.
We don't know who they are or where they are. They're all
around us.

I don't know how I have avoided it so far, not
getting this. But I can tell you by the end of this --
you know, breakthroughs are rare for the vaccinated. But
I know people that have had vaccinations and are boosted
and have still gotten it; although, they didn't have to go
to the hospital, and they didn't die. And they were older
than me, which is pretty old.

In my opinion, this is one of the worst decisions
I have seen. And I have seen quite a few bad ones, and
this is a horrible one. It didn't help anybody. I don't
know what they were -- even in their -- what they put
together to tell us made no sense to me. I just wanted to
throw that out there.

Laura, did you have a comment?

MS. STOCK: Thank you, Dave, for mentioning that.
I just wanted to remind all of us -- I have been proud to
be part of a Board in a state where we have often gone
further than what has happened at federal OSHA. That is
something that we should continue to do. And when we come
up on that March new draft, I hope that we can consider
what we think makes sense including, you know, the vaccine
test approach that was rejected by the Supreme Court for
the moment. I guess it's not a final decision yet.

I agree with you. It was a disappointing decision. And while we are not required as we planned to be through the Horcher process of adopting it, there's nothing to stop us on our own from being able to do what we think is right. So I hope that we can think about that as we come up with our next adoption to really be driven by the most protective and what is supported by the science and be open to moving further than what we might see our federal counterparts doing.

So I agree with you. I think we have the opportunity to do more.

CHAIR THOMAS: Barbara?

MS. BURGEL: I just wanted to echo Laura's comment. I would agree with moving forward with vaccine, either with our permanent COVID standard or expanding the ATD to include other industries where there are vaccine mandates in that.

CHAIR THOMAS: Thank you, Barbara.

Any other comment from the Board?

You know, this is a tough issue. It really is. But I saw no reason why it didn't go through. But, you know, I think most of it is politics. And, you know, we are never going to get away from that. Enough of that.

The next Standards Board regular meeting is
February 17th, 2022, via teleconference and videoconference. Please visit our website and join our mailing list to receive the latest updates. Thank you for your attendance today. There being no further business to attend to, this business meeting is adjourned. Thank you so much for attending and your comments. We appreciate you. We will see you next month. Thank you.

(The meeting adjourned at 11:53 a.m.)
HEARING REPORTER'S CERTIFICATE

I, Shelby K. Maaske, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 1st day of February, 2022.

______________________
SHELBY K. MAASKE