

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of:)
OSHA Standards Board Meeting)
_____)

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

HYBRID MEETING VIA WEBEX AND IN-PERSON

CALIFORNIA STATE RAILROAD MUSEUM

EAST THEATER

111 I STREET

SACRAMENTO, CA 95814

THURSDAY, JANUARY 18, 2024

10:00 A.M.

Reported by:

Martha Nelson

APPEARANCESBOARD MEMBERS PRESENT IN SACRAMENTO:

Dave Thomas, Chair

Kathleen Crawford, Management Representative

Dave Harrison, Labor Representative

Nola J. Kennedy, Occupational Health Representative

Chris Laszcz-Davis, Management Representative

Laura Stock, Occupational Safety Representative

BOARD MEMBERS PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Joseph M. Alioto Jr., Public Member

BOARD STAFF PRESENT IN SACRAMENTO:

Autumn Gonzalez, Chief Counsel and Acting Executive Officer

Amalia Neidhardt, Principal Safety Engineer

Kelly Chau, Attorney

Sarah Money, Executive Assistant

BOARD STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Michelle Iorio, Attorney

Jesi Mowry, Administration and Personnel Support Analyst

Jennifer White, Regulatory Analyst

APPEARANCES

CAL/OSHA STAFF PRESENT IN SACRAMENTO:

Jeff Killip, Chief of Cal/OSHA

Eric Berg, Deputy Chief of Health

Susan Eckhardt, Senior Safety Engineer

Yancy Yap, Senior Safety Engineer, Research and Safety Standards Unit

CAL/OSHA STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Jason Denning, Principal Safety Engineer, Research and Standards Unit

Phillip Yow, Senior Safety Engineer, Cal/OSHA Crane Unit

TKO Staff:

John Roensch

Maya Morsi

Sean Acrea

Conner Helm

INTERPRETERS:

Fabian Londono

Brenda Tamez

APPEARANCES

PUBLIC COMMENTERS:

Bruce Wick, Housing Contractors of California

Nick Plurkowski, United Steelworkers

Chris Walker, California Association of Sheet Metal and Air
Conditioning Contractors (CalSMACNA)

Marc Connerly, Roofing Contractors Association of
California

Richard Lawson, Lawson Roofing Company

Stephen Rehrmann, Stomper Company, Inc.

Sharon Hilke, Painting and Decorating Contractors of
California

JD Friend, Operating Engineers Local 3

Steve Johnson, Associated Roofing Contractors of the Bay
Area Counties

Rex Hime, Western Electric Contractors Association

Dr. Cris Williams, International Lead Association

Sarah Maya-Goldbaum, United Food and Commercial Workers
Local 135

Helen Cleary, Phylmar Regulatory Roundtable, Occupational
Safety and Health Forum

Susan Bernard, Battery Council International

Mike West, State Building and Construction Trades Council
of California

Christopher Lee, United Contractors

Duane Musser, National Roofing Contractors Association

APPEARANCESPUBLIC COMMENT (cont.)

Eddie Marquez, Union Roofing Contractors Association and
California Hispanic Chambers of Commerce

Michael Miiller, California Association of Winegrape
Growers

David Sikorski, Operating Engineers Local 12

Larry Hopkins, Operating Engineers Local 12

John Zarian, National Commission for the Certification of
Crane Operators (NCCCO)

Thom Sicklesteel, National Commission for the Certification
of Crane Operators (NCCCO)

Beth Malinowski, SEIU California

Thomas Milietti, Operating Engineers

Dan Leacox, Leacox & Associates

Dan Reding, Operating Engineers Local 3

Stephen Knight, Worksafe

Meghan Stanczak, United Food and Commercial Workers Local 5

Tracy Berry, American Subcontractors Association of
California

Anne Katten, California Rural Legal Assistance Foundation

Mitch Steiger, California Federation of Teachers

Dave Smith, Dave Smith & Company

Robert Moutrie, California Chamber of Commerce

Mark Hoffman, Ecobat Resources

APPEARANCESPUBLIC COMMENT (cont.)

Tresten Keys, Associated General Contractors of California

Chris Cetin, Laurence-Hovenier, Inc.

Matt Kuzemchak, Federal OSHA

Tom Rhodes, TWR Framing Enterprises

Maria Santiago

Sid Montgomery, United Production Framing

Mark Dally, Circle M Contractors

Jason Cetin, Laurence-Hovenier, Inc.

Brent Kisgen, United Production Framing

Alex Mercier, Circle M Contractors

Juan Ayzlz, Union Local 701

Tony Guzman, Union Local 701

Israel Santiago, United Production Framing

Jim C. Henderson, Davis Development Company

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

Cassie Hilaski, Nibbi Brothers General Contractors

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P R O C E E D I N G S

10:00 a.m.

THURSDAY, JANUARY 18, 2024

CHAIR THOMAS: Good morning and welcome to the Occupational Safety and Health Standards Board meeting. It's now called to order and let's stand for the flag salute.

(The Pledge of Allegiance is recited in unison)

CHAIR THOMAS: Thank you. The lighting in here is terrible so bear with me. Not for a movie theater, but for this meeting it's terrible.

My name is Dave Thomas. I'm the Chairman, and the other Board Members present today are: Kathleen Crawford, Management Representative; Dave Harrison, Labor Representative; Nola Kennedy, Occupational Health Representative; Chris Laszcz-Davis, Management Representative; Laura Stock, Occupational Safety Representative. Joining the meeting via Webex is Joseph Alioto, Public Member.

Joe, can you hear us and are you -- well, let's see. Where are you joining us from and are other people present with you?

BOARD MEMBER ALIOTO: Okay. Good morning, everybody, first of all, and I'm sorry that I can't be there. One of the great treats of being there, of course,

1 is the Railroad Museum, so I'm really sorry that I wasn't
2 able to join today. I am streaming to you live from my
3 office up in San Francisco and nobody is present with me.

4 CHAIR THOMAS: Thank you. So you have no
5 friends?

6 BOARD MEMBER ALIOTO: I have no friends except
7 for you guys. That's why I wish I were there.

8 CHAIR THOMAS: Then present from the staff for
9 today's meeting are: Autumn Gonzalez, Chief Counsel and
10 Acting Executive Officer for today's meeting; Amalia
11 Neidhart, Principal Safety Engineer, who is also providing
12 translation services for our commenters, who are native
13 Spanish speakers; Kelly Chau, Attorney; and Sarah Money,
14 Executive Assistant.

15 Present here in Sacramento from Cal/OSHA are Jeff
16 Killip, Chief of Cal/OSHA; Eric Berg, Deputy Chief of
17 Health for Cal/OSHA; and Susan Eckhart, Senior Safety
18 Engineer. Sorry, it is hard to read in here. And Yancy
19 Yap, Senior Safety Engineer, Research and Standards Unit.

20 Cal/OSHA staff present via Webex today are Jason
21 Denning, Principal safety Engineer, Research and Standards
22 Unit, and Philip Yow, Senior Safety Engineer, Cal/OSHA
23 Crane Unit.

24 The Board staff supporting the meeting remotely
25 are: Michelle Iorio, Attorney; Jesi Mowry, Administration

1 and Personnel Support Analyst; and Jennifer White,
2 Regulatory Analyst.

3 Copies of the agenda and other materials related
4 to today's proceedings are available on the table near the
5 entrance to the room, and are posted on the OSHSB website.
6 This meeting is also being live broadcast via video and
7 audio stream in both English and Spanish. Links to these
8 non-interactive live broadcasts can be accessed via the
9 Meetings, Notices, and Petitions section on the main page
10 of the OSHSB website.

11 If you are participating in today's meeting via
12 teleconference or web conference, we are asking everyone to
13 place their phones or computers on mute and wait to unmute
14 until they are called on to speak. Those who are unable to
15 do so will be removed from the meeting to avoid disruption.

16 As reflected on the agenda, today's meeting
17 consists of three parts.

18 First, we will hold a public meeting to receive
19 public comment or proposals on occupational safety and
20 health matters. Anyone who would like to address any
21 occupational safety and health issue, including any of the
22 items on our business meeting agenda, may do so when I
23 invite public comment. If you are participating via
24 teleconference or video conference, the instructions for
25 joining the public comment queue can be found on the

1 agenda. You may join by clicking the public comment queue
2 link in Meetings, Notices and Petitions section on the
3 OSHSB website or by calling 510-868-2730 to access the
4 automated public comment queue voicemail.

5 If you experience any technical issues with the
6 teleconference or video conference, please email
7 oshsb@dir.ca.gov. When the public meeting begins, we are
8 going to alternate between three in-person speakers and
9 three remote commenters. When I ask for public testimony,
10 in-person commenters should provide a completed speaker
11 slip to the staff person near the podium and announce
12 themselves to the Board prior to delivering comment.

13 Commenters attending via the teleconference or
14 video conference, please listen for your name and
15 invitation to speak. When it is your turn to address the
16 Board, unmute yourself if you're using Webex or dial star 6
17 on your phone to unmute yourself if you're using a
18 teleconference line. Please remember star six, because
19 that is the thing that holds us up the most in some of
20 these comments.

21 We ask all commenters to speak slowly and clearly
22 when addressing the Board, and if you are commenting via
23 teleconference or videoconference remember to mute your
24 phone or computer after commenting.

25 Today's public comment will be limited to two

1 minutes per speaker and the public comment portion of the
2 meeting will extend for up to two hours so that the Board
3 may hear as many members of the public as possible.
4 Individual speakers and total public comment time limits
5 may be extended by Board Chair.

6 After the public meeting we will conduct the
7 second part of our meeting which is the public hearing. In
8 the public hearing we will consider proposed changes to the
9 and health standards that we're notice for today's meeting.
10 Finally, after the public meeting is concluded, we'll hold
11 a business meeting to act on those items listed on the
12 business meeting agenda.

13 We have a presentation right now. A Cal/OSHA
14 presentation on the lead standard will be part of the
15 business meeting. Is it during the business meeting or
16 now?

17 MS. GONZALEZ: During the business meeting.

18 CHAIR THOMAS: Okay. So we'll have that during
19 the business meeting.

20 Public meeting. We will proceed now with the
21 public meeting. Anyone who wishes to address the Board
22 regarding matters pertaining to occupational safety and
23 health is invited to comment.

24 Except, however, the Board does not entertain
25 comments regarding variance matters. The Board's variance

1 hearings are administrative hearings where procedural due
2 process rights are carefully preserved. Therefore, we will
3 not grant requests to address the Board on variance
4 matters.

5 For our commenters who are native Spanish
6 speakers, we are working with Amalia Neidhardt to provide a
7 translation of their statement into English for the Board.
8 At this time Amalia Neidhardt will provide instruction to
9 the Spanish-speaking commenters so they are aware of the
10 public comment process for today's meeting.

11 Amalia?

12 (Instructions are given in Spanish.)

13 MR. ROENSCH: Dave, can you turn on your
14 microphone there?

15 Dave, is your green light on in the microphone?

16 CHAIR THOMAS: I didn't know you couldn't hear
17 me. Now you can hear me.

18 And you know, in these politically and
19 religiously treacherous times, I just want to remind
20 everybody that in all fairness and good sportsmanship, the
21 49ers must beat Green Bay this weekend. So let's give the
22 49ers a big go Niners.

23 Go Niners.

24 UNKNOWN SPEAKER: Go Niners.

25 CHAIR THOMAS: Hopefully everybody's relaxed now,

1 right?

2 MR. WICK: Packers fan since 1967.

3 CHAIR THOMAS: My condolences. My condolences.

4 MR. WICK: Now that we got that out of the way.

5 Thank you for clearing the air.

6 BOARD MEMBER ALIOTO: That explains a lot, Bruce.

7 MR. WICK: My pleasure, Chair Thomas, Board
8 Members. Bruce Wick, Housing Contractors of California.

9 I want to bring up an important issue and bring
10 two examples of why this issue needs to be resolved, and
11 it's the Division's view on conducting advisory committees.
12 They continue to say, well, you can't get enough labor
13 representation and we can't get a good reg done the way the
14 Standards Board staff does it.

15 Totally disagree. The Standards Board gets 25,
16 30 people around a table, labor representatives. They
17 don't have to be totally equal in number. I've been in
18 many advisory committees with Dave Harrison and his
19 colleagues and your colleagues, Dave Thomas, and
20 everybody's well respected, everybody gets their voice
21 heard, and we work through to the right reg. Because we
22 have labor people who know the craft and the safety needs.
23 We have management who's there, who has to implement this,
24 train on it, and enforce it, and we have safety experts.
25 Hundreds of hours of experience to draw on.

1 When one person sits in an office, says give me
2 your input, but I will write the reg, it's easier for them,
3 but 18 million workers should not have a reg that is made
4 because it's easier for the drafter.

5 We should concentrate on getting the best reg. A
6 reg done by roundtable with all the experts is going to be
7 a much more effective regulation than one person sitting in
8 an office.

9 So two examples.

10 The indoor heat illness prevention. We are on
11 version 11, because what happens when one person gets input
12 and then rewrites it, they say, okay, this person has a
13 problem, I'll fix that. Well, they fix that and create
14 another problem. And the next version, somebody says,
15 well, now you have this problem. So you fix that problem,
16 and then you create yet another problem.

17 When we're all around the table, we solve those
18 problems then, and now we take care of things. So the lead
19 reg has taken seven years and it's still -- I'm sorry, the
20 indoor heat has taken seven years and it's still not right.
21 Warehouse workers were supposed to be protected in 2019.
22 Five years later, we don't even have the reg worked right.
23 This is a serious problem.

24 Second example and last, the lead reg. That,
25 we're on our ninth version. By the time this comes up for

1 next week it will be 13 years this will have been being
2 worked on and it is still not right. The presentation, the
3 PowerPoint we saw, is inaccurate in several parts. You'll
4 hear from others about that.

5 We'll talk about the SRIA process. The SRIA is,
6 you can have an economist follow the procedures of a SRIA,
7 but if they don't understand what to plug in and how to
8 apply the data and where to get the real data, you can have
9 a SRIA that, like this one, is billions of dollars off in
10 its numbers. We've asked for a meeting with DIR to walk
11 through those, that information, four months ago. We have
12 no response. We give, employers give DIR, provide 1.7
13 billion dollars to DIR to fund their operations and we
14 can't even get a response to a request to talk about the
15 SRIA. This is so important.

16 So I really think the right thing next month when
17 this comes up for vote, we've been at it 13 year, it should
18 be voted no. Tell the Division to get on it. Let's have a
19 true advisory committee. Get the scientific experts who
20 are still talking about what's airborne, and what's
21 ingestion exposure, and how to mill those two and get the
22 right permissible exposure level and action level. We need
23 to get these things right. And one person sitting in
24 office, that's not only hard to do, it takes too long.

25 Thank you.

1 CHAIR THOMAS: Thank you.

2 Good morning.

3 MR. PLURKOWSKI: Good morning, Chair Thomas and
4 Board Members. My name is Nick Plurkowski, and I'm an
5 operator at the PBF Refinery in Martinez, formerly operated
6 by Shell. I'm here representing the United Steelworkers
7 and USW Local 5.

8 The USW represents just under a million workers
9 in North America, including most of California's refinery
10 workers. Local 5 represents a thousand workers in the Bay
11 Area refineries.

12 The USW is urging your consideration of an
13 emergency standard to expand the scope of §5189.1, process
14 safety management for petroleum refineries, to include
15 refineries that process renewable feedstocks in place of
16 petroleum. These plants include Marathon and the Phillips
17 66 plant in Rodeo, and more are expected to come online in
18 the next few years. The USW submitted a petition this week
19 to the Board so you'll be seeing it soon.

20 We're calling for an emergency standard because
21 one of our members, Brother Jerome Serrano, was critically
22 burned in November last year by flammable liquids at the
23 Marathon Refinery. Brother Serrano has been at the UC
24 Davis Burn Center since he was flown by helicopter there on
25 the morning of November 19th. He has third degree burns

1 over 80 percent of his body. Jerome received a tracheotomy
2 because he suffered inhalation burns to his esophagus and
3 trachea. He lost the soft tissue on his ears and eyelids,
4 and he severely burned his hands from protecting his face
5 and using them to find his way out of the epicenter during
6 the loss of containment under the furnace. He lost his
7 pinky fingers on both hands, and could potentially lose
8 more of his fingers.

9 Jerome has had four more major surgeries so far
10 and many more to come if he survives. He will never be the
11 same, and his ability to support his wife and family has
12 been destroyed. If he survives, he faces a lifetime of
13 severe disfigurement and disability.

14 I'm telling you about Brother Serrano because we
15 saw this coming for the last few years. This was not a
16 freak accident. It was an inevitable result of shoddy
17 management and poor maintenance at the Marathon Refinery,
18 which began when Marathon managers decided that the plant
19 was exempted from §5189.1, Cal/OSHA's groundbreaking
20 process safety management standard for petroleum and
21 refineries that this Board approved unanimously in 2017.
22 To this day, 5189.1 stands as the most far-reaching and
23 protective process safety standard worldwide.

24 We know from firsthand experience that it has
25 made California's refineries substantially safer. It has

1 protected hundreds of thousands of California residents and
2 our state's refinery workers and contractors. Washington
3 State adopted section 5189.1 in December of 2023.

4 Marathon Management decided that the refinery
5 does not process petroleum, so it should be exempted from
6 5189.1 and should fall under the antiquated 5189, which
7 Cal/OSHA adopted from federal OSHA in 1992, and that has
8 not been updated since then. It covers the state's non-
9 refinery chemical plants. Marathon's decision to exempt
10 itself from 5189.1 went unchallenged by OSHA and DIR.

11 To be clear the physical properties of petroleum
12 crude oil versus renewable fats, oils, and greases may be
13 different, but those differences end at the point of
14 delivery to the facility where the feedstock is processed.
15 Both types of feedstocks are processed into highly
16 flammable gasoline, jet fuel, and diesel.

17 It's important for you to know that §5189 is
18 ineffective for these large fuel processing plants that
19 power our state. In 2014, the reports of the U.S.
20 Chemical Safety Board and Governor's Working Group on
21 Refinery Safety concluded that the weaknesses of §5189
22 contributed substantially to the deferred maintenance, poor
23 safety culture, and lack of accountability by Chevron
24 management that led to the catastrophic pipe failure at the
25 Richmond Chevron plant in August 2012. That incident

1 endangered lives of 19 workers who were caught in the
2 flammable vapor cloud and it caused some 15,000 residents
3 to seek medical attention for symptoms related to smoke
4 exposure according to the CSB's report.

5 And now Marathon has unilaterally decided that
6 5189.1 is irrelevant. We've lost everything we fought for
7 under Section 5189.1. Both Cal/OSHA and my union have been
8 disarmed under §5189, and Brother Serrano is paying the
9 price.

10 And make no mistake, under 5189, this refinery is
11 on the path to a catastrophic loss of containment that
12 could injure or kill many workers, and could threaten the
13 safety and health of many thousands of residents. Brother
14 Serrano's incident and the many flaring events and other
15 problems we've witnessed at this plant are indicators of
16 Marathon's disinvestment in safety, and it is only a matter
17 of time before the plant experiences a major industrial
18 disaster. The bottom line is that Cal/OSHA and DIR have
19 allowed one of the state's largest refineries that produces
20 millions of gallons of highly flammable liquids to escape
21 coverage under 5189.1, our state's hard-won refinery PSM
22 regulation.

23 While Governor Newsom's shift in energy policy
24 has created the opportunity for the oil industry to take
25 advantage of renewables during the transition anticipated

1 for fossil fuels, we do not believe the Governor or
2 legislator intended to create a massive gap in worker and
3 community safety by allowing renewable refineries to ignore
4 Cal/OSHA's refinery safety regulation, §5189.1. On behalf
5 of Jerome Serrano, his family, the USW, and Local 5, we are
6 respectfully requesting that this Board accept our petition
7 and support it in order to ensure that the scope of §5189.1
8 is immediately expanded to cover Marathon and all of our
9 state's renewable fuels refineries. Further, we
10 respectfully request that the Board direct Cal/OSHA's
11 Research and Standards Unit to undertake this emergency
12 rulemaking effort.

13 Thank you very much for your time and attention.

14 CHAIR THOMAS: Thank you.

15 Morning.

16 MR. WALKER: Morning, Mr. Chair, members of the
17 Board. Chris Walker with the California Sheet Metal Air
18 Conditioning Contractors. We represent 300 union
19 contractors across the state that design, build, and
20 install HVAC, mechanical systems, architectural sheet metal
21 products for industrial, commercial, and public works
22 projects.

23 I want to talk today about lead, and the proposal
24 and the process and the science. Safety of our workers is
25 the utmost concern. What many of you don't understand is

1 our contractors are the workers. It's their family, it's
2 their friends, it's their crew. Nothing is more important.
3 CAL SMACNA supports the overall objective of reducing the
4 blood lead burden of workers. We agree and understand that
5 exposure to lead at lower levels can have harmful effects,
6 and we support the intent of the proposed amendments to
7 protect workers from occupational exposure to lead.

8 However, we have significant concerns regarding
9 the unintended consequences and unreasonable burden that
10 the proposed amendments to the action level and the PEL
11 will have on California businesses tasked with retrofitting
12 and building California's decarbonized future.

13 What you will find is much of the carbon is found
14 in existing buildings. When you drop the PEL, ALPEL, from
15 50 and 30 to 10 and 2, you're increasing the scope of the
16 current regulations on all job sites by an order of
17 magnitude. It drives the cost of exposure assessments,
18 controls, medical surveillance, and blood level testing
19 into the stratosphere.

20 The SRIA was mentioned earlier. Moving forward,
21 I hope that you are paying attention to the actual costs of
22 dropping these thresholds to these levels will have on
23 businesses that have no choice but to comply out of fear of
24 enforcement, lawsuits, what have you. We will protect
25 ourselves, and we will have to spend the money to do that

1 even when it's not necessary. This is where the rule gets
2 it wrong.

3 Modeling concerns. Staff has been provided
4 alternative interpretations of the modeling concerns. Have
5 they been addressed? Today you will hear a presentation
6 from staff. I've seen 10 slides defensively arguing that
7 PBPK is an appropriate model. That's fine. But the
8 assumptions and the application of that model are what's
9 wrong. And to date, I'm not aware of anything that's been
10 done by staff to reach out to the Gradient scientists and
11 researchers to find out why there's such a difference in
12 their findings. Simply because they work with the lead
13 industry isn't a good enough reason.

14 I've got some questions. The quote from the
15 Gradient study, it can be concluded that the OEHHA model
16 overpredicts the blood lead level corresponding to a given
17 air lead measurement across a wide range of air lead
18 measurements. Most importantly, this comparison plainly
19 points out that the OEHHA model is inappropriate for use in
20 establishing workplace air limits such as the PEL or action
21 level from any blood limits that are proposed in a revised
22 Cal/OSHA lead standard.

23 I have some questions. Has Cal/OSHA staff, or
24 OEHHA staff, conducted additional modeling, applying the
25 recommended corrections and modifications reflecting the

1 best currently available science as provided by Gradient?
2 Have they done that? If not, why?

3 Has OEHHA and Cal/OSHA completed these revisions
4 and discussed them with Gradient? If not, why not?

5 We don't dispute the legitimacy of using a PBPK
6 model. What I hear is concern about the applicability and
7 assumptions that OEHHA and Cal/OSHA staff have relied upon
8 in their use of that model, and the costs to this state,
9 building owners, contractors, to decarbonize our future.
10 Unnecessary costs is a waste. It's exactly where
11 California is ridiculed across the nation. If we're going
12 to do it, we'd better do it right, and the science better
13 be solid.

14 I have some other questions.

15 You have a staff availability issue. As a
16 general observation across the years-long process and
17 effort to revise the lead standard, it's apparent that
18 Peter Schultz, a former CDPH technical expert and current
19 retired annuitant, has been substantially involved in the
20 process from a technical and programmatic perspective. In
21 fact, at a meeting of the coalition members in the
22 construction industry that we had with Cal/OSHA staff late
23 last year, Peter essentially chaired the meeting and served
24 as a technical expert on the proposed revisions.

25 Why has Peter not been more available to the

1 stakeholder community over the last few years? I'm not
2 aware of him being here today. Why isn't he available to
3 you for your questions?

4 The science must be solid. We cannot embark on
5 this kind of differential in interpretation of exposure and
6 the costs to contain that exposure where we're wasting
7 money, taxpayer money. Public works projects. Schools.
8 Right? We have to get this right.

9 If we have to do this and revise it and work with
10 you guys over the next year, let's do it. We're about
11 protecting people from let we think the current standard
12 does a good job. We need to do better.

13 But to take the PEL and AL from 50 and 30 to 10
14 and 2, do you not realize what that threshold change will
15 mean to businesses who have to comply? And if they don't
16 comply, they're sleepless at night, worried about lawsuits
17 and enforcements and having their businesses taken away
18 from them at the end of the day? This is the kind of thing
19 that California employers are tired of.

20 Get it right. Let's take the time to get it
21 right, and let's protect our workers.

22 CHAIR THOMAS: Thank you. We're going to now go
23 to online speakers.

24 So Maya, who do we have?

25 Hello, Maya?

1 MS. MORSI: Up next is Robert Orford with Mayo
2 Clinic Emeritus.

3 CHAIR THOMAS: Hello. Are you with us, caller?

4 MR. CONNERLY: Yes. Hello?

5 CHAIR THOMAS: Hello. Can you hear us?

6 MR. CONNERLY: Yes. Are you able to hear me now?

7 CHAIR THOMAS: Yes. Go right ahead.

8 Introduce yourself, please.

9 MR. CONNERLY: This is Mark Connerly, executive
10 director of the Roofing Contractors Association of
11 California, here to testify in opposition to this proposed
12 regulation.

13 This is going to contribute significantly to the
14 underground economy. The fact of the matter is there just
15 is going to be very poor compliance, very little
16 compliance. To give you an example, over the last year,
17 more than 20 construction organizations have convened on a
18 regular basis: emails, phone calls, meetings. I have never
19 seen a regulation that has stirred this much concerted
20 effort to defeat it by a wide variety of organizations as
21 this one has. And the reason for that is that it is the
22 most preposterous, inappropriate, poorly conceived
23 regulation that I've seen in 20 years, quite frankly.

24 Bad contractors, illegitimate contractors, bad
25 actors, are not going to comply with it. But even the good

1 contractors who normally try to follow the rules are simply
2 not going to comply. And it's because of the process
3 that's not been transparent, the -- again, the very poorly
4 conceived provisions of the proposal.

5 I strongly, strongly urge you to please take a
6 step back. Give us a chance to come to the table and talk
7 this through.

8 The industry does not oppose protecting workers,
9 that is not the case. We want to put forth a standard that
10 protects workers, and that will be effective. We do not
11 just want to push through a standard that is ineffective
12 just for the purpose of pushing through a standard.

13 So please, please, we urge you to vote against
14 this, and put through a standard. Come back to the table,
15 talk with industry, and let us work on a standard that's
16 more effective.

17 CHAIR THOMAS: Thank you.

18 Who do we have next, Maya?

19 MS. MORSI: Up next is Richard Lawson with Lawson
20 Roofing Co.

21 CHAIR THOMAS: Richard, can you hear us?

22 MR. LAWSON: Can you hear me?

23 CHAIR THOMAS: Yes, go right ahead.

24 MR. LAWSON: Thank you.

25 I'm Richard Lawson with the Lawson Roofing

1 Company in San Francisco. We are a family-owned roofing
2 contracting business that was established in 1907. So
3 we've had 117 years of experience in the San Francisco Bay
4 Area installing roofs and waterproofing.

5 Of course, our most valuable asset is our
6 employees, and the safety of our employees is absolutely
7 one of the most important items that we go over. And we
8 want to be able to comply with those standards, but
9 unfortunately, the lead standard that is being proposed is
10 not something that us, as a contractor, can do in any type
11 of reasonable form.

12 The current regulations that we have seem to be
13 working very well. If we're going to modify it, let's do
14 it right.

15 I've got questions about the costs of the SRIA
16 that established that has not been looked at properly.

17 During those 117 years of experience, 47 years of
18 myself being on the job, I do not recall any employee
19 having lead poisoning issues in our business, we don't deal
20 with lead that often, but it's still out there. It's on
21 roofs. It's all around. The PEL limits that are being
22 proposed are pretty much unworkable for us.

23 We would like to work with you, as we have
24 mentioned before, to try to get a standard that is
25 workable, that protects our employees, but the situation as

1 it stands now, not only puts the employer at significant
2 risk from trying to comply with these standards, we also
3 are going to be responsible for our employees actions off
4 hours, if they work as a fisherman melting lead, or they
5 happen to be enjoying using firearms, making bullets and
6 ammunition for their arms, working with lead would then be
7 in their system and we'd be responsible for those actions.

8 So I'd please like you to vote no on this, and
9 then let us get to work on a regulation that is workable
10 and that could help the employees as well as the employers
11 to keep everybody safe.

12 Thank you.

13 CHAIR THOMAS: Thank you. And who do we have
14 next, Maya?

15 MS. MORSI: Up next is Steven Rehrmann with
16 Stomper Company.

17 CHAIR THOMAS: Steven, how you doing?

18 MR. REHRMANN: Morning, everybody.

19 How we doing?

20 CHAIR THOMAS: Steven, can you hear us?

21 MR. REHRMANN: Yeah.

22 CHAIR THOMAS: Yeah. yeah.

23 You might want to speak up just a little bit.

24 MR. REHRMANN: Okay. Yeah, this star six setup
25 is a little bit unfortunate. Okay, so Steven Rehrmann,

1 Stomper Company, demolition operations manager. Stomper
2 Company's been in business for over 50 years. It has vast
3 experience in working with lead in construction removal.

4 Proposed changes don't place nearly enough
5 importance on engineering controls and PPE, which are the
6 main factors in proactively protecting workers. The
7 proposed regulation changes seem to mainly address
8 biological monitoring, which merely serves as a backstop,
9 and anything that can be done at that point in the
10 employee's exposure cycle is reactive.

11 The standard is calling to test at levels which
12 are not widely commercially available. Flame atomic
13 absorption, which is the most widely used test source, only
14 tests at four micrograms per kilogram. The regulation
15 currently calls for two. Speaking with the testing
16 facilities, there's no timetable for one plasma testing
17 which would be the future test. We had no timetable for
18 when that would be widely available. As it stands, plasma
19 testing is 3x the cost, and will take up to five days to
20 run a standard test, because currently as we're in Northern
21 California we have to send these to Southern California.
22 (Indiscernible.) And this five days is the estimate before
23 the few facilities that can actually perform the test,
24 start to get inundated with tests, and then the backlog
25 starts filling.

1 For worker training, the two-hour awareness
2 course for lead in construction is more than adequate to
3 cover this training material, which right now would, as we
4 estimated, about eight hours for all 36. Our company's
5 been using the two-hour course for years, we've had zero
6 exposure to lead. The proposed 36-page handout to
7 employees, which again focuses too hard on health hazards
8 and biological monitoring. It's not worker protection in
9 engineering control. It's far too bloated and confusing.

10 We were running some estimated costs and
11 (indiscernible due to poor connection). So tests cost up
12 to three times as much, up to \$180 per test. Arrival time,
13 up to five days for waiting for results, at which time we
14 have to continually test, which means more people in the
15 field running all their money. I can't even estimate that.
16 Training, the additional six hours per year for 70
17 employees at \$90 an hour puts the burden at about \$37,000 a
18 year of extra training for an employer like us. Blood
19 draws would be about four times a year, times two hours a
20 piece, 70 employees at \$90 an hour puts us about \$50,000.
21 That's before technician cost. That does not factor in
22 loss of production time either. There's also extra
23 administrative time for all the OSHA notifications, not to
24 mention the extra showers and wash station facilities,
25 which also I can't estimate the lost time for usage to use

1 those as well.

2 None of this is written in regards to the PL or
3 the PEL with respirator protection taken into account. The
4 increase in unnecessary notifications, worker protections,
5 training, and blood draws will create nothing but fear and
6 panic amongst the workers. Proposed regulation does not
7 adequately address the main parts of worker safety. We
8 believe it should be rewritten with input from the
9 stakeholders that actually do the work, a database approach
10 that does not make working with lead more complicated than
11 it needs to be.

12 Thank you.

13 CHAIR THOMAS: Thank you.

14 We'll now have three from the in-person speakers,
15 so go right ahead.

16 MS. HILKE: Good afternoon, good morning,
17 Chairman Thomas and Board. My name is Sharon Hilke. I
18 represent the Painting and Decorating Contractors of
19 California and I'm also part of the larger coalition of
20 construction in lead. I want to just, I'm mostly going to
21 be talking about the SRIA, but I just wanted to start with
22 a small piece of science.

23 So Dr. Kevin Guth, who's a CIH and a doctorate
24 and assistant professor at the University of Florida and a
25 couple of other degrees, was going to be testifying today

1 and he was unable to make it, but he will be testifying at
2 the February 15th meeting. He's a leading expert in lead
3 in construction. He did a study that was published in
4 2020, that concluded, it was 279 workers on the Bridge
5 Projects, abrasive blasters, painters, workers, and his
6 conclusion was that the predominant cause of high blood
7 levels was the failure to use already existing health and
8 safety controls and measures, and then once that was
9 applied, they saw a significant drop in the blood lead
10 levels.

11 By the way, we've asked OSHA many times now if
12 they could provide their information to us on the
13 correlation between citations for high blood level
14 exposures on worksites and the correlation to the
15 noncompliance with existing PPE. We feel that that's
16 probably the bigger solution to the problem.

17 The second conclusion that he reached is that
18 ingestion is a much greater risk to the worker population
19 than inhalation. Inhalation is based on airborne.
20 Ingestion is, you know, hands, face, mouth.

21 Oh, I almost did the three monkeys thing there.
22 So I am sorry he's not here today, but February
23 15th, you'll all get to talk to him.

24 The other thing is that Federal OSHA is proposing
25 to reduce their standard from 50 to a PEL of 30, and an

1 action level from 30 to 10. And how we know this is
2 because they started out by reaching out to all of the
3 stakeholders nationally. They did questionnaires. They're
4 going to have in-person meetings. But the federal
5 government believes that a PEL of 30 and an action level of
6 10 is sufficient to protect the health and safety of
7 workers who are exposed to lead or can come in exposure to
8 lead. So what does Cal/OSHA know 13 years ago that somehow
9 federal OSHA still hasn't figured out in 2024? I don't
10 understand the disparity between the federal regulations
11 and our proposed regulations.

12 And I just want to say at a PEL of two, just make
13 it zero. It might as well be zero. It's so low that it
14 will be triggered on every job site for the smallest thing.
15 The reduction of 90 percent of the PEL and 83 percent of
16 the action level is -- it's just extraordinary. And the
17 impact is so much broader than Cal/OSHA anticipates. And
18 it's way broader than the SRIA anticipates. And now on to
19 my presentation, which is...

20 CHAIR THOMAS: Wait, wait, just a minute here.

21 MS. HILKE: No, I'm going to be, you know me, I'm
22 going to be quick and I'm not going to talk about showering
23 requirements.

24 CHAIR THOMAS: You got 30 seconds.

25 MS. HILKE: No, no, no.

1 CHAIR THOMAS: Go ahead.

2 MS. HILKE: I want my time back. So, reclaiming
3 my time.

4 So, in Eric's -- well actually Cal/OSHA's, sorry
5 -- Cal/OSHA's has a very strong critique of the community,
6 the stakeholders, and how we dealt with the SRIA. He says
7 we didn't share our methodology, he says we didn't share
8 data substantiating claims, we calculated in a different
9 way than SRIA -- first of all, no kidding -- and our cost
10 should not be compared with SRIA costs. Which I don't
11 understand, it's the same cost.

12 I wanted to give you -- you remember me. I'm the
13 person who talks about the showering requirements costing
14 \$10 billion a year, for which we were mocked several times
15 at the hearings, not by any of you lovely people. It was
16 just kind of a fact.

17 We met with -- and in all of our letters, we've
18 also mentioned our model in all of the letters. We went
19 through all the class code classifications for
20 construction, pulled out the ones that would be impacted.
21 It's 86,000 contractors at an extremely low estimation of
22 about two employees per contractor, which is really
23 generously low. We have about 160 employees, 50 are
24 supervisors, 110 are regular workers, and we base it on the
25 WCIRB rate of \$52. That's our model. It's in all of our

1 letters. It's in all of our testimony. We're not trying
2 to hide it. We want you to know what it is.

3 You know, Eric made a -- Mr. Berg made, my best
4 friend -- made a comment at the last hearing that we raised
5 high hell and then they took out the showering requirement.
6 I don't think we raised high hell, I think we just raised
7 numbers, facts, and math.

8 We actually met with Cal/OSHA. They were very
9 gracious to meet with us in person in August at their
10 headquarters in Oakland. There were three of them, six of
11 us in a CIH. Us is the coalition. So at that time there
12 was still a showering requirement and we started discussing
13 the showering requirement. And as you start going through,
14 it's not a little spigot, a little hose and some plastic.
15 The logistics for this are tremendous, to the point that it
16 would be extremely difficult for most contractors to just
17 set up a three-station showering station. In any event, we
18 did demonstrate to them the costs. So -- and they took the
19 showering requirement out.

20 So that day our costs were accurate and we
21 weren't incompetent or liars. So that day it worked.

22 I think it's interesting to note that when we
23 were talking about the cost for showering, the issue of
24 containment, the water, if you buy into -- it goes through
25 your PPE, it goes through your clothing, it's on your skin.

1 If you buy into that -- then that is lead exposure water.
2 It has to be contained, it has to be stored, and it has to
3 be transported. And the cost -- just five little 55-gallon
4 drums a week, which as a crew of five is nothing, is \$4,500
5 a week. When you start adding that up, I mean, those are
6 real world costs.

7 The astonishing response from Cal/OSHA at our in-
8 person meeting was, then just dump it down the storm drain.
9 I don't work for Cal/OSHA, but I know we shouldn't be
10 dumping lead-contaminated water down a storm drain. That
11 is not a serious response to a real critical issue facing
12 us.

13 I am almost done.

14 So in our meeting we wanted to talk about the
15 training, and Cal/OSHA said we're kind of done. We're
16 done. What you should do now is you should go talk to DIR.
17 So Christopher Lee -- who most of you know, he has 40 years
18 in Cal/OSHA -- and I requested of DIR that we meet with
19 their SRIA staff, and we never got an answer.

20 So we're actually trying very hard to get the
21 facts about the SRIA out. Where it stands now, there's
22 some questions about training. CDPH requires a special
23 certification, which is 40-hour training. The lead
24 regulation is silent on it. We're not really sure what to
25 do, and nobody talks to us anymore about, well, what do you

1 think this means in your lead regulation? So, we're left
2 with a projected cost of \$3.9 billion annually.

3 It's 4,400 percent higher than what the SRIA
4 says. That's like if you went to buy a house and it was
5 \$500,000 and then it just turned into 44 times that, which
6 I can't do the math right now because I'm trying to talk,
7 sorry. It's a lot more. 4,400 percent is unbearable.

8 And I think somebody has to have the
9 responsibility for saying that the SRIA has to be accurate.
10 I mean, the Code of Regulations does, but they're not
11 really at this hearing. Somebody has to say it needs to be
12 the truth. If it's \$3.9 billion, which it totally is, then
13 they should just own that. Just own that it's \$3.9
14 billion, and tell us that we're going to bear that burden.
15 86,000 contractors are going to be spending \$3.9 billion
16 just on the lead proposal. And again, we have
17 significantly underestimated how many employees that will
18 impact, and then --

19 CHAIR THOMAS: Can we get to the wrap-up here?
20 Because --

21 MS. HILKE: Yes. Thank you.

22 So I just think that they should be honest about
23 it. I think somebody should make them be honest about it,
24 and we 100 percent would like you to vote no on this.
25 Involve stakeholders, do math, have a correct SRIA, have a

1 regulation that's understandable.

2 I appreciate your time. We're here at every
3 hearing since April and I do appreciate you listening to
4 us.

5 Thank you so much. Appreciate it.

6 CHAIR THOMAS: Thank you.

7 Good morning. Who do we have next?

8 MR. FRIEND: Good morning, Mr. Chairman, members
9 of the Board and staff. My name is JD Friend. I'm with
10 the Operating Engineers Local Number Three. I'm grateful
11 for the opportunity to address the Standards Board today.
12 I'm a 24-year member of the Operating Engineers with 10
13 years. I have served as an instructor, the safety
14 curriculum coordinator at our apprenticeship, and most
15 recently the director of safety for Operating Engineers.

16 I am here to support Petition 598. I would like
17 to express my support of the petition for the purpose of
18 convening an advisory committee on an expedited basis.

19 First and foremost let me emphasize my unwavering
20 support for certification standards for crane operators.
21 Adherence to high certification standards is not merely a
22 formality, but a foundational element in ensuring the
23 safety and competency of our workforce. I'm an advocate
24 for granting this petition as it provides an opportunity to
25 convene an advisory committee with priority status. This

1 committee can play a pivotal role in further clarifying the
2 language surrounding the recertification requirements.

3 Beyond procedures, it addresses a pressing
4 concern: the potential discouragement faced by California
5 crane operators holding multiple certifications.

6 One significant issue that the petition aims to
7 rectify is the inconsistency of 1,000 hours of crane
8 specific operation across certifying bodies. This lack of
9 uniformity not only contributes to confusion, but also
10 poses challenges for crane operators certifying on multiple
11 cranes in California compared to their counterparts
12 certified in other states.

13 Additionally, an advisory committee could ensure
14 standardization for anyone operating a crane in the state
15 of California. By addressing inconsistencies, this
16 petition can contribute to creating a safer working
17 environment surpassing Federal OSHA standards, and
18 establishing regulations that do not discourage
19 Californians from retaining multiple crane certifications.

20 In conclusion, I urge the Board to consider the
21 merits of supporting this petition, the establishment of an
22 advisory committee with priority status, and subsequent
23 clarification of language that can provide a way for a
24 safer, fairer, less discouraging environment for crane
25 operators in California. I appreciate your time.

1 Thank you.

2 CHAIR THOMAS: Thank you.

3 Good morning.

4 MR. JOHNSON: Good morning, Chair Thomas, members
5 of the Board, Division staff, standard Board staff. My
6 name is Steve Johnson. I'm with Associated Roofing
7 Contractors, and I am part of the broader construction
8 coalition that is concerned employers.

9 We've written a few letters to the Standards
10 Board. We've met with Cal/OSHA. I want to just focus my -
11 - I've made comments on a number of topics that I have
12 concerns about, but I want to just focus my comments on one
13 point for indoor heat, and I think it goes to the broader
14 issue with not having meetings with stakeholders, with not
15 seeking input from stakeholders, because in the third
16 comment period for indoor heat, one of the issues came up
17 about an exemption for storage units. So on construction
18 sites they're known as conex boxes.

19 I just wonder when an exemption ceases to become
20 an exemption, because with an upper temperature in a conex
21 box on a hot day -- the conex boxes are made of metal.
22 Their primary function is storage of construction
23 materials. The only time that they're accessed is if
24 construction materials are needed, where an employee would
25 go in, get materials, come back out, go back to work. So

1 with an upper limit, with a temperature of 95 degrees, that
2 brings the conex boxes back into the regulation, where the
3 exemption was specifically designed to address those spaces
4 that weren't primarily used for work areas, and the time
5 limit of 15 minutes, overall 60 minutes a day -- that's
6 fine. I mean, most employees will go into a conex box,
7 grab what they need, and that's not an issue.

8 But if there is an upper limit, anytime any
9 employee walks in, the whole standard is brought in for
10 indoor heat. Which includes a training element, which
11 includes measurement of two different temperatures, and
12 deciding which temperature is hotter. So that's not an
13 exemption. That doesn't help.

14 I want to focus my comments for lead on two
15 areas.

16 The first is the training element that is in the
17 regulation. It states that employers are required to
18 conduct effective training on all aspects of the lead
19 regulation and the appendices. Most lead construction work
20 that's done is a lead awareness-type training that's
21 anywhere from two to four hours, that talks about the
22 dangers of a flood exposure, that talks about routes of
23 exposure, that talks about personal protective equipment,
24 respiratory protection equipment, brushes on the action
25 level and permissible closure limits.

1 I can guarantee you that with the amount of
2 material that's in the lead regulation and the appendices,
3 that cannot be covered in a two-to-four-hour awareness
4 training. That will take a minimum of two days to cover
5 that material in any kind of training format.

6 The other problem is that the language in the
7 regulation is written at a graduate level, and we're trying
8 to do training at a worker level, boots on the ground.
9 Roofing contractors do not have white lab coats in their
10 construction trailers. They have work boots and hard hats
11 and safety glasses. And it just goes way, way beyond what
12 can effectively be taught.

13 And to have a Cal/OSHA inspector walk onto a job
14 site and ask a construction employee who happens to be
15 doing lead welding or some other trigger activity a
16 question -- what is effective training? So that is
17 subjective and it's up to the individual inspector to
18 decide what is effective training. And if the construction
19 worker doesn't understand the regulation or doesn't give
20 the right answer, well then the employer gets a citation
21 for not having effective training in lead because they
22 didn't cover all of the elements of the regulation, they
23 didn't cover the entirety of the appendices.

24 The other issue that I want to talk about is the
25 blood lead testing. Construction workers do not like

1 having needles poked in their arms. I can guarantee you,
2 I've been on many construction sites, I've talked to
3 construction workers, and that is something they just do
4 not want. First of all, most of them don't even understand
5 that before they even walk onto a job site where there's
6 going to be a trigger task, that they're going to have to
7 have medical surveillance, they're going to have to have a
8 blood lead test done according to the current reg --
9 according to the revised reg. So any trigger tasks.

10 The trigger tasks are way out of whack. The
11 trigger tasks do not really focus on the intense activities
12 such as abrasive blasting for lead-based paint on bridges,
13 for example. They're not structured in a way that they
14 accurately reflect the amount of work that needs to be done
15 in many cases. So I can guarantee you there will be a
16 pushback from construction workers on blood lead monitoring
17 up to five times in a calendar year depending on the length
18 of the project, workers could be subjected to that. You
19 know, I don't like going to the doctor for any reason, and
20 if it includes a blood draw, chances are I just might pass
21 out because I really don't like needles myself.

22 So one of the stated goals of CDPH is to push the
23 burden on medical surveillance and blood lead monitoring
24 onto employers. That's the strategy of lowering the
25 trigger height -- or, I'm sorry, the action level and PEL

1 to near zero -- that it will force employers to do blood
2 lead monitoring. And it's a stated goal in the initial
3 statement of reasons. So that shouldn't be something that
4 is forced onto employers.

5 And the other concern I have about the CDPH
6 database is that employees will have no medical privacy.
7 Their home addresses, their phone numbers, will be listed
8 in a CDPH database where they can be contacted by CDPH, and
9 so they are giving up their right to have medical privacy
10 for any anything that's done in medical surveillance on
11 them.

12 And the last point I want to make is with
13 workers' comp claims. If we had a high incidence of
14 workers' comp claims with lead poisoning in construction,
15 that would show up in our workers comp claims. We currently
16 know that we have a federal regulation that protects
17 employees from lead exposure currently. So this is not in
18 my mind an emergency situation to look at adjustments of
19 action level in PEL and talk about trigger tasks. There
20 should be a high number of claims for blood lead exposure
21 for high blood lead levels, and we are not seeing that in
22 construction in the construction industry.

23 So I urge the Board to vote no on February 15th
24 for the lead standard, and let's come to the table. Let's
25 have real conversations. There's a difference between

1 hearing and listening. And right now, I'm sorry to say,
2 Cal/OSHA is not listening.

3 Thank you.

4 CHAIR THOMAS: Thank you.

5 We will go to online commenters. So, Maya, who
6 do we have?

7 MS. MORSI: Up next is Rex Hime with WECA.

8 CHAIR THOMAS: Rex, can you hear us?

9 MR. HIME: Good morning, Ken. Yes, can you hear
10 me?

11 CHAIR THOMAS: Yeah. Go right ahead, please.

12 MR. HIME: Thank you very much.

13 Good morning. My name is Rex Hime with Western
14 Electrical Contractors Association.

15 I am here to speak in opposition to the current
16 form of the proposed lead standards and would request they
17 be worked on to fix some more critical issues before
18 reintroduction.

19 I'm going to take a high-level approach here.

20 First of all, you can tell there weren't any real
21 efforts to have advisory committee discussions on this.
22 And I know this has been hit on previous commenters, so I'm
23 not going to take too much time, but get all the expertise
24 in the room and work it out so the standard does not
25 produce unintended consequences.

1 In the spirit of safety these unintended
2 consequences are something we should do our best to avoid
3 as well. There's unnecessary training and paperwork
4 components for workers that have extremely minimal
5 exposure. On top of that and on the training topic the
6 training requirements are far overreaching. The penalties
7 do not match the realistic outcome of the proposed
8 requirements and how difficult they would be to implement.

9 Another thing that has been mentioned time and
10 time again is the SRIA severely underestimates the cost of
11 this. And in part, that is due to the data that can be
12 corrected by having complete input from industry and
13 stakeholders. And without being fixed, this could have a
14 huge potential to increase the underground economy and
15 impact California and its workers in a more negative way
16 than without the change.

17 But to wrap this up, it seems that instead of
18 trying to rush this across the finish line, we need to make
19 sure that we take the necessary steps to create the best
20 reg, make sure that the facts and the data and the science
21 are correct when deciding the change of standards. And
22 hopefully we can do that.

23 I urge you to take a no vote when this comes up
24 next month, and thank you very much for your time.

25 CHAIR THOMAS: Thank you.

1 Who do we have next, Maya?

2 MS. MORSI: Up next is Dr. Cris Williams with
3 International Lead Association.

4 CHAIR THOMAS: Hello, Dr. Williams. Can you hear
5 us?

6 MR. WILLIAMS: I can. Can you hear me as well?

7 CHAIR THOMAS: Go right ahead, please.

8 MR. WILLIAMS: Yes, my name is Cris Williams.

9 MS. GONZALEZ: Please speak slowly.

10 Yes, will do.

11 CHAIR THOMAS: Chris, before you start --

12 MR. WILLIAMS: Sure.

13 CHAIR THOMAS: I'm telling everybody, slow down a
14 little bit. Just relax. Because we have people
15 transcribing this and they have to keep up with you. So
16 thank you.

17 Go ahead, Cris.

18 MR. WILLIAMS: Perfect. Will do. So my name is
19 Cris Williams. I am the director of health science at the
20 International Lead Association.

21 This is a little bit backwards, but I would like
22 to comment on the Department of Industrial Relations'
23 PowerPoint presentation entitled Occupational Lead
24 Poisoning Prevention Proposal that will be, as we
25 understand, presented later in this meeting. But we

1 understand, as an association, that in the presentation,
2 there are allegations of false claims made by stakeholders,
3 meaning industry, regarding the air lead-blood lead
4 relationship and the state's efforts to model that
5 relationship.

6 As a stakeholder, the International Lead
7 Association is disappointed. We were not made aware of
8 such alleged false claims outside of the presentation. The
9 lack of advanced notice, along with the minimal information
10 provided to explain the Department's rejection of our
11 concerns about the model and the underlying data, leaves us
12 at a distinct disadvantage in terms of our ability to
13 provide meaningful responses.

14 I want to preface my comments by saying -- and
15 this reiterates what a previous speaker said -- ILA's
16 greatest concern is not with the use of pharmacokinetic
17 modeling for establishing workplace exposure limits, but
18 rather the department's assertions about the modeling
19 either gloss over or completely ignore important facts
20 about model design and inputs that bias it toward
21 predicting a relationship between air lead and blood lead
22 levels that is not supported by real world data.

23 I'll start with some general comments about the
24 presentation, but I would also like to make specific
25 comments regarding the alleged false claims that will be

1 made in the presentation later today.

2 The presentation makes the position, and we
3 believe this to be around slides 23 and 24 of the
4 presentation, that pharmacokinetic modeling is the best
5 method to determine lead exposure limits and particularly
6 air lead limits. This position stems from the claim that
7 existing empirical or real-world studies do not account for
8 low-level chronic lead accumulation that occurs over years
9 and decades, especially over the time frame of 45 years
10 required by the California Labor Code, while
11 pharmacokinetic modeling can account for this.

12 However, although an empirical study of chronic
13 45-year lead exposure in the workplace has not been
14 conducted, it is important to point out that there are
15 several empirical studies reported in the literature that
16 span a decade or more of workplace lead exposure, a time
17 period sufficient for both the achievement of steady state
18 blood lead levels and the manifestation of any chronic
19 health effects from lead exposure.

20 An example of this is a soon-to-be-published
21 study that I described in comments made to this Board on
22 April 20th, 2023, that looked at workers in a modern lead
23 handling facility for which more than 700 data points were
24 available for worker blood lead and personal air lead
25 concentrations collected for a given worker at the same

1 time. In this study, air lead and blood lead data were
2 collected for workers under conditions of no respirator
3 use.

4 The key findings of the study were, one, when air
5 lead concentrations were plotted against blood lead
6 concentrations for each of the workers in the study, there
7 was shown to be no relationship between air lead
8 concentrations and blood lead concentrations and
9 statistical analyses of the relationship between these two
10 beared this out.

11 And the second conclusion was the air lead blood
12 lead relationship from the study was -- excuse me.
13 Compared to the relationship as established by OEHHA's
14 model and statistical analysis demonstrated that the model
15 was an extremely poor fit to the data from the study. So
16 the overall conclusion of the study was that the air-lead,
17 blood-lead relationship from the OEHHA model in no way
18 resembles the relationship demonstrated by real-world data
19 from a modern lead handling facility. And blood lead data
20 accumulated by the battery industry over the past several
21 decades bears out this disconnect with model predictions.

22 So on or about slide 39 it stated that despite
23 industry's claims to the contrary, the OEHHA model
24 inhalation transfer coefficient, or ITC, which is the
25 fraction of inhaled lead absorbed into the body, is

1 consistent with recent studies. Also, contrary to industry
2 claims, the use of the 30 percent ITC value from the model
3 ensures that blood lead determinations will not be
4 overestimated. So, in response to that claim, ILA notes
5 that Dr. Gary Ginsberg, one of OEHHA's external scientific
6 reviewers, stated in 2012 that the OEHHA model included no
7 accounting for loss of lead in air particulates by
8 coughing, sneezing, and nasal discharge, and that although
9 OEHHA specifically acknowledged the role of nose blowing
10 and particle clearance, OEHHA made no attempt to address
11 nose blowing as a pathway for clearing particles from the
12 head region.

13 In addition, in his peer review of the OEHHA
14 model in 2012, Dr. Richard Leggett, one of OEHHA's internal
15 scientific reviewers and the original developer of the
16 model upon which the OEHHA model was based, stated that the
17 OEHHA model was likely overestimating the degree to which
18 inhaled particles would be transferred to the GI tract.
19 Dr. Leggett also noted the role of nose blowing and similar
20 processes for particle removal.

21 So both Dr. Ginsberg and Leggett noted
22 deficiencies in the OEHHA model that directly affected the
23 value of the ITC. In addition, Gradient Corporation in
24 2014 critiqued the OEHHA model and showed that the ITC
25 value used in the model did not account for current

1 scientific knowledge regarding the clearance of inhaled and
2 deposited particles from the body, the timing of particle
3 clearance from the respiratory tract to the GI tract, and
4 corresponding changes in the duration of various GI
5 conditions that would be encountered by particles
6 transported to the GI tract. All factors, when considered,
7 justify the lowering of the ITC value appropriate for use
8 in the model.

9 So using a range of scientifically supportable
10 alternative ITCs, Gradient showed that blood lead levels
11 could be overestimated by as much as six times for a given
12 air lead level compared to blood lead levels estimated
13 using the OHHEA model assumption of 30 percent for the
14 AITC. So on or about slide 40, it is stated that despite
15 industry claims to the contrary -- yes sir?

16 CHAIR THOMAS: Chris? Can you wrap up? I mean,
17 you've already been on for about--

18 MR. WILLIAMS: -- Hello?

19 CHAIR THOMAS: Yeah, can you wrap up your comments
20 please?

21 MR. WILLIAMS: Can I proceed?

22 CHAIR THOMAS: Yeah, for about another minute.

23 MR. WILLIAMS: I'm not hearing anything from the
24 chairman.

25 CHAIR THOMAS: Can you hear me now?

1 MR. WILLIAMS: I can now, yes.

2 CHAIR THOMAS: Okay.

3 Wrap up your comments in about the next minute.

4 Thank you.

5 MR. WILLIAMS: Alright.

6 There are a couple of other slides I would like
7 to comment on. In the interest of time, I will just
8 comment on the next one, and would request that we as an
9 association are allowed to submit our detailed written
10 comments to the presentation given that we really weren't
11 given time to look at the presentation in much depth and
12 respond accordingly.

13 So, actually, I'll end right now with that, Mr.
14 Chairman.

15 CHAIR THOMAS: Maya, who do we have next?

16 MS. MORSI: Up next is Michael Miiller with the
17 California Association of Winegrape Growers.

18 CHAIR THOMAS: Oh, he's here, so we'll count him
19 as being not here. But if you want to --

20 MS. MORSI: Okay.

21 CHAIR THOMAS: Okay, let's go to the next person.

22 MS. MORSI: Okay, up next is Meghan Stanczak
23 (phonetic) with UFCW Local 5.

24 CHAIR THOMAS: Go ahead, caller.

25 I didn't get the name.

1 MS. MORSI: The name is Meghan Stanczak.

2 CHAIR THOMAS: Meghan, can you hear us?

3 MS. MORSI: If you're on the phone, please press
4 star six to unmute yourself.

5 CHAIR THOMAS: Can you hear us Meghan?

6 We'll go on to the next.

7 You messed it up, Mike. We were doing perfect
8 and then -- so who do we have next, Maya?

9 MS. MORSI: Up next is Sarah Maya-Goldbaum with
10 United Food and Commercial Workers.

11 CHAIR THOMAS: Can you hear us, caller?

12 MS. MAYA-GOLDBAUM: Morning.

13 Can you guys hear me?

14 CHAIR THOMAS: Yeah.

15 Go ahead. Go ahead, Sarah.

16 MS. MAYA-GOLDBAUM: Perfect. Good morning, Chair
17 Thomas and members of the Standards Board. My name is-
18 Sarah Maya-Goldbaum. I'm a worker advocate with the United
19 Food and Commercial Workers Union, Local 135 in San Diego.

20 The purpose of my comment today is to
21 passionately implore Cal/OSHA to promptly adopt an indoor
22 heat standard without further revisions or delays. The
23 necessity for the standard is urgent, and has been long
24 neglected. Workers have already endured an arduous wait
25 for more than eight years, and prolonging the situation is

1 simply not feasible.

2 The occupational health and safety risks
3 associated with escalating temperatures in California have
4 reached a critical point. Consequently, it has become
5 paramount to shield workers from our severe consequences of
6 heat in every workplace scenario. Neglecting to establish
7 a definite standard regarding indoor heat renders workers
8 exceedingly susceptible to heat-related ailments. These
9 conditions can lead to grave outcomes.

10 During my time working at a grocery store, I
11 unfortunately encountered a heat ailment. This incident
12 occurred while I was responsibly breaking down a grocery
13 load as part of my duties. This situation was exasperated
14 by the absence of a proper cooling system in our area where
15 we were required to work. It is incomprehensible and
16 inexcusable for workers to embark upon their daily lives
17 with the constant worry of whether they will return safely
18 to their families solely due to the fact of absence of
19 protective measures against indoor heat.

20 Therefore, I urge Cal/OSHA to take immediate
21 action and adopt an indoor heat standard, as workers are
22 simply incapable of enduring another summer without
23 adequate safeguards.

24 Thank you so much for your time.

25 CHAIR THOMAS: We'll go back to in-person, so

1 step right up.

2 Morning.

3 MS. CLEARY: Good morning. Okay. Good morning,
4 Chair Thomas and Board Members. My name is Helen Cleary.
5 I'm the director of PRR, Occupational Safety and Health
6 Forum.

7 CHAIR THOMAS: And don't get too close to the
8 mic, because it --

9 MS. CLEARY: Okay.

10 CHAIR THOMAS: Yeah. Thank you.

11 MS. CLEARY: Is that better?

12 CHAIR THOMAS: Yep.

13 MS. CLEARY: I know. I'm going to try to be
14 slow. I promise.

15 Okay. PRR submitted a letter to the Board
16 detailing some of our concerns with the SRIA, and we'll
17 share just a few observations today from that letter.

18 Simply put, we do not believe this SRIA is
19 accurate, and it's not because the analysis was done
20 differently, that industry calculated their costs, or the
21 SRIA real process is actually flawed. It's because the
22 assumptions and the data, the entire fiscal analysis was
23 based on, was wrong and it's incomplete. So bad data in
24 results in bad data out.

25 One reason is the final cost was based on the

1 Division's determination that only 227,465 workers out of
2 18 million in the State are exposed to potentially harmful
3 lead exposures levels. The economic impact of these
4 changes on all the utilities combined in the State is based
5 on 2,165 utility workers. How is that even possible? Four
6 PRR members in utilities currently have 8,000 workers in
7 their lead programs. Their cost to comply with these
8 requirements, new requirements, isn't considered because
9 they're already being protected? That's a great news story
10 that they don't meet the levels that the Division used, but
11 there will be a cost because of the extreme reductions and
12 the expanded scope.

13 But setting that aside, one of the glaring
14 issues, is the fact that the required exposure assessments
15 were not even considered in the cost because it was assumed
16 that they were already done.

17 That assumption is false for two reasons.

18 One, the current and traditional method of
19 analysis, flame AA, is not sensitive enough to detect to an
20 action level of two.

21 Number two, employers have never been required to
22 test to that low of a level before, so why are they
23 expected to have the data?

24 Our four utilities, those 8,000 workers, estimate
25 they will need to complete 1,832 exposure assessments,

1 which will require an industrial hygienist and interim
2 protections until the assessment is completed. None of
3 that was considered in the cost in the SRIA. And those are
4 just a few of the flaws of the assumed costs that were
5 made.

6 The presentation we took a look at on the
7 modeling implies there were no limitations and
8 uncertainties. In addition, there is no data or reasoning
9 for how the Division determined that the proposed suite of
10 requirements, all the requirements, combined with the
11 significantly lowered PEL and action level, would ensure
12 the blood lead levels would be below the target of 10
13 micrograms per deciliter. In fact, the Division's
14 estimated blood lead levels used in the SRIA indicate that
15 the current requirements are protecting workers.

16 DIR staff estimated that 82.5 percent of the
17 exposed workers in California have BLLs below the new
18 target of 10, 17.5 percent have BLLs less than 30, and less
19 than 1 percent have BLLs over 30. Obviously, there are
20 worker populations that still need protection and
21 management, but 82.5 percent is pretty good data for the
22 current out-of-date PEL and action level.

23 The other significant factor with that
24 information is, quote, employees with the highest estimated
25 blood lead levels are employed in firing ranges, battery

1 manufacturing, and motion picture production, end quote.
2 Combine this information with the other data that the
3 Division has determined, the specific industries, the
4 worker tasks that result in the categories of exposure that
5 they've defined, and you can identify which workers need
6 protection. And all of this is based on the modeling that
7 the Division is confident is accurate.

8 One of PRR's primary concerns with the proposal
9 is the upfront heavy lifting of exposure assessments and
10 interim protections. The lack of inclusion of these
11 significant requirements in the SRIA compounds our concern.
12 These elements should not be required simply because the
13 employer doesn't have the data to validate the exposure is
14 below the action level, which was reduced by 93 percent.
15 It's unreasonable, and the necessity of it is not supported
16 by the Division's own data on the estimated exposure levels
17 and BLLs for those exposed workers in California.

18 If the Division and Board's intention is for the
19 impact of the rule to align with the SRIA, 227,465 workers
20 in specific industries, performing specific tasks, then we
21 are not understanding how the rule will be applied and
22 enforced, and we would love to be wrong on this. But if
23 that's not the intent, the SRIA needs to be redone or the
24 proposed requirements need to be revised. It won't be
25 right or acceptable to adopt a rulemaking package if these

1 two huge pieces do not align and they tell completely
2 different stories.

3 We look forward to the Division's presentations
4 today and hopefully learning some more. I hope you have
5 time to take a look at our letter and thank you for your
6 time and consideration today.

7 CHAIR THOMAS: Thank you.

8 Let's hold on one second. We got some noise out
9 here.

10 Thank you, Nola.

11 Alright. Go ahead. Sorry.

12 MS. BERNARD: Okay. Good morning. My name is
13 Susan Bernard. I am the Director of Regulatory and
14 Technical Affairs at Battery Council International.

15 I want to thank the Board for the opportunity to
16 be here today and to continue our participation in this
17 rulemaking process. As many of you know, we've been
18 involved for over a decade now.

19 We understand the goal and importance of the
20 reduced blood leads. We do not object to these thresholds.
21 We actually supported them. We also have a voluntary blood
22 lead program that has been implemented with our members for
23 several years now. And so we just want to make it clear
24 that we are not opposed to that.

25 I do want to echo some of the other -- my

1 comments are going to focus on another area, but I do want
2 to echo some of the comments made previously. I can
3 confirm that OEHHA did not ever directly reach out to us
4 about the Gradient report. They made no changes in their
5 modeling in response to that. And some of the other
6 comments made today about cost, we certainly agree with.

7 I'm going to focus my comments today on the
8 implementation schedule, however. We just don't believe
9 that 12 to 18 months is enough time for our members to
10 retrofit or build facilities that are going to be required
11 because of the because of this standard.

12 In our April 2023 comments we submitted an
13 appendices done by an environmental consultant. We asked
14 them to come up with an estimated timeline for
15 implementation. This is going to require building shower
16 rooms, locker rooms, retrofitting the plants for air
17 capture, all of that stuff. That combined with permitting
18 issues, delays that happen in construction, their
19 recommended timeline for implementation was over three
20 years. They said at the very least you need three years.

21 So we still do not think that 12 to 18 months is
22 going to put our members in a position where they can be
23 compliant with these new regulations.

24 I do want to let you all know, you know, as we've
25 been involved throughout this whole process, I know some of

1 you might be a little surprised that Roger Miksad isn't
2 here today since he's the one that's always been here, but
3 we remain at your disposal. We are more than willing to
4 meet with people and talk with people. As Dr. Williams
5 said, we would love to provide opportunity in response to
6 the presentation that we are going to hear later today.

7 And I mean in relation to that, the PEL and the
8 action level are unnecessarily low, and that I think goes
9 hand-in-hand with the air and blood modeling and all of the
10 costs that are going to be required to make sure our
11 facilities can meet those meet those requirements.

12 I think that's pretty much it. I mean obviously
13 we can't do the right thing if we aren't afforded the time
14 to do it.

15 Another concern that I'll mention, a little bit
16 lower priority, but we did request that language be
17 included to relieve employers from requirements to provide
18 medical removal benefits where an employee's exposure is
19 determined by a qualified position to occur outside the
20 workplace. As somebody else mentioned, gun ranges are a
21 very big source for lead exposure and we have seen exposure
22 occurring outside of the workplace when workers are on
23 medical leave. And we don't think it's fair for employers
24 to pay for that when their exposure is not happening under
25 our purview.

1 So in summary, we are asking for a no vote in
2 February, unless substantial changes in particular to the
3 effective date and implementation timeline are adopted by
4 the Board.

5 Thank you.

6 CHAIR THOMAS: Thank you.

7 Go ahead. Who do we have next?

8 Good morning.

9 MR. WEST: Good morning, Chair Thomas and members
10 of the Board. My name is Mike West and I work for the
11 State Building and Construction Trades Council of
12 California.

13 The health and safety of the members of the State
14 Building Trades is a top priority for us, whether we are
15 talking about silica, asbestos, lead, or any other chemical
16 exposures that are known to have negative health impacts,
17 short-term or long-term. We are thankful for the
18 engagement of the Department of Public Health and are still
19 vetting the proposed new standards with our affiliated
20 unions, but believe that the update of these standards is
21 long overdue.

22 Thank you for your time.

23 CHAIR THOMAS: Thank you.

24 And now we're going to go to people that are
25 video or audio.

1 Who do we have Maya?

2 MS. MORSI: Up next is Christopher Lee with
3 United Contractors.

4 CHAIR THOMAS: Christopher, can you hear us?

5 MR. LEE: Yes, I can. Good morning, Chair
6 Thomas.

7 I have my little friend here today. I hope I can
8 get through this babysitting right now.

9 I want to echo the comments of Bruce Wick, Helen
10 Cleary, Chris Walker, and Stephen Rehrman as well as
11 others.

12 Good morning. Thank you for the opportunity to
13 appear before you today.

14 I've been committed to occupational safety and
15 health for the last 43 years of my professional life.
16 We've certainly served with Federal OSHA, Cal/OSHA, and as
17 a private consultant. The contractors I represent are
18 dedicated to the well-being of their employees and strive
19 to comply with all applicable Title VIII regulations. The
20 stakeholders with whom I work overwhelmingly believe that
21 safety and health regulations should be necessary,
22 feasible, and clear in what courses of action should be
23 taken.

24 Unfortunately, we are deeply concerned that the
25 current lead revision fails to meet all three tests. We

1 are also concerned about the awkward and protracted process
2 and lack of transparency. And I would raise the SRIA as an
3 example. And I know it's been touched on before.

4 I won't belabor it, but my colleague Sharon Hilke
5 of Painting and Decorating Contractors of California and I
6 methodically walked our way through each of the sub parts
7 of the proposed regulation, applied real world
8 demographics, consulted with appropriate vendors -- not
9 this one -- and calculated costs by category.

10 There's a significant difference in the SRIA and
11 the calculations that we've computed. At the suggestion of
12 Cal/OSHA and a good faith effort, we formally requested a
13 meeting as has been previously stated with DIR. We have
14 failed to hear anything but crickets as a result of that
15 request.

16 I know Mr. Berg has not prepared or presented his
17 PowerPoint, but there are some inaccuracies in there as
18 previously stated. We have shared information about our
19 calculations and the demographics upon which they're based.
20 and we disagree that we have not been open and transparent
21 with the Division. We've shared our methodology and that
22 information is contained in our coalition letter on page
23 two.

24 I want to not reiterate what our United
25 Contractors member Stephen Rehrman stated, but just please

1 focus on his comments about the serious and significant
2 impact, both financial and operational, on companies like
3 Stomper Company.

4 The last point on the SRIA I want to mention, I
5 don't think it's been mentioned previously, is that the
6 estimated costs in the SRIA are just for the revisions to
7 the standard, not the total cost of complying with the
8 entire regulation.

9 And then in closing, I want to mention to the
10 Board that a copy of this document assessment, lead
11 exposure controls on bridge painting projects using worker
12 blood lead levels, has been given to you, but please take a
13 look at that. It's from the Center for Environmental and
14 Occupational Risk Analysis and Management, University of
15 South Carolina -- or Florida, excuse me.

16 And so I'm going to wrap this up. I have some
17 other responsibilities as you may have heard. I want to
18 encourage the Board to review the final assessment and I
19 encourage the Board to vote no and give this revision a
20 serious reconsideration.

21 And I thank you for your time and forbearance
22 with my little friend.

23 CHAIR THOMAS: Thank you.

24 Who do we have next, Maya?

25 MS. MORSI: Up next is Duane with National

1 Roofing Contractors Association.

2 CHAIR THOMAS: Are you with us, caller?

3 MR. MUSSER: Yes, I'm here.

4 Can you hear me?

5 CHAIR THOMAS: Yeah. Go right ahead, please.

6 Thank you.

7 MR. MUSSER: Okay. Thank you so much, Chair
8 Thomas and Board Members.

9 My name is Duane Musser. I'm Vice President of
10 Government Relations at the National Roofing Contractors
11 Association based in Rosemont, Illinois, and here to
12 comment on the proposed general industry and construction-
13 led standards proposal. Our association is a part of the
14 Construction Industry Coalition that was mentioned
15 previously. Our association was established in 1886, and
16 represents over 3,600 member companies in all segments of
17 the roofing industry, including about 340 companies in
18 California. Our members are, on average, small, privately
19 held companies, and we represent both union and non-union
20 employers, and we are also a leader in promoting safety and
21 health within the roofing industry, as that is one of the
22 core missions of our association.

23 A large portion of roofing work has little or no
24 exposure to lead, but there are some roofing materials that
25 do contain lead, and as a result, much of the work

1 performed is generally intermittent and does not result in
2 significant exposure to employees. Nevertheless, we are
3 committed to ensuring that workers are adequately protected
4 from exposure to lead when it does occur.

5 We have been carefully monitoring developments
6 with respect to lead regulations at both the federal and
7 the state level. For example, we commented back in 2022
8 with respect to Federal OSHA's advanced notice of proposed
9 rulemaking dealing with workplace exposure to lead, and the
10 staff in our risk management department has reviewed the
11 California proposal now under consideration, and we have
12 very serious concerns with this proposal. Our risk
13 management staff was not able to be there today because
14 they're out teaching fall protection classes to our
15 members.

16 But just to summarize, we really do have strong
17 concerns. We'd like to associate NRCA's views with the
18 some of the other points that have been raised by the
19 Construction Industry Coalition members here today. Most
20 critically, we think that the dramatic reductions in the
21 PEL and the action level are not justified given the data
22 and the science underlying this situation in order to
23 protect employees from horrible exposure.

24 We also share the concerns with respect to the
25 costs that have been estimated on the training and other

1 requirements under the SRIA that are basically vastly
2 underestimated, and those do have to be accurately
3 predicted so we can understand how to comply with this, or
4 our members can understand how to comply with this in the
5 future.

6 So in summary, we really believe that this is an
7 overly zealous regulatory approach that really does more
8 harm than good. And in particular, it's going to increase
9 incentives for a totally unregulated activity in the
10 underground economy, which is really bad for workers.

11 So given these concerns, NRCA strongly urges the
12 Board to vote no on this proposal and resume stakeholder
13 engagement to develop a standard that is really realistic
14 and effective. We remain committed to working with you
15 all, and stakeholders, to have a productive dialogue and
16 produce a truly effective regulation in the future.

17 Thank you so much for your time and appreciate
18 your consideration.

19 CHAIR THOMAS: Thank you.

20 Who do we have next, Maya?

21 MS. MORSI: Up next is Eddie Marquez with Union
22 Roofing Contractors Association.

23 CHAIR THOMAS: Eddie, can you hear us?

24 MR. MARQUEZ: Yes. Good morning.

25 Can you hear me?

1 CHAIR THOMAS: Yeah. Go right ahead, please.

2 MR. MARQUEZ: Alright.

3 Good morning, esteemed staff, Cal/OSHA Boards.
4 My name is Eddie Marquez. I represent the Union Roofing
5 Contractors Association and I also represent the California
6 Hispanic Latino Chambers of Commerce, where I am an
7 executive board, and the board has authorized me to speak.

8 On the union side, we represent -- pardon me --
9 over 7,500 union roofers in California. And on the chamber
10 side, we represent over 2 million Hispanic Latino-owned
11 businesses in California.

12 I'm not going to go over the exhaustive testimony
13 in opposition to the standard that has already been
14 articulated. We are for worker and health and safety in
15 California. We're opposed to the SRIA. This is going to
16 drive the underground economy.

17 And I just want to reiterate, I have testified on
18 this previously, that the impact to our union contractors
19 is huge. The impact to the ethnic community is huge. So
20 for all of the reasons that have been previously
21 articulated, we, the Union Roofing Contractors Association
22 and the California Hispanic Chambers, also echo those
23 concerns.

24 Thank you for your time.

25 CHAIR THOMAS: Thank you.

1 We will go back to in-house speakers.

2 So good morning.

3 MR. MIILLER: Good morning.

4 Thank you Chair, Board Members, Board staff,
5 Division staff. I'm Michael Miiller with the California
6 Association of Winegrape Growers.

7 I'll try to be very brief this morning. I know
8 you have a lot on your agenda and a lot on your plate.

9 I wanted to personally invite you to the Unified
10 Wine and Grape Symposium next week here in Sacramento.
11 It's a four-day-long trade show here at the Sacramento
12 Convention Center. Our organization is the co-owner of the
13 event. It is the largest Wine Trade Association trade
14 event in the Western Hemisphere. About 15,000 people from
15 all over the world will be here. And there you can see and
16 talk with people who have developed manufacturing operating
17 ag tech equipment that is autonomous in nature. You could
18 talk to them about safety issues around the world, how it's
19 operated, as well as how it is good for the environment and
20 it is the future of agriculture. I encourage you to attend
21 if you can. If you'd like to register for it, please feel
22 free to send me a note. I'll take care of that for you and
23 we'll make sure that you get you there for that if you'd
24 like to go. It starts on Tuesday. Tuesday and Wednesday
25 is the trade show here at Sacramento at the Sacramento

1 convention Center. I'll make sure you get the information.
2 I'll try to get to all the Board Members if I can. It's a
3 worthwhile event.

4 CHAIR THOMAS: More importantly is the bar
5 hosted? Or --

6 MR. MIILLER: Wednesday, there's a regional wine
7 tasting. You can taste wine from all over the country and
8 compare the different regions, that is very educational in
9 purpose. I assure you I'll be there.

10 I also want to talk about the indoor heat
11 regulation, and I'll try to be brief.

12 An issue that we've raised several times with
13 this is that the indoor heat prevention, indoor heat
14 illness prevention regulation, applies to the inside of an
15 air-conditioned cab of a vehicle or tractor or equipment.
16 We've asked that if it is a fully functioning and
17 operational air conditioner -- meaning the ignition is on,
18 it operates, it accomplishes its goal, the air conditioner,
19 of getting the temperature down to in the 70s where it is
20 of comfort and relief from heat -- we feel that should not
21 be under this regulation, especially if the worker who's
22 going into that vehicle is already covered under the
23 outdoor regulation.

24 We've asked for it several times. We even
25 provided amendments to accomplish that, to make it work,

1 because we're not opposed to having a regulation in place
2 for indoor heat, but we want to make it work. We want to
3 make it accomplish its goal and objective and not just
4 create meaningless requirements of law that don't actually
5 serve the purpose of worker safety.

6 And I'll give you the example. If we have a
7 worker in a vineyard, The worker is out working in 90 plus
8 degrees heat, and they take a break, and the worker --
9 remember, that worker's covered under the outdoor heat
10 regulation -- that worker then goes to the inside of a
11 tractor to have lunch to cool down, or the inside of a
12 pickup truck, turns on the ignition, and automatically
13 cools down within two or three minutes to a very
14 comfortable temperature that's actually relieved from
15 outdoor heat. This regulation says that that worker is now
16 subject to both the indoor and the outdoor heat regulation.

17 Which for us raises a couple questions. One is,
18 is that really what the regulation is intended to do? Is
19 that what it's trying to do?

20 And two, the question is, if that is what it's
21 intended to do, what does it accomplish? What is the
22 additional workplace safety provided to that worker by
23 submitting that worker to being covered under the indoor
24 heat regulation when they're already covered under the
25 outdoor? To us there really isn't one.

1 And at this point in time, because as I think
2 Bruce has pointed out, we're pretty far along in that
3 process, and it's hard to look at that and say this is an
4 unintended consequence. Because I've raised the issue
5 several times in testimony, we've put it in writing, we've
6 offered the amendments, and it still is not resolved in the
7 current regulation.

8 And when I was a staffer in the Capitol working
9 in legislation, lawyers always told me, mean what you say
10 and say what you mean when you're writing law. Words in
11 law matter, and you have to take the time to try to get it
12 right. And this one seems easily fixable, and we asked you
13 to take a look at it.

14 And relative to the Chair's comments earlier
15 regarding the upcoming game on Saturday: as a Midwestern
16 kid, I was raised to love the Beatles and love the Packers.
17 So I'll just leave you with this: all you need is love,
18 love is all you really need.

19 Thank you everyone. Have a good day.

20 MR. SIKORSKI: Good morning.

21 CHAIR THOMAS: Good morning.

22 MR. SIKORSKI: Thank you Chairman Thomas, Board
23 Members, for the opportunity to speak. My name's David
24 Sikorski. I'm the business manager of the Operating
25 Engineers Local 12. We represent 20,000 members in the

1 southern 12 counties of California.

2 I'm here to oppose Petition No. 598. You know,
3 California has long played a leadership role in worker
4 safety, and eliminating the thousand-hour requirement for
5 recertification would strip away some of those protections
6 we've enjoyed. This is not a new rule, and without it,
7 there's no, there's nothing that hinders anybody being
8 recertified.

9 The way it works now, if you carry two
10 certifications, just to oversimplify it, say a hydraulic
11 crane certification and a tower crane certification, and
12 you've been running a hydraulic crane for the last five
13 years so you can't show a thousand hours on that tower
14 crane, there's nothing that prohibits you from recertifying
15 on that tower crane. All does is requires you to get in
16 the seat and take a practical exam.

17 We eliminate that practical exam, there's a real
18 potential that we'll have people carrying certifications
19 for 10, 20 years that haven't even been in the seat of a
20 crane.

21 We can't trade worker safety for convenience, and
22 for those reasons, I would ask you to deny Petition 598.

23 Thank you.

24 CHAIR THOMAS: Thank you.

25 Good morning.

1 MR. HOPKINS: Good morning, Chairman Thomas and
2 the Board. I'm also here to speak on Petition 598 in
3 objection to the petition.

4 The petition calls for elimination of a 1,000
5 hour requirement in order to qualify --

6 CHAIR THOMAS: I'm sorry, but did you -- I got
7 sidetracked. Did you introduce yourself?

8 MR. HOPKINS: I'm sorry, let me go back. I'm
9 Larry Hopkins, the director of training for Southern
10 California Operating Engineers, and I've been in the
11 industry for about 43 years now. I've been in training for
12 27, and I've been the director for about 10, so pretty
13 versed in the training aspects of what we do.

14 Anyhow, this petition calls for us to eliminate
15 the 1,000-hour requirement in order to receive a waiver,
16 take advantage of the waiver, and only have to take a
17 knowledge test in a written format versus a practical. The
18 evidence or lack thereof does not support any change in the
19 way the law is currently written in California. One thing
20 that there is a lot of evidence to support is a substantial
21 reduction in accidents with cranes in the last 18 years
22 that this law has been in effect.

23 I also wanted to talk about a little area work
24 that's been stimulated because of this certification where
25 we have seen requests for training go up a thousand plus

1 percent. Why? Because now you're being asked to verify
2 that you can do what you say you can do through a written
3 test as well as a practical test.

4 I would hope for those of us who might have flown
5 up here today that we didn't have a pilot flying that
6 hadn't seen the controls in five years. I'm sure we'd be a
7 little more nervous about that had we known that.

8 Nonetheless, training has been stimulated. We
9 have much more increased volume at the training sites now
10 with people coming out to get on the cranes if they haven't
11 been on it for a while. They're allowed to do that. They
12 can go out and they can get familiar with these cranes
13 again and do the practical test if that's what it takes.

14 If we were to eliminate that 1,000-hour
15 requirement, that means there would be no standard
16 requirement, not only for certification initially, but also
17 for recertification. So now you have no standard in crane
18 certification. And to do that, I think, would be a
19 travesty. And you're probably going to see your accident
20 rates start to increase again.

21 I personally have been hit by this with a friend
22 of mine who was killed in a crane accident, and I think
23 that had this law been in place at that time, it might have
24 helped prevent that as well.

25 As far as financial impact on stakeholders,

1 although I don't think that it's OSHA's consideration to
2 necessarily trade safety for convenience or the financial
3 impact it may have, I think the effect would actually be
4 the opposite of what is being alleged, that there would be
5 a reduction in the cost for organizations that host these
6 practical tests. The reason I say that is because most of
7 our members that have been certified on cranes have no
8 problem reaching the minimum hours. We're talking about a
9 five-year period and we're requesting a thousand hours.
10 Most workers that are working on cranes or any other
11 machine have worked ten or twelve thousand hours in that in
12 that amount of time. So I don't think it's over-the-top to
13 ask for that minimum requirement of a thousand hours, and
14 again if they don't meet that, they simply go take a
15 practical test to prove that they can do what they say they
16 can do.

17 I think I've covered most everything.

18 I just want to bring the Board's attention back
19 to why did we do this in the first place: we had numerous
20 crane accidents. Mobile cranes far exceed the crane
21 accident rate of tower cranes. Why? Because tower cranes
22 are typically set up in a fail-safe kind of atmosphere with
23 limit switches and controls, that if an operator makes a
24 mistake by lifting too much weight or taking it out too
25 far, the machine will shut down. It won't allow them to do

1 that. So because of that, the accident rate is much lower
2 in the tower crane industry.

3 But the reason we did this law to begin with was
4 when -- it has usually has to be something high-profile to
5 get the attention of OSHA, whether it be California,
6 certainly the Feds, we are many times more reactionary than
7 we are proactive. And we had a crane in 1989 in San
8 Francisco, a power crane that was being assembled,
9 basically fall on the doorstep of Cal/OSHA, and they
10 decided we better do something about this. And that's
11 where it came from.

12 So I think that they've done a great thing. I
13 think they did it right. And I would urge you to vote no
14 on this petition.

15 And I think that covers it for me.

16 Thanks.

17 CHAIR THOMAS: Thank you. At this time, we're
18 just about at noon, we're going to take a 15-minute break
19 and then we'll reset after that.

20 So we are adjourned for 15 minutes, and we'll be
21 back at about 5 after.

22 Thank you.

23 (The meeting went to break at 11:52 a.m.,
24 returning at 12:10 p.m.)

25 CHAIR THOMAS: Alright.

1 We are back in session, and we're going to start
2 with people online, speakers.

3 Maya, who do we have?

4 MS. MORSI: Up next we have Tom Rhodes with TWR
5 Enterprise.

6 CHAIR THOMAS: Was that Tom?

7 MS. MORSI: Tom Rhodes.

8 UNIDENTIFIED SPEAKER: Can you hold on for one
9 moment?

10 CHAIR THOMAS: You want to --

11 UNIDENTIFIED SPEAKER: We're just logging right
12 back in.

13 We weren't sure of the confirmation and had some
14 technical difficulties.

15 CHAIR THOMAS: Amy, he's not going to speak now.
16 He's going to speak when we have the fall protection
17 hearing.

18 UNIDENTIFIED SPEAKER: Thank you so much.

19 CHAIR THOMAS: Not to tell you what to do, but.

20 Yeah. So we'll go on -- Maya, we're going to go
21 on to the next speaker who's not talking about fall
22 protection.

23 MS. MORSI: Okay. Next is John Zarian with
24 NCCCO.

25 CHAIR THOMAS: John, can you hear us?

1 MR. ZARIAN: Yes, I can, thank you.

2 Sorry, just trying to get my camera on.

3 Maybe I'll have to proceed without it.

4 I apologize.

5 CHAIR THOMAS: No problem.

6 MR. ZARIAN: Can you hear me okay?

7 CHAIR THOMAS: And you're speaking about fall
8 protection, right?

9 MR. ZARIAN: No, Mr. Chair, I'm speaking on the
10 Petition 598.

11 CHAIR THOMAS: Go right ahead.

12 MR. ZARIAN: Thank you.

13 Good morning, Chair Thomas, members of the Board.
14 My name is John Zarian. I'm the general counsel for the
15 National Commission for the Certification of Crane
16 Operators, also known as NCCCO or CCO. I've been a
17 licensed California attorney for nearly 35 years and have
18 represented NCCCO for nearly 20 years since 2016 as a
19 general counsel.

20 I'd like to speak in support of the pending
21 Petition No. 598.

22 By way of background, in 2005, California took
23 the lead in adopting a crane operator certification
24 standard. Federal OSHA then also adopted a similar crane
25 operator certification standard. One of the elements of

1 these standards relates to the scope of exemptions to the
2 hands-on examination requirement at the time of
3 recertification.

4 These standards have been defined in regulations
5 and related guidance over the years. For example, as set
6 forth in the pending petition, in 2012 in a letter of
7 interpretation, Federal OSHA defined the exemption from
8 taking the hands-on practical exam based on experience and
9 fits in a way that allowed for flexibility and was not
10 prescriptive. Working together, these state and federal
11 rules have been very successful in reducing the number of
12 accidents that result in injuries and fatalities to
13 construction workers.

14 As this Board is of course aware, in California,
15 the standards in Title VIII were modified just last year to
16 provide that the exemption from a hands-on certification
17 exam should now be made available only to operators who can
18 document at least 1,000 hours of experience operating the
19 specific type of crane for which recertification is sought.
20 At the time, NCCCO and others raised specific concerns over
21 the foregoing requirement, and in response the final
22 statement of reasons recognized that, I quote, there may be
23 a better way to handle the recertification issue, but Board
24 staff believe it is outside the scope of rulemaking, close
25 quote. By its petition, NCCCO seeks to respond to this

1 comment.

2 As noted in the petition, last year's change
3 marked a significant narrowing of the availability of the
4 exemption from the hands-on examination requirement to
5 operators in California. The narrowed exemption, which
6 diverges from the rules previously in place and the rules
7 currently in place outside California, has had a number of
8 perhaps unintended consequences and raises a number of
9 concerns.

10 In particular, California's more stringent
11 standard will make it much more difficult for crane
12 operators holding multiple certifications to qualify for an
13 exemption from the hands-on examination based on operating
14 experience during their prior certification cycle. Also,
15 the more stringent standard in California will increase the
16 costs paid by employers for practical testing of operators,
17 and in addition, as Board Member Harrison has explained,
18 the more stringent standard will put California operators
19 at a disadvantage because operators from neighboring states
20 will not be subject to such requirements when they earn
21 their recertifications from nationally accredited
22 certification bodies.

23 For these reasons, the petition request that the
24 new requirements adopted just last year be rolled back in
25 one very limited respect, namely with respect to the

1 exemption in the hands-on examination requirement for clean
2 operator certification as it applies to the requirement for
3 specific hours on specific equipment. Ultimately, of
4 course, there's always a further safeguard in the
5 requirement that the employer remains responsible for
6 determining that an operator has the necessary knowledge,
7 skills, and abilities necessary to be considered qualified
8 to operate specific types of equipment in specific
9 configurations and under specific environmental conditions.
10 But granting the petition will allow simply for the
11 application of previously existing guidelines, including
12 the federal OSHA letter of interpretation that have been in
13 place for many years and which remain in place today in
14 other states.

15 NCCCO respectfully admits that the previous
16 framework will continue to be successful in increasing the
17 safety of construction working environments in California
18 and elsewhere.

19 Thank you.

20 CHAIR THOMAS: Thank you.

21 Who do we have next, Maya?

22 MS. MORSI: Up next is Tom Sicklesteel with CCO.

23 CHAIR THOMAS: Tom, can you hear us?

24 MR. SICKLESTEEL: Yeah.

25 CHAIR THOMAS: Tom, go right ahead.

1 MR. SICKLESTEEL: Chair Thomas and Standards
2 Board Members, appreciate the time. My name is Tom
3 Sicklesteel. I'm the chief executive officer of CCO. We
4 are one of four credentialed certifying bodies recognized
5 by OSHA. We have 94 percent of the certified crane
6 operators in California are certified by CCO.

7 We speak in support of the Petition 598 and the
8 creation of an expedited stakeholder process.

9 CCO is focused on improving safety for those that
10 work in around cranes. It's a standard thing that clear
11 rules make for safer work sites. Unfortunately, the rule
12 that we have in California isn't clear. Specifically, the
13 rule indicates that there's a waiver based on specific type
14 of crane experience.

15 What does that mean? It's not defined anywhere.
16 Does that mean it's by ASME standard? Does that mean it's
17 by certification? Does that mean by make or model?
18 There's been an inconsistent implementation by accredited
19 bodies, and that's what we're trying to bring to your
20 attention. One lumps all of these, the mobile cranes,
21 under one practical exam. One of the other accredited
22 bodies separates it actually by capacity, and yet one other
23 one separates it out by certification. So what happens is
24 we're not even consistent on the rule.

25 So this creates a disadvantage for, especially

1 for those who have multiple certifications, because they're
2 the ones exposed to having to create or take multiple
3 practical exams potentially.

4 This will also, as John indicated earlier,
5 greatly disadvantage operators in California compared to
6 those in neighboring states that may come into the state to
7 work, because the ones outside of the state of California
8 don't have to comply with that same rule.

9 The other element I would just add is, at the
10 very end of this section, it says that these operators who
11 provide this documentation shall not be required to take
12 the hands-on examination. The only element that's
13 considered for that exemption is the documentation, not
14 operational history, incidents, accidents, or anything else
15 of that nature. We think that that's an important factor
16 that should be considered.

17 With that, Mr. Chair, we remain fully supportive
18 of the petition and an expedited stakeholder process.

19 Thank you.

20 CHAIR THOMAS: Thank you.

21 And who do we have next, Maya?

22 MS. MORSI: Up next is Beth Malinowski with SEIU
23 California.

24 MS. MALINOWSKI: Hi, good afternoon everyone.

25 CHAIR THOMAS: Hi, Beth.

1 MS. MALINOWSKI: Chair, members of the Board,
2 Beth Malinowski with SEIU California representing over
3 700,000 workers across a wide array of industries, service
4 jobs to health care.

5 I want to align myself with the comments made by
6 UFCW and other labor colleagues regarding the indoor heat
7 standard.

8 We do urge the adoption of an indoor heat
9 standard because a specific indoor heat regulation is long
10 overdue.

11 At the same time that we urge adoption, we must
12 also share our concern that the most recent draft is not as
13 protective as it should be. SCA California does not agree
14 with the decision to raise the upper temperature limit from
15 87 to 95 Fahrenheit, even for short periods of time. We
16 are concerned the locations of this change for all workers,
17 including health care workers, nurses, others who are
18 regularly staffing high heat acute care settings, like burn
19 units and birthing centers. It's not justified or health
20 protective, and we strongly oppose allowing this exception
21 without adjusting for high humidity and conditions where
22 employees might be wearing clothing that restricts their
23 body's natural abilities to remove heat. So again, want to
24 urge adoption.

25 Again, also concerned with kind of where we have

1 landed with the standard. We know we can do better in
2 California.

3 So thank you all for your time.

4 CHAIR THOMAS: We will now go to in-house
5 speakers.

6 Please introduce yourself and good afternoon.

7 MR. MILIANTI: Good afternoon, Mr. Chairman. My
8 name is Tom Milianti. I am the executive director for the
9 Operating Engineer Certification Program. We are one of
10 the nationally accredited crane licensing organizations.

11 I am a 25-year crane operator. I've been
12 involved in training from an instructor to an assistant
13 coordinator, and now I am the Executive Director for the
14 program. I would just like to say OACP started out as the
15 Southern California crane and hoisting program back when
16 California was putting this standard together. It was
17 designed around what the rules put in place at the time
18 were, and we use this across the country.

19 Myself, I am actually from Chicago. I'm a crane
20 operator from there. That's where my base is at. We have
21 operators there that don't have a problem meeting this
22 standard of 1000 hours for each type of crane. You know,
23 if it's necessary for them to retake a practical exam, then
24 that's what has to be done. It's in the name of the safety
25 for, you know, not only the workers, but the public also.

1 And I feel that removing this thousand hour requirement is
2 just going to make it available to where, you know, people
3 can get into cranes and not have any practical experience
4 when it comes to running a crane.

5 With that I would like to say thank you for your
6 time and allowing me to speak.

7 CHAIR THOMAS: Thank you very much.

8 Good morning, or afternoon.

9 MR. LEACOX: Good afternoon Board, staff, and all
10 the good people in this room. I'm Dan Leacox with Leacox
11 and Associates.

12 And hearing some of the testimony today, I just
13 wanted to follow up on comments I made last month and in
14 prior meetings, kind of oriented around the subject of the
15 SRIA and why one should care. Okay? Why one should care

16 And the first topic is the what I characterize
17 as the unproductive burden that some folks were fishing
18 around for what to call what we're talking about and in the
19 context of SRIA, I would characterize it as the
20 unproductive burden. In other words the burdens, the costs
21 of implementing a rule or some component of the rule that
22 doesn't really get you safety. And that's really a common
23 denominator, I think, of what you hear today, much of, the
24 unproductive burden, the unproductive burden, the
25 unproductive burden. It's not about safety or not safety.

1 It's about the unproductive burden.

2 And the notion that you would spend any amount of
3 money or impose any amount of burden for any amount of
4 safety, no matter how small, is, I don't know -- I'll pick
5 my 20th word for it -- inadvisable. Okay?

6 And the SRIA, honestly done, is an opportunity to
7 weed out the unproductive burdens. It calls for comparison
8 to alternatives. It's alternatives that, by comparison,
9 that weed out the unproductive burdens. That's what occurs
10 in a roundtable advisory meeting. People put alternatives
11 on the table and they discuss the safety gain and the
12 burden, and they work out the burdens that are worthwhile
13 and those that are not.

14 In the context of a SRIA it's all put to dollars
15 but it is an opportunity if honestly done, and if that's
16 the intent to weed out unproductive burdens.

17 Of course it could be done with the intent to
18 justify the proposed rule, right? If that's your end goal
19 then it can be done much differently. It's very easy to
20 manipulate an analysis with numbers and dollars and the
21 input that you choose and the formulas that you take and
22 the assumptions that you make. You can all along rig the
23 thing to get the result you want, and anybody who knows
24 their business doing that will tell you that in a moment of
25 honesty. So it's with -- is it being done to justify the

1 proposed rule on the table, or is it really being done to
2 weed out the unproductive burdens?

3 And the reason you should care. SRIA stands for
4 Standardized Regulatory Impact Assessment and it's about
5 economy, I mean it talked about the economy and measuring
6 the economy. When I go out and participate in the economy,
7 what I find are people helping one another. Okay? People
8 in business, people going to work. They're out there
9 helping people. It's easy to hear it as dollars and we
10 don't care about dollars. But what we're talking about is
11 people participating in society, helping one another. They
12 might help with their labor, they may help by providing
13 dollars, et cetera. And so what you're protecting when you
14 protect the economy is you're protecting what people are
15 doing to help others that other people value.

16 And when I talked last month about profit, you
17 know, a job being profitable for the worker, a job being
18 profitable for the employer paying for it, I think it's
19 worthwhile to clear up profit because I find this thing
20 confused and maligned a lot because of some confusion
21 between what a real profit is and what you might call false
22 profits.

23 So if I buy a piece of wood out of the market for
24 \$10, and pay somebody \$10 to fashion it into a statue, and
25 that statue is worth \$30 and I put that on the market

1 because somebody will buy it for \$30, I've made a \$10
2 profit. Yeah, that's some quick math. But I've made a \$10
3 profit and that \$10 represents what I have given above what
4 I have taken. I took a piece of wood, I took some labor
5 out of the market, I put in there something that everybody
6 valued more than that. Profit represents what you're
7 giving more than what you're taking.

8 And when you think about it only in terms of
9 dollars, that can get confused. But dollars only have
10 value if there's something to buy. You know, if it doesn't
11 buy goods and services, it doesn't represent anything. And
12 it needs to be re-understood as representing what one is
13 giving above what one is taking. Unless, of course, it's
14 obtained by force or deception, at which point you're
15 talking about some shade of theft, okay?

16 And so this matters because these unproductive
17 burdens impact and burdens people's lives and their ability
18 to help one another in ways that other people value. And
19 this is about helping people, okay? And it has a broader
20 scope than just safety, but there are many things people
21 value in life beyond that. And it's a policy Board that
22 should be a backstop for lots, for the whole package. And
23 I think that's what the SRIA is about, and should attempt
24 to do. And why these messages about unproductive burdens
25 need to be taken very seriously and evaluated with great

1 care, with attention to the science, as opposed to what
2 I've characterized in the past as the science says.

3 And that's all.

4 Thank you.

5 CHAIR THOMAS: Thank you.

6 Come on up. Good afternoon.

7 MR. REDING: Good afternoon. Thank you, Chairman
8 Thomas and the Board.

9 My name is Dan Reding. I'm a business manager at
10 Local 3, and I'm here to talk on Petition 598 today.

11 Along with my brothers from Local 12 and across
12 the International Union of Operating Engineers, we strive
13 to do the best we can to create the safest and best-trained
14 operating engineer crane operators in this country, and I
15 feel that we do.

16 Unfortunately, today we disagree on this
17 petition, but I'm not here to bash either side. You've
18 heard opinions on both sides, pros and cons, on how it
19 should work. But at the end of the day, we are all here
20 for the same reason. To create a better program and a
21 safer program for our crane operators across this country
22 so that everyone on a job site is entitled to work safe,
23 whether they're running the crane or they're working around
24 it.

25 And we feel that there's an opportunity here to

1 do it. Because of what this petition has brought forward,
2 and being here today, I think this has been a positive
3 outcome to this point. There's been a whole lot of
4 opinions, you know facts, numbers that you've all heard.
5 I'm not going to go into all that for you. But the fact
6 is, and you heard it earlier, 94 percent of the crane
7 operators across this country work under the CCO.

8 And I'm not saying it's perfect. I think both
9 programs could be looked at and improved on, because at the
10 end of the day, as industry leaders, as crane operators,
11 our goal is to produce a better program and a safer program
12 for everybody out there that's working on these
13 construction sites. And I think we have an opportunity to
14 do that today.

15 I think our obligation is to come together and
16 figure out, as experts in this industry, what is the best
17 solution going forward. I don't believe it should be left
18 up to the Board without all of the experts getting together
19 in this industry to decide what is the best solution, and
20 then bring it to the Board for a resolution.

21 So today I'm requesting that we move this Board
22 to an advisory committee going forward that the experts,
23 the leaders of the crane industry can get together,
24 evaluate it, look at the shortcomings on both sides, and
25 figure out what is the best program for certification on

1 both sides.

2 And at the end of the day, because of this
3 petition, I feel we are going to come out with a better
4 program, if we're allowed to do that, and a safer program
5 for everybody that's working on these job sites across the
6 great state of California. But I think we have a great
7 opportunity to do that, and an obligation to every union,
8 and working men and women out there that's on these job
9 sites, to do the best we can and produce a program that'll
10 be in the best interest and the safest for everybody on a
11 job site. And again, I think we have the opportunity and I
12 request that the Board take it into consideration to kick
13 it back to the experts, to the folks that work in this
14 industry, and rely on them to come up with a better
15 solution at the end of the day.

16 And if they can't -- but I believe they can. I
17 believe that's what we're here for I believe that's what
18 both programs are set up to do, and with a little
19 initiative I believe we could come to a solution and we'll
20 all look back on this in some day and go, this petition
21 coming forward was a great step to do nothing but improve
22 the safety of the crane industry in this state.

23 Thank you very much.

24 CHAIR THOMAS: Thank you.

25 We're going to move on to persons that are

1 online, audio/video.

2 Maya, who do we have?

3 MS. MORSI: Up next is Stephen Knight with
4 WorkSafe.

5 CHAIR THOMAS: Stephen can you hear us?

6 MR. KNIGHT: Yes.

7 Hi. Thank you Board Members, and for your
8 patience today and your time. Stephen Knight, executive
9 director with WorkSafe.

10 We're here to achieve workplace protection for 18
11 million California workers, including from serious life-
12 threatening risks from lead and heat. And both of these
13 regulations soon to be in front of you for your vote are
14 deeply considered and very long delayed.

15 I would point you to our May 18th letter
16 supporting indoor heat, alongside the California Labor
17 Federation, UFCW, California Nurses, the Korean Immigrant
18 Workers Association, Climate Resolve, SEIU, and the
19 Teamsters, and the Philippine Association of Workers and
20 Immigrants, and the Restaurant Opportunity Center, and the
21 Healthy Nail Salon Collaborative, and the Santa Clara Waste
22 Theft Coalition, and more on indoor heat.

23 And on lead, our April 19th letter submitted
24 alongside the SEIU, the Employee Rights Center in San
25 Diego, the Center for Environmental Health, UFCW,

1 California Rural Legal Assistance Foundation, and more.

2 You've been subjected to a barrage of objections
3 and efforts to create confusion around both of these rules
4 today, including claims that California is a laughing stock
5 when in fact we're leading the nation and the world. So
6 yes, change is hard, but I want to be clear that further
7 delay and further concessions beyond what's already been
8 made to business and industry in both of these roles is a
9 win for employers and a loss for workers and worker safety.

10 Thank you for your time and for the opportunity
11 to comment today.

12 (Inaudible speech from Chair Thomas.)

13 MS. MORSI: Your mic is off. It's very hard to
14 hear you.

15 CHAIR THOMAS: I guess my microphone was off.

16 MS. MORSI: There you go.

17 I wasn't sure if I should speak anyways.

18 Up next is Sid Montgomery with United Production
19 Framing.

20 CHAIR THOMAS: Oh, so telling me she's supposed
21 to be for fall protection. We'll do that later and he can
22 come back later, alright?

23 So we'll move on from that one to the next.

24 Thank you.

25 MS. MORSI: Okay. I'm going to go back to the

1 top for those that did not hear.

2 Robert Orford with Mayo Clinic.

3 CHAIR THOMAS: Robert, can you hear us?

4 Robert?

5 MS. MORSI: If you're on the phone, please press
6 star six to unmute yourself.

7 CHAIR THOMAS: Robert, can you hear us? Star
8 six?

9 Apparently not.

10 We'll go on to the next.

11 MS. MORSI: Okay, and the last public commenter
12 is Meghan Stanczak with UFCW Local 5.

13 CHAIR THOMAS: Meghan, can you hear us?

14 MS. STANZCAK: Can you hear me?

15 CHAIR THOMAS: Yeah. Meghan, go ahead.

16 MS. STANZCAK: Can you hear me?

17 CHAIR THOMAS: Meghan, yeah. Go ahead.

18 MS. STANZCAK: Okay. Yeah.

19 Standards Board Members, my name is Meghan
20 Stanczak. I'm a worker advocate with United Food and
21 Commercial Workers Union with Local 5. I'm a grocery
22 worker for 16 years before that.

23 I strongly urge Cal/OSHA to adopt an indoor heat
24 standard with no further revisions or delay. Workers have
25 been waiting over eight years for an indoor heat standard

1 and cannot wait a day longer. Heat in California has risen
2 to a dire occupational health and safety hazard, and
3 workers must be protected from impacts of heat at all work
4 sites, from our workers in buildings with no cooling
5 options, to agricultural workers in greenhouses and hoop
6 houses where temperatures can easily rise to 90, 95 or 100
7 degrees and higher. It's particularly important that we
8 see workers or industries from critical protection of
9 outdoor, of indoor heat standard like the agricultural
10 industry.

11 Workers in the agricultural industry are on the
12 forefront of experiencing the consequences of climate
13 change and are in the most dire need of protection from
14 heat. Without a standard to protect workers from heat
15 indoors, they will face heat stress that can cause heat
16 stroke, cardiac arrest, kidney failure, and even death.
17 Workers do not go to their jobs every day to worry that
18 they won't make it home to their families because of the
19 lack of protection from indoor heat.

20 I urge Cal/OSHA to adopt an indoor heat standard
21 because workers can't wait another summer without
22 protections.

23 Thank you so much for your time and attention to
24 this concern.

25 CHAIR THOMAS: Thank you.

1 Is that all of our online speakers, Meghan -- or
2 Maya?

3 MS. MORSI: For public commenting, that is all.

4 CHAIR THOMAS: Okay.

5 So we're going to finish up with our in-house
6 speakers here, so please go ahead and introduce yourself.

7 Good afternoon.

8 MS. BARRY: Good afternoon, Chairman and Board.
9 My name is Tracy Barry. I'm the current president of the
10 Bay Area Chapter American Subcontractors Association, and
11 I'm also the government relations chair for the American
12 Subcontractors Association of California.

13 I'm here to speak on the lead issue. I'll make
14 it short so everybody can get through.

15 I have just been caught up on this in the last
16 year so I'm going to point to all of my professionals that
17 have spoken on this. Many of the unions are part of our
18 group, and we are hoping that you will vote no and bring
19 the stakeholders in, and let's collaborate and get things
20 together that way.

21 I understand the mission of the other side, but
22 we are construction. We represent every trade contractor
23 and construction supplier in the state. It's a lot of
24 people.

25 And we are safety first all the way. So bring us

1 in, let's talk.

2 Thank you.

3 CHAIR THOMAS: Thank you.

4 Good afternoon.

5 MS. KATTEN: Good afternoon, Chair Thomas, Board
6 Members, and Division staff. I'm Anne Katten with
7 California Rural Legal Assistance Foundation, and first I
8 strongly support the previous comments from SEIU, UFCW, and
9 WorkSafe in support of the urgent need for the passing the
10 lead standard and the indoor heat standard.

11 And once again, I'm here to urge your support for
12 the indoor heat illness prevention regulation. It's
13 crucial to put this regulation in place without further
14 delay or additional weakening revisions. It's very likely
15 we're heading into another year with record high summer
16 temperatures and indoor workers especially at fast paced
17 and strenuous jobs in packing houses, greenhouses and many
18 other indoor facilities urgently need the protection of
19 this regulation to reduce their exposure to heat and the
20 risk of debilitating and life-threatening heat illness and
21 increased risk of accidents that occurs when it's very hot.

22 While we strongly share the concerns expressed by
23 Beth Malinowski of SEIU about the most recent revisions,
24 and we think that 95 Fahrenheit is too high a temperature
25 for allowing a 15-minute exception, we do support the

1 exclusion of vehicles without effective air conditioning
2 and shipping containers from this 15-minute per hour
3 exception to the standard because both capture and
4 concentrate outdoor heat. So if you start the 15 minutes
5 at around 95 degrees, the temperature could raise
6 dangerously during the 15-minute period.

7 And again, while we do have concerns about the
8 most recent draft, we realize the time is running out and
9 we urge your support for the regulation when it comes up.

10 Thank you.

11 CHAIR THOMAS: Thank you.

12 Good afternoon.

13 MR. STEIGER: Good afternoon. Thank you, Mr.
14 Chair, members and staff.

15 Mitch Steiger with CFT. We are a union of about
16 120,000 educators and classified workers across California.

17 And to touch on a few issues that have been
18 raised today, with respect to the lead standard, we do
19 represent some classified workers that could, based on
20 their duties, be exposed to some of these hazards. And we
21 would strongly push back against some of the earlier
22 comments about the proposed lead standard being overzealous
23 or unnecessary or not aligning with the science.

24 We think the science on this issue is pretty
25 settled, that the harms from lead start at any number above

1 zero, and they only get worse from there. The damage can
2 be permanent. You can bring it home and expose your kids
3 to it where the damage is also permanent. As I look around
4 the room, I see I'm not the only one who was born before
5 1980, and we are all going through life with several fewer
6 IQ points than we would if we weren't exposed to lead at a
7 relatively low level early in life when it was in gasoline.
8 And so we think it's incredibly important to keep the
9 standard where it is, keep it strong. We've been working
10 on this for far too long.

11 One of the first things I did after I moved to
12 California in 2010 was go to an informational hearing that
13 was on this issue where at that point they were complaining
14 about how long we had been working on this standard. We
15 can't waste any more time. We've got to get this passed.
16 We've got to update these standards we would urge the Board
17 to move forward with it as is.

18 And we're in kind of a similar situation with
19 indoor heat, where the 2016 year was mentioned as when the
20 bill was run, sponsored by the California Labor Federation
21 and a lot of other groups, to make something proposed for
22 adoption to the Standards Board by 1/1/2019. The five
23 years have now passed, and we think it's very much time to
24 do it.

25 We've heard of some rumors that there are efforts

1 to raise that exemption for 15-minute exposures to 115
2 degrees, or just more, or it's infeasible, we would point
3 directly to the part of the standard that very clearly
4 states if the employer can demonstrate that bringing it
5 down below 87 degrees is infeasible, then they don't have
6 to do it. I mean, there are control measures that come
7 into place. There are other engineering controls and
8 administrative controls that have to be considered and
9 employed where appropriate, but much to the dismay of many
10 people on our side, the standard does not say get it down
11 to 87 degrees or else. It says you have to do whatever you
12 can to make things as safe as possible for your workers,
13 which is really the goal of all of these standards, but
14 especially the indoor heat one.

15 There is also some pretty settled science on this
16 regarding the effect of heat on the functioning of the
17 human brain, both for the teacher or the paraeducator, as
18 well as the students. Nobody performs as well when the
19 temperature goes up. We need to make sure that this is in
20 place as soon as possible. We've been talking about it
21 forever. The standard is, we think, very favorable to
22 employers. A lot of the employer concerns have been
23 included, and we would strongly urge the Board to adopt it
24 as soon as possible.

25 Also, just wanted to clearly -- or sorry, briefly

1 mention the CDPH guidance that came out last week that more
2 or less eliminated the COVID-related isolation period for
3 asymptomatic workers, and drastically reduced the isolation
4 period for those with symptoms. Our members are very
5 concerned about this. At the moment, we're still
6 researching it and still monitoring it. But we think,
7 again, the evidence is pretty clear that just because
8 you're not showing COVID symptoms does not mean you can't
9 give out COVID, and we have a lot of members who are
10 teaching rooms full of children with, who are
11 immunocompromised or have different health issues, that put
12 them at serious risk of severe COVID. A child at my son's
13 school that was in the fifth grade died from COVID in the
14 last few months. This is very much a very serious issue
15 that still affects a lot of people, and with this new
16 guidance in place, it is not at all clear that a worker who
17 is COVID positive, not showing symptoms, and does not want
18 to go to work and infect and potentially very seriously
19 injure, if not kill their students, would be protected.

20 Under this standard, the language that's used in
21 the guidance, where it says they are recommended to stay
22 away from immunocompromised individuals and those at
23 serious risk, no one really knows what that means. So if a
24 worker refused to go to work, what happens? Could they be
25 discharged? Could they be retaliated against? We don't

1 really know. So it's an issue that we're taking a close
2 look at, but we hope it's something that others do as well.

3 And on a final personal note, I would just like
4 to say that as someone raised in Seattle, I'm deeply
5 offended by the pro 49ers slant of this meeting. And given
6 that we're in this world where the Niners are in the
7 playoffs and the Seahawks aren't, we're all called to be
8 Packers fans.

9 Thank you very much.

10 CHAIR THOMAS: I take great offense to that.

11 But I understand your feelings because Seattle
12 was not that great this year. But that's alright.

13 MR. SMITH: Good afternoon. I'm Dave Smith, a
14 safety consultant from California.

15 And I find that I'm now known as the first aid
16 kit guy. And I'm not here to talk about first aid kits.
17 Big surprise.

18 What is effective and what does effectiveness
19 mean? That's what I'm here to talk about.

20 Safety standards developed at the Board have a
21 big impact on protecting the life and health of workers in
22 California. They also set the baseline for safety
23 performance in all areas. So it's really important to get
24 the standard as clear and as practical as possible to
25 achieve maximum results. Words matter, and I know I'm

1 cribbing somebody else's line, but I wrote it first. They
2 do matter. Words matter.

3 And a term used throughout the California safety
4 orders is effective, or effectiveness. Employers must have
5 an effective injury and illness prevention program.
6 Employers who need this must have an effective HECP, or
7 Hazardous Energy Control Procedure, as part of their
8 lockout-tagout program. How do I know what's effective? I
9 didn't have any accidents, or -- the fact is, I find no
10 definitions of effective and effectiveness in Title VIII.
11 So therefore we use a standard dictionary definitions,
12 which is one is producing a desired or intended result. So
13 if we got what we wanted, or that's what I intended, it's
14 effective, right?

15 So effectiveness seems to be a word like safety
16 or risk. Everyone knows what it means but everyone also
17 has a different understanding of what that is. So the lack
18 of a specific or more detailed definition of effective or
19 feasible or other general terms leads to arbitrary
20 enforcement actions, you know, when standards become law.

21 A prior client was told by a Division compliance
22 officer that effective means whatever the compliance
23 officer thinks. I wasn't really happy with hearing that,
24 and I said, well, you know, that's the way it is. They're
25 enforcing what they believe to be ineffective and citing it

1 for it. A client later settled, saving money on appeal,
2 but that shows the life cycle of regulations that start
3 here, are enforced as laws by the Division, and then
4 appeals, or maybe the court system, adjudicate the results.

5 So my point is, consider words such as effective
6 when writing standards. What does that mean? How does an
7 employer know that they are in compliance without a
8 specific definition?

9 And just briefly, another use of effective is, as
10 effective as, at least as effective as, by the feds in
11 evaluating state plans. Is that identical? Apparently,
12 they think so.

13 However, I'm going to support Cal/OSHA on this.
14 I think the California program is far more effective than
15 the Fed/OSHA program. We have the Injury and Illness
16 Prevention Program standard. We have the Wildfire Smoke
17 Standard. We are talking about heat illness prevention.
18 And we have permissible exposure limits, PELs, from this
19 century. And although I and everybody else has complained
20 about the slow process here, it's positively lightspeed
21 when compared to the feds. So I think we're more
22 effective.

23 Just make sure that the meaning of words such as
24 effective or feasible are clearly understood by all so that
25 everyone knows what to do.

1 Thank you.

2 CHAIR THOMAS: Thank you.

3 And at this time do we have any other in-house
4 speakers, because this is going to be the last one unless
5 you get up down.

6 MS. GONZALEZ: We have another one online.

7 CHAIR THOMAS: We have another one online?

8 MS. GONZALEZ: Yeah. Sorry.

9 CHAIR THOMAS: Alright. Well, this is the last
10 in-house speaker.

11 Go ahead.

12 MR. MOUTRIE: Thank you, Mr. Chair.

13 For a moment, I thought you were suggesting I did
14 not count and I felt very lost.

15 Good afternoon, Chair Thomas and members. Happy
16 2024.

17 I'm glad to get started off this year with
18 something as peaceful and consensus-based as professional
19 sports. I hope that carries forward.

20 Obviously there's a lot in front of the Board in
21 the next couple months and I'm sure it'll be a busy year.
22 I'm going to touch on a number of regulations. I will do
23 my best to go slower than I just was.

24 So first, this is becoming a broken record for
25 me, but I want to just reiterate to the Board and to staff

1 how important, for my employers and my members, getting
2 model documents in a workplace. For example, the Workplace
3 Balance Plan, and examples like that earlier are so
4 appreciated. I have members asking on a daily basis, hey,
5 we really want to get ahead of that Workplace Balance
6 thing, it's coming. You know, do you have a plan? Can
7 Cal/OSHA give me a model plan we need to start implementing
8 now? And it takes us, I mean, as was mentioned in the lead
9 topic, months to years to sort this out for large
10 companies. So the sooner we can have those, they're much
11 appreciated.

12 Second, I want to touch on a comment from Bruce
13 Wick about the advisory committee process and roundtables
14 as a model. Something that hasn't been said clearly, I
15 just want to add there is, the roundtable model is
16 certainly slower in the moment, right? But I think when we
17 talk about regulations being years later than we want them,
18 which is something none of us want, I think it is slower in
19 the moment, but faster when you count the years to get to a
20 good draft. And so to that point, I think it actually is
21 faster for us, hopefully.

22 Number three, on the lead regulation, I want to
23 clarify something that's -- I think there's been a point
24 where two sides have talked past each other, and I just
25 want to clarify something. I don't think that, at least

1 from what I've heard on the employer side and from my
2 members, you know, no one is debating if lead is hazardous.
3 That is not the discussion we are having. I think it came
4 up in a prior meeting. No one is debating what, the
5 question is how.

6 You heard the concerns today about, how do we do
7 this within the years it will take for us to do
8 construction changes? Months to years, depending on it,
9 right? How -- we look at the OEHL model, is it accurate?
10 Is the SRIA accurate? Can we do the blood testing that is
11 required in the timeline?

12 So I don't want it to be painted up with a broad
13 brush that we're here just saying, you know, let's not
14 dangerous. That's not where we are. The question is can
15 we do what's being asked in the time, and how we do it.

16 And obviously with next month, you know, I don't
17 see 15-day changes so that means we have to, you know,
18 speak to you about what we can do.

19 Last on indoor heat I want to speak to a point
20 raised by Steve Johnson about outdoor storage sheds, right?
21 And I appreciate the Division's work to include some kind
22 of outdoor storage shed exemption there, because obviously
23 those are structures that are far away from main structures
24 that are hard to deal with. We share the concerns there
25 that the present regulation, the present draft, setting a

1 temperature threshold for those effectively removes that
2 exemption. So for my members' concerns, they just don't
3 see it ever applying. So that it looks nice in text, it
4 won't help, you know, any of us. And we hope that can be
5 addressed.

6 And that's all to begin the year.

7 Thank you for your time.

8 CHAIR THOMAS: Thank you.

9 Alright, so I understand we have one more speaker
10 online. Is that correct?

11 Maya, who do we have?

12 MS. MORSI: We have Mark Hoffman with Ecobat
13 Resources.

14 CHAIR THOMAS: Mark, can you hear us?

15 Mark?

16 MR. HOFFMAN: Can you hear me?

17 CHAIR THOMAS: Yep. Go right ahead.

18 MR. HOFFMAN: Okay. Great. Thank you for
19 hearing me out.

20 So good afternoon, Chair Thomas and Board
21 Members. My name is Mark Hoffman. I'm the Environmental
22 Director for Ecobat Resources, and I'm commenting on the
23 general industry lead standard.

24 Ecobat is the only lead acid battery recycling
25 facility in the state of California. We responsibly

1 recycle over 10 million lead acid batteries each year and
2 are proud to be able to say that not only are we committed
3 to environmental stewardship, but we're committed to the
4 health and safety of our workforce. We have the lowest
5 average worker blood lead levels in our industry.

6 Ecobat wants to be clear that our focus on
7 reducing blood lead levels is unwavering. Ecobat has had
8 voluntary programs in place to reduce worker blood lead
9 levels for many years, as protection of workers is of
10 paramount importance to us. We agree this rule is
11 appropriate for revision regarding more stringent blood
12 lead level standards. We have set internal blood lead
13 level limits more stringent than the current standards, and
14 therefore support the lowering of the worker blood lead
15 level standards.

16 However we disagree with lowering the permissible
17 exposure level as the proposed rule is not based on actual
18 performance data and results from our U.S. facilities.

19 Ecobat has closely monitored blood lead levels
20 for years, and the data shows that the blood lead levels do
21 not correlate with air lead levels. Most notably, after
22 engineering controls and respiratory protection
23 considerations, ingestion is the greatest route of exposure
24 and is directly associated with employee hygiene, among
25 other factors. Unrelenting focus on personal hygiene has

1 been our most significant factor in our blood lead
2 reduction success.

3 If the permissible exposure level is incorporated
4 as proposed, Ecobat supports the lead acid battery
5 recycling separate engineering control airborne limits, or
6 SECALs, for those select processes. These SECALs are based
7 on a feasibility assessment that was requested and
8 submitted to the Division.

9 Lead acid battery recyclers have the highest
10 burden for controlling lead in air of any industry. We
11 therefore support SECALs for the lead acid battery
12 recycling industry.

13 Further, the proposed time frame for compliance
14 with the PEL provisions of the regulation is not adequate.
15 I think this has already been expressed by a few speakers.
16 If the current proposed timeline is not modified, other
17 than the SECALs, our industry will not be compliant. The
18 existing proposed compliance period does not consider the
19 hurdles that industry will need to go through. It includes
20 evaluation of engineering controls, design, equipment
21 procurement, construction installation, and local and state
22 permitting. Ecobat believes this will be a minimum of a
23 three-year timeline. The Board should not implement a rule
24 that will immediately place facilities out of compliance.

25 Ecobat requests your consideration to maintain

1 the existing PEL on action levels as Ecobat has, and
2 continues to reduce average blood lead levels of employees
3 under the existing standard. We would like to stress that
4 the focus of the rule should be on reduction of worker
5 blood lead levels, allowing industry to use our internal
6 expertise to meet those goals.

7 Thank you for your time and consideration.

8 CHAIR THOMAS: So I want to make sure we don't
9 have any other in-house commenters.

10 Maya, do we have anybody else on the line?

11 MR. KEYS: Pardon my interruption, may I try and
12 hop on the queue here? I thought I was in and my name was
13 never called.

14 CHAIR THOMAS: Are you here for -- what's the next
15 -- the fall protection?

16 MR. KEYS: No I'll be making comments on the lead
17 standard.

18 CHAIR THOMAS: Okay go right ahead.

19 MR. KEYS: Awesome. Thank you for your time.

20 Chairman, members of the Board, good afternoon.
21 My name is Tresten Keys. I'm the safety manager here with
22 Associated General Contractors of California. AGC is a
23 member-driven organization with around 900 companies
24 statewide specializing in commercial construction.

25 Many comments have been submitted regarding

1 several serious issues with this proposed lead regulation,
2 including economic impact and some justifications for the
3 permissible exposure limit and action level, all of which
4 we have submitted written comments on.

5 Today, I would like to focus on medical
6 requirements, particularly those regarding physical exams
7 required prior to assignment, similar to what we would call
8 pre-employment physicals.

9 The regulation states that physician or licensed
10 healthcare providers shall provide their opinion as to
11 whether the employee has any dedicated health-related
12 conditions, including the ability to procreate a healthy
13 child, and to provide any recommended limitations to the
14 place upon the employee.

15 It must be made clear as to whether initial
16 prior-to-assignment physicals will be used as defined. If
17 pre-employment physicals are to be used for disqualifying
18 or restricting work, then clear, quantifiable guidelines
19 should be provided in terms of what medical conditions and
20 at what level would be substantiate the requirements for
21 denying someone a work assignment. If pre-employment
22 physicals are not to be used for disqualifying or
23 restricting workers from lead-associated activities, then
24 the rule should explicitly prohibit the practice. If pre-
25 employment physicals are not to be used for disallowing

1 work assignments but are to be used strictly as baselines
2 for annual tracking of symptoms, then tractable criteria
3 must be included in the regulation.

4 Conditions attributed to lead exposure, as we see
5 in Appendix A, are very broadly described and are typical
6 of broad spectrum of causes. They include but are not
7 limited to blood pressure problems, constipation,
8 infertility, and irritability.

9 For example, just using blood pressure as an
10 example here. If blood pressure is to be used as a
11 criteria for injury caused by exposure to lead, then
12 guidelines need to be included to determine what blood
13 pressure levels, and under what circumstances, will be
14 attributed to lead exposure. The rule must have clear
15 specific guidelines as to what can prompt a physician or
16 other licensed healthcare professional to disqualify a
17 person from an assignment. The rule must be clarified so
18 all parties know who will be disqualified or restricted and
19 for clearly defined reasons. Without clarification, just
20 the existence of a blood pressure problem of any severity
21 could lead to many unrelated causes being disqualified and
22 otherwise eligible workers.

23 If pre-employment physicals are not to be used as
24 qualification criteria, and if only criteria for making
25 employment decisions is based on blood lead level, then the

1 rule should clearly state that. And if blood lead level is
2 intended to be the only trigger for employment decisions,
3 explicit language needs to be included as to what is to be
4 done with extensive medical information acquired through
5 pre-appointment and subsequent physicals under this
6 standard.

7 Thank you very much for your time.

8 CHAIR THOMAS: Thank you for your testimony, and
9 the public meeting is adjourned, and the record is closed.

10 We will now proceed to the public hearing.
11 During the hearing we will consider the proposed changes to
12 occupational safety and health standards that were noticed
13 for review today. The Standards Board adopts standards
14 that in our judgment are enforceable, reasonable,
15 understandable, and contribute directly to the safety and
16 health of California employees.

17 The Board is interested in your testimony on the
18 matters before us. Your recommendations are appreciated,
19 and will be considered before a final decision is made. If
20 you have written comments you may read them into the record
21 but it's not necessary to do so. As long as your comments
22 are submitted via email at oshsb@dir.ca.gov by 5 p.m.
23 today. Board staff will ensure that they are included in
24 the record and forward copies of your comments to each
25 Board Member and I assure you that your comments will be

1 given every consideration. Please include your name and
2 address on any written materials that you submit.

3 I would like to remind the audience that the
4 public hearing is a forum for receiving comments on
5 proposed regulations, not to hold public debates. While
6 rebuttal comments may be appropriate to clarify a point, it
7 is not appropriate to engage in arguments. If you would
8 like to comment orally today, please line up at the podium
9 when asked for public testimony. Please state your name
10 and affiliation, if any, identify what a portion of the
11 regulation you intend to address each time you speak.

12 If you're participating remotely and would like
13 to comment then you may join the comment queue by clicking
14 the public comment queue link in the Standards Board
15 updates section at the top of the main page of the OSHSB
16 website, or by calling 510-868-2730 to access the automated
17 public comment queue voicemail.

18 When public comment begins, we are once again
19 going to alternate between three in-person and then three
20 remote commenters. When I ask for public testimony, in-
21 person commenters should provide a completed request to
22 speak slip to the attendant near the podium and announce
23 themselves to the Board prior to delivering a comment. For
24 commenters attending via teleconference or video
25 conference, please listen for your name and the invitation

1 to speak. When it is your turn to address the Board.

2 Unmute yourself if you're using Webex.

3 After all testimony has been received and the
4 record is closed, staff will prepare a recommendation for
5 the Board to consider at a future business meeting. At
6 this time, Amalia Neidhart will provide instructions to our
7 Spanish-speaking commenters so that they are aware of the
8 public hearing comment process for today's public hearing.

9 Amalia?

10 (Participation instructions are given in
11 Spanish.)

12 MS. MORSI: Please unmute yourself.

13 MR. ROENSCH: Dave, is your microphone on?

14 You can hear that right?

15 Anyway, let's see. I'll start it with
16 construction and safety orders §1671.1, §1716.1, §1730, and
17 §1731, fall protection and residential construction.

18 Amalia, will you please brief the Board?

19 MS. NEIDHART: Chairman Thomas and Board Members,
20 the package before you today consists of amendments to
21 California's requirements for fall protection in
22 residential construction to make them at least as
23 effective, ALAE, as federal OSHA's requirements.

24 But first some background. On May 28th, 2013,
25 federal OSHA submitted a letter to the Division of

1 Occupational Safety and Health, Cal/OSHA, expressing
2 concern over the non-conformity of California's residential
3 fall protection standards with those of federal OSHA and
4 asserted the California's 15 foot trigger height for
5 residential construction, and varying trigger heights for
6 residential roofing operations, did not provide California
7 workers with protection from falls equal to the provided
8 one by federal OSHA standards.

9 On August, 2013, OSHSB, or the Standards Board,
10 submitted a letter to OSHA stating that OSHA assumes that
11 equivalent verbiage equals equivalent safety, that state
12 plans are not required to mirror OSHA's plans, and
13 requested that equivalency be based on other measures such
14 as end results.

15 On February 4th, 2015 the Standards Board
16 received a response from federal OSHA stating that
17 achieving an overall construction fatality rate lower than
18 the national rate, or a higher number of inspections and
19 lower incident rate, were not conclusive evidence of an at
20 least as effective program. Additionally, federal OSHA
21 identified key areas where Cal/OSHA standards differ
22 significantly, including the trigger height, exceptions for
23 general requirements for conventional fall protection, and
24 instances where requirements were unclear, included
25 ambiguities or lack definitions. Federal OSHA reiterated

1 that there have been additional technological advances in
2 the types and capabilities of commercially available fall
3 protection equipment, and that OSHA rarely encounters real-
4 world situations in which conventional fall protection is
5 truly infeasible.

6 In response to federal OSHA concerns, Board staff
7 convene an advisory committee meeting on November 3rd and
8 4th in 2015 to discuss California versus federal OSHA
9 residential fall protection standards in terms of their
10 effectiveness and the necessity to address any issues that
11 may merit amendments to Title VIII residential for
12 protection standards. Findings from that meeting with
13 presented to the Board at their January 21st, 2016 business
14 meeting in Costa Mesa, California. At the 2016 Board
15 meeting in Costa Mesa, the Board passed a motion that
16 committed to changing the residential construction trigger
17 height and directed staff to treat as high priority and
18 work expeditiously with stakeholder involvement to assure
19 California's regulatory compliance with federal
20 construction industry full protection standards.

21 In response to the Board's directive, Board staff
22 convened an AC meeting on April 11th, 2016. Afterwards,
23 Board staff held various discussions with federal OSHA to
24 come up with an agreement on proposed language to render
25 California's requirements for fall protection in

1 residential construction, ALAE, or at least as effective as
2 federal OSHA requirements. Between 2017 and 2019, the
3 Board awarded a contract to work and complete the SRIA that
4 was submitted to the Department of Finance. From 2020 to
5 2021, the rulemaking was placed on hold due to the COVID-19
6 pandemic and insufficient staffing levels.

7 Of note, since 2015 and all the way up to now,
8 federal OSHA has identified the issue of the residential
9 fall regulations not being at least as effective as federal
10 OSHA regulations in their evaluation of the California
11 state plan, and published these findings in their follow-up
12 federal annual monitoring evaluation or FAME report.

13 On August, 2022, an e-mail communication was sent
14 to the AC committee members, or advisory committee members,
15 to share with them the proposed draft and the status of
16 this project. Subsequently, key stakeholders met
17 separately with federal OSHA to hold additional discussions
18 and identify whether their determination of not being at
19 least as effective had changed. It had not.

20 Most recently, Board staff consulted with
21 Department of Finance to ensure that the fiscal estimates
22 completed in 2019 were thoroughly considered, and
23 anticipated costs we're adjusted for inflation.

24 This brings us to today. Federal OSHA has
25 submitted an official letter expressing their support and

1 appreciation and stating that these proposal is at least as
2 effective with one minor note. This note identified by
3 federal OSHA will be addressed to the rulemaking process.

4 Today is the last day of the 45-day public
5 comment period, an opportunity by the public to provide
6 comments that you will hear today. At this time, 5 comment
7 letters have been received, including the letter of opinion
8 from federal OSHA, noted earlier, and the Cal/OSHA letter
9 of support.

10 Chair Thomas and Board Members, the proposal is
11 now ready for public comment and your consideration.

12 Thank you.

13 CHAIR THOMAS: Thank you, Amalia.

14 At this time, we will accept public testimony and
15 we'll do three in-house, and we will do three in-house and
16 then we will do three online. So you guys know the drill
17 give the speaker slip, and introduce yourself.

18 Here we go.

19 Yeah, and please, two to three minutes if
20 possible. Well, or shorter. Or shorter.

21 MR. WICK: We will do our best. This -- I mean,
22 this is a big deal and you know so hopefully we'll get to
23 our public testimony quickly.

24 Thank you.

25 CHAIR THOMAS: Thank you.

1 MR. WICK: Bruce Wick, Housing Contractors of
2 California again. As we shared in our video last month,
3 what looks safer on paper in federal regulations is not, is
4 actually far less safe in reality. You saw that.

5 We heard that it rarely, Fed/OSHA rarely
6 encounters infeasibility. That's because people work off
7 of ladders. People tie off at their feet level. That's
8 not right. That's far less safe than the way we do it in
9 California.

10 So Kevin Bland is going to talk about some
11 proposed amendments that we believe comport with federal
12 OSHA that we would like to meet with staff and work through
13 to try to make this. We can't bring this proposal back to
14 as safe as California, but we can make it closer. And it's
15 sad that we have to do that. We'd be better off just
16 leaving our California reg. We have led the nation in the
17 best fall protection regulations for residential
18 construction on a reality basis, not a paper basis. And
19 we're sad we might have to lose that.

20 I want to talk about the SRIA for a minute. As
21 you know, we sent an opposed letter in as soon as the
22 original SRIA was adjusted. The SRIA said the net cost of
23 the residential fall protection for the first year would
24 cost \$200,000. The actual number is 108 million dollars,
25 and that's net. The actual true cost, full cost, impacting

1 industry and the cost of housing was 140 million then.
2 With inflation it's 170 million now. A big difference.

3 We also detailed 15 major errors in the SRIA. We
4 have had zero response to that letter that was sent to
5 Christina Shupe.

6 This is really important that we get the SRIA
7 right. One thing all Californians are in agreement about:
8 we have a crisis in affordability of housing in California.
9 To say we're going to impact housing costs by a hundred and
10 seventy million dollars is a big deal, and we need to know
11 what that real figure is, we need to be public with it and
12 say this is what we're doing. And the sad part is the
13 framing part of the regulations. It's going to cost a 120
14 million dollars, and as you saw in the video we will be
15 less safe spending 120 million dollars. Rents will go up,
16 the cost of new housing will go up for a less safe
17 regulation just to say we're complying with federal paper
18 regulations.

19 So it's a very big deal for us that we get that
20 SRIA right. Again, you expect us to comply with the
21 regulations you approve. We need to comply with the laws
22 that the legislature approves for us on not having an
23 accurate SRIA.

24 You're going to hear from multiple stakeholders
25 in the industry in the following. They are understandably

1 frustrated, and there will be some intensity in their
2 testimony. This is personal to them. None of you have
3 employees that will be impacted by this regulation. Many
4 of them worked in the field, and they know what it would be
5 like if their employer said, start working with ladders,
6 start working, tying off at your feet and hoping you don't
7 hit the ground before it engages.

8 They are responsible now. They're all at the
9 place of being responsible to their employees. They have
10 to look their employee in the eye and say, you are going to
11 operate less safely. And why? Somebody in an office in
12 Washington DC said so.

13 They said there were advisory committees. Yeah,
14 that was a person in DC coming out and saying 6 feet, 15
15 feet is not 6 feet. I have a plane to catch. There was no
16 discussion. And our advisory committee was, we're stuck
17 with six feet. What do we do? There was no, how do we get
18 back to the safety of our landmark regulation.

19 So please listen to what they have to say, and
20 please require DIR to get a meeting with us with their SRIA
21 person to fix the SRIA so that you and we all know the
22 impact cost, and please have your staff meet with Kevin and
23 myself so we can try to amend this thing to mitigate the
24 damage.

25 Thank you very much.

1 CHAIR THOMAS: Thank you.

2 Good afternoon.

3 MR. CETIN: Good afternoon, yes, Chair Thomas and
4 Standards Board. My name's Chris Cetin, and I'm the safety
5 manager for Laurence-Hovenier Incorporated.

6 I'm here to speak about the amended changes in
7 §1762.

8 Us at Laurence and Hovenier, we've been signatory
9 to the Southwest Carpenters Union since we opened our doors
10 in 1979. We've been in business 45 years with projects
11 spanning from the happiest place on earth to luxury
12 continuing life communities, student housing complexes,
13 hotels, as well as multifamily and single family housing.
14 And in that time, we have not had any serious injuries or
15 fatalities from a fall.

16 We have and will always be a union company. Our
17 company sends -- all our employees have to go through the
18 Southwest Carpenters Apprentices Program in conjunction with
19 their in-the-field training. Safety is number one. A new
20 apprentice must go through safety training before they can
21 even pick up a tool, and fall protection has the highest
22 priority.

23 The current Cal/OSHA fall protection standard
24 §1716.2 has been taught at the training center as well as
25 in the field for over 20 years. Why? Because it works,

1 and it is the best practice. The Southwest Carpenters
2 Training Center 714, in conjunction with the CFCA, the RCA,
3 the HCC, old participating union and non-union contractors
4 produced a video visually showing and explaining the way
5 §1716.2 is carried out in the field.

6 It was my guys you saw in that video building
7 everything, okay? They're all union employees. It's a
8 brotherhood and a sisterhood. It's a family thing. We
9 look out for everybody.

10 The fall protection standard that was established
11 over 20 years ago at the uniform height of 15 feet created
12 a clear boundary between one-story work, which would not
13 require the use of scaffolding, guard rails, or fall
14 protection systems. Two-story and above work would clearly
15 require fall protection in all cases. §1716.2 as currently
16 written has created a safer work environment, a reduction
17 in falls for California union workers and residential
18 construction contractors.

19 Compliance is very clear to our employees,
20 management and Cal/OSHA. Everything above the second floor
21 requires fall protection. For us, it means as soon as we
22 raise our exterior walls, we begin setting a perimeter
23 guardrail system as seen in the fall protection video
24 created at Local 714 of the Southwest Carpenters Union.

25 I keep repeating the Southwest Carpenters Union

1 for a reason. Fall protection training begins at a
2 training center, and the current fall protection standard
3 §1716.2 has been taught for over 20 years. Apprentices are
4 taught not to tie off at their feet. Why? Because you'll
5 hit the ground before the fall protection, before it
6 engages. You saw it in the video. We in the industry know
7 and understand this. For the life of me, I can't
8 understand why -- that was the driving force in the video
9 we produced. You clearly see every dummy drop, the worker
10 hits the ground first when tied off at their feet, or can
11 get caught up in bracing causing suspension trauma or
12 worse. Essentially stated, there's no place to tie off
13 above your head on a wooden structure.

14 Most of our union work that our company does
15 happens in LA, with 90 percent multifamily structures
16 dedicated to low-cost income, Section 8 housing, and
17 everything that has to do with getting our homeless off the
18 street. Multifamily projects typically start on a podium
19 that's already two to three stories tall with another four
20 to five wood on top, and in very tight conditions. There
21 is no exterior fall protection device that fits or goes up
22 seven or eight stories.

23 But there is a way to protect our workers, and
24 that's how §1716.2 as it stands. We can protect the
25 exterior of the structure by utilizing guardrail systems or

1 scaffold systems as we demonstrated in the fall protection
2 video. We also showed how plumb and line bracing takes up
3 all the space in the interior unit, not allowing the use of
4 interior scaffolding or netting. In the video, we also
5 demonstrated the joisting, sheathing, and stacking
6 procedures we use in §1716 too.

7 We also showed how ladders are impractical and
8 unstable platforms, and how fatigued one gets constantly,
9 climbing up and down, and how it places a nail gun right
10 here at their chest, firing towards them.

11 My question for you is, why? Why are you
12 proposing to do -- it clearly places the employee in a safe
13 condition and gives them a false sense of security? The
14 fact, you can't tie a person off at their feet and not
15 expect them to hit the ground or get them tangled in plumb
16 and line bracing and face possible suspension trauma.

17 Ask yourself this, why would you want to put in
18 place something that clearly doesn't work for something
19 that has worked for over 20 years?

20 And I do think for a minute that the Southwest
21 Carpenters Union would not have supported giving us room in
22 the facility to actually film and work with union and non-
23 union companies to prove to you how it works and how it
24 doesn't. We never would have made a video, they wouldn't
25 let us, if they didn't believe it, if they didn't back it.

1 \$1716.2 needs to be left as it is, and the way
2 that it's been for over 20 years.

3 Thank you.

4 CHAIR THOMAS: Thank you.

5 Go ahead.

6 MR. KUZEMCHAK: Good afternoon.

7 Matt Kuzemchak. I'm the area director for OSHA's
8 Oakland area office.

9 Thank you for the opportunity to provide comment
10 during today's public hearing.

11 As many of you know and have heard today, trigger
12 heights for fall protection and residential construction
13 activities in California has been a long-standing issue for
14 federal monitoring in the state, dating back as far as
15 2011. In the January 21st, 2016 Standards Board meeting,
16 the Board adopted a motion directing staff to treat as high
17 priority and to work expeditiously in support of the Board
18 to ensure the California regulatory compliance with federal
19 construction fall protection standards. A lot has
20 transpired since that adoption, including diligent work by
21 Board staff, convening advisory committees, drafting and
22 redrafting SRIAs, not to mention the most significant
23 public health crisis of our time.

24 Since joining OSHA in 2021, I have been working
25 with Board staff in the monitoring of the state plan, and

1 have seen the effort that went into the public notice
2 released on December 1st. I have to thank them for their
3 diligent work in the matter, and I was very happy to see it
4 proceed to the next steps in the rulemaking process.

5 OSHA's position continues to be that the current
6 California standards are not at least as effective as the
7 federal program in that they do not contain, this is
8 quoting from the federal standard, specific provision for
9 the protection of employees from exposure to hazard by such
10 means as containing appropriate provision for use, suitable
11 protective equipment, and for control or technological
12 procedures with respect to such hazards, as required by
13 federal OSHA standards for the development and enforcement
14 of state plan standards.

15 Standards requiring protection from six feet up
16 in construction activities are in place across the nation
17 and the territories, with California being the last state
18 to permit unprotected work above the six foot trigger
19 height.

20 That falls from 15 feet are more hazardous than
21 falls from six feet is not open to debate. It is a matter
22 of physics. The falls from 6 to 15 feet result in more
23 serious injury and death more often than falls from less
24 than 6 feet has been demonstrated in multiple studies. For
25 example, 7.8 percent of deaths from falls and construction

1 occur at heights below 6 feet, while 33.1 percent occur in
2 the range of 6 to 15 feet. Another study found that
3 falling less than 6 feet, the ratio of serious injury
4 requiring days away from work to fatal injuries was 280,
5 while falls in the 6 to 15 foot range was 31, meaning a
6 worker is nine times more likely to die in a fall from 6 to
7 15 feet rather than a fall from 6 feet. The median days
8 away from work for such a fall is also three and a half
9 times greater than one from under 6 feet. The days away
10 from work for a fall from 6 to 15 feet, median days away,
11 is nearly 60. As written the current California standards
12 do not require that an employer take any specific action to
13 protect workers engaged in residential construction
14 activities up to the height of 15 feet.

15 I appreciate the Board staff's concerted action
16 to bring the changes to the state's regulations to protect
17 workers engaged in the important work of building homes
18 across California. OSHA encourages you to move at all due
19 haste in adopting and implementing this regulation to
20 better prevent worker injury in the state.

21 Thank you for your time.

22 CHAIR THOMAS: Thank you. We're going to go now
23 go to online speakers or commenters.

24 Maya, who do we have?

25 MS. MORSI: We have Tom Rhodes with TWR

1 Enterprises.

2 CHAIR THOMAS: Tom, can you hear us?

3 MR. RHODES: Hello. Can you hear me?

4 CHAIR THOMAS: Yeah. Go right ahead, Tom.

5 MR. RHODES: Okay, thanks.

6 Hello. My name is Tom Rhodes. My company is TWR
7 Enterprises Inc., and we are one of the largest framing
8 companies in California.

9 And I'd like to make comments in support of what
10 Bruce Wick and Chris Cetin have already stated. I'm a
11 fourth-generation framer, an experienced carpenter,
12 residential framing contractor who's been in business in
13 California for 40 years. Our company has employed
14 thousands of workers in California over those years, and
15 we've pretty much seen it all and experienced everything
16 that we're talking about here.

17 I was part of the original group of stakeholders
18 who worked on the current standard within Cal/OSHA
19 regulations. We set out to improve the fall protection
20 standards for residential construction in order to create a
21 safer work environment for all employees. Stakeholders
22 included small business owners, union representatives,
23 union and non-union contractors, carpenters, safety
24 professionals, and Cal/OSHA representatives. The results
25 of the collective safety effort for our framing men and

1 women in the state of California has been in place for 20
2 years now and has drastically improved the safety of our
3 job sites in California. In particular, in my company over
4 the last 20 years, it's given me the confidence that my
5 carpenters are working safe and will go home to their
6 families due to the innovation of §1716.2.

7 As a historical perspective, I, along with the
8 other stakeholders, sat in numerous advisory committee
9 meetings where we took each and every framing task and
10 broke it down to the safest method to perform those tasks.
11 This resulted in what we now call the 1716.2 rule in
12 California. And what I also have experienced is that we
13 experience more injuries from falls off of ladders than we
14 do from falls off of the second floor.

15 Frankly, in my opinion, California has been and
16 continues to be ahead of the Fed/OSHA when it comes to fall
17 protection, in reality, and in residential framing
18 construction. As the Board has heard and will likely
19 continue to hear after I have spoken, the proposed rule
20 ignores the safe process and procedures that were born out
21 of many advisory committees that were held in developing
22 §1716.2. The sad truth is that the current §1716.2
23 provides a more effective and safe means of framing and
24 residential construction than what the federal proposal
25 purports to do, let alone the discussion of practicality.

1 I don't say this lightly or without direct
2 experience in this assertion. My over 40 years of
3 experience confirms this assertion.

4 I sincerely hope that this Board takes action to
5 stand firm on safety and amend the proposed regulation that
6 is before you today to address the issues that have been
7 raised in this hearing.

8 Thank you.

9 CHAIR THOMAS: Thank you.

10 Who do we have next, Maya?

11 MS. MORSI: Up next is Maria Santiago.

12 CHAIR THOMAS: Maria, can you hear us?

13 MS. NEIDHART: Chairman Thomas, Maria Santiago
14 put a note in Spanish, so I can translate if she needs
15 help.

16 CHAIR THOMAS: Go ahead.

17 MS. NEIDHART: Maria, are you on the phone or on
18 the web?

19 (Ms. Neidhart asks Ms. Santiago a question in
20 Spanish)

21 MS. NEIDHART: Okay. I'm going to proceed and
22 write what she entered.

23 Maria Santiago wrote, there wouldn't be that many
24 accidents if workers were to follow instructions. More
25 safety? Wouldn't it be better if workers received more

1 training and instruction to be more committed and more
2 conscientious of their work that they have, and to follow
3 the safety rules? Lastly they should cite or sanction the
4 worker that does not obey or follow the safety rules.
5 Although accidents will always happen, they will not be as
6 many.

7 CHAIR THOMAS: Thank you.

8 Who do we have next, Maya?

9 MS. MORSI: Up next is Tom -- I'm sorry, Tom
10 Rhodes is already in there.

11 Sid Montgomery.

12 CHAIR THOMAS: Sid, can you hear us?

13 MR. MONTGOMERY: I can, can you hear me?

14 CHAIR THOMAS: Go right ahead, please.

15 MR. MONTGOMERY: Thank you, Chair Thomas. I am,
16 hi, this is Sid Montgomery with United Production Framing.
17 We're a framing contractor in Southern California. We span
18 a footprint from Chula Vista to basically the border of
19 Mexico up through Ventura.

20 And I also want to speak about §1762 and the
21 concerns I have with this new regulation going to a six-
22 foot trigger height.

23 I am very, very concerned about my employees
24 having to tie off at their feet level or work from ladders
25 when doing the tasks that they have to perform at these

1 heights, much like Mr. Cetin and others have mentioned here
2 today. You know, these homes -- and probably as you saw in
3 the videos -- these homes, when we frame them, there's a
4 lot of braces and temporary supports inside those units
5 that does not allow us to have any interior scaffolding
6 type of structure set up for this. So, you know, to tie
7 off in a foot level, to have the possibility of tripping
8 over what we're tied off on, potentially being tangled up
9 when they fall, and then also hitting the floor before any
10 of that safety restraint would protect them, is just, you
11 know, it's just something that is just not safe.

12 And then working off of ladders, you know, again,
13 as mentioned with these tools they use, they use saws on
14 the ladders, they also use nail guns, things like that.
15 And when they're in these situations and they're working
16 around these braces to perform these tasks, it's just going
17 to create a very dangerous situation to where they could
18 possibly cut themselves up in the upper torso areas,
19 possibly have nail gun injuries in the upper body.

20 So, again, for representing all my employees and
21 being truly, truly concerned about their safety, you know,
22 I just hope that we can find a way around this and not have
23 it.

24 And another thing for me, you know, I have a 20-
25 year-old son right now that is in this industry. As we

1 speak, he's out working on a job somewhere for us. You
2 know, and I believe in OSHA. I believe in the safety. I
3 believe in everything that's going on there. And, you
4 know, I don't worry too much about it.

5 However, with something like this, I couldn't
6 imagine having my own son tie off or do these operations
7 from a ladder.

8 So I hope you truly consider, you know, consider
9 what's in front of us here and can help us out.

10 Thank you.

11 CHAIR THOMAS: Thank you.

12 I will now continue with speakers that are here.

13 So go ahead. State your name.

14 MR. DALLY: Hi. Mark Dally. Thank you for
15 listening to my comments today. I work for a company
16 called Circle M. We're a framer in Orange County. I
17 started in this industry in 1976.

18 Sorry, it is personal to me. I think if you
19 change the -- I think the regulations are working and they
20 work very well the way they are. I think if we change them
21 you're going to create a hazard that's going to create more
22 and more and more injuries. So I think it would be a
23 mistake, and I say that through 48 years of experience.

24 But everybody's already talked about all the
25 regulation and all that so I would want to comment about

1 the federal OSHA standards. And we heard a gentleman from
2 OSHA today talk about how California needs to comply with
3 the feds.

4 I would challenge all of you to travel around the
5 United States and see the fact that nobody follows fall
6 protection regulations in residential that I've seen --
7 I've yet to see it, I've been all over the U.S. -- and I
8 have not yet seen and anybody do fall protection like we do
9 in California. So I'm going to suggest that you, you know,
10 if there's any way we can get together with all the
11 stakeholders and discuss this again, I think it would
12 behoove everybody, and it's for everybody's safety, not to
13 mention the cost and all that stuff. It's purely a safe
14 situation.

15 I would rather stand on a wall and shoot a nail
16 gun at my feet to joist than try to do it from a ladder.
17 It's just -- it truly is infeasible. I don't care what the
18 feds say. They're mistaken. And there's probably people
19 that have never actually worked in construction.

20 So, that's my opinion.

21 Thank you for letting me talk.

22 CHAIR THOMAS: Thank you.

23 Good afternoon.

24 JASON: Good afternoon, Dave Thomas, and to the
25 chair.

1 My name is Jason. And I'm a union carpenter.
2 based at a local 714 in Southern California. I work for
3 the company that my father works with, Laurence and
4 Hovenier. I went through the apprenticeship program at the
5 Southwest Carpenters Training Center, local 714. I'm a
6 fourth-generation union carpenter, and I've worked on the
7 fall protection video that you guys have witnessed.

8 When I was going through the apprenticeship
9 program, the instructors drummed safety into us daily, from
10 day one to the day that I graduated. Safety is everything.
11 It's important to not only myself, but my brothers and my
12 sisters. We have to go through this basic safety training
13 before they allow us to even touch any tools. As you
14 progress through the program, you have to get your skill
15 blocks completed and take tests on your knowledge in order
16 to progress to the next level as you progress through the
17 program to a higher level of apprentice.

18 Fall protection, specifically §1716.2 is the law.
19 If you don't comply, you would be sent home and possibly
20 thrown out of the program for noncompliance, and I have
21 seen that happen. I guess I had a little advantage, two of
22 the instructors we formally employed For LHI.

23 I have my dad teach me also. Nepotism is alive
24 and well.

25 Okay, as I stated earlier I worked on the fall

1 protection video with other employees who I worked work
2 with on a daily basis I have a question for you. Did you
3 notice that all the yoyos, not the people, the retractables
4 were attached to girder trusses in the roof structures,
5 with a long tagline to pull it down to you? Well there's a
6 reason for that. You can't tie off on top of plates of
7 walls and not expect to hit the ground first. On a wooden
8 structure, there is no place above you to tie off to. I
9 have installed the guardrail fall protection system LHI
10 uses on all their jobs.

11 You do realize the time it takes me to install
12 the system takes longer than the operation would, and puts
13 me at a greater risk?

14 We showed that time lapse in the fall protection
15 video. Every framer, every joister, every sheeter, and
16 stackers in that video are all union employees working for
17 LHI that have been trained on the certain fall protection
18 standards §1716.2. And you saw how it works. You also saw
19 how working off ladders has a greater exposure to the
20 joisters and stackers. Did you notice the hoses and cords
21 and the tripping hazards it creates when climbing up and
22 down a ladder all day? Not to mention where it places the
23 nail gun, where they place the nail gun. Oh, and let's not
24 forget how worn out they'll all be carrying all your tools
25 up and down the ladder all day long.

1 You saw my friend Rolando at the end of the
2 video. Did you listen to his words? He said, I quote,
3 "Don't make us work like this."

4 I remember how it was when LHI was framing
5 Juniper Springs Lodge up in Mammoth. Those were the days
6 of a fall protection plan, controlled access zones, and a
7 spotter. That was my first job, making sure and warning
8 workers when they were getting too close to the edge. Not
9 very efficient if you ask me.

10 I hear we may be going back to the fall
11 protection plan. I hope not. And in my own words, don't
12 make me work like that.

13 Thank you.

14 CHAIR THOMAS: Thank you.

15 Good afternoon. Go ahead.

16 MR. KISGEN: Good afternoon, Mr. Chair and Board.

17 My name is Brent Kisgen, and I'm a third
18 generation carpenter and now a safety coordinator safety
19 coordinator for United Production framing.

20 I think the repetition here between two things is
21 family, and the concern for enforcing safety and making
22 sure our guys are out working safe. I've worked out in the
23 field as a carpenter for six years, and then progressed
24 into safety and have been doing it for seven years. And
25 considering the concern of having our employees going up

1 and down these ladders, most likely having to carry tools
2 along with them, moving the ladders back and forth as they
3 go up and down to nail these joists and trusses among other
4 structural members, not only the ergonomic concern but as
5 well as the puncture concerns that having a nail gun right
6 next to your face as you nail down these members.

7 My father was my foreman and he had lost an eye,
8 and while his nickname was Eye-Gone, and having driven with
9 him from job sites and seeing the hazards that missing and
10 I present and, you know, there's no going back and having a
11 surgery to get that second eye back. It's something that I
12 genuinely concern for our family members that are out there
13 working along with us.

14 That's all I have.

15 Thank you.

16 CHAIR THOMAS: Thank you.

17 We're going to go to online callers.

18 Oh, there's no one in? No one in the queue?

19 Okay, good. I shouldn't say it like that, but
20 good.

21 Anyway, go ahead.

22 Good afternoon.

23 MR. MERCIER: Good afternoon chairman and Board.
24 Thank you for letting us have this opportunity to speak.

25 Basically, where's the pride of ownership of

1 California? The federal representative said we're the last
2 holdout.

3 CHAIR THOMAS: Oh did you -- can you state your
4 name?

5 MR. MERCIER: Oh I'm sorry my name is Alex
6 Mercier. I am vice president, risk management, for Circle
7 M Contractors.

8 You heard from Mark Dally who's also with my
9 organization.

10 But what I was saying is that we're the last
11 state. I take that as a badge of honor. Because it's not
12 broke, it doesn't need fixing at all. You will make
13 framing operations less safe. You will increase the amount
14 of man-hours by doing so. You'll increase the opportunity
15 for accidents.

16 We've heard ad nauseum, the nail gun placements,
17 the increased use of ladders, not to mention -- well, it
18 already has been mentioned, but everyone gets it right now.
19 And I would have to stand in front of a bunch of carpenters
20 with their nail bags on and tell them, hey guys here's what
21 we're doing now. And when they ask why, I have nothing
22 except because we're being told to. So I implore you to
23 stick to your guns and keep this the way it is because
24 it'll be less safe.

25 And I'm doing a duty for my employees right now

1 speaking to you. I would be negligent if I didn't.

2 That's all I have to say.

3 Thank you.

4 CHAIR THOMAS: Thank you.

5 And before we go to our next speaker, I think we
6 have to adjourn it too for -- for if we can if we can get
7 you guys maybe two minutes a piece, and then we'll be right
8 on time.

9 Union rules, you know, for breaks on lunch and
10 stuff like that. Well, then you're going to have to do it
11 after that, so.

12 Go ahead.

13 MR. AYZLZ: So good afternoon. My name is Juan
14 Ayzlz. I'm a union carpenter out of Local 701.

15 During the past few years, I've worked on various
16 wood-framed projects under Core Contracting, and I can say
17 with confidence that we have successfully implemented the
18 §1716.2 standard.

19 I'd like to end by voicing my support for the
20 testimony provided by both Kevin Bland and Bruce Wick.

21 CHAIR THOMAS: Thank you.

22 Perfect. That is -- that was so nice. So
23 succinct.

24 Unlike what Kevin's going to do, but -- no.

25 MR. GUZMAN: Good afternoon.

1 My name is Tony. I'm a northern California
2 carpenter, Local 701, and I've been a framing professional
3 for 10 years.

4 As a Northern California carpenter, you know, I
5 agree with my colleagues in the south, Southern California
6 carpenters on this matter, and I am here to testify in
7 opposition of the proposed Fed/OSHA draft regulation to
8 §1716.2. I currently work for Core Contracting and, yeah,
9 we have successfully implemented the current §1716.2
10 standard as it stands. And as my colleague stated, if it's
11 not broken, please don't fix it.

12 The proposed draft regulation to §1716.2 will
13 implement the Fed/OSHA six foot trigger height. The rule
14 only creates more hazards. We see an increased number of
15 close calls, trips, and other injuries due to the use of
16 retractable yoyos, lifelines, ladders, or scaffolding.
17 With the increased hazards when tied off brings up the very
18 real possibility of falling. As the Board saw in the video
19 presented during the last meeting, it is not feasible to
20 use the fall protection equipment currently available for
21 our type of work if the proposed regulations are
22 implemented.

23 Implementation of the six-foot trigger height,
24 Fed/OSHA's six-foot trigger height, will hinder our ability
25 to safely conduct our job. I urge you to take a step back

1 and meet with the stakeholders regarding this matter.

2 Thank you.

3 CHAIR THOMAS: Thank you.

4 Good afternoon.

5 MR. SANTIAGO: Good afternoon. My name is Israel
6 Santiago. The company I'm here with is United Production
7 Framing, along with my colleague Brent Kisgen.

8 I would like to thank you guys for everything
9 that you guys do. You know, I know it's not a perfect
10 world and there's a lot of accidents out there but, you
11 know, we do our best to keep our employees safe and this
12 fall protection is very important for us. We always tell
13 the guys hey, be careful.

14 You know, I've worked since 2015 as a pickup guy,
15 picking up trash, so I started as a laborer. And I grew
16 up, I worked my way up, you know, they taught me. My dad
17 is a carpenter as well for 35 years. He started training
18 me, coaching me, and they got me in the right step. So I
19 know how it is. I've been out there for seven years.

20 So as a carpenter, as us carpenters who are out
21 and are out in the field, there are three things for us.
22 It's to be safe, work hard, and to go home with our
23 families because that's what matters.

24 You know, two years ago I was moved up to the
25 safety department and it's been the best. It's been really

1 cool. We are a safety culture in our company, and I know
2 everyone else is, you know. We love these -- we enjoy
3 these OSHA regulations because it keeps us safe and it
4 keeps everyone safe. Having that said, you know, I just
5 wanted to give you guys my background. I've worked down
6 the field, platforms, I've done stacking, I've done
7 trussing, I've done all this stuff.

8 But yeah, that ladder, man, it's just like, going
9 up and down, especially in summer, that's going to cause
10 heat strokes, you know. It can cause a lot of things for
11 our guys. I would not be able to enjoy that going up and
12 down with my tools and all that stuff.

13 So please, you know, this regulation you guys
14 have now, it's really good. It's really good, and we all
15 abide by it. You know, we do our best to keep them safe,
16 and if there's something that is a safety hazard, we coach
17 them. We say hey, come back down, and let's do a
18 retraining for you guys. And so that's what we do.

19 So thank you.

20 CHAIR THOMAS: Thank you. Appreciate it.

21 And this will be our last commenter until we
22 recess, so go right ahead.

23 MR. HENDERSON: Good afternoon. Thank you.

24 My name is Jim Henderson. I'm the Vice President
25 of Operations for Davis Development Company. We employ

1 about 1,500 carpenters in both of our offices. I run
2 Northern California.

3 We feel that the new standards are not going to
4 be what we're looking for. We feel it's going to make our
5 employees less safe, and in talking to some of our
6 employees, they're not excited about it because they know
7 the risk.

8 We have a safety meeting every single morning
9 with every employee. We do that every single morning. We
10 do a warm up, and we have a safety meeting, and they know.
11 Look, the guys know what to do, and they know that tying
12 off your feet is going to be less safe. It doesn't take a
13 brain surgeon to figure that one out. And they're
14 concerned because we've been talking about it for a while
15 now.

16 We think you guys should regroup, go back,
17 reevaluate this, and try to make it more user-friendly for
18 the employees themselves, because I keep hearing from
19 people that, in other states, they're already doing this.
20 And I've worked in seven states. Nobody follows it. They
21 don't -- they partially do kind of make just a try at it,
22 but they don't do it. And it's going to be very, very
23 difficult and it's going to increase costs dramatically,
24 dramatically on a state that's already suffering from not
25 having enough housing, affordable housing, right? So we'd

1 like for you guys to take another look at this, push it
2 back, reevaluate, and see what we can come up with that's
3 better.

4 We realize that we've been doing this for 20
5 years. It works pretty well. It's worked really well for
6 everybody. If there's changes that need to be made, then
7 we make the changes. But the direction we're heading right
8 now is dangerous. And my boss sent me up here just to
9 express that for him.

10 So all I want to say is thank you for the time.
11 We appreciate it.

12 CHAIR THOMAS: Thank you. Appreciate it.

13 We appreciate all our commenters. We will have
14 more after we have our break, but it's going to be a half-
15 hour break so you have time to go grab something and --
16 yeah.

17 Union rules but sucks, right?

18 Anyway, so we're going to adjourn for a half-
19 hour. Thank you.

20 (The meeting went to break at 2:01 p.m.,
21 returning at 2:35 p.m.)

22 CHAIR THOMAS: Alright. We are back in session
23 and we're going to continue with testimony on fall
24 protection in residential construction.

25 So hello. Good afternoon.

1 MR. BLAND: Good afternoon, Your Honor. I mean
2 Chairman.

3 CHAIR THOMAS: Three minutes.

4 MR. BLAND: Chairman Thomas, Board Members. I
5 think we lost the staff, but I'll say hi anyway.
6 Stakeholders here.

7 I'm Kevin Bland. I'm representing the
8 Residential Contractors Association and the California
9 Framing Contractors Association. Here to -- and I'm going
10 to testify on the fall protection standard as everyone
11 knows.

12 One is, as you guys probably already heard, I'm
13 not going to reiterate, our concern is safety and the
14 safety of the working men and women in the field doing
15 framing construction. Couple things, I did submit a
16 comment letter that has changes or at least suggestions
17 that we would like to consider. I don't know -- you know,
18 I mean, at the end of the day, bottom line is it's with the
19 system that Fed/OSHA has as we've heard for a single story,
20 there isn't a real feasible safe way to do it other than
21 the prescribed method we have. You can go to a fall
22 protection plan and all the things that fed does, but it's
23 not going to provide the safety of what our §1716.2 does.

24 So I do want to do a little bit, go back in
25 history. It's interesting because our plan was around

1 since -- our regulation -- since 2002 I think was the
2 adopted year. So it was in place for a decade before it
3 was ever an issue. And I think the legal issue is, we
4 heard them talk about earlier, that at least as effective
5 doesn't matter whether or not -- and this is the feds
6 talking -- we have less falls. It doesn't matter that we
7 have less injuries. It doesn't matter that we have less --
8 because but isn't that the measurement of whether you're
9 safe if you're out in the field?

10 So I think what I would ask is, there's got to be
11 a way to push back from this Board on Fed/OSHA's
12 interpretation of what is at least as effective. We've
13 provided a record I mean for years on this. And everyone
14 has said well at least it's effective doesn't mean the
15 same, but now they're coming back and saying that it means
16 to be the same, because one number isn't equal to the
17 other. But you can't do this in a vacuum. You have to
18 look at the thing, the totality of the circumstances, and
19 the effective nature of it.

20 Interestingly enough there's an article yesterday
21 in the OSHA News where nationwide in federal OSHA their
22 falls were up, their citations were up for falls, but yet
23 ours are down and here we're not as effective.

24 I also think that it's kind of a little bit
25 disingenuous when we hear the feds say well, the reason

1 this is possible is because there's new technology out
2 there. Well, we have asked since 2013, show us that
3 technology because we would love to see it.

4 I think one time they showed us some apparatus
5 that looked like a forklift that you could tie people off
6 to one at a time. Can you imagine trying to build a house
7 with that, especially in California or a multi-story? You
8 can't park 10 of these around a house to have 10 carpenters
9 tie off above their head to a skyhook. Well, they aren't
10 workers, and probably the two Daves know what I mean by
11 skyhook, but that's basically what it is, right? And it's
12 an impossibility. And it is infeasible. And they said
13 well, if it's infeasible you can use a fall protection
14 plan. Well yeah.

15 So when we talked about this -- I know you had
16 said we talked about this -- the issue was consistency,
17 right? So that means every single job they're expecting us
18 to prove infeasibility. Again, every framed house, whether
19 it's a 10,000 square foot house or a hundred square foot
20 house or a set of apartments, the framing process and the
21 way that goes together is the same. There isn't a need to
22 have to reprove it on every single job. And we also want
23 consistency above the men and women who are working out
24 there, and the union workers and non-union workers. How do
25 you keep safety, having consistency and consistent

1 enforcement and consistent compliance in a process that we
2 can buy into?

3 I know this as an iron worker. If something that
4 we had to do from a safety standpoint made sense to us, we
5 were going to do it because we wanted to go home at the end
6 of the day. I wanted my brother and sister to go home at
7 the end of the day, and in some cases literally my family
8 and figuratively my family. You heard from all these guys.
9 They are working with their family. You think they're
10 going to say, oh, we don't want my family member to go
11 home? When they say it, they mean it literally and
12 physically.

13 And that's why we're so passionate in fighting to
14 try to get something that will satisfy the Fed's
15 bureaucracy and the political nature of this fight and
16 focus on the safety nature of this fight. I don't want
17 contractors, when this is all over, every day to go out
18 into the field and decide, do I want to try to comply with
19 something that is unsafe to avoid a citation, or do I want
20 to do what I know is safe, that may not be in compliance,
21 so my guys go home at the end of the day? That's the
22 choice that this proposed regulation is presenting in this
23 big political fight from Fed/OSHA.

24 I understand you guys are in a tough spot because
25 of the pressures from the feds, but I think we can get

1 there. We have some compromise in even our proposal in our
2 letter if we can we can get there. So I hope that you guys
3 send the Division back to the drawing board on this. 15-
4 day notice, we work on some changes that can try to get
5 this thing into a place that Fed/OSHA will buy.

6 And also if they're just keep sending a letter
7 that says no, push back. I mean, we had folks up in 2010,
8 2002, all the way through until probably a couple of years
9 after advisory committee, where interior of Cal/OSHA was
10 pushing back against the feds, because they were there for
11 the development. They knew all the ins and outs of why we
12 ended up where we were. And those people have all retired
13 and gone away, so no one has the same gusto. And we need
14 to have that gusto to push back.

15 I'm sorry, I've droned on. I appreciate
16 everyone's time in listening to us today.

17 Yes?

18 BOARD MEMBER STOCK: I actually have a question
19 for you, Kevin.

20 MR. BLAND: Can it be multiple choice? I'm
21 better at those.

22 BOARD MEMBER STOCK: You know, thanks to your
23 testimony and everybody else who testified. It's great if
24 you have compromises that might help us meet the federal
25 mandate, you know, as well as address some of those issues.

1 So I hope that that bears fruit in some way.

2 But I did have a particular question because
3 you've sort of addressed a little bit of my question in
4 what you said, but I heard a lot of other people talking a
5 lot about the concern about having to use ladders or having
6 to tie off at the feet. And so it made me just go back to
7 look at the actual language.

8 MR. BLAND: Sure.

9 BOARD MEMBER STOCK: Because I think, wow, does
10 it require doing those things? And this is the language
11 that it says. It just, again, with the new trigger height,
12 that fall protection, six feet or more, fall protection
13 shall be provided by one or more of the following methods:
14 scaffolding, guardrails, safety nets, a personal fall
15 protection system, or, if you demonstrate infeasibility --
16 I hear your point about that -- but if you demonstrate
17 infeasibility, then you can use a fall protection plan
18 that's probably more similar to what's happening now.

19 So I just -- it did help me to see that, because
20 I was concerned to feel like we had language that was so
21 specifically requiring certain people that we heard from
22 many people are -- and it is not.

23 And so I just want to highlight that and see if
24 you have any comments on that.

25 MR. BLAND: Oh yeah, no and Laura, that is --

1 sorry, Board Member Stock. That is -- I'm actually glad
2 you asked that, because that's a good question.

3 How did we get -- why the ladder concern?
4 Because one is, to get a fall protection plan and to get it
5 approved and have one for every different job, and the
6 enforcement element of that, because the burden shifts. So
7 one way around that is okay, we won't use any conventional,
8 but we're not going to have a fall protection plan and we
9 can do it off ladders. That's number one.

10 Number two is that is something that is told to
11 us from different folks in federal jurisdictions that that
12 is how they comply. They try, they do it off a ladder and
13 they have more falls and then they get frustrated and quit
14 doing it, but Fed/OSHA would accept that because you're not
15 -- there's no fall protection requirement for using a
16 ladder and so that was why.

17 And then there's also been some prime contractors
18 that are here in California and have national -- that they
19 have said okay, we want to enforce the federal rule here
20 under contract, and so we're like well, it's infeasible.
21 They go, I don't care. And so they force them to do it off
22 of ladders, and we have more injuries in that.

23 So that's where that ladder issue came up.

24 BOARD MEMBER STOCK: Yeah. So that's -- thank
25 you for that explanation, and I know we're running close

1 time but I just did want to ask that, and it did feel like
2 the language, the actual language, provides more
3 flexibility. But I understand what you're saying about the
4 disincentives, and all of that stuff so -- so, you know, I
5 think it'll be great to, you know, see what your comments
6 are, see what OSHA says, so I hope that some sort of
7 compromise can be reached.

8 MR. BLAND: I actually appreciate you asking me
9 that, because that probably wasn't clear. It's just a big
10 fear, too.

11 Alright. Thank you. Any other questions while
12 you got me?

13 CHAIR THOMAS: I'm going to -- yeah, I'll allow
14 it.

15 Oh, do we have a commenter online?

16 BOARD MEMBER CRAWFORD: I have a question.

17 CHAIR THOMAS: Okay, well let's -- do we have a
18 commenter online? Let's get that out of the way.

19 Is there a commenter that we have, Maya?

20 MS. MORSI: We do not have any commenters online.

21 CHAIR THOMAS: Okay. So that was -- I don't have
22 to worry about that.

23 Yes, so you have a question, Chris?

24 BOARD MEMBER LASZCZ-DAVIS: Oh, I -- yeah.

25 CHAIR THOMAS: Laszcz-Davis. Board Member.

1 BOARD MEMBER LASZCZ-DAVIS: Thank you.

2 Alrighty, yeah I do have a question. I don't
3 know whether it's --

4 MS. MORSI: My apologies. Sorry about that.
5 We actually have one last one.

6 CHAIR THOMAS: I thought my voice had changed
7 there for a minute.

8 MS. MORSI: My apologies.

9 CHAIR THOMAS: I'm just getting nervous.

10 Well let's go ahead before you ask your question.
11 Let's do that so we can be done with it. It sounds
12 terrible, be done with the commenters.

13 But who do we have, Maya?

14 MS. MORSI: We have Cassie Hilaski with Nibbi
15 Brothers.

16 CHAIR THOMAS: Oh.

17 MS. HILASKI: I actually feel bad interrupting
18 that great conversation.

19 CHAIR THOMAS: Go ahead, Cassie. We've been
20 waiting for you all day.

21 MS. HILASKI: Oh sure. So, Cassie Hilasky with
22 Nibby Brothers.

23 So actually Kevin ended up going into some of
24 what I was going to point out about the fall protection
25 plan and how that regulation really is flawed. And really,

1 what it seems to me that Cal/OSHA did 20 years ago is that
2 rather than have everyone do their own fall protection
3 plan, and quite honestly, when I've talked to my peers
4 across the country and asked them, hey, how do you do the
5 six-foot thing? They tell me we don't, because the
6 Fed/OSHA regulations allows us to opt out it as long as we
7 have a fall protection plan. So we just write that it's
8 infeasible and we show them how it's infeasible and then we
9 go on our merry way without tying off at six feet.

10 And so what Cal/OSHA actually did 20 years ago is
11 they wrote the fall protection plan that the feds required
12 and made that the regulation so that people didn't have to
13 figure out what the fall protection plan was and so that
14 you actually had an effective fall projection plan for all
15 contractors, which is what Kevin is obviously talking to in
16 terms of consistency, and something that people are
17 actually going to follow, rather than the exception that's
18 allowed in the fed regulation. Because they say, hey, and
19 by the way, if you, if no other alternative measures are
20 possible, then the employer can implement a safety
21 monitoring system. Which personally I think is the lowest
22 bar of safety that you can have in fall protection, is to
23 rely on one person to watch to keep everyone else safe.

24 So it does seem that the writing on the wall is
25 that feds are going to force California to adopt their

1 language, but I really hope -- and it sounds like you're
2 going to, so thank you -- I really hope that you direct the
3 Division to look at Bruce Wicks' and Kevin Bland's
4 suggestions and other stakeholders' suggestions. Get
5 together, engage in conversation with the stakeholders, to
6 talk about how can we comply with the federal regulation,
7 but do it in a way that's much safer than how most of the
8 framers across the country actually implement that
9 language, because the reality isn't very safe across the
10 country, and I would still argue that California under our
11 current regulation does it safer than anywhere else in the
12 country, and we protect our workers better than anywhere
13 else, but if we have to comply with this identical adoption
14 of the flawed federal regulation, then let's try to at
15 least do our best to do it in a way that most effectively
16 actually protects the workers.

17 So thank you very much with that. I'll turn it
18 back over to Kevin and your conversation.

19 Thanks.

20 CHAIR THOMAS: Thank you. And I don't know why
21 he's got you in a basement. That looked pretty bad.

22 Sorry. Go ahead.

23 MR. BLAND: Well I did -- I think there was a
24 question. I mean that was a great final comment, so that's
25 a good note to end on.

1 CHAIR THOMAS: Okay, I'm going to let Chris ask
2 you a question.

3 BOARD MEMBER LASZCZ-DAVIS: Yeah, just real
4 quickly.

5 Actually I like what Cassie had to say. I think
6 it summarized it very well.

7 You know, as I listened to the exchange here, you
8 know, we have a new proposed regulation. However,
9 operationally, people are finding, experientially, they're
10 finding it to be a problem. However, we've got the Fed
11 saying you must.

12 We certainly had some statistics shared. It was
13 not clear to me whether they were national statistics are
14 unique to California, which suggested there was a problem.
15 None of it makes sense. If you put it together side by
16 side it's not making sense. Do we have California-specific
17 statistics? Do we have benchmarking with other state
18 programs to see what the actual implementation is versus
19 what they say, what we think they're doing? I mean there
20 are a whole lot of questions I would ask.

21 And you know, my initial thrust is we can't
22 accept this as it is. Our experience operationally versus
23 what the feds want us to do doesn't align. For me that's a
24 red flag.

25 So we've got dialogue that needs to occur.

1 CHAIR THOMAS: Thanks Chris, and I'll visit you
2 in jail. I might --

3 MR. BLAND: I'll defend you all if you go to jail
4 over this one, because that's worth defending that pro bono
5 on the record.

6 CHAIR THOMAS: Oh, thanks Kevin.

7 MR. BLAND: You are -- I might be right there
8 with you though.

9 CHAIR THOMAS: Any other questions?

10 No questions? Okay.

11 BOARD MEMBER ALIOTO: Mr. Chair, do you have a --
12 can you hear me?

13 CHAIR THOMAS: Yes.

14 Go ahead. Go ahead, Joe.

15 BOARD MEMBER ALIOTO: Thanks, Dave. How you
16 doing. Thank you for -- thank you.

17 Kevin, question for you, and I know that you've
18 turned into the Q&A person, so I want to say thank you for
19 that.

20 I know that you reiterated a number of arguments
21 or comments that that people made. But I thought, and I
22 share my comments with the other members of the Board, as
23 well as Cassie from Nibbi, about the way that you have
24 encapsulated the issue I think has been very, very helpful.
25 So I want to say thank you for that. You are the only

1 person that I can recall that addressed this idea of
2 whether the requirement is infeasible or would create a
3 danger. I had the same questions that Ms. Stock had, which
4 is, okay, tying off at the feet at six feet is -- it causes
5 a danger, or if entanglement causes a danger that would,
6 you know, especially for people that are carrying equipment
7 like saws or nail guns, then seems to me like that's fairly
8 clear uh that you would be exempt from that because it
9 would create a greater danger than the one that you're
10 trying to avoid by having the fall protection gear.

11 So I want to also just reflect and share my own
12 thoughts on what Cassie just said. You know, maybe one
13 thing that we can consider as a Board is establishing what
14 we presume to be infeasible or what we can -- we can, you
15 know, almost establish a presumption that certain
16 activities would create a danger and therefore a harness is
17 not necessary, and we could talk a little bit about, and
18 maybe even put that into the regulation, something that
19 might describe some of the dangers that have been commented
20 on today.

21 So, all of that is to just ask you this question.
22 How is it that you make sure that workers are kept safe
23 when they are at, let's say, 14 feet or 13 feet? Like,
24 what process do you do? Do you use a fall protection plan?
25 Do you use a harness? Is there a net? Can you just

1 describe how you make sure that your workers at 13 feet, or
2 whatever it is, below the -- it's not enough to trigger the
3 current 15 feet regulation -- how do you make sure that
4 those folks are safe?

5 MR. BLAND: Sure. I appreciate it. Because this
6 is something that this thing got coined at the 15-foot rule
7 the reality of it is our §1716.2 standard really is a zero-
8 foot rule, because what it does is lays out a process.

9 So let's take laying joists for example.
10 Specifically in §1716.2, it lays out the process, and I
11 think we heard it coined kind of like a fall protection
12 plan, but it's regulatory language that's enforced and
13 consistent. So whenever you're laying joists, there's a
14 way that you are prescribed in the regulation to lay them
15 that creates the working platform as you're going. There
16 is a distance given to where, okay, if you need to walk on
17 them, they have to be supported structurally and a certain
18 maximum distance apart that helps add for fall protection.
19 There is a means in which the order in which they're laid
20 out is spelled out in §1716.2. Back in the day when we did
21 the advisory committees, we took each task. And that's one
22 example, is that, how can we do this safely? Because
23 conventional fall protection isn't a feasible option,
24 because wood's wood. The wood hasn't changed in 20, 40 --
25 I mean, I guess maybe a million years. But that's where

1 that comes in. And that's the fall protection.

2 So it's all alternative fall protection, if you
3 will, and then when -- if within the 15 foot was just this
4 arbitrary number that said, single stories are different
5 than two-story houses and five-story apartments. And then
6 the interior, though, it's never really over 15, over -- 10
7 foot is usually the ceiling. So interior on the second,
8 you know, it's the same issue. And I may be going too far,
9 but.

10 Now why did we decide on the exterior of the
11 second floor? On a two-story home, it makes sense to put
12 either scaffold or bracket scaffolds around the top.
13 Here's the deal. You're doing that from internal over an
14 8-foot, about an 8-foot or a 9-foot wall, and you're doing
15 it internal. So your fall risk in that installation is
16 still the lesser risk, versus if without that up at the
17 perimeter, then you've got a 30-foot or a 20-foot or
18 whatever, and so then we took the risk continuum and laid
19 that out.

20 And that's how we came up with -- that made sense
21 on the perimeter of a second, where it didn't make sense on
22 the first. Because you're actually exposed more on the
23 whole thing of the first floor installing and disassembling
24 at the exact same fall height, as what you are when you're
25 installing the joist and the decking and the trusses if

1 it's a single-story. In fact, you're exposed longer by,
2 you know, probably about 30 percent at that same fall
3 height. Where up top, you may be exposed to a fall height,
4 but at that 8-, 9-foot level off of a ladder, putting on
5 the fall protection versus the 20 foot.

6 I hope I came across right.

7 BOARD MEMBER ALIOTO: Yep.

8 MR. BLAND: We put a lot of thought in this,
9 believe it or not.

10 Thank you, Board member.

11 CHAIR THOMAS: Any other questions?

12 Alright. Thank you.

13 MR. BLAND: Thank you.

14 CHAIR THOMAS: So there being no further persons
15 coming forward to testify at this time the public meeting -
16 - public hearing, unless we have somebody?

17 Oh. I thought you were waiting for the next --
18 go ahead.

19 BOARD MEMBER HARRISON: So I just had a few
20 observations or maybe questions. So I was here in 2016,
21 January of '16 when the meeting in question, when it was,
22 15 isn't 6, I got a plane to catch. And it was pretty
23 surreal.

24 Excuse me.

25 Fed/OSHA decided some statistics about injury

1 from falls at 6 feet versus 6-to-15 feet. And my question
2 for Fed/OSHA would be, were those national statistics or
3 California statistics? And you can answer it later, I'm
4 just -- I just want to get my questions on the record. If
5 you want to now, that'd be great.

6 Please.

7 MR. KUZEMCHAK: Yes. So that is actually from a
8 study of national statistics, so across the nation, for
9 known heights of fall. So a lot of our reports do not
10 record at the height of the fall.

11 BOARD MEMBER HARRISON: Okay.

12 MR. KUZEMCHAK: So that was -- they excluded a
13 bunch of falls that didn't have a known height in them.

14 So that is national statistics.

15 BOARD MEMBER HARRISON: Okay. Are you able to
16 break that down to California?

17 MR. KUZEMCHAK: So California's -- gosh, what do
18 you guys call it here? SOII, is that right, Eric? Yeah,
19 SOII. So the way you collect statistics does not break it
20 down in that manner. So we federally do. The Bureau of
21 Labor Statistics does a lot of that. When it comes to
22 state-specific data, it's not broken down like that.

23 And I will say, it sounds like I'm talking up the
24 feds. We don't break it down perfectly into like all of
25 the data that you can pull out of it, but it is a little

1 more specific.

2 BOARD MEMBER HARRISON: Okay.

3 BOARD MEMBER KENNEDY: So just to follow up, I
4 think what you had presented for the national statistics
5 was the difference in rates between 0-to-6 and 6-to-15.
6 So, since we're really looking at California, I mean, that
7 makes sense to me. You would get in -- I mean, the higher
8 you go, the more likely you're going to be injured from a
9 fall. It's not particularly helpful if we can't see how
10 that compares with what's going on in California. Because
11 we have people here saying, our rates are so much lower
12 than the rest of the nation, but we're hearing from you
13 that we can't disaggregate them, and so I get a little
14 stuck with, so which really is the safer one?

15 You know, I'm getting pretty compelling arguments
16 from people who work in this area saying that the way we do
17 it in California is safer, and I haven't heard something as
18 compelling from Fed/OSHA. Now granted, I haven't been here
19 through the whole process, I've only been -- I wasn't here
20 in 2016. I don't know all of the history, but it would be
21 terrific to really know which one is safer. I mean,
22 because -- when at the end of the day, we want to keep our
23 workers safer.

24 BOARD MEMBER HARRISON: And just to kind of
25 finish my thought on that, I wanted to know California

1 statistics because the rest of the country doesn't have
2 \$1716.2 that they're complying with.

3 And so that's why I asked the question. And I
4 hope that that makes sense.

5 MR. KUZEMCHAK: It does. Yeah.

6 BOARD MEMBER HARRISON: Okay, very good. And
7 then my other -- nope, nope, go ahead. And I'm done with
8 Fed/OSHA.

9 Thank you, sir. Appreciate it.

10 CHAIR THOMAS: Wait, are you done?

11 BOARD MEMBER HARRISON: My other note was that --
12 sorry, sorry. My other comment was that it's not very
13 often that we get labor, management, industry all on the
14 same page, and in opposition for a good reason. And for
15 that, I'm still not -- I'm glad we're not voting today
16 because I think there's a lot more work to do. I think as
17 it currently stands, I couldn't support it.

18 But my question, I guess, to Autumn would be, if
19 we don't pass a rule, what's the consequence? What happens
20 then?

21 MS. GONZALEZ: I think Matthew might be able to
22 better answer that question than I. Sorry, Matthew.

23 CHAIR THOMAS: See, this is like going up and
24 down a ladder all day. Just --

25 MS. GONZALEZ: Getting your steps in.

1 MR. KUZEMCHAK: I missed my walk this morning
2 because I had to be here early, so I kind of appreciate it.
3 It feels good. Get a little leg work.

4 So one of the things that I want to highlight is,
5 when we talk about at least as effective as in the federal
6 standards, our measures of efficacy are actually based in
7 our standards. So we have 29 CFR 1902. And in 29 CFR
8 1902, it defines how we measure effectiveness. And so in
9 my remarks when I quoted that standard, and it talks about
10 having positive protections for specific hazards, that is
11 what is missing, right? And so that is what we're saying
12 is not at least as effective as.

13 We have an identified hazard, 6-to-15 feet, that
14 is not positively protected. So that is that measure of
15 efficacy. So what happens, I think is your question, what
16 happens if a standard is not adopted that we find at least
17 as effective as? Federal OSHA can assume jurisdiction in
18 the state of California over really any matters up to,
19 including all of the construction industry, for enforcement
20 purposes until such a standard is adopted. So we, as the
21 OSHA act is written and as our standards are written, if a
22 rule is not adopted, federal OSHA can basically take over
23 enforcement of the construction industry in the state of
24 California.

25 CHAIR THOMAS: So let me ask you this, while

1 we've got you here. Is there any chance that we can get
2 all the parties together and try and work something out?
3 Because, you know, the infeasibility part of it I guess
4 could be used, but it depends on your interpretation of
5 infeasible, right? And apparently you have a different one
6 than we do, or they have a different one than you do.

7 So -- but my problem with the whole thing is, is
8 we've been threatened for a long time. And, you know, I
9 don't take it with a grain of salt. It's very serious.
10 And, you know, in most aspects of any rulemaking or
11 regulation, California is way ahead of everybody else, even
12 the feds. And, you know, in my opinion, I think right now
13 is -- you know, we're kind of like this, and I don't think
14 we need to be there. I think maybe we can find some
15 alternative that will make it acceptable. Something. I
16 don't know if you've already been through this song and
17 dance, but I haven't. But I think it's the least that we
18 could do to try and find some common ground for this to be
19 worked out, because what I what I'm hearing is that, yeah,
20 we have a regulation, it's a federal regulation, but nobody
21 really uses it around the country.

22 And my other question was going to be is, in
23 these falls that you've documented and have statistics on
24 that are not in California, I mean, how many contractors
25 were actually cited for that? People don't always fall

1 when they're fully protected. They usually they fall when
2 they're not. So what were the citations on those, or were
3 there any citations that you know of?

4 MR. KUZEMCHAK: So that's not something I came
5 prepared to discuss today. That's a lot of data.

6 CHAIR THOMAS: That's the one thing I was trying
7 to find out.

8 MR. KUZEMCHAK: There's a lot of data and
9 information that would go into that.

10 What I can say is we changed this rule a long
11 time ago. We published our reasons in the Federal
12 Register. The reasons that we took this action are a
13 matter of public record. They were subject to public
14 discussion, and they haven't changed. And so we are of the
15 belief that, you know -- and it sounds flippant, and I
16 understand that -- but we are of the belief that 15-foot is
17 not as protective as six, and that the California
18 regulations allow things that are much more likely for a
19 worker to fall up to 15 feet rather than 6 feet and that is
20 the position.

21 BOARD MEMBER STOCK: Yeah. And I just want to --
22 I mean, when you describe what it is you're looking for, I
23 just want to say for myself that it makes sense to me. It
24 makes sense to me that what you're saying is there is a
25 hazard between 6-feet and 15-feet that is not positively

1 addressed. And I share the concern. And I share your kind
2 of common sense, you know, interpretation that falling from
3 six, there's still a hazard there.

4 And so -- but I also hear you say, when you say
5 positive response, it opens up a little bit of conversation
6 about what a positive response is. So I know we're not
7 going to be kind of finalizing this conversation now and
8 time is wasting and et cetera, et cetera. But it feels
9 like maybe within there is room. Honestly, I haven't read
10 all the comments yet, and everything like that. But within
11 that, maybe there is room for defining what that positive
12 response is in a way that is going to be, you know, serve
13 in some way to address some of the concerns. But I mean, I
14 would go on record saying that I would support the concept
15 that you're saying, that I believe that there's a gap there
16 and that, you know, filling it is important. But how it is
17 being filled, maybe there's some room there.

18 So, you know, I hope there's an opportunity to
19 have those conversations. I don't know whether they've
20 been completely -- you feel like they've been had and asked
21 and answered. I did read a little bit of the notes from
22 the advisory committee, and I was also there in 2016 when
23 this happened, so I've heard some of what Fed/OSHA said,
24 some of which I think I agreed with.

25 So I look forward to seeing what happens.

1 MR. KUZEMCHAK: And Chair Thomas, to your
2 question about committing to a discussion, I can't do that
3 on behalf of the agency at this point, right? I'm not in
4 the room with them. I haven't had the conversation with
5 them. There's folks in this room that I've had
6 conversations with.

7 And the least I can tell you is that the least I
8 can do is listen to what's presented and give you my
9 perspective on it, and try to engage as we need to. I
10 cannot promise that the outcome is going to be anything
11 different than what it, you know --

12 CHAIR THOMAS: Right.

13 MR. KUZEMCHAK: I cannot promise an outcome. I
14 cannot, but I can certainly listen. I can certainly try to
15 bring things the directions that I can, so that at least
16 you have been heard and not listened to. I think that was
17 the word --

18 CHAIR THOMAS: I like that. The turn of that
19 phrase

20 MR. KUZEMCHAK: -- the phrase that somebody used
21 today.

22 CHAIR THOMAS: Well thank you for that.
23 Hopefully -- I know we have another question, I think we
24 have two more -- but I appreciate that.

25 And I know you're in a tough position too. I get

1 it.

2 And I think what we're really looking for here,
3 and I'll get to your questions is, you know -- and I don't
4 know that there's a -- you know, we could say, yeah we
5 approve the fed standard, and then nobody complies with it.
6 You know, I mean that can happen too, I mean, but that
7 isn't really what we want to happen. You know, we want
8 everybody to be safe. I'm going to leave it at that. We
9 want everybody to be safe and be able to go home from the
10 job and not get hurt and not injured or killed. So that's
11 -- I think we all have the same concerns, it's just how do
12 we get there.

13 Go ahead, Nola.

14 BOARD MEMBER KENNEDY: I just sort of wanted to
15 make a comment, and that's to kind of tie together what
16 Laura said with what you said.

17 To me this really sounds like we're close. That
18 there's some language we're missing. And I know that you
19 can't make any commitments, you can't offer any guidance or
20 make any promises, but do you see a path between what we're
21 doing now and if we could have some language that that
22 would be seen as a positive protection?

23 Again, I don't want to put you on the spot.

24 MR. KUZEMCHAK: Yeah, it's a challenging
25 question. And what I can, how I can respond to that is, if

1 there is a path, it is a difficult one, and it is a
2 difficult road to navigate. That's what I will say.

3 CHAIR THOMAS: Go ahead, Chris.

4 BOARD MEMBER LASZCZ-DAVIS: I appreciate the
5 difficult roads to navigate, but I think we need to take
6 them in this case, quite frankly.

7 I mean, have we done -- have you guys done, had
8 an opportunity to do any benchmarking as to conformance to
9 the existing fall protection standard that the feds
10 presently have? I mean, do you have any idea as to its
11 efficacy at this point in time?

12 Okay, you don't have to answer that.

13 MR. KUZEMCHAK: Yeah, I'm not sure what that
14 question is and, you know, I certainly don't have any data
15 or information on that.

16 I can say that we do cite fall protection a lot,
17 but the reason we cite fall protection a lot is because we
18 look for it a lot. The reason we look for it a lot is
19 because a lot of people get hurt and a lot of people die.

20 BOARD MEMBER LASZCZ-DAVIS: Okay.

21 And I know you indicated earlier that the
22 statistics you shared were national statistics, and I
23 wasn't sure if I understood -- and Eric, I apologize -- but
24 I'm not sure I understood your comment.

25 Do we have any way to get at California's state

1 experience in this arena?

2 MR. BERG: We have CFOI data which is fatalities,
3 but it doesn't -- it won't give you the fall height. So we
4 know that construction falls, deaths from falls in
5 construction, is one of the biggest causes deaths in the
6 construction industry, and we know it's as far as a
7 percentage of the total deaths, it really hasn't gone down
8 since §1716.2, but we can't -- we don't have any --

9 BOARD MEMBER LASZCZ-DAVIS: But you can't --

10 MR. BERG: -- we don't have distances in that.

11 BOARD MEMBER LASZCZ-DAVIS: You can't tease it
12 apart any further than that?

13 MR. BERG: There's no fall distance in that --

14 BOARD MEMBER LASZCZ-DAVIS: Really?

15 MR. BERG: -- CFOI data. That's called the
16 Census of Fatal Occupational Injuries.

17 BOARD MEMBER LASZCZ-DAVIS: Okay. I appreciate
18 that.

19 But there has to be a process, a dialogue that
20 occurs that will -- to Nola's point, to Laura's point, it
21 sounds like we're close, but there needs to be a bit more
22 latitude so that in those cases where the risk is deemed
23 unacceptable, the contractor, the employer, has an
24 opportunity to do what's right in terms of risk mitigation.

25 I mean, there has to be. It's what regulations

1 are all about in the health and safety. Anyways. Forgive
2 the lecture, but there is a way through this, and that's
3 the end of it.

4 CHAIR THOMAS: I don't think that was a question

5 BOARD MEMBER LASZCZ-DAVIS: Yep.

6 CHAIR THOMAS: But are we done with the witness?
7 Are we done with the witness?

8 BOARD MEMBER HARRISON: I'm going to wait until
9 he gets to his seat to ask my next one.

10 CHAIR THOMAS: Alright. So no more -- let's see.

11 There being no other persons coming forward to
12 testify in this matter, the public hearing is closed.
13 Written comments will be received until 5 p.m. today. So
14 thank you very much for your comments today.

15 And for anybody we put on the spot, too bad.
16 Sometimes it's just the go. It's just the way it is.

17 So now we're going to proceed with our business
18 meeting. The purpose of the business meeting is to allow
19 the Board to vote on the matters before it and to receive
20 briefings from Staff regarding the issues listed on the
21 business meeting agenda. Public comment is not accepted
22 during the business meeting unless a member of the Board
23 specifically requests public input.

24 Proposed petition decision for adoption, the
25 National Commission for the Certification of Crane

1 Operators Thom Sicklesteel Petition 598. Petitioner
2 requests to amend Title VIII, General Industry Safety
3 Orders subsections §5006.1(d) and §5006.2(d)(3),
4 regulations associated with recertification requirements of
5 crane operators. The Petitioner asks Cal/OSHA to consider
6 the rulemaking, or a process outside rulemaking, the
7 requirement that for recertification of crane operators,
8 certification either one, retake a hands-on practical
9 examination, or two, have at least a thousand hours of
10 documented experience operating this specific type of crane
11 for which certification is sought.

12 Additionally, the Petitioner requests that
13 California's requirement be revised to allow accreditation
14 certification bodies to determine the appropriate amount --
15 sorry. Appropriate amount of operating experience
16 necessary to be exempt from the practical examination at
17 the time of recertification, and the types of experience
18 that should count towards qualifying for a particular
19 hands-on exemption.

20 And so I believe -- who's going to --

21 BOARD MEMBER HARRISON: So, Dave?

22 CHAIR THOMAS: Yes. Yes. Go ahead.

23 BOARD MEMBER HARRISON: Before we get into this,
24 if I could go ahead and make a comment real quick. So
25 after the last Board meeting, I was contacted by Counsel

1 and advised that based on some of the comments made, that I
2 should recuse myself moving forward on this petition. And
3 although I might not agree with the advice of Counsel I'm
4 going to follow it, because my number one goal has been and
5 always will be to maintain the integrity of this Board.

6 And so with that, out of an abundance of caution,
7 I'm going to recuse myself. So I'm going to step out until
8 we're done. And I guess Autumn will text me when we're
9 okay, very good.

10 CHAIR THOMAS: Thank you, Dave.

11 So I guess Cal/OSHA is going to brief the Board.

12 Who from Cal/OSHA is --? Is that you?

13 MR. BERG: Well, not me, precisely. Yancy Yap
14 and Jason Denning. So I'm not sure -- okay, so Jason
15 Denning will begin the briefing, and then Yancy will
16 continue from there.

17 Thanks.

18 CHAIR THOMAS: Thank you.

19 MR. BERG: And Yancy -- oh, Jason's on Webex.

20 CHAIR THOMAS: Oh.

21 MR. BERG: And Yancy's in person.

22 MR. DENNING: Hopefully you all can hear me.

23 CHAIR THOMAS: Yes. We can.

24 MR. DENNING: Great. Perfect.

25 Well, good afternoon.

1 CHAIR THOMAS: Can we see you better? Can you
2 pull him up?

3 There we go. There you are.

4 MR. DENNING: Are we here now?

5 CHAIR THOMAS: Yep. Go right ahead.

6 MR. DENNING: Well, good afternoon Chair Thomas
7 and members of the Board.

8 Here to discuss the Petition 598, particularly
9 the requirements within that pertain to that petition for
10 the recertification of crane operators included in §5006.1
11 and §5006.2 of Title VIII regulations. My discussion will
12 be focused on the history for the requirement of the train
13 operators to form the practical hands-on examination for
14 the recertification, unless they have the 1,000 hours of
15 operating hours within their five-year certification period
16 for that type of training in their certification.

17 The subject Petition 598 was discussed at the
18 last meeting, and I'm hoping to provide some information
19 regarding the duration and applicability of the 1,000-hour
20 requirement, so that you have a better understanding of the
21 regulation and for a more informed decision for this
22 petition.

23 So the initiation of the certificate or crane
24 operator orders was begun in 2000. May of 2000, the
25 advisory committees were first convened based on two

1 petitions to the Board for crane certification requirements
2 within group 13 of the General Industry Safety Orders. The
3 resulting regulation became effective in May of 2003 with
4 the recertification requirement under §5006.1d, which
5 included the 1,000-hour requirement for recertification.
6 As discussed on the ISOR for this regulation, the
7 recertification requirement was initiated to ensure
8 continuity and competency of crane operators. At this time
9 of adoption, the crane orders were completely included
10 within Title 8 regulations under group 13 of General
11 Industry and were applicable to all industries.

12 There was an effective date that was incorporated
13 within the regulation, June 1st, 2005, which was included
14 to allow entities to establish compliant programs and
15 certify the backlog of applicants that would be required to
16 comply with the new regulation. The enforcement for this
17 then began in 2005, officially on June 1st, 2005. In
18 January 2011, Board staff began work on a HORCHER
19 rulemaking based on the Federal Crane Industry Construction
20 standard, commonly referred to as CDAC. The resulting
21 regulation from this was adopted into Article 15 of the
22 General Entry Safety Orders in May of 2011, and included a
23 certification and re-certification requirement within the
24 same section under §1618.1. This section included the same
25 1,000-hour requirement for recertification as the existing

1 §5006.1 regulation.

2 And at this time, there were two parallel
3 regulations, both in General Industry and Construction. So
4 §5006.1 was also still in the General Industry Safety Order
5 group 13. And there was a clean-up advisory and subsequent
6 regulation -- I'm sorry, rulemaking that was convened
7 starting in 2011 to clean up some of the inconsistencies of
8 the HORCHER regulation. And the resultant regulation was
9 effective in 2012, and there were no changes made to
10 §1618.1, so it still included the same requirements from
11 the original HORCHER regulation.

12 The stakeholders, after this regulation, the
13 HORCHER regulation, provided some input and requested that
14 the crane orders be recombined in Title 8 regulations into
15 a single set of orders. So, the rulemaking for this was
16 initiated in 2014 and sought to consolidate the bifurcated
17 crane regulations and make it a little easier for the
18 regulated public to identify applicable crane orders
19 without having to go to two different places. The
20 resulting regulations from recombined were effective in
21 July 26th of 2022, and brought us up to our current
22 recertification standards under §5006.1 and §5006.2.
23 Neither one of the regulations was substantially changed
24 and both include the 1,000-hour recertification.

25 Basically, in summary, the requirement for the

1 operators who seek operator recertification to perform the
2 practical examination who have not attained 1,000 hours of
3 documented experience on the equipment for which they seek
4 their certification, it was decided on by advisory
5 stakeholders and has been included in the title VIII
6 regulations for over 20 years. Although the requirement
7 was adopted in General Industry and Construction in
8 different times, it's remained unchanged and applicable to
9 both General Industry and Construction operations
10 throughout the entire regulatory history of the standard.
11 It's definitely not new to the regulated public.

12 Removing the 1,000-hour requirement would hold
13 operators of trains in California to no practical operating
14 experience for recertification. It's contrary to the
15 intent of the regulation to maintain continuity for
16 operators and would reduce the public's safety.

17 Thank you.

18 CHAIR THOMAS: Thank you.

19 Any questions?

20 I do have one question.

21 So I've been hearing through testimony that this
22 is the only state that requires the 1,000-hour rule, and if
23 you're in any other state you don't have to recertify with
24 a thousand hours on a particular piece of equipment and or
25 crane. And so I'm trying to figure out, doesn't this --

1 among other things -- doesn't this set back operating
2 engineers or crane operators in California.

3 MR. DENNING: Set them back?

4 CHAIR THOMAS: Well, I mean, if they have to get
5 recertified for each piece of equipment, and no other state
6 does this, but they can come into California and operate
7 those pieces of equipment, I'm not quite sure how that is
8 going to help operating engineers. And then we have a
9 difference of opinion among the operating engineers in
10 California, northern California and southern California.

11 Yes?

12 MS. NEIDHART: If I may -- this is Amalia
13 Neidhart with the Standards Board -- I want to direct you
14 to the supplemental materials. You probably haven't had
15 the opportunity to look at it.

16 We provided supplemental materials and background
17 at the beginning of this month, and as part of the Q&A in
18 one of the pages, page 5, we have a question, right? Are
19 out-of-state crane operators able to work in California
20 without going to the recertification California has which
21 includes the 1000-hour exception for the hands-on exam. In
22 the answer it says, you know, other state operators can --
23 they also have it, right? It says other states have their
24 own additional processes to ensure crane operators have the
25 requisite numbers of hours of experience. This is done

1 through state licensing procedures similar to California's
2 regulations, and applies to certification and
3 recertification. For example, an operator in the state of
4 Pennsylvania, New Mexico, or in the city of New York is
5 required to obtain a license in addition to maintaining a
6 national certification. Some of these licenses require
7 minimum hours of experience in operation, not currently a
8 requirement for most certified organizations. According to
9 the Certification of Crane Operators, CCO, 16 states and
10 seven cities have licensing requirements. Certification is
11 also determined by the organization who issued the original
12 certification, but states have the right to add additional
13 requirements or allow for exemptions as long as they meet
14 or exceed the federal requirements.

15 So hopefully that answers your question.

16 BOARD MEMBER ALIOTO: Mr. Chairman, I have a
17 question for Mr. Denning.

18 CHAIR THOMAS: Sure.

19 BOARD MEMBER ALIOTO: Okay. Great. Thank you.
20 Thank you.

21 Mr. Denning, I'm going to ask you a couple
22 factual questions here so I can understand. There were
23 some comments made at last month's meeting, and there were
24 also some comments made during public comment by chief
25 counsel of CCO, who discussed last year's change in the

1 regulation which marked a narrowing of the exception, and
2 he also said that the regulations last year -- or, excuse
3 me, that California now has a more stringent standard as a
4 result of the regulations last year and that they should be
5 rolled back.

6 I think, and I'm not sure, because I read the
7 write-up here about these regulations, and it seems clear
8 to me that this regulation has been around without a
9 substantive change for 18 years. So there is, however, in
10 the petition, a 2012 letter of interpretation from federal
11 OSHA. Maybe that has something to do with it. Okay?

12 So my just general question is, has there been
13 any change last year? I mean, what is your best
14 interpretation or understanding of what this statement is
15 that counsel for CCO made, and that has been made in other
16 --I think at last month about last year's change. Can you
17 illuminate at all on that?

18 MR. DENNING: Yeah, I think that must be a
19 misunderstanding of the regulation, because the regulation
20 requirements have not changed in its entirety.

21 The entire regulatory history of the 1,000-hour
22 requirement has been in there in one place or another, or
23 both, in Construction and General Industry since 2003. And
24 it has been applicable to all industries at all times,
25 because the General Industry orders were originally

1 presiding, but at that point applicable to all industries.
2 So I'm not sure what they're referring to there.

3 The 2012 regulation for us would have been the
4 recombined regulation, I believe. So that would have been
5 -- or the two though, that was the HORCHER, that would have
6 been the HORCHER for us. So that did not change the
7 regulation for certification. It was simply just brought
8 over into Construction.

9 BOARD MEMBER ALIOTO: And then did your analysis
10 have anything to do with the federal letter of
11 interpretation that's cited in the petition at page two of
12 their letter, at Mr. Sicklesteel's letter?

13 MR. DENNING: No, I did not. No, I didn't take
14 that letter into consideration.

15 It was a, you know, they're not binding for
16 California regulations unless we're not effective as the
17 federal government. So we don't have to -- and mine was
18 simply a history of the regulations really more was what my
19 analysis was.

20 CHAIR THOMAS: Right.

21 BOARD MEMBER ALIOTO: Okay. Dave, I don't have
22 any -- is there another presentation? I do have some
23 general comments that I'd like to make at some point, but I
24 don't want to interfere with your agenda.

25 CHAIR THOMAS: Okay. Well let's -- I think we

1 have another speaker.

2 MR. YAP: Yeah. Yancy Yap with --

3 CHAIR THOMAS: Thank you very much. Appreciate
4 your comments. Thank you.

5 MR. DENNING: Thank you.

6 MR. YAP: Yeah. Yancy Yap with Cal/OSHA Research
7 and Standards. I'd like to address comments that were made
8 at the last Board meeting for Petition 598 that were not
9 already addressed in the Division's Petition 98 evaluation.

10 There was a comment that new rule no longer says
11 crane related experience, that now it says crane operating
12 experience. The response to that is the wording has
13 remained crane operating experience since 2003.

14 There was a comment that there were a shortage of
15 crane operators. The response to that is I interviewed
16 personally stakeholders as part of research for Petition
17 598. There were no mention of shortages of operators due
18 to the requirement to obtain 1,000 hours of experience to
19 be exempted from the hands-on or practical exam. An OE3
20 representative stated to me the requirement is going to
21 cause shortages, but provided no objective information. A
22 representative of OE12 stated that the requirement has not
23 caused a shortage of operators. The requirements haven't
24 changed in the past year, and there was no report of
25 shortages since 2003 when requirements began.

1 There was a comment that ASME, which is American
2 Society of Mechanical Engineers, ASME B30.5, the consensus
3 standard, conflicted with Cal/OSHA regulations. The
4 comment was that ASME B30.5 requires a hands-on
5 recertification if the operator is involved in an accident.
6 The commenter stated this conflicts with California
7 regulations, which says if you have 1,000 hours, you are
8 exempt even after having an accident. The response to that
9 is, I reviewed ASME B30.5-2014, and there is no such
10 requirement for an operator to recertify or requalify after
11 being involved in an accident.

12 There was a comment that California as being the
13 only state that requires 1,000 hours experience to be
14 exempted from the hands-on practical examination, and that
15 it disadvantaged California operators because operators
16 from Nevada, Oregon, and Arizona can get recertified in
17 those states and come to California and operate a crane,
18 and that there were no requirements of operators
19 recertified from out of state to operate a crane in
20 California. The response to that is I interviewed two
21 crane industry experts and two operating engineering
22 unions. During those interviews, there were no mention of
23 California operators being disadvantaged to neighboring
24 Nevada, Oregon, Arizona, or other states due to California
25 recertification processes. The International Union of

1 Operating Engineers is one example of a certifying agency
2 that operates outside of California and maintains the same
3 California requirements to gain 1,000 hours to qualify for
4 exemption to the hands-on examination. In other words,
5 certifying agencies operate outside of California and in
6 some instances impose the same California recertification
7 requirements. Thus California is not unique in imposing
8 its requirements, and therefore California operators are
9 not disadvantaged by strict recertification requirements.

10 And finally there was a comment that NCCCO and
11 five other certifying agencies, that their current practice
12 is based on a 2012 federal letter of interpretation, which
13 states that the intent of recertification was never meant
14 to be strenuous. Our response is the current requirements
15 for recertification as a crane operator in California have
16 been in place since 2003. The current practice of NCCCO
17 and five other certifying agencies would have to follow
18 California regulations to recertify an operator in
19 California. The 2012 Fed/OSHA letter of interpretation was
20 referring to Fed/OSHA regulations, which are less stringent
21 than California for recertifications.

22 CHAIR THOMAS: Thank you.

23 Any questions of Yancy?

24 I'm going to make a suggestion here because I'm
25 not an expert at any of this at all, but I know that there

1 is a definite difference of opinion between OE3 and OE12.
2 And I don't know all the reasons why there are, but there
3 definitely are, and my suggestion would be that -- and I
4 don't know how we do this, because I don't know what the
5 timeline is but maybe today, but there's a -- I would
6 suggest that we have an advisory committee put together
7 quickly, because those two need to discuss this and get
8 their you-know-what together so that we can vote this and
9 feel like we're doing the right thing either way.

10 Yes.

11 BOARD MEMBER STOCK: Yeah.

12 I mean, so I would say, you know, I've read all
13 of the stuff, I read the stuff you put together Amalia,
14 listened to everybody, and honestly it feels to me a little
15 kind of straightforward that we should deny the petition,
16 because it just feels like we haven't really heard the
17 reason not to but I also do, you know, respect the
18 differences of opinion that are here and I'm very mindful
19 of the resources it takes to do advisory committees and how
20 burdensome they are and I noticed that there was an option
21 E that was a little bit short of -- I certainly wouldn't,
22 like -- I know last time we talked about, like, let's
23 accept the petition and then have an advisory committee,
24 because I would vote against the petition that defines
25 specific language that in my mind has not been -- you know,

1 we've heard a lot of reasons why it doesn't make sense, so.

2 But there's an option C that can recommend that
3 key stakeholders convene an informal meeting to bring
4 opposing viewpoints closer together if there's a timeframe
5 that allows it. Again, that's what --

6 CHAIR THOMAS: I think that's exactly what I
7 said. Did I say --

8 BOARD MEMBER STOCK: Yeah. So not --

9 CHAIR THOMAS: I got you.

10 BOARD MEMBER STOCK: Yeah. It's not a formal
11 advisory committee, because I just feel like that, you
12 know, is a huge burden on the -- and I don't feel this
13 warrants it. But if people would appreciate an informal
14 opportunity.

15 CHAIR THOMAS: I think that probably would be.

16 BOARD MEMBER STOCK: I could get behind that.
17 Because otherwise I would vote to deny the petition.

18 CHAIR THOMAS: Okay. I think that might be the
19 answer, because I would rather see that than -- in whatever
20 form, informal, whatever -- than to do this now. That's
21 just my opinion.

22 But what I was going to ask is, can we fit that
23 in?

24 MS. NEIDHART: If the Board directs us, we can
25 have one of the engineers start informally, right? Not

1 called an advisory committee.

2 CHAIR THOMAS: Yeah.

3 MS. NEIDHART: It can determine the vote. We can
4 do that. We can assist in bringing the different parties
5 together and later come and report it, but the part about
6 whether or not you can delay voting on the petition, I
7 would defer that to our legal area, because that's not my
8 cup of tea.

9 But I definitely -- if you guys direct us, I can,
10 you know, definitely direct one of the senior safety
11 engineers, right, to bring these parties together, not call
12 them an advisory committee, but have an informal meeting
13 and discuss more, and we can come and report to you guys.

14 CHAIR THOMAS: Thank you.

15 BOARD MEMBER STOCK: I just have a quick
16 question, though.

17 CHAIR THOMAS: Go ahead.

18 BOARD MEMBER STOCK: I just have a really quick
19 question, and it's just in terms of informal versus formal.
20 Right?

21 So what is the difference going to be in terms of
22 the weight of the importance of that at the end of the day?

23 MS. GONZALEZ: Well, I mean, an advisory
24 committee doesn't necessarily have to end up with
25 rulemaking either. So I'm not sure how to parse what the

1 difference is.

2 MS. NEIDHART: If I may, this is Amalia speaking.
3 Okay? This is Amalia speaking. Right.

4 One of the things I wanted to clarify. As an
5 advisory committee, you're trying to put together a
6 language. Right? That's how I would look at it. And then
7 be able to propose, yes, we're going to be able to proceed
8 on a regulatory process, or no we are not.

9 And I kind of feel like informal, that's what I
10 want to clarify -- and this is Amalia speaking, I'm not an
11 attorney -- informal would be to try and get the parties
12 together to see exactly what are the different issues.

13 Does that make sense?

14 CHAIR THOMAS: Yeah.

15 MS. NEIDHART: And then we can report to you and
16 say, we think that the issues are perhaps what they want is
17 -- I'm not sure. I don't want to speak for the different
18 parties. Right? But we can say for instance, it's a issue
19 that they can be certified, but if they make it clear they
20 cannot be certified they have been involved in a rollover
21 or something like that, right, we can inform you that. So
22 then it's easier, clearer, what the path forward is going
23 to be.

24 My concern about calling it an advisory is that
25 then we will have to come back to you and say it's either

1 yes, we're going to proceed with regulation, or no we are
2 not.

3 Does that make sense?

4 And I kind of feel like right now everything --
5 this is Amalia speaking -- it's muddled. I really don't
6 know what the clear issues are. That's what I want to say,
7 because they're going to say what Amalia said is wrong,
8 it's very clear. I honestly don't exactly know what the
9 clear issues are, and I think it will be good to identify
10 them and be able to talk about them, and then we can look,
11 from there, options.

12 Does that make sense?

13 But this is Amalia speaking.

14 BOARD MEMBER STOCK: Amalia speaking. We got it.

15 CHAIR THOMAS: So our -

16 BOARD MEMBER ALIOTO: Dave, may I say something?

17 BOARD MEMBER STOCK: Autumn?

18 MS. GONZALEZ: No, Amalia, that makes total sense
19 to me.

20 This is the sixth month for this petition, so
21 this would be the day that you would need to take some
22 action on it. So.

23 BOARD MEMBER LASZCZ-DAVIS: Today?

24 MS. GONZALEZ: Yeah. We pushed it off last
25 meeting.

1 CHAIR THOMAS: So we're --

2 BOARD MEMBER ALIOTO: Can you guys hear me?

3 BOARD MEMBER CRAWFORD: Yes.

4 CHAIR THOMAS: Yeah.

5 BOARD MEMBER ALIOTO: Okay, great. Do you mind
6 if I interject briefly?

7 CHAIR THOMAS: No, go right ahead.

8 BOARD MEMBER ALIOTO: Okay, great. Because I
9 lost your video and I don't know if you can see me or not.
10 I know I'm required to have my video on, so hopefully
11 that's working.

12 I just want to kind of state what my thoughts are
13 on this. I know that I made some comments at the last
14 meeting and I just kind of want to solidify what my
15 position is on this. I think it's a great idea. Let me
16 just say to start, I think it's a great idea for the
17 parties to come together and try to work something out.

18 I am actually open to having them meet in an
19 advisory committee scenario. I think that would -- if
20 they're doing that or if they're meeting informally to me,
21 I think we can hash that out. But I want to just provide a
22 couple of my thoughts and comments to the stakeholders in
23 the hopes that maybe it will help formulate some of the
24 discussion that they end up having.

25 I have read the petition. I've read all of the

1 materials that have been provided to us, and I heard the
2 comments of some of the stakeholders today. I've heard the
3 comments of the operating engineers, both national and
4 local, and here are my comments.

5 Number one, to me, I don't see how the California
6 standard differs substantively from the federal
7 interpretation that was listed or cited at page two of the
8 petition. The comment that I read states that when a
9 nationally recognized accrediting agency determines that a
10 requisite number of equipment operation hours are
11 sufficient, then that's all that would be needed for
12 recertification. So there is, at least is the way that I
13 read it, they still do require some type of number of hours
14 for some recertification.

15 The second point that the petitioner makes is
16 that the current standard is too stringent, that it's not
17 reasonably attainable for most crane operators. And then
18 this gets back to the point that this regulation has been
19 in existence for nearly 20 years, and yet the argument is
20 made almost prospectively as though a new standard could
21 have some impact on the attainability of that. But since
22 the standard's been around, I would just recommend to the
23 stakeholders that, if in fact that is true, to deliver or
24 to develop some evidence to show that crane operators have
25 not been able to attain it because it is too burdensome.

1 We should have, in my opinion, at least 18 years of
2 experience to pull on.

3 There is also the issue about the specific type
4 of crane that I want to get into in a moment. But then the
5 final point that they make is that this might have
6 unintended burdens on crane employers and again, if it
7 does, then there should be some data to at least provide
8 some kind of anecdotal evidence of that at the very least.

9 So the request that they have made is number one
10 to give CCO discretion to decide whether or not there's
11 recertification. I just want to emphasize that my opinion
12 of that is I'm very skeptical of something like that. I
13 think that if you start to provide discretion to an
14 accrediting agency like this, that's going to result in
15 inconsistencies. Worse, it's going to result in the claims
16 of favoritism from people who have not been recertified,
17 and frankly it puts CCO at risk of litigation or blame if,
18 God forbid, an accident occurs from an operator that's been
19 recertified on their discretion that had, you know, not the
20 requisite number of hours, so I just want to note that.

21 The final point that they make, and the request
22 that they make, is to allow for the hours to count when
23 they are applied to operating various types of cranes. And
24 maybe this makes sense. I don't know about cranes nearly
25 in depth as the parties do and the stakeholders do. I

1 don't know if this is the difference between driving a
2 sedan and a pickup truck, in which case it seems to me like
3 one driver's license would be fine for that, or if it's
4 more like driving a sedan versus driving an 18-wheeler
5 semi. If the difference is truly substantive then maybe it
6 does make sense to ensure that the hours are counted
7 towards specific cranes. So I think that would be a
8 fruitful topic of discussion.

9 You know, this has been a very convoluted issue
10 in my opinion from the beginning because there were
11 citation to regulation changes that apparently didn't
12 happen. I am a little bit confounded by the fact that
13 we've got operating engineers that are on opposite sides of
14 this particular issue. So those are my general thoughts,
15 and whatever we decide as a Board, I think it does make
16 sense for the stakeholders to get together and if that's in
17 an advisory committee or in a or more informal setting,
18 then I'm in favor of that.

19 BOARD MEMBER LASZCZ-DAVIS: I think Nola
20 mentioned that.

21 CHAIR THOMAS: Nola, go ahead.

22 BOARD MEMBER KENNEDY: Well, what I'm about to
23 say speaks to a very small part of what Joe was mentioning.

24 If we do an advisory committee, which I think we
25 should on this, I think there's a real difference between

1 accrediting bodies and bodies that provide certification
2 for crane operators, and I definitely think the accrediting
3 bodies need to be part of the advisory committee since they
4 are the ones who are going to basically dictate the
5 requirements for recertification and certification.

6 And, you know, I think they are more important or
7 as important to have in this conversation as certainly the
8 certifying bodies who one of the petitioner is a certifying
9 body.

10 CHAIR THOMAS: Laura.

11 BOARD MEMBER STOCK: Yeah. I mean I probably
12 land on the side of feeling like a way to go would be to
13 deny this petition, because this petition includes language
14 and assertions that I feel like have not necessarily kind
15 of made sense or been supportive, and then encourage people
16 to meet together and determine whether another petition
17 should be filed. So I might go in that direction, but it,
18 you know, it might be what I would propose.

19 But if everybody else really felt strongly that
20 an advisory committee, I'm just very mindful of the
21 resources and limited resources of the Division. But if
22 the advisory committee was going to be the direction, I
23 would not want to vote for that if it was accepting the
24 petition, which I think we've been given options, because I
25 would not be accepting. I would not want to vote for this

1 petition.

2 So it sounds like, you know, Autumn has provided
3 in our packet like a version that says grant to the extent
4 of formulating an advisory committee to determine whether
5 any change is needed, because I have not been convinced
6 that any changes are needed personally. So that's where I
7 would not want to have -- I would not be able to vote for
8 something that is presupposing that these changes are
9 needed.

10 So I guess those are the two options. Like I
11 could imagine, you know, denying it because this is our
12 deadline but encouraging conversations of stakeholders, and
13 it sounds like the Division would facilitate that, that
14 might be my preference but if others want to vote the other
15 direction, I could support that, as long as it was not
16 specific to language.

17 BOARD MEMBER KENNEDY: I was just saying I think
18 it's a Board activity not a Division activity.

19 BOARD MEMBER STOCK: I'm sorry?

20 BOARD MEMBER KENNEDY: I think it's a Board
21 activity not, a Division activity.

22 BOARD MEMBER STOCK: Oh, it's a Board -- excuse
23 me, I'm sorry, Board activity. I always get that mixed up.
24 Sorry, always getting that mixed up.

25 BOARD MEMBER CRAWFORD: This is Kate. I think

1 it's important to have an advisory committee. I don't
2 actually think that the option of an informal advisory
3 committee is the way to go. I think you just go with the
4 advisory committee.

5 So then the question does become, do you grant or
6 deny? And I would ask you to split those hairs for us,
7 Autumn.

8 MS. GONZALEZ: I think you can get where Laura is
9 suggesting that you go, which is to grant only to the
10 extent to convene this advisory committee to explore the
11 current language and whether changes are needed.

12 So you're not saying we agree 100 percent with
13 everything the petitioner has put forth, we're just opening
14 the door to the conversation to happen. And that can be
15 done in an advisory committee.

16 BOARD MEMBER CRAWFORD: So is that the motion?

17 CHAIR THOMAS: So, yeah, I just have one.

18 So a yes vote means that you're accepting --

19 MS. GONZALEZ: Granting to the extent of holding
20 an advisory committee to explore potential changes to the
21 regulation.

22 BOARD MEMBER STOCK: So, I could make a motion to
23 that effect. What Autumn just said, I make that motion.

24 BOARD MEMBER CRAWFORD: And I second that.

25 BOARD MEMBER STOCK: Okay.

1 CHAIR THOMAS: Alright.

2 We have a motion. We have a second. Any further
3 discussion? I shouldn't even say that. No further
4 discussion.

5 Sarah, will you call the roll?

6 MS. MONEY: I'm sorry. I didn't catch the motion
7 or the second.

8 CHAIR THOMAS: It was Laura made the motion and -
9 -

10 BOARD MEMBER STOCK: Kate. Kate seconded.

11 CHAIR THOMAS: Okay.

12 MS. MONEY: Okay.

13 BOARD MEMBER ALIOTO: And this is a motion --
14 just, I'm sorry -- but this is a motion just very
15 specifically to grant the petition only insofar as it
16 establishes an advisory committee?

17 BOARD MEMBER STOCK: To determine whether there
18 are any changes or not. That doesn't mean it supposes the
19 outcome.

20 BOARD MEMBER ALIOTO: Okay. Very good.

21 BOARD MEMBER STOCK: What Autumn said.

22 CHAIR THOMAS: You're on.

23 MS. MONEY: Okay, so I have the motion as Laura
24 Stock and the second as Kate Crawford.

25 Joseph Alioto?

1 BOARD MEMBER ALIOTO: Aye.
2 MS. MONEY: Sorry, just a minute.
3 Kathleen Crawford?
4 BOARD MEMBER CRAWFORD: Aye.
5 MS. MONEY: Dave Harrison?
6 BOARD MEMBER CRAWFORD: Abstain.
7 CHAIR THOMAS: Abstain.
8 Recuse.
9 MS. MONEY: Okay.
10 Nola Kennedy?
11 BOARD MEMBER KENNEDY: Aye.
12 MS. MONEY: Chris Laszcz-Davis?
13 BOARD MEMBER LASZCZ-DAVIS: Aye.
14 MS. MONEY: Laura Stock?
15 BOARD MEMBER STOCK: Aye.
16 MS. MONEY: Chairman Thomas?
17 CHAIR THOMAS: Aye.
18 The motion passes.
19 Alright. That was good.
20 God, that only took an hour and a half. But it
21 was necessary. It was necessary.
22 So where are we at? Yes.
23 Alright, so, without further ado, Eric, you're
24 on. You have a presentation. Dave, come back in.
25 MR. BERG: So, I had a PowerPoint. We had two

1 PowerPoints.

2 How do I put it on there?

3 CHAIR THOMAS: Alright. Here we go. Good with
4 that.

5 MR. BERG: Can you all see the screen?

6 CHAIR THOMAS: Yeah. I got one right here, so
7 I'm good.

8 MR. BERG: Oh, Okay, I didn't see that.

9 Okay. Alright. Well, thank you.

10 Oh. First I had another thing. Tomorrow will be
11 Jeff Killip, the chief's last day as chief. So he's
12 leaving us. So we're going to miss him greatly. So I just
13 want to say thanks, Jeff, for all the work you've done with
14 us. It's been great working with him, and we'll miss him
15 greatly, and we hope we get a new chief. I don't know.
16 Anyway, we're going to miss Jeff Killip a lot. He's been
17 great to work with.

18 And as you recall from November, we had this
19 presentation prepared and we weren't -- there wasn't enough
20 time. And Jeff Killip actually was part of that
21 presentation. So I'm just going to read his part. But he
22 wrote his part of it, so I'll just read it. It's pretty
23 short.

24 Good afternoon, Chair Thomas, Board Members,
25 stakeholders, and members of the public. Cal/OSHA's

1 mission is to assure that California's nearly 19 million
2 workers have a safe and healthy workplace. We do this in
3 part by developing occupational and safety and health
4 standards. Cal/OSHA provides free and confidential
5 consultation, training and outreach to employers, outreach
6 and training to workers, and we enforce these occupational
7 safety and health standards. We also collaborate with
8 businesses, labor, advocates, and other stakeholders and
9 entities to promote workplace safety and health, because we
10 all win when workers go home safe and healthy.

11 The actions we take to protect workers are based
12 on credible evidence. One challenge that makes our mission
13 to protect workers harder is the insertion of incomplete
14 and or misinformation into the conversation. We
15 respectfully request that the Board carefully consider the
16 viability of any information presented before relying on
17 its credibility. To do otherwise may compromise workers'
18 safety and health. The stakes are high.

19 The proposal to update the lead regulation is
20 evidence-based and supported by solid science. Cal/OSHA
21 submits that the proposed revisions to lead standards are
22 absolutely necessary to protect employees. Our free and
23 confidential Cal/OSHA consultation services will be ready
24 and available to support and help employers understand,
25 implement, and comply with the proposed updates to the lead

1 standard through outreach events and direct assistance,
2 including on-site consultation. In addition, our Cal/OSHA
3 Publications Unit will ensure that guidelines for the
4 proposed updates to the lead standards are available prior
5 to the regulation taking effect in January of 2025. In
6 short, Cal/OSHA has a plan and stands ready for the
7 successful implementation of the proposed updates to the
8 lead standard.

9 Alright, thank you. That was Jeff Killip
10 speaking through me.

11 So, okay, I'll get to the PowerPoint now.

12 Sorry. There's a delay on the clicker.

13 So thank you Chair Thomas and all Board Members
14 for taking time out to listen to us.

15 The first slide shows kind of the break-up or the
16 contents of the presentation. So, first, we'll talk about
17 the timeline of the lead rulemaking, then the health
18 effects of lead, why we're doing the rulemaking for lead,
19 Cal/OSHA and standards for duty to protect workers,
20 modeling airborne lead to blood lead levels to determine
21 permissible exposure limits and action levels, responses to
22 stakeholder feedback, and then Cal/OSHA made industry-
23 recommended changes to the proposal, and then the
24 complexity of the regulations. So first is the timeline.
25 So it started way back in 2010, so 14 years ago, when CDPH

1 came to Cal/OSHA and wrote a formal letter to us requesting
2 that we update the lead standard, particularly to reduce
3 the PEL, reduced the action level, reduced the blood lead
4 removal levels, and then having more protective
5 requirements for hygiene, protective clothing, training,
6 and communication.

7 So they wrote us a couple times, 2010-2011, and
8 then in 2011 and 2012, we held the first advisory committee
9 meetings, and we discussed mainly the medical surveillance
10 and medical removal protections in those advisory committee
11 meetings.

12 And then in 2012, the National Toxicology
13 Program, it's a U.S. government agency, published a
14 monograph on the health effects of low-level lead, and in
15 2013, U.S. EPA issued an integrated science assessment for
16 lead. So these are kind of comprehensive reviews of all of
17 the scientific knowledge on toxicity of lead in these large
18 documents, and kind of summarized and looked at all the
19 science.

20 And then in 2013 is when the California Office of
21 Environmental Health Hazard Assessment, or OEHHA, which is
22 part of CalEPA, published -- oh, sorry, sorry -- 2013 is
23 when OEHHA, which is, as I said, the Office of
24 Environmental Health Hazard Assessment, published its
25 updated physiologically based pharmacokinetic model for

1 modeling blood lead levels.

2 And then at the same time, CDPH reviewed that
3 model and worked with OEHHA and then made a recommendation
4 to Cal/OSHA that the permissible exposure limit, or the
5 PEL, should be from 0.5 to 2.1 micrograms per cubic meter.
6 That was the recommendations coming from OEHHA and CDPH.

7 In 2013, CDPH held a scientific symposium for the
8 scientific basis for the proposed PEL, the 0.5 to 2.1, and
9 there were representatives from NIOSH, CDPH, OEHHA,
10 University of Colorado, Mount Sinai School of Medicine,
11 Clark University, Michigan State, UC Irvine. So it was a
12 big gathering of some of the top scientists in the country.

13 In 2014, we had the third advisory committee
14 meeting, where we proposed -- Cal/OSHA proposed a PEL of 10
15 micrograms per cubic meter, so much, much higher than what
16 CDPH or EHA wanted, and an action level of 2 micrograms per
17 cubic meter. And then that was at the third advisory
18 committee meeting, going back 10 years ago almost.

19 And then 2015 were the 4th, 5th, and 6th advisory
20 meetings where we discussed more details on the PEL action
21 level and other changes to the lead standard.

22 And then 2016, the drafts were revised and
23 updated, and final drafts were prepared in 2017. And then
24 the SRIA was prepared in the following couple of years.
25 And in 2019, Labor Code 1617 was put into effect, and this

1 requires Cal/OSHA to propose a revised lead regulation and
2 the Standards Board to vote on the proposal by September
3 30th, 2020. I apologize, we're very late, but that was,
4 the law says we're supposed to do this -- Cal/OSHA's
5 supposed to do this by 2020. And then in 2020 through
6 2022, the SRIA was under review by different agencies and
7 other staff. And much of our staff was also working on
8 COVID issues.

9 Okay. And then we get to the formal rulemaking.
10 So then finally, the rulemaking package was done after
11 about 13 years of work. So in March of last year, formal
12 rulemaking began, and there was a 45-day of a comment
13 period, and the public hearing, and since then we had two
14 15-day changes. Based on response to comments we've made
15 additional changes, in addition to the ones are made to the
16 advisory committee process.

17 And then the next meeting on February 15th is
18 when the vote on this proposal is expected, and if it's
19 passed it would be effective January 1st, 2025.

20 Next I'll get to the health effects of lead.

21 So, basically, there is no -- there's no safe
22 level of lead. Any amount of lead is toxic. So, this
23 first quote I have is from one of the top toxicologists
24 from the World Health Organization, that there's no known
25 safe level of lead in the body.

1 And then the Agency for Toxic Substance of
2 Disease Registry, also called ATDSR, they set minimum risk
3 levels for toxics based on human-animal studies. And they
4 said there is no MRL for lead because the lowest lead
5 levels measured are still associated with serious adverse
6 health effects.

7 And then next is EPA, just its -- their water
8 level -- I know it's not related to occupational, but it's
9 just they set levels that they consider are safe for
10 different hazardous chemicals. And for lead, it's zero
11 because it said, based on the best available science, there
12 is no safe level of exposure to lead. So, there's multiple
13 experts and agencies saying there's no safe level.

14 And here's a kind of overview of the health
15 effects of lead, what it does to your body.

16 It can cause kidney damage, high blood pressure,
17 heart disease and related deaths, various types of brain
18 damage, cerebral vascular accident, which is another name
19 for stroke, peripheral vascular disease, osteoporosis,
20 decreased hemoglobin, decreased sperm count, infertility,
21 spontaneous abortion or miscarriage, reduced birth weight,
22 premature weight, and learning behavior problems and kidney
23 damage to the developing infant.

24 And cardiovascular mortality is one of the major
25 ones that are caused by lead-exposed workers. These are

1 often hidden or not detected because it's a common health
2 problem in society as a whole. So these are not noticed
3 until after 20 years of high blood pressure -- after 20
4 years of, say, lead work, you have high blood pressure --
5 there's no way to determine if that's from another cause or
6 from lead. And so nearly none of these cases get covered
7 by workers' compensation.

8 Lead is a true poison, which means it has no
9 function whatsoever. Some poisons seem, at low doses,
10 might be beneficial or not be a problem, but lead is in
11 that respect a true poison. Any amount is damaging.

12 And how lead works, it mimics calcium in the
13 body, which is essential to brain chemistry. So it leads
14 to the death of neurons and other brain cells, interrupts
15 communication between neurons, impairing learning and
16 memory. And lead also mimics calcium in blood vessels, and
17 takes over some of calcium's normal activities, which leads
18 to the high blood pressure, coronary artery disease, heart
19 disease, and stroke.

20 So why are we doing rulemaking for lead?

21 The current regulations, which is §1532.1 and
22 §519(D)(8), do not protect workers from low-level lead
23 poisoning, and this proposal will greatly improve the lives
24 of lead-exposed workers by reducing lead-related illnesses,
25 disability, and early death. The current permissible

1 exposure limit, which is 50 micrograms per cubic meter, and
2 the action level of 30, are based on outdated
3 toxicological, medical, and epidemiological data, which is
4 over 45 years old, and they do not protect workers from all
5 harmful effects. Recent toxicological, medical, and
6 epidemiological data show very low levels of lead exposure
7 have serious health effects. And as I said before, there's
8 no safe level. And these low-level effects were not known
9 when the PEL and action level were set in 1978.

10 Okay. And so here's some of the analysis from
11 the SRIA that if we did nothing and kept existing
12 regulation as is, in the next 10 years, that would mean an
13 additional 31 additional worker deaths, 329 additional
14 workers with hypertension or high blood pressure, 10
15 additional workers would suffer from a nonfatal heart
16 attack, and 691 additional workers would suffer from
17 depression due to brain damage. And this doesn't cover
18 kidney disease, other heart diseases, anemia, stroke,
19 osteoporosis, and damaging done to developing infants.

20 Okay, and then on our role to protect workers,
21 it's set out in Labor Code 144.6, so I'll just read the
22 last part, but it's regarding setting standards with toxics
23 and physical agents to the extent feasible, because no
24 employee will suffer material impairment of health or
25 functional capacity, even if such employee has regular

1 exposure to a hazard regulated for their entire working
2 life. And this is basically the same as the OSH Act of
3 1970, which created federal OSHA. It has very similar or
4 exact language.

5 So federal OSHA does define what a working life
6 is. They define it as 45 years. And that applies even if
7 it's not that common that an employee would be exposed for
8 an entire 45 years. And federal OSHA was sued over this
9 concept, but they won and was upheld by the U.S. District
10 Court of Appeals.

11 So next I'll get to the modeling of airborne lead
12 to blood lead levels.

13 Okay. First is lead is a cumulative poison. It
14 means it slowly builds up in your body. It doesn't go away
15 quickly. It just continuously builds up. Low-level
16 chronic lead exposures results in lead accumulating in the
17 body over years and decades. And lead is stored in bones.

18 Wait a second. Did I mess it up?

19 Yeah. This is it. Sorry.

20 So lead is stored in bones, and it can take
21 decades for lead stored in bones to stop releasing lead to
22 the blood after external exposures have stopped. So even
23 after exposures have stopped, the bone will continue to
24 release lead into the blood and continue to cause damage to
25 the body. And then, existing empirical studies do not show

1 the airborne-to-blood-lead relationship from low-level
2 chronic lead accumulation occurs over many decades.

3 There it goes. It's really slow.

4 A physiologically-based pharmacokinetic model is
5 the best scientific method to link blood-lead levels to air
6 levels at low exposures known to cause serious harm over
7 several decades. There are no chamber studies or no
8 workplace observational studies that relate measured air
9 levels to blood lead levels over the timeframe, which is 45
10 years required by labor code in the OSHA Act, at the very
11 low blood levels known now to cause serious harm.

12 And then modeling is the best scientific method
13 to determine lead exposure limits. A physiologically-based
14 pharmacokinetic model is not static. It can also adapt to
15 shorter-term exposures that could be input -- that data
16 could be input and compared to observational studies.

17 So this is kind of the same thing, that it's a
18 mathematical model used to determine or come up with the
19 best estimate of the amount of chemical found in the blood
20 and organs at different points in time based on exposures.
21 And it predicts the absorption, distribution, metabolism,
22 and excretion of chemical substances in humans using
23 scientific knowledge of these processes. It uses
24 information about the body's anatomical and physiological
25 structure, as well as biochemical processes, and it uses

1 data from experiments on human tissues, cells, subcellular
2 fractions, and specific proteins, and additional
3 information from toxicological studies and human studies.
4 Then they, after they're completed, they undergo a peer
5 review in scientific journals and scientific advisory
6 panels, and the computer software that basically runs these
7 models contains the peer-reviewed data, models, tools, and
8 databases, and includes chemical properties and bioactivity
9 information brought together for integrated analysis.

10 So this type of modeling has been widely used for
11 a long time, and it's used now in pharmaceutical research,
12 drug development, and health risk assessments. First used
13 in 1937, and widespread use began in the 1970s with wider
14 adoption of computers. So, federal OSHA, way back in 1978,
15 used biokinetic modeling to come up with the PEL and action
16 level it had then. Of course, they had much less data and
17 weren't aware of the low-level effects at all, but they did
18 use a similar type of model, just simpler. And then, OEHHA
19 updated and refined existing EVPK models to lead in humans
20 to determine the appropriate maximum airborne level in
21 workplaces to ensure lower blood lead levels in workers.
22 And then EPA and ATSDR also developed and use many PVK
23 models in their assessment of chemicals and their dangers
24 to humans.

25 So background on the OEHHA model that's being

1 used now. It comes originally from 1993, a model developed
2 by Richard Leggett from the Oak Ridge National Laboratory,
3 U.S. Department of Energy. And in 2013 the model was
4 updated and tested by OEHHA to address workplace exposures,
5 and then they also expanded it to include a wide range of
6 particle sizes and then also to address current background
7 lead levels. And then more recently in 2020 and 2023 the
8 model -- OEHHA went back and evaluated and updated and
9 reviewed the model, and found that the model was still
10 accurate and did not need change.

11 So CDPH's recommendations were based on this
12 modeling, as I said earlier, a PEL of 0.5 micrograms per
13 cubic meter over 40 years. If that was implemented, then
14 95 percent of the workers would have blood lead levels less
15 than 5 micrograms per deciliter. And at the maximum range,
16 2.1, that CDPH recommends, 95 percent of the workers would
17 have blood leads under 10 and 57 percent would have under
18 5. And then a couple of caveats here, that this is 40
19 years rather than 45, and that harm still occurs below 5
20 micrograms per deciliter.

21 And then of course we didn't use those PELs in
22 action levels or at least the PEL, we didn't use a PEL from
23 OEHHA. We used one that -- we used 10 instead which is 5
24 to 20 times higher than the OEHHA model and CDPH
25 recommendation. So, as I said, it's much higher, and

1 that's based on feasibility issues.

2 Then we set the action level near the high range
3 of the maximum CDPH recommendation to account for the fact
4 that the PEL is not health-protective.

5 And then some of the modeling questions that came
6 up. First was empirical research shows that there's no
7 clear correlation between air-lead levels and blood-lead
8 levels in the workplace. And we had several researchers
9 helping us with this, but they found many long-term
10 workplace scientific studies that show a significant
11 relationship between air and blood lead levels, and those
12 are included in our documents relied upon. And some of the
13 evidence for this is higher blood levels, and similar
14 operations correlate with higher air lead levels.
15 Published peer-reviewed studies -- as I said, they're in
16 the documents relied upon -- and there were some studies
17 that didn't find a relationship between air and blood
18 levels, and we found that those did not account for
19 respirator use or that the particle size was much different
20 in those comparisons.

21 Finally, evaluation of the scientific
22 observational studies confirmed the OEHHA modeling as
23 consistent with real workplace exposures.

24 Next was an allegation that the OEHHA model was
25 outdated and that it has not been revised to address

1 deficiencies identified by industry and independent
2 experts. And since 2013, OEHHA has re-evaluated the model
3 to address comments from industry and experts, and
4 published their updated results in peer-reviewed
5 literature, and these were published in 2020 and 2023,
6 addressing all these claims. OEHHA concluded that the blood
7 lead levels and corresponding air lead levels in the 2013
8 model did not change.

9 Next, you heard earlier about the inhalation
10 transfer coefficient that OEHHA used. That's the fraction
11 of inhaled lead that's absorbed to the body. And OEHHA
12 used inhalation transfer coefficient of 30 percent. That
13 means they're assuming 70 percent of the inhaled lead is
14 not absorbed, only 30 percent, which is much less than the
15 52 percent at the maximum possible determined by OEHHA, and
16 they did this to ensure blood lead levels were not
17 overestimated.

18 Next was the OEHHA modeling is restricted to
19 smaller particle sizes, and does not account for larger
20 particle sizes, which are not absorbed in the blood. And
21 in fact, OEHHA modeling does consider larger particle
22 sizes. And they calculate those by showing that large
23 airborne particles deposit in respiratory mucosa -- some of
24 which are small, not all -- swallowed and partially
25 absorbed to the blood through the gastrointestinal tract.

1 And the OEHHA model accounts for the much lower absorption
2 rate of large particles through the intestinal tract and
3 their modeling. And even at the low absorption rates, lead
4 in the blood from larger airborne particles still accounts
5 for over 10 percent of all inhaled lead absorbed into the
6 body.

7 Next was ingestion exposures were not considered
8 in the OEHHA model developed to predict blood lead levels.
9 And the OEHHA model, in fact, does include workplace
10 ingestion exposures. OEHHA analyzed studies on workplace
11 ingestion. Studies on workplace ingestion did not preclude
12 the significant contribution of inhaled lead, and the
13 studies that didn't find a relationship between air and
14 blood levels did not account for respiratory use, which I
15 mentioned before. An analysis of observational studies
16 found blood lead levels were consistent with simulations
17 from the OEHL model.

18 Next was conditions underlying the OEHHA model
19 are not reflective of present-day conditions, and the data
20 is old, from the 1960s and 1970s. Since the data is old,
21 it doesn't have a reliable predictive value, but in fact,
22 the OEHHA model has used studies through 2008 and have
23 confirmed the OEHHA model is accurate, so the data is up-
24 to-date.

25 And the OEHHA model has been looked at by other

1 agencies. One is the European Chemicals Agency Committee
2 for Risk Assessment. In 2020, they said the results of the
3 OEHHA modeling are accurate. The OEHHA modeling approach
4 is reasonable and appropriate and is better than using
5 empirical studies. The United States Department of Defense
6 also uses a PVPK model for airborne blood-lead
7 relationships, and results from the DOD modeling were very
8 similar to the results from the OEHHA modeling.

9 And then I'll go through some of the changes we
10 made at the request of industry.

11 First was that employers need additional time to
12 comply with the changes to lead standard, and so we
13 responded to this by delaying, where we'll ask the Office
14 of Administrative Law to delay the effective date of the
15 standard. It would normally be July 1st, 2024, if it was
16 passed in February. And so we'll ask for a delay to
17 January 1st, 2025.

18 Next is what's called the Separate Engineering
19 Control Airborne Limits, or SECALs. These are, kind of
20 instead of having to comply with the PEL using engineering
21 controls and work practices, this allows employers to rely
22 solely on respirator protection. It's done in the cadmium
23 standard. We did this in the advisory process, you know,
24 prior to rulemaking at the request of industry. So we
25 already had done several processes that we allowed

1 employers to use this alternative. And then during the
2 formal rulemaking, we added additional processes that can
3 use these CCALs or these separate engineering control
4 airborne limits.

5 And then respiratory protection in the initial
6 proposal, filtering facepiece respirators were prohibited,
7 like as in the asbestos regulation and some other
8 regulations. But at industry's request, we deleted that
9 prohibition and allowed certain filtering face pieces, some
10 of the better ones, the N-100s and other 100 ones. The
11 filtering face pieces can continue to be used.

12 Then on to the hygiene. The initial proposal
13 prohibits consumption of food, drinks, tobacco, application
14 of cosmetics in areas where employees are exposed. And we
15 didn't have any exceptions. So at industry's request, we
16 add an exception to allow access to drinking water
17 exposures under 50 micrograms per cubic meter, which is the
18 old PEL, to help prevent heat illness.

19 And then change rooms in general industries. The
20 change rooms are already required in existing regulation
21 under the old PEL, but the new one required change rooms
22 for workers who worked over the new PEL, and it applied
23 January 1st, 2025. So we had an additional year delay to
24 January 1st, 2026.

25 And then showers and construction, this was

1 discussed earlier. Initial proposal required showers
2 wherever their employees were exposed over the new PEL, and
3 there is no feasibility exception. So we changed this at
4 industry's request. We rolled back the requirement,
5 similar to what's in the current regulation, so showers
6 aren't required until the current PEL, or 15 micrograms per
7 cubic meter is -- employees are exposed over that level, or
8 interim protections where they haven't done an exposure
9 assessment for the most dangerous tasks. And we also added
10 the feasibility exception.

11 And in general industry, showers are required now
12 at the old PEL, so this would require showers at the new
13 PEL and we also rolled back that effective date one year to
14 2026.

15 And lunchroom, same thing, they're required right
16 now at the old PEL and will be with the new PEL and we
17 rolled back that to 2026.

18 And initial blood testing, the initial proposal
19 required initial blood testing without any exceptions, and
20 we added three exceptions to that. Two of the exceptions
21 regarded different intermittent types of exposure and the
22 third exception was regarding employees who had already
23 tested in the previous two months to reduce the amount of
24 testing.

25 Okay. Medical surveillance was required for all

1 employees exposed over the action level, with one exception
2 for certain intermittent exposures. We added an additional
3 exception for, you know, different scenarios of
4 intermittent exposures.

5 It's not advancing. Sorry.

6 Okay. Let's keep going. I think it skipped
7 another one. Sorry.

8 Two. Okay. Hopefully it stays on this slide.

9 Okay. Sometimes it has a short delay, sometimes
10 it has a long delay.

11 Okay. So the initial proposal required a written
12 elevated blood level response program for employees with
13 more than 10 micrograms per deciliter without exception.
14 So, we add an exception that's not required when the
15 employee's initial blood level is greater than 10.

16 And then medical exams. Employers are required
17 to offer medical exams to employees over the action level.
18 And so, we add an exception, and the medical exam does not
19 have to be offered to employees if they've had one in the
20 preceding two months. And again, the medical exam is
21 offered to employees. Employees are not required to accept
22 it.

23 BOARD MEMBER KENNEDY: Can I just ask a question
24 about that?

25 MR. BERG: Sure.

1 BOARD MEMBER KENNEDY: So you're offering a
2 medical exam to -- I'm sorry, you're offering a medical
3 exam to employees exposed above the action level before
4 assignment?

5 So you've done an exposure assessment, you know,
6 the area you're sending them to is above the action --

7 MR. BERG: You know they're over the action
8 level. Right.

9 BOARD MEMBER KENNEDY: How do you know they're
10 over the action level if they haven't been assigned?

11 MR. BERG: Well the work area where they're going
12 to is over the action level.

13 BOARD MEMBER KENNEDY: Alright. So this is after
14 assessments have been done. Okay.

15 MR. BERG: And then medical removal protections
16 for employees. It required medical removal -- the initial
17 required medical removal exposed over the action level if
18 their average blood level was over 20 over the last six
19 months, their average. And that was effective one year
20 after the effective date of standards in 2026. And we
21 didn't have any exceptions for that, so we add an
22 exception. So regardless of what the average is over the
23 previous six months, if their last test is under 15, then
24 they don't have to do the medical removal protection.

25 Whoops. So next on to the -- damn it.

1 Okay. So going on to the complexity of the
2 regulations, there's been a lot of discussion on the
3 complexity of the regulations. So the existing fed
4 regulations are complex, and the ones we have now are
5 complex, and they were adopted pretty much identical to
6 what federal OSHA had in 1978, or 46 years ago for general
7 industry, and 1993, or 31 years ago, for construction. So
8 it's built on top of these regulations, and we're required
9 to have regulations at least as effective as federal OSHA
10 under the Labor Code and under the United States Code.
11 There are two laws saying that we have to do that.

12 So the proposed fed regulations are edits to
13 these existing regulations, so we preserve the existing
14 structure of the regulations. One of the reasons is people
15 have been using these regulations for 30 to 46 years, so
16 they're familiar with them, and also using the existing
17 structures ensures that we're at least as effective as
18 Fed/OSHA. If we completely scrapped it and start from new,
19 it'd likely be found not as effective as federal OSHA. And
20 lastly, we have a flow chart kind of for the regulation.

21 This we've used -- it's not advancing, sorry.
22 This we had in some of the advisory meetings. We'd have a
23 flow chart as part of the advisory meetings on the packet
24 that went out to everybody before the meetings and used
25 during the meetings. It just kind of shows how the

1 regulation works and what's been changed. And we'll
2 include these in guidance documents that -- going forward
3 we're working on many different type of guidance documents
4 to help employers, in addition to a model exposure control
5 plan that employers can use. So, you know, these
6 flowcharts will be part of that. Not really to go through
7 it, but just to show you that this will be included in
8 those guidance documents. We had them in the past in the
9 advisory committee process. We had one for construction,
10 one for general industry.

11 Okay. And that was the end of my part, and Susan
12 will do the other part. Part 2.

13 CHAIR THOMAS: Before you do, Susan, we're going
14 to have to take a 10 minute break. Another union rule, but
15 anyway.

16 MR. BERG: Sorry.

17 CHAIR THOMAS: For our transcribers so they could
18 catch their breath and relax.

19 So we're going to have a 10 minute break. We'll
20 be back at 4:40.

21 (The meeting went to break at 4:32 p.m.,
22 returning at 4:43 p.m.)

23 CHAIR THOMAS: Susan Eckhardt, please proceed.

24 Oh, turn your mic on.

25 Okay. Okay.

1 MS. ECKHARDT: Okay. Good afternoon, Chair
2 Thomas and Board Members.

3 My name is Susan Eckhart. I'm a certified
4 industrial hygienist and a senior safety engineer at
5 Cal/OSHA's Research and Standards Health Unit.

6 I wanted to mention that you can get a copy of
7 this PowerPoint and the one Eric presented by sending an
8 email with a PRA, or Public Records Act request, to the
9 Standards Board at oshsb@dir.ca.gov.

10 Okay. A Standardized Regulatory Assessment, or
11 SRIA, focuses on the economic impact of a proposed
12 regulation. We've received a lot of comments about this
13 SRIA. Some of the comments question the accuracy of the
14 cost estimates in the SRIA.

15 A couple of days ago, PRR sent a letter to the
16 Board that addresses points related to the SRIA. We are
17 not prepared to address all the points of their letter
18 today at this meeting. We also don't have time to do so.
19 OSHA will provide a response prior to the vote on the lead
20 proposal on February 15th.

21 We were asked by Board Members to talk about the
22 methodology used in the SRIA. So let's.

23 First I'd like to go over the background of the
24 SRIA. It was prepared by a team of economists at Berkeley
25 Economic Advising and Research or BEAR. It was released in

1 2019 and revised in 2020 to correct several errors and
2 omissions. The full SRIA is posted at the Department of
3 Finance website which is shown on this slide.

4 Okay. A SRIA is required by the California
5 Government Code to focus on the incremental costs of a
6 regulation relative to a baseline with the existing
7 regulations in place. Now some regulations are brand-new
8 regulations. Then a SRIA estimates the cost of complying
9 with the proposed regulation for regulated businesses and
10 agencies. So for a new regulation, the incremental costs
11 would reflect the full cost of compliance. However,
12 Cal/OSHA has lead regulations that are currently in place.
13 In this case, the proposed regulations contain revisions to
14 the existing language and the incremental costs reflect
15 only the changes to the existing standards.

16 The lead SRIA only estimates the additional cost
17 of compliance with the revised requirements of the proposed
18 regulations, such as lowering the PEL and action level, as
19 well as other changes. That is, the SRIA estimates the
20 difference between the existing cost of compliance and the
21 cost to comply with the proposed regulations once they
22 become effective. The difference between existing costs
23 and the cost of compliance with revised regulations
24 includes factors such as the additional employees that
25 would be covered by specific requirements, as well as the

1 cost of any new requirements.

2 Okay. For this SRIA, we first had to determine
3 the number of employees occupationally exposed to lead. I
4 think in the interest of time, I'm going to zip through
5 this. If you have any questions, I guess you can email me
6 or something.

7 Okay. So we spent a lot of time determining the
8 number of employees that were occupationally exposed to
9 lead and we did this with assistance from the Occupational
10 Lead Poisoning Prevention Program people at CDPH. They're
11 really the experts on occupationally exposed lead workers.
12 And the numbers that we used were based on NAICS codes,
13 which are industry codes where employees were likely to be
14 occupationally exposed to lead. In construction we
15 estimated that about 85,000 employees are occupationally
16 exposed to lead, and about 143,000 in general industry.
17 These approximately 228,000 employees comprised just a
18 small percentage of the workforce in the affected
19 industries.

20 Okay. Yeah

21 Next we broke down employee exposures into
22 ranges, or exposure groups that we called them, of airborne
23 lead to which they might be exposed, from less than 2
24 micrograms per cubic meter, 2 to 10 micrograms per cubic
25 meter, up to greater than 500 micrograms per cubic meter.

1 And the air concentrations in this exposure group
2 represent, you know, the levels at which current
3 requirements apply and levels at which proposed
4 requirements would kick in. To estimate how many employees
5 working in each NAICS code fall into a particular exposure
6 group, we modeled employee occupational exposure to lead
7 based on data found in the scientific literature. A more
8 complete explanation of this method that we use for the
9 SRIA is in appendix A to the SRIA. Now this is just an
10 example. It's a chart for construction showing the number
11 of lead-exposed employees in each airborne exposure group.
12 And the green bars represent the estimated number of
13 employees in the various exposure group.

14 So starting on the left side of the chart, that
15 bar, I guess it's the second tallest bar, it's for the
16 number of employees in the less than two micrograms per
17 cubic meter exposure group. That's, like, about twenty
18 five and a half thousand employees. And then as you go
19 across to the right, eventually you get to the bar on the
20 right-hand side is employees exposed to greater than 500
21 micrograms per cubic meter. It's about 15,000 employees.

22 So note that not all of the employees working in
23 construction or general industry are subject to the revised
24 lead standards. An even smaller subset of employees are
25 affected by particular requirements of this proposal.

1 Okay. So as we discussed, employees were
2 assigned to particular exposure groups. Then we determine
3 what additional requirements would apply to those
4 employees. For example, in the 2 to 10 micrograms per
5 cubic meter exposure group, it would include exposure
6 assessments, basic hygiene, medical surveillance, and
7 training. Costs were estimated by looking at the number of
8 employees in a particular industry who are expected to be
9 exposed at a given exposure level and multiplying that
10 number of employees by the cost per employee to implement
11 each proposed requirement. We included an equation in case
12 it's easier for some people to understand the process
13 through an equation, but essentially, you know, we totaled
14 the cost for each industry and then multiplied that by the
15 number the -- cost per employee to implement the
16 requirement, and then added the cost for each industry to
17 obtain the overall costs.

18 I wanted to talk about interim protections a
19 little bit. Yeah. Interim protections apply to trigger
20 tasks in construction, and presumed significant lead work
21 or PSLW in general industry. In the SRIA we assume that
22 exposure assessments were done so interim protections
23 wouldn't apply to employees performing these tasks. Note
24 that exposure assessments are required by the proposed
25 standards, and in fact are already required by the existing

1 standards. Instead of interim protections in the SRIA,
2 requirements for employees are based on the exposure group
3 the employees are in, and the additional requirements that
4 would apply to employees in that exposure group.

5 Oh. I'm sorry I'm having trouble with a clicker.

6 Okay. The construction industry groups did their
7 own calculation of the cost to comply with the proposed
8 regulation. They did not share their methodology for
9 calculating costs, or share any data to substantiate their
10 claims, though they said they did earlier today. They gave
11 us a sheet that showed that every employee in construction
12 was covered under this regulation, which is not what we
13 determined. I mean, I don't think that's the case at all.
14 So they estimated the cost of four billion dollars a year
15 to comply with the costs of the revised lead standards.

16 But I don't believe you should compare their
17 numbers with the numbers in the SRIA. It's really apples
18 and oranges. We believe the cost to comply with the
19 proposed regulations as shown in the SRIA were calculated
20 properly, and the estimated costs of compliance in the
21 Saria are correct. Per the SRIA, the estimated cost to the
22 construction industry is estimated to be approximately 98
23 million dollars in the first year of the proposed
24 regulation, the first year that it's in place, and the cost
25 for general industry firms is estimated at about 131

1 million dollars for the first year.

2 At the October Standards Board meeting, Board
3 Member Stock asked us to talk about the benefits of the
4 regulation. The SRIA estimated that the proposed
5 regulations would have large benefits to both employees and
6 society. The benefits are due to reduced employee blood-
7 lead levels are expected to result from the proposed
8 regulations, and the accompanying reduction in the numbers
9 of premature deaths, cases of hypertension, or high blood
10 pressure, non-fatal heart attacks, and depression amongst
11 employees. The estimated monetary benefits are expected to
12 increase as the number of years increases with the proposed
13 regulations in place, and this is because employees blood-
14 lead levels are expected to fall each year that the
15 proposed regulations are in place. These lower blood-lead
16 levels are expected to result in more health damage being
17 avoided and thus greater monetary benefits.

18 And the SRIA estimates that after the five years
19 after the proposed regulation is enacted, that the monetary
20 benefits would be 140 million dollars and, you know,
21 finally after 45 years after the proposed regulation is
22 enacted, the benefits would be 1.3 billion dollars, and
23 that is economic benefits are per year. So, yeah,
24 eventually 1.3 billion dollars per year in economic
25 benefits, and that's in 2017 dollars.

1 And there's additional benefits that weren't even
2 quantified that include a reduction in employee cases of
3 muscular pain, nervous system disorders, dementia, and male
4 and female fertility damages. There's also benefits to
5 people that aren't employees, and these include an expected
6 reduction in take-home lead exposure, which occurs when
7 lead particles are transported home, resulting in lead
8 exposure to children and other family members of employees.
9 We know that infants, children, and pregnant people are
10 particularly sensitive to the effects of lead exposure.
11 While these benefits are expected to be significant, they
12 are not monetized in the SRIA.

13 Okay. Any changes to the proposed regulations
14 that result in a change in the costs or benefits of the
15 regulations must be updated. These changes will be made on
16 a revised Form 399. A 399 contains economic and fiscal
17 impact statements, and the 399, like the SRIA, includes
18 only additional costs that are attributable to the
19 proposal. The final 399 is reviewed and then must be
20 signed off by the Department of Finance. So there are
21 costs associated with new requirements that were added
22 after the SRIA was written and changes to the text of the
23 regulations were posted in the two 15-day notices. The 399
24 will be updated to reflect these additional costs as well
25 as any costs that have been reduced.

1 Finally -- this is I think my last slide, yes --
2 we recognize that overall costs have increased since the
3 SRIA was written. To account for this, we are adjusting
4 the dollar amounts to reflect the increase in costs from
5 2017 to 2022. To do this, we are increasing overall costs
6 by 21 and a half percent. 21 and a half percent represents
7 the growth in the Consumer Price Index between 2017 and
8 2022. These updated costs and benefits will be shown on
9 the revised 399.

10 Thank you.

11 CHAIR THOMAS: Thank you.

12 BOARD MEMBER KENNEDY: I know we're in a hurry to
13 get out. You don't need to respond to these now, but maybe
14 in comments or somewhere.

15 One is you stated that when in calculating the
16 SRIA, you made the assumption that employers had already
17 done exposure assessments because they've been doing them
18 for years. One of the comments that we had from a
19 stakeholder was that, yes, we've been doing exposure
20 assessments, however, they've not been at a limit of
21 detection that would meet the PEL or the action level, so
22 that they're going to have to redo all those exposure
23 assessments. So that was one comment that should be
24 addressed.

25 And then the other is, it was really great at the

1 beginning of the presentation, there was a list of how many
2 excess deaths and some of the morbidities we would have if
3 we didn't adopt the regulation. It was maybe in Eric's.
4 And then yours just said we'd have a reduction in them.

5 It would be really nice to have an estimate of
6 what reduction we could estimate to see. I mean we used
7 that 31 deaths.

8 MS. ECKHARDT: I believe they're all in the SRIA.

9 MR. BERG: Yeah. Mine was in the SRIA.

10 MS. ECKHARDT: In the benefits section.

11 BOARD MEMBER KENNEDY: Okay.

12 MR. BERG: Yeah. Mine were all directly taken
13 from the SRIA.

14 BOARD MEMBER KENNEDY: Excellent. Thank you.

15 CHAIR THOMAS: Any other questions?

16 Yeah. Go ahead. Comment questions.

17 BOARD MEMBER LASZCZ-DAVIS: Comment questions.

18 Bear with me here. I often play the devil's
19 advocate here.

20 You know, I was listening to the presentation on
21 the SRIA and I kept on asking myself, what are the basis of
22 the projections? You know, if we wanted to listen to some
23 clarity on the methodology, I was left in the dark on that
24 one. So maybe it's just more detail that I need. And I'd
25 wondered, for those in the room who questioned the SRIA

1 that had been done, if there was a discussion with the
2 stakeholders, what would that discussion sound like? You
3 know, so I think we've got an issue there until people who
4 understand SRIA both ways have this discussion, informal
5 advisory committee, whatever.

6 Exposure levels. I know there's a fair amount of
7 information here on exposure levels, but I've always found
8 it very helpful. As you well know, exposure levels vary
9 depending upon the agency, the organization that develops
10 them. A matrix that would reflect not only Cal/OSHA, but
11 Cal/OSHA suggested ILOs, ACGIHs, and some of the other
12 state lead exposure levels would be helpful to me to
13 understand the basis of the numbers that they have
14 projected and why. The thing that I always struggle with
15 is it's easy to say, let's reduce the PELs, but do we
16 understand the unintended consequences or the impact? I'm
17 not sure we do, and I think we go into that a little bit
18 dark.

19 Implementation. I think that's going to be a
20 real struggle on this one, and it was interesting to me
21 that, you know, in the public comment period, Christopher
22 Lee, who's been one of our governmental employees for a
23 number of years, made the statement that, you know, he
24 suggested that the lead standard the proposal not be
25 approved because it hasn't reflected any integration of

1 real-world vendors.

2 So there's a lot of information here by
3 scientists and researchers, but what does the other half of
4 the house have to say with regard to all this? I mean have
5 the operators, those who are responsible for
6 implementation, had much input in this? And I just don't
7 know, maybe it's a question of ignorance on my part, so
8 those are just comments.

9 CHAIR THOMAS: A question or comment? Or both?

10 BOARD MEMBER STOCK: Kind of maybe following up
11 on what voices are not being heard, and you just named one.
12 And I feel like I'm very struck both today, and at previous
13 meetings on this, that we are not hearing voices from
14 workers who are impacted by lead.

15 And that's just an essential challenge that we
16 face as a Board, that the people who have the resources to
17 come here every month and to participate in discussions on
18 complicated issues like SRIA and other things, you know,
19 tend to be on one side of the equation, and there's a lot
20 of voices that are missing there. And so I just feel --
21 and I'm even just thinking about, you know -- because I
22 think our responsibility is to listen to them. We have to
23 make decisions based on what the experience of workers and
24 listen. You know, I think Eric summarized what our mission
25 is, and so it's difficult when we don't hear those voices.

1 And I keep wishing we had them, and I understand the
2 challenges to get them at the table. But even just sort of
3 requests to be meeting with you all to talk about the SRIA.

4 And I'm just wondering about the process of SRIA.
5 Because in many -- I think in the lead standards, it's a
6 little challenging because there may not be sort of one set
7 of unions that represent workers, it's harder to get those
8 stakeholders at the table -- but in other kinds of things,
9 like the indoor heat, where there've been many, many, many
10 active advocacy groups that have been working on that. And
11 I know that there've been questions about the SRIA that
12 impact heat. So I'm just feeling like if we're inviting
13 stakeholders in to meet with the Division or with the
14 Board, and with the Division to give their input about the
15 SRIA and whether those estimates are accurate or to talk
16 about provisions, I want to be sure we're giving equal
17 opportunity to both sides to have that kind of impact.

18 So I just, I'm concerned a little bit that it's
19 weighted in a particular direction because of the lack of,
20 you know, the lack of ability to participate on the other
21 side.

22 CHAIR THOMAS: Right.

23 Go ahead, Kate.

24 BOARD MEMBER CRAWFORD: I think earlier somebody
25 used the term people are talking past each other. And I

1 think specifically on the SRIA, on that, I mean, this is
2 actually not the first time that we've had real troubled
3 commentary from stakeholders on the inaccuracy of the SRIA.
4 It happened during COVID, it's happening for fall
5 protection, it's happening for lead, and it's happening for
6 indoor heat.

7 And I think that that's a terrible situation for
8 us to find ourselves in. We are to listen to all of this
9 and listen and understand that what we are hearing is
10 accurate, and if there's such a tremendous disconnect then
11 we are not hearing each other, and it is vital that we do.

12 I agree with what Laura and Chris and Nola said,
13 but my real true concern here is that the SRIAs are just
14 kind of a check the box, we have to do this, we're going to
15 put a few things together and push it through, and that is
16 not the way to do business.

17 CHAIR THOMAS: Any other questions or comments
18 from the Board?

19 BOARD MEMBER ALIOTO: Yes, Mr. Chair.

20 BOARD MEMBER STOCK: I guess I might ask if, Eric
21 or Susan, you have any comments on what you've heard about
22 the concerns that Kate just raised about the SRIA?

23 I just want to give you a chance to respond to
24 that if you have anything to say.

25 MR. BERG: I mean, we go into SRIAs, nothing's

1 predetermined. We hire outside experts to do a lot of the
2 work, so nothing's decided ahead of time. Nothing's like
3 checking a box. I mean we let them free reign to you know,
4 speak with industry, speak with workers, speak with
5 everyone, do their own analysis. And then it's reviewed by
6 many different people -- not necessarily us, but it's
7 reviewed by many other people.

8 And so I don't think it's some predetermined
9 outcome. They go into that with an open mind and start
10 from scratch.

11 So that's my guess.

12 BOARD MEMBER STOCK: You described the
13 calculation, the process that you used. I mean, it sounds
14 like maybe there's a little more information that would
15 help. I know Chris was asking for a little bit more, but
16 it sounds like we've been provided as we look at this later
17 with some -- you've shared with us how you can accomplish
18 things, so I appreciate seeing this.

19 So I appreciate seeing this.

20 CHAIR THOMAS: Let me get to Joe, because I think
21 Joe had a question.

22 Did you have a question or comment, Joe?

23 BOARD MEMBER ALIOTO: Yes. I did.

24 Thank you. Thank you, Dave.

25 There's not necessarily --

1 CHAIR THOMAS: Can you turn it up a little bit?
2 We can't -- or turn it up?

3 There you go.

4 BOARD MEMBER ALIOTO: Can you guys hear me
5 alright?

6 CHAIR THOMAS: Yeah. Go ahead.

7 BOARD MEMBER ALIOTO: Okay. Great. Great.
8 Thank you very much, Dave.

9 Number one, thank you for those presentations.
10 Very, very helpful, both of you. And I want to commend you
11 on the time and effort for putting those together. Thank
12 you for doing that.

13 I really appreciate also, Eric, your attempts,
14 successful in many cases, to directly confront some of the
15 criticisms that you have received with respect to your
16 analysis. It would be really helpful, I think, to have a
17 similar slide that shows some of the criticisms of the SRIA
18 and perhaps what your response would be to the criticisms,
19 or to the suggestions perhaps even, of some of the
20 stakeholders.

21 Again, echoing my colleagues on this, but Mr.
22 Walker, I know, made the comment that the SRIA model uses
23 assumptions that are wrong. I've been hearing that for the
24 last couple of months now, and I still don't quite
25 understand what the specifics are of those. And to be

1 honest with you, it almost might be too detailed. And I
2 just want to make sure that there's communication between
3 the parties about what is the accusation, or what is the
4 suggestion that assumptions in the SRIA are wrong, and have
5 those been addressed? And at the end of the day, if
6 everybody comes back and says, look, we don't agree, but at
7 least there's been a discussion and it's been hashed out,
8 that would be so much more helpful, I think, for me,
9 certainly, and probably for the rest of the Board.

10 So I just want to echo the thoughts about getting
11 people together so that you all -- because you guys are so
12 much more, better equipped to answer some of these
13 questions on your own outside of this meeting setting than
14 it is to hash these out during public comment and during
15 questions and exams, right? Like we're doing right now.

16 So I really just want to encourage you to get
17 together and to try to work through these very specific
18 issues and just try to address them. So that's my overall
19 comment.

20 And then, Eric, if you don't mind, or somebody --
21 again, you don't have to do this now -- there was mention
22 of a federal OSHA new standard. I think if I understood it
23 correctly, the PEL going from 30 down to 10, and maybe I
24 got this wrong, the PEL going from 50 to 30. Whatever it
25 was, it was significantly higher than the regulation that

1 is being proposed in California. I don't know if you've
2 had a chance to look at that. I'd be curious to have your
3 reaction to that. I read what, I saw what you said, and
4 I've been listening intently about the fact that there is
5 no safe level of lead.

6 Curious to hear what your thoughts are because,
7 you know, Fed/OSHA has the same requirements that we do as
8 far as protecting workers to the extent feasible. Are they
9 saying that, you know, the feasibility of implementing some
10 of these regulations requires such a much higher PEL? I'm
11 curious to have your reactions on that Fed/OSHA proposed
12 regulation.

13 MR. BERG: Yeah. I'm not sure if Fed/OSHA has
14 proposed it. They had an announced notice of proposed
15 rulemaking. So, I haven't seen that 30 or 10, but I'll
16 research, because sometimes they do the announced
17 announcements of proposed rulemakings years or decades
18 ahead of time. Like silica took 20 years I think for them
19 to do, the one that we found that was really bad, but it
20 took them 20 years to do that. So I'm not sure how long
21 this lead one will take, but I haven't looked at it in a
22 while.

23 But I'll take a look at it.

24 BOARD MEMBER ALIOTO: You know, I'm curious,
25 because I heard that for the first time today and I just

1 wanted to get some kind of -- your thoughts on that.

2 MR. BERG: Thanks Joe.

3 MS. ECKHARDT: I also wanted to say that, you
4 know, we got many, many written comments about the proposed
5 changes to the regulations, and one of the things that we
6 have to include in the final statement of reasons is a
7 response to every question that we received, every comment
8 we received. So there's a lot of comments that have
9 criticisms about the SRIA, so we respond to those in
10 writing in the final statement of reasons that will be
11 posted I believe on February 2nd. So a couple weeks before
12 the vote by the Standards Board on the proposal. So --

13 CHAIR THOMAS: Thank you.

14 MS. ECKHARDT: Yeah.

15 BOARD MEMBER ALIOTO: Excellent. Excellent.

16 I appreciate that, Ms. Eckhardt, and I'm sure
17 that obviously we're going to peruse that.

18 So thank you very much.

19 CHAIR THOMAS: I want to make one comment
20 regarding the SRIA. I'm probably one of the few that were
21 here when there was no SRIA. It was, they spitballed it,
22 and I didn't always agree with what they came up with as a
23 number because it wasn't done professionally. It was -- I
24 think it was as professional as it could be done.

25 But now, I mean, I think this is sent out and --

1 see, I think this is what's one of the things that's wrong
2 with this whole discussion, is nobody trusts the number you
3 get. These guys, I mean -- management doesn't. I don't
4 know why, but they don't trust it, and it could be just a
5 difference of opinion. There could be a difference in
6 cost.

7 But I think it is really not cool to question the
8 integrity of some -- you're not even associated with them.
9 You give them this to do, and they do it outside of you,
10 and then you guys get accused of trying to mold it into
11 something so you get what you want. I don't believe that.

12 This is a totally different way of doing it, and
13 I'm really getting a little upset about hearing how
14 dishonest, you know, everybody is on each side. I think
15 everybody comes to the table wanting to get the best for
16 their business, their employees, for government.
17 Everybody's trying to do a good job. I don't think it does
18 any good to accuse any agency or the public or the
19 employers of coming to it with dishonest intentions. That
20 doesn't do any good. I think everybody does it with
21 integrity. There's just disagreements and that's fine.
22 You hash out your disagreements.

23 But I don't like this, you know, you're molding
24 it your way you want it so you can get this passed. I don't
25 believe that, and I don't think there's any place for it.

1 Go ahead. Go right ahead.

2 BOARD MEMBER LASZCZ-DAVIS: You know, let me just
3 push back just a little bit. You know, what I'm not
4 hearing is mistrust of the numbers. What I'm hearing is
5 not really understanding the basis of assumptions for the
6 numbers, and I think -- maybe I'm thinking about this too
7 simplistically -- if you got the two or three parties
8 together that look at this, that view these assumptions
9 differently, I think we'd come out of it a lot more
10 positively than where we're at, at this point in time.

11 I don't think it's mistrust. I think it's us not
12 understanding, you know, the different parties not
13 understanding the assumptions and perhaps adjustments that
14 need to be made. So, for what that's --

15 CHAIR THOMAS: I mean, that's fine. I just don't
16 think that was the intention of some people here.

17 So, that's my -- anyway.

18 BOARD MEMBER HARRISON: I just wanted to --

19 CHAIR THOMAS: Yes, Dave.

20 BOARD MEMBER HARRISON: -- if I can. Sorry, I
21 know it's late.

22 So there's been some discussion about the
23 participation of labor in this rulemaking process. And I
24 just wanted to quickly recognize Mr. Mike West from the
25 State Building Construction Trades Council, who has

1 testified several times to propose a rule as-is, as well as
2 Mitch Steiger, formerly of the California Labor Federation,
3 who was here steadfast for a really long time, even though
4 he's not with the Fed anymore, speaking on behalf of all
5 workers in the state of California. So.

6 BOARD MEMBER STOCK: I completely agree.

7 BOARD MEMBER HARRISON: Yeah.

8 BOARD MEMBER STOCK: So those are two versus the
9 many others.

10 BOARD MEMBER HARRISON: Understood.

11 BOARD MEMBER STOCK: But they are very important,
12 and I greatly -- I share your tremendous appreciation for
13 their presence and their contribution.

14 CHAIR THOMAS: Alright, so where are we at now.

15 Okay, so we're not going to hear any more
16 comments from the public. We've already, so. We could,
17 but if anybody has anything to say, say it now or forever
18 hold your peace, and you got one minute.

19 So anybody.

20 No? No?

21 Alright. So let's see, where are we at.

22 Oh. So executive officer's report, or acting
23 executive officer's report.

24 MS. GONZALEZ: I'll just mention that we have
25 executive officer interviews on Tuesday, and so most of you

1 got a notice about that. It's a public notice because
2 Board Members will be present, but there's no public
3 meeting. It's a closed session for personnel.

4 CHAIR THOMAS: Okay. Anything else?

5 Yeah. I think we've done about all the damage we
6 can do today, so anyway. Okay. Let me get to my closing
7 here.

8 So the next Standards Board regular meeting is
9 scheduled for February 15th, 2024 in Burbank, California
10 via teleconference and videoconference. Please visit our
11 website and join our mailing list to receive the latest
12 updates.

13 We thank you for your attendance. There'll be no
14 further business to come before this Board.

15 This meeting is adjourned. Thank you very much
16 for your time.

17 (The meeting adjourned at 5:18 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 8th day of July, 2024.



MARTHA L. NELSON, CERT**367

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