

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:                    )  
May 20, 2021 OSH                    )  
Standards Board Meeting         )  
\_\_\_\_\_                                  )

TELECONFERENCE

*PLEASE NOTE: In accordance with Executive Order N-29-20, and  
Executive Order N-33-20, the May Board Meeting will be conducted via teleconference*

THURSDAY, MAY 20, 2021

10:00 A.M.

Reported by:  
E. Hicks

## APPEARANCES

### BOARD MEMBERS:

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

### BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer  
Autumn Gonzalez, Chief Counsel  
Sarah Money, Executive Assistant  
Michael Nelmda, Sr. Safety Engineer

### BOARD STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Michael Manieri, Principal Safety Engineer  
Lara Paskins, Staff Services Manager  
David Kernazitskas, Sr. Safety Engineer  
Jennifer White, Staff Services Analyst

### ALSO PRESENT:

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

### TKO STAFF:

John Gotcher  
John Roensch  
Brian Monroe  
Rey Ursery  
Maya Morsi

### INTERPRETERS:

Susana Haikalis, Translator  
Carol Meredith, Spanish Language Interpreter  
Estela Moll, Spanish Language Interpreter

## APPEARANCES (Cont.)

### PUBLIC COMMENT:

Helen Cleary, Phylmar Regulatory Roundtable  
Darrell C. Smith, Daniel C. Salas Harvesting, Inc.  
Eric Frumin, Change to Win Strategic Organizing Center  
Lawrence Gayden, California Manufacturers & Technology Association  
Mark Wolinski, City Of Roseville  
Melissa Patack, Motion Picture Association of America  
Katie Hansen, California Restaurant Association  
Brian Mello, Associated General Contractors of California  
Ken Smith, University Of California  
Eddie Sanchez, Southern California Coalition for Occupational Safety and Health,  
(SoCalCOSH)  
Bruce Wick, Housing Contractors Of California  
Sarah Wiltfong, Los Angeles County Business Federation (BizFed)  
Pamela Murcell, California Industrial Hygiene Council  
Giancarlo Rubio, Valley Industry & Commerce Association  
AJ Rossitto, California Hotel & Lodging Association  
Maggie Robbins, Worksafe  
Vivi Le, Los Angeles Alliance For A New Economy  
Elda Brueggemann, Western Agricultural Processors Association  
Len Welsh, representing himself, the California Hotel and Lodging Association (CHLA),  
the Ironworker Management Progressive Action Cooperative Trust (IMPACT), and  
the Grower-Shipper Association of Central California  
Brooke Billingsley, Retail worker  
Mitch Steiger, California Labor Federation, AFL-CIO  
Robert Moutrie, California Chamber of Commerce (CalChamber)  
Saskia Kim, California Nurses Association/National Nurses United  
Bryan Little, California Farm Bureau  
Karen Tynan, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
Cassie Hilaski, Nibbi Brothers General Contractors  
Matthew Allen, Western Growers Association  
Anne Katten, California Rural Legal Assistance Foundation  
Patricia Bruno, Los Angeles Area Chamber of Commerce  
Beverli Marshall, Valley Sanitary District  
Cynthia Rice, California Rural Legal Assistance, Inc.  
Michael Miiller, Winegrape Growers  
Kevin Bland, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
Norma Wallace, Tuolumne Joint Powers Authority

APPEARANCES (Cont.)

PUBLIC HEARING:

John Zarian, National Commission for the Certification of Crane Operators (NCCCO)  
Bruce Wick, Housing Contractors of California  
Kevin Bland, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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 New Article 98.1, Safety Devices and Operational Aids, new sections 5017, 5018;  
 Article 99, Testing, section 5022;  
 Article 100, Inspection and Maintenance, section 5031; new sections 5031.1, 5031.2, 5031.3, 5033.1, 5036, 5037; and Group 26, Article 153, Commercial Diving Operations, section 6060  
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1 PROCEEDINGS

2 MAY 20, 2021

10:00 a.m.

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

11 Can you please mute yourselves because I'm getting some  
12 feedback. Thank you.

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

17 Supporting the meeting remotely are Mr. Michael Manieri,  
18 Principal Safety Engineer; Ms. Lara Paskins, Staff Services Manager; Mr.  
19 David Kernazitkas, Senior Safety Engineer; and Ms. Jennifer White,  
20 Regulatory Analyst.

21 Via teleconference, we are joined today by Mr. Eric Berg,  
22 Deputy Chief of Health, representing the Division of Occupational Safety  
23 and Health.

24 At this time, we ask those of you participating in the WebEx  
25 conference to please add your name and contact information to the chat

9

1 box. These entries will become a part of the official record of today's  
2 proceedings. Those not attending the videoconference can email your  
3 information to [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). While supplying your information is  
4 not required, it is appreciated.

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

7 In accordance with the Executive Orders N-29-20 and N-33-  
8 20, today's Board Meeting is being conducted via teleconference, with an  
9 optional video component.

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

14 We have limited capabilities for managing participation  
15 during public comment periods, so we're asking everyone who is not  
16 speaking to place their phones on mute and to wait until they are called  
17 on to speak.

18 As reflected on the agenda, today's meeting consists of three  
19 parts. First, we will hold a public meeting to receive public comments on  
20 proposals on occupational safety and health matters. Anyone who would  
21 like to address any occupational safety and health issues, including any  
22 of the items on our business meeting agenda, may do so at that time.  
23 Members of the public who have contacted staff either by email or phone  
24 and asked to be placed in the public comment queue will be called on in  
25 turn. Additionally, those joining via WebEx may ask to join the queue via

10

1 the chat function.

2 The WebEx chat function is monitored exclusively by staff  
3 and is only available as a virtual attendance log and to send requests to  
4 join the public comment queue. It is not a method for providing public  
5 comments to Board Members. Board Members will not consider or  
6 respond to any messages delivered via the chat function, nor will such  
7 comments become part of the official rulemaking record.

8 Please listen for your name and an invitation to speak before  
9 addressing the Board. And please remember to mute your phones or  
10 computer after commenting. After everyone in the queue has been  
11 provided an opportunity to speak we will then open to the public  
12 comment to anyone on the call who was not able to enter the queue. If  
13 you are able to speak more than once, please contact staff and have your  
14 name placed back in the public comment queue.

15 Board staff can be contacted by email at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov) or  
16 via phone at 916-274-5721 to be placed in the comment queue. If you  
17 experience a busy signal or are routed to voicemail please hang up and call  
18 again.

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

23 Finally, after the public meeting is concluded, we will hold a  
24 business meeting to act on those items listed on the business meeting  
25 agenda. The Board does not accept public comment during its business

1 meeting unless a member of the Board specifically requests public input.

2 Yesterday evening, the Board received a memorandum from  
3 Eric Berg and the Division, requesting we not vote to approve the  
4 emergency proposal on today's agenda. In light of the new guidelines  
5 from the CDC and California Department of Public Health, the Division  
6 would like to revisit the current proposal. The Board will consider the  
7 Division's request, along with public comments received on the subject,  
8 during the business meeting. A copy of the Division's memorandum to  
9 the Board was sent to our mailing list last night and it is posted on the  
10 OSHSB website under the "what's new" header.

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

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

20 For our commenters who are native Spanish speakers, we are  
21 working with an interpreter, Susana Haikalis, to provide a translation of  
22 their statements into English for the Board. At this time, Ms. Haikalis will  
23 provide instructions to the Spanish-speaking commenters, so they are aware  
24 of the public comment process for today's meeting.

25 Ms. Haikalis, please.

1 INTERPRETER HAIKALIS: [READS THE FOLLOWING IN SPANISH]

2 Public Comment Instructions.

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

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

14 "After the public meeting, we will conduct the second part of  
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18 "Finally, after the public hearing is concluded, we will hold a  
19 business meeting to act on those items listed on the business meeting  
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21 meeting unless a member of the Board specifically requests public input.

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23 the public comment period. We are asking everyone to keep their phones  
24 and WebEx audio on mute until your name is called to address the Board.  
25 Please remember to mute again after you have finished commenting.

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2 providing public comments to Board Members. Board Members will not  
3 consider or respond to any messages delivered via the chat function, nor will  
4 such comments become part of the official rulemaking record.

5                   "This meeting is also being live broadcast via video and audio  
6 stream in both English and Spanish. Links to these non-interactive live  
7 broadcasts can be accessed via the "what's new" section at the top of the  
8 main page of the OSHSB website.

9                   "Please listen for your name to be called for comment. If you  
10 have not provided a written statement, please allow natural breaks after  
11 every two sentences so that we may follow each statement with an English  
12 translation."

13                   CHAIR THOMAS: Thank you, Ms. Haikalis.

14                   Mr. Gotcher, who do we have in the queue?

15                   MR. GOTCHER: Our first commenter is Helen Cleary, from the Phylmar  
16 Regulatory Roundtable.

17                   CHAIR THOMAS: Helen, can you hear us?

18                   MS. CLEARY: Good morning, yes.

19                   CHAIR THOMAS: Good morning, go right ahead.

20                   MS. CLEARY: Thank you. Thank you, Chair Thomas, Board  
21 Members, staff, for the opportunity to speak today about the COVID-19  
22 proposed amendments. My name is Helen Cleary and I'm the Director of the  
23 Phylmar Regulatory Roundtable, PRR/OSH Forum.

24                   We're truly grateful to the Division for requesting today's Board vote be  
25 postponed, so that changes can be made to the draft for consistency with CDC and

1 California's reopening date of June 15th. This is great news. And it will make the  
2 regulation more workable.

3           Although amendments are positive steps, PRR has significant concerns  
4 about unexpected new provisions that merit Board and Division attention that are  
5 spelled out in detailed written comments that we submitted yesterday. So today I'll  
6 focus on a few of them.

7           I want to start by asking, "How many of you have misplaced your white  
8 card -- the vaccination card?" This is a rhetorical question of course, because I don't  
9 want to know and obviously you can't show me. But I mention this because the lost  
10 white card has been one of the biggest challenges one of our members is having while  
11 managing their employee vaccination program.

12           It sounds like a simple provision, but asking for that verification is only  
13 the first step of many. And that can be a challenge in itself. A member shared that they  
14 have a yes/no question of vaccinations. It goes to one person and the output is a total  
15 percentage. Employees still do not want to answer that question.

16           So to put the new provisions in a real world context I want to play this  
17 out a little bit. So imagine you have 25,000 employees. Based on community averages  
18 you estimate 40 percent of your workforce is vaccinated. That's 15,000 employees that  
19 are not vaccinated.

20           They may become vaccinated but each would be at a different time  
21 requiring continual tracking, tracing, documenting, updating and in the interim,  
22 providing the N95 of the correct size until they do. This triggers multiple paths, two  
23 classes of people in your organization, and a chain of events.

24           The first step is tracking vaccination status of your entire workforce.  
25 While the ETS does not directly require employers to track or mandate vaccines the

1 revisions related to face coverings, N95s and physical distancing are so restrictive that  
2 to comply with them an employer with a large workforce will be pushed to track  
3 vaccination status.

4           The majority of PRR members have already decided not to require  
5 employees to be vaccinated or to track them. In early May, we surveyed PRR members:  
6 30 out of 28 said they would not require vaccinations. Two said they were considering  
7 it, but for certain situations such as international travel.

8           This week we surveyed again. Although there were fewer responses the  
9 results were similar, it was 13 to 1. We asked why. They said privacy issues on advice of  
10 legal counsel. It's a personal employee decision. And not until the vaccines are  
11 authorized, and employers do not have the legal right to this information.

12           We also asked "What percentage of employees they estimated were  
13 vaccinated?" Those responses varied: 25 percent of 33,000 employees; 45 percent of  
14 2,000; 80 percent at one site. Many said there's no way to determine or they estimate  
15 based on the general population percentages.

16           It's true that employees may decide to share their vaccination status,  
17 however that's a personal decision to be made by each individual. To be clear, PRR  
18 members support vaccination. But we do not believe it should be mandated. The  
19 burden would outweigh the benefit.

20           Multiple PRR members have implemented vaccination programs.  
21 Participation varies maybe because individuals are vaccinated elsewhere or the  
22 demographic of the workforce is younger and they're less likely to become vaccinated.  
23 Member experience has been that it's a challenge to get them vaccinated, even when  
24 the availability is literally at the workplace.

25           In February, one member began hosting three vaccination sites three



1 days a week. They currently run one site, because interest has waned. And  
2 approximately 33 percent of that workforce were vaccinated to date through that  
3 program. Another member hosted multiple sites, allowed employees, dependents, and  
4 contractors to participate. It was open to thousands of people and turnout was in the  
5 single digits.

6 Now step two of this process. You have to determine the correct size of  
7 the respirator for each unvaccinated employee. In our example, that's 15,000. How do  
8 you determine the correct size fit without a fit test? It's impossible for people with  
9 facial hair.

10 These issues are aside from the risk of exposing private medical  
11 information, potential health risks to the employees and contradicting message that  
12 N95s are for health care.

13 The next step is make sure that you have enough respirators. One PRR  
14 member has 41,000 indoor employees in one region in California. They estimate that 30  
15 percent, 12,300 workers are not vaccinated; 12,300 times five days a week equals over  
16 61,000 N95s a week. That's over 246,000 N95s a month.

17 One member engineered masks that were 93 percent effective. And now  
18 they're not going to be able to use them. Their next step is to create policies and  
19 procedures for two classes of people: vaccinated and non-vaccinated. Obstacles are  
20 multiplied when employers must create two sets of policies. It's more complicated  
21 when the regulation requires employers to create two classes of people and involves  
22 medical decisions, medical limitations and religious reasons. Doing so will likely result in  
23 discrimination, harassment, and possible work place violence.

24 Finally, you continue to manage the workplace and all the other controls  
25 you have in place including the people.

1                   We ask the Board to consider how this plays out in an office setting.  
2   Five people are having a meeting in a conference room. And in order to remove their  
3   face coverings somebody has to ask, "Is anyone not vaccinated?" If someone says "yes",  
4   people may ask why and answers such as religious reasons, or I have a health condition  
5   are given, or theres silence. We advise the Division to consider this type of experience  
6   when drafting new provisions to align with the CDC. Exemptions for fully vaccinated  
7   employees will not work if 100 percent of the workforce must be vaccinated to benefit.

8                   In addition, we urge that the requirement to provided respirators for  
9   volunteer use be removed. Current control measures have been effective for a year and  
10   a half. If leaders, public health experts and the data show us moving in a positive  
11   direction, it's mystifying why the amendments to the ETS create new, unnecessary  
12   burdens and requirements.

13                  Thank you for your time and attention to this obviously significant  
14   matter. We appreciate the work of the Division and the Board to protect the health and  
15   safety of California's workers as PRR members do every day in their work places.

16                  CHAIR THOMAS: Thank you.

17                  John, whom do we have next up in the queue?

18                  MR. GOTCHER: Our next commenter is Darrell Smith, from  
19   Daniel C. Salas Harvesting, Inc.

20                  CHAIR THOMAS: Hello. Do we have you, sir?

21                  MR. SMITH: Yes, sir. Can you hear me?

22                  CHAIR THOMAS: Yeah, I can. Go ahead, Daniel.

23                  MR. SMITH: It's actually Darrell Smith, from Daniel C. Salas Harvesting.

24                  CHAIR THOMAS: Oh, sorry.

25                  MR. SMITH: No, no worries. Thank you.

1 I'd like to thank the Board again for allowing me the opportunity to  
2 speak. I won't be redundant. I concur with the last commenter. And I just wanted to  
3 point out that even with CDC guidelines and they're fluid -- with the fluid situation I  
4 would hope that the ETS at some point becomes fluid. And I would hope that the delay  
5 in today's vote, if there is such a delay, will actually take into consideration the CDC  
6 guidelines in regards to vaccination status.

7 In our industry, we're proud to say that the highest priority is the safety  
8 and protection of our employees. And our percentage of vaccinated employees is  
9 actually very high. And it is our highest priority as far as a goal for 100 percent  
10 vaccination.

11 I would hope that this delay, if there is a delay in the standards would  
12 incorporate the removal of the respirator areas as the last speaker commented on.  
13 Because it will create a huge burden as to the availability of N95 respirators if it's under  
14 the current situation moving forward as proposed now.

15 I would hope that this ETS standard could be updated on a more frequent  
16 basis, because there is going to be a lot of positive change when it comes to  
17 therapeutics and increased vaccination status with our work population.

18 Again, I thank you for the opportunity to speak today. And I would hope  
19 that if there is a delay it would be a very short delay in moving forward to implement  
20 this very needed amended changes to this ETS. Thank you again.

21 CHAIR THOMAS: Thank you, Darrell.

22 Mr. Gotcher, who do we have up?

23 MR. GOTCHER: Our next commenter is Ashley Salas from Daniel C. Salas  
24 Harvesting, Inc.

25 CHAIR THOMAS: Good morning, Ashley.

1 MR. SMITH: Good morning. This is Darrell Smith again. Ashley will not  
2 be able to speak today. She wanted to make sure that you guys understood that she is  
3 thankful for the opportunity and that she will speak at a future meeting. Thank you.

4 CHAIR THOMAS: Thank you.

5 Who do we have next, Mr. Gotcher?

6 MR. GOTCHER: Our next commenter is Eric Frumin, from the Change to  
7 Win Strategic Organizing Center.

8 CHAIR THOMAS: Mr. Frumin, are you with us?

9 MR. FRUMIN: Can you hear me now?

10 CHAIR THOMAS: We can hear you. Go right ahead.

11 MR. FRUMIN: Okay thanks. I'm going to start the video here.

12 So Chairman Thomas, other members of the Board. Thank you very  
13 much for your efforts. To date, your affirmative approach to this problem with your  
14 decision last fall and your continued interest in trying to make sure that the state does  
15 what it can to help employers and workers get worker protection from COVID.

16 If the situation I guess as we sit here today is a little confusing with the  
17 Department's memoranda to you yesterday urging you to hold off on any action. So I'm  
18 not sure how to respond to that. There's a lot more we -- and I tuned in a little bit late. I  
19 missed the first few minutes. So you may have addressed that already.

20 In any event, I do want to just offer the following comment. One of the  
21 most important aspects of this problem is, as Helen Cleary has just tried to provide, is  
22 that we have real time information about where the situation stands.

23 And fortunately, there is a reporting system for COVID within the public  
24 health infrastructure that approximates that. It's not perfect by any means, but  
25 compared to other occupational illnesses we get pretty good real time information about

20

1 where problems are happening, where outbreaks are occurring, where attention is  
2 needed.

3           It was the Legislature's intent that this information be made public when  
4 it passed Senate Bill 685 last year. And that has not happened. We only have two  
5 counties in the state, LA County and Merced, that post publicly the outbreak data, the  
6 cluster information, that they have reported to them by employers. And of course the  
7 ETS is generating these reports by employers to county health departments and CDPH.

8           So there is definitely a need to pay close, close attention to the latest  
9 available information and guidance. But also to the latest information available  
10 information about the cases that are occurring. And it's really a tragedy in public policy  
11 that CDPH has persisted in its refusal to make cluster information available for the  
12 particular employers involved.

13           I understand this is a sensitive issue for everybody involved. But COVID is  
14 a sensitive issue. And we're not going to be assured that whatever measures are in  
15 place are sufficient. And whatever outbreaks are continuing are known. That the  
16 responses are appropriate if the information is kept solely within the purview of the  
17 health agencies. It needs to be public matter so that employers and workers and others  
18 including the media and elected officials can see that information as well.

19           It's not clear exactly what the Board's authority is to me to  
20 influence CDPH's decision making here. Obviously you have authority under the OSHA  
21 act, not state public health law.

22           On the other hand, you're a critical user of that information. And I think  
23 you're as much a stakeholder of that information as anybody else in the state, certainly  
24 at least as much as much as DOSH and DIR, and the Governor.

25           So I would urge you in a maybe somewhat unorthodox way here to take

1 an action today to call upon CDPH to finally release the outbreak specific employer,  
2 location specific outbreak data that they have and that has been so useful in the  
3 counties where it is released.

4 I just looked at the LA county data. Yeah, the number of outbreaks is way  
5 down. But right there, 706 cases at Northrop Grumman in Palmdale. I would think that  
6 would be an important piece of information for people in that community to know, for  
7 other employers in that industry to know. Maybe it's an artifact. I don't know, but it  
8 should be a warning that we need real time information and the Board most of all needs  
9 it. And I would hope you would consider that in whatever actions you take today to  
10 deal with the status of the ETS and the information that all of us need in order to  
11 maximize the effectiveness of whatever rule exists or is amended.

12 Thank you again for all your efforts and to the Board staff as well. We  
13 appreciate your consideration. Thank you.

14 CHAIR THOMAS: Thank you, Eric.

15 John, who do we have up next?

16 MR. GOTCHER: Our next commenter is Lawrence Gayden from the  
17 California Manufacturers' and Technology Association.

18 CHAIR THOMAS: Good morning.

19 MR. GAYDEN: Thank you for having me. Yes, can you guys hear me all  
20 good?

21 CHAIR THOMAS: Yeah. Go ahead.

22 MR. GAYDEN: Thank you. The California Manufacturing and Technology  
23 Association appreciates this opportunity to address the Board meeting on the COVID-19  
24 Emergency Temporary Standards or ETS. California manufacturers uphold the health  
25 and safety of our workers and that commitment has only deepened during the

1 pandemic. As a critical infrastructure industry during the initial days of the pandemic  
2 California manufacturing companies have had to work diligently to immediately develop  
3 processes and solutions that allowed their workers to remain safely employed. So they  
4 continued to support the state's (indecipherable) response.

5           The proposed revisions today present some challenges on the right to  
6 feasibility, clarity and harmony with a myriad of existing state and local and federal  
7 Corona virus-related laws that have come before us. Instead of really enhancing our  
8 current best practices, some of these proposed standards seem to impose some  
9 additional burdens on the manufacturing industry at large. And cause some  
10 inconsistencies with some of the federal and state restrictions as California prepares to  
11 reopen.

12           We're hopeful you will to reconsider our comments in future revisions to  
13 the ETS frequently asked questions in preparation for the future advisory committee  
14 discussions.

15           Our comments align with those we've already submitted alongside with  
16 the California Chamber's (indiscernible) brief and our other business industry counter  
17 parts. Our concern is the standards to be focus on clarity, on vaccinations and  
18 documentation, feasibility as far as verbal notices, having to provide N95 respirators to  
19 every unvaccinated indoor employee, outbreak notifications and consistency with  
20 science and other local, federal and guidelines release from obligation, (indecipherable)  
21 obligations for face coverings and physical distancing. Manufacturing is compliance  
22 driven and aspects ETS to force manufacturers to be in compliance with an outdated  
23 model.

24           CMTA appreciates the opportunity to participate in this conversation.  
25 And we look forward to continue our conversation to improve the COVID ETS and

1 achieve the right balance between worker protections and operational integrity for  
2 manufacturing in the industry at large. So thank you.

3 CHAIR THOMAS: Thank you.

4 John?

5 MR. GOTCHER: Our next commenter is Mark Wolinski from the City of  
6 Roseville.

7 CHAIR THOMAS: Mark, are you with us?

8 MR. WOLINSKI: I am. Good morning, Chair Thomas and Members of the  
9 Board. My name is Mark Wolinski. And I am the Government Relations Administrator  
10 for the City of Roseville, representing Roseville City Manager Dominic Casey.

11 Our comments today relate to the masking mandates and social  
12 distancing guidelines the Board is considering during the later portion of today's agenda.

13 We are asking that you align your guidelines and those of the Center of  
14 Disease Control and Prevention and the California Department of Public Health.

15 Overall, we are asking that you consider the implications and challenges a  
16 variation to the guidelines would create for cities and businesses alike.

17 As we continue to focus our efforts on recovering from the grip of the  
18 pandemic, it is crucial that there is consistency between agencies and their guidelines.  
19 Consistency provides clarity and minimizes confusion and operational issues for our  
20 cities and businesses.

21 It's for these reasons that we respectfully ask for your thoughtful  
22 consideration regarding the alignment of the masking and social distancing guidelines  
23 with those of the CDC and CDPH.

24 We thank you for your time and consideration. And please know that we  
25 are available to be a resource to the Board if you have questions or need additional

24



1 information as you consider these issues. Thank you.

2 CHAIR THOMAS: Thank you, Mr. Wolinski.

3 John, who's up next?

4 MR. GOTCHER: Our next commenter is Melissa Patack from the Motion  
5 Picture Association of America.

6 MS. PATAACK: Thank you so much.

7 CHAIR THOMAS: Good morning.

8 MS. PATAACK: Good morning. My name is Melissa Patack. I'm here on  
9 behalf of the Motion Picture Association, which is the trade association for the leading  
10 producers and distributors of motion pictures, television series and streaming programs  
11 across all distribution platforms.

12 We filed a lengthy comment letter, which goes into detail on the issues  
13 raised by the proposed ETS so I won't go through all of the questions that we raised.

14 The most important point to emphasize, as many of the other speakers  
15 have spoken about, is that as we emerge and recover from the COVID-19, the employer  
16 community needs alignment and a harmonization from all the governmental regulatory  
17 authorities. If public health orders are being withdrawn effective June 15th and  
18 occupancy, distancing and masking restrictions are being lifted and modified, then  
19 businesses and employers cannot be expected to impose the limitations that are  
20 reflected in the current draft of the standard on their employees. It's impractical. And  
21 it's just really unworkable.

22 Increasing vaccination rates across California make exposures less  
23 significant. And the Cal/OSHA regulations in this area regarding isolation, quarantine,  
24 etcetera seem unnecessary and should really reflect the current public health standard.  
25 Requirements that face coverings also need to reflect current realities of very low

25

1 positivity rates and fewer COVID cases.

2 In our sector, we have of course bargaining agreements with a number of  
3 guilds and unions. We have a long-standing history of robust labor relations and  
4 agreements with our unions. And we have worked out what at the height of COVID was  
5 required for a safe workplace. And we were very grateful the government allowed us to  
6 come back to work last summer and into the fall.

7 But again the standards are now changing. And frankly employees don't  
8 want -- they feel that they're safe. And they are not so inclined to follow the guidelines  
9 and the requirements. So we need OSHA to understand that. And we do think that as  
10 public health improves we hope that the Standards Board will work with the State  
11 Department of Health, so that any workplace standards, if needed, align with public  
12 health requirements. Thank you so much for your consideration.

13 CHAIR THOMAS: Thank you, Melissa.

14 John, who do we have up next?

15 MR. GOTCHER: The next commenter is Katie Hansen from the California  
16 Restaurant Association.

17 CHAIR THOMAS: Katie, can you hear us?

18 MS. HANSEN: Good morning.

19 CHAIR THOMAS: Good morning.

20 MS. HANSEN: Yes, I can. Good morning. Thank you for the opportunity  
21 to provide comment.

22 The global pandemic has financially devastated community restaurants  
23 and has dramatically altered restaurant operation. The demand for public health had  
24 required us adapt quickly to insure physical distancing, address the needs of vulnerable  
25 populations and manage all too often periodic shutdowns and in-store and dine-in

26

1 operations. Only now are we beginning to reopen our dining rooms and start the long  
2 road to economic recovery.

3 It is important for the emergency safety orders to reflect the recent  
4 federal and state changes to best practices and guidances for employers. We are  
5 pleased to pay some of the positive changes in the amended ETS to reflect vaccinations  
6 and physical distancing requirements phased out by July 31st of 2021.

7 But we do have a few areas of concern with the amended ETS. Requiring  
8 community restaurants to provide N95s to unvaccinated employees is a significant cost  
9 to an industry that is struggling financially, due to government ordered shutdowns.

10 Face coverings, such as surgical masks as defined in the amended ETS,  
11 should suffice. N95s should be reserved for medical professionals, front-line responders  
12 and for use to comply with the emergency wild fire smoke regulations. Requiring  
13 restaurants to utilize MERV 13 filtration, or HEPA filtration units in the event of a COVID-  
14 19 outbreak poses a significant financial cost to restaurants at a time when they have  
15 yet to even begun the years of hopeful recovery up ahead.

16 We would recommend requiring both of the filtration units to be used in  
17 the event of a major outbreak.

18 The definition of exposed group only include employees. Under the  
19 current ETS, an outbreak can be triggered by three customers who dine at a restaurant  
20 of stand waiting in a restaurant location for 15 minutes. This is misguided as restaurants  
21 will be held responsible for something they have no influence over and will have to incur  
22 the cost to comply with the section 3205.1 in the event of an outbreak.

23 The amended ETS phases out the use of partitions in the workplace on  
24 July 31st. It then requires restaurants to reinstall partitions in the workplace in the  
25 event of a COVID-19 outbreak. Restaurants previously installed partitions at a

1 significant cost. It is not practical for restaurants to take down partitions and reinstall  
2 them every time there is an outbreak in the workplace. Restaurants have extremely  
3 limited space to store partitions.

4 Reinstating partitions should occur in the event of a major COVID-19  
5 outbreak. There are many different types of restaurants with varying physical  
6 footprints. We need clarification on the meaning of "location" in section  
7 3205(b)(6)(C)(2) and request that the FAQ provide clarity on this definition the  
8 restaurants can utilize the exemption.

9 Thank you for the opportunity to provide comments.

10 CHAIR THOMAS: Thank you for your comments.

11 John, who do we have up next?

12 MR. GOTCHER: Our next commenter is Brian Mello from the Associated  
13 General Contractors of California. 37:40

14 CHAIR THOMAS: Brian. Can you --

15 MR. MELLO: Good morning.

16 CHAIR THOMAS: Good morning, Brian. Go ahead.

17 MR. MELLO: Mr. Chairman, members of the Board again good morning.  
18 My name is Brian Mello. I'm the Safety and Health Manager for the Associated General  
19 Contractors of California. AGC is a member driven organization with around 1,000  
20 companies statewide, specializing in commercial construction.

21 Given the release memorandum, we appreciate the Division's efforts to  
22 update the COVID-19 ETS with updated guidance from the CDC. Although we would still  
23 like to voice some concerns. AGC of California would like to address the ambiguity  
24 found with vaccinated versus unvaccinated individuals and record keeping as it pertains  
25 to the current proposed regulation.

1                   Construction has a unique multi-employer environment, which may  
2 constitute for having anywhere from 2 to 20 different employers on site at once. This  
3 proposed regulation has brought up feasibility concerns when dealing with multi-  
4 employer environment.

5                   In the case a controlling contractor has 15 subcontractors on site, how is  
6 the controlling contractor or sub contract to both manage and ensure the general  
7 contractor or subcontractor procedures for obtaining vaccination information is  
8 effective and accurate? And how is that information shared to effectively plan a safe  
9 work environment on site? We ask for the Division to clarify enforcement procedures as  
10 well as the process to verify vaccinations in a procedure that followed applicable laws.

11                   As of yesterday, May 19th, there were three new positive cases per  
12 100,000: 0.05 new deaths per 100,000, 0.9 percent positivity rate, and a total of  
13 35,910,346 vaccines administered. As everyone saw on March 13th and again on March  
14 16th, the CDC updated guidance for fully vaccinated and unvaccinated individuals.

15                   Subsection 3205(a)(2) through (5) personal protective equipment states  
16 "After July 31st, employees shall provide respirators for voluntary use in compliance  
17 with subsection 5144(c)(2)."

18                   Guidance from the Center for Disease Control suggests the use of face  
19 coverings as well as physical distancing to be continued for those that are unvaccinated.

20                   We urge the Division to consider removing the respirator mandate and  
21 continue with CDC guidance for unvaccinated individuals, which consists of face  
22 coverings and physical distancing. By continuing this practice in alignment with CDC for  
23 unvaccinated individuals and effectively utilizing contact tracing procedures established  
24 in an employer's IIPP program, we would still be mitigating the risk of COVID-19 to  
25 unvaccinated employees.

1                   We appreciate your time and consideration around these comments as  
2 well as the detailed written comments that were previously submitted. Thank you.

3                   CHAIR THOMAS: Thank you.

4                   John, who's up?

5                   MR. GOTCHER: The next commenter is Ken Smith from the University of  
6 California.

7                   CHAIR THOMAS: Ken, can you hear us?

8                   MR. SMITH: Yes. Thank you very much Chair Thomas and members of  
9 the Board. My name is Ken Smith. I'm the Executive Director for environmental health  
10 and safety with the University of California. And I appreciate the opportunity to address  
11 the Board today.

12                   And I'm still trying to digest a little bit about the information that you  
13 shared regarding Deputy Chief Berg's memo to pull the item from your agenda for  
14 approval. And I think I am in agreement with that. The University of California has  
15 produced written commentary that I won't go into regarding the specifics of this  
16 regulation. But bear with me just a little bit as I start to think this out and perhaps other  
17 members of the Board have thought this out as well.

18                   As was mentioned by previous commenters, both on this call and the  
19 earlier calls, one challenge that we have in California is how to adapt an emergency  
20 standard to a very fluid situation. There is this long delay in the period of time between  
21 what we know from the science, what is proposed in the proposed revisions to the  
22 standard. And then ultimately the time that it takes the Standards Board to produce  
23 that written language and adopt it. And so there is this time delay.

24                   The language that you saw in the proposal that was submitted earlier was  
25 really language that was created in January of this year, at the peak of the third wave of

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1 this epidemic, right? We knew that we had a vaccine. We knew at the time that that  
2 vaccine was very effective at preventing individuals that were fully vaccinated from  
3 contracting COVID. What we weren't certain about when that language was produced is  
4 does the vaccine actually prevent or reduce the transmission of the virus?

5           And I think what we're beginning to see in science and the evidence  
6 that's being published is that yes, it actually has that ability. That somebody who is fully  
7 vaccinated is less likely to contract the disease. If they do contract the disease, it's very  
8 much more a milder disease. As part of that kind of lower severity of the disease they  
9 produce, they replicate less viral particles. They shed less viral particles. And therefore  
10 they're less likely to transmit these viral particles.

11           So this vaccine not only protects the vaccinated individuals it's actually  
12 protecting those that are around them. And I don't think the official ETS, as its proposed  
13 right now, really recognizes that. It still has the requirements for -- even though that  
14 there are some sunset dates at the end of July, the requirements for social distance or  
15 six foot distancing or Plexiglas barriers, or even for masking, right? And that's probably  
16 the most challenging one right there.

17           And so I wonder two things for this Committee that I'm sure you've  
18 thought about. One is what we saw happen after you last looked at this in November is  
19 immediately right after, the month after, Governor Newsom had to strike down part of  
20 that standard already, because we knew that fully vaccinated people no longer needed  
21 to quarantine.

22           And I wonder what type of precedent that might set that a governor can  
23 affect the decisions of this Board. This Board was originally created to be fully  
24 independent. I don't think anybody objected to that, because that's the direction the  
25 science went to. And I think we were all very grateful, both on labor and management,

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1 to see that change and that recognition.

2 But I do have concerns that what about if whatever proposal is submitted  
3 to this Board in the coming days, whether or not it will be as fluid and will the Governor  
4 then be forced based science and CDC recommendations, to have to yet again strike  
5 down something this board has created. And I really am concerned about the  
6 precedent that that might create.

7 So now thinking forward here just a little bit, reading Deputy Chief Berg's  
8 letter that hope to provide some language to you in time to meet the June 15th  
9 reopening of California the removal of the CDPH guideline.

10 I wonder if perhaps in your business meeting if you might be able to  
11 discuss exactly how that will occur. I don't actually see a game strategy for you to play  
12 on this chessboard here. This is the last meeting you have before that date. There are  
13 public rulemaking rules that you have to comply with. And I wonder if during your  
14 discussions you might talk about how Cal/OSHA Division might be able to produce some  
15 language to you in time for it.

16 Or will your only move that is left be simply to strike this ETS? I believe  
17 you still have that ability in its entirety. That of course creates some problems about  
18 well we don't a fully vaccinated workforce. The numbers are improving. The  
19 acceptance of fully vaccinated individuals continues to increase. And the amount of  
20 cases continues to decline. But if you can just talk just a little bit about your strategy  
21 forward and how you might envision this winding up, whether it's a complete exit of this  
22 standard or if you do anticipate to have an emergency meeting or an ad hoc meeting  
23 prior to that June 15th date?

24 And with that, I think I will conclude my comments. Thank you very  
25 much.



1 CHAIR THOMAS: Thank you, Mr. Smith.

2 John, who do we have up next?

3 MR. GOTCHER: Our next commenter is Pamela Murcell from the  
4 California Industrial Hygiene Counsel.

5 CHAIR THOMAS: Pamela, can you hear us? Hello Pamela. I think we  
6 have a problem, John. I'm not hearing anything. Are you?

7 MR. GOTCHER: No, I'm not.

8 Pamela, if you are on the WebEx, we have your phone number and we'll  
9 try and reach out to you. So if you get a call, please answer and we'll circle back to you.

10 CHAIR THOMAS: On to the next please.

11 MR. GOTCHER: Next is going to be a statement from San Bernardino  
12 County, read by Christina Shupe.

13 CHAIR THOMAS: Christine, go ahead.

14 MS. SHUPE: Just one moment please. Thank you. The following  
15 statement was delivered to us from San Bernardino County. And I apologize, the front  
16 page appears to be missing.

17 "San Bernardino County has several questions and concerns. Generally  
18 speaking, how does the revised language apply to the Governor's orders, which are  
19 expected to be effective June 15th. Who does this program apply to, i.e. vaccinated,  
20 non-vaccinated and/or those who have antibodies after COVID-19 exposure and  
21 diagnosis?"

22 "3205 revised language was (indecipherable) with questions noted in  
23 blue."

24 You know, at this time I'm going to ask for the Chair's leave. I'd like to  
25 confirm that this is the appropriate statement that they asked to have read into the

1 record. There are significant references to Title 8 in here that are not in align with  
2 what we would generally expect from a public statement.

3 CHAIR THOMAS: Sure.

4 MS. SHUPE: Thank you.

5 CHAIR THOMAS: Switch back over. All right, John. We're going to have  
6 Christina go and verify and then we're going to move on to our next commenter.

7 MR. GOTCHER: Our next commenter is Eddie Sanchez, from SoCalCOSH.

8 CHAIR THOMAS: Mr. Sanchez, can you hear us?

9 MR. SANCHEZ: Yes. Sorry, I was trying to turn on my video. I think folks  
10 can see me now.

11 CHAIR THOMAS: Yes. Go right ahead.

12 MR. SANCHEZ: Good morning. My name is Eddie Sanchez with Southern  
13 California Coalition for Occupational Safety and Health, SoCalCOSH. We're a nonprofit  
14 organization based in Southern California, an advocate for safe, healthy and secure work  
15 places and low wage immigrant and workers of color.

16 We are here in support of strengthening COVID-19 Emergency Temporary  
17 Standards. I want to thank the Board for considering our comments today.

18 From the very start of the pandemic, we have worked closely with our  
19 organizational partners and allies to best address the concerns of workers and  
20 community members in our recent.

21 Every day, we hear firsthand from workers about their fears of going to  
22 work, getting the virus and bringing it home to their families. We know COVID cases are  
23 currently low, but a change in the standard now could put many workers knowingly in  
24 danger. And we see cases rises -- when we see cases rising, excuse me. We know from  
25 experience now that employers will not do what's right or what's safe on their own.

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1                   It's unclear, also, how well vaccines will prevent cases, dramatic and  
2 mild COVID infections. How well vaccines will prevent transmissions of the virus and  
3 how long protections from the vaccine will last.

4                   Additionally, many workers are still unvaccinated. Many of whom have  
5 not been given the paid time off by their employer to get the vaccination. Living in the  
6 scope of this standard directly puts those workers at risk, workers whose employers are  
7 already breaking the law again and again. Limiting the scope of the standard leaves to  
8 trust and good will that the employers will do what's right. And we know that many  
9 won't.

10                  Compoundedly, we see low road (phonetic) employers ignoring just basic  
11 guidelines, failing to install protective measures in the workplace. And they see state  
12 and local guidelines as suggestions rather than the law.

13                  We continue to live with the virus. And it's crucial that we ensure that  
14 workers are safe and secure at the workplace. We ask that you proceed with care  
15 before changing the ETS to reflect the recent CDC updates, because many medical  
16 experts have criticized as being premature and worrisome.

17                  Workers are looking to the Board to make the best decision and pass a  
18 common sense solution to ensure that Cal/OSHA is able to hold employers for violating  
19 COVID-19 guidelines and also keep workers safe. I thank you for your time and  
20 consideration.

21                  CHAIR THOMAS: Thank you, Mr. Sanchez.

22                  Mr. Gotcher, who do we have in the queue?

23                  MR. GOTCHER: At this time, there are 16 more commenters,  
24 approximately, with the next few commenters being Bruce Wick, Sarah Wiltfong, and  
25 Len Welsh beginning with Bruce Wick, from the Housing Contractors of California.

1 CHAIR THOMAS: Bruce, can you hear us?

2 MR. WICK: Yes, sir. Can you hear me?

3 CHAIR THOMAS: I can. Go right ahead.

4 MR. WICK: All right. Thank you, Chair Thomas, Board Members. Thanks  
5 for the opportunity. I submitted some written comments regarding the data. Eric  
6 Frumin said we need to use the information available. And we haven't done that very  
7 well. So I submitted some of the information that comes from the California Workers'  
8 Compensation Institute, the leading research institute that looks at Workers'  
9 Compensation cases related to COVID. They have a public access website. The  
10 information is very helpful, as you know we have a state COVID-19 website.

11 When you look at that information, 9.4 percent of the general population  
12 has tested positive for COVID, as a COVID case; 46 percent approximately, of  
13 Californians are in the working population. So you would expect, from the 3.6 million  
14 COVID positive cases, well over 1.7 or .8 million would be Workers' Compensation  
15 occupational claims. The number is actually 145,000. Four percent of our COVID  
16 positive cases are occupationally related. And half of that number is healthcare workers  
17 and first responders. So we get down to 2 percent of total COVID cases have been  
18 reported as Workers' Comp cases.

19 Sadly, of the fatalities, the 61,000 fatalities, less than 1,000 are from  
20 occupational issues, as stated by the CWCI. COVID is tragic, but occupational areas are  
21 very, very few, other than the ones we know about. Eric Frumin talked about a specific  
22 employer with 762 cases. Well Cal/OSHA ought to work with that department of public  
23 health and move fast on that. Eddie Sanchez said, "You know, many won't comply."  
24 Most are employers, implying they have.

25 I studied the difference between federal OSHA and Cal/OSHA in citations

1 when Cal/OSHA could only use the IIPP and site as for guidance. Cal/OSHA citations  
2 per employer were 67 percent higher than federal OSHA. This is data that ought to be  
3 presented to you as a Board. And as this comes back, I think we always, sadly, need to  
4 be concerned about the Division presenting about N95 respirators.

5 I trust statements made by Cal/OSHA Standards Board personnel. I trust  
6 statements made by Chief Parker, of Cal/OSHA. Unfortunately, sadly, statements made  
7 by Division staff have consistently been wrong.

8 Statements were made to you as a Board about we had a solution for  
9 utility workers when we instituted the wild fire smoke. That was completely wrong.  
10 Last year, we asked multiple times in multiple meetings what about N95 respirators for  
11 wild fire smoke? We were assured over and over they would be readily available. That  
12 was not true. And employers not on the healthcare side and first responders, didn't  
13 want to compete for those precious N95 respirators.

14 And we are still, worldwide with the tragedy in India that's going on,  
15 wildfires and healthcare workers across the globe -- we want N95 respirators to be  
16 available for those people trying to save lives and dealing very closely with COVID-tested  
17 positive people.

18 So I would really encourage you, as a Board, to require Division staff to  
19 give you data when they make presentation to you about why something should be  
20 changed. How it should be changed. Data is available. And that way you can have --  
21 they can have more credibility giving you information that you can rely on. And that's  
22 really important as we go forward here.

23 So thank you for the opportunity.

24 CHAIR THOMAS: Thank you, Bruce.

25 John, who do we have up?

1 MR. GOTCHER: Our next commenter is Sarah Wiltfong from the Los  
2 Angeles Business Federation, BizFed.

3 CHAIR THOMAS: Sarah, can you hear me?

4 MS. WILTFONG: Yes. Can you hear me?

5 CHAIR THOMAS: Yes. Go right ahead.

6 MS. WILTFONG: Thank you. My name is Sarah Wiltfong. I'm calling on  
7 behalf of BizFed, the Los Angeles County Business Federation. We're an alliance for over  
8 200 business organizations who represent over 400,000 employers in Los Angeles  
9 County.

10 We're here to address the proposed amendments to the Cal/OSHA  
11 Emergency Temporary Standard for readoption.

12 First, we would like to thank Cal/OSHA for their leadership during this  
13 incredibly challenging time. We know how complex this process has been. And we  
14 appreciate the effort by you and your staff to make the standard work as best as  
15 possible. We were certainly glad to see some updates to the emergency standard that  
16 improves it. However, we still have some serious concerns, in particular required  
17 employers to track the vaccination of all their employees where no such tracking system  
18 exists; the details of which other commenters have highlighted very well.

19 In light of the recent updated guidance by the CDC on mask wearing and  
20 Governor Newsom's announcement on reopening of the economy June 15th, we  
21 support the Division of Occupational Safety and Health's request to delay voting on the  
22 standard to review these new guidances.

23 BizFed represents mostly small businesses who have been heavily  
24 impacted by the pandemic. They have invested a considerable amount of funds to  
25 remain open. And conflicting guidelines from local municipalities, the counties, the

1 state, Cal/OSHA and the CDC make it nearly impossible for everyone to comply.

2 As the federal government and the state have updated their guidelines  
3 and made announcements that the economy is set to reopen soon, Cal/OSHA is setting  
4 different standards. And expanding that will only cause more confusion and  
5 unnecessary delays.

6 We believe Cal/OSHA Board should consider holding off on the standards  
7 and consider updating to reflect guidances by the state and the CDC. Thank you.

8 CHAIR THOMAS: Thank you, Sarah. John?

9 MR. GOTCHER: Our next commenter is Len Welsh and after that will be  
10 Pamela Murcell again. Len Welsh, you're up next. If you wouldn't mind introducing  
11 yourself too, it looks like you're representing quite a few organizations.

12 MS. THOMAS: Hello, Len. Can you hear us?

13 (No audible response.)

14 MS. SHUPE: While we're waiting for Len to connect I'd just like to remind  
15 our public commenters that we are providing live Spanish translation services, so it's  
16 very helpful if you can keep your speaking speed slower and more moderated. Thank  
17 you.

18 CHAIR THOMAS: Thank you, Christina.

19 I don't believe we have that speaker, so I think we should move to I think  
20 it was Pam, John?

21 MR. GOTCHER: Yeah, Pamela Murcell if you're on the line now from the  
22 California Industrial Hygiene Council.

23 CHAIR THOMAS: Pamela, can you hear us?

24 MR. GOTCHER: It looks like I may have her on the phone line now. Sorry,  
25 stand by. Hi, Pam. Can you hear us?

1 MS. MURCELL: Hello, this is Pam. Can you hear me?

2 CHAIR THOMAS: Go ahead, Pam. We can hear you.

3 MS. MURCELL: Thank you. I appreciate you working through the  
4 technical difficulties. I cannot get WebEx audio today, so I'm having to go to the old-  
5 school call-in method.

6 And with that said Chair Thomas and Board Members and staff and  
7 Division staff my name is Pamela Murcell. I'm representing the California Industrial  
8 Hygiene Council and I'm the current President of CIHC. And just briefly CIHC represents  
9 occupational health and safety professionals in California and we work on their behalf to  
10 enhance the practice for our profession.

11 The California Industrial Hygiene Council certainly appreciates the  
12 opportunity to comment on the COVID-19 prevention emergency regulation. We  
13 appreciate being involved in the process all along and in the advisory committee  
14 meetings especially. We also appreciate that the challenges this issue have been  
15 unprecedented and we just understand the hard work from the Board staff and DOSH  
16 staff on this issue. And please know that it is much appreciated.

17 A comment specifically on the ETS, so the proposed version of the COVID  
18 ETS that is potentially being considered today, is an improvement from the version that  
19 was adopted in November of 2020. And we especially agree with including exceptions  
20 for those who are fully vaccinated.

21 If the proposed version is adopted we request that the Division provide  
22 guidance for FAQs as soon as possible to address how employers will determine fully  
23 vaccinated employees versus those who are not while maintaining confidentiality of an  
24 employee's health issues. This is actually an important question whether we are talking  
25 about COVID-19 vaccination or vaccinations for other infectious diseases. And having

40



1 this information in place would be a major step forward.

2           Given the rapidly changing public health guidance and lifting of COVID-19  
3 restrictions as well as in light of the Division's request to postpone today's vote on the  
4 latest version of the ETS, CIHC encourages the following two actions. First, consider  
5 repealing or establishing an expiration date of June 15, 2021, for the ETS version  
6 currently in effect. Based on the news from the Governor's Office the pending lifting of  
7 COVID-19 restrictions in California could make the ETS a moot point.

8           Second, move expeditiously with a path forward to permanently address  
9 worker protection in all industries from infectious diseases. This would be a more  
10 efficient use of valuable resources rather than a chance to fix protections and  
11 prevention measures for COVID-19 only. The path forward could include adding COVID-  
12 19 explicitly to the list of diseases covered by the Aerosol Transmissible Disease  
13 Regulation for those employers in work environments that are covered by the ATD  
14 regulation. And developing a mandatory appendix for the Injury and Illness Prevention  
15 Program regulation that applies to employers in work environments that are not  
16 covered by the ATD regulations. And such appendix would require these employers to  
17 address and plan for infectious disease prevention.

18           CIHC would look forward to advisory committee participation to assist  
19 the Division with a path forward on this issue. And again we encourage expediting this  
20 approach. Thank you for your time and consideration.

21           CHAIR THOMAS: Thank you.

22           John, who do we have up?

23           MR. GOTCHER: Our next commenters are Giancarlo Rubio, AJ Rossitto  
24 and Maggie Robbins. Next up is Giancarlo Rubio from Valley Industry & Commerce  
25 Association.

1 MR. RUBIO: Hello, can everybody hear me?

2 CHAIR THOMAS: Yes, we can. Go right ahead.

3 MR. RUBIO: Hi everybody, good morning. Again, my name is Giancarlo  
4 Rubio and I'm calling from Valley Industry & Commerce Association to express concern  
5 about the proposed readoption of the COVID-19 Emergency Temporary Standards. The  
6 Center for Disease Control has recently loosened restrictions on fully vaccinated  
7 individuals. And the State of California boasts the lowest COVID-19 case rate the nation,  
8 yet the state still maintains some of the strictest COVID-19 business restrictions in the  
9 country.

10 We are very concerned that the adoption of these standards will freeze  
11 employers into a compliance model that is already out of date and will only grow more  
12 outdated in the coming months. For example, the readoption includes provisions to  
13 provide unvaccinated employees with N95 respirators. This burdens employers  
14 financially for choices made by employees regarding vaccinations and could potentially  
15 leave global healthcare sector without access to critical respirators in the case of an  
16 outbreak again.

17 Further, the readoption will take away nuanced jurisdictional control over  
18 businesses, especially in the area such as Los Angeles County that are quickly returning  
19 to normalcy in rapidly increasing vaccination rates. It is appropriate for the state to  
20 adopt more vague provisions in alignment with the CDC in order to preserve local  
21 control.

22 And we hope that the Standards Board will consider revising these  
23 concerns prior to the readoption of the COVID-19 Emergency Temporary Standards.  
24 And I appreciate you all for listening and thank you very much.

25 CHAIR THOMAS: Thank you.

1 John?

2 MR. GOTCHER: Our next commenter is AJ Rossitto from California Hotel  
3 and Lodging Association.

4 CHAIR THOMAS: Mr. Rossitto, can you hear us?

5 MR. ROSSITTO: Yes, I can hear you.

6 CHAIR THOMAS: Go right ahead.

7 MR. ROSSITTO: Thank you, Board, for the opportunity to speak today.  
8 My name is AJ Rossitto. I'm speaking on behalf of the California Hotel and Lodging  
9 Association, which represents over 6,000 hotels statewide. On behalf of the Association  
10 thank you for your efforts to make the current Emergency Temporary Standards more  
11 workable. However, the science around COVID-19 mitigation is a fast-evolving field and  
12 even the latest changes do not reflect federal guidance, particularly with regard to  
13 vaccinated persons.

14 Therefore the California Hotel and Lodging Association urges the Board to  
15 adopt standards in such a way that they will automatically adapt to state federal  
16 guidance, (indiscernible) guidance to effectively those industries that proven a record of  
17 frequent outbreaks.

18 Further, the current approach to respirators, at the onset of fire season  
19 no less, will likely drastically increase the demand for respirators and has the potential  
20 to impact business operations and respirator availability as a result. For hotels, this  
21 could affect the ability to provide emergency shelter during wildfires.

22 These comments broadly characterize our position, but specific concerns  
23 can be found in our submitted letter. In the interest of time I respect the Board and will  
24 conclude. Thank you for the opportunity to speak.

25 CHAIR THOMAS: Thank you.

1 John?

2 MR. GOTCHER: Our next commenters are Maggie Robbins, Vivi Le and  
3 Elda Brueggemann with Maggie Robbins next from Worksafe.

4 CHAIR THOMAS: Maggie, good morning.

5 MS. ROBBINS: Yes, hello. I'm Maggie Robbins from Worksafe. Yeah it's a  
6 little hard to figure out where to begin given all the sudden changes we've been seeing  
7 the last weeks and then again with the memo last night, but I guess I would start with  
8 saying that we have concerns.

9 We need to continue controlling COVID at work, so that we can sustain  
10 the improving rates of infection, hospitalization and death in the state. The temporary  
11 standard is indeed temporary, but it continues to be meaningful and provide  
12 enforceable expectations on what people can expect at work, both for employers and  
13 for workers.

14 Infections are still occurring in many parts of the state, outbreaks at  
15 workplaces are still occurring throughout the state as the CDPH data shows. So I don't  
16 think we can yet relax protections intended to prevent infections from people who have  
17 close contacts on the job.

18 Vaccination is helping, but as of this week the vaccination rate of eligible  
19 people in the state is just shy of 50 percent. And the state is vaccinating something like  
20 240,000 shots per day at all ages. And if this continues maybe by July 15th or July 31st  
21 the date contemplated in the draft, we could have reached all workers in the state. But  
22 currently in the next two weeks before we get to our June 15th reopening deadline,  
23 we're unlikely to be anything higher than low 60 percent vaccination rate for the  
24 population and for the workforce.

25 So we have a concern that there's still many, many susceptible people

1 who will be in the workplace by June 15th. And that you need to consider this when  
2 you're thinking about the controls that are required in the workplace. We're not talking  
3 about people going out to bars, going to the gym, or going to dinner parties. We're  
4 talking about a place people earn their living where they have to be in proximity to  
5 other people. And that we still have half the population unvaccinated currently.

6           So we fear that the state is contemplating this change to the ETS to take  
7 in a CDC recommendation intended for the general population, and placing it on a  
8 workplace setting. And we think this is going to lead to basically open season in the  
9 workplace for all controls to be relaxed or most controls to be relaxed. And why do we  
10 say this?

11           The guidance is saying there's no masks needed for vaccinated people  
12 indoors or outdoors. The current proposed stamp change to the ETS would have a  
13 relaxation of many controls in the standard for vaccinated workforces. And that's  
14 including that there's no real indication of how employers document vaccination status  
15 as numerous speakers have pointed out. So what we potentially have is lots of people  
16 not wearing masks, an inability to actually determine who's vaccinated or not, and then  
17 a relaxation of all of the social distancing, contact tracing, testing, face coverings. You  
18 know, like everything is going to be released if people are assumed to be vaccinated,  
19 given that there's no requirement for what documentation is.

20           So and then we also agree with others who said, we don't think vaccines  
21 should be mandated. But we do need time to reach people, so that we can have a  
22 higher percentage of our workforce vaccinated and immune from infection. People still  
23 need protection at work. I don't think we can forget that. We're all very hopeful that  
24 this temporary standard is indeed temporary and I think we need it a bit longer.

25           So we're asking the Board to do the following things. One is to recognize

1 that work place is different than the general public setting. That people must go to  
2 work to earn a living.

3           Second, we think that the Board needs to be really clear in direction  
4 about how this issue of who's vaccinated or not could be documented, so we don't end  
5 up with this open season of all basically controls being relaxed. And we also want to  
6 strongly support what Eric Frumin talked about earlier. That if this is going to be open  
7 season we need to have the data to know where these worksite outbreaks are going, so  
8 that we can target more effectively interventions to get those under control. And to see  
9 where the problems are occurring, where the industries and regions of the state, where  
10 we're having trouble.

11           We think the DOSH has been very -- and Board staff have been very good  
12 in the changes that they suggested to the standard. A lot of them are things that we  
13 think are really good changes such as ventilation and supplementary air cleaning, but  
14 I'm not going to go into those now. I think to our biggest concerns that I outlined  
15 previously are where I should focus my attention today.

16           And in conclusion, I do think we need to maintain controls in the  
17 workplace while we have a vaccination rate of 50 percent. Thank you very much.

18           CHAIR THOMAS: Thank you.

19           John, how many do we have left in the queue?

20           MR. GOTCHER: Approximately ten left.

21           CHAIR THOMAS: All right, let's continue. Who's up next?

22           MR. GOTCHER: Our next commenter is Vivi Le from Los Angeles Alliance  
23 for a New Economy.

24           CHAIR THOMAS: Hello, are you with -- Hi, good morning.

25           MS. LE: Hello, hi everyone. My name is Vivi Le, I'm a worker/organizer

1 at Los Angeles Alliance for a New Economy. I'm down here in Los Angeles and we  
2 would like to urge you to not vote on the proposed revisions. It is much too premature.

3 I personally on a personal note have experienced the protection that  
4 these provisions have provided me, because I was a worker during the pandemic. I  
5 worked at Target for a period of time. And I want to urge you to keep these mask  
6 requirements in stores and to not use getting vaccinated as a replacement to those  
7 requirements. Because one, it will be difficult to track vaccinations, it's much easier to  
8 track masks. Two, it will be it will be difficult to track the stores that are not following  
9 these proposed revisions because, of course, you can't see if somebody has been  
10 vaccinated. And for all you know they may or may not be being honest. And three, this  
11 last year -- I want to really stress this -- has been incredibly traumatic. And the rush to  
12 change these guidelines right now is frankly painful.

13 Even the requirements right now that are up towards workplace safety  
14 protocols like plastic barriers, etcetera, they follow at the bare minimum in a lot of the  
15 stores. And I know this from personal experience. It barely protects workers and I urge  
16 caution and to be more safe than sorry about masking requirements and vaccination  
17 requirements and thinking about the logistics of tracking those things.

18 I've seen too many coworkers get sick. It's incredibly traumatic to feel  
19 like you have no choice but to die perhaps from a disease, because you have bills to pay  
20 or you're possibly getting your family sick. Especially in places like Los Angeles that were  
21 completely decimated by COVID during the winter period.

22 I hope and I really urge Cal/OSHA, that these standards were the only  
23 thing protecting me when there was an outbreak at my workplace. I later learned that  
24 during that COVID outbreak in Los Angeles there were many retail employers who  
25 weren't following those already quite strict standards strictly, because there was a lot of

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1 workplace outbreaks; a wild, wild amount.

2 I have seen grandparents die. I know of carwash workers who died from  
3 COVID. So those small percentages that are brought up sometimes, we need to  
4 remember those are human beings. Young people who bring home COVID and have to  
5 live with the trauma of giving their parents a sickness that caused their death, that's  
6 incredibly traumatic. Every public positive case is traumatic and we have to do  
7 everything we can to prevent that, especially if you have no choice but to go to work.

8 You know, particularly in low-income communities that make up a large  
9 majority of retail workers, those communities also have lower vaccine accessibilities.  
10 They tend to be Black, brown, lower-income people of color. And they tend to live in  
11 multigenerational households, so it's very easy to spread and give it to your entire  
12 family.

13 Considering the vaccine inequities present, taking away this mask  
14 requirement, proposing using vaccination as a good replacement is too fast, too soon.  
15 Maybe one day, but not right now, not right now. Please save lives and protect these  
16 workers who have lived through so much pain this past year. And every infection we  
17 prevent is a life saved from the trauma of this disease. Thank you for taking the time to  
18 hear this.

19 CHAIR THOMAS: Thank you.

20 John?

21 MR. GOTCHER: Our next commenters are Elda Brueggemann, Len Welsh,  
22 and Brooke Billingsley, with next being Elda Brueggemann from the Western Agricultural  
23 Processors Association.

24 CHAIR THOMAS: Elda, can you hear us?

25 MS. BRUEGGEMANN: Good morning.



1 CHAIR THOMAS: Good morning.

2 MS. BRUEGGEMANN: I can hear you. Can you hear me?

3 CHAIR THOMAS: Yes, go right ahead.

4 MS. BRUEGGEMANN: All right, good morning. Thank you to the Board  
5 for the opportunity to provide comment. My name is Elda Brueggemann, Director of  
6 Environmental and Safety for Western Agricultural Processors Association. We have  
7 submitted written comments, so I'll just focus our concerns in the proposed ETS  
8 requirements on the new requirement in the draft to require N95 respirators.

9 It's unnecessarily burdensome and will cause major supply problems with  
10 the need for N95 respirators, which the CDC continues to state that they are prioritized  
11 for healthcare workers or when the wildfire smoke regulation -- so when we have  
12 workers working outside during wildfire smoke we will have to supply those N95s. Or  
13 the requirements to use those N95s for curbside handling under the DPR regulation, so  
14 we might have some supply problems.

15 So under the proposed ETS if the employers are to require and encourage  
16 unvaccinated employees to wear an N95, could this be construed as discriminatory?  
17 Because their coworker who has been vaccinated can wear a face covering or not wear  
18 a face covering. So if the N95s are voluntary use and we are required to enforce, how  
19 do we handle that? Is it voluntary or is it required? What's the deal there? So we feel  
20 that that requirement should be dropped.

21 While the guidance and the recommendations from CDC and CDPH  
22 continue to be updated due to the drop in COVID cases and with the vaccination  
23 programs throughout the state, the proposed ETS is very confusing in the workplace and  
24 is no longer necessary and should not be made permanent. Thank you very much.

25 CHAIR THOMAS: Thank you.

1 John?

2 MR. GOTCHER: Our next commenter is Len Welsh. And Len it looks like  
3 you're representing multiple organizations, so I would ask that you introduce yourself if  
4 you don't mind.

5 MR. WELSH: Yes. Can you hear me now?

6 CHAIR THOMAS: Yeah Len, go right ahead.

7 MR. WELSH: Sorry for the problems earlier. Good morning everybody  
8 Len Welsh, former chief of Cal/OSHA representing myself first of all, the California Hotel  
9 and Lodging Association, Grower-Shipper Association Of Central California, and the  
10 Ironworker Management Progressive Action Cooperative Trust, which is a labor-  
11 management partnership.

12 You know, one thing that has been clear from the moment we've had the  
13 ETS regulations in place is the difficulty of hardwiring requirements in the regulation.  
14 And the bureaucratic methods that are needed to make changes when new information  
15 comes along. We will be much better off if we have a situation where we can with some  
16 kind of fluidity follow guidance, which changes much more rapidly than regulations  
17 when new information comes along.

18 We kind of had a situation like that before the ETS. Cal/OSHA was  
19 enforcing the IIPP and that was working pretty well. Of course, there are certain things  
20 that the IIPP enforcement couldn't require like maintaining wages for somebody  
21 excluded. But we've gotten to a point now where I could see kind of a three-tiered  
22 enforcement approach.

23 The first thing of course, the Aerosol Transmissible Disease standard,  
24 which we've been relying on heavily ever since the pandemic appeared. That applies to  
25 healthcare and the more high-risk workplaces and has worked out very well. By the

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1 way, that was my idea when I was chief of Cal/OSHA.

2 A little history here, 2003-2004 we are all terrified of H1N5, a strain of  
3 influenza that has a 60 percent fatality rate when people catch it, 60 percent. People  
4 were terrified that that disease would become transmissible from human to human. It  
5 turned out there wasn't any significant jump in the virus's ability to go from human to  
6 human, it remained something transmissible only from chickens to humans. But we  
7 didn't know what was going to happen back then.

8 And after almost a decade of trying to get a tuberculosis standard  
9 through, which was just vehemently opposed by many industry groups, all of the sudden  
10 the waters parted and we were able to get started on a regulation that not only would  
11 finally cover tuberculosis, but would also cover novel pathogens we didn't yet know  
12 about. When that standard was adopted, I think it was 2008, it took a long time. It was  
13 a 7-0 vote by the Standards Board and I vividly remember the whole room clapping,  
14 because it was a consensus-based standard and it was historic.

15 So here we are now with the pandemic and an ATD standard that doesn't  
16 cover the average place of employment. It's targeted to the highest risk places of  
17 employment. I could see a three-tiered setup now. I could see going back to the Injury  
18 and Illness Prevention Program to cover the average workplace. Repainting the ETS  
19 standard to cover hotspot places of employment that are not covered by the ATD  
20 standard like, for example, meatpacking. And with that kind of structure, we'd probably  
21 have a nice fluid system that can rapidly follow changes in information that reflected in  
22 changes in guidance.

23 There actually is another approach we could use besides simply trying to  
24 enforce the IIPP and if -- I would ask you Board Members and folks from DOSH to take a  
25 look again at the ATD standard. And look specifically at section

1 5199(A)(2)(a)(2)(phonetic). That subsection contains exceptions for dental facilities or  
2 dental procedures from complying with the ATD standard if certain conditions are met.

3 One of those conditions is written is as follows, "The Injury and Illness  
4 Prevention Program includes a written procedure for screening patients for ATDs that is  
5 consistent with current guidelines issued by the Centers for Disease Control and  
6 Prevention, or infection control in dental settings. And this procedure is followed  
7 before performing any dental procedure on a patient concurrent whether the patient  
8 may present an ATD exposure risk." We could use that approach now. We could amend  
9 the current standard in subsection (a), where exceptions are listed or activities or places  
10 of employment that would not be covered by the current ETS.

11 We could add a subsection (a)(1)(e), "places of employment other than  
12 those listed in section (e)(1) below if all elements of the IIPP include provisions  
13 consistent with guidelines issued by CDC and/or CDPH." And a subsection (a)(1) below  
14 would list the exceptional places of employment like, for example, meat packing.

15 A final note here, it might be good if instead of referring to CDC as a  
16 source of guidelines we have seen what's controlled by our Governor. And the  
17 Governor instructs CDPH to be on top of this with guidelines targeted in addition to  
18 public health settings, workplace settings, dealing with the various kinds of settings, like  
19 just for example, a grocery store, having guidelines for those, conducting public  
20 discussions from time to time to get input on how things are working.

21 If CDPH become the authority and a standard by -- and this exception, as I  
22 suggested specifically lists it as the authority to look through for guidelines then we  
23 could have the best possible clarity for employers. First up, that presumes the  
24 Governor's office would be controlling its CDPH and controlling other organs in the  
25 executive branch to make everything consistent and seamless. That's possible. So that

1 would be that would be one suggestion I'd strongly urge you folks to take a look at.

2           The vaccination issue is problematic as we heard from Helen Cleary, but  
3 we have to confront it. Vaccinations are changing the landscape and we have to include  
4 provisions that let employers respond to the fact that they have a fully or mostly  
5 vaccinated workforce, relaxing the kinds of protections that don't make sense when  
6 those conditions exist.

7           Right now DOSH has got a toe in the water with some exceptions for  
8 workforce if they're 100 percent vaccinated. But we really ought to start thinking about  
9 working herd immunity concepts into this and recognizing that it's unrealistic to have a  
10 workforce that's 100 percent vaccinated. You can get close, but you can't get 100  
11 percent in most cases for the kinds of reasons Helen mentioned before.

12           I also want to commend Bruce Wick for the comments he made about  
13 supporting anything we do put into regulation with hard data, at least when hard data  
14 are available. And there are plenty of hard data that we can use as guidance.

15           So with that I think I will conclude my comments. I think it's a wonderful  
16 idea that we are holding back a little bit on making changes to the ETS. And I hope the  
17 reason we're holding back is because there will rapidly be a suggestion for new  
18 amendments that are much more in line with the Governor's proposed opening of  
19 California on June 15th, much more consistent with that, and with where the guidance  
20 seems to be going nationwide. Thank you very much.

21           CHAIR THOMAS: Thank you Len.

22           John?

23           MR. GOTCHER: Our next commenters are Brooke Billingsley, Mitch  
24 Steiger and Rob Moutrie with next Brooke Billingsley from the retail worker during the  
25 pandemic -- who is a retail worker during the pandemic.

1 CHAIR THOMAS: Brooke, can you hear us?

2 MS. BILLINGSLEY: Hi there, thank you so much.

3 CHAIR THOMAS: Good morning.

4 MS. BILLINGSLEY: Good morning. So my name is Brooke Billingsley. I've  
5 been a retail worker during the pandemic and I'm here to urge you to delay a vote on  
6 changing the Emergency Temporary Standard. I actually gave comment many months  
7 ago in support of this Emergency Temporary Standard. And I know it has really helped  
8 protect workers like myself throughout this pandemic. And while we are seeing things  
9 are improving and the situation is looking very good, right now I believe it's very  
10 premature to try to change a lot of these standards. Especially in terms of social  
11 distancing and masking for workers like myself who work in places like retail and for  
12 many workers in a lot of situations, especially in regards to the lack of enforcement for  
13 checking for vaccination.

14 I know from workplaces like the one I was in where I dealt with managers  
15 who were not following standards, and there was really no enforcement of that that it's  
16 going to basically, regardless of vaccination status, we will be seeing people just saying  
17 there's no more masks in the workplace. And no more social distancing. And that's  
18 concerning at this point when while things are improving we're about to see -- we're  
19 already seeing a massive increase in tourism. International tourism is coming back. I

20 This is a time where the pandemic can shift in very negative way even  
21 though we are currently improving. And it seems like delaying until we have a better  
22 idea is the safest thing for workers. And I really encourage you to wait a little bit longer  
23 to just before removing that, especially for workers who are dealing with public facing  
24 and are dealing with tourism. And unless there's better enforcement (indiscernible)  
25 fully vaccinated workplaces.

1 All right, thank you so much.

2 CHAIR THOMAS: Thank you, Brooke.

3 And can I -- whoever the next speaker is can I get you to moderate your  
4 rhythm and slow it down, because we have a transcript going. So John, who's up next?

5 MR. GOTCHER: Our next commenter is Mitch Steiger from the California  
6 Labor Federation, AFL-CIO.

7 CHAIR THOMAS: Mitch, how you doing?

8 MR. STEIGER: Doing well, how are you? Thank you Chair Thomas and  
9 members. I appreciate the opportunity to testify today, and very much appreciate all  
10 the work that's been put into all versions of this standard. I know it's very much a tough  
11 policy issue and a moving target and everyone is getting pulled in a million different  
12 directions. And so I just really want to applaud the work that everyone's done on all of  
13 this.

14 I guess to kind of separate our testimony into two sections, we'll first talk  
15 about the proposal for the new ETS as it stands right now. And then after that we'll get  
16 to what may be coming in the new version that we don't know exactly what that's going  
17 to say.

18 With respect to the one that we've got right now there are some helpful  
19 clarifications that we do support, some terms that have been used and then introduced,  
20 are more clearly defined, and we think that will definitely help with compliance. But  
21 there are also some issues that we think are worthy of reconsidering, one being this  
22 question of the N95s versus distancing and partitions.

23 A lot of people have brought this up. And I think there's an issue that  
24 comes up with most worker safety and health regulations where we have to manage the  
25 difference between what a regulation is going to look like on paper in writing, and how

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1 it's going to play out in practice. And I can't think of a case where it's more relevant  
2 than this one, overall, just the issue of the COVID-19 ETS. But then specifically with  
3 questions like this of what do we do with the N95s versus distancing and partitions?

4           Where I think everyone would agree that an N95 is a much more  
5 effective way of preventing someone from catching the virus versus the distancing and a  
6 partition. But given that one, you'll have pretty close to total compliance or you can  
7 have pretty close to total compliance versus an N95 that is going to be much, much  
8 harder to make sure that employers provide them, make sure workers wear them. A lot  
9 of workers can't wear them. That difference has to be managed.

10           And the reality of what's going to happen when we take away distancing  
11 and partitions and allow an employer to just provide N95s, I think it's safe to assume in a  
12 lot of -- maybe most of cases -- you won't see unvaccinated workers wearing those N95s  
13 for any number of reasons. And so the fact that N95s are more effective needs to be  
14 factored into that discussion of which one of these control measures is going to be more  
15 effective.

16           And I think the reality is N95s are tough. They should be provided, but  
17 we've got to build our standard around the fact that a lot of workers just aren't going to  
18 wear them for one reason or another. And so we think it makes sense to keep including  
19 partitions and physical distancing in our standard.

20           There are also we think some concerns with the concept of an employer  
21 who has documentation that a workforce is fully vaccinated and then they get out of big  
22 pieces or most of the standard. I'm trying to think about how this one would work in  
23 practice. It seems like an employer could in theory send an email out to their workforce  
24 saying, "Hey I've heard you're all fully vaccinated. Let me know if you're not." And the  
25 lack of an affirmative response could be enough for an employer to then argue, "Hey



1 I've got documentation here that everyone is fully vaccinated. I don't want to do any  
2 of these things that I don't have to do now." And we think that the standard could  
3 really benefit find some greater clarification there on exactly what "documentation"  
4 means.

5           It also, the way that it's written seems like it may allow employers to stop  
6 testing fully vaccinated workers even if they come down with a symptomatic case. We  
7 would argue that these are the probably the most important people to test, because  
8 this could be one of the rare but pretty expected breakthrough cases. It could be the  
9 sign of a stronger variant. It could mean that there's something going wrong with our  
10 process of determining vaccination. Or it could mean that the vaccines aren't working  
11 as well. And whether it's any of those or something else we think it's really important to  
12 test those workers and so especially if a fully vaccinated worker has a symptomatic case  
13 we should still be testing them. And so that's the standard as it stands, the new  
14 proposed standard as it stands right now.

15           To get to talk a little bit about what may be coming in the next version if  
16 the vote to delay does happen, it seems really important to really think about where we  
17 are right now; whereas a lot of other folks have mentioned a minority of the population  
18 is vaccinated. I think it's about 48 or 49 percent. But I just looked at the website and it  
19 looks like that doesn't include people who are too young to be vaccinated. And so I  
20 tried to figure out how many people that is, kind of tough to do. My best guess is about  
21 15 percent of the population is under the age of 12. And so you add that on top, a  
22 pretty strong majority of the population right now isn't vaccinated in addition to the fact  
23 that as we all know vaccines aren't 100 percent. No matter what you do pretty much  
24 every vaccine out there you are still going to have some cases, breakthrough cases have  
25 occurred.

1                   We also need to keep in mind that new stronger variants are still a  
2 possibility. It looks like the vaccines work pretty good against the ones that we already  
3 know about, but they don't work as well and there could be other variants still coming.  
4 We've got to keep that in mind.

5                   But the really important point we think is that all of these numbers we've  
6 got regarding how effective a vaccine is were developed in a world where everyone is  
7 wearing masks, everyone is social distancing, everyone's got partitions. Society has  
8 changed to deal with this virus. And if we just change society back to the way it was  
9 those numbers are probably going to go down. And a lot more people are going to get  
10 the virus, because there's going to be just a lot more exposure to it. And so all of that  
11 also needs to be considered along with the fact that we don't have the database that  
12 we're supposed to have. As Eric Frumin mentioned, that we were supposed to have a  
13 pretty good online database of outbreaks where they occur, so that we could use that  
14 information to make decisions about when it's the right time to take away masks. We  
15 don't have that database. And so one can definitely argue that it's premature to make  
16 these big decisions, because there's still so much we don't know about the problems  
17 that may still be out there.

18                   And also with respect to the numbers that have also been mentioned by  
19 a lot, we think 50 people a day is still a lot of people. To think about it in terms of  
20 another issue if we had 50 people a day dying from wildfires I don't think we would say,  
21 "Well that's a pretty good number. Let's stop trying to prevent wildfires. Let's start  
22 undoing the things that are really inconvenient or that might be expensive that prevent  
23 wildfires." I think we would all realize we got a serious problem, that we've got to step  
24 it up. But we're in this weird world where we've just kind of gotten used to these really  
25 staggering death tolls from this virus.

1                   But we need to keep in mind that is still 50 people. That is still the  
2 families of 50 people that are dying every day. And we need to base policy on that, not  
3 on how much worse things used to be but on how bad things still are. And they're still  
4 pretty bad.

5                   And we would also really respectfully push back against the argument  
6 that we should include Workers' Comp numbers in a serious way in determining how  
7 serious the exposure is. As we all know there are a lot of reasons why workers don't  
8 want to file comp claims for something like this. And the vast majority of cases are  
9 either mild or asymptomatic, so you're not going to see a whole lot of claims filed there.

10                  But more importantly, the virus really doesn't care whether it was  
11 occupational or not, whether it was occupational enough for the worker to file a  
12 Workers' Comp claim or not. If an outbreak starts in a place where there are a lot of  
13 people who aren't vaccinated and whether it's a barbecue or a workplace or whatever,  
14 it's still a major concern. And it's still going to hurt and possibly kill a lot of people. And  
15 so we really need to build our policy around that.

16                  And then the final point that I'd like to make as was mentioned very well  
17 by Maggie Robbins, workplaces are fundamentally different from what you choose to do  
18 outside of the workplace. A person can very much make their own decision about  
19 whether they want to go to a social event or get on a plane for a vacation or go to a  
20 certain store and whether or not that risk is worth it to them. People really can't do that  
21 in the workplace. Your job is where you need to go to earn the money that you need to  
22 have to survive. Jobs can be very hard to find and workers are often pretty much where  
23 they are and they don't have the option of just going somewhere else. And they don't  
24 have a whole lot of say over how much risk they're forced to deal with. Those decisions  
25 are largely made by their supervisors, by the nature of the industry that they're in, a

1 whole lot of other factors that they have very little control over.

2           And that fundamental difference really needs to be factored into this,  
3 that when the CDC says fully vaccinated people don't have to wear masks it's different if  
4 it's your workplace where you may be surrounded by people who are unvaccinated.  
5 And even if you are vaccinated maybe you're immunocompromised and you don't know  
6 for sure how well that's going to work. Or you know, you're just exposed to so much  
7 that the risk of you getting a breakthrough case is still pretty high.

8           And we really think it's important to keep in mind that the CDC guidance  
9 that says fully vaccinated people don't need to wear masks, if that's based on an  
10 assumption that those who are unvaccinated are actually going to be the ones who  
11 wear masks and N95s indoors that's a fantasy. I think we all know that's not going to  
12 happen. That the people who are -- those out there who are very intent on not getting  
13 the vaccine, are the exact same ones who are not going to wear a mask. And so we're  
14 not going to know who they are. The risks of exposure are going to go up. Workers are  
15 going to be more in danger. And we're not sure that that's the best metric to use or the  
16 best yardstick that we should base our statewide standard on.

17           We should be really careful. We should keep in mind all the differences.  
18 Ad we should tread very carefully in considering how we're going to change this  
19 regulation. Thank you.

20           CHAIR THOMAS: Thank you, Mitch.

21           John, who's up next?

22           MS. SHUPE: John, before we go to the next person I'd just like to make  
23 an announcement and remind everybody that the chat function in WebEx is strictly for  
24 registering your attendance in the meeting if you wish to do so. If you wish to join the  
25 comment queue for public comment, please email [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). Thank you.

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1 CHAIR THOMAS: Thanks, Christina.

2 Who do we have up, John?

3 MR. GOTCHER: Our next commenters are Rob Moutrie, Saskia Kim and  
4 Bryan Little with next up being Rob Moutrie from CalChamber.

5 CHAIR THOMAS: Rob --

6 MR. MOUTRIE: Good.

7 CHAIR THOMAS: Go right ahead.

8 MR. MOUTRIE: Thank you, Mr. Chair. Good morning, everyone and I will  
9 do my best to not take all the way until lunch. So first, I'd like to thank the Board --

10 CHAIR THOMAS: Let's hope so.

11 MR. MOUTRIE: I'd like to thank the Board and Division staff for their work  
12 on this. Obviously this has been around the clock task for months to almost a year now,  
13 I suppose. And that work is appreciated.

14 Regarding the proposed amends to the COVID-19 ETS, which the Board  
15 had been set to vote on today I think like many of the speakers I'd like to say that we  
16 appreciate many of the improvements that were there. As Mitch just noted, there were  
17 a number of definitions that were cleared up and improved that we are thankful for.  
18 Notably we are thankful for the inclusion of vaccines, though we have some concerns  
19 with exactly how that is applied, which I'll get to in a second. We're glad to see them  
20 recognized. They are scientifically proven and life-changing and life-saving.

21 I'd also like to express appreciation for the changes to clean air  
22 requirements. I know that catching up with modern science we know surface-based  
23 transmission is not the issue we thought it was initially, thankfully. And so we're glad to  
24 see those improvements to catch up as well, which are much more workable for  
25 employers.

1                   With that said I'll turn to some of the more specific concerns and many  
2 of the places where we think the ETS, the amended ETS as drafted is less feasible or less  
3 clear than we had hoped. So first as an initial matter we see the difference between the  
4 July 31st date and the July 15th — excuse me, June 15th date as a huge source of  
5 confusion and problems amongst employers. I had since this draft was released, just  
6 over a week ago I suppose, I've had so many calls saying wait, "What are we doing on  
7 June 15th? What's happening July 31st? Why are these different?" And frankly we  
8 don't see the wisdom in that distinction, so we hope that as part of the amendments  
9 that Mr. Berg I'm sure will be working on shortly, that's something that can be  
10 addressed.

11                   Turning to specific concerns, and I will not go through our complete  
12 concerns, which are more fully addressed in our letter, but will highlight the largest  
13 points I think. First we have significant concerns with the amended ETS's requirements  
14 using — excuse me, providing N95s both pre and post-July 31st. And those have been  
15 expressed by a number of other speakers, but what I would like to add is a little bit of  
16 background math as we see it. Kind of back of the envelope math on the scale of that  
17 requirement so the Board has a sense of, as we see it, what that competition will be,  
18 basically healthcare workers, first responders, those looking for wildfire.

19                   And also outside of the U.S. right in other countries where they're dealing  
20 with more active infections, India comes to mind obviously. Those supplies are needed  
21 in the professions that are perhaps more frontline.

22                   So for some back-of-the-envelope math California has about 17 million  
23 employed workers. If we assume, as has been discussed, the vaccination rate today is  
24 just under 50 percent with another 13 percent or so in between doses. But we can just  
25 for now let's assume that number will rise and by July 31st or so let's assume we get to

1 75 percent.

2                   Okay, if 1 in 4 workers is unvaccinated that still leaves us over 4 million  
3 workers who are unvaccinated. And presumably that's the portion who are firmly  
4 vaccine-hesitant let's say. Well let's assume half of those are indoor. We still have 2.1  
5 million workers who will be consuming N95s on a regular basis. And the standard isn't  
6 perfectly clear about exactly how often those might need to be handed out. Notably, I  
7 think DOSH just pulled off of their website, guidance on ongoing or repeated use of  
8 N95s. But assuming those are used let's say twice a week, we're talking about 4 million  
9 N95s a week.

10                   That's a considerable demand that I think we need to see some numbers  
11 about how that will affect other industries and costs. Because that's a huge demand as  
12 we see it going through the pendency (phonetic) of this emergency regulation, right?  
13 Not just a couple of months like in wildfire season or something to that effect.

14                   I also would like to note that those masks when we compare them  
15 against what the obvious alternative is, what we've been using, which is face masks --  
16 that we've all seen them everywhere -- which have been effective for us. These N95s  
17 will not be fit-tested, medically evaluated. As we've all talked about the beard issue,  
18 beards like mine -- Kevin's obviously comes to example -- those make the fit an issue  
19 where these N95s won't be providing the full effective protection. Because they are  
20 not, the way that healthcare workers and others wear them, we're not (indiscernible)  
21 seen everywhere, so we're looking at something that is not going to provide -- The  
22 medical benefits are in my mind a small difference from what we've been using. The  
23 costs are huge and the cross-industry competition issue is a public policy problem. We  
24 have severe concerns about that specific inclusion, particularly post-July 31st once it's  
25 expanded to all indoor unvaccinated work.

1                   Regarding vaccines, I think that a number of people have discussed the  
2 documentation issue. I'd just like to clarify one point. I certainly (indiscernible) we look  
3 forward to clarity on what documentation might be, and I know many employers have  
4 concerns about how to acquire that information, respectfully, of privacy concerns and  
5 maintain it. But I do want address one point that's been raised by multiple speakers,  
6 which is the idea that this documentation requirement isn't somehow imaginary and it  
7 will be open season about who is and isn't vaccinated.

8                   I mean that's just not true under the text, right? To the extent there is a  
9 requirement of vaccination employers will have to have that and Cal/OSHA will enforce  
10 that. And that means we will not be an open season, we will know if someone is or isn't  
11 vaccinated. Again, FAQs pending hopefully that issue can be addressed. But we're not  
12 talking about moving to open season here, right? We're talking about respecting the  
13 efficacy of scientifically proven vaccines.

14                   One other point that I see that has not been raised that and I think needs  
15 to be considered going forward, the standard in some places recognizes vaccines as a  
16 safety precaution on the (indiscernible) terms with naturally acquired immunity from  
17 someone who has infected. In other places however natural immunity --

18                   MS. SHUPE: Rob, I'm so sorry to interrupt you but one, we need to start  
19 to address the time issue and two, I need you to slow down for our translators and our  
20 court transcriptionist.

21                   MR. MOUTRIE: You're so right. Thank you Christina, my apologies. And I  
22 will try to close up quickly.

23                   So we'd like to see vaccines and natural immunity considered on equal  
24 footing. After all, natural immunity is also effective as is recognized in some places.

25                   I'll skip over the issue of barriers and dividers and putting them in and out



1 as a feasibility concern was well addressed by Katie Hansen for restaurants. We  
2 absolutely agree with that concern.

3 I'll turn then to an underlying kind of concern, which is we believe it looks  
4 like the way the ETS is drafted this burden of N95s and other pieces seems to be forced  
5 to set up employers to require vaccination. And to be clear, CalChamber is in favor of  
6 that. We have spoken out on that front multiple times. We're in favor of I should say,  
7 vaccines.

8 The concern that we have is we don't believe that requiring employers to  
9 do it across the state is the policy build that's fair. Certainly, in certain regions where  
10 vaccine has a tendency as more prevalent, those employers may not be able to fill those  
11 jobs when they let those people go. That's an economic problem and a logistical  
12 problem that's regionally amplified. And we think that should be considered if the  
13 underlying goal seems to be to push towards compelling vaccination.

14 One last point, which actually I'll clarify quickly and I'll be done, apologies  
15 for the time. There's been much discussion about the present vaccine rate at 50  
16 percent. I think that's the wrong piece of data to look at. When we look at 13 percent  
17 of the population being partially vaccinated and we consider this standard will be  
18 passed in like 2 to 4 weeks when Mr. Berg comes back, and then 10 or so days for OAL,  
19 we should really be looking at who we have vaccinated then. And if you look at then we  
20 have another 13 percent we will certainly be a majority of California thankfully. But let's  
21 keep in mind our frame of reference. We're planning for tomorrow not today.

22 The last point I'll make, and this is a hopeful reminder for anyone who  
23 (indiscernible) vaccinated, actually Mr. Sanchez commented that sick leave cannot cover  
24 vaccination, that is incorrect. COVID-19 supplemental sick leave does allow time for  
25 vaccination appointments. I know, I used it for my own and I would urge any workers

65

1 who are listening or anyone listening who isn't vaccinated, to take advantage of that.

2 So in conclusion thank you. We appreciate many of these corrections.

3 However, we certainly have substantial concerns and look forward to either  
4 amendments that Mr. Berg is bringing shortly or quick FAQs and advisory committees to  
5 address them. Thank you.

6 CHAIR THOMAS: Thank you.

7 John, who do we have up next?

8 MR. GOTCHER: Our next commenter is Saskia Kim from the California  
9 Nurses Association/National Nurses United.

10 CHAIR THOMAS: Thank you. And can I ask that you, whoever is going to  
11 speak next and after that, slow down just a little bit and try and keep your comments to  
12 two or three minutes if possible. We'd appreciate that, thank you.

13 MS. KIM: Thank you. Good morning, Saskia Kim of the California Nurses  
14 Association. Thank you for the opportunity to testify. At the outset I would just  
15 mention that most of our nurses are covered by the ATD standard and so are not  
16 covered by the ETS. However, we do have call center nurses who are covered by the  
17 ETS. And quite frankly all of the workers covered by the ETS could potentially become  
18 one of our patients, because what happens outside the hospital happens inside the  
19 hospital.

20 In recent days since the CDC relaxed protective measures like masking,  
21 testing, and isolation for fully vaccinated people we have been vocal about our concerns  
22 that easing back on protections now is not based on science, it does not protect public  
23 health, and threatened the lives of patients, nurses and other frontline workers across  
24 the country. Preventing and reducing transmission of COVID-19 requires multiple layers  
25 of protective measures.

1                   It's the Swiss-cheese approach to respiratory virus pandemic defense.  
2 No single intervention is perfect at preventing spread. They all have holes. But if you  
3 stack multiple interventions together, you can prevent the virus from passing. Vaccines  
4 are just one slice of cheese in this scenario. The other slices include masks, testing,  
5 isolation, distancing, and avoiding crowds and large gatherings. Importantly it also  
6 includes protecting frontline workers from workplace exposure to the virus. Again,  
7 vaccines are only one important component of a robust public health infection control  
8 program. All of our protective measures should remain in place in addition to vaccine.  
9 As much as we want it, this pandemic is not over.

10                   And we would also point out the following with regard to the scientific  
11 evidence that the CDC used to update its guidance. First, the CDC relied on a high  
12 number of preprints, which are preliminary works that haven't been certified by peer  
13 review and shouldn't be relied on to guide clinical practice or health-related behavior.

14                   Second, CDC cited studies that have been authored by individuals who  
15 have reported financial conflicts of interest and/or relationships with Pfizer and other  
16 companies.

17                   And finally, the CDC actually cited a Pfizer press release as data to guide  
18 public health recommendations and clinical guidelines.

19                   In terms of the specific changes to the ETS we have concerns that  
20 beginning June 15th employers — I'm sorry, July 15th employers only have to make  
21 testing available to employees who are symptomatic and not fully vaccinated. So that  
22 means that testing under this subdivision does not need to be made available to fully  
23 vaccinated employees, even if they are symptomatic unless they had a close contact  
24 with a COVID case in the workplace or if there's been an outbreak, again, provided they  
25 have symptoms.

1                   And if the Board considers approving changes to masking, physical  
2 distancing, and testing requirements CNA asks that you also consider the following.  
3 First, the circulation of COVID variants of concern that are more transmittable, deadly,  
4 and may already be or may become vaccine-resistant.

5                   Second, there are unanswered questions about vaccines. Nurses  
6 emphasize that it's unclear how well vaccines prevent asymptomatic and mild COVID  
7 infections, how well vaccines prevent transmission of the virus, and how long protection  
8 from vaccines will last.

9                   And third, the CDC announced it would no longer be tracking infections  
10 among fully vaccinated people unless they result in hospitalization or death. That  
11 means the CDC is no longer tracking data necessary to understand whether vaccines  
12 prevent asymptomatic and mild infections, which can cause long-term implications for  
13 COVID patients. They're not tracking how long vaccine protection may last and to better  
14 understand how variants impact vaccine protection.

15                   Again, nurses believe that all of our protective measures should remain in  
16 place in addition to vaccines. The pandemic is not over. Thank you for the time, I  
17 appreciate it.

18                   CHAIR THOMAS: Thank you.

19                   Who do we have next, John?

20                   MR. GOTCHER: Our next commenters are Bryan Little, Karen Tynan and  
21 Cassie Hilaski with next Bryan Little from the California Farm Bureau.

22                   CHAIR THOMAS: Bryan, can you hear us?

23                   MR. LITTLE: Yes, I can.

24                   CHAIR THOMAS: Go right ahead.

25                   MR. LITTLE: Good morning, Mr. Chairman and Board Members and

1 agency staff. Thank you for the opportunity to offer some comments today. I  
2 represent California Farm Bureau, which represents more than 30,000 farmers and  
3 ranchers producing more than 400 food and fiber commodities in 53 of California's 58  
4 counties, employing thousands of Californians and feeding millions of Americans and  
5 people around the world.

6 I'd like to associate Farm Bureau with the written comments offered by  
7 CalChamber on behalf of a broad coalition of employer advocates. California  
8 Association of Winegrape Growers on behalf of the broad coalition of the agricultural  
9 employer advocates. And Phylmar Regulatory Roundtable on behalf of its members,  
10 and a number of statements offered thus far by several of my colleagues representing  
11 employers here.

12 We appreciate that the Standards Board is considering revisions to the  
13 ETS to recognize, if belatedly, the reality of the availability of highly effective COVID-19  
14 vaccines. We are appreciative of other changes made in the draft the Board is  
15 considering today. However, events have largely overtaken both the November 2020  
16 ETS and this proposed revision of the ETS.

17 The Centers for Disease Control issued guidance last week to the effect  
18 that vaccinated people can forgo masking in most situations, indoors and outdoors, with  
19 limited exceptions. Governor Newsom has clearly stated that he intends to reopen  
20 most activity in California on June 15, including discontinuation of masking in most  
21 circumstances.

22 The draft revision to the ETS released on May 7 was plainly at odds with  
23 later CDC guidance and the governor's later stated intention for reopening. The draft  
24 revision of the ETS featured extensive use of N95 respirators for unvaccinated people  
25 and continued use of face coverings as well as other numerous restrictions in workplace

1 activities that CDC guidance indicates are no longer necessary.

2 The agency to its credit has recognized that this proposed revision of the  
3 ETS is out of step with the Governor's stated intentions and CDC guidance. And has  
4 asked the Board not to vote to approve the proposed revision to the ETS the Board was  
5 scheduled to consider at today's meeting. We think that's a reasonable thing to do and  
6 we look forward to working with the agency in developing a way forward in light of  
7 CDC's guidance, anticipated future guidance from the California Department of Public  
8 Health and the Governor's expressed wishes.

9 So what's the way forward? Well first, we think that we need to go back  
10 to the drawing board here. The agency and Standards Board should seriously reconsider  
11 the necessity of any COVID-19 standard or any infectious disease standard outside the  
12 context where employees may be exposed through the normal course of their duties,  
13 like healthcare providers and first responders. The regulatory process that led to the  
14 existing standard clearly illustrated that any regulatory action would be obsolete on the  
15 day it became effective and would become more so with the passage of time. This is the  
16 case with the November 2020 ETS, which they don't mention whatsoever on the  
17 workplace impact of vaccines, which became available in December of 2020 when the  
18 ink on the original ETS was barely dry. Sorry about that. Was scarcely dry.

19 It simply is not possible for the agency and the Board to promulgate and  
20 approve regulations and amendments quickly enough to adjust to the constantly  
21 evolving pandemic. For this reason alone we strongly recommend the agency and the  
22 Board take whatever action is necessary to withdraw the November 2020 ETS. We hope  
23 the Board will follow the agency's request in not voting to approve the May 7th  
24 proposed revision today.

25 When the Board considers whatever future action the agency

1 recommends we hope all parties will keep in mind the need that the agency already  
2 had tools in hand prior to the November 2020 ETS in the form of extensive industry-  
3 based guidance and enforcement of that guidance to the injury and illness prevention  
4 regulation.

5 We also would strongly recommend that the agency not mandate the use  
6 of N95 respirators when CDC is rapidly unwinding face covering requirements. A  
7 requirement for extensive use of N95 respirators in this context is going to lead to  
8 shortages of respirators as we saw last summer in the context of the ongoing pandemic  
9 and the wildfire smoke problems that we had last summer.

10 It's going to cause shortages in other places, in other parts of the United  
11 States other than California where we are going to probably have a severe a wildfire  
12 season this year. And we will be denying access to respirators to people that need them  
13 immediately, because of a variety of different needs.

14 I'm not going to comment anymore, because a lot of what I wanted to  
15 say has already been said. But I'd like to thank you for the opportunity to comment and  
16 again to associate myself with the comments of many of my colleagues who have  
17 already spoken. Thank you

18 CHAIR THOMAS: Thank you.

19 Who do we have next John?

20 MR. GOTCHER: Our next commenter is Karen Tynan from Ogletree,  
21 Deakins, Nash, Smoak & Stewart, P.C.

22 MS. TYNAN: Hello, I think it's still morning. Good morning, Chair  
23 Thomas, can you hear me?

24 CHAIR THOMAS: I can. And I want to make one comment before you  
25 proceed. After your comments we're going to take a 15-minute break, so this will be

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1 the last comment before we take a 15-minute break. So go ahead Karen, the pressure  
2 is on, before noon hopefully.

3 MS. TYNAN: I know and it will give people 15 minutes just to think about  
4 what I'm saying while they eat, so I appreciate that you've teed me up. Thank you so  
5 much. This morning has been very helpful.

6 I do want to offer the perspective for those who don't know me. I'm a  
7 practitioner. I'm a workplace safety practitioner, an attorney that not only litigates  
8 OSHA citations but also provides advice and counsel. I think that's very important for  
9 people to understand, so that you can understand my perspective in working with  
10 employers to be compliant.

11 In thinking back to November and December I'd like to just offer three  
12 comments from where we've been and where we are today. It's pretty clear to me that  
13 there likely won't be a vote today, but we'll see. The present proposal certainly looks  
14 backwards not forwards. I agree with Mr. Moutrie on that. It's more consistent with  
15 May 2020 than May 2021.

16 There are three things I think that we need: we need clarity in definitions,  
17 obviously vaccinations. We need more clarity around documentation. We need more  
18 clarity around how vaccinated people will be treated at work. And as an advice and  
19 counsel person, I need to understand how to counsel people on that.

20 Secondly, and I'm not going to beat the flies on a dead horse about N95  
21 respirators. I think Ms. Cleary gave the best analysis on that. I would like to add that  
22 immediately when the draft was issued about 10 days ago my clients began almost a  
23 frantic search for supply lines for N95 masks in anticipation of this possible regulation.  
24 And if we think back to May 2020, and I think many people will recall that there were  
25 massive shortages. I know many of my clients received shipments of N95s through back

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1 channels such as county public health departments, re-packaged, re-marketed  
2 vendors. I'd like to avoid that again. And so along with Ms. Cleary I think the N95  
3 sections, which include CAE and others need to be deleted or possibly redrafted.

4 And I'd like to make one final comment as a practitioner about the  
5 feasibility of enforcement. I just checked the DOSH website this morning where  
6 citations are posted. I think many of us know and realize that the IIPP regulation is  
7 being fully enforced with regard to COVID. You can take a breeze down all those  
8 citations and see that the enforcement of COVID-related hazards in citations, there  
9 hasn't been a lack of that. And so I want to make sure I give the Board the information  
10 that there still is enforcement and there is not a lack of tools with regard to  
11 enforcement on the COVID hazards.

12 So I'll close out, because I suspect other people already have their soup  
13 and sandwiches ready to go. And I appreciate the opportunity, Chair Thomas. And I  
14 respectfully request that the Board Members consider the no-vote, or not voting on this  
15 today, so that improvements that are forward-looking can occur. Thank you, sir.

16 CHAIR THOMAS: Thank you, Karen.

17 At this time the Complaints Department will be closed for 15 minutes.  
18 We'll be back at 10, at 12:15. So we'll be right back and we'll see you then.

19 Mr. GOTCHER: And when we return, the next commenters are Cassie  
20 Hilaski, Matthew Allen and then Anne Katten. Thank you.

21 (Off the record at 12:00 noon.)

22 (On the record at 12:17 p.m.)

23 CHAIR THOMAS: Thank you, John.

24 We are back in session and we still have a few commenters left. And I  
25 would say once again try and don't speak too fast and try and keep your comments to

1 about two or three minutes. We'd appreciate it.

2 So John, who do we have up next?

3 MR. GOTCHER: Our next commenter is Cassie Hilaski from Nibbi Brothers  
4 General Contractors.

5 CHAIR THOMAS: Cassie.

6 MS. HILASKI: Hello.

7 CHAIR THOMAS: Hi.

8 MS. HILASKI: Can you hear me, I assume? All right, so first of all I'd like  
9 to thank the Division for all your hard work in updating the regulations. I know it was a  
10 lot of work. And it was great too that you engaged with the stakeholders in February  
11 and really took our comments into consideration, so thank you very much for that  
12 opportunity in February.

13 I also echo Helen Cleary's very thorough and accurate comments. I am  
14 very concerned with the proposed language and the updated ETS about creating two  
15 classes of employees. That creates the very real likelihood for harassment and  
16 discrimination.

17 I also appreciate Len Welsh's comments regarding how the lessons  
18 learned in the ATD Standard could be applied to COVID-19 today and using CDPH as an  
19 authority to where we're at today. To that point, the inability to keep up with the  
20 current science is exactly why we requested repeatedly last year that we not have an  
21 ETS standard put into place during an ongoing pandemic. And now we're seeing the  
22 very real problems that proposes, so that's why I really liked Len Welsh's suggestions  
23 that would address that problem.

24 That said, so if the proposed delay to the current ETS is only to  
25 incorporate more distinctions, distinctions between vaccinated and unvaccinated

1 personnel then I would actually recommend that the Board proceed with today's vote  
2 to at least bring us up to April 2021, because we're currently stuck in December 2020.

3 I also believe, I know my employees, they really need to see progress  
4 towards normalcy. And for example, the proposed suggestion to relieve the  
5 requirement for physical distancing on July 30th is actually an important morale booster  
6 for our workers, especially when it's possible that most workers could be vaccinated by  
7 that date. Of course I don't imagine that the Board is actually going to decline Eric  
8 Berg's requests and will indeed delay the proposed updates.

9 Therefore if that is the case I would like to request that you at least  
10 consider as many have in not requiring the -- sorry, consider striking the proposal for the  
11 requirement for N95 respirators to be provided to unvaccinated personnel for use on a  
12 voluntary basis. That seems unnecessary given the fact that face-coverings have worked  
13 effectively for months. And in the face of another severe wildfire season there will be  
14 added pressure on the supply of N95 respirators. I want to clarify my concern is not  
15 financial. It's really the ability to comply in the face of excessive industry demand. And  
16 the fact that I simply don't think it will make anyone safer.

17 And as radical as it sounds I would also suggest that the Board seriously  
18 consider ending the ETS in conjunction with the state's June 15th date or the proposed  
19 July 30th date that was referenced in the updated ETS.

20 I think we have to remember why we put controls in place at the very  
21 beginning of the pandemic. It was not to eradicate the virus or to prevent every person  
22 in the country from contracting the virus. It was actually to flatten the curve and not  
23 have to turn people away from the hospitals when they needed treatments. So with the  
24 vaccination readily available, which will keep many from either getting the virus or  
25 needing hospital treatments I think it's time to start to consider a sunset date for the

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1 ETS, whatever date that people think that point in time is truly feasible.

2           So three possible options: if you don't vote on the updated ETS today  
3 please remove the creation of two classes of personnel “vaccinated versus  
4 unvaccinated;” and/or remove the requirement for N95 respirators for voluntary use of  
5 unvaccinated personnel.

6           Two, if there will be no consideration of addressing the concerns around  
7 the language regarding vaccination and unvaccinated personnel then please vote on the  
8 ETS today so we can at least be updated to April 2021 and not be stuck in December  
9 2020.

10           And then finally, start to consider an end date for the ETS to be June 15th  
11 or July 30th or whenever the experts expect all who want the vaccination to have had  
12 the opportunity to receive it and achieve full inoculation. So that whoever actually gets  
13 the virus is much less likely to either die or need hospitalization.

14           Thank you very much for -- oh, here in my comments, although there is  
15 one administrative note I did want to request. I don't know if you all realize that  
16 California's Blueprint for a Safer Economy still references the COVID industry guidance  
17 for construction that the CDPH and Cal/OSHA issued last July. And that has not been  
18 updated, that document. And some of the counties are still referencing that document  
19 to the regulated community. And it's not in sync with the current ETS, so it creates  
20 some confusion. So if you could either change the reference to be the ETS or update  
21 that document I think it would also help with some of the confusion that's being caused  
22 by this reference. Thank you very much.

23           CHAIR THOMAS: Thank you, Cassie.

24           Who do we have up next John?

25           MR. GOTCHER: Our next commenter is Matthew Allen from the Western

1 Growers Association.

2 MR. ALLEN: Good afternoon, Mr. Chair and Members of the Standards  
3 Board, Committee and Division staff. I'm Matthew Allen with the Western Growers  
4 Association and we represent fresh produce growers in California, very vertically  
5 integrated growers who grow, harvest, ship and pack fresh produce. We appreciate the  
6 opportunity to comment today regarding the proposed amendment to the ETS. We  
7 would associate our comments largely with those made by Bryan Little from the  
8 California Farm Bureau Association and from Mr. Moutrie from California Chamber of  
9 Commerce.

10 We think that given where we are today with the changing guidance from  
11 CDC, upcoming changes and guidance from CDPH, and with the governor's reopening  
12 plan that the ETS remains out-of-date and out-of-sync with that standing guidance. And  
13 we believe that this is the time for the ETS to actually be rescinded.

14 We are pleased that vaccinations are finally being recognized as the  
15 ultimate mitigation factor to mitigate COVID spread and to prevent illness. We would  
16 ask that the Standards Board work with the Division to do FAQs immediately to  
17 recognize that given that vaccinations are occurring at a very fast pace throughout the  
18 state across industries and especially within the agricultural sector.

19 We also have a concern regarding the N95s now being placed in the ETS  
20 proposed amended language. We are concerned, again not on a cost issue, but on a  
21 supply issue as we will be competing with healthcare. We'll be competing with issues to  
22 comply with wildfire smoke regulations. That we will be experiencing a shortage of  
23 N95s that will then put our folks out of compliance when they're intending all-on to  
24 comply with anything coming out of the Standards Board and the Division.

25 So at this time, we would request that the ETS be rescinded and we roll

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1 back to the guidance that Cal/OSHA can continue to issue as conditions change. And  
2 that would then recognize sort of the fluid situation we find ourselves in regarding  
3 COVID-19. Thank you.

4 CHAIR THOMAS: Thank you.

5 John, who do we have up next?

6 MR. GOTCHER: Our next commenters are Anne Katten, Puja Navaney,  
7 Beverli Marshall, with next being Anne Katten from the California Rural Legal Assistance  
8 Foundation.

9 MS. KATTEN: Hi, good afternoon. This is Anne Katten. Can you hear me?

10 CHAIR THOMAS: Hi Anne, go right ahead.

11 MS. KATTEN: Okay, great. Thank you. We support the comments  
12 previously of Maggie Robbins, Mitch Steiger, Saskia Kim, Ms. Le and Ms. Billingsley and  
13 just echo that we need to be cautious about rolling back protections. And mindful also  
14 that in rural areas of the state vaccination rates have been lower and case rates have  
15 been higher, especially among farm workers.

16 Just to address a few specifics in the proposal, which I recognize is not  
17 going to be voted on today we think the definition of “fully vaccinated,” needs to  
18 incorporate the need for boosters with time and emergence of new variants.

19 We support the proposed requirements to improve ventilation in work  
20 areas and employee housing. And think we need to keep in mind that this will also help  
21 respond to future pandemics and to wildfires to protect workers in those situations.

22 We're concerned about the proposed rollback in protections for  
23 employer-provided housing and transportation. Especially the deletion of provision of  
24 meals for ill workers who are being housed, many of whom you know are away from  
25 their home, from their countries, and they're isolated.

1                   We also feel that the proposed rollback of disinfection of shared  
2 equipment and frequently touched surfaces in vehicles is too extreme. You know, we  
3 recognize this isn't the principle way of being exposed but those are close, frequent  
4 contacts. And we think that the proposed requirements that only require disinfection  
5 after someone who becomes infected has touched the surfaces won't work, because  
6 you don't find out about the infections right away anyway.

7                   And we greatly appreciate the work of the Board and the Division on this  
8 and look forward to continuing at the discussion. Thank you.

9                   CHAIR THOMAS: Thank you.

10                  John, who do we have?

11                  MR. GOTCHER: Our next commenter is Puja Naveney from the Los  
12 Angeles Area Chamber of Commerce.

13                  CHAIR THOMAS: Go right ahead, sir.

14                  (No audible response.)

15                  MR. GOTCHER: Puja Naveney, are you on the line? And if you are a call-  
16 in user you need to press “\*6” to unmute yourself

17                  MS. BRUNO: Hello, can you hear me?

18                  CHAIR THOMAS: Oh yes, go right ahead. Sorry about the sir, ma'am, go  
19 right ahead.

20                  MS. BRUNO: Yeah, sorry. Puja Naveney was not able to continue on the  
21 waiting for the call, but this is Patricia Bruno. I'm calling on behalf of the Los Angeles  
22 Area Chamber of Commerce to provide comments on Petition 583.

23                  CHAIR THOMAS: Go right ahead.

24                  MS. BRUNO: On behalf of all the 500,000 businesses in Los Angeles and  
25 the 1,400 members that are part of L.A. Chamber, we are here to strongly voice our

1 concerns to the readoption of the emergency regulations on COVID-19, resulting in this  
2 petition.

3           So some of the comments we would like to share with you or where we  
4 have concerns is that after July 31st employers will be required to provide N95  
5 respirators for voluntary use. There is a lack of clarity regarding the use of N95 masks  
6 and whether we can make them available or have to actively offer them on a regular  
7 basis to vaccinated workers.

8           The definition of “exposed group” is overly broad. Also we are concerned  
9 that it could put an onerous on the employers to identify, which employees are  
10 vaccinated versus unvaccinated in order to relax physical distancing and face-covering  
11 requirements. With the infection rate currently being low and vaccines readily available  
12 why must we have to monitor the entire workforce?

13           Also, notifications of a possible exposure to have -- go out when  
14 employers know or should have known about a positive COVID case. You know, people  
15 can now go about freely and do things outside of -- from their homes. And so this  
16 presumes that we should know where our employees are at all moments and time and  
17 could potentially be exposed.

18           Next, this will require installation of solid partitions at worksites after July  
19 31st when people can't physically -- can't see around. I guess this will require lots of  
20 Plexiglas and partitions at our cubicles and office space without any science to say it  
21 makes more worksites safer.

22           Again, if the goal is to open up, because the infection rates are low, why  
23 are these new requirements being added?

24           There also needs to be consistency and alignments with all the state  
25 guidelines.



1                   Also an area of concern is that there is just a lack of consistency. If you  
2 look at the different counties, Orange County, San Bernardino, Ventura and Los Angeles  
3 County, they all have different guidelines. So we would request that the state be  
4 consistent, provide some consistency to not have this onerous regulatory burden on  
5 businesses to try to understand what rules they should be following.

6                   So due to these reasons we are respectfully asking you to reconsider the  
7 adoption of this petition. Thank you.

8                   CHAIR THOMAS: Thank you.

9                   John, who do we have up next?

10                  MR. GOTCHER: There are four commenters left in the queue at this time,  
11 with the next few being Beverli A. Marshall, Cynthia Rice, Michael Miiller, with next  
12 being Beverli Marshall from the Valley Sanitary District.

13                  MS. MARSHALL: Hello, good afternoon. Can you hear me okay?

14                  CHAIR THOMAS: Yeah, speak a little louder but go ahead.

15                  MS. MARSHALL: Okay I will do my best. So I am the General Manager for  
16 Valley Sanitary District, which is a small to medium special district in the Coachella  
17 Valley that provides wastewater services. And I am speaking on behalf of my agency,  
18 but I can say that this probably is similar to what other special districts are experiencing  
19 which is very early on we wholeheartedly followed of the recommendations.

20                  And we immediately implemented policies, procedures and different  
21 engineering and administrative barriers to keep the public and our staff safe. Only to  
22 find out that we -- many of the items that we purchased were not going to be  
23 reimbursed by FEMA under those conditions.

24                  Again, we found out we were not going to be included in the federal  
25 funding for COVID relief. And because of that we were going to have to bear the burden

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1 of purchasing all of the PPE and implementation, things like computers, laptops for  
2 people that needed to work from home, installing barriers, the Plexiglas barriers. We've  
3 installed cubicles where we had open shared spaces. And then in the most recent round  
4 of COVID funding, we again were left out. Special districts received absolutely zero  
5 funds. The state has the option of passing on those funds, which it has not said that it  
6 would do so.

7 In your new requirements for us to provide, continue to provide and then  
8 on top of it provide additional PPE like the N95s where the regular masks that we have  
9 been using that were compliant, have been doing a good service, we would now have to  
10 purchase the N95s. It's just both an administrative burden as other representatives that  
11 have spoken have said, and there is an extreme cost perspective. Because unlike cities,  
12 counties and even small businesses that had access through cities and counties to apply  
13 for financial relief to help offset these costs, special districts have been able to receive  
14 none of that.

15 And so because of that, I ask you to reconsider the proposal that's in  
16 front of you today and any potential changes you might make. And I second what many  
17 of the other speakers have said, which is we should remove it and reference it in the  
18 IIPP and be consistent with what the State Public Health Department is recommending,  
19 and nothing more stringent than that. Thank you for your time.

20 CHAIR THOMAS: Thank you.

21 John?

22 MR. GOTCHER: Our next commenter is Cynthia Rice from the California  
23 Rural Legal Assistance, Incorporated.

24 MS. RICE: Good afternoon, thank you all for the opportunity for speaking  
25 with you today and I will be brief, having been preceded by many eloquent advocates

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1 on behalf of California workers. CRLA, Inc. has 18 offices located in agricultural areas  
2 around the state. And for nearly 60 years, we have been focusing on advocacy on  
3 behalf of low-wage workers and in particular farm workers.

4 We take issue with some of the statements made by Mr. Little and other  
5 representatives of the agricultural employers' associations that it is time to roll back a  
6 standard and eliminate the standard. In agricultural areas, we are finding a lower rate  
7 of vaccination and a continued higher rate of case outbreak as when compared to  
8 California at large and even the nation.

9 As pointed out by several of the other speakers it is not time to eliminate  
10 the protections that this Board put into place in December. We are where we are with a  
11 lower rate, because the protections were put into place. When we compare where  
12 California is to other states it is because of the responsibility of this Board and taking  
13 action consistent with their charge to protect workers, to put in a safety standard when  
14 the federal agency failed to do. And the decrease in incidents of occupational outbreaks  
15 and the control of that is a function of that standard.

16 We cannot eliminate that now when the science is not there. Unlike Mr.  
17 Wick, I do trust staff and I trust the nurses too who had very eloquent comments about  
18 that. They rely on actual science and not popular science. And again, there is urging to  
19 get ahead of the science here in terms of whether or not masks are available. This is a  
20 workplace protection not a general standard applicable to people who can choose to be  
21 where they are, when they want to be, and whether or not wear a mask.

22 With respect to reliance, the urged reliance on the IIPP as an  
23 enforcement and protection mechanism for exposure to COVID-19, it didn't work last  
24 year. In the summer of 2020 we saw huge outbreaks in agricultural, both meatpacking  
25 and traditional field and field-packing operations. The IIPP was not facile enough for the

1 enforcement agency actions that needed to be taken to bring about immediate  
2 compliance with requiring masking, requiring physical distancing, and requiring  
3 sanitation protections.

4           The standard provided transparency that was not only a boon to the  
5 employers, because they knew what they had to do, but it was critical to workers. It is  
6 one thing to have a worker say, “I want a mask because the standard says I have a right  
7 to have a mask.” And another thing for a worker to say, “I'd like to know what's in the  
8 IIPP, so I know what protections I have when I'm within four to five feet of someone  
9 who might have COVID.”

10           This standard has provided that transparency, it has increased the  
11 protection of workers, and it has put California ahead of the curb in terms of protections  
12 of its worker and its population generally, and we shouldn't go back.

13           One final point I want to make with respect to the vaccination, the  
14 reliance on vaccination as a way of lessening the masking standards. We have real  
15 concerns about the accountability for that. Agricultural in particular, but low-wage  
16 worker industries generally have a very high incidence of reporting a failure to comply  
17 with record-keeping and reporting requirements. Some estimates are that as many as  
18 50 percent of agricultural workers don't have documentation to work, that it is in fact  
19 falsified at the employer level in many respects. To suggest that an employer would not  
20 falsify vaccination records in order to avoid the cost of providing masks and physical  
21 distancing I think is not a reality in the low-wage worker world.

22           So thank you for the considerable effort and time and good thought that  
23 has gone in to developing the standards. We applaud staff for trying to balance the  
24 interests of industry while keeping worker protection in the forefront. And we urge the  
25 Board to not consider at all eliminating the standard and to take into consideration the

1 comments made by worker advocates about some of the suggestions that have been  
2 made. So thank you very much.

3 CHAIR THOMAS: Thank you.

4 John?

5 MR. GOTCHER: Our next commenter is Michael Miiller from the  
6 California Association of Winegrape Growers.

7 CHAIR THOMAS: Michael, can you hear us?

8 MR. MIILLER: Yes, I can, Chair Thomas. How are you?

9 CHAIR THOMAS: Go right ahead, I'm good. Go right ahead.

10 MR. MIILLER: Thank you. Good afternoon, I am Michael Miiller with the  
11 California Association of Winegrape Growers. And I will speak briefly about the  
12 Emergency Temporary Standards. I will also try to speak slowly for the translator and  
13 please feel free to remind me if I talk too fast.

14 Thank you Chair Thomas and members for your leadership and your  
15 public service. Thank you also to Board staff and Cal/OSHA staff as well. I know you're  
16 all working very hard on a very complicated, difficult issue.

17 To begin with, I want to align ourselves with the comments from Helen  
18 Cleary, Bruce Wick, Len Welsh, Bryan Little, Karen Tynan, Matthew Allen, and Rob  
19 Moutrie. They spoke well on a number of issues that we agree with.

20 When the ETS was approved in November staff from Cal/OSHA had  
21 previously testified that COVID-19 workplace enforcement actions were already  
22 occurring under the IIPP regulations. And I understand this is contrary to what Cynthia  
23 Rice just said that the Board staff had testified to, that I want to remind the Board  
24 Members of that. Board staff also reported that the ETS was simply not needed;  
25 nonetheless, the Board adopted the ETS and here we are today.

1           A few weeks after it was adopted the ETS was already out of date. This  
2 is not a surprise. It was predicted and the Board knew in advance that this would  
3 happen, but the Board's hands were tied and took no action for six months.

4           California employers have had facilitated vaccinations for employees and  
5 employees have been rolling up their sleeves to get a shot. But for the last six months  
6 the ETS has been no mention whatsoever of vaccines or the efficacy of vaccines.

7           Due to the continuously changing health, safety and scientific landscape  
8 the ETS continues to be the wrong approach for regulating workplace health and safety  
9 for COVID-19. Consequently, common sense dictates that the ETS must be repealed. If  
10 there is any doubt about this I urge you to read the Findings of Emergency or the  
11 amendments.

12           After the ETS has been in effect for six months the findings state the  
13 following, "Data for the number of cases of COVID-19 infection and number of deaths  
14 attributable to workplace exposure to COVID-19 is not currently available." That's what  
15 this findings state. However, that statement is simply untrue. There is most certainly  
16 data available, which shows the level of workplace exposure.

17           For example, I urge you to begin by reviewing Workers' Compensation  
18 data that was discussed by Bruce Wick. Additionally using data extracted from  
19 California Reportable Disease Information Exchange, the County of Santa Cruz studied  
20 more than 16,000 cases. As of May 17th that county reports that more than 92 percent  
21 of those cases with a known likely source of exposure were not from the workplace.  
22 Again, I'll repeat that, 92 percent all the cases were not workplace exposure.

23           I take exception to Cynthia Rice's comments as there is -- what she said  
24 that there is -- about the cases, of how she discussed, specifically agricultural being a  
25 more risky workplace environment. I take exception to that. There is no evidence to

1 support her assertions.

2 I have personally surveyed several growers. Here's a typical reply, which I  
3 just received this morning, "145 of 147 of my employees are all vaccinated. We  
4 provided the opportunity and scheduled the dates of these vaccinations. We have the  
5 records to verify this. Additionally, 100 percent of our employees living in our housing  
6 are vaccinated." That is information I got just this morning from one of our growers.

7 Nonetheless, if it is true that Cal/OSHA has no available data then  
8 Cal/OSHA has failed to justify the continuing need for the ETS. Again, the ETS needs to  
9 be repealed.

10 We also have major concerns with the statements of the findings that the  
11 Board is considering making this ETS a permanent regulation. We strongly object to any  
12 effort to make this a permanent regulation. Many of our employers now have  
13 vaccination rates that are higher than the community vaccination rates if the ETS places  
14 tighter restrictions on that workplace than the restrictions that exist in the community.  
15 This makes no sense.

16 The Board's discussion of making this a permanent regulation sounds an  
17 alarm to California employers and employees who diligently follow state and federal  
18 guidelines and direction in creating a vaccinated workforce. Vaccinations save lives.  
19 this is a fact. We are all urging Californians to get vaccinated.

20 As we are doing that, it is tone-deaf to tell those same Californians that  
21 face-covering mandates, physical distancing and COVID-19 restrictions may be here to  
22 stay. Is that really the message that the State of California wants to send our residents?  
23 I don't think so. Therefore, any effort to make the ETS a permanent regulation should  
24 be immediately denounced by the Board.

25 If the ETS stays in place though it needs to be consistent with CDC and

1 CDPH guidelines for all the reasons discussed by others this morning. As the ETS is a  
2 regulation keeping it current with science means that the Board will need to consider  
3 formal amendments as soon as June and then again in July and every month thereafter.

4           Additionally there would need to be FAQs released immediately. The  
5 problem is that because this is a formal regulation it takes six months to add a comma.  
6 This delay fails to recognize that employees and employers are taking action today and  
7 need clear guidelines today that reflect the current science and data. The ETS requires  
8 employers and employees to take immediate action, respectfully ask that the Board and  
9 Cal/OSHA act with that same level of urgency.

10           But also to N95s, we are very concerned with the proposed new  
11 requirements to add N95 requirements for availability for voluntary use. If those N95s  
12 are not available the employer has no ability to comply. We learned last summer the  
13 scarcity is real. While the state was facing wild fires the state released N95s from our  
14 stockpile to protect ag employees in the workplace who may be exposed to wildfire  
15 smoke. We need to pay attention to lessons learned from that experience. If this new  
16 requirement is approved we know that demand will skyrocket, cost will rise with that  
17 and availability of N95s will once again becomes scarce. The ETS needs recognize this  
18 reality and create an off-ramp for such predictable situations.

19           Looking back at the wildfire smoke regulation it would make no sense to  
20 create a similar requirement here. To repeat that same action and expect a different  
21 outcome is nonsensical.

22           In summary California has the highest vaccination rates, lowest case  
23 numbers and lowest positivity rates in the world. Relative to the workplace the Golden  
24 State's success was achieved due to the efforts of all of us, employers encouraging  
25 employees to get vaccinated and facilitated with vaccination opportunities. Employers



1 rolling up their sleeves, and the community as a whole spreading the word to get  
2 vaccinated. Keeping the ETS in place ignores the efforts of millions of Californians in  
3 achieving that success and importantly the public health benefits of that success.

4 We are on track to finally reopen California on June 15th and we support  
5 Governor Newsom's efforts. The science shows that the end of the pandemic may be in  
6 sight. I'm worried though that the light at the end of the tunnel is this ETS, which is an  
7 oncoming train. It does not pass a lab test to expect the statewide reopening while at  
8 the same time keeping the ETS in place.

9 Nonetheless if the ETS is kept in place we ask for these three things. One,  
10 immediately reject any possibility of it becoming permanent. Two, tests would need to  
11 be amended to eliminate the new requirements for N95 respirators. And three, the ETS  
12 would need additional clarifying amendments in June and new FAQs immediately from  
13 Cal/OSHA.

14 Again, I thank you for your public service and all that you are doing and  
15 thank you for your consideration of our concerns.

16 CHAIR THOMAS: Thank you.

17 Who do we have up next, John?

18 MR. GOTCHER: Our next commenter is Kevin Bland from Ogletree  
19 Deakins, Nash, Smoak & Stewart, P.C.

20 CHAIR THOMAS: Hey Kevin, thank you.

21 MR. BLAND: Hello, good afternoon. I think I might even be last here, so I  
22 may be the one you're waiting for. Chairman Thomas, Board Members, the general  
23 public, division staff, Board staff thank you for this opportunity this afternoon to  
24 comment on this very important issue facing employers, employees in the State of  
25 California.

1 First let me do, for the interest of brevity, incorporate into my  
2 comments without repeating them the comments made and the written submissions  
3 made by Helen Cleary, Bruce Wick, Len Welsh, Rob Moutrie, Bryan Little, Karen Tynan  
4 and Michael Miiller. Those comments were in line with my thoughts and issues with this  
5 regulation and regulatory process. And I won't repeat them here.

6 First, I think it's important to recognize the difference in something that is  
7 aspirational versus regulatory feasibility and effectiveness and what I mean by that.  
8 There are a lot of things in this proposal that may be aspirational, but when you try to  
9 put it into a regulatory context you need something that's reasonable, enforceable,  
10 feasible, and hits the problem. We have already figured out that every time we come  
11 out with one of these that we are a month behind. This is a very evolving issue we've  
12 seen over the last year. My partner, Karen Tynan put it well, this sounds like a May '20  
13 issue as opposed to a May 2021 issue with the advance of vaccines and the  
14 advancement and reduction in cases here in the state of California through efforts of  
15 employees, employers and folks, individuals in this state.

16 I do want to touch on one issue, which is kind of been a theme here  
17 today is the vaccine issue. One issue I have with this is we see throughout this proposal  
18 100 percent vaccination to get to do this, 100 percent vaccination in this act. So 100  
19 percent vaccination is basically unfeasible so anything that happens with that is really  
20 nonexistent.

21 And I have a personal example of why I say 100 percent is not feasible.  
22 My son when he was three years old contracted a disease, and I won't say which son to  
23 protect his privacy, which was paralyzing and which he recovered. And any virus  
24 vaccine that he would take, whether it's COVID or any other one, can bring that paralysis  
25 back and trigger that. That's science.

1 I'm not -- and I don't know what the difference in popular science and  
2 real science is that was alluded to earlier, I think science is fine. And in this context we  
3 have the CDC. We have the California Department of Public Health. We have the  
4 Governor's Office giving us a direction. We're in the process of opening up the state.  
5 And I would hope that whatever actions we do are going to align with that process and  
6 that progress that we are making here in the state together. So I think it's very  
7 important that whatever action this Board takes and the Division takes with this, follows  
8 those principles.

9 We saw the ability of following the change in science earlier in the year  
10 when we were using the IIPP and guidance together to accomplish those goals. We saw  
11 that regularly enforced in the workplace. This idea that the employers want open  
12 season on its employees is a little bit disingenuous. And that statement does not reflect  
13 what we have seen in reality here in California. And by employers and by folks that  
14 testify and work regularly in front of this Board to represent a very large majority of  
15 employers here in California.

16 You heard from Karen Tynan earlier today. You will hear from me. We  
17 spend a very large portion of our day helping employees comply. And also I want to say  
18 comply with the law, we also help them comply with safety. Just because the law may  
19 say this doesn't mean we help guide them in actions that work for work tasks that they  
20 may be doing, unique situations. We give them guidance to make sure their employees  
21 are healthy and safe and in a safe environment.

22 And that is very important to my clients, to my members of the  
23 associations that I represent. And I apologize, I should have said the associations at the  
24 front of this, I think everybody knows it by now. I think I've heard it, probably said it 100  
25 times, but I'm representing California Contractors Association, the Residential

1 Contractors Association, and the Western Steel Council.

2 So I think that consistency is very important, the recognition that 100  
3 percent vaccination is just not a feasible regulatory requirement. And we need to  
4 recognize that and stay with where the science is going. Stay with where the Governor's  
5 Office is leading California to with the opening of the state. And pay very close  
6 attention to that and try to distinguish between what can be regulatory versus  
7 aspirational. I think that is very important for us to recognize.

8 We do urge a no vote as the Division has suggested in yesterday's press  
9 release, I think that's very important.

10 And with that, I appreciate your time. I've droned on a little longer than I  
11 expected to, I apologize for that but I appreciate the opportunity to speak. Thank you  
12 very much.

13 CHAIR THOMAS: Thanks, Kevin.

14 John, who do we have left?

15 MR. GOTCHER: Our next commenter is Norma Wallace from the  
16 Tuolumne Joint Powers Authority.

17 CHAIR THOMAS: Go, right ahead.

18 (No audible response.)

19 CHAIR THOMAS: I'm seeing your hand up, but I'm not hearing anything.  
20 Are you muted?

21 MR. GOTCHER: It looks like you are unmuted, Norma. I'm not sure if  
22 there's a secondary mute on an external microphone maybe?

23 (Technical issues follow.)

24 CHAIR THOMAS: Do we have anyone else left, John, so we could work  
25 this out?

1 MR. GOTCHER: There is no one left in the queue right now.

2 CHAIR THOMAS: Let's see if we can figure this out.

3 (Pause to work out technical difficulties.)

4 MS. WALLACE: I think I'm unmuted now.

5 CHAIR THOMAS: Oh, I think we can hear you. Go right ahead.

6 MS. WALLACE: Thank you. Sorry for that, I know I'm the last one and  
7 everyone is ready to be done with this.

8 My name is Norma Wallace and I'm with the Tuolumne Joint Powers  
9 Authority. We represent 21 school districts in 4 counties in Northern California. And  
10 our concern is staff and students. And I know Cal/OSHA, we're talking about workers,  
11 but our workers work directly with children so that's why I'm on this call.

12 At this time, the schools have been going through extraordinary  
13 measures that are required by CDPH, Public Health and Cal/OSHA. And as everybody  
14 probably knows vaccinations are not eligible for 12 and under. So most likely our  
15 schools will have most of the students masked if this continues into next year.

16 So our concern for the workers with eliminating masking would be one,  
17 the N95s. We aren't first responders or firefighters or healthcare workers although this  
18 year our schools have been asked to do all of those things a little bit, and with COVID.  
19 But we aren't those people. So having fit tests isn't really practicable first school  
20 districts for the N95s. And for us the masks have worked. We have had small  
21 outbreaks, but nothing compared to what everybody has been talking about today in  
22 their industries because the schools go through a lot of measures to keep the kids and  
23 staff safe.

24 Lastly, verification of the vaccination if people could unmask being  
25 vaccinated is going to cause more contention and litigation with our schools. It's going

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1 to cost contention with bargaining units, and we already have those issues now. So to  
2 add that onto an issue we already have like just teaching our kids that has been a theme  
3 of concern for us when we are discussing lifting for vaccinated individuals especially in  
4 the school district.

5 So what we ask is if Cal/OSHA could discuss in their next meeting  
6 something that would align with schools too, because we are under a different guidance  
7 for schools than most everybody else. So that's what I wanted you to consider.

8 CHAIR THOMAS: Thank you very much.

9 John, is there anybody else in there? Is that the last one?

10 MR. GOTCHER: Yeah, there are no further commenters in our queue.

11 CHAIR THOMAS: All right. At this time if there are any additional  
12 members of the public who would like to comment on any matters concerning health  
13 and safety you can call in, but I think we're at the end here.

14 MS. SHUPE: We need to circle back to the previously submitted  
15 comment from the San Bernardino County. They had requested that we read a  
16 statement into the record. They have summarized that statement and the written  
17 comment was actually provided to Board Members earlier this morning prior to the  
18 meeting. So at this time Sarah Money will go ahead and read that summary statement  
19 into the record for the Board Members.

20 MS. MONEY: The following comment was submitted by Chris Golden of  
21 San Bernardino County.

22 "Overall the County supports standards that protect employees.  
23 However, the proposed language in Title 8, 3205 does not provide consistency with  
24 current guidelines. The proposed language further creates separate policies and  
25 practices for vaccinated and non-vaccinated employees, something that has not been

1 done with other regulations.

2 "Further, it would require employers to navigate the legal issue of  
3 knowing which employees are vaccinated and not vaccinated. The proposed plan  
4 further puts an unreasonable burden on the employer as it states the employer, 'should  
5 have known.' How can an employer know when an employee is going to be sick?  
6 And/or how will an employer know someone is sick when they are asymptomatic?

7 "The use of an N95 respirator is inconsistent with practices that have  
8 been used for over a year and what has been stated in CDC, OSHA publications. As data  
9 has shown the use of a face-covering has been effective and is appropriate.  
10 Additionally, implementing respirator protection would create a tremendous burden  
11 and cost to the county as well as making future purchases difficult with an  
12 overwhelming demand versus supply.

13 "Lastly, how is OSHA going to consistently enforce these regulations  
14 when there is not enough clarity in the regulation? We would respectfully request the  
15 Board to suspend any revisions to the ETS until the Governor's announcement on June  
16 15th. If any revisions are to be made then they should be consistent with the CDC and  
17 CDPH. Thank you for your time and consideration."

18 CHAIR THOMAS: Thank you for reading that, Sarah.

19 So we have no other commenters at this time. So the Board appreciates  
20 your testimony and the public meeting is adjourned and the record is closed.

21 We will now proceed with the Public Hearing. During the  
22 hearing, we will consider the proposed changes to the Occupational Safety  
23 and Health Standards that were noticed for review today.

24 Let me read this and then Dave, I'll let you hop in.

25 The Occupational Safety and Health Standards Board adopts

1 standards that in our judgment will provide such freedom from danger as  
2 the nature of the employment reasonably permits and that are enforceable,  
3 reasonable, understandable, contribute directly to the safety and health of  
4 California employees.

5           The Board is interested in your testimony on the matters before  
6 us. Your recommendations are appreciated and will be considered before a  
7 final decision is made. If you have written comments you may read them  
8 into the record, but it is not necessary to do so as long as your comments  
9 are submitted to Sarah Money, our Executive Assistant, via email at  
10 [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov) by 5:00 p.m. today. Ms. Money will ensure that they are  
11 included in the record, and forward copies of your comments to each Board  
12 Member. And I assure you that your comments will be given every  
13 consideration. Please include your name and address on any written  
14 materials that you submit.

15           I would also like to remind the audience that the public hearing  
16 is a forum for receiving comments on proposed regulations, not to hold  
17 public debates. Where rebuttal comments may be appropriate to clarify a  
18 point it is not necessary to engage in arguments regarding each other's  
19 credibility.

20           If you would like to comment orally today please contact staff  
21 via email at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov) or via phone at 916-274-5721 to be placed in  
22 the public hearing comment queue, or address the Board when I open the  
23 teleconference for additional testimony. Please state your name and  
24 affiliation, if any, and identify what portion of the regulation you intend to  
25 address each time you speak.



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

4                   And before I proceed to Ms. Haikalis translating this into  
5 Spanish for some commenters we may have, I'm going to ask Dave Harrison -  
6 - because I think he's going to have to leave us -- so Dave, if you have a few  
7 words to say go right ahead.

8                   MR. HARRISON: Thank you, Chair Thomas.

9                   First, I would like to apologize to the Board, to Board staff and to the  
10 general public. I will need to step out of this meeting, but I wanted to make a few  
11 comments regarding a CDAC rule that is about to be presented. The CDAC rulemaking  
12 has been a long-time process. I think the very first advisory committee was in 2014.

13                   And as I look back through the notes there's several folks the titles have  
14 changed, have moved on. And I wanted to send out a sincere thank you to Board staff,  
15 specifically Conrad Tolson for going through retirement, coming back as a retired  
16 annuitant, re-retiring and continuing his dedication to the crane rule here. He's worked  
17 on this for us and he's been instrumental in this process, so thank you Conrad. I think if  
18 you look at the exorbitant amount of documents, over 700 pages in our packet today, is  
19 a testimony to the work that has gone into that.

20                   And so our original statement from day one is a crane is a crane. It  
21 doesn't know what temperature it's working in and the hazards exist whether we're  
22 talking general industry or construction. And so I'm very happy to see the progress that  
23 was made in bringing the crane rule back into one general industry standard, as much as  
24 we're able to anyway.

25                   So again, my apologies for stepping away. I have asked Christina Shupe

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1 to forward me a copy other video of the public testimony for CDAC, so that I can  
2 review that later. Because I am very interested to hear what the general public has to  
3 say in this regard. So again thank you and we'll see you all soon.

4 CHAIR THOMAS: Thank you Dave, appreciate that.

5 Now at this time I'm going to ask Ms. Haikalis to provide  
6 instructions to the Spanish-speaking commenters, so they are aware of the  
7 public hearing comment process for today's meeting. So Ms. Haikalis, can  
8 you go ahead and do that please.

9 INTERPRETER HAIKALIS: [READS THE FOLLOWING IN SPANISH]

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

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

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

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

6 "If you would like to comment orally today, please contact staff  
7 via email at oshsb@dir.ca.gov to be placed in the public hearing comment  
8 queue."

9 CHAIR THOMAS: Thank you.

10 We'll now proceed to the proposed schedule for today's public  
11 hearing. Title 8: Various Safety Orders and Sections as Listed in the Notice  
12 for Proposal to Consolidate Construction Safety Orders, Article 15 (Cranes  
13 and Derricks in Construction), Into General Industry Safety Orders, Group 13  
14 (Cranes and Other Hoisting Equipment).

15 Mr. Manieri, will you please brief the Board?

16 MR. MANIERI: Good afternoon, Chairman Thomas and Board  
17 Members. Can you all hear me clearly?

18 CHAIR THOMAS: We can.

19 MR. MANIERI: Good. I'm pleased to present this proposal,  
20 long-awaited proposal to the Board.

21 Chair Thomas, Board Members before July 11th, 2011, all  
22 Title 8 Crane Standards were contained in the General Industry Safety  
23 Orders. However on August 9th, 2010, Federal OSHA published an  
24 overhaul of its construction industry cranes and derrick standard via its  
25 advisory committee referred to industry as CDAC, C-D-A-C. In the

1 construction industry standards it was known then and it is as it is today  
2 29 CFR 1926 Subpart CC.

3           The Board staff responded with a proposal intended to consolidate these  
4 standards into the GISO via the accelerated Horcher rulemaking process. General  
5 industry expressed concerns about potential "overreach created by the use of the  
6 Horcher process to consolidate federal construction standards into the GISO. And  
7 because of federal time constraints on adopting the standard, the CDAC rules were  
8 placed in the Construction Safety Orders in 2011.

9           Since that time the Board received numerous comments from  
10 stakeholders suggesting that it would be prudent for California to consolidate all the  
11 crane safety orders into a single GISO location as they were once located to provide as it  
12 were, "one stop shopping." Stakeholders indicated to us that based on their industrial  
13 experience a mobile crane, for example, may work on a construction and general  
14 industry-type project in the same day. This proposal would consolidate the  
15 Construction Safety Order Crane Safety Order Standards into the GISO and create a  
16 single unified set of crane standards. Both the Construction Safety Orders and the  
17 General Industry Safety Orders are based on the American Society of Mechanical  
18 Engineers B30 crane standards. The consolidation is expected to have little regulatory  
19 impact on general industry. And exceptions are proposed for the limited cases where  
20 the CDAC standards would impose new requirements on cranes used solely in general  
21 industry.

22           Due to the size of the proposal, it was divided into several smaller  
23 portions for review by four advisory committees and one additional subcommittee.  
24 Each committee consisted of stakeholders from labor, management, manufacturers,  
25 crane certifiers, safety experts, and the Division of Occupational Safety and Health. The

1 end product contains advisory committee recommended revisions and clarifications  
2 based on their input, comprehensively addressing practically all aspects of safe crane  
3 and derrick operation and qualifier operator certification requirements.

4           Since the rulemaking consolidates existing CSO standards for cranes and  
5 derricks into the GISO and since those rules were largely based on the federal rules for  
6 cranes and derricks in construction the consolidation maintains conformity with  
7 corresponding federal standards. The only departure is maybe that in some cases by  
8 virtue of consolidating the Construction Safety Orders into the GISO the state standards  
9 will be more protective than the federal standards since some of the federal standards  
10 are found only in Subpart CC for construction and not in 29 CFR 1910, which is for  
11 general industry.

12           The Board should note that this proposed consolidation was reviewed  
13 with industry stakeholders as I mentioned earlier at a number of advisory committee  
14 meetings chaired by Board staff convened during 2014 and 2015. And the advisory  
15 committee consensus among stakeholders was that this proposal would not be  
16 burdensome or onerous.

17           To ensure that California's crane standards are commensurate with  
18 Federal OSHA, this rulemaking also includes the federal amendments for operator  
19 qualifications and certification for construction. Which were promulgated on November  
20 9th, 2018, as 29 CFR Code of Federal Regulations, Part 1926, Subpart CC, Sections  
21 1926.1427 and 1926.1430, which was adopted by the Board February 20th of 2020 via  
22 the Horcher process as you will recall.

23           These amendments consist of, but were not limited to, verbatim federal  
24 language having to do with certifying crane operators including requirements for  
25 physical examination, introduction of the term "licensure," written formal testing and

1 practical hands-on examination, training and retraining, evaluation and operator  
2 assessment. These requirements became effective in California on April 6th, 2020, as  
3 stated earlier and are included as part of this proposal.

4           There have been a number of written comments and oral comments  
5 (indiscernible) written comments and oral comments are anticipated. During the last  
6 regularly scheduled quarterly meeting with Region 9 Federal OSHA. Federal OSHA  
7 representatives indicated that the overall proposal appeared to be commensurate with  
8 federal standards and in some cases even more stringent. Federal OSHA did provide a  
9 few comments using their side-by-side comparison, some of which are of a, I would  
10 classify as a non-substantial nature, with a few comments of a substantial nature. All  
11 comments of course as you know will receive careful consideration by the Board staff as  
12 we move into the Phase 2 of the project.

13           Finally, as stated by Mr. Harrison the Board staff would like to express  
14 gratitude to the former Board staff engineer and the author of this package Mr. Conrad  
15 Tolson who in retirement displayed the willingness to provide assistance to staff in  
16 assisting us, assisting all of us in getting this proposal to public hearing.

17           At this time the Board staff believe the proposal is now ready for the  
18 Board's consideration and the publics' comment. Thank you.

19           CHAIR THOMAS: Thank you, Mr. Manieri.

20           At this time, we will accept public testimony. Mr. Gotcher do we have  
21 any commenters in the public queue at this time?

22           MR. GOTCHER: Our first commenter is John Zarian from the National  
23 Commission for the Certification of Crane Operators.

24           CHAIR THOMAS: John, are you with us?

25           MR. ZARIAN: I am. Good afternoon, thank you.

1 CHAIR THOMAS: Go ahead.

2 MR. ZARIAN: Thank you, Mr. Chair and Board Members, staff. Thank you  
3 for the opportunity to comment on behalf of the National Commission for the  
4 Certification of Crane Operators. My name is John Zarian and I'm employed as the  
5 General Counsel to NCCCO. I'm also a licensed California lawyer and how been for 32  
6 years.

7 NCCCO is a nonprofit organization with a mission of developing affecting  
8 performance standards generally safe low handling equipment, but in particular cranes.  
9 And that's been very much the focus our efforts over the last 25 years. NCCCO currently  
10 has approximately 112,000 certificates across the country.

11 As a threshold matter, NCCCO strongly supports the direction being taken  
12 and would like to applaud and express its sincere appreciation for your efforts to  
13 consolidate and coordinate the construction and general industry standards applicable  
14 to cranes and derricks Through parallel but harmonized regulations.

15 However, presently NCCCO has two specific comments and  
16 recommendations directed to Sections 5006.1 and 5006.2 of the proposed crane  
17 standards. First, the standards include a requirement of a) physical examinations and b)  
18 substance-abuse tests as part of the requirements certification and recertification by an  
19 accredited certification body. Respectfully we submit that these two requirements  
20 should not be part of the certification process or direct responsibility of the certification  
21 body but rather an element that as employer responsibilities and employer evaluations.

22 As to physical examinations, those can differ by type of equipment, by  
23 task, by the particular job being done. The standards themselves, the ASME standards  
24 and others referred to sufficient strength which is a matter that can vary from task to  
25 task and equipment to equipment.

1                   For these reasons it is the employer who is in the best position to make  
2 those determinations about physical strength and suitability.

3                   As the substance-abuse test, those two are really a part of the employer  
4 relationship. They involve privacy considerations related to the handling of drug tests  
5 and similar records. As a certification body the handling of those matters would raise  
6 serious concerns and would make it very difficult to deal with local jurisdictions  
7 requirements and for like the types of things that local employers would be best suited  
8 to deal with.

9                   Also of course, a certification body deals with a certificate or re-  
10 certificate once every five years. An employer is there on the ground all the time, day to  
11 day, week to week.

12                   So for these reasons these are important elements, but we submit  
13 matters best addressed by the employer and really belonging as part of an employer-  
14 evaluation element of the construction standard. We do recognize that in that regard  
15 that an evaluation element would be needed for general industry, for both general  
16 industry and construction, as it is now presently part of the standard.

17                   The second comment we would like to make a recommendation is with  
18 respect to this portion of the proposed standard that includes a 1,000-hour documented  
19 experience exception to the practical examination requirement for recertification. To  
20 be sure, at least one accrediting body that accredits a certification program or body has  
21 accepted this exception for some certifications.

22                   However, there is no assurance that this will always be the case. There  
23 are many different types of certifications. We offer 32 different designations. And the  
24 types of experience accepted may vary.

25                   For example, is it straight hours? I mean, someone can be in the seat for



1 quite a while without making very many, if any picks (phonetic). Or other types, there  
2 are other types of measures other than hours, for experience and other types of  
3 benchmarks except the 1,000 hours depending on the type of equipment.

4           Ultimately, we submit these are questions for accreditation, for the  
5 bodies that accredit certification programs. They have standards to which certification  
6 bodies are held. There are schemes that are approved. There are assessments that are  
7 psychometrically evaluated and validated. And so as part of those the requirements  
8 that are made the assessment requires typically a written examination and a practical  
9 examination. And the nature and scope and parameters of those are matters that are  
10 reviewed regularly by the accrediting body and ultimately approved by the accrediting  
11 body that will then accredit a certification program if it meets those standards.

12           That can change from time to time. And for all these reasons, we submit  
13 the 1,000-hour documented experience exception for the practical examination  
14 requirement is also something that should not be a responsibility of the certification  
15 body. Although an important consideration, it is best left we submit, to the accrediting  
16 body in these cases.

17           With that Chair Thomas and Board Members I would submit our  
18 comments and thank you again for the time that you provided.

19           CHAIR THOMAS: Thank you, Mr. Zarian.

20           John, who do we have in the queue?

21           MR. GOTCHER: Our next commenter is Bruce Wick from the Housing  
22 Contractors of California.

23           CHAIR THOMAS: Bruce?

24           MR. WICK: Thank you.

25           CHAIR THOMAS: Thank you. Go ahead.

1 MR. WICK: Thank you for the opportunity and I also echo Dave  
2 Harrison's comments. And I just want to appreciate Conrad Tolson. I remember those  
3 enormous meetings for two days in a row with all of the huge numbers in the room  
4 working through a very tedious set of documents. And Conrad was just very  
5 conscientious and as we know has kept on going, so Conrad thank you so much for  
6 bringing this all together. And it's a great thing to see that we can plow our way through  
7 and come out with a really good clear reg and not have the construction orders and the  
8 general industry orders and any confusion between them. So thanks and look forward  
9 to this being adopted soon.

10 CHAIR THOMAS: Thank you, Bruce.

11 John, who do we have up in the queue?

12 MR. GOTCHER: Our next commenter is Kevin Bland from Ogletree  
13 Deakins, Nash, Smoak & Stewart, P.C.

14 CHAIR THOMAS: I'm sorry, who was that?

15 MR. BLAND: It's Kevin Bland.

16 CHAIR THOMAS: Go ahead, Kevin.

17 MR. BLAND: Chair, Members of the Board, the public, the Division staff  
18 and Board staff I appreciate the opportunity to comment. I want to echo Dave  
19 Harrison's comments and Bruce Wick's comments. This has been a very arduous path.  
20 Conrad Tolson took the bull by the horns, never gave up, worked diligently for days and  
21 days and days of advisory committee on this. We methodically worked through with all  
22 different stakeholders from all different walks of life and experience levels and experts.  
23 And the work that Conrad did in the end to get this to a point where it's ready for the  
24 Board's vote next month or whenever it ends up on the agenda cannot be underscored  
25 more than any other regulation. This was very difficult, tedious, a lot of text to go

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1 through and he guided us. He was a model of how advisory committees can work and  
2 should work and we thoroughly appreciated it.

3 He's sorely missed in the Standards Board arena chairing these, and so  
4 we appreciate that. And we're so glad that he stuck in there after his retirement, in  
5 between drinks with a little cocktail umbrellas on it or whatever he does in his  
6 retirement. So we greatly appreciate it and thank you very much.

7 CHAIR THOMAS: Thank you, Kevin.

8 MR. BLAND: Thank you.

9 CHAIR THOMAS: Who do we have in the queue, John?

10 MR. GOTCHER: There are no further commenters in the queue.

11 CHAIR THOMAS: All right. At this time, there being no further persons  
12 coming forward to testify in this matter do we?

13 MS. SHUPE: We do not. However, I would like the Chair's leeway to also  
14 extend my gratitude to Conrad. We miss you very much here in the office and I wish  
15 you were still in California, so we could have you on staff. Thank you.

16 CHAIR THOMAS: Thanks, Christina.

17 CHAIR THOMAS: And thank you, Conrad. I see you out there so thumbs  
18 up, good job.

19 So at this time there being no other persons coming forward to testify on  
20 this matter, the public hearing is closed. Written comments will be received until 5:00  
21 p.m. today. Thank you very much.

22 We'll now proceed with the business meeting. The purpose of  
23 the business meeting is to allow the Board to vote on matters before it and  
24 to receive briefings from staff regarding the issues listed on the business  
25 meeting agenda.

1 Proposed Emergency Safety Order for the Re-Adoption, Government  
2 Code SEC 11346.1, Title 8: General Industry Safety Orders Chapter 4, Subchapter 7 new  
3 sections 3205, 3205.1, 3205.2, 3205.3, and 3205.4 COVID-19 Prevention.

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

5 MR. BERG: All right, thank you very much.

6 Cal/OSHA developed a proposed update to the COVID-19 prevention  
7 regulations taking into account stakeholder input, the latest scientific understanding of  
8 these, vaccinations, and recommendations and input from the California Department of  
9 Public Health. And this proposed update was posted on May 7th.

10 However, on May 13th the Center for Disease Control and Prevention, or  
11 CDC, updated the guidance to allow fully vaccinated persons to go without masks in  
12 some settings.

13 On May 17th California Health and Human Services Agency's Secretary,  
14 Dr. Mark Ghaly announced that California plans to implement the CDC's guidelines  
15 starting June 15th.

16 So the Division consulted with Board staff and the California Department  
17 of Public Health staff and believe it is important to revisit this proposed COVID-19  
18 prevention update in light of these new guidances.

19 The Division requests the Board not to vote now to approve this current  
20 proposal that's before it, but instead allow us to present a new proposal at a future  
21 meeting. And the Division will limit any potential changes to consideration of the  
22 (indiscernible) and guidance in order to make possible a targeted effective date June  
23 15th, 2021. Thank you.

24 CHAIR THOMAS: Thank you, Eric.

25 At this time, Ms. Shupe, can you please brief the Board on the

1 logistics of the Division's request?

2 MS. SHUPE: Thank you, Chair Thomas. Board staff have  
3 discussed the benchmarks that must be met for the Board to consider a  
4 revised proposal and time for a possible June 15th effective date as  
5 mentioned in the Division's memorandum.

6 In order to meet the APA requirements for emergency  
7 regulatory actions, which mandate the agencies provide the Office Of  
8 Administrative Law with at least 10 calendar days for review prior to  
9 becoming effective, the Board will need to vote on a revised proposal no  
10 later than June 3rd of 2021.

11 The revised proposal will need to be finalized and posted for  
12 public review no later than 5 days prior to that vote. As such we expect  
13 that a revised proposal if directed by the Board, would be publicly  
14 available next Friday on May 28th, 2021.

15 So as you can see we are dealing with extremely short  
16 turnarounds. And the Division is well-counseled to limit their  
17 considerations of changes.

18 CHAIR THOMAS: Thank you, Christina.

19 At this time are there any questions that the Board has of Mr. Berg or  
20 Christina at this time?

21 BOARD MEMBER STOCK: Yeah, this is Laura Stock. I have  
22 just a couple of comments I would make. And I support the request to  
23 delay. And I think it gives us a chance to consider some of the testimony  
24 that we've heard today.

25 And I also wanted to make a couple of comments. Like many

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1 others, I know that the goal is to get these in line with some of the CDC  
2 guidelines and CDPH guidelines. I just want to comment that like many  
3 others in the public health community I have some concerns about those  
4 guidelines. And I am concerned that we may be prematurely lifting requirements that  
5 are in the current ETS that have been proven to work, which is a combination of  
6 approaches including masking, social distancing, ventilation which is more important  
7 than ever now that we know that it's airborne, isolation, testing and certainly  
8 vaccination. And lifting these requirements maybe putting workers at risk and may  
9 result in new workplace outbreaks, rising cases in the community, and maybe increase  
10 risk of new variants emerging as a result of that.

11           We know of course that vaccinations are extremely effective. But we  
12 also know as various people have said less than 50 percent of Californians are  
13 vaccinated. So we without a doubt are going to be dealing with workplaces that are a  
14 mix of vaccinated and unvaccinated and our job is to protect all workers.

15           So with that I just want to make a couple of specific comments on what's  
16 been in there, what may come. As I mentioned I'm concerned about guidelines that  
17 allow unvaccinated people to remove their masks indoors regardless of the vaccination  
18 status of others in the workplace. As a number of other people have said without a  
19 requirement that masks must be worn by everyone who is vaccinated and unvaccinated  
20 it seems very likely that unvaccinated workers will not wear face covers let alone N95s,  
21 which could increase the risk of infection indoors.

22           Also, because so much of the proposal is going to be based on  
23 vaccination status I agree with a number of the commenters who mentioned that there  
24 has to be clearer instructions on how to verify vaccination status. There needs to be  
25 verifiable measures to determine who is vaccinated and so that appropriate precautions

1 such as masking and other measures of distancing and isolation can be put in place for  
2 people who are unvaccinated. So I support greater attention to that.

3 I'm also wondering whether there could be language that could reinstate  
4 restrictions if numbers rise. Because I think as we begin to roll back protections that we  
5 have seen have worked, and as a number of people have said have gotten us to the  
6 good place where we are now, those numbers may rise.

7 And that means we need a means to ensure also good data. So I'll  
8 support the comments that were made by some people about the importance of CDPH  
9 publishing outbreak data so we can understand when those numbers are rising. But it  
10 would be great if there could be some language that would allow the reinstatement of  
11 restrictions if they rise.

12 And I would like to refer the Division staff and others from a letter  
13 submitted this morning from Peggy Sugarman who's a Workers' Comp Director in the  
14 City and County of San Francisco, who actually suggested language for metrics that  
15 could be used to mark a rise in cases. And a proposal that would lead employers to  
16 develop surge protection plans. And I think that would be worth looking at.

17 So I think that in general I know there is eagerness to go back to  
18 normal. I know that when we are looking at the workplace the pandemic  
19 is not over and I want to be sure that we don't risk the progress that  
20 we've made by undoing some of the protections that have gotten us to  
21 where we are today. Thank you.

22 CHAIR THOMAS: Thank you, Laura.

23 Any other comments, yeah, Barbara?

24 BOARD MEMBER BURGEL: Great. I also would like to thank the Division,  
25 Eric and your crew, and the Standards Board for a lot of work in putting forth this

1 version. There are many, many strengths to this version of the Temporary Emergency  
2 Standard, which I support. Certainly, I think the integration of vaccination data and  
3 recognition of the protection that vaccination provides is important. I also hear  
4 employer concerns and the reality of the privacy of that information and how best to  
5 track vaccinated versus unvaccinated employees and the challenge that that has posed.

6 I do however have some concerns about the fact that I don't think it's a  
7 time to roll back protections. I think the CDC guidance on May 13th was a bit  
8 premature. I think it does create a two-class system of vaccinated versus unvaccinated.  
9 And it shifts the responsibility to individual employees to try and sort out, "How are we  
10 going to know if our coworkers are vaccinated? How do we know if vaccinated  
11 individuals have symptoms," etcetera, etcetera. So it is complicated for sure.

12 I do want to echo and support some of the comments that remains today  
13 specifically around I think employers -- what I like about the proposal is the continued  
14 testing, but I also think vaccinated individuals with symptoms need to be offered testing  
15 as well by employers, going forth.

16 I think I love the written COVID-19 Prevention Program, which includes a  
17 ventilation guidance. I don't want to lose sight of the hierarchy of controls. So  
18 overdependence on a respirator for example when really ventilation, physical  
19 distancing, sort of the disinfection process, all that stuff shouldn't automatically just  
20 stop on July 31st.

21 So I am concerned around breakthrough infections, which certainly are  
22 happening despite vaccination. I'm also concerned around variants. So I do think and I  
23 also support Peggy Sugarman's letter looking at that surge plan, if we can integrate  
24 surge plan language into the next version. Using the RNOT, the reproduction number  
25 was one of the suggestions that came from the San Francisco County Department of



1 Public Health. I certainly would recommend integrating a surge plan into the next  
2 version.

3 So I again want to thank the Division for all your work.

4 CHAIR THOMAS: Thank you, Barbara.

5 Chris?

6 BOARD MEMBER LASZCZ-DAVIS: Yeah, thank you. It's been a long day,  
7 but I guess we're here for the duration so here we go.

8 Honestly there's been a tremendous amount of work undertaken by Eric  
9 Berg's staff, the Standards Board staff and many, many others, I mean the hundreds of  
10 people even today who have commented. I mean this is a Herculean task, but it's one  
11 that I think everybody has embraced as serious.

12 I heard today a couple of times the comments that we probably shouldn't  
13 have gone the route, an emergency standard, because it would fluctuate given the  
14 science and the experience. And I have to say I disagree with that. At the time we had a  
15 crisis. We didn't have options in the regulatory scheme to deal with it very classically.  
16 And I think we the Board, dealt with it as we saw best, recognizing that we would have  
17 the issues that certainly have been articulated today.

18 Having said that, there was some comments today that I would agree  
19 with. I think the risk is shifting. I think the risk in California today in 2021 is not what it  
20 was in 2020. I think that needs to be considered.

21 I'm not sure where we got the stats but a couple of people commented  
22 that if you look at the workplace statistics most of the COVID cases are not emanating  
23 from the workplace, but in the community And there is certainly cross-fertilization. I  
24 don't know what the balance there is in terms of consideration, but I think that needs to  
25 be kept in mind.

1 I don't think we can roll everything back but I think we need to continue  
2 to have some COVID requirements in place, because the crisis isn't over. But I think we  
3 need to recognize that it has been mitigated to some extent.

4 On a forward-looking basis we'll see where this takes us. It may be  
5 appropriate to let the ETS eventually take its course. But I think on a permanent basis  
6 we've got to look at a permanent standard or permanent options that allow an  
7 infectious-disease set of provisions whether they are part of the existing regulatory  
8 scheme or as standalones. Because I don't think that when the next pandemic or the  
9 next novel virus shows up that we want to go through this exercise again, so those are  
10 my thoughts.

11 CHAIR THOMAS: Thank you, Chris.

12 Any other Board Member comments? Yes, Nola?

13 BOARD MEMBER KENNEDY: Yeah, but I'm going to try to not take too  
14 long. I agree with much of what Chris just said. I do also want to thank the Division, Eric  
15 Berg's group and the Board staff and all the commenters today who have been following  
16 this and working and trying. I mean we're all here for the same reason, we all want  
17 workers to be healthy and we want them to stay that way.

18 I particularly find myself thinking that we are here at an interface  
19 between different entities. We're dealing with a public health crisis. We are trying to  
20 look at it as an occupational health issue. Those are inherently related but different  
21 approaches.

22 In the occupational environment, we tend to look at the source of  
23 hazards. Most times those sources of hazards are under the control of the employer.  
24 We are now looking at a source of a hazard that's not necessarily under the control of  
25 the employer and yet it is a hazard in the workplace that we need to deal with.

1                   So I just want to recognize how difficult this is and why we find  
2 ourselves so conflicted over how to approach it. And just appreciate everyone for  
3 chiming in and helping us get there.

4                   CHAIR THOMAS: Thanks, Nola.

5                   I just have a couple of comments. And I guess the first one would be  
6 about a year ago, a little over a year ago, we tried to open everything again and that  
7 didn't work. It was a disaster. And it led to a lot of things that happened just a few  
8 months ago. Until we got the vaccine we were in dire straits and I think everybody  
9 knows that.

10                  And I know there's people out there that think we should not go forward  
11 with this temporary regulation, but I don't agree with that. And there's still many things  
12 that I think we're going to learn. I think every regulation that we've passed since I've  
13 been here, which has been getting close to 12 years, over a little time will become a  
14 little bit obsolete with technology and just the changes that happen. Just look at  
15 elevators. I mean you're always kind of playing catch up.

16                  But I will say I do have a concern. I that feel the Division is right, that we  
17 should let them take a look at the new CDC guidelines and put together a package that  
18 is as firm as we can get it. I mean that's what we're trying to do. And I do have a  
19 concern about the N95 masks. I don't think that's necessary. I've been wearing one of  
20 these ever since this started and fortunately I didn't get it. I didn't take many chances.

21                  And I'm vaccinated now with both shots. It's been after two weeks, so I  
22 feel pretty good about it. But we have a lot of people that for whatever reason are not  
23 as adamant about getting the vaccine as I have been. I wanted it. I was the first in line.  
24 As soon as I could get it, I got mine.

25                  And our message should be we're getting to the end of this. Hopefully

1 we're getting to a place where we can open things up. And I think everybody agrees  
2 that it's looking that way, but just in the back of your mind you have to think we said  
3 this before and we just don't want to get -- for lack of a better word -- we don't want to  
4 get stupid, all right. We just want to hang in there and do the things that we know will  
5 protect us and protect those around us. And the first thing is the vaccine.

6 The second thing is I still feel when I go into a grocery store or into some  
7 public place where there is a lot of people around even though I am vaccinated I put my  
8 mask on. I just feel like that's the right thing to do, but that's just me.

9 But anyway, those are my comments. And I'm happy that the Division  
10 has decided to try and update this before we actually pass it. And if the Board is in  
11 agreement to allow the Division time to allow to revisit the ETS proposal then I would  
12 like to table this agenda item. And then are there any objections from any of the Board  
13 Members if we do that?

14 BOARD MEMBER STOCK: Dave, I wonder whether Kate had something to  
15 say. I see a little symbol in her box. And I had one more thing to say before we end this  
16 discussion, but I wanted to first give Kate an opportunity too. If she wants to, I just see  
17 something in her box.

18 CHAIR THOMAS: Okay. Kate, did you have any comment to make?

19 (No audible response.)

20 BOARD MEMBER STOCK: Maybe not, okay.

21 MR. GOTCHER: So if you are referring to the yellow triangle, is that what  
22 you're talking about?

23 BOARD MEMBER STOCK: Yeah.

24 MR. GOTCHER: That references a connection issue on her end.

25 BOARD MEMBER STOCK: Okay, great.

1 MR. GOTCHER: It's not a hand raise for example.

2 BOARD MEMBER STOCK: Okay. Great. Sorry, I just wanted to be sure  
3 that you had a chance to say something if you wanted to, Kate.

4 The only last comment, well two quick comments. I just wanted to  
5 mention that the N95 provision as I understand it is sort of hand in hand with the  
6 prospect of reducing some of those more effective engineering controls. Therefore, if  
7 there is no longer going to be social distancing, if there is no longer going to be some of  
8 the other things, then I think there is an attempt to try to increase the  
9 protectiveness of the face masks.

10 Because again the way it's currently structured is a multi- pronged  
11 approach and that's the ideal way to do it. But as we begin to roll away pieces of that  
12 multi-pronged, recognizing the hierarchy of controls as Barbara mentioned, that's how I  
13 understand the proposal to increase the personal protective equipment so I appreciate  
14 that.

15 And then the last thing I just want to mention is to second what Chris  
16 said. I do think it's really important to begin the process of thinking about how to create  
17 a permanent infectious disease standard that could build on the ATD standard and that  
18 could be addressing these in the future, because this is an emergency standard that  
19 does have an expiration date. To those people who have been saying this is going to go  
20 on forever, it actually has an expiration date. So I just want to support and agree with  
21 Chris that I think that's important step that I'm hoping will be able to start soon. Thank  
22 you.

23 CHAIR THOMAS: Thank you, Laura.

24 So as I was saying if there is no objection from Board Members we would  
25 table this issue. And then Ms. Shupe would proceed to put this on the agenda for our

1 June 3rd meeting that we would have, emergency meeting. And if there are no  
2 objections from the Board Members I am going to do that. Is there any objection?

3 BOARD MEMBER BURGEL: Not from me.

4 CHAIR THOMAS: I guess raise your hand if you don't have an objection,  
5 so I can --

6 BOARD MEMBER STOCK: No objections.

7 CHAIR THOMAS: Good. Then that's what we will do and we will come  
8 back on June the 3rd to look at that. And Mr. Berg will speak with us again at that time.

9 BOARD MEMBER BURGEL: So a point of clarification, Dave.

10 CHAIR THOMAS: Sure.

11 BOARD MEMBER BURGEL: Is the meeting set for June 3rd at 10:00  
12 o'clock? And that's a public meeting, I'm assuming.

13 CHAIR THOMAS: Yes. And I think is it 10:00?

14 MS. SHUPE: Yeah, so just one moment please. This is Christina Shupe.  
15 Yes, we will go ahead and notice the meeting for June 3rd at 10:00 a.m. This will be the  
16 only item on the agenda as it is not a regular Board meeting, it won't have the Executive  
17 Officer's Update, Legislative Update, etcetera. It will however be noticed. We do have  
18 enough time to notice it as a regular meeting, so everyone will have at least 10 days'  
19 notice that the meeting is going to take place and how to join.

20 CHAIR THOMAS: Great. Any other questions?

21 BOARD MEMBER STOCK: And the revised language will be available May  
22 28th? Is that the timeline again?

23 CHAIR THOMAS: I think the revised language will be available --

24 MS. SHUPE: So our proposed time meeting for June 3rd meeting would  
25 be to have that language by May 28th, that gives us five days prior to the meeting. And

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1 that five-day window is a requirement.

2 BOARD MEMBER BURGEL: And can I just outline the options? Number  
3 one, will what proposal be to adopt, to continue, because if indeed this current  
4 emergency temporary standard -- if we did not vote at all or did not anything when is  
5 that scheduled to sunset?

6 MS. SHUPE: So the Emergency Temporary Standard that is currently in  
7 effect through October of this year, barring any action by the Board.

8 BOARD MEMBER BURGEL: Okay. Then that's one option, that it could  
9 remain unchanged until October.

10 The second is that there would be revised language that we would vote  
11 on that could extend the Temporary Emergency Standard.

12 The third option could be that we would sunset the Temporary  
13 Emergency Standard as of June 15th, 2021, is that an option?

14 And the fourth one could -- well we can't permanent standard. It's too  
15 short. I know that Virginia and Oregon passed permanent COVID standards. I know that  
16 part of it.

17 CHAIR THOMAS: If it got voted down then it would be gone. If we vote  
18 for it on the 3rd then it will continue unless there is a change in the date, which it  
19 sunsets -- now you said October?

20 MS. SHUPE: Yeah. I think I can clear up a little bit of the questions that  
21 are going on here.

22 BOARD MEMBER STOCK: Thank you.

23 MS. SHUPE: So each emergency adoption exists on its own timeline. So  
24 the current Emergency Temporary Standard that is in place expires in October of 2021.  
25 And that is an extended timeline due to executive orders that have pushed it up beyond

1 normal. If the Board does nothing between now and October of 2021 then those  
2 protections stay in place through that time and then disappear.

3 If instead the Board chooses to adopt revisions, which would be our first  
4 readoption, then that first timeline ends. And then a new timeline begins that is tied to  
5 that readoption action. And that will be 90 days plus an additional 120-day window that  
6 is provided by executive orders, so a total of 210 days would be allowed for that  
7 readoption.

8 The Board is then allowed a second readoption. And again it has its own  
9 timeline, so if you choose to readopt in 95 days we start all over from scratch. They  
10 don't add onto each other.

11 BOARD MEMBER BURGEL: Just one more question, so if indeed the  
12 proposal comes June 3rd and the Standards Board does not vote to adopt it then that  
13 still means that the emergency temporary standard is in place until October for --

14 MS. SHUPE: That is correct.

15 BOARD MEMBER BURGEL: Okay.

16 MS. SHUPE: The Board would have to vote to rescind or to -- and I  
17 apologize, I'm going to mess up the official word -- but you would have to vote to take  
18 action to end the current ETS protections early.

19 CHAIR THOMAS: Chris?

20 BOARD MEMBER LASZCZ-DAVIS: Yeah, just a real quick question to  
21 dovetail what Barbara's asked. If we were to move towards some permanent elements,  
22 requirements at what point can that work be initiated?

23 MS. SHUPE: So I think that that question is appropriate for Mr. Berg.

24 MR. BERG: Sorry, what's the question? I didn't understand.

25 BOARD MEMBER LASZCZ-DAVIS: The question Eric is we are talking



1 emergency temporary standards and extensions. That we've also I think suggested  
2 that on a forward-looking basis we need to be working towards a permanent standard  
3 of some sort whether or not it's part of the ATD or IIPP or whatever. At what point can  
4 we begin work on a permanent standard?

5 MR. BERG: We can begin work immediately. It's just the bandwidth of  
6 my group is stretched beyond capacity right now, but we can begin that immediately.

7 BOARD MEMBER LASZCZ-DAVIS: All right. Thanks, Eric.

8 CHAIR THOMAS: All right, any other questions?

9 BOARD MEMBER BURGEL: I have one other question. Could the  
10 Governor, similar to what happened after we passed the ETS and we had that 14-day  
11 quarantine language in it, the Governor working with the Department of Public Health  
12 issued a change to go to CDC guidance around the 10 days and 7 days for infrastructure  
13 workers, etcetera, etcetera. Could the Governor do an executive order if he doesn't  
14 agree with what we pass on June 3rd?

15 MS. SHUPE: I think it would be presumptuous of me to posit what the  
16 governor may or may not do. I would say that he did have the authority to pass the  
17 executive order after the Board's initial adoption bringing it more in line with CDC  
18 guidance. And I believe he retains that authority now.

19 BOARD MEMBER STOCK: Thank you.

20 CHAIR THOMAS: Okay. All right, so any other questions? Okay so we  
21 have that tabled until June the 3rd, the information will go out. And on May the 28th  
22 the revisions will go out 5 days prior.

23 MS. SHUPE: That is the expectation.

24 CHAIR THOMAS: That's the expectation. Thank you.

25 MR. BLAND: Chairman, can I be recognized from the public? A quick

1 question procedurally.

2 MS. SHUPE: This is a Board meeting during the business meeting, so it's  
3 at your discretion. However, those questions can also be directed to staff.

4 CHAIR THOMAS: I don't know that we would -- I tell you what, you can  
5 ask the question and then I will determine whether who answers it and when. It may  
6 not be answerable at this moment, go ahead.

7 MR. BLAND: Great. Very simple, is there a public comment period on  
8 this emergency meeting at the beginning like it would on a regular meeting?

9 CHAIR THOMAS: Oh, yes.

10 MR. BLAND: Okay.

11 MS. SHUPE: Definitely.

12 CHAIR THOMAS: I believe yeah, there would be a business meeting,  
13 there would be a comment period.

14 MR. BLAND: All right, thanks.

15 MS. SHUPE: Actually, this is an important point. The Bagley-Keene  
16 guidelines that the Board operates under, requires that we allow public comment on  
17 every single agenda item. And so we normally do that during the public meeting, but  
18 we can also do it for individual agenda items.

19 CHAIR THOMAS: Okay. Now I'm not sure if that applies to public  
20 complaints, but just thank you. Just kidding.

21 MR. BLAND: No complaints.

22 CHAIR THOMAS: So we're going to go on with Proposed Variance  
23 Decisions for Adoption. Ms. Gonzalez, will you please brief the Board on the Proposed  
24 Variance Decisions.

25 MS. GONZALEZ: Good afternoon, Board Chair and members.

1 On your Consent Calendar, we have Proposed Decisions A through O that  
2 are ready for your consideration and your possible adoption.

3 CHAIR THOMAS: Thank you, Ms. Gonzalez. Do I have a motion to adopt  
4 the Consent Calendar A through O?

5 BOARD MEMBER LASZCZ-DAVIS: I so move.

6 BOARD MEMBER STOCK: Second.

7 CHAIR THOMAS: I have a motion and second. Anything on the question?

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

9 MS. MONEY: Ms. Burgel?

10 BOARD MEMBER BURGEL: Aye.

11 MS. MONEY: Ms. Crawford?

12 BOARD MEMBER CRAWFORD: (No audible response.)

13 MS. MONEY: I'll go on. Ms. Kennedy?

14 BOARD MEMBER KENNEDY: Aye.

15 MS. MONEY: Ms. Laszcz-Davis?

16 BOARD MEMBER LASZCZ-DAVIS: Aye.

17 MS. MONEY: Ms. Stock?

18 BOARD MEMBER STOCK: Aye.

19 MS. MONEY: Chairman Thomas?

20 CHAIRMAN THOMAS: Aye.

21 MS. MONEY: Going back to Ms. Crawford.

22 (No audible response.) Ms. Crawford?

23 MS. SHUPE: Ms. Crawford has communicated with me and she votes aye.

24 MS. MONEY: Thank you.

25 MS. SHUPE: I apologize, she's having some issues with her audio.

1 CHAIR THOMAS: Thank you. So the motion passes.

2 And then we will continue, excuse me, a Division Update. Mr. Berg can  
3 you please brief the Board?

4 MR. BERG: Ah yes, thank you. I have a report on the proposed Group V  
5 Elevator Safety Orders. The DOSH Elevator Unit is in the process of updating the Group  
6 V Elevator Safety Orders proposal. A proposal, which incorporates by reference the  
7 2013 ASME A17.1 Consensus Standard. The updated draft proposal would incorporate  
8 by reference the 2019 ASME A17.1 Standard.

9 The updated draft will address all of the safety concerns addressed in the  
10 original proposal.

11 If the Elevator Unit determines that additional public and/or worker  
12 safety can be afforded by recommending the incorporation of the 2022 iteration of the  
13 ASME standard we will further amend our draft proposal. Thank you, that's all I have.

14 CHAIR THOMAS: Thank you, Mr. Berg.

15 Legislative Update, Ms. Gonzalez can you please move the Board?

16 MS. GONZALEZ: Of course. You have a number of updates in your  
17 legislative update materials in your Board packages and I won't go through all of them.  
18 But I do want to draw your attention to AB 257, which is the fast-food industry working  
19 standards. We're keeping a close eye on that one, because there are some potential  
20 jurisdictional overlap issues with that and the Board. And we'll keep you updated.

21 CHAIR THOMAS: Thank you Ms. Gonzalez.

22 Executive Officer's Report, Ms. Shupe, can you please brief the Board?

23 MS. SHUPE: Thank you, Chair Thomas. At this time I'd like to take the  
24 opportunity to welcome Linda Mehawk to the Board staff.

25 Ms. Mehawk is a retired annuitant who will be stepping in to assist us

1 with the Board's variance process. As Mr. Berg just noted the Group V elevator  
2 proposal is being revisited. And I support the decision of the Division to consider  
3 incorporating more recent consensus standards that will add to worker safety. As a  
4 result however the Board's annual variance workload, which currently stands at over  
5 700 applications and growing will continue to increase for the foreseeable future. This  
6 is an unfunded mandate that the Board has tried to absorb over the years and has with  
7 much success, but has become increasingly difficult.

8 We have increasingly relied on retired annuitants as a temporary  
9 workload solution, as we seek to fill vacant positions. While managing an increasing  
10 volume variance applications but also regulatory priorities from the legislature and  
11 emergency rulemaking actions required for the Board to meet California's needs in the  
12 face of the COVID-19 pandemic and growing hazards from wildfires that continue to  
13 ravage our state.

14 Unfortunately as retired annuitants, our very able Variance Secretary  
15 Jackie Lowe and Ms. Mehawk are restricted by law to no more than 960 hours of work  
16 in a fiscal year. As of May 14th we have exhausted that allowance for Ms. Lowe. Ms.  
17 Mehawk will be working with Ms. Money to move our most pressing variances over the  
18 next six weeks. But until Ms. Lowe's return at the start of the next fiscal year on July 1  
19 the vast majority of our variance hearings will be on hold.

20 Are there any questions from the Board?

21 CHAIR THOMAS: I see no questions.

22 So New Business, future agenda items?

23 MS. SHUPE: Do any of the Board Members have items that they would  
24 like staff to add to a future agenda?

25 BOARD MEMBER LASZCZ-DAVIS: Not at this time.

1 CHAIR THOMAS: All right. I'm not seeing any, so do we have closed  
2 session today?

3 MS. SHUPE: Ms. Gonzalez, did you want to meet with the Board in closed  
4 session at this time?

5 MS. GONZALEZ: I don't have anything for closed session today.

6 CHAIR THOMAS: All right, so we have no closed session.

7 So our next Board meeting will be June the 3rd, 10:00 a.m. via  
8 teleconference and a video conference. So please visit our website and join our mailing  
9 list to receive the latest updates. We thank you for your attention today.

10 There being no further business to attend to this business meeting and  
11 this meeting in general is adjourned. Thank you very much. And just so you know, we  
12 had almost 500 people at this meeting today, so it was well-attended. And thank you  
13 very much. We'll see you on the 3rd.

14 (The Business Meeting adjourned at 2:06 p.m.)

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CERTIFICATE OF REPORTER

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

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of September, 2021.



ELISE HICKS, IAPRT CERT\*\*2176

**TRANSCRIBER'S CERTIFICATE**

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

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of September, 2021.

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Myra Severtson  
Certified Transcriber  
AAERT No. CET\*\*D-852