

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
November 18, 2021 OSH)
Standards Board Meeting)
_____)

TELECONFERENCE

PLEASE NOTE: In accordance with section 11133 of the Government Code, this Board Meeting will be conducted via teleconference.

THURSDAY, NOVEMBER 18, 2021

10:00 A.M.

Reported by:
E. Hicks

CALIFORNIA REPORTING, LLC
229 Napa Street, Rodeo, California 94572 (510) 224-4476

APPEARANCES

BOARD MEMBERS:

Barbara Burgel, Acting Chair and Occupational Health Representative
Kathleen Crawford, Management 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
Michael Manieri, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
Sarah Money, Executive Assistant
Michael Nelmidia, Sr. Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager
David Kernazitskas, Sr. Safety Engineer
Jennifer White, Regulatory Analyst
Cathy Dietrich, Regulatory Analyst
Amalia Neidhardt, Senior Safety Engineer

TKO STAFF:

Brian Monroe
Erik Kuether
Maya Morsi
John Roensch

ALSO PRESENT:

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

SPANISH INTERPRETERS:

Patricia Hyatt
Julia Elizarraz

APPEARANCES (Cont.)

PUBLIC COMMENT:

AnaStacia Nicol Wright, Worksafe

Helen Cleary, Phylmar Regulatory Roundtable

Kevin Greene, California Professional Firefighters

Len Welsh, Western Steel Council

Mitch Steiger, California Labor Federation

Valerie Soter, Self

Dan Leacox, Leacox & Associates

Cynthia L. Rice, California Rural Legal Assistance, Inc.

Eddie Sanchez, Southern California Coalition for Occupational Safety and Health
(SoCalCOSH)

Bruce Wick, Housing Contractors of California

Kevin Bland, Ogletree, Deakins, Nash, Smoak & Stewart, representing the Western Steel
Council, Residential Contractors Association and California Framing Contractors
Association

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1 PROCEEDINGS

2 NOVEMBER 19, 2021

10:01 a.m.

3 A/CHAIR BURGEL: Good morning. This meeting of the Occupational
4 Safety and Health Standards Board is now called to order. I am Barbara Burgel, Acting
5 Chair for today's meeting. And the other Board members present today are Ms.
6 Kathleen Crawford, Management Representative; Ms. Nola Kennedy, Public Member;
7 Ms. Chris Laszcz-Davis, Management Representative; Ms. Laura Stock, Occupational
8 Safety Representative.

9 Also present from our staff for today's meeting are Ms. Christina Shupe,
10 Executive Officer; Mr. Michael Manieri, Principal Safety Engineer; Ms. Autumn Gonzalez,
11 Chief Counsel; Ms. Sarah Money, Executive Assistant; and Mr. Michael Nelmidia, Senior
12 Safety Engineer who is providing technical support.

13 Supporting the meeting remotely are Ms. Lara Paskins, the Staff Services
14 Manager; Mr. David Kernazitkas, Senior Safety Engineer; Ms. Jennifer White, Regulatory
15 Analyst; Ms. Cathy Deitrich, Regulatory Analyst; and Ms. Amalia Neidhardt, Senior Safety
16 Engineer who is providing translation services for our commenters who are native
17 Spanish speakers.

18 By way of teleconference, we are joined today by Mr. Eric Berg, Deputy
19 Chief of Health, representing Cal/OSHA.

20 Today's agenda and other materials related to today's proceedings are
21 posted on the OSH, the Occupational Safety and Health Standards Board website.

22 In accordance with section 11133 of the Government Code today's Board
23 meeting is being conducted by way of teleconference, with an optional video
24 component.

25 This meeting is also being live broadcast by way of video and audio

1 stream in both English and Spanish. Links to these non-interactive live broadcasts can
2 be accessed by way of the “What’s New” section at the top of the main page of the
3 Occupational Safety and Health Standards Board website.

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

8 As reflected on the agenda, today’s meeting consists of two parts. First,
9 we will hold a public meeting to receive public comments or proposals on occupational
10 safety and health matters. Anyone who would like to address any occupational safety
11 and health issues including any of the items on our business meeting agenda may do so
12 at that time. Members of the public who have submitted requests to be placed in the
13 public comment queue by way of the online form or automated voicemail system will be
14 called on in turn.

15 Please be advised that the instructions for the joining the public
16 comment queue have changed and can be found on the agenda for today's meeting.
17 You may join by clicking the public comment queue link in the “What’s New” section at
18 the top of the main page of the Occupational Safety and Health Standards Board
19 website or by calling 510-868-2730. Again, that number is 510-868-2730, to access the
20 automated public comment queue voicemail.

21 Please be sure to provide your name as you would like it to be listed or
22 your affiliation or organization, if any, and the topic you would like to comment on.

23 When public comment begins, please listen for your name and an
24 invitation to speak. When it is your turn to address the Board, please be sure to unmute
25 yourself if you’re using WebEx or dial *6 on your phone to unmute yourself if you’re

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1 using the teleconference line. Please be sure to speak slowly and clearly when
2 addressing the Board and please remember to mute your phone or computer after
3 commenting.

4 Today's public comment will be limited to two minutes per speaker. And
5 the public comment portion of the meeting will extend for up to two hours so that the
6 Board may hear from as many members of the public as is feasible. The individual
7 speaker and total public comment time limits may be extended by the Board Chair if
8 practicable.

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

14 Before we open the public meeting, Christina Shupe our Executive
15 Officer, has asked to speak. Christina?

16 MS. SHUPE: Thank you, Chair Burgel.

17 At this time I'd like to ask Mr. Manieri to stand. And we framed this up.
18 While I bring this over, I'm going to ask you to move your chair out of the way. I want to
19 make sure everybody sees this.

20 MR. MANIERI: Oh.

21 MS. SHUPE: I'm not sure that the dates on here are correct. Is this really
22 36 years?

23 MR. MANIERI: It's pretty close. I'm not the greatest numbers guy, but it
24 looks right. Yeah, yes.

25 MS. SHUPE: Well, Mike, this is in appreciation for all of your service. Not

1 just to the Standards Board, but to the entire state.

2 MR. MANIERI: Thank you so much, Chris. Thank you all, I appreciate it.
3 This is wonderful. Thank you, thank you. I wasn't expecting this, but this is great.
4 Thank you so much.

5 MS. SHUPE: Your (indiscernible) has been tremendous.

6 MR. MANIERI: I hope so.

7 MS. SHUPE: So I have to say I'm getting a little choked up, but Mike --
8 Mike has just been a massive part of the Board for, gosh, an entire generation.

9 MR. MANIERI: Yeah, maybe more than one.

10 MS. SHUPE: Yeah. And you've really set the tone for our team, the way
11 they work together. You've always, always embraced (indiscernible) and collaboration.
12 That is a legacy that will stay with the Board.

13 MR. MANIERI: And I'm pleased to hear that. Thank you, I appreciate it.
14 That's what I tried to do. Thank you, thank you so much.

15 Well, Christina, what can I say? I had a few comments I was going to
16 make, but you know I don't have to do it. I don't have to make them today or I can --

17 MS. SHUPE: I think you can sit back down and make as many comments
18 as you like. This is your turn.

19 MR. MANIERI: Really? Well, may I sit down and just go ahead?

20 MS. SHUPE: Yes, yes.

21 MR. MANIERI: All right, thank you all. So you can see this, this is beautiful
22 and in appreciation for service and I really appreciate the appreciation, I honestly do.
23 Thank you.

24 So I just had a few things I wanted to say to you. I'm going to make this
25 short, because I know you have a fairly long meeting. So as you know, I'll be retiring

1 from the Board. This is my 254th meeting. This is an event that I've been thinking
2 about a long time. It has elicited both excitement and some regret.

3 I've been a health and safety practitioner since 1976, actually, in the
4 private sector and with the Standards Board program. And in 1985 I began my Board
5 service as an associate engineer. I was transplanted from the Bay Area to Sacramento.
6 And I was not too far into the work before I realized that the Board was my niche before
7 I realized that and that it was a place that I would retire from. I knew that even back
8 then. Now I have an offer I can't refuse, which is called retirement. And well you know,
9 the truth be told I decided I should not pass on the opportunity. It's kind of time to pass
10 the top torch and move on. So while I'm excited about this new phase, the friendships
11 that I've made at the Board over the many years -- I've gotten to know so many
12 exceptional, professional and just plain great people from within and outside the
13 program. The Board, its staff, and its stakeholders, who we have endeavored to serve.

14 The work, you all know this, the work can be very hard; very frustrating
15 from day to day sometimes. But I'm leaving with the knowledge that I've been a part of
16 special, of something quite unique and special. And that with your guidance and
17 inspiration over the years I was able to make a difference, I believe, for the workers of
18 California. Now in my absence I know you're going to continue to make that difference.
19 My years with the program, the Board, has been the best years of my professional life.
20 Even a global pandemic did not change that.

21 I did not have to think long and hard about accepting my new position as
22 it were it came down to knowing that sooner or later, all good things have to come to an
23 end. This is a chapter in my life, which must close in order to reveal another. It's not
24 truly goodbye, because I plan to be part of the safety community in some way. And it
25 may include becoming an annuitant here at the Board, a second chance if you will, to

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1 serve and leave something else behind that'll be lasting.

2 So I want everybody to know it is truly (indiscernible). I found a kind of
3 mutual bonding here that can only develop in doing the kind of work that I've done and I
4 shared with you the burdens of that work. And we've supported each other every day
5 to preserve and accomplish the mission of the Board in the most challenging of
6 circumstances. I'm really proud of having served with all of you. You all certainly
7 deserve the very best in the years ahead.

8 So in closing I'll just -- I won't quote William James, the philosopher that
9 I've mentioned many times over the past couple of years, but I'll try to find someone
10 who kind of embodies my feeling right now. And since I'm a baseball fan I'll recall the
11 farewell that the New York Yankees Lou Gehrig summed up upon his bittersweet
12 retirement from baseball. And he said that, "I feel that all things aside, I am and have
13 been the luckiest man on the face of the Earth." Yes, me too, thank you.

14 A/CHAIR BURGEL: Thank you, Mike. We wish you well on your
15 retirement. You will be missed.

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

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

25 For our commenters who are native Spanish speakers we are working

1 with Ms. Amalia Neidhardt to provide translation of their statements into English for
2 the Board. At this time Ms. Neidhardt will provide instruction to the Spanish-speaking
3 commenters so they are aware of the public comment process for today's meeting.

4 Thank you, Amalia.

5 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH] Public Comment
6 Instructions.

7 "Good morning, and thank you for participating in today's Occupational
8 Safety and Health Standards Board public meeting. Board Members present are Ms.
9 Barbara Burgel, Occupational Health Representative and Acting Chair; Ms. Kathleen
10 Crawford, Management Representative; Ms. Nola Kennedy, Public Member; Ms. Chris
11 Laszcz-Davis, Management Representative and Ms. Laura Stock, Occupational Safety
12 Representative.

13 "As reflected on the agenda, today's meeting consists of two parts. First,
14 we will hold a public meeting to receive public comments or proposals on occupational
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17 agenda.

18 "We have limited capabilities for managing participation during the public
19 comment period. We are asking everyone to keep their phones and WebEx audio on
20 mute until your name is called to address the Board. Please remember to mute again
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23 both English and Spanish. Links to these non-interactive live broadcasts can be accessed
24 via the "What's New" section at the top of the main page of the OSHSB website.

25 Please be advised that the instructions for joining the public comment

12

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5 you would like it to be listed, your affiliation or organization, if any, and the topic you
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7 "Please listen for your name to be called for comment. When it is your
8 turn to address the Board, please be sure to unmute yourself if you're using WebEx or
9 dial *6 on your phone to unmute yourself if you're using the teleconference line. Please
10 be sure to speak slowly and clearly when addressing the Board and please remember to
11 mute your phone or computer after commenting. If you have not provided a written
12 statement, please allow natural breaks after every two sentences so that we may follow
13 each statement with an English translation.

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

19 A/CHAIR BURGEL: Thank you Ms. Neidhardt.

20 Mr. Kuether, do we have any commenters in the queue?

21 MR. KUETHER: Yes, Chair Burgel. First up we have AnaStacia Nicol
22 Wright from Worksafe.

23 A/CHAIR BURGEL: Okay.

24 MR. KUETHER: AnaStacia?

25 MS. WRIGHT: Yes, hello. Can you all -- hi.

1 MR. KUETHER: Hello.

2 MS. WRIGHT: Hi. So good morning and thank you all, Members of the
3 Board. My name is AnaStacia Nicol Wright and I'm a staff attorney with Worksafe. I'm
4 here today to comment briefly on the proposed standards for workplace protections
5 from COVID-19, both the Emergency Temporary Standard, or ETS, and the two-year
6 standard. And first off, I want to thank the Division for its dedicated focus on science-
7 driven standards and these proposed updates to mandatory workplace standards that
8 are helping protect California workers from COVID.

9 However, with respect to section 3205.1 relating to outbreaks, the
10 language there should match the California Department of Public Health's definition
11 that three or more cases at a worksite qualify, as it did in the original adoption of the
12 ETS. By leaving out positive non-employee cases, customers, contractors, students, this
13 language significantly limits protections for workers, and it seriously increases the
14 likelihood of workplace spread of COVID-19.

15 Finally, we've seen the proposed draft of the two-year standards to come
16 into effect after April of next year. And we're very interested in an update on the
17 progress toward compliance with the Standardized Regulatory Impact Assessment, also
18 known as SRIA. Given the long delays that this has brought to numerous pending
19 standards and the severity of the ongoing risk to California's workers, we believe that
20 it's imperative that this analysis be well underway to prevent any avoidable
21 interruption, delay, or reduction in COVID-19 workplace protections. Thank you all.

22 A/CHAIR BURGEL: Thank you, Ms. Nicol Wright.

23 Mr. Kuether?

24 MR. KUETHER: Next up is Helen Cleary from the Phylmar Regulatory
25 Roundtable, PRR-OSH Forum.

1 MS. CLEARY: Good morning, Board Members. My name is Helen Cleary
2 and I'm the Director of PRR. Thank you for the opportunity to speak today. We'd also
3 like to address the proposed readoption text of the COVID-19 ETS.

4 At first we just want to ask why. Why is the Division adding a new
5 prescriptive requirement to this rule? The draft requires testing of close contacts three
6 to five days after exposure. CDC and CDPH updated the time frame to five to seven days
7 the same week the text was released. So why does the draft already conflict with the
8 guidance it was meant to align with? Why is the Division working on two distinct drafts
9 instead of using the same language in this text as proposed in the permanent rule? The
10 text in the permanent rule requires employers to exclude close contacts from the
11 workplace for the quarantine period required by CDPH. Unlike the ETS draft there are
12 no prescriptive elements.

13 We implore the Board to push for a simple solution and simple language,
14 language that allows control measures to keep up with public health guidance. Almost
15 every month since May of 2020, PRR is given examples that a COVID-19 standard will
16 never keep up. Board Members have acknowledged this and we honestly don't
17 understand why this is acceptable.

18 If this text and approach continues, PRR recommends the Division
19 consider feasibility and the risk of transmission when workers cannot maintain six feet
20 of distance in the revised sections. As written, asymptomatic vaccinated workers and
21 asymptomatic workers who test negative must stay home for fourteen days if they
22 cannot maintain six feet even if they were a face covering and are outdoors. This is
23 particularly problematic for members with critical infrastructure workers who work in
24 the field to maintain our communities. There's also a safety hazard where they need to
25 work in teams.

1 CDC guidance says that most fully vaccinated people do not need to be
2 restricted from work after exposure if they wear a mask and they test negative, physical
3 distancing isn't even mentioned. CDPH guidance does not distinguish between indoor
4 and outdoor settings, but we know that outdoors is low-risk. We've raised the feasibility
5 of physical distancing and certain work settings in earlier drafts and we've requested
6 that it's addressed in this one as well, particularly when employees are outdoors and
7 following other mitigation measures.

8 Thank you all for your continued work and I hope everybody stays safe.

9 A/CHAIR BURGEL: Thank you, Ms. Cleary.

10 Mr. Kuether?

11 MR. KUETHER: Okay the next three that we have up will be Kevin
12 Greene, Len Welsh and Mitch Steiger, with first up will be Kevin Greene from the
13 California Professional Firefighters.

14 MR. GREENE: Good morning members of the Standards Board. Making
15 sure my mute is off. My name is Kevin Greene. I'm the EMS Health and Safety Director
16 for the California Professional Firefighters. I appreciate you providing the opportunity
17 to provide public comment today. The CPF will be submitting a comment letter in
18 response to the 15-day package for the firefighter PPE standard later today, but I
19 wanted to provide you some feedback in advance.

20 First, we would like to express appreciation to the Board and staff for
21 working with us in recent months. We believe some of the modifications in the 15-day
22 package make important progress. For example, we appreciate the proposal by staff to
23 remove the requirements around wildland respiratory protection to allow for more time
24 for us to work through a requirement that is structured in a manner that will not result
25 in unintended health consequences and include a process for a field evaluation that

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1 includes labor.

2 Unfortunately, there remains some significant deficiencies in the
3 proposed rule. We are disappointed that labor input and clear reporting are not
4 included in the requirements to use SCBAs during overhaul. We firmly believe these
5 safety rules are most effective when labor has a clearly defined seat at the table for the
6 development of standard operating procedures and purchase decisions and that is not
7 found in this proposal.

8 In sum, you will see in our letter that we do support a path forward to
9 adopt these rules if the Standards Board provides clear direction to address these
10 deficiencies in 2022. Thank you again for the opportunity to speak today and I look
11 forward to speaking with you all soon. Thank you.

12 A/CHAIR BURGEL: Thank you, Mr. Greene.

13 Mr. Welsh, Len?

14 MR. WELSH: Good morning all, can you hear me okay?

15 A/CHAIR BURGEL: Yes.

16 MR. WELSH: Sounds good. My comment this morning is directed to the
17 petition that was recently filed by the Western Steel Council recommending a different
18 approach to a permanent standard to address COVID and other potential pandemics.
19 I'm representing Greg McClelland of the Western Steel Council, I'm representing the
20 Ironworker Management Progressive Action Cooperative Trust, California Hotel &
21 Lodging Association, and Fresh Harvest.

22 And probably most of the public has not seen this petition, it was just
23 submitted this week. As I mentioned it does propose a very different approach, an
24 approach basically like -- similar to the one that was being followed before we got the
25 COVID standard -- basically DPH was issuing advice and DOSH was issuing 3203 citations

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1 for failure to follow the advice. This proposal here would remove doubts about
2 whether a 3203 citation would hold up.

3 It places the primary authority for pronouncing not only on public health,
4 but occupational safety and health with the Department of Public Health. And the
5 reason for that is this is an infectious disease issue. Only DPH really has the deep bench
6 needed to address an infectious disease. It would require DOSH to cooperate with DPH
7 in formulating advice. And DOSH can provide a very valuable resource both by
8 inspections it does in the matter of enforcement, and also site visits it does as a matter
9 of consultation, providing information to DPH about what kinds of situations are being
10 found in workplaces.

11 Most public health guidance applies equally to workplace issues. There
12 are some exceptions like meat packing, nursing homes, a few types of environments like
13 that where exposure in the workplace is especially concentrated. This is where DOSH
14 should be applying its expertise, it's occupational safety and health expertise to inform
15 DPH, so it can issue a proper guidance.

16 This is the petition. And actually, we're not maybe hoping -- we're not
17 asking the Board to follow the petition process, because it's too slow. This is an
18 extraordinary situation that requires emergency, prompt action. We're hoping that the
19 proposal put in front of the Standards Board will motivate Standards Board Members to
20 take this up on their own motion, which they have the authority to do. And move it
21 forward as an alternative to what's now being considered as a permanent standard.

22 This standard would apply only when the Governor has issued an
23 executive order. And the point here is to ensure the best possible coordination
24 between the Governor's Office, DPH and DOSH on handling a pandemic. If a situation
25 doesn't rise to the level of pandemic necessitating issuance of an executive order by the

1 Governor then 3203 citations are perfectly appropriate.

2 I would like to draw your attention, all of you, to two DARs that have
3 been issued by the Appeals Board, Decisions After Reconsideration: Granite
4 Construction and Papich Construction. Granite Construction's cite is Inspection Number
5 1235643. Papich Construction I have the COR citation, 48 COR 40-8399. These DARs
6 addressed 3203 citations issued for employers' failures to address Valley fever. And
7 these DARs eliminated the question as to whether 3203 can apply to hazards that are
8 not regulated in a specific regulation. The Board, almost without discussion, issued
9 DARs which essentially said of course a 3203 citation is appropriate. The only issue is
10 are the measures DOSH is requiring appropriate for employers to follow under this
11 standard? So one major source of doubt that existed when the ETS was first adopted
12 has been removed by those DARs. This proposal however would remove the doubt
13 even further by having all of this reliance on guidance by DPH be tied to an executive
14 order.

15 One final point that Helen Cleary just raised, guidance changes much
16 faster than rulemaking can keep up with it. That's why we need a standard that says
17 follow what DPH guidance says to do currently. Because that changes often rapidly.
18 The rulemaking process now, even with emergency temporary standards, has shown us
19 that it simply cannot address a fast-changing situation like we have with COVID.

20 I hope the Board Members will take this up, perhaps discuss as an official
21 agenda item at the December meeting. It's very important that this proposal be
22 considered seriously. Thank you all for the opportunity to comment.

23 A/CHAIR BURGEL: Thank you, Mr. Welsh.

24 Okay, Mitch Steiger.

25 MR. STEIGER: Thank you very much Chair Burgel and members, I

1 appreciate the opportunity to speak today.

2 First just wanted to express our appreciation and admiration of Mike
3 Manieri and your decades of service to the Standards Board. It's been great to work
4 with you and learn from you. And your work has very much made workers safer across
5 California and absolutely saved lives, and so we very much appreciate all of your
6 contributions. And wish you nothing but the best in whatever comes next.

7 MR. MANIERI: Thank you.

8 MR. STEIGER: Also, just wanted to touch on two issues before the Board
9 soon, one of which is the COVID-19 ETS and specifically the two-year readoption
10 proposed for April. Again, we just very much urge the Board and the Division to return
11 exclusion pay to that standard. That though the numbers do look better now as we
12 learned the hard way through this pandemic they go up and down, they get worse, they
13 get better, new variants show up, all sorts of things can go wrong. And we need to have
14 a standard that's prepared for things to go wrong.

15 I just checked the numbers, it looks like there are about, I think, 56
16 deaths per day still from COVID-19. So we are very much still in this. We're very much
17 still in a serious situation. We're currently being urged by the state government to give
18 boosters, because of the anticipated winter surge. And hopefully that doesn't
19 materialize, but it very possibly could. And we need to be prepared for whatever is
20 coming next and that exclusion pay is a critically important piece of this regulation and
21 what keeps workers who are sick away from those who aren't. And that is not only
22 what we think is most fair for those workers who aren't yet sick, but also is a really
23 important part of the process in slowing the pandemic and is a really important rule that
24 we don't want to get rid of. And preserving it in a way where employers are still
25 required to exclude cases, but not give them the exclusion pay is just going to encourage

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1 workers to not report symptoms, hope that it's just the flu. And frankly it's just going
2 to result in more people going to work sick and infecting other workers. And us just
3 being stuck in this mess for longer and longer in addition to hurting workers and
4 potentially killing some. So we would very much urge the Division and the Board to
5 return exclusion pay to that final version that's adopted in April.

6 And I also just wanted to briefly touch on the firefighter PPE regs that I
7 believe are on the agenda for next month. And we would echo the comments of Kevin
8 Greene and the California Professional Firefighters. And broadly speaking just very
9 much urge the Board to figure out a way to include and institutionalize labor feedback
10 on those standards. Obviously, the workers are the ones who wear this PPE and the
11 ones who are currently very frequently getting sick and dying from the carcinogenic
12 exposure that they have to deal with at work. This is a very important thing for them.
13 And their knowledge base and their contributions to this are, we think, critically
14 important in making sure that we have a regulation that works to keep workers safe and
15 is something that's feasible for employers. But by excluding their voices, or at least not
16 explicitly including them, we think we really run the risk of a regulation that doesn't
17 have all of the language that it needs to be as effective as it can be. So we very much
18 echo their comments and urge the Board to include that perspective in the near future,
19 however that can best be accomplished. Thank you very much.

20 A/CHAIR BURGEL: Thank you, Mr. Steiger.

21 Mr. Kuether, any more coming?

22 MR. KUETHER: Okay, the next three that we have is Valerie Soter that
23 will be representing herself, Dan Leacox from Leacox and Associates, and Cynthia L. Rice
24 from the California Rural Legal Assistance, with first up Valerie Soter.

25 MS. SOTER: Good morning, everyone. Can you hear me all right?

1 A/CHAIR BURGEL: Yes.

2 MR. KUETHER: Yes.

3 MS. SOTER: I'm the head of HR for a medium-sized privately held
4 essential manufacturer. Most if not all employers are continuing to experience the
5 ramifications of COVID-19. The pending requirement for employers to test
6 unvaccinated, undeclared status employees in the workplace creates additional financial
7 and operational hardship for us. I researched price and availability of COVID test
8 options prior to President Biden's executive order announcement. My findings
9 indicated projected costs for testing alone range from \$90,000 to over a quarter of a
10 million dollars annually for us. These figures do not include mileage, travel, test and
11 wait times. These events are a compensable time required to be paid by employers.
12 Further complicating testing is difficulty in sourcing an adequate supply of test kits.
13 Alternative offsite testing does not always provide the rapid results that we need.
14 Findings can take up to the next day.

15 COVID vaccines have moved from being a celebrated offering to a point
16 of contention causing divide in our workplaces and across our nation. The outcome is
17 increasing employee angst in our workplaces. I see that myself. This does not make for
18 a healthy workplace. The past year-and-a-half have been very challenging for all of us
19 placing the onus of testing and all that comes with testing on the backs of small to
20 medium-sized employers is a clear intention to position businesses into a position of
21 enforcement. It is evident the unsaid objective is to make employers responsible to
22 achieve increase vaxxed populations by making it financially appealing for businesses to
23 require employees to be vaccinated. This responsibility should be borne by our
24 government. Small to medium-sized businesses lack economies of scale to absorb the
25 costs.

1 Due to the mandated approach to vaccinations potential employees do
2 not want to apply for opportunities. In turn, entry-level wages are rising and stuffed
3 with inflation. The strategy is disruptive and crippling to our business in every way.

4 I do want to thank you for all of your time today. And thank you to OSHA
5 for helping us keep our workplace safe.

6 A/CHAIR BURGEL: Thank you, Ms. Soter.

7 Okay, Mr. Leacox.

8 MR. LEACOX: Good morning, am I audible?

9 A/CHAIR BURGEL: Yes.

10 MR. LEACOX: Great. So, a couple of things quick, I just wanted to start
11 on the subject of Mike Manieri, the definition of a gentleman. I've had the privilege of
12 working with him a number of times and I greatly appreciate it. The institutional
13 knowledge that he carries along for the Board will be lost when it's gone. But, Mike, I
14 want to take a little exception to something you said that about all good things must
15 come to an end. I think you've made a lasting contribution to the Board, a legacy if you
16 will at the Board, that will go on in in your absence. And I think those are good things
17 that will not end.

18 And my second comment is I want to reiterate or validate the notion of
19 really considering this petition, COVID petition. This IIPP approach, it very much needs
20 to be considered as an alternative, a performance-based alternative if you will, as
21 opposed to the prescriptive one we've been following. For all the reasons Mr. Welsh
22 mentioned the ETS approach has been highly problematic all along the way. And if you
23 roll back to the beginning there were lots of recommendations from the business
24 community to take the IIPP approach with guidance. This is much along those lines
25 though with the difference of bringing in CDPH, elevating it to the context of an

1 executive order and elevating CDPH guidance. And it's a worthy consideration and I
2 recommend it highly. And would like to see it featured on next month's agenda with
3 some good time from petitioners or others to hear what they think and so we can get a
4 sense about where this is going consensus-wise. Thank you.

5 A/CHAIR BURGEL: Thank you, Mr. Leacox.

6 Cynthia Rice, Ms. Rice?

7 MS. RICE: Good morning, can you hear me?

8 A/CHAIR BURGEL: Yes.

9 MS. RICE: Thank you very much. This format is a little confusing.
10 Anyways, thank you very much for the opportunity. And CRLA would want to extend
11 their congratulations and appreciation to Mr. Manieri as well.

12 I wanted to comment both on the ETS and then a shortcoming on the
13 permanent standard and a response to the comments made about the pending petition.

14 First, we did submit comments earlier this week along with California
15 Rural Legal Assistance Foundation in support of the good work that the staff has done in
16 attempting to revise the standard to keep up with the current recommendations with
17 respect to both through Federal OSHA as well as CDC.

18 We also very much appreciate the retention of the exclusion pay as
19 previously indicated. That is critically important to ensure employees' reporting of
20 symptoms and exposure without the risk of losing pay, potentially their job and
21 seniority, once they are excluded from the workplace.

22 We also very much appreciate and know the retention of the specific
23 standards with respect to transportation and housing, which are increasingly an
24 extension of the workplace in agriculture due to the use of H-2A employees. We urge
25 the Board with respect to their consideration of the permanent standard to both

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1 preserve those specific sections and certainly to preserve, actually reinstate from the
2 current draft, exclusion pay. We have seen in agricultural workforce a greater
3 willingness to report symptoms and to get vaccinated based on these standards, the
4 emergency standards that have been in place. It has been working and we should retain
5 as much of it as possible through the period of time it is in effect until the permanent
6 standard can be adopted. Once the permanent standard is considered it should include
7 exclusion pay, it should include those specific housing and transportation provisions.

8 And with respect to the petition that was mentioned today by Mr. Welsh,
9 we would respectfully disagree with the position that the CDPH can be relied upon to
10 serve the unique function that the Standards Board does. The CDPH does have, of
11 course, the obligation to establish general safety and health standards that are
12 applicable to the population at large. The Board has a different and unique role and that
13 is to identify protection standards specifically for the workplace, which we know are
14 different than those that are necessary in the general life and retail -- general operations
15 we all have as a private citizen. The Standards Board is uniquely positioned to address
16 those. And merely returning it to an IIPP reference to the CDPH standards is going to
17 put us back, frankly, in the same place we were in the first several months of the
18 pandemic. Which was having an uncertain enforcement approach and uncertainty for
19 workers who want to know what they can demand of their employers.

20 So thank you very much for the work that the staff has done on this. We
21 look forward to being able to participate in the development of the permanent
22 standard. And urge the Board to proceed as you are currently proceeding with both the
23 readoption of the emergency standard and work toward establishing a permanent
24 standard. Thank you.

25 A/CHAIR BURGEL: Thank you, Ms. Rice.

25

1 Mr. Kuether, who's next?

2 MR. KUETHER: The next three are Eddie Sanchez with the Southern
3 California Coalition for Occupational Safety and Health, Bruce Wick from the Housing
4 Contractors of California, and Kevin Bland with the Western Steel Council, Residential
5 Contractors Association and California Framing Contractors Association, with first up is
6 Eddie Sanchez. Eddie?

7 MR. SANCHEZ: Good morning, everyone. My name is Eddie Sanchez with
8 the Southern California Coalition for Occupational Safety and Health, SoCalCOSH. Our
9 organization is founded on the principle that workplace deaths and injuries are
10 preventable. We are here in continued support of strengthening the COVID-19
11 Emergency Temporary Standard and the eventual permanent standard for COVID. I
12 want to thank the Board and staff for your hard work on this process today and for
13 considering our comments today.

14 I'd like to comment on the language for the ETS and two-year standard.
15 We ask that the definition of "outbreak" match the California Department of Public
16 Health, CDPH, definition.

17 We also want to emphasize the importance of initiating the required
18 Standardized Regulatory Impact Assessment, SRIA, for ongoing protections especially as
19 we work towards a two-year standard for COVID protections. Given the severity of
20 ongoing risks to California workers, it's important that the analysis be already in action
21 to prevent any avoidable interruptions, delays, or reductions in these vital COVID
22 workplace protections.

23 And as Mitch had mentioned earlier, we also ask that the language retain
24 exclusion pay to the final version that's adopted in April.

25 I want to once again thank you all, the Board and the staff, for your time

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1 and consideration and work on this effort. We know you'll make the best decision to
2 protect workers and working-class families. Thank you.

3 A/CHAIR BURGEL: Thank you, Mr. Sanchez.

4 Mr. Wick, Mr. Bruce Wick.

5 MR. WICK: Good morning, thank you. I do also want to give great thanks
6 to Mike Manieri. He is the epitome of someone who went into public service and did
7 the job right. I hope we remember one of his real leadership qualities was saying, "We
8 will take the time to get it right." And sometimes it's tedious and sometimes it's hard as
9 he said. "It's our job to get it right," but Mike would lead us to take that time to get it
10 right. And so many regs would be passed that we wouldn't have to go back and redo or
11 that weren't ineffective, because we took the time to get it right. And Michael it's also,
12 in baseball analogy, comforting to know that if we have issues you're on deck to pinch-
13 hit when we have something come up, so thank you for that.

14 I do want to talk about the petition and what that -- followed by Western
15 Steel Council -- Len Welsh spoke about the two cases on Valley fever. I was on the
16 Appeals Board meeting just before this and they clearly reiterated it was unanimous by
17 the Appeals Board that 3203 IIPP could be cited and held against employers who failed
18 to consider something like Valley fever or -- you know that they haven't seen one yet,
19 but it will be extremely similar -- the idea of COVID.

20 And I'd like us to step back for a minute and talk about how the IIPP
21 allowed Cal/OSHA, when this pandemic first started, that we could react very fast. They
22 were focused on information, prevention, and compliance with IIPP. And industries like
23 construction stepped up quickly. And as information unfolded, we were able to adapt
24 to it. But I would suggest over the last almost the eight, nine months -- or well if we go
25 back to 2020, over a year -- the enormous resources of the Division and this Board were

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1 taken up by doing something beyond the IIPP.

2 We have the ATD for our heroic healthcare workers who will be frontline
3 for any public health emergency. It has been there, and it will be there in the future.
4 DOSH can focus on people like Len talked about, nursing homes, meat-packing plants
5 where you have employees close together. That should be the focus. We spent an
6 enormous amount of time on industries, for instance, like construction that the ETS
7 made no change in how effective we were taking care of our employees. But the
8 Division lost a lot of resources as did this Board in processing a lot of regulatory issues
9 focusing on adding to it.

10 So I think the permanent solution really should be IIPP-focused. People
11 have talked about it's more flexible and speedier. And those, both things are true, but it
12 also allows for less confusion. And CDPH issues guidance, and DOSH's guidance is
13 behind that curve, then you have confusion. Then employers don't know what they're
14 supposed to do, employees talk about, "Well this party said that." You know, we're in a
15 difficult situation so the more we can focus on IIPP, more focus on a single set of
16 guidance we will be much better off for the long-term and be able to respond like DOSH
17 did especially early, extremely effectively.

18 In the first three months of this pandemic we all worked together. And
19 most industries have been very successful in minimizing and preventing COVID and we
20 continue that basis, so thank you.

21 A/CHAIR BURGEL: Thank you, Mr. Wick.

22 Okay, we have Kevin Bland. Kevin?

23 MR. BLAND: Yeah, good morning Acting Chairperson Burgel, Board
24 Members, Board staff, Division, Division staff. Kevin Bland representing the Western
25 Steel Council, California Framing Contractors Association, and the Residential

1 Contractors Association. As some people said, the usual suspects with me.

2 First, I can't say enough about Michael Manieri. I know the last Board
3 meeting I think I said quite a few words, so I'll keep this one shorter. But, Michael,
4 you've done more for this safety community I think than can ever be stated. And just on
5 a personal note you have done so much to help mold myself professionally in working
6 with you over the years. And recognizing the ability you have to bring balance. I know
7 when we go into these advisory committees and rulemakings you're very thoughtful.
8 And you have this ability to balance enforcement and compliance and labor and
9 management and Division concerns to come out on the other end with regulations that
10 meet all those needs. It may not make everybody happy, but you find that sweet spot
11 where you have a regulation that's enforceable whenever you go out in the field. That
12 the employers understand and what can be complied with and how to comply with.
13 And that is the quintessential professional. And the mark you've left on the Board, on
14 the state, I don't think will ever be forgotten and I just really appreciate you as a person,
15 as a professional in your profession.

16 I do hope there's that thing called retired annuitant, that -- what is it six
17 months out -- you can come back and do your thing again. Not that I don't want you to
18 enjoy retirement, but selfishly I would love to work with you some more in the future.
19 But I appreciate everything you have done and contributed. You're a first-class, top-
20 shelf man.

21 So I want to talk a little bit, I know there's been a lot said: Helen Cleary,
22 Len Welsh, Dan Leacox, and Bruce Wick. I am not going to repeat everything they said, I
23 agree with them wholeheartedly.

24 I do want to reemphasize one aspect or two aspects here with the
25 support of this petition. Number one is that this Board does in fact have the ability and

1 the power on its own motion to bring this to the forefront and be able to act on it post-
2 haste. I think it's a vital component of moving into a permanent regulation that applies
3 to COVID and could be applied to a pandemic we don't even know about in the future
4 that could occur, that may have different components.

5 We saw over this last year-and-a-half now, it's been I guess, since the
6 pandemic started -- how quickly the science changes and how quickly things change.
7 We've been in a pickle a couple times with the current ETS of either falling behind or
8 getting ahead of whatever the guidance is. We just heard as some of the speakers had
9 mentioned today something changed on one day and then the next day, or the same
10 day a regulation came out that -- our proposal for the ETS -- that wasn't in alignment
11 with what CDPH's guidance was.

12 I do want to clarify one thing. I think in this petition it doesn't say just
13 CDPH, it brings together the Governor's Office, Cal/OSHA's expertise and CDPH's;
14 although the main guiding factor here is CDPH. But it doesn't exclude. I think one
15 speaker had mentioned, "Oh, it seems to exclude Cal/OSHA from the mix there." But
16 we all have our skillsets. And the main skillset in a health crisis is going to be CDPH.
17 They have the expertise. They have the epidemiologists. They have the wherewithal on
18 a public health crisis like this. And with a sprinkling in from Cal/OSHA with the
19 knowledge base it has in workplaces, the IIPP gives that backdrop to be able to have an
20 effective, safe work environment in the end that is also nimble, also able to adjust and
21 change with what is considered reasonable reactions, reasonable compliance that can
22 be changed without having to go through three 12-hour Board meetings in June.
23 Because the guidance, as that changes, we can be nimble and change with it.

24 And I think that can't be lost in this petition, which is very important,
25 because once again we've seen this over the last year. Let's learn from what has

1 occurred. And that's what this petition does, it takes what we've experienced and now
2 is a solution that provides safety and health for the employees. And an ability for the
3 Division to enforce the regulation, the ability for the employers to comply with a
4 regulation, and the ability for it to be nimble based on what the current status is of the
5 science and the guidance by the professionals out there.

6 I'll leave you with this. I don't know if anyone remembers one of the very
7 first Standards Board meetings in the pandemic when we started talking about ETS, I'll
8 say it again. Rather than saying that Cal/OSHA is so far behind and can't do anything we
9 should have been yelling from the rooftops, "Hey we're ahead of the other 49 states.
10 We have an IIPP here, we have the ability to enforce it," which we did. And we jumped
11 on that. And we should have recognized that and continued that throughout. That is a
12 model for the rest of United States to follow, not the reverse and not the ETS.

13 So with that I'll yield back to my colleagues, whoever else is in the queue,
14 and I appreciate your time today. And I strongly urge this Board to adopt this petition
15 posthaste and start developing a regulation based on this. Thank you.

16 A/CHAIR BURGEL: Thank you, Mr. Bland.

17 Mr. Kuether, any more commenters?

18 MR. KUETHER: At this time there are no other commenters on the list.

19 A/CHAIR BURGEL: Okay.

20 At this time are there any additional members of the public who would
21 like to comment on any matters concerning occupational safety and health? Please
22 state your name as you would like it to be listed, and affiliation for the record. Do we
23 have anyone queueing up? (No audible response.) Okay, thank you. The Board
24 appreciates all the testimony from today. The public meeting is adjourned and the
25 record is closed.

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

6 As noticed by our mailing list on Monday, the Board's consideration of a
7 Horcher proposal to adopt regulations of substantially similar to the Federal OSHA's
8 vaccination and testing ETS, as required by 29 CFR 1953.5(b), has been delayed until
9 more information on the U.S. Court of Appeals litigation develops. Therefore, I'm
10 removing that item from our agenda and moving on.

11 So the proposed variance decisions for adoption are listed on the
12 Consent Calendar. And, Ms. Gonzalez, will you please brief the Board.

13 MS. GONZALEZ: Good morning, Chair Burgel and Board Members. On
14 our Consent Calendar today Items A through R are ready for your consideration and
15 possible adoption.

16 A/CHAIR BURGEL: Are there any questions from the Board for Ms.
17 Gonzalez?

18 Okay. Do I have a motion to adopt the Consent Calendar?

19 BOARD MEMBER LASZCZ-DAVIS: I so move.

20 BOARD MEMBER STOCK: Second.

21 A/CHAIR BURGEL: Okay, so Chris is the first. And then Laura is the second.
22 It has been moved and seconded that the Board adopt the Consent Calendar as proposed.

23 Ms. Money, will you please call the roll?

24 MS. MONEY: Ms. Crawford?

25 BOARD MEMBER CRAWFORD: Aye.

1 MS. MONEY: Ms. Kennedy?
2 BOARD MEMBER KENNEDY: Aye.
3 MS. MONEY: Ms. Laszcz-Davis?
4 BOARD MEMBER LASZCZ-DAVIS: Aye.
5 MS. MONEY: Ms. Stock?
6 BOARD MEMBER STOCK: Aye.
7 MS. MONEY: Acting Chair Burgel?
8 A/CHAIR BURGEL: Aye. The motion passes.
9 Okay, now it's time for reports, the Division Update. Mr. Berg, will you
10 please brief the Board?

11 MR. BERG: All right, thank you very much. The Division continues to work
12 on the COVID ETS and permanent regulation and rulemaking documents. We are in
13 continuous and frequent communication with CDPH. The CDPH has always been
14 involved in this process. And we also have very highly qualified occupational health
15 experts and professionals on our own staff. Most have a master's degree and some
16 have PhDs and we also have medical doctors. So our own staff is very highly qualified to
17 do this work and we work continuously with CDPH on this work. So that's all I have for
18 now, thank you.

19 A/CHAIR BURGEL: Okay. Are there any questions from the Board for Mr.
20 Berg?

21 BOARD MEMBER LASZCZ-DAVIS: Could somebody clarify the timing on
22 the proposed agenda's items moving forward in terms of a readoption and a permanent
23 standard and any other activity that'll occur between now and then?

24 MS. SHUPE: So, Chris, I believe I can address that for you.

25 BOARD MEMBER LASZCZ-DAVIS: Thank you.

1 MS. SHUPE: I was going to bring this up in the Executive Officer's
2 Report, but the Board will be considering the second readoption of the current ETS in
3 December. It does have some modifications, which have been posted. But the final,
4 final language will be posted a minimum of five days prior to the Board's meeting. So
5 that would be the second ETS readoption for California's regulations.

6 We are then looking at the proposal for a "permanent" -- and I say that
7 with quotation marks -- COVID regulation, which would be presented to the Board
8 sometime in either late March or early April and we don't have an exact timing for that
9 yet. And that would have a two-year effective date as currently proposed.

10 BOARD MEMBER LASZCZ-DAVIS: Thank you, Chris.

11 A/CHAIR BURGEL: Great, thank you.

12 And as far as the Federal Horcher process, what is the anticipated vis-à-
13 vis the Appeals Board decisions?

14 MS. SHUPE: So we're actively monitoring that litigation as I know many,
15 many others are. And we're in communication with Federal OSHA on their
16 requirements. We are a state-plan state, so we have certain legal requirements under
17 the regulations in that code that you cited, that 29 CFR 1953.5(b), which requires that
18 state plans adopt at least as effective as regulations within 30 days of the passage of a
19 Federal emergency regulation.

20 Right now there's a stay in place and that continues to be in place.
21 Should that change, we will then reconvene with Federal OSHA and look at our
22 requirements at that time and update the Board and the public.

23 A/CHAIR BURGEL: Great, thank you. I have a question also regarding the
24 SRIA process. I don't know if Mr. Berg or Ms. Shupe, Christina, if you can address some
25 of the comments that were made today.

1 MS. SHUPE: Eric, do you want to address that or would you like me to?

2 MR. BERG: Yeah, I can I just brief that we've been in discussion with the
3 Department of Finance about the Economic Impact Assessment, so we're in continuous
4 discussions with them. I don't have any more details than that.

5 A/CHAIR BURGEL: And this --

6 BOARD MEMBER STOCK: This is Laura. Can I just follow up? Barbara, I
7 had that same question. So I guess there's a concern about getting that started as soon
8 as possible in order to avoid -- we know that those reports take a long time. Can you let
9 us know what steps are being taken? Or if there's any way we can support getting that
10 process started immediately or as soon as possible?

11 MR. BERG: Well, it's been underway. I mean, we've been working on the
12 economic impact of the permanent regulation. And we've had meetings with the
13 Department of Finance going back some time now. So it's just been underway, our
14 economic impact assessment.

15 BOARD MEMBER STOCK: Okay, so do you think that that will be
16 completed in time for the vote in March?

17 MR. BERG: That's the plan, but I don't know for sure right now.

18 MS. SHUPE: At this time, I think it's important to remember that it's
19 always going to be a balance between being able to provide a proposal before the end
20 of the ETS, so there isn't a gap in coverage. While also balancing the Department of
21 Finance requirements for a fiscal analysis. And that is what the Division has been
22 working on. And I can vouch they've been working on it for quite some time.

23 A/CHAIR BURGEL: Okay. Any other comments?

24 BOARD MEMBER STOCK: All right, I just -- (Overlapping colloquy) I'm
25 sorry, I want just to follow that forward. So right, I mean I guess so what I'm hearing is

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1 that the process is underway, there is a hope that it would be completed in time, so
2 that there wouldn't be a gap in coverage. I know that there is a couple of different
3 pathways. One is to craft a rule that falls below the threshold for a SRIA. And then
4 there is -- which is one pathway -- then there is doing the actual SRIA, assuming that
5 there might be proposals that would exceed that threshold.

6 And my concern is that there are some provisions that are important,
7 including issues around exclusion pay that we've heard a lot of our stakeholders express
8 concern about being deleted. So I'll just kind of express the hope that the work that's
9 being done right now is not only to the effort of keeping the cross below that threshold,
10 but is actually launching the report that would not limit the creation of a standard. I
11 don't want that, the concern about just SRIA to impact essential provisions in the
12 proposed permanent regulations.

13 So just want to kind of acknowledge that and hope that the process that's
14 going on is going to be considering that.

15 MR. BERG: Okay, I'll bring that back to Cal/OSHA leadership. Thank you.

16 A/CHAIR BURGEL: Great. Chris?

17 BOARD MEMBER LASZCZ-DAVIS: Yeah, just a question. You know,
18 having heard the comments, the public comments, I have to ask whether or not it's
19 appropriate and probably necessary for us to learn more about the petition that's been
20 filed by the Western Steel Council? I'd like to see it as an agenda item at the next
21 meeting. Now I don't know where that'll go, but I think it's been articulated have
22 something worth noting by enough of our stakeholders that I think we need to take a
23 look at it in light of a permanent consideration.

24 BOARD MEMBER CRAWFORD: This is Kate. I agree completely with the
25 comments of Chris just now. I was just doing hash marks, how many stakeholders were

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1 asking for that specifically. And so I agree this needs to be an agenda item in
2 December.

3 A/CHAIR BURGEL: Okay, Laura?

4 BOARD MEMBER STOCK: Yeah. So I have some concerns about this, both
5 sort of mainly procedurally and process-oriented. I think the issues that are being raised
6 are issues that had been discussed for many, many months the value of using an
7 approach for IIPP. That was discussed prior to our voting of the original regulation. And
8 it has been brought up by a number of stakeholders many, many times. And I believe
9 has been thoroughly discussed and will continue to be discussed. I imagine that at our
10 agenda in December there is going to be a full and robust discussion from a range of
11 stakeholders about the approaches we might take including the comment about IIPP
12 and the role of CDPH, etcetera. So I think that our existing system of public comment
13 and stakeholder input has allowed all of those issues to surface.

14 And I think that obviously that was brought up beforehand. And while
15 some stakeholders are saying it would bring us back to this first three months where
16 things were going well, I think the passage of the ETS last November was precisely
17 feeling that it wasn't going well, that relying exclusively on the IIPP was not providing
18 the specificity that was needed. But just to say though people might disagree with that
19 decision, it was fully and robustly discussed.

20 And I think also having heard Eric's comments about the existing
21 expertise within DOSH that has experts who have been looking at infectious diseases,
22 had a crucial a role in promulgating and enforcing the ATD standard, I think that our
23 current system provides the expertise that is needed. And I'm just concerned in general
24 when somebody submits a petition. There is a process that we go through that allows
25 that to be voted on, whether we're going to consider it, it sets up an advisory

1 committee, etcetera.

2 So I'm just wondering if rather than kind of doing something that seems a
3 little out of step with our way of usually doing things by elevating a specific petition to
4 an agenda item, which is not typical, if we can just make a commitment that we are
5 encouraging stakeholders during the public comment meeting that is already scheduled
6 to come prepared to provide all of their comments that they want to, including their
7 suggestions on particular approaches. So, I guess I would say I don't see the need for a
8 specific agenda item, because we have that opportunity in our regular procedures. And
9 I have some concerns about how that impacts our general process when people submit
10 petitions.

11 BOARD MEMBER CRAWFORD: I hear what you're saying, Laura, but we
12 have received a petition, so we have invested stakeholders. And I think it should be an
13 agenda item.

14 BOARD MEMBER LASZCZ-DAVIS: Yeah.

15 A/CHAIR BURGEL: Did you want to comment?

16 BOARD MEMBER LASZCZ-DAVIS: Yeah, just a couple of words really to
17 dovetail what Kate indicated. The truth is a petition has been presented to us. I would
18 be lying to you to suggest that I know all the details of that, its impact and how it would
19 play out. And I think given the incredible work that the Division has done in terms of the
20 standards I think that given the stakeholders and the fact that we have another petition
21 on the table that may actually elevate the collaborative inner workings, I think we need
22 to at least consider it and hearing it out from a tactical, logistical standpoint as well.

23 And if we acknowledge that then part of the December meeting can
24 allow the petitioners to share the details about that petition and how it compares to
25 what we're doing.

1 BOARD MEMBER STOCK: I guess my question would be is that I feel like
2 typically when stakeholders submit a petition there's a process that everybody has been
3 aware of over many, many years. And in all the years I've been on the Board they
4 submit the petition. It's evaluated by the Division and by the Standards Board staff.
5 They have an opportunity to review it and comment and make recommendations. We
6 get an opportunity to review that. It gets discussed by stakeholders. And I just repeat
7 my concern about veering from that process and what implication that might have for
8 future.

9 And I guess I'll just say again that I think my resisting to specifically adding
10 a review of the petition to a discussion item in contradiction to the process that I've
11 been familiar with for many years, does not mean that we can't discuss those issues.
12 And as I said I think the existing public comment process, just like we heard today, gives
13 all the stakeholders every opportunity that they need to present their ideas about
14 approaches. But a petition is something very specific that falls into procedures that
15 have been in place and that everybody relies on consistency of in applying that. And I'm
16 concerned about elevating this particular petition. And other stakeholders that haven't
17 realized that that's an option, haven't come to us with an opportunity with a different
18 approach, again, in general we're using the public stakeholder comment period for that
19 purpose. So I guess I just have to reiterate my concern about it.

20 A/CHAIR BURGEL: I would actually concur. And a point of information
21 with Laura, your point, I have a point of information for Christina, Ms. Shupe, from
22 Robert's Rules of Order. Any Board Member can bring an agenda issue or -- I mean, a
23 topic for a future meeting. And so if Chris or Kate wish to bring up a discussion of using
24 IIPP, not in reference to that specific petition, but for IIPP for the prevention and
25 management of COVID in the workplace that is possible for Kate or Chris to do; is that

39

1 correct?

2 MS. SHUPE: So we are actually not bound strictly by Robert's Rules of
3 Order. We're bound by Bagley Keene, which requires that any action taken by the
4 Board be properly noticed on our agenda. I'd like to point everybody to our agenda
5 right now where you'll see that on every agenda, we notice new business. And this is an
6 opportunity to have discussions such as the one that you're having today where you can
7 discuss items that come before the Board, dig into them in detail, but you cannot really
8 make any decisions.

9 And so, if the Board wants to have a discussion of that nature you can do
10 that right now if you want to. I guess I'd like to clarify exactly what the hope is for the
11 December agenda. Are you looking for a decision or are you looking for a discussion?

12 BOARD MEMBER LASZCZ-DAVIS: I'm actually looking for an exploratory
13 discussion initially.

14 A/CHAIR BURGEL: Okay. Kate?

15 MS. SHUPE: We've noticed discussions for hot topics before. We did this
16 when we had the firefighter PPE — I'm sorry, the Wildfire Smoke Prevention ETS. We
17 noticed a discussion for that one. We have noticed discussions for COVID-19. So it will
18 be up to the Board Chair for the December meeting to set the agenda. But I think that
19 there is some precedent here.

20 But also I really want to break down for everybody the difference
21 between a decision and a discussion. So there's nothing that prevents you from having
22 that discussion right now. But making decisions? Absolutely not, those have to be
23 properly agenda-ized.

24 A/CHAIR BURGEL: Okay, what's the pleasure of Kate and Chris? Do you
25 want it, Chris?

1 BOARD MEMBER CRAWFORD: Go ahead Chris.

2 BOARD MEMBER LASZCZ-DAVIS: Well, I'd certainly like to see it on the
3 agenda for the December meeting.

4 A/CHAIR BURGEL: For a discussion?

5 BOARD MEMBER LASZCZ-DAVIS: For discussion.

6 BOARD MEMBER CRAWFORD: Yes.

7 BOARD MEMBER STOCK: Can I suggest that we frame that as a discussion
8 of various approaches, including the IIPP, so it's not specifically -- that makes it a little bit
9 more general, that it doesn't specifically elevate that there is a particular petition. Not
10 that that precludes discussing that, the elements of that, but if we just define as you
11 described it Chris you want to discuss the approach using the IIPP. And if we want to
12 discuss the role of CDPH there's nothing to prevent us.

13 And I know we had that topic specifically on the agenda at the
14 subcommittee meeting. At your request actually, Chris, that we open the door to the
15 public to look specifically at the pros and cons of an approach using the IIPP. So just
16 again, that's another example of where this issue and this approach, there have been
17 many opportunities within our current structure and process to discuss that. And we
18 can certainly -- so I guess that would be a friendly kind of suggestion that we frame that
19 discussion in that more general way that would then allow any discussion.

20 And again, as I'm hearing what Christina you're saying is we do also know
21 that the readoption will be up for a vote in December. And so that will be a decision
22 that we will be making in December. But we further have opportunities to discuss
23 alternative approaches that might inform the kind of decisions we make about the
24 permanent regulations.

25 MS. SHUPE: That's correct.

1 BOARD MEMBER LASZCZ-DAVIS: And I think that's fair enough, Laura.

2 A/CHAIR BURGEL: Okay. Now Christina, do we need a motion to pass to
3 add this to the agenda for discussion for the December meeting or?

4 MS. SHUPE: No. I'll just take this as a request to staff to add the agenda
5 item.

6 A/CHAIR BURGEL: And, Nola, you have a comment? Nola?

7 BOARD MEMBER KENNEDY: Yeah. I just sort of wanted to add some
8 comments to the discussion that we're having. I think I too would like to see a discussion
9 added to the agenda for December. You know, when we original -- and all through this
10 we've heard from several stakeholders sort of saying, "Why can't we use the IIPP? It
11 should work." And we did it explore that through the subcommittee. The answer we
12 got at that time was we don't really know how it's going to work, because none of the
13 decisions from the Appeals Board have come back yet. We're starting to get decisions
14 from the Appeals Board, not I don't think necessary -- and Eric will have more specific
15 information probably, but I don't know that we've had anything related specifically to
16 COVID yet.

17 But I know I would like to see not just a discussion of CDPH rule and
18 whether this is a good opportunity for using an existing regulation to approach the
19 pandemic. But I think we also need to look at and think about how using the IIPP will
20 influence our abilities for enforcement and how it will affect compliance and compared
21 to other things that are being considered. We really do want regulations that are easy
22 to understand and enforceable. And so I would like to see that explored a little more,
23 especially in light of perhaps -- I mean, just like the science has changed, the policy may
24 be changing with time too. So I'd like maybe a reanalysis of how effective it would be,
25 especially in light of some Appeals Board decisions are being made.

1 BOARD MEMBER LASZCZ-DAVIS: I agree.

2 A/CHAIR BURGEL: Thank you. Any other comments or questions for Mr.
3 Berg?

4 All right. Thank you, Eric.

5 MS. SHUPE: Before we move on, I just want to clarify a couple of items.
6 Because, Nola, you asked for a reanalysis. And so I want to know if the Board is
7 expecting a staff report on this item or if this is going to be noticed as was discussed as a
8 general discussion item?

9 BOARD MEMBER KENNEDY: I think for December it's not enough time
10 probably, a general discussion item is enough. But in the future depending on how that
11 discussion goes some analysis may be needed for looking at the two-year standard or
12 more permanent rulemaking. I don't think anything is needed for December.

13 A/CHAIR BURGEL: If we have any updates from Appeals.

14 BOARD MEMBER KENNEDY: Yes.

15 A/CHAIR BURGEL: That would be helpful. But I would agree with Nola.

16 MS. SHUPE: Thank you.

17 A/CHAIR BURGEL: Any other comments from the Board in this issue?

18 (No audible response.)

19 Okay we're going to move forward to the Legislative Update. Again,
20 thank you, Mr. Berg. Ms. Gonzalez, will you please brief the Board on the Legislative
21 Update?

22 MS. GONZALEZ: Sure, thank you. If you look in your Board packages this
23 month the legislative report is very short. The Legislature is not going to reconvene
24 until January 3rd, so we probably won't have much of a substance to give you until then.

25 A/CHAIR BURGEL: Are there any questions from the Board for Ms.

1 Gonzalez? Seeing none, thank you, Ms. Gonzalez.

2 Ms. Shupe will you please brief the Board?

3 MS. SHUPE: Yes, thank you. Just one moment, juggling tech here.

4 Okay so as I've already noted we're watching the federal language or the
5 federal litigation regarding the federal vaccination and testing ETS. I wanted to focus
6 though today's report on our efforts to fill our vacancies. As you know we're about to
7 have a very important vacancy in our Principal Engineer position. And so to that end we
8 have secured additional support for the administrative management of our hiring
9 process. So they want to thank DIR for assisting us with that. And we've also identified
10 two retired annuitant candidates to assist us until our permanent late recruitments can
11 be completed.

12 Looking forward, we'll be noticing a 15-day comment period for our
13 proposal to consolidate variance sections within Construction Safety Orders, Article 15,
14 also known as the Cranes and Derricks in Construction proposal. Oral comment and
15 review will open tomorrow. And it will remain open until December 8th, 2021. I'd like
16 to note for our stakeholders that that is prior to the next Board meeting. So it will be
17 the full 15 days, but it will close on December 8th.

18 And then at our next meeting on December 16th the Board will consider
19 the second readoption of the ETS, which we have addressed. And such readoption
20 would remain effective for 90 days after its effective date. So that would be from
21 January 14th until about April 14th.

22 Are there any questions from the Board? Thank you.

23 A/CHAIR BURGEL: Great. Thank you, Ms. Shupe.

24 Okay, now it's our New Business, the future agenda items. Do any of the
25 Board Members have questions for staff or items that they would like to propose for

1 future Board agenda items? As we discussed we have one for December, but are there
2 additional topics? I don't see any hands up, okay.

3 And Closed Session will not be necessary today, so I'm removing that
4 items from our agenda.

5 And adjournment of the business meeting, the next Standards Board
6 regular meeting is scheduled for December 16th, 2021, by way of teleconference and
7 video conference. Please visit our website and join our mailing list to receive the latest
8 updates. We thank you for your attendance today. There being no further business to
9 attend to this this business meeting is adjourned. And I wish to thank everybody. Thank
10 you.

11 (The Business Meeting adjourned at 11:22 a.m.)

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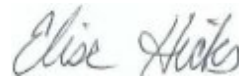
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