

TELECONFERENCE MEETING
STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH
FORENSIC ALCOHOL REVIEW COMMITTEE

DEPARTMENT OF PUBLIC HEALTH
RICHMOND CAMPUS CONFERENCE CENTER
850 MARINA BAY PARKWAY
ROOM B-137
RICHMOND, CALIFORNIA

TWENTY-SEVENTH MEETING
TUESDAY, NOVEMBER 17, 2015
10:00 a.m.

Reported by:
Julie Link

APPEARANCES

Review Committee Members

Dr. Paul Kimsey, Chairman, Department of Public Health

Jennifer Harmon, California Association of Toxicologists

Dan Jeffries, California District Attorneys Association

Sgt. Eric Jones, California Highway Patrol

Bruce Lyle, California State Bar Association

Jennifer Shen, California Association of Crime Lab Directors

Mark Slaughter, California Public Defenders Association

Kenton Wong, California Association of Criminalists

Richmond, California

Bob Moezzi, Branch Chief

Clay Larson, Section Chief

Sacramento, California

Alexandra Stupple

Sgt. Eric Jones

Mark Slaughter

Steve Woods

Russ Huck

San Diego, California

Jennifer Shen

Santa Ana, California

Jennifer Harmon

Dan Jeffries

Bruce Lyle

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1 Dan Jeffries on behalf of the California District
2 Attorneys Association.

3 COMMITTEE MEMBER LYLE: Bruce Lyle on behalf
4 of the California State Coroners Association.

5 COMMITTEE MEMBER HARMON: Jennifer Harmon,
6 California Association of Toxicologists.

7 CHAIR KIMSEY: Okay. And in San Diego.

8 COMMITTEE MEMBER SHEN: Jennifer Shen, a
9 representative of the California Association of
10 Crime Lab Directors.

11 CHAIR KIMSEY: Kenton, do you want to
12 identify who you're representing?

13 COMMITTEE MEMBER WONG: California
14 Association of Criminalists.

15 CHAIR KIMSEY: And I'm representing the
16 Department of Public Health.

17 So thank you all. I guess for opening
18 remarks, I want to thank everyone for coming back
19 from yesterday, and we'll have public comment again
20 before we resume our subcommittee reports.

21 Our agenda, we tried to set up timeframes,
22 and obviously yesterday we pretty much spent the
23 whole day working on the subcommittee reports, but
24 we'll take public comment before our subcommittee
25 reports continue, and then we'll also take public

1 comment as we go from subcommittee report to
2 subcommittee report.

3 Any other questions about the agenda at this
4 point?

5 COMMITTEE MEMBER HARMON: Jennifer Harmon in
6 Orange County. Any chance that we can move the lunch
7 again to the one o'clock hour, just due to the
8 content of what we're discussing, I think breaking
9 the day in half is a little bit better.

10 CHAIR KIMSEY: Yes.

11 COMMITTEE MEMBER HARMON: Is that doable,
12 maybe we move it to one o'clock so we have three
13 hours and three hours?

14 CHAIR KIMSEY: I agree. In fact, thank you
15 for reminding me. I was going to ask folks about
16 their schedules for the day. It worked very well for
17 myself to be able to go to another meeting at one
18 o'clock.

19 Does one o'clock to two o'clock work for
20 folks for lunch?

21 COMMITTEE MEMBER LYLE: Bruce, it works for
22 Dan and I.

23 COMMITTEE MEMBER WONG: Yes.

24 CHAIR KIMSEY: Okay. Anyone that has a
25 conflict with that idea? Okay, then we'll put down

1 lunch from one to two.

2 Any other agenda items, comments on the
3 agenda?

4 MS. STUPPLE: Paul, this is Alex. I heard
5 that somebody's going to be switching rooms during
6 the meeting.

7 CHAIR KIMSEY: Okay.

8 COMMITTEE MEMBER SHEN: That's me, Jennifer
9 Shen.

10 MS. STUPPLE: Okay. Are you in the place
11 where the public is allowed to come for this
12 meeting?

13 COMMITTEE MEMBER SHEN: Yes, I believe so.

14 COMMITTEE MEMBER WONG: The answer is yes.

15 CHAIR KIMSEY: Yes, our program person here
16 in Richmond says yes.

17 MS. STUPPLE: Okay. Well, there's a problem
18 with moving rooms in case a member of the public
19 comes. Could you put a sign or something on the door
20 saying where the new room will be once you move?

21 COMMITTEE MEMBER SHEN: Yes, I will do that.

22 MS. STUPPLE: Okay, because there has to be
23 a committee member in the room for the public when
24 you change rooms, so thank you.

25 COMMITTEE MEMBER SHEN: (inaudible) if

1 someone showed up.

2 CHAIR KIMSEY: Any other comments on the
3 agenda?

4 Okay. Before we continue our subcommittee
5 report, any public comments?

6 MR. LARSON: I had a couple brief comments
7 from yesterday.

8 CHAIR KIMSEY: Could you identify yourself?

9 MR. LARSON: Sorry, Clay Larson, Department
10 of Public Health. Actually speaking as a member of
11 the public right now.

12 In a number of instances when the committee
13 discussed one of the items as numbered, the item
14 actually included multiple comments. I think that's
15 how we get to the 500 total comments that was
16 referenced. There's obviously not 500 individually
17 numbered comments, so in some cases a comment,
18 within that numbered remark there actually are
19 multiple comments. And I think in some cases the
20 committee chose to only respond to one. I suspect
21 that OAL at some point might expect a response to
22 all public comments.

23 I'll comment on two of the **rogue** responses.

24 One was the issue of enforcement. This has
25 certainly been troublesome for the committee for ten

1 years. And there's been references to self-
2 enforcement in the past. The current opinion from
3 subcommittee 2 includes a statement that the courts
4 have long recognized the self-enforcing nature of
5 the regulations.

6 I don't believe there's any court opinion
7 that states that. Certainly not the cited case. In
8 fact, I think the cited case demonstrates just the
9 opposite. If you read carefully *People v. Adams*,
10 they sort of establish the conditions which create a
11 foundation for the admissibility of chemical test
12 evidence on a rather robust program. They refer to a
13 program that includes licensing, which has obviously
14 been removed, but also the control, governance, and
15 regulation of the laboratories. I haven't heard the
16 committee use those adjectives very often.

17 So I think the expectation from that court
18 case is that it was a existing program with
19 oversight elements and enforcement elements, and
20 there's no references there or in any court case to
21 self-enforcing or self-actuating regulations.

22 I was pleased that we finally talked about
23 the AG's opinion. I recall the meeting when the AG's
24 opinion was formally on the agenda. The Chair
25 introduced it and gave a brief summary of the

1 salient points. And there was absolutely no
2 discussion.

3 We have now seized on the two components of
4 enforcement that are described in the AG's opinion,
5 the injunctive relief and the mandamus.

6 I think if you actually read the AG's
7 opinion carefully, it includes there a discussion of
8 something called legal standing. Legal standing
9 cites that the AG makes include sections that the
10 regulations that the committee has chosen to repeal.

11 So there still may be issues. The committee
12 can throw this in as sort of a solution to the
13 comments, but I think it's appropriate to also
14 incorporate, and in fact it's a disciplinary action,
15 authority to commence disciplinary action should be
16 actually incorporated into the regulations.

17 CHAIR KIMSEY: Okay. Thank you.

18 Any comments from the committee? Any other
19 public comment?

20 So I believe we'll go ahead and continue the
21 subcommittee report from Subcommittee 2, and I
22 believe we were on item 118. Did we finish 118? My
23 notes aren't exactly clear myself.

24 COMMITTEE MEMBER SHEN: I think we start
25 today at 118.

1 CHAIR KIMSEY: Okay. And I believe Dan or
2 Bruce, you were walking us through this.

3 COMMITTEE MEMBER LYLE: This is Bruce. Am I
4 starting my stuff?

5 CHAIR KIMSEY: Well, did you do 118?

6 COMMITTEE MEMBER LYLE: I think we
7 overlapped a little bit.

8 COMMITTEE MEMBER HARMON: Jennifer Harmon.
9 Did you want to go back to 107 which (inaudible)?

10 CHAIR KIMSEY: Yes, thank you. Let's go
11 ahead and do that. We were going to think about that
12 overnight.

13 COMMITTEE MEMBER HARMON: So I came up with
14 some language that could go after what is already in
15 1220.2(a)(4) or it can have a section (5). It's
16 basically the section where it says alcohol or other
17 volatile organic solvents shall not be used to wash
18 or rinse glassware and instruments used for alcohol
19 analysis.

20 I wrote it as (5) If a mass spectrometer
21 detector is utilized, 1220.2(a)(4) does not apply to
22 detector maintenance. That would limit any alcohol
23 or organic solvent could be used specifically only
24 for detector maintenance.

25 COMMITTEE MEMBER SHEN: So we're putting in

1 a (5)?

2 COMMITTEE MEMBER HARMON: You could put it
3 in (5) or put it as an addition to (4), doesn't
4 matter to me.

5 COMMITTEE MEMBER SHEN: I think that it
6 should be a (5).

7 COMMITTEE MEMBER HARMON: Okay. So it would
8 be 1220.2(a)(5), If a mass spectrometer detector is
9 utilized, 1220.2(a)(4) does not apply to detector
10 maintenance.

11 COMMITTEE MEMBER SHEN: So I have adding in
12 1220.2(a)(5), If a mass spectrometer detector is
13 utilized, 1220.2(a)(4) does not apply to detector
14 maintenance.

15 COMMITTEE MEMBER HARMON: That's what I
16 have.

17 COMMITTEE MEMBER SHEN: Works for me.

18 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. I
19 have a question. If you guys all know that you would
20 never use alcohol on certain instruments, do we even
21 need to have (a)(4) or the new (a)(5) in there?

22 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
23 believe that it's completely unnecessary and we run
24 checks to ensure that the instrument isn't a
25 negative, but it's what's been in the regulation. I

1 don't think that it's necessary to state that.

2 COMMITTEE MEMBER SHEN: I would tend to
3 agree with that.

4 COMMITTEE MEMBER HARMON: Kenton?

5 COMMITTEE MEMBER WONG: I agree.

6 COMMITTEE MEMBER JEFFRIES: Then I would
7 suggest for clarity we just eliminate (a)(4) and the
8 new (a)(5), even though I don't disagree with (a)(4)
9 and the new (a)(5), but if it's something you guys
10 already know, just in case some other technology
11 comes around that's similar to mass spectrometer and
12 would also be applied to that, you don't want to
13 lock in a situation where the only exemption is for
14 the mass spectrometer.

15 COMMITTEE MEMBER SHEN: That is a very good
16 point.

17 CHAIR KIMSEY: Then do we want to add some
18 language on why we're removing it? Which might be
19 just what we've talked about. The fact that best
20 practices indicate that alcohol would not be used in
21 forensic alcohol instruments or something to that
22 effect.

23 COMMITTEE MEMBER HARMON: That's a really
24 good language. Standard practices, best practices.

25 What do you think, Jennifer?

1 COMMITTEE MEMBER SHEN: I have best
2 practices indicate that...and then I stopped.

3 CHAIR KIMSEY: Best practices would indicate
4 that alcohol would not be used -- sort of stumbling
5 -- for maintenance of forensic alcohol testing
6 devices, equipment?

7 COMMITTEE MEMBER SHEN: Well, best practices
8 indicate that alcohol is not appropriate for wiping
9 glassware. I mean, that's what it's not appropriate
10 for.

11 CHAIR KIMSEY: Okay.

12 COMMITTEE MEMBER SHEN: But I think the
13 point is that we are running blanks and controls and
14 standards and QA and all this other stuff to show
15 that we aren't having any carryover.

16 I don't know, I've changed my mind again. I
17 think I would just leave it and put in Jennifer's
18 (5), and then make Jennifer's (5) a little more
19 broad. Something about instrumentation -- just
20 (inaudible) washing glassware.

21 COMMITTEE MEMBER WONG: Kenton Wong. How
22 about for (a)(4) it should be evidence that best
23 practices mandate blah-blah-blah.

24 COMMITTEE MEMBER JEFFRIES: Kenton, are you
25 suggesting to put that in the comments to the public

1 comment on it or to actually create something in the
2 regulations that say that?

3 COMMITTEE MEMBER SHEN: Jennifer Shen. I
4 think we should leave (4) alone, there's no harm to
5 it, and you really don't want anyone doing that.

6 COMMITTEE MEMBER WONG: No.

7 COMMITTEE MEMBER SHEN: But I think that to
8 Dan's point, I think we should make (5) broader to
9 include not just the mass spectrometer detector.

10 COMMITTEE MEMBER JEFFRIES: How about
11 changing (5) to something like, if alcohol is used
12 for cleaning or maintenance, other methods must be
13 used to ensure no carryover. But then we're still
14 stuck with (4) where it says you shall not use
15 alcohol.

16 Jennifer, if you could go back to why you
17 think that we should keep it in there or what
18 situation you envision in a lab that doesn't know
19 not to use alcohol.

20 COMMITTEE MEMBER SHEN: I think what I'm
21 envisioning is that it could be argued that if
22 you're using -- I guess there's two parts here.

23 One is the argument that no one would ever
24 use it. The other argument is that, even if you did
25 use it either on instrument maintenance or washing

1 dishes, that we would know if we had contamination
2 because we run blanks, etcetera.

3 I don't know, I guess it comes down to
4 whether or not we think that is so obvious that we
5 don't need to put it in there.

6 COMMITTEE MEMBER JEFFRIES: Well, it doesn't
7 seem like we really address cross contamination
8 issues elsewhere, do we? It seems like that's part
9 of what you guys know as your best practice and
10 procedure, how you avoid cross contamination, how
11 you make sure that you don't have any contamination.

12 COMMITTEE MEMBER HARMON: This is mentioned
13 in more than one place in the regulations, in
14 collection and handling; correct, folks? I'm pretty
15 sure it's mentioned in collection and handling also.

16 COMMITTEE MEMBER JEFFRIES: Yeah, I think
17 there's a reference in the collection of it about
18 alcohol. But that I always thought was applied to,
19 you know, you've got a phlebotomist out there in
20 some rural area that's never drawn blood for an
21 alcohol DUI case, and it's just sort of a reminder
22 that that's what they've got to do. It seems like
23 the labs are a lot more sophisticated.

24 COMMITTEE MEMBER SHEN: Yeah.

25 COMMITTEE MEMBER LYLE: Bruce. It shows up

1 in 1219.1(c).

2 CHAIR KIMSEY: This is Paul. Our
3 stenographer is asking us to just try and identify
4 ourselves. It's a great conversation, don't get me
5 wrong, but it's a little hard to track who's
6 talking.

7 COMMITTEE MEMBER SHEN: Jennifer Shen. So
8 what do we want to do here? I think if we take those
9 out, then we're going to be good for another 20 or
10 30 years probably.

11 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. If
12 we take both (a)(4) and (a)(5) out and eliminate
13 them completely, you think we're good for 20 to 30
14 years?

15 COMMITTEE MEMBER SHEN: Yes. I don't think
16 that we have the option of leaving in (4) and not
17 adding a (5).

18 COMMITTEE MEMBER WONG: Correct.

19 COMMITTEE MEMBER SHEN: So we either have to
20 add in (5) or we have to take them both out.

21 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
22 would advocate we take it out. It's mentioned
23 repeatedly in the collection, I think we have three
24 separate sections that mention it in collection. The
25 laboratories are sophisticated enough to know that

1 they should not be contaminating their samples at
2 analysis. And if they aren't, there are controls
3 under standards of performance that would
4 demonstrate contamination.

5 COMMITTEE MEMBER WONG: Correct.

6 COMMITTEE MEMBER HARMON: So I think it's
7 redundant and say we just pull it out entirely.

8 COMMITTEE MEMBER SHEN: Jennifer Shen. I
9 need verbiage to put in on 107 if we're going to
10 remove this.

11 COMMITTEE MEMBER HARMON: Quality control
12 practices are in place under standards of
13 performance and make this redundant.

14 COMMITTEE MEMBER SHEN: Quality control
15 practices are in place within the regulations?

16 COMMITTEE MEMBER HARMON: Yes.

17 COMMITTEE MEMBER SHEN: Making this
18 redundant. Should I put in something about the fact
19 that we don't want to hamper technology going
20 forward?

21 COMMITTEE MEMBER HARMON: And it is
22 prohibitive to certain technology advances. It's
23 prohibitive on certain maintenance protocols or
24 procedures in advancing technology.

25 COMMITTEE MEMBER SHEN: Okay. This section

1 will be removed as quality control practices are in
2 place within the regulations, making inclusion here
3 redundant. This section is prohibitive currently on
4 certain maintenance protocols and could hinder the
5 advancement of technology.

6 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. I
7 think that sounds perfect, that's a good
8 explanation.

9 COMMITTEE MEMBER SHEN: All right.

10 CHAIR KIMSEY: Okay. I think we're ready to
11 go back to 118.

12 COMMITTEE MEMBER JEFFRIES: Dan again. Just
13 to clarify, Jennifer and I on our assignment went
14 beyond the end page that we were supposed to, so we
15 answered 118 and all the way to Page 97 as well as
16 Bruce, so I don't know if you want to have Bruce
17 take it from here or if you want to work on our
18 proposed changes or work on both of them.

19 CHAIR KIMSEY: Well, let's work on both of
20 them. Whoever wants to take the lead you can pass
21 off one to the other, but we'll certainly consider
22 both.

23 COMMITTEE MEMBER JEFFRIES: I think that
24 from here our position is that Bruce should lead us
25 and we'll add to it as we go along.

1 CHAIR KIMSEY: Okay.

2 COMMITTEE MEMBER LYLE: Bruce Lyle from
3 Orange County. So from 118 down to at least
4 singularly to 122, I'm going to acquiesce back from
5 acquiescing and refer back to the language that was
6 in 1:16, which is the change from analysis to
7 testing is more consistent with the verbiage used
8 throughout the country. This definition was changed
9 to more accurately reflect current law and more
10 clearly states what breath alcohol testing means.
11 The word analysis describes how the test results are
12 achieved, which is not suitable in this context,
13 thus making the revised definition more appropriate.

14 COMMITTEE MEMBER SHEN: All right. Do we not
15 have a 119?

16 COMMITTEE MEMBER HARMON: No. Jennifer
17 Harmon from Orange County. I saw that too.

18 CHAIR KIMSEY: I noticed it also. I don't
19 think we have one.

20 COMMITTEE MEMBER SHEN: Jennifer Shen.
21 (inaudible) from elsewhere was the proposed change
22 from analysis to testing is to ensure language
23 consistency between the regulations and Health and
24 Safety Code 100701, which specifically states, and
25 then there's a bunch of information there. So I

1 think that must have been what --

2 COMMITTEE MEMBER HARMON: Jennifer Harmon.
3 That was Dan and I.

4 COMMITTEE MEMBER SHEN: Okay. So I think I
5 can leave that in and then in 120, that verbiage
6 that you've just described, Bruce, is what I've been
7 cutting and pasting into the other ones.

8 COMMITTEE MEMBER LYLE: Okay.

9 COMMITTEE MEMBER JEFFRIES: This is Dan.
10 Jennifer, do you want to also include that same
11 language in 118 because it's also that same topic?

12 COMMITTEE MEMBER SHEN: Yeah, I will do
13 that. So in 120 I have your language still.

14 COMMITTEE MEMBER HARMON: Yes.

15 CHAIR KIMSEY: So do I.

16 COMMITTEE MEMBER HARMON: So the language
17 should be in 118 and 120.

18 COMMITTEE MEMBER SHEN: And it is, the
19 proposed change from analysis to testing is to
20 ensure language consistency between the regulations
21 and Health and Safety Code 100701, which
22 specifically states all laboratories that are
23 subject to requirements of section 100700 shall
24 ensure that breath alcohol instruments and
25 calibrating devices used in testing are listed in

1 the conforming products list in the Federal Register
2 by the National Highway Traffic Safety
3 Administration, blah-blah-blah.

4 COMMITTEE MEMBER HARMON: Yes.

5 COMMITTEE MEMBER SHEN: Okay. So are we
6 missing anything else in 118, is that all there was
7 in there?

8 COMMITTEE MEMBER HARMON: That's all there
9 was.

10 COMMITTEE MEMBER SHEN: Okay. So do we need
11 to on 118 because of that last thing that says, As a
12 consequence the committee has not shown that the
13 proposed change is necessary to effectuate the
14 purpose of any statute. I really don't want to
15 continue to put that statement in over every time;
16 do we need to?

17 COMMITTEE MEMBER JEFFRIES: I guess it
18 depends. The public comment is more to indicate that
19 the commenter believes that we needed to respond to
20 everything every time it's raised even though it's
21 raised repeatedly. I think Alex is giving us good
22 counsel yesterday about where she thought it was
23 necessary to include it, so I believe including
24 responses as appropriate and necessary and that we
25 do not need to respond to every time the same issue

1 is raised, but I'll defer to Alex on that.

2 MS. STUPPLE: I don't think you need to
3 answer that specific sentence at this point.

4 COMMITTEE MEMBER SHEN: All right. So then
5 we're moving on to 120?

6 COMMITTEE MEMBER LYLE: Yeah. So for the
7 first section, you can copy and paste that same
8 language about breath analysis and testing. And you
9 guys had something else.

10 COMMITTEE MEMBER HARMON: Yes. Jennifer
11 Harmon. Dan and I had commented about the written
12 description, and it reads, The regulation remains
13 mostly unchanged. Only modification from original
14 was the substitution of the word testing from
15 analysis for consistency with Health and Safety Code
16 100701. Additional requirements would expand
17 Department's role beyond current regulation.

18 COMMITTEE MEMBER SHEN: And then I should
19 put in a paragraph here about the fact that the
20 Department hasn't been requiring this for a long
21 time now.

22 COMMITTEE MEMBER HARMON: Correct. So
23 they're asking for something that they've never
24 asked for before, under public comment.

25 COMMITTEE MEMBER SHEN: Well, at least they

1 haven't asked for it in a long time. They used to
2 ask for it, didn't they?

3 There was a letter that came out that said
4 we are no longer required to file written --

5 COMMITTEE MEMBER HARMON: 2006.

6 COMMITTEE MEMBER SHEN: 2006, right?

7 COMMITTEE MEMBER HARMON: Yeah.

8 COMMITTEE MEMBER SHEN: Okay. Shall we add
9 something in here about that? The Department has not
10 required written descriptions to be on file since
11 2006.

12 COMMITTEE MEMBER HARMON: Correct.

13 COMMITTEE MEMBER JEFFRIES: I also think we
14 should include Jennifer's language about the
15 additional requirements would expand the
16 Department's role beyond current regulations. Just
17 make it clear that we considered the proposed
18 comment and we don't feel it's necessary or
19 appropriate to expand the current regulations.

20 COMMITTEE MEMBER SHEN: Yes. This would be
21 in addition to that, so we have the proposed change
22 from analysis to testing paragraph, then we have the
23 paragraph about the regulation remains mostly
24 unchanged, and then the very last one will be The
25 Department has not required written descriptions of

1 the methodology to be on file since 2006.

2 COMMITTEE MEMBER HARMON: Sounds good.

3 COMMITTEE MEMBER SHEN: Okay.

4 COMMITTEE MEMBER LYLE: Bruce again. Are we
5 going to 121?

6 COMMITTEE MEMBER SHEN: Yes.

7 COMMITTEE MEMBER LYLE: 121, the first
8 section talks about we need to cut and paste the
9 change from analysis to testing.

10 COMMITTEE MEMBER SHEN: Although at some
11 point should we start putting in see comment such-
12 and-such?

13 CHAIR KIMSEY: Yeah.

14 COMMITTEE MEMBER LYLE: Yeah, if that's
15 easier for you.

16 COMMITTEE MEMBER SHEN: As soon as I have it
17 to cut and paste it's going to be easier for me, so
18 I'll start doing that.

19 COMMITTEE MEMBER LYLE: Okay. And then
20 Jennifer has more.

21 COMMITTEE MEMBER HARMON: The committee
22 removed duplicative language which stated
23 instruments used for testing must meet requirements
24 for standards of performance which were dictated and
25 continue to be dictated in the new version by the

1 DOT.

2 The new language still requires the same
3 standard for laboratories and for breath test
4 instruments; they must conform to DOT conforming
5 product requirements.

6 The language in 1221.1 (b) remains mostly
7 unchanged by the committee. The only changes made
8 are in analyst classification and substitution of
9 testing for analysis to ensure consistency with
10 other modifications. Substance of regulation is
11 maintained.

12 So again, the changes here are consistent
13 with all other changes that have been made and the
14 actual substance of what is being regulated has not
15 changed.

16 COMMITTEE MEMBER SHEN: Is that going to be
17 enough, Alex?

18 MS. STUPPLE: I believe so.

19 COMMITTEE MEMBER JEFFRIES: Dan Jeffries.
20 Before we leave that paragraph, can we just briefly
21 touch on the issue? I don't think it's an issue but
22 the public comment suggests that by the changes
23 we're making we're imposing new requirements on law
24 enforcement.

25 My read of the language is that we're not

1 imposing anything new on law enforcement, but I just
2 want to make sure that everyone else agrees, that
3 the CHP, Sergeant Jones understands that we're not
4 imposing any new requirements. If a law enforcement
5 agency currently is using breath testing equipment
6 we're not changing that in any way.

7 COMMITTEE MEMBER JONES: This is Eric. I
8 agree, I can't see how this would affect us.

9 COMMITTEE MEMBER JEFFRIES: I know the
10 comments don't really make much difference but in
11 terms of what we're doing what's really important is
12 changing the language of the regulations themselves,
13 but if ever at some point in the future people are
14 trying to interpret what we meant by the
15 regulations, they might look back at the so-called
16 legislative intent of what our thinking was when we
17 were drafting the comments, and it might be helpful
18 just to include a brief blurb in here that says
19 something like the committee does not intend to
20 impose any additional restrictions on law
21 enforcement.

22 COMMITTEE MEMBER WONG: I think that's good
23 for clarity, and intent.

24 COMMITTEE MEMBER SHEN: The committee does
25 not intend to impose any additional restrictions on

1 law enforcement.

2 COMMITTEE MEMBER JEFFRIES: The committee
3 does not intend to impose any additional conditions
4 on law enforcement. That actually is a better word.

5 COMMITTEE MEMBER SHEN: That's fine. The
6 committee does not intend to impose any additional
7 conditions on law enforcement.

8 COMMITTEE MEMBER JEFFRIES: Correct.

9 COMMITTEE MEMBER SHEN: Okay. Do we need to
10 address the last paragraph of the clarity issue?

11 COMMITTEE MEMBER LYLE: I think Alex said
12 she would come through with the responses as we
13 already have them.

14 MS. STUPPLE: Because accessories was
15 already there, correct?

16 COMMITTEE MEMBER SHEN: (inaudible)

17 MS. STUPPLE: Yes.

18 COMMITTEE MEMBER HARMON: Accessories was
19 already there.

20 COMMITTEE MEMBER LYLE: Accessories was
21 already in 1221.2(b). The old 1221.2(b) talks about
22 and any related accessories, so we're using it in
23 the same context, we're not really adding any
24 concepts, we're not changing the definition of it.

25 MS. STUPPLE: What about calibrating units

1 devices, was that added? It says, performed only
2 with instruments and accessories calibrating
3 units/devices. A little confusing.

4 COMMITTEE MEMBER LYLE: That was added by
5 us.

6 COMMITTEE MEMBER SHEN: Jennifer Shen. When
7 I was going through this before, I put the word
8 related back in per public comment just in my copy,
9 so shall be performed only with instruments and
10 related accessories. I don't know where that whole
11 comment was but someone was very interested that we
12 did that.

13 MS. STUPPLE: But what about the calibrating
14 units/devices that comes after?

15 COMMITTEE MEMBER SHEN: Is that a problem
16 also?

17 MS. STUPPLE: The commenter described that
18 accessories looks like an adjective there, and then
19 we're not sure what accessories calibrating
20 units/devices. Is there supposed to be an and?

21 COMMITTEE MEMBER SHEN: Yeah, I think
22 there's supposed to be an and, so it should say with
23 instruments, related accessories, and calibrating
24 units/devices.

25 CHAIR KIMSEY: That sounds good.

1 COMMITTEE MEMBER JEFFRIES: Just for
2 clarity, are calibrating units the same things as
3 devices?

4 COMMITTEE MEMBER SHEN: I don't know.

5 COMMITTEE MEMBER HARMON: They could be
6 using simulator solutions or they could be using dry
7 (inaudible), so accessories or units could
8 theoretically apply to either one of those. Device
9 would probably be a simulator itself.

10 COMMITTEE MEMBER JEFFRIES: So then we
11 probably want to have it separated by and so it says
12 only with instruments and related accessories and
13 calibrating units and devices which meet the
14 requirements.

15 COMMITTEE MEMBER HARMON: Or and accessories
16 of calibrating units/devices.

17 COMMITTEE MEMBER WONG: Refer to
18 instruments, accessories, and calibrating
19 units/devices.

20 COMMITTEE MEMBER JEFFRIES: I like Kenton's
21 language.

22 COMMITTEE MEMBER HARMON: I like Kenton's
23 language also.

24 COMMITTEE MEMBER SHEN: Okay. So what was
25 it?

1 COMMITTEE MEMBER WONG: Instruments,
2 accessories, and calibrating units/devices.

3 COMMITTEE MEMBER SHEN: Okay. instruments,
4 accessories, and calibrating units/devices or just
5 instruments, accessories, and calibrating units?

6 COMMITTEE MEMBER WONG: I'm ambivalent, it
7 doesn't matter to me. Any strong feelings?

8 MS. STUPPLE: And is usually better than a
9 slash.

10 COMMITTEE MEMBER WONG: Okay. Let's go with
11 what Alex says. We'll acquiesce.

12 COMMITTEE MEMBER SHEN: What are we
13 acquiescing to?

14 COMMITTEE MEMBER LYLE: I think we're going
15 back to the original language with the connectors by
16 and.

17 COMMITTEE MEMBER WONG: Get rid of the
18 slash, so units and devices.

19 COMMITTEE MEMBER SHEN: Okay. So it's going
20 to be Breath alcohol testing shall be performed only
21 with instruments, accessories, calibrating units,
22 and devices. Yes? No?

23 CHAIR KIMSEY: Yes.

24 COMMITTEE MEMBER JEFFRIES: I'm good with
25 that.

1 COMMITTEE MEMBER SHEN: All right. I'm
2 ready.

3 COMMITTEE MEMBER LYLE: So we're at 122.
4 First the analysis versus testing verbiage. Then
5 Jennifer has something on the licensing authority.

6 COMMITTEE MEMBER HARMON: Licensing
7 authority was removed by SB 1623 and the removal has
8 been maintained by the committee. Licensing is not
9 an option that will be considered by the committee.
10 The regulation remains mostly unchanged.
11 Changes made ensure consistency with other
12 modifications. Only changes made to the text include
13 the removal of analyst classifications and the
14 requirement of licensure of laboratories.

15 COMMITTEE MEMBER SHEN: I need to put in
16 something about the place/entity issue again.

17 COMMITTEE MEMBER HARMON: Yes.

18 COMMITTEE MEMBER SHEN: Which was, I think,
19 1:18.

20 COMMITTEE MEMBER HARMON: It was a long time
21 ago.

22 COMMITTEE MEMBER SHEN: I'm pretty sure it's
23 1:18.

24 COMMITTEE MEMBER HARMON: Yes, 1:18 talks
25 place/ entity.

1 COMMITTEE MEMBER SHEN: Okay, I'll add that
2 in. Are we done with that one?

3 COMMITTEE MEMBER LYLE: Did we talk about
4 the regulation remains mostly unchanged?

5 COMMITTEE MEMBER HARMON: Yes.

6 COMMITTEE MEMBER SHEN: So we have a clarity
7 issue with the phrase may be used and the reference
8 to places other than forensic alcohol laboratories.
9 It's not clear. It says virtually all breath alcohol
10 analysis is conducted away from the laboratory.

11 COMMITTEE MEMBER JEFFRIES: Dan. That's the
12 original language, we didn't change that.

13 COMMITTEE MEMBER HARMON: Yes.

14 COMMITTEE MEMBER SHEN: All right. Okay,
15 123.

16 COMMITTEE MEMBER LYLE: 123. Besides the
17 analysis versus testing, I wrote that we could
18 repeal due to H&S section 100715. There is no
19 specific mandate in these statutes to regulate law
20 enforcement.

21 And Jennifer has, 1221.1(b)(2) is one of the
22 most critical sections of the document as it relates
23 to breath alcohol testing. It clearly differentiates
24 blood, urine and tissue alcohol testing standards of
25 performance and standards of procedure (Article 5)

1 from requirements for breath alcohol testing. The
2 term immediate, although possible at sometime prior
3 to have had different implications, is now
4 understood to define direct/timely testing of a
5 subject (breath alcohol testing) as being different
6 than collection of a biological sample that will be
7 tested almost always at a different location and at
8 a later time. The section defines what requirements
9 breath alcohol testing is not held to and should be
10 maintained.

11 So I'm good with going with that, getting
12 rid of my gibberish -- I mean, my input.

13 COMMITTEE MEMBER SHEN: Yeah, I like that.
14 Any other comments on that one?

15 CHAIR KIMSEY: No.

16 COMMITTEE MEMBER LYLE: Bruce. 124. Again
17 the analysis and testing.

18 COMMITTEE MEMBER SHEN: Instead of putting
19 that in there, I'm going to start putting in see
20 comment 1:18.

21 COMMITTEE MEMBER LYLE: Okay. The word
22 immediate is in the original regulations and
23 therefore does not represent a change. It is also a
24 common word with a nearly universally understood
25 meaning and therefore should not create undue

1 clarity issues.

2 COMMITTEE MEMBER SHEN: What about the
3 Suggest going back to original wording part?

4 COMMITTEE MEMBER LYLE: Yeah, there is that
5 Suggest going back to original wording. It was what
6 the commenter is intimating, I think. But if the
7 committee wants we can stick with the language in
8 123?

9 COMMITTEE MEMBER HARMON: Yes. There is a
10 request here again in 124 is to apply Article 5 to
11 breath alcohol testing, and I would use the same
12 language that we used in 123 as to why not do that.

13 COMMITTEE MEMBER SHEN: Okay. So we're going
14 to add the critical sections language?

15 COMMITTEE MEMBER HARMON: Yes.

16 COMMITTEE MEMBER SHEN: All right. I'm not
17 really understanding what the issue is with the last
18 comment here.

19 COMMITTEE MEMBER HARMON: Jennifer Harmon.
20 What the public comment is asking is for us to apply
21 the conditions under Article 5 to breath alcohol
22 testing, which is an expanded scope to what the
23 regulation currently does already, and I would argue
24 it's not appropriate (inaudible) breath alcohol
25 testing.

1 There's a differentiation in the current
2 regulation between alcohol analysis, blood, tissue,
3 urine, and breath alcohol testing, and they're
4 trying to apply blood alcohol tissue urine analysis
5 to breath. The differentiation means that we
6 maintain as what is currently maintained in the
7 regulation.

8 COMMITTEE MEMBER SHEN: Okay. So I would be
9 adding the comment from 123 into 124?

10 COMMITTEE MEMBER HARMON: Yes.

11 COMMITTEE MEMBER SHEN: So everybody's good
12 with that?

13 COMMITTEE MEMBER WONG: Yes.

14 COMMITTEE MEMBER SHEN: So would we take out
15 the suggest going back to original wording thing,
16 then?

17 COMMITTEE MEMBER LYLE: Yes. But in order to
18 address the problem that the commenter had with the
19 word immediate, we could leave in what I wrote about
20 immediate.

21 COMMITTEE MEMBER SHEN: Yeah, The term
22 immediate (inaudible), that thing?

23 COMMITTEE MEMBER LYLE: Yeah.

24 COMMITTEE MEMBER SHEN: Yeah. So what I have
25 there, then, is the comment about the analysis to

1 testing, and then we have -- I have two comments
2 about immediate.

3 The word immediate is in the original
4 regulations and therefore does not represent a
5 change. It is also a common word with a nearly
6 universally understood meaning and therefore should
7 not create undue clarity issues.

8 And the term immediate, although possible at
9 some time prior and having (inaudible) is now
10 understood to mean this time. So I have both of
11 those in there, and then I'll the comment from 123
12 into 124.

13 COMMITTEE MEMBER HARMON: Sounds good.

14 COMMITTEE MEMBER SHEN: Okay. Moving on,
15 125.

16 COMMITTEE MEMBER LYLE: 125. Rescind the
17 repeal of Section 1219.3 which reads, Breath
18 Collection. A breath sample shall be expired breath
19 which is essentially alveolar in composition.
20 Crossing out The quantity of breath sample shall be
21 established by direct volumetric measurement. The
22 breath sample shall be collected only after the
23 subject has been under continuous observation for at
24 least 15 minutes prior to collection of the breath
25 sample, during which time the subject must not have

1 ingested alcoholic beverages or other fluids,
2 regurgitated, vomited, eaten, or smoked, or placed
3 anything in his/her mouth.

4 COMMITTEE MEMBER JEFFRIES: Dan. The comment
5 I'd make on it, I'm guessing that this is something
6 that probably comes up in almost every DUI trial
7 that's conducted in the state, and I'm sure that
8 this is an area that we really have to be careful
9 about. I'm sure Sergeant Jones probably could echo
10 this from his experience, that every single DUI
11 trial spends a long time talking about whether you
12 observed the subject. And I don't think we intended
13 to change it from a continuous observation, but the
14 way we inadvertently changed it by making it 15
15 continuous minutes changes the meaning, meaning that
16 the person doesn't have to be continuously observed,
17 it only means that the 15 minutes has to be
18 continuous, but I don't think we intended that
19 change, so I'm with Bruce on the idea of going back
20 to the original language.

21 But I do question whether we should even
22 change it at all to add the or placed anything in
23 his or her mouth. I'm not sure exactly what that
24 adds to us.

25 If for instance during that 15 minute period

1 the officer has the person take a preliminary
2 alcohol screening device and they're blowing into a
3 breath test, does that void the 15 minute waiting
4 period? And I can see scenarios where that might be
5 included in the 15 minute waiting period or 15
6 minute observation period.

7 I think this is one that is such a highly
8 (inaudible) area that any change that we make will
9 just create more ripple effects than we intend, so
10 that unless there's something we really feel that's
11 wrong with this section, I would suggest we just
12 leave it completely the way it was originally.

13 COMMITTEE MEMBER SHEN: So I included the
14 word fifteen in there so that it read, the breath
15 sample shall be collected only after 15 minutes
16 continuous minutes during which time the subject
17 must not have ingested. So are we saying it's 15
18 continuous minutes, not 15 continuous minutes of
19 observation.

20 COMMITTEE MEMBER JEFFRIES: Right, and I
21 think that is what's debated in just about every DUI
22 trial up and down the state as to whether you mean
23 does the 15 minutes have to be continuous time or
24 does the officer have to be continuously watching
25 the person to make sure that they didn't vomit,

1 regurgitate. And most of the time it's been my
2 experience the officers will testify that, even
3 though they don't have face-to-face contact when
4 they're transporting in the back of their patrol
5 car, they are aware of the person, they're watching
6 to see if they regurgitate, they're paying attention
7 to all that stuff. And I think that officers in the
8 field understand what we currently mean by this
9 section, and if we change the section it may create
10 questions as to what the new regulations mean.

11 COMMITTEE MEMBER JONES: This is Eric. I
12 completely agree. I would prefer to go back to the
13 original.

14 CHAIR KIMSEY: Was there something
15 specifically we were thinking about when we added or
16 placed anything in his/ her mouth?

17 COMMITTEE MEMBER WONG: Interfering
18 substances. Any potentially interfering substances.

19 COMMITTEE MEMBER HARMON: Jennifer Harmon.
20 I'm with Kenton on the (inaudible), but addressing
21 the public comment about having something in your
22 mouth is probably appropriate and should be added to
23 the regulation.

24 COMMITTEE MEMBER WONG: And I think we
25 should probably just use a blanket statement like,

1 to avoid the introduction of the presence of any
2 interfering substances. I don't think we need to
3 delineate all beverage, fluids, regurgitate, vomit.

4 COMMITTEE MEMBER SHEN: So I'm looking at
5 the original language here and it looks like we just
6 added in the word continuous.

7 COMMITTEE MEMBER WONG: To where, Jennifer?

8 COMMITTEE MEMBER SHEN: I'm looking at
9 1221.1(b)(2). I think what it used to say was, A
10 breath sample shall be expired breath which is
11 essentially alveolar in composition. The quantity of
12 breath sample shall be established by direct
13 volumetric measurement. The breath sample shall be
14 collected only after the subject has been under
15 continuous observation for at least 15 minutes prior
16 to collection of the breath sample, during which
17 time the subject must not have ingested alcoholic
18 beverages or other fluids, regurgitated, vomited,
19 eaten, or smoked.

20 COMMITTEE MEMBER WONG: That's the original?

21 COMMITTEE MEMBER SHEN: I think so. That's
22 from my understanding based on all of the cross-
23 outs.

24 COMMITTEE MEMBER HARMON: Jennifer Harmon.
25 The original 1219.3 is what Jennifer just read.

1 COMMITTEE MEMBER JEFFRIES: This is Dan. I
2 think, though, that by changing the language the way
3 we did, we changed what we're referring to when
4 we're talking about continuous. We are now making it
5 15 continuous minutes whereas before the continuous
6 referred to continuous observation.

7 COMMITTEE MEMBER SHEN: Right, so my
8 question is do we just need to take the word
9 continuous -- the part that we would put back is,
10 The breath sample shall be collected only after the
11 subject has been under continuous observation for at
12 least 15 minutes prior to collection of the breath
13 sample. Is that what we need to put back?

14 COMMITTEE MEMBER JEFFRIES: Yes, that is
15 correct.

16 COMMITTEE MEMBER SHEN: Because we wouldn't
17 be putting back the first sentence, would we?

18 COMMITTEE MEMBER JEFFRIES: I don't think
19 the first sentence is an area of contention usually.
20 I think the contention usually has to do with that
21 15 minute observation period, and I think that's
22 where we have to be really careful that any changes
23 we make are very intentional and are well thought
24 out.

25 COMMITTEE MEMBER LYLE: What we did was we

1 took away 1219.3 and we moved it into 1221.1, and
2 1221.1(b)(3) is a large section of what used to be
3 1219.3.

4 What I was suggesting is that we just put
5 back 1219.3 because it included all that language,
6 and relocate it back there. For some reason we
7 cancelled it out there and moved parts of it to
8 1221.1.

9 COMMITTEE MEMBER JEFFRIES: This does not
10 make sense to me. I think we would be best served by
11 leaving the language in its entirety in place,
12 unless there's something we specifically feel needs
13 to be changed.

14 COMMITTEE MEMBER LYLE: And that was my
15 thought by taking the repeal of 1219.3, but going
16 way back.

17 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
18 think the reason why it was done is because it is
19 the only place in which breath is mentioned under
20 1219. And so what you did was actually put the
21 breath alcohol testing requirements, including the
22 question of the sample, under breath, and so it's
23 just making the document consistent to that if
24 you're looking for language regarding breath you go
25 to one place instead of looking in places where

1 everything else is covering fluid analysis.

2 CHAIR KIMSEY: I agree.

3 COMMITTEE MEMBER LYLE: I agree. I think
4 it's fine to move it and renumber it and all that. I
5 just would suggest we keep the language itself
6 wherever we end up putting it.

7 COMMITTEE MEMBER SHEN: Okay. So where is
8 the language right now?

9 COMMITTEE MEMBER HARMON: It is in Article 7
10 under 1221.1(c)(3).

11 COMMITTEE MEMBER SHEN: Okay. So we're going
12 to leave it there but we're going to make it
13 slightly different.

14 COMMITTEE MEMBER HARMON: Jennifer Harmon.
15 My recommendation is that you leave it there, but
16 that you take the entirety of 1219.3, which was the
17 original language, and renumber it under breath. The
18 language does not change.

19 COMMITTEE MEMBER SHEN: Okay. So it's going
20 to say everything from, A breath sample shall be
21 expired all the way through vomited, eaten, or
22 smoked.

23 COMMITTEE MEMBER JEFFRIES: Right. At this
24 point I think we should also discuss the possible
25 addition as to whether we want to add anything, but

1 I think that's what we're suggesting, we take the
2 entire paragraph as it currently is written and
3 renumber it so that it becomes the new section.

4 COMMITTEE MEMBER SHEN: Okay.

5 CHAIR KIMSEY: Are we proposing to leave the
6 sentence that's struck out, The quantity of breath
7 sample shall be established by direct volumetric
8 measurement, are we leaving that in or taking it
9 out?

10 COMMITTEE MEMBER JEFFRIES: This is Dan.
11 Does anyone know what that means?

12 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
13 know how it's interpreted, which is that a volume
14 must be determined and it must be provided by the
15 laboratory. As far as established by direct
16 volumetric measurement, I'm not sure exactly how
17 everybody's achieving that. I'm sure it's different
18 from laboratory to laboratory.

19 COMMITTEE MEMBER SHEN: Maybe we should take
20 that sentence out.

21 CHAIR KIMSEY: It's struck out in my copy at
22 the moment.

23 COMMITTEE MEMBER LYLE: Bruce. That is why I
24 struck it out.

25 COMMITTEE MEMBER JEFFRIES: I'm comfortable

1 striking that out also.

2 COMMITTEE MEMBER SHEN: Well, the reason we
3 took out the first sentence, A breath sample shall
4 be expired breath which is essentially alveolar in
5 composition, is because that's already defined. We
6 took that out because it was redundant, because we
7 already know what a breath sample is because it's
8 defined in the regulations.

9 COMMITTEE MEMBER LYLE: And are the
10 regulations now saying a breath sample is
11 essentially alveolar in composition, is that said
12 somewhere else?

13 COMMITTEE MEMBER SHEN: That's our
14 definition, I think.

15 COMMITTEE MEMBER LYLE: Okay. Then I'm good
16 with that.

17 COMMITTEE MEMBER SHEN: So I think that we
18 should just start with, The breath sample shall be
19 collected only after the subject has been under
20 continuous observation for at least 15 minutes prior
21 to collection of the breath sample, during which
22 time the subject must not have ingested alcoholic
23 beverages or other fluids, regurgitated, vomited,
24 eaten, or smoked.

25 COMMITTEE MEMBER LYLE: And my suggestion is

1 to leave it at that, but we should hear from
2 everyone about whether they think we should add to
3 it to place anything in his or her mouth language.

4 And actually, on this one I would actually
5 invite Sergeant Jones' comments because that's going
6 to be the question that the officers are asked. If
7 we add language there saying that it can't be
8 anything that -- interfering substance, I don't know
9 that if Sergeant Jones is on the stand if someone
10 asked him is a bite block that's put in there to
11 prevent epileptic seizure, is that an interfering
12 substance, I don't know what that means. It
13 interferes with the person's ability to bite their
14 own tongue. I would be at a loss to answer that
15 question.

16 COMMITTEE MEMBER JONES: This is Eric. What
17 was the purpose of placing that last part, what was
18 that designed to address?

19 COMMITTEE MEMBER LYLE: Chewing gum or mind.

20 COMMITTEE MEMBER WONG: Kenton Wong. That
21 was originally designed just to preclude the
22 introduction of anything that may potentially cause
23 an interfering substance result of the test.

24 COMMITTEE MEMBER LYLE: Wouldn't that be
25 covered under eaten? Would not chewing gum or mind

1 be covered under eaten? I guess I can see how
2 chewing gum might not be considered eaten, but
3 certainly mints would be eaten.

4 COMMITTEE MEMBER WONG: Yeah, anything
5 that's going to be in the mouth is fodder for
6 potentially introducing an interfering substance,
7 that's the way it's looked at.

8 COMMITTEE MEMBER JONES: The only reason I
9 have any problem with changing this section is that
10 this has become a very well understood section in
11 the law enforcement community, so by changing it you
12 are really -- I mean, you hear all kinds of crazy
13 things that people allege to have put in their
14 mouths once you get to trial, and it's not. You
15 know, if somebody takes a big bite of a patrol car
16 seat is that an interfering substance? I don't know.

17 COMMITTEE MEMBER LYLE: Yeah, I totally
18 agree. I've heard so many stories about everything
19 from alcohol (inaudible) to all sorts of other
20 issues that officers are asked to testify on a
21 scientific basis that if we ask officers to testify
22 about what an interfering substance is, I think
23 we're raising it to a whole new level of what we're
24 asking the officers to be able to testify to.

25 I think leaving it the way it is, if the

1 defendant gets on the stand and says I chewed the
2 back of the patrol car, then we can have a
3 discussion with a scientist about whether that would
4 have any effect on the breath test, but to ask the
5 officer to know what an interfering substance is, I
6 think is a little difficult.

7 Unfortunately what we're doing is we're
8 saying the officer shall continuously observe for 15
9 minutes, so we're putting the duty on the officer to
10 understand what that means. So then it becomes
11 important what the officer believes is an
12 interfering substance.

13 I totally agree with Sergeant Jones that
14 this is an area that is well trained, well thought
15 out in terms of law enforcement practices and going
16 through the academy and every Department spends a
17 lot of time talking about it because it does come up
18 in just about every single DUI trial.

19 So with all that said, my position would be
20 not to add or place anything in his or her mouth. I
21 think that can be dealt with individually at trial
22 if the person choose to eat a patrol car seat.

23 MS. STUPPLE: This is Alex. At the end of
24 125, the last paragraph, there's a comment that
25 needs to be responded to that suggests adding mouth

1 spray, gum or mints.

2 COMMITTEE MEMBER WONG: I don't think we
3 want to get that specific because there's going to
4 be a whole myriad of things that people are going to
5 say, well, that's not mouth spray, gum, or mints,
6 it's something else and that's not covered in the
7 regulation. I don't think we want to get that
8 specific because there's always going to be a
9 loophole for a defense attorney or defendant to say,
10 well, that wasn't mouth spray, gum, or mints, it was
11 something else.

12 COMMITTEE MEMBER LYLE: And I think the more
13 things we try to list on there, the harder it
14 becomes to understand what we mean. By this point
15 everyone pretty much has a common understanding of
16 what that paragraph means in terms of what they're
17 supposed to do.

18 COMMITTEE MEMBER WONG: I think that was the
19 intent of or place anything in his/her mouth. That
20 generality was to prevent that loophole from someone
21 saying it wasn't mouth spray, gum, or mints.

22 COMMITTEE MEMBER JONES: This is Eric. By
23 not adding this, this doesn't preclude the defense
24 from introducing that argument. They can still say
25 that my client, he vomited right before the breath

1 test and you couldn't tell or you couldn't see or
2 for whatever reason. I don't know if this really
3 adds anything by putting that in there.

4 COMMITTEE MEMBER LYLE: I agree with the
5 sergeant. I don't think it adds anything, it just
6 unnecessarily complicates things for the officers.

7 COMMITTEE MEMBER SLAUGHTER: Mark Slaughter.
8 It makes my job easier if we keep it in. Just FYI.

9 But if you think about things that are
10 already in the mouth that could be argued, such as a
11 false tooth or dentures or even those little breath
12 mint strips that aren't eaten, they're not sprayed,
13 they're not chewed, but they're in there and they
14 could potentially be an interfering substance. But
15 that's certainly something that could be argued if
16 we kept that last tail end sentence in.

17 COMMITTEE MEMBER JONES: You could argue
18 that right now, though.

19 COMMITTEE MEMBER SLAUGHTER: I still could
20 argue it, yes.

21 COMMITTEE MEMBER HARMON: They can argue it
22 on its merit. They can't argue it as a compliance
23 issue.

24 COMMITTEE MEMBER SLAUGHTER: That's correct.

25 COMMITTEE MEMBER HARMON: They would have a

1 double argument if this was in the regulation.

2 Right, Mark?

3 COMMITTEE MEMBER SLAUGHTER: That's correct.

4 COMMITTEE MEMBER JEFFRIES: This is Dan. I
5 think the purpose of most of what we've done is to
6 try and make the life of the laboratories easier in
7 terms of regulations and procedures and all that. I
8 think the last thing we want to do is to change it
9 and make it more difficult for law enforcement to do
10 their job. But then that's why I'm on this side of
11 the table.

12 CHAIR KIMSEY: So do we have a consensus.

13 COMMITTEE MEMBER HARMON: Jennifer Harmon.
14 This doesn't change anything for the laboratories
15 about the quality of the breath sample obtained.

16 COMMITTEE MEMBER LYLE: Bruce. I would defer
17 to the legal and Eric on that, because if this is
18 going to make their job too easy or too hard, Mark,
19 then we should probably take it out, or not put it
20 in.

21 COMMITTEE MEMBER SHEN: Okay, we need a plan
22 here.

23 COMMITTEE MEMBER WONG: What say you,
24 gentlemen?

25 COMMITTEE MEMBER JEFFRIES: We've had three

1 of us express opposition to adding that language,
2 and I'm not sure, Jennifer I think was somewhere in
3 the middle.

4 COMMITTEE MEMBER HARMON: Yeah, I'm not
5 opposed to adding the language.

6 COMMITTEE MEMBER JEFFRIES: I would say that
7 Eric and I are opposed to it, and it sounded like
8 Bruce is opposed to adding it. Who's in favor of it?

9 COMMITTEE MEMBER SHEN: I thought you wanted
10 to add it, Bruce.

11 COMMITTEE MEMBER LYLE: I suggested adding
12 it but I didn't have the argument that it was going
13 to cause Eric any kind of problems.

14 COMMITTEE MEMBER SHEN: I think we should
15 not add it. I think we should go with changing that
16 section to the language that we discussed, which is
17 change it to, The breath sample shall be collected
18 only after the subject has been under continuous
19 observation for at least 15 minutes prior to
20 collection of the breath sample, during which time
21 the subject must not have ingested alcoholic
22 beverages or other fluids, regurgitated, vomited,
23 eaten, or smoked.

24 And then call it a day.

25 COMMITTEE MEMBER SLAUGHTER: Agreed.

1 COMMITTEE MEMBER WONG: I agree. So that's
2 how the original 1219 was, right?

3 COMMITTEE MEMBER SHEN: Yes, without the
4 first two sentences. So what do we need to put in
5 here, Alex?

6 MS. STUPPLE: Just your reasoning for not
7 including mouth spray, gum, mints, which I wrote
8 down as complicates things for police officers,
9 don't want to get that specific, don't want a list,
10 common understanding right now, just based on what
11 you guys are saying.

12 COMMITTEE MEMBER SHEN: Okay. So I need
13 verbiage.

14 COMMITTEE MEMBER JEFFRIES: How about the
15 committee feels that the existing language is
16 sufficiently clear and is not vague and therefore
17 declines to add to that language.

18 COMMITTEE MEMBER LYLE: But we do want to
19 clear up the 15 minute thing, right?

20 COMMITTEE MEMBER JEFFRIES: By going back to
21 the original language we're not changing the 15
22 minutes.

23 COMMITTEE MEMBER SHEN: The committee feels
24 the language is clear?

25 MS. STUPPLE: The comment isn't saying that

1 it's not clear, it's saying that adding mouth spray,
2 gum, and mints.

3 COMMITTEE MEMBER LYLE: That's the comment
4 at the very end.

5 MS. STUPPLE: Right, but it still needs to
6 be addressed.

7 COMMITTEE MEMBER LYLE: I was addressing the
8 comment in the fourth paragraph about trying to
9 change the (inaudible) and I thought maybe we should
10 address that also first.

11 MS. STUPPLE: Yeah, you should.

12 COMMITTEE MEMBER LYLE: So I think that
13 response is good, Jennifer, for that comment, and
14 then we do need to address the last one with
15 something like the committee does not feel the need
16 to add to the prohibited activities during the 15
17 minute period.

18 COMMITTEE MEMBER SHEN: Don't we have to say
19 why we don't?

20 COMMITTEE MEMBER WONG: Too specific.

21 MS. STUPPLE: Yeah, you need to say why.

22 COMMITTEE MEMBER WONG: It's too specific.

23 COMMITTEE MEMBER LYLE: Or add this is well
24 understand in the law enforcement community.

25 COMMITTEE MEMBER HARMON: It's the original

1 regulation, there's no change. This is what's been
2 in place for this long.

3 MS. STUPPLE: Well, there is a change now,
4 though, because you're going back.

5 COMMITTEE MEMBER LYLE: Right, we proposed
6 changing it and now we're going back and saying we
7 don't want to change it, so now we have to explain
8 why we don't want to change it.

9 COMMITTEE MEMBER SHEN: All right. I am
10 putting the committee feels the existing language is
11 clear and declines to add any further language. The
12 committee feels this language has been well
13 understood in the law enforcement community.

14 COMMITTEE MEMBER LYLE: And does not need to
15 be amended.

16 COMMITTEE MEMBER SHEN: Okay. I have
17 language like 14 times in that sentence, I'll do
18 something about that.

19 COMMITTEE MEMBER LYLE: That's okay, it
20 doesn't go in the final regulation so the exact
21 language isn't as critical as in the statute itself.

22 COMMITTEE MEMBER SHEN: The committee feels
23 the existing language is clear and declines to add
24 anything further. The committee feels this language
25 has been well understood in the law enforcement

1 community and does not need to be amended.

2 COMMITTEE MEMBER LYLE: I like that.

3 COMMITTEE MEMBER SHEN: All right. Are we
4 ready to move on?

5 CHAIR KIMSEY: Sounds like it.

6 COMMITTEE MEMBER SHEN: 126. Are you
7 acquiescing again, Bruce?

8 COMMITTEE MEMBER LYLE: I don't know, I
9 can't remember. What I said was, Rescind the repeal
10 because even though these sections are redundant,
11 there is no harm in leaving them in. That's a
12 serious acquiescence.

13 What did we repeal?

14 COMMITTEE MEMBER HARMON: We repealed that
15 they were on the conforming products list, which is
16 already in the Health and Safety Code and cited.

17 COMMITTEE MEMBER SHEN: We repealed them
18 because they were redundant.

19 COMMITTEE MEMBER HARMON: Redundant and
20 dated.

21 COMMITTEE MEMBER LYLE: So do we have
22 language from previous that argues why redundancy is
23 bad?

24 COMMITTEE MEMBER SHEN: No, I think we're
25 going to have to invent some.

1 COMMITTEE MEMBER LYLE: I think that's where
2 I couldn't figure out how to do that.

3 COMMITTEE MEMBER SHEN: I think redundancy
4 is not efficient.

5 COMMITTEE MEMBER HARMON: If you go to 121
6 there's language, The committee removed duplicative
7 language which stated instruments used for testing
8 must meet requirements for standards of performance
9 which were dictated and continue to be dictated in
10 the new version by the DOT.

11 The new language still requires the same
12 standard for laboratories and for breath test
13 instruments; they must conform to DOT conforming
14 product requirements.

15 COMMITTEE MEMBER SHEN: So that language is
16 in?

17 COMMITTEE MEMBER HARMON: 121.

18 COMMITTEE MEMBER SHEN: So I'm adding in the
19 comments from 121.

20 COMMITTEE MEMBER LYLE: Yes.

21 COMMITTEE MEMBER SHEN: Okay. So I'm adding
22 in the comments from 121 starting at the committee
23 removed duplicative language?

24 COMMITTEE MEMBER HARMON: Yes.

25 COMMITTEE MEMBER SHEN: All right. So I

1 could probably actually just put see comment 121, I
2 suppose.

3 COMMITTEE MEMBER LYLE: Yeah.

4 COMMITTEE MEMBER SHEN: That would be
5 easier.

6 COMMITTEE MEMBER LYLE: There you go.

7 COMMITTEE MEMBER SHEN: Okay.

8 COMMITTEE MEMBER JEFFRIES: Does Alex feel
9 we need to address the issue of Health and Safety
10 Code 120701 only regulates laboratories and not law
11 enforcement? The comment seems to suggest that we
12 should be regulating law enforcement's selection of
13 breath testing equipment. Do we need to address
14 that, Alex?

15 MS. STUPPLE: I'm a little confused because
16 earlier you said that you were not trying to
17 regulate law enforcement, right?

18 COMMITTEE MEMBER JEFFRIES: Correct.

19 MS. STUPPLE: But then the people that are
20 going to be using some of these are law enforcement,
21 which I'm confused by that.

22 COMMITTEE MEMBER JEFFRIES: I think the
23 comment indicate that the commenter believes we
24 should be regulating law enforcement and dictating
25 to law enforcement which types of devices they

1 should be using. And I think the committee's feeling
2 is that's not appropriate or necessary. I just don't
3 know if we need to make that comment that we decline
4 to regulate law enforcement's choice of breath
5 testing equipment.

6 MS. STUPPLE: Yes, I think that's probably a
7 good idea. The more you put in, the better.

8 COMMITTEE MEMBER SHEN: Okay. So I'm adding,
9 what am I adding?

10 COMMITTEE MEMBER JEFFRIES: The committee
11 declines to add regulations that specify the breath
12 testing equipment to be used by law enforcement.

13 COMMITTEE MEMBER SHEN: Okay.

14 COMMITTEE MEMBER JEFFRIES: Then I think we
15 need to say why we feel that way.

16 COMMITTEE MEMBER JONES: This is Eric. I
17 forget the exact Vehicle Code, but the breath
18 testing equipment used by law enforcement is
19 considered another field sobriety test. The actual
20 evidential test that's really done, that's the
21 machine that's usually provided by the laboratory
22 itself. These regulations probably shouldn't step
23 into regulating a preliminary test because it's not
24 really the purpose of it.

25 I know my agency tries to mirror as closely

1 as possible to these regulations internally. That
2 way it strengthens the quality or the weight of that
3 preliminary test, but really these regulations
4 aren't designed to regulate that.

5 MS. STUPPLE: That would be good to add.

6 COMMITTEE MEMBER JEFFRIES: So Jennifer, we
7 probably want to add the committee is not intending
8 to regulate preliminary field alcohol testing
9 devices used by law enforcement.

10 COMMITTEE MEMBER SLAUGHTER: Mark Slaughter.
11 I have a little bit of concern since some of the
12 machines now used in field tests are also used for
13 evidentiary testing.

14 COMMITTEE MEMBER WONG: Like the DOJ EPAS?

15 COMMITTEE MEMBER SLAUGHTER: That's right.

16 COMMITTEE MEMBER HARMON: They would held to
17 a higher standard, Mark, as they are evidential
18 tests and governed by a laboratory, so it
19 differentiates in our notes is the laboratory is
20 governing that testing and governing those
21 instruments.

22 The greater concern would be potentially a
23 preliminary screener that is not being provided by a
24 laboratory.

25 COMMITTEE MEMBER SLAUGHTER: That makes

1 sense.

2 COMMITTEE MEMBER HARMON: So in that
3 testing, as Eric was saying, is really covered under
4 the Vehicle Code as a preliminary screener and well
5 defined. If a laboratory is providing
6 instrumentation that is to be used as a screener, by
7 default those screener are going to be held to a
8 higher standard as they are being used for
9 evidential purposes as well. Does that make sense?

10 COMMITTEE MEMBER SLAUGHTER: It does. Is it
11 clear in our intent, though.

12 COMMITTEE MEMBER JEFFRIES: And that's why I
13 thought maybe if we added a sentence about our
14 intent, that we don't intend to regulate those
15 devices.

16 COMMITTEE MEMBER SHEN: Okay. So I have the
17 committee declines to add verbiage that specifies
18 breath testing by law enforcement. The committee
19 declines to regulate preliminary breath testing?

20 COMMITTEE MEMBER JEFFRIES: I think it's
21 preliminary field alcohol testing devices used by
22 law enforcement.

23 COMMITTEE MEMBER SHEN: Okay. The committee
24 declines to regulate preliminary field alcohol
25 testing devices used by law enforcement.

1 COMMITTEE MEMBER JEFFRIES: I'm okay with
2 that with just one follow-up comment both with Mark
3 and Eric. Are there areas of the CHP up in northern
4 California somewhere where they're not supported by
5 any labs and you guys are kind of on your own? I had
6 heard that was the situation in some counties in the
7 far north. Is that the case?

8 COMMITTEE MEMBER JONES: My understanding is
9 that every county that doesn't have -- most
10 metropolitan areas have their own crime lab, but all
11 the more rural counties are at this point using the
12 Department of Justice for their breath testing
13 equipment. I don't know of any off the top of my
14 head that would fit that.

15 COMMITTEE MEMBER JEFFRIES: Yeah, I'm pretty
16 familiar with what's going on in southern California
17 and I don't (inaudible) with any of them at all down
18 here, so I just thought maybe from your perspective.

19 I think that Jennifer's right that any of
20 those would be regulated because they're with the
21 Department of Justice.

22 COMMITTEE MEMBER SLAUGHTER: That's correct.
23 The only thing I just don't want these regulations
24 to step into is there are some areas, like they'll
25 have the DOJ machine but they'll also have a

1 preliminary screener, and they'll use the
2 preliminary screener before they administer the DOJ
3 test. That should just be considered a field
4 sobriety test.

5 COMMITTEE MEMBER HARMON: Can we add an
6 additional statement that the regulations are
7 intended for evidential breath alcohol testing
8 specifically?

9 COMMITTEE MEMBER JONES: I don't know if we
10 want to go that far, and I'm sure Mark may have a
11 comment on this. But the preliminary alcohol
12 screening device testing, it's in an interesting
13 area. I mean, literally, a lot of agencies are
14 mirroring exactly what Title 17 does, so that does
15 carry quite a bit of weight in court. So by saying
16 it's not really an evidential test or by saying that
17 we're regulating evidential testing, you may
18 inadvertently be regulating those devices as well.

19 COMMITTEE MEMBER JEFFRIES: I agree. I think
20 we don't want to go into that area because I think
21 that is the case, that most law enforcement agencies
22 are trying to mirror the Title 17 requirements to
23 make sure they're following their best practices and
24 procedures, and we don't want to tamper with that.

25 COMMITTEE MEMBER WONG: Go ahead, Mark.

1 COMMITTEE MEMBER SLAUGHTER: It at some
2 point gets back to People v. Adams, which doubles
3 back and says, hey, follow the regulations if you
4 want to make that preliminary test admissible. So it
5 kind of covers itself with case law.

6 COMMITTEE MEMBER JEFFRIES: I think we've
7 made it clear in terms of our comments and I'm
8 comfortable with what we've got so far.

9 COMMITTEE MEMBER SHEN: So what we have so
10 far is we have the comments from 121 added in here,
11 and then that The committee declines to add
12 regulations that specify the breath testing
13 equipment to be used by law enforcement. The
14 committee declines to regulate preliminary field
15 alcohol testing devices used by law enforcement.

16 COMMITTEE MEMBER JEFFRIES: I think that's
17 good.

18 COMMITTEE MEMBER SHEN: Did we get
19 everything, Alex?

20 MS. STUPPLE: Yeah.

21 COMMITTEE MEMBER LYLE: Bruce. So moving on
22 to 127. That is simply the reference to the analysis
23 versus testing.

24 The same is true for 128. On 128 there's a
25 section about the ISOR. I don't know what I should

1 do about that, I don't really know how to answer
2 that.

3 MS. STUPPLE: Yeah, don't worry about that
4 right now.

5 COMMITTEE MEMBER LYLE: Thank you. So you
6 got that, Jennifer?

7 COMMITTEE MEMBER SHEN: Yeah. So moving on
8 to 129.

9 COMMITTEE MEMBER LYLE: Okay, 129. Suggest
10 rescinding the change of 1221.2(a)(2) and revert
11 back to, The accuracy of instruments shall be
12 determined, because, alcohol water and dry-gas
13 reference samples are referred to later in
14 1221.2(a)(2)(A).

15 COMMITTEE MEMBER SHEN: Didn't we already
16 change this?

17 COMMITTEE MEMBER LYLE: I'm not sure.

18 COMMITTEE MEMBER SHEN: Jennifer, didn't you
19 address this somewhere already?

20 COMMITTEE MEMBER HARMON: No.

21 COMMITTEE MEMBER SHEN: I have written down,
22 A blank or secondary standard shall be analyzed
23 concurrently or prior to analysis of subject sample
24 on each day of analysis and in any instrument used.
25 All blanks, secondary standards and samples shall be

1 taken through all steps of the method.

2 COMMITTEE MEMBER HARMON: That's for a
3 completely different section. That's for blood.
4 That's for fluid analysis.

5 I'm with Bruce, I don't that we need to be
6 specific, I think we can go back to the original
7 language so the specificity is addressed in a
8 subsection.

9 COMMITTEE MEMBER JEFFRIES: It's under the
10 title is Standards (inaudible) Procedure.

11 COMMITTEE MEMBER SHEN: All right.

12 COMMITTEE MEMBER LYLE: Bruce. So we're okay
13 with that. My next statement is, A definition for
14 each in 1215 is feasible, and I would leave it up to
15 the committee to help with the wording, or to put
16 them in as definitions.

17 COMMITTEE MEMBER SHEN: So we agree to the
18 rescinding, yes?

19 CHAIR KIMSEY: Yes.

20 COMMITTEE MEMBER SHEN: Do we think that we
21 need to define those?

22 COMMITTEE MEMBER LYLE: That was my
23 question. I didn't really feel strongly that we
24 needed to but I was leaving it up to the committee
25 to give me some input on that as to whether we

1 should.

2 CHAIR KIMSEY: Historically has there been
3 any confusion that would require us to make a
4 definition?

5 COMMITTEE MEMBER LYLE: That's a good
6 question.

7 COMMITTEE MEMBER SHEN: I don't know. They
8 haven't been defined before. This is one of those
9 things that if you're a competent technician you
10 would know this.

11 COMMITTEE MEMBER LYLE: I guess it depends
12 on who the audience for the regulations are. If it's
13 me, then I have no idea what that means, so I would
14 need a definition.

15 COMMITTEE MEMBER JEFFRIES: Dan. Just so
16 we're clear on what we're talking about, when we
17 talk about a definition for each in 1215, are we
18 talking about each subparagraph as they originally
19 were or as we propose changing them? I've lost you.

20 COMMITTEE MEMBER SHEN: We're talking about
21 defining the term water pollution and dry gases of
22 alcohol, right?

23 COMMITTEE MEMBER LYLE: Yes.

24 COMMITTEE MEMBER WONG: I don't think it's
25 been an issue in the past.

1 COMMITTEE MEMBER LYLE: Okay. So we won't
2 define them.

3 COMMITTEE MEMBER WONG: Less is more.

4 CHAIR KIMSEY: We still need to say why
5 we're not going to address it, though.

6 COMMITTEE MEMBER SHEN: Yes. So we're going
7 to say that these terms have been utilized by the
8 forensic community for the last several decades?

9 COMMITTEE MEMBER WONG: Yeah.

10 COMMITTEE MEMBER SHEN: Although I don't
11 know how long the dry gases have been around.

12 COMMITTEE MEMBER HARMON: At least 10 to 15
13 years.

14 COMMITTEE MEMBER WONG: I was going to say
15 at least 15 years.

16 COMMITTEE MEMBER JEFFRIES: So about the
17 same length of time we've been working on these
18 regulations.

19 COMMITTEE MEMBER HARMON: Pretty much.

20 COMMITTEE MEMBER WONG: They'll be on to
21 something else by the time we finish.

22 COMMITTEE MEMBER JEFFRIES: That's right.

23 COMMITTEE MEMBER SHEN: So these terms have
24 been utilized by the forensic community for well
25 over a decade with no issue?

1 COMMITTEE MEMBER JEFFRIES: That sounds good
2 to me.

3 CHAIR KIMSEY: This is Paul. As your
4 chairman, do people want to take a bio break for ten
5 minutes?

6 COMMITTEE MEMBER HARMON: Yes.

7 CHAIR KIMSEY: And parking meters?

8 COMMITTEE MEMBER SHEN: Yeah, I have to move
9 my car.

10 CHAIR KIMSEY: So let's take a break for ten
11 minutes.

12 (Off the record 11:36 a.m. to 11:47 a.m.)

13 CHAIR KIMSEY: Okay, then we'll go ahead and
14 get started again. Jennifer has to move her room at
15 noon, so let's go ahead and go for ten minutes or
16 so. We were, I think, on 130?

17 COMMITTEE MEMBER LYLE: I was midway through
18 129.

19 CHAIR KIMSEY: Oh, okay.

20 COMMITTEE MEMBER SHEN: Yeah, we have a bit
21 of 129 to go here.

22 CHAIR KIMSEY: Okay. I was being optimistic.

23 COMMITTEE MEMBER LYLE: So with reference to
24 the comment within the comment about describing to
25 specify in the regulations how the reference samples

1 are prepared and obtained, what I said was, It is
2 not feasible to specify in regulations how the
3 reference samples are prepared or obtained. The
4 reference samples may come from many sources:
5 private companies, other labs, or the lab in
6 question. Therefore, it would be impossible to
7 describe how all of the samples are prepared.

8 COMMITTEE MEMBER SHEN: Okay. I like that.

9 COMMITTEE MEMBER LYLE: Okay. Then I go on
10 to say, Nor is it feasible to describe the required
11 procedures employed with their use as it will be
12 different for each laboratory. The procedure will
13 depend on the specific reference samples being used
14 and the specific breath instruments that are in
15 service at each laboratory. The regulation could not
16 account for the variety of combinations of purchased
17 dry gas, purchased/in-house prepared water
18 solutions, or the numerous types of breath testing
19 instruments available and the specific software then
20 associated with each type of instrument. It is
21 already stated that the purpose for the reference
22 samples is to determine accuracy.

23 Then I have some hanging word reviewing, but
24 ignore that.

25 COMMITTEE MEMBER SHEN: All right, I'll take

1 that out. That sounds good.

2 COMMITTEE MEMBER LYLE: Then I have a note
3 here, The regulation could be modified to include a
4 statement similar to that found in ASCLD/LAB ISO
5 17025 which states: 5.5.10 When intermediate checks
6 are needed to maintain confidence in the calibration
7 status of the equipment, these checks shall be
8 carried out according to a defined procedure.

9 I didn't know if you guys were interested in
10 that, rehashing that ASCLD lab stuff or not. I think
11 it's usually the flavor of the committee to say we
12 don't like to rehash that, but I threw it out there.

13 Comments?

14 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
15 suggest we keep it out.

16 CHAIR KIMSEY: I think unless there's a
17 compelling reason to put it in, I would agree to
18 keep it out.

19 COMMITTEE MEMBER WONG: I concur, keep it
20 out.

21 COMMITTEE MEMBER SHEN: All right. So I'm
22 removing that from our comment.

23 COMMITTEE MEMBER LYLE: Okay. That was more
24 a comment for the committee versus something to be
25 kept in as a comment to the commenter.

1 COMMITTEE MEMBER SHEN: All right. So I
2 think that's well done, Bruce, I like that.

3 COMMITTEE MEMBER LYLE: So are we clear to
4 go to 130?

5 CHAIR KIMSEY: Yes.

6 COMMITTEE MEMBER LYLE: All right. The range
7 of .08 to .25 grams was inserted to more accurately
8 reflect meaningful alcohol levels. .08 reflects
9 current State law (Veh. Code yadda-yadda-yadda.

10 The upper limit change is less crucial and
11 therefore it is suggested to remain at .30.

12 The commenter had issue with the -- I really
13 didn't remember why we went down to .25. Another
14 acquiescence by myself.

15 COMMITTEE MEMBER SHEN: What do you think
16 about this, Jennifer?

17 COMMITTEE MEMBER HARMON: I would actually
18 advocate to keep the .30. I don't think there's any
19 reason to drop it to .25.

20 COMMITTEE MEMBER SHEN: All right. Sounds
21 good to me, I don't care at all.

22 COMMITTEE MEMBER HARMON: I don't see any
23 reason to drop it.

24 MS. STUPPLE: So you need to state why
25 you're going back to .30.

1 COMMITTEE MEMBER LYLE: Because on
2 reflection .25 was too restrictive.

3 CHAIR KIMSEY: Further committee discussion
4 determined that .30 was sufficient.

5 COMMITTEE MEMBER LYLE: How is that, Alex?

6 MS. STUPPLE: Why is it sufficient?

7 COMMITTEE MEMBER WONG: Because it's been
8 that way for the last 40 years and it's been fine.

9 MS. STUPPLE: Okay.

10 COMMITTEE MEMBER SHEN: So further committee
11 discussion determined .30 was sufficient and the
12 committee feels there is no compelling reason to
13 change it, basically.

14 CHAIR KIMSEY: After 30-plus years.

15 COMMITTEE MEMBER HARMON: There is mention
16 about NIST traceability. Do we mention anything that
17 those standards should be NIST traceable anywhere?
18 Because if we don't, we should. The commenter is
19 correct.

20 CHAIR KIMSEY: I thought we did address that
21 earlier. Didn't we address NIST traceable standards?

22 COMMITTEE MEMBER SHEN: We addressed it as a
23 definition, I believe.

24 COMMITTEE MEMBER WONG: 1:103. Or 1:102. One
25 of those.

1 COMMITTEE MEMBER HARMON: I think it's
2 referenced under Article 5 and probably needs to be
3 referenced under the breath article as well.

4 COMMITTEE MEMBER SHEN: Okay. So where would
5 we put that?

6 COMMITTEE MEMBER LYLE: Yeah, 2(a) ends
7 with, The reference sample shall be provided by a
8 forensic alcohol laboratory.

9 COMMITTEE MEMBER SHEN: That would be where
10 we would add it in, I would think.

11 COMMITTEE MEMBER LYLE: Yeah, I think you're
12 right.

13 COMMITTEE MEMBER SHEN: That's a lot,
14 1221.2(a)(2)(A)(i), that seems like a lot.

15 COMMITTEE MEMBER LYLE: It would be the
16 first (i) versus the second (i).

17 COMMITTEE MEMBER SHEN: Oh, yeah, there is.
18 Okay. So this would be (ii). Goodness. Do we have
19 verbiage for that?

20 COMMITTEE MEMBER HARMON: The reference
21 samples which are known water solutions or dry gases
22 of alcohol which are used to check the accuracy of
23 breath alcohol testing instruments must be NIST
24 traceable.

25 COMMITTEE MEMBER SHEN: That sounds good.

1 The reference samples which are known water
2 solutions or dry gases of alcohol which are used to
3 check the accuracy of breath alcohol testing
4 instruments must be NIST traceable.

5 COMMITTEE MEMBER HARMON: Yes.

6 COMMITTEE MEMBER SHEN: All right, got it. I
7 can do probably one more comment then I have to move
8 rooms.

9 COMMITTEE MEMBER LYLE: All right. So we're
10 going on to 131. This is Bruce.

11 COMMITTEE MEMBER SHEN: That's kind of a big
12 one.

13 COMMITTEE MEMBER LYLE: Yeah. I was looking
14 ahead, and I broke (i) down into (ii) and (iii), so
15 we're going to have break it down.

16 COMMITTEE MEMBER SHEN: Oh.

17 COMMITTEE MEMBER JEFFRIES: Dan. Just before
18 we go down that road, I'm concerned about a
19 situation, and I don't know if anyone still uses
20 them, but at one point I remember we had some
21 instruments with LAPD that the way the analysis
22 periodic checks were done was not automatically by
23 the instrument itself but required an operator to
24 remotely control the instruments and then perform
25 the test that way.

1 So if we change the language to require it
2 to be capable of performing an internal self-
3 generated check, we then eliminate that category of
4 instruments where it's not self-generated, it's
5 generated by an outside operator. I just want to
6 make sure we're not limiting ourselves on this.

7 COMMITTEE MEMBER HARMON: Isn't (ii)
8 explaining that?

9 COMMITTEE MEMBER JEFFRIES: I think that the
10 (ii) might but if you remotely log in and tell it to
11 perform an accuracy test, you may not be manually
12 doing it, you're sort of automatically doing it,
13 you're initiating it.

14 So the concern I have with the first part is
15 the self-generated.

16 COMMITTEE MEMBER SHEN: So what I think we
17 should do is you guys should work all this out while
18 I'm moving rooms.

19 CHAIR KIMSEY: Jennifer, This is Paul. Do
20 you have a new phone number you're going to be at?

21 COMMITTEE MEMBER SHEN: Yeah, I have to go
22 to a different floor and a different place, it's
23 going to take me a few minutes.

24 CHAIR KIMSEY: Do you know what the phone
25 number is where you're going to be?

1 COMMITTEE MEMBER SHEN: I do not, but I will
2 text you a new number. I imagine this whole move is
3 probably going to take me ten minutes.

4 CHAIR KIMSEY: Okay.

5 COMMITTEE MEMBER SHEN: I will text you,
6 Paul, with my new number.

7 CHAIR KIMSEY: Yes, and don't forget the
8 sign, please.

9 COMMITTEE MEMBER SHEN: And I will not
10 forget the sign.

11 CHAIR KIMSEY: Thank you.

12 COMMITTEE MEMBER SHEN: Right, bye-bye.

13 CHAIR KIMSEY: Let's see.

14 COMMITTEE MEMBER JEFFRIES: Dan. So if we
15 use the language that Bruce has suggested, the (i),
16 (ii), (iii) language, my only concern is where we've
17 added this capable of performing internal self-
18 generated accuracy checks. It seems to me that there
19 might be some instruments that are not capable of
20 performing self-generated checks but are still done
21 automatically.

22 COMMITTEE MEMBER WONG: Well, (ii) says or
23 manually by an operator.

24 COMMITTEE MEMBER LYLE: Bruce. And I think
25 it was in response to the idea that the automatic

1 and the manual were going to require greater
2 specificity, and that's why I broke it out into
3 three different sections, because it contained three
4 different kind of situations, so I broke it into
5 three different, that one entry into three different
6 things and tried to further explain it or give it
7 more detail.

8 COMMITTEE MEMBER JEFFRIES: My thinking is
9 the language as we had proposed seemed to make
10 sense.

11 COMMITTEE MEMBER LYLE: Okay.

12 COMMITTEE MEMBER JEFFRIES: I like the
13 language as we had originally proposed where it
14 added the language performed automatically on
15 applicable instruments or manually by an operator,
16 blah-blah-blah. It seemed like that covered it and I
17 thought that was fine, but if you guys think we need
18 to make it more clear.

19 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
20 think it's clear. I don't know that we need to have
21 any more, it seems clear.

22 COMMITTEE MEMBER LYLE: So how do we address
23 that specificity issue? Just say we don't need to
24 change it and that it's clear.

25 COMMITTEE MEMBER JEFFRIES: I think we just

1 say the committee does not feel it is necessary to
2 specify procedures employed for specific
3 determination of accuracy of instruments as it is
4 well understood in the scientific community.

5 Is that correct, it's understood?

6 COMMITTEE MEMBER HARMON: Yes, I think it's
7 understood.

8 COMMITTEE MEMBER WONG: Uh-hmm.

9 COMMITTEE MEMBER JEFFRIES: So then we'd
10 just leave the original language.

11 COMMITTEE MEMBER LYLE: Okay. And you wrote
12 down what --

13 COMMITTEE MEMBER JEFFRIES: Yeah, so I can
14 give this to Jennifer for 131 when she's back
15 online.

16 COMMITTEE MEMBER LYLE: Perfect. Now, the
17 same section talks about the ISOR stating that the
18 change from the entity of a laboratory to an analyst
19 is more specific.

20 COMMITTEE MEMBER HARMON: That's the
21 laboratory entity question again, right?

22 COMMITTEE MEMBER LYLE: Right, but it seemed
23 like it was more directed at changing the ISOR,
24 which correct me if I'm wrong Alex, it doesn't seem
25 like we need to comment on that?

1 MS. STUPPLE: Yeah, it's a duplicate anyway.

2 COMMITTEE MEMBER LYLE: Okay. So should I go
3 on to 132? Hearing no objections.

4 Well, we have the testing and analysis
5 thing, so we can refer back to 82 or whatever it is.

6 The only other change was swapping out the
7 word procedures for the word instruments. The word
8 procedures was added because the procedure
9 encompasses all aspects of the analysis process
10 including the instrumental portion and does not make
11 the sentence any more awkward than it was
12 originally.

13 So kind of snarky, but do you feel like that
14 answers the comment?

15 [Telephone dialing]

16 CHAIR KIMSEY: Let's take a break, please.

17 (Off the record 12:05 p.m. to 12:15 p.m.)

18 CHAIR KIMSEY: We're back officially. I
19 think we were at 130 or 131.

20 COMMITTEE MEMBER LYLE: This is Bruce. On
21 131 Dan is going to read Jennifer Shen some language
22 to put in instead of mine.

23 COMMITTEE MEMBER SHEN: All right. So the
24 whole thing is going to be different?

25 COMMITTEE MEMBER JEFFRIES: No. What we're

1 going to do is go back to the original language, so
2 Bruce's comment about consider rewording, we're not
3 going to reword, we're going to leave it just the
4 way that it's originally be proposed by the
5 committee. And so my language is only as to our
6 response to the public comment.

7 COMMITTEE MEMBER SHEN: Okay. So we're
8 leaving it the way we, the committee, proposed.

9 COMMITTEE MEMBER JEFFRIES: Correct.

10 COMMITTEE MEMBER SHEN: All right, I'm
11 ready.

12 COMMITTEE MEMBER JEFFRIES: And our response
13 to the public comment is, The committee does not
14 feel it is necessary to specify procedures employed
15 for specific determination of accuracy of
16 instruments as it is well understood in the
17 scientific community.

18 COMMITTEE MEMBER SHEN: Okay. The committee
19 does not feel it is necessary to specify procedures
20 employed for specific determination of accuracy of
21 instruments as it is well understood in the
22 scientific community.

23 COMMITTEE MEMBER LYLE: And then we leave
24 the language as originally proposed by the
25 committee.

1 COMMITTEE MEMBER SHEN: Leave as originally
2 proposed by committee. Okay, got it.

3 COMMITTEE MEMBER LYLE: Then in 132, the
4 first section we would say see the response in 1:82.

5 COMMITTEE MEMBER SHEN: Okay.

6 COMMITTEE MEMBER LYLE: Then I said, The
7 only other change was swapping out the word
8 procedures for the word instruments. The word
9 procedures was added because the procedure
10 encompasses all aspects of the analysis process
11 including the instrumental portion and does not make
12 the sentence any more awkward than it originally
13 was. And the committee seemed to think that was
14 okay.

15 COMMITTEE MEMBER SHEN: Yeah, I agree.

16 COMMITTEE MEMBER LYLE: And then the second
17 part was, The committee did not feel that the
18 regulations were the proper place to include every
19 possible step in each process, given the multitude
20 of options in use. The original regulations did not
21 contain these micro steps and the authors of the
22 statutes did not require them.

23 COMMITTEE MEMBER SHEN: Sounds good to me.

24 COMMITTEE MEMBER LYLE: Okay.

25 MS. STUPPLE: But then there's the part

1 about the law enforcement again.

2 COMMITTEE MEMBER JEFFRIES: Again we
3 probably should just use that same language before,
4 which is something like the committee does not
5 intend to regulate procedures for alcohol testing
6 devices used by law enforcement agencies, whatever
7 that language was we used.

8 MS. STUPPLE: Right.

9 COMMITTEE MEMBER SHEN: What comment was
10 that?

11 COMMITTEE MEMBER JEFFRIES: It was a couple
12 of comments ago, the committee does not intend to
13 regulate procedures for alcohol testing devices used
14 by law enforcement.

15 MS. STUPPLE: I think it was 126.

16 COMMITTEE MEMBER SHEN: Okay. I'm just going
17 to put that in, 126, instead of rewriting it.

18 COMMITTEE MEMBER JEFFRIES: Right.

19 COMMITTEE MEMBER SHEN: Okay.

20 MS. STUPPLE: So then the problem is the
21 next response to the comment, 133.

22 COMMITTEE MEMBER LYLE: We're moving to 133?
23 Is that what you said, Alex?

24 MS. STUPPLE: We're talking about 133 now,
25 yeah.

1 COMMITTEE MEMBER LYLE: Okay. So what I said
2 was, The ISOR does not state that the training/
3 qualifications regimens between an analyst and a
4 breath operator will be exact copies. That would be
5 ridiculous due to many factors, the least of which
6 is the breath instrument operator is generally a
7 different person than the forensic analyst. The
8 operator is generally a law enforcement officer
9 whereas the analyst is generally not. Training a law
10 enforcement officer for forty hours would be a waste
11 of time. Four hours should suffice. The subjects in
12 sections 1221.2(a)(3)(A)(i), (iii) through --

13 COMMITTEE MEMBER SHEN: Bruce?

14 COMMITTEE MEMBER LYLE: Yes?

15 COMMITTEE MEMBER SHEN: So for some reason,
16 and I don't know why, I think it must have been the
17 shortening of the ISOR or something happened, so a
18 justification got put in that we didn't write, so
19 I've changed that. Of course this is not the correct
20 justification. Alex and I have talked about this
21 before.

22 That's one of the things that you'll see
23 changed in the ISOR, the justification is changed to
24 be more reasonable.

25 COMMITTEE MEMBER LYLE: Okay.

1 COMMITTEE MEMBER SHEN: So I'm thinking that
2 we should just put that the ISOR was (inaudible).

3 What do you want to do with that, Alex?

4 MS. STUPPLE: I'm a little confused because
5 operators, is that law enforcement?

6 COMMITTEE MEMBER LYLE: Generally, yes.

7 MS. STUPPLE: So we are in a sense
8 regulating law enforcement.

9 COMMITTEE MEMBER JEFFRIES: I think we're
10 only regulating law enforcement when it comes to the
11 point they're using equipment that is for
12 evidentiary purposes which is supplied by the
13 laboratory.

14 But where we're going with it, we're not
15 making any changes to the existing law, we're
16 leaving it exactly the way it is with just a little
17 tweaking of the language.

18 COMMITTEE MEMBER SHEN: Before we get to
19 that part, this first part, Bruce, I'm just going to
20 change it to the ISOR justification is incorrect and
21 has been corrected.

22 COMMITTEE MEMBER LYLE: Okay.

23 COMMITTEE MEMBER SHEN: That was some crazy
24 thing happened there.

25 COMMITTEE MEMBER HARMON: So Alex, where are

1 you at? Law enforcement is only regulated if they
2 use the instruments that the laboratory provides.
3 That's the regulation. If they use the instruments
4 that the laboratory provides then they have to go
5 through the laboratory provided training.

6 COMMITTEE MEMBER LYLE: So it seems a
7 stretch to say that we're regulating them by making
8 sure that they're being trained and discussing what
9 the training is.

10 Or is that what you're saying, Alex?

11 MS. STUPPLE: I don't think that's a stretch
12 to say that, and I think that the way the
13 regulations are worded, even though you haven't
14 changed much, it's not saying laboratories shall
15 only provide instruments to law enforcement if they
16 train the law enforcement. That would be regulating
17 the laboratory, but to me it sounds like it's
18 regulating law enforcement.

19 And then 133 kind of says that you are. So I
20 don't know how you want to -- I don't know, maybe
21 there's not really a solution to that.

22 COMMITTEE MEMBER SHEN: Do we want to
23 specify the difference between regulating and
24 training?

25 COMMITTEE MEMBER JEFFRIES: We're not really

1 proposing any changes to the language, so we're not
2 suggesting making changes to the language. What
3 we're talking is just how do we respond to the
4 public comment, and maybe our response is again
5 we're not intending to regulate the field alcohol
6 testing devices used by law enforcement.

7 MS. STUPPLE: Okay.

8 COMMITTEE MEMBER JEFFRIES: But you're
9 right, Alex. We're regulating what law enforcement
10 can do if they are using devices that are provided
11 by a laboratory.

12 MS. STUPPLE: Right.

13 COMMITTEE MEMBER JEFFRIES: Which is what
14 most law enforcement are using for evidentiary
15 purposes.

16 MS. STUPPLE: Maybe put that in there, that
17 last part, that it's only when the lab is providing
18 the instruments. Because it doesn't really say that.

19 COMMITTEE MEMBER JEFFRIES: Okay. I like
20 that.

21 So Jennifer, you have all that?

22 COMMITTEE MEMBER SHEN: I just did something
23 crazy on my laptop and it's some weird thing and I
24 can't get back to my -- I'm in the header or
25 something. So I don't have it, I'm sorry.

1 COMMITTEE MEMBER JEFFRIES: Okay. Let me
2 know when you're ready and I'll read it to you.

3 COMMITTEE MEMBER SHEN: All right. Okay.
4 Shoot.

5 COMMITTEE MEMBER JEFFRIES: The committee is
6 not intending to regulate preliminary field alcohol
7 testing devices used by law enforcement.

8 COMMITTEE MEMBER SHEN: Okay.

9 COMMITTEE MEMBER JEFFRIES: The training
10 regulations apply only to instruments provided by a
11 laboratory.

12 COMMITTEE MEMBER SHEN: Okay. The committee
13 is not intending to regulate preliminary field
14 alcohol testing devices used by law enforcement.

15 The training regulations apply only to
16 instruments provided by a laboratory.

17 COMMITTEE MEMBER JEFFRIES: Yes.

18 COMMITTEE MEMBER SHEN: All right.

19 COMMITTEE MEMBER LYLE: Are we good with
20 that, Alex?

21 MS. STUPPLE: Yes.

22 COMMITTEE MEMBER JONES: This is Eric. I
23 have just a question for my own knowledge. Do we
24 define who an operator is in here?

25 CHAIR KIMSEY: Yes.

1 COMMITTEE MEMBER JEFFRIES: I think we do,
2 but I don't know where.

3 CHAIR KIMSEY: So we can move this along,
4 that's new section 1221.2(a)(5).

5 COMMITTEE MEMBER JEFFRIES: We do have it
6 defined where we say an operator shall be a forensic
7 alcohol analyst or a person who has completed
8 successfully the training described under section
9 etcetera, etcetera, and who can be called upon to
10 operate a breath testing instrument in the
11 performance of his or her duties. I think that's the
12 paragraph under which your officers would fall.

13 COMMITTEE MEMBER JONES: Okay, thank you.

14 COMMITTEE MEMBER HARMON: How we doing,
15 Jennifer?

16 COMMITTEE MEMBER SHEN: I'm back online
17 here, I got out of my header.

18 COMMITTEE MEMBER HARMON: Do you have the
19 language, Dan?

20 COMMITTEE MEMBER JEFFRIES: Did you write it
21 down?

22 COMMITTEE MEMBER SHEN: I did. The committee
23 is not intending to regulate -- that one?

24 COMMITTEE MEMBER JEFFRIES: Yes.

25 COMMITTEE MEMBER SHEN: Yeah, I got it.

1 COMMITTEE MEMBER JEFFRIES: Okay.

2 COMMITTEE MEMBER LYLE: This is Bruce. So
3 1:134, I didn't know how to answer the first part of
4 that. The committee has proposed to add additional
5 detail describing the requirements for training
6 using the precautionary checklist. The language,
7 Description of, and adherence to, the Precautionary
8 Checklist. is not punctuated correctly and is
9 awkward. I didn't know how it was not punctuated
10 correctly. Can anybody tell me?

11 COMMITTEE MEMBER SHEN: I don't know why
12 either.

13 CHAIR KIMSEY: So do we have any grammarians
14 in the group?

15 MS. STUPPLE: You don't need those commas
16 but it's not really the end of the world either.

17 COMMITTEE MEMBER LYLE: Okay. So I answered
18 that last sentence, the committee felt it would be
19 inappropriate to constrain an operator and/or an
20 analyst with a set time frame for instruction.

21 MS. STUPPLE: And can you say why you feel
22 it's inappropriate?

23 COMMITTEE MEMBER HARMON: It's going to
24 differ from laboratory to laboratory.

25 MS. STUPPLE: And why is that okay?

1 COMMITTEE MEMBER HARMON: And instrument to
2 instrument. It's going to depend on whatever process
3 they have in place.

4 CHAIR KIMSEY: And that's okay?

5 MS. STUPPLE: Yeah, why is that okay?

6 COMMITTEE MEMBER JONES: This is Eric.
7 Laboratories use different instruments, as long as
8 they come from the CPL, so each one's a little
9 different.

10 COMMITTEE MEMBER LYLE: So we can say the
11 timeframe is dependent on the instrument and the
12 laboratory and the procedures employed.

13 COMMITTEE MEMBER SHEN: Well, we're not
14 giving time constraints for each and every single
15 topic.

16 COMMITTEE MEMBER LYLE: Right, but we have
17 to explain why we don't in this particular case. The
18 comment says we should specify a required a time
19 period.

20 COMMITTEE MEMBER SHEN: So there's too much
21 variation between laboratories and instrumentation
22 to do so?

23 COMMITTEE MEMBER LYLE: Perfect. Does that
24 satisfy Alex?

25 MS. STUPPLE: Yes.

1 COMMITTEE MEMBER LYLE: All right. Section
2 135, The term Screen Prompt is arguably plain
3 language, however, if is not considered so by the
4 committee, I suggest we add Section 1215(r) to read,
5 because the suggestion is we define screen prompt.

6 COMMITTEE MEMBER SHEN: That's such common
7 vernacular.

8 COMMITTEE MEMBER LYLE: That's what I
9 thought. But if you feel like it is not common
10 language, then we could say, Screen Prompt means an
11 aid to the operator of a computer in the form of a
12 question or statement that appears on the screen
13 showing that the equipment is ready to proceed and
14 indicating the options available.

15 CHAIR KIMSEY: I agree it's common
16 vernacular but that's a very good explanation of it
17 also.

18 COMMITTEE MEMBER SHEN: Yeah, it is. I'm
19 going to use it just because it's so good.

20 COMMITTEE MEMBER JEFFRIES: My only concern
21 is if we use it we'll invite public comment to the
22 new language.

23 COMMITTEE MEMBER SHEN: Right. I think
24 screen prompt, I think you have to live under a rock
25 to not know what that is.

1 CHAIR KIMSEY: I would agree.

2 COMMITTEE MEMBER LYLE: All right. So we're
3 agreed that we do not need to add a definition for
4 screen prompt.

5 COMMITTEE MEMBER HARMON: No definition.

6 COMMITTEE MEMBER SHEN: All right. So I need
7 to change that to say the term screen prompt is
8 arguably plain language.

9 COMMITTEE MEMBER LYLE: Okay.

10 COMMITTEE MEMBER SHEN: And needs no
11 definition.

12 COMMITTEE MEMBER LYLE: Thank you. The
13 second part.

14 COMMITTEE MEMBER SHEN: Didn't we do this
15 before?

16 COMMITTEE MEMBER WONG: Yeah, we talked
17 about a written precautionary checklist.

18 COMMITTEE MEMBER SHEN: Oh, that's right.

19 COMMITTEE MEMBER HARMON: And we eliminated
20 that.

21 COMMITTEE MEMBER WONG: Um-hmm.

22 COMMITTEE MEMBER SHEN: This one says, The
23 Precautionary Checklist shall be incorporated into
24 the testing sequence is confusing.

25 COMMITTEE MEMBER HARMON: It is not

1 confusing.

2 COMMITTEE MEMBER LYLE: Right. So what I
3 said if it's truly confusing then I had some
4 suggestions, but if you don't feel it's truly
5 confusing.

6 COMMITTEE MEMBER HARMON: Incorporate it
7 however that works, not confusing.

8 COMMITTEE MEMBER SHEN: So we're going to
9 say that is not confusing.

10 COMMITTEE MEMBER LYLE: Do we have to say
11 why it's not confusing?

12 COMMITTEE MEMBER SHEN: Because it's common
13 language.

14 What do you think, Alex?

15 MS. STUPPLE: I think that's okay.

16 COMMITTEE MEMBER SHEN: Hang on a second.

17 COMMITTEE MEMBER LYLE: Okay, I'm hanging.

18 COMMITTEE MEMBER SHEN: All right, got it.

19 COMMITTEE MEMBER LYLE: They say nothing in
20 the definition of a precautionary checklist purports
21 it to be a printed document, because there was some
22 question here as to whether it's printed out.

23 COMMITTEE MEMBER HARMON: I think we
24 resolved that already.

25 COMMITTEE MEMBER LYLE: Did we resolve it?

1 You did it without me.

2 COMMITTEE MEMBER HARMON: In definition, I
3 think, right? Like a long time ago.

4 COMMITTEE MEMBER SHEN: Right. Yeah.

5 COMMITTEE MEMBER LYLE: Okay.

6 COMMITTEE MEMBER SHEN: So we have that same
7 time constraint thing again.

8 COMMITTEE MEMBER LYLE: Yeah.

9 COMMITTEE MEMBER SHEN: So the issue is that
10 the precautionary checklist and the screen prompts
11 around the instrument are used sort of synonymously
12 and maybe that isn't accurate.

13 COMMITTEE MEMBER JEFFRIES: I think that's
14 true, I think they're not synonymous. My experience
15 is that we're talking about two different things.

16 COMMITTEE MEMBER SHEN: Right. So do we have
17 it written?

18 COMMITTEE MEMBER LYLE: The commenter says
19 the regulations appear to describe the precautionary
20 checklist as a record, not a series of screen
21 prompts. This ambiguity of the current regulations
22 is not addressed with the new requirements here.

23 COMMITTEE MEMBER SHEN: So if you look at
24 (d)(i), says The Precautionary Checklist shall be
25 incorporated into the testing process. And then

1 (d)(ii) each instrument screen prompt shall be
2 discussed and reviewed by the instructor.

3 So I could see why you might think that the
4 precautionary checklist is being given to you and
5 incorporated by screen prompts.

6 COMMITTEE MEMBER HARMON: Can you just say
7 each instrument's screen prompt shall be discussed
8 and reviewed by the instructor when appropriate?

9 COMMITTEE MEMBER SHEN: I'm not the alcohol
10 person here, but the screen prompts are to get you
11 through actually running the tests?

12 COMMITTEE MEMBER HARMON: precautionary
13 checklists can be used for two different things, it
14 could be written or it could be prompts, and the
15 precautionary checklist is ensuring that the
16 regulations are being met.

17 COMMITTEE MEMBER SHEN: Okay. So the screen
18 prompts talked about here under (d) is practical
19 experience, the screen prompts here could easily
20 mean operating the instrument versus using the
21 precautionary checklist, correct?

22 COMMITTEE MEMBER HARMON: Correct.

23 COMMITTEE MEMBER SHEN: Maybe we could the
24 precautionary checklist shall be incorporated into
25 the testing process up under (c), precautionary

1 checklist.

2 COMMITTEE MEMBER HARMON: Yes.

3 COMMITTEE MEMBER SHEN: And then when we get
4 under practical experience and we start with screen
5 prompts it's not so confusing.

6 COMMITTEE MEMBER HARMON: Yes, I would
7 agree. I would say each instrument's screen prompts
8 shall be discussed and reviewed by the instructor
9 when appropriate.

10 COMMITTEE MEMBER SHEN: When applicable?

11 COMMITTEE MEMBER HARMON: When applicable,
12 that's fine.

13 COMMITTEE MEMBER SHEN: So in order to
14 answer this comment we are going to be saying that
15 the committee agrees and will remove whatever that
16 is up to the one in front of it?

17 COMMITTEE MEMBER LYLE: (d)(i) will be
18 incorporated under (2)(c)(ii).

19 COMMITTEE MEMBER HARMON: Jennifer Harmon.
20 It should probably just say (c) should just be the
21 precautionary checklist shall be incorporated into
22 the testing process.

23 And then when you get to (d), which is
24 practical experience, the (i) should be gone. The
25 (ii) should stay the same with the modification of

1 when applicable. (iii) should stay. And then (iv)
2 the instructor shall observe the trainee perform a
3 test on the instrument. I wouldn't include the
4 precautionary checklist there.

5 COMMITTEE MEMBER SHEN: Okay. So (c) is
6 going to be precautionary checklist and the only
7 thing under (c) is going to be the precautionary
8 checklist shall be incorporated into the testing
9 process.

10 COMMITTEE MEMBER HARMON: Correct.

11 COMMITTEE MEMBER SHEN: So everything under
12 (c) right now will go away?

13 COMMITTEE MEMBER HARMON: Yes.

14 COMMITTEE MEMBER SHEN: All right.

15 COMMITTEE MEMBER HARMON: I'm not really
16 sure what that means, description of and adherence
17 to.

18 COMMITTEE MEMBER SHEN: Well, it's awkward
19 and poorly grammaticized.

20 COMMITTEE MEMBER HARMON: Yes.

21 COMMITTEE MEMBER SHEN: So then under
22 practical experience, (i) is going to be each
23 instrument's screen prompts shall be discussed or
24 reviewed by the instructor when applicable.

25 COMMITTEE MEMBER HARMON: Yes.

1 COMMITTEE MEMBER SHEN: (ii) will be the
2 operation of the breath instrument shall be
3 demonstrated by the instructor.

4 COMMITTEE MEMBER HARMON: Yes.

5 COMMITTEE MEMBER SHEN: And (iii) will be
6 the instructor shall observe the trainee perform a
7 test on the instrument while he or she acknowledges
8 each step of the precautionary checklist?

9 COMMITTEE MEMBER HARMON: I would say the
10 instructor shall observe the trainee perform a test
11 on the instrument, period.

12 COMMITTEE MEMBER SHEN: Okay, period. Does
13 everyone agree with that?

14 COMMITTEE MEMBER LYLE: Yes.

15 COMMITTEE MEMBER JEFFRIES: Yes.

16 CHAIR KIMSEY: Yes.

17 COMMITTEE MEMBER SHEN: Okay. So I need to
18 know why we're doing all that. My understanding is
19 that the committee is agreeing that the
20 precautionary checklist incorporation into the
21 testing sequence and the screen prompts can be
22 confusing because they can be two separate things.
23 So therefore we moved some verbiage around to create
24 clarity.

25 COMMITTEE MEMBER HARMON: Yes.

1 COMMITTEE MEMBER SHEN: Okay.

2 CHAIR KIMSEY: Any additions to 135?

3 COMMITTEE MEMBER LYLE: This is Bruce. It
4 also clears up 134, the comment about the
5 punctuation and it being awkward, it cleans that up
6 too.

7 COMMITTEE MEMBER SHEN: I just want to go on
8 record with the fact that the people at this
9 facility are amazingly awesome.

10 COMMITTEE MEMBER LYLE: Okay.

11 COMMITTEE MEMBER SHEN: They've been taking
12 great care of me.

13 COMMITTEE MEMBER LYLE: Really?

14 COMMITTEE MEMBER SHEN: Yeah. Even when
15 they're moving me all around, they are taking very
16 nice care of me.

17 CHAIR KIMSEY: Wonderful.

18 COMMITTEE MEMBER SHEN: Okay. the committee
19 is agreeing that the precautionary checklist
20 incorporation into the testing sequence and the
21 screen prompts can be construed as being the same
22 when in fact they are not. The committee moved some
23 language around to create clarity about this issue.

24 COMMITTEE MEMBER HARMON: And the very last
25 comment, the one that's being moved to (iii), the

1 way it's worded here right now assumes that the
2 precautionary checklist is the process, whereas the
3 precautionary checklist could be the process or a
4 portion of the process.

5 COMMITTEE MEMBER SHEN: And that's why we
6 can't leave it the way it is.

7 COMMITTEE MEMBER HARMON: Correct.

8 COMMITTEE MEMBER SHEN: Okay. So we're going
9 to introduce a section (iv) assumes the
10 precautionary checklist is part of the process when
11 it may not be?

12 COMMITTEE MEMBER HARMON: It could be the
13 process or a portion thereof. This assumes that it
14 is the process.

15 COMMITTEE MEMBER SHEN: That it may be the
16 process or a portion thereof.

17 COMMITTEE MEMBER HARMON: Correct.

18 COMMITTEE MEMBER SHEN: All right. I am
19 caught up.

20 COMMITTEE MEMBER HARMON: Alex, are you
21 good?

22 MS. STUPPLE: Yeah.

23 COMMITTEE MEMBER HARMON: Okay.

24 COMMITTEE MEMBER LYLE: Okay. Can I go on to
25 136?

1 COMMITTEE MEMBER SHEN: Yeah, I'm ready.

2 COMMITTEE MEMBER LYLE: Okay. 136, the
3 comment was we should add a title to (3)(e) of
4 Written Examination, which I agreed to. Because all
5 the others, (a), (b), (c), (d) have titles.

6 That okay? So 136, adding a title?

7 COMMITTEE MEMBER SHEN: Yes.

8 COMMITTEE MEMBER LYLE: Okay. 137, There was
9 a problem with the idea that (F) might be unclear. I
10 put There is punctuation between the words test and
11 accurately which is believed to be a comma. Because
12 from the copy I get it's all underlined, but it
13 looks like it's a comma. Therefore, the word
14 accurately is in regards to following the
15 Precautionary Checklist, not suggesting the breath
16 test be accurate.

17 COMMITTEE MEMBER JEFFRIES: Can we just
18 clarify that the copy I'm looking at, the one most
19 recently sent out to us has all that language
20 crossed out. Are we proposing to include
21 1221.4(a)(3)(F)? The copy I'm looking at (inaudible)
22 October 2015, it's crossed out.

23 COMMITTEE MEMBER SHEN: That's on the second
24 page. That says, Upon successful completion of the
25 training session and successful completion of both

1 the written and practical examinations, the trainee
2 will be issued a certificate.

3 COMMITTEE MEMBER LYLE: That's (g).

4 COMMITTEE MEMBER JEFFRIES: The copy I'm
5 looking at also has it at that. I show the old (F)
6 that would talk about successfully complete as being
7 stricken, and the new (F) refers to issuance of a
8 certificate that includes the operator's name.

9 COMMITTEE MEMBER SHEN: Right, that's what I
10 have. So I have our new (F) being, Upon successful
11 completion.

12 COMMITTEE MEMBER LYLE: And the public
13 comment was based on what looks like language that's
14 been stricken.

15 COMMITTEE MEMBER JEFFRIES: When did it get
16 stricken?

17 COMMITTEE MEMBER SHEN: I have no idea.
18 Before we sent it out, apparently.

19 COMMITTEE MEMBER LYLE: Before we sent it
20 out to the public, because the public is commenting
21 on (F) that I have in our revision from that time.
22 From the time of the public comment (F) was there.

23 COMMITTEE MEMBER JEFFRIES: And Jennifer,
24 your note on it in the tracked changes version says,
25 removed as redundant to practical experience (4),

1 and it looks like that comment is from JS32, which I
2 assume is your comment.

3 COMMITTEE MEMBER SHEN: Yeah.

4 COMMITTEE MEMBER JEFFRIES: So it looks like
5 you removed it and that was the last change, you
6 removed it as being redundant to practical
7 experience sub(4). And I agree, that is the correct
8 reference and it does seem to be referring to the
9 same thing as practical experience (4).

10 COMMITTEE MEMBER SHEN: I think I might have
11 gotten a little hysterical when I was looking at
12 everything (inaudible). Because I think I tried to
13 make some changes that didn't seem like they had
14 huge import, and that may be one that I did. So
15 sorry about that.

16 COMMITTEE MEMBER HARMON: So the language
17 should be that it's been removed?

18 COMMITTEE MEMBER LYLE: It's removed.

19 COMMITTEE MEMBER JEFFRIES: In the most
20 recent version it is removed.

21 COMMITTEE MEMBER SHEN: Yeah, it was removed
22 because it was redundant.

23 COMMITTEE MEMBER JEFFRIES: Right.

24 COMMITTEE MEMBER SHEN: Because we already
25 had practical experience. And I think someone made

1 that public comment somewhere. Most of those things
2 I did because I saw someone say that's not right or
3 why are you doing this?

4 COMMITTEE MEMBER LYLE: So our comment in
5 response to the public comment for 137 is the
6 proposed language of 1221.4(a)(3)(F) has been
7 removed as being redundant.

8 COMMITTEE MEMBER SHEN: Yeah, I think so. So
9 then this other comment I can take out too?

10 COMMITTEE MEMBER LYLE: Under 137?

11 COMMITTEE MEMBER HARMON: You can take it
12 all out.

13 COMMITTEE MEMBER LYLE: I guess you can take
14 all of them out.

15 COMMITTEE MEMBER SHEN: Okay. So all I have
16 is that it was taken out because it was redundant.
17 That's it.

18 COMMITTEE MEMBER LYLE: Right.

19 COMMITTEE MEMBER SHEN: Okay. Does everyone
20 agree that it was redundant?

21 COMMITTEE MEMBER HARMON: I believe it's
22 redundant.

23 COMMITTEE MEMBER JEFFRIES: Now in (4) which
24 says the instructor shall observe the trainee
25 perform a test on the instrument while he or she

1 acknowledges each step of the precautionary
2 checklist.

3 COMMITTEE MEMBER HARMON: But we eliminated
4 the requirement to acknowledge each step of the
5 precautionary checklist.

6 COMMITTEE MEMBER JEFFRIES: Right.

7 COMMITTEE MEMBER HARMON: Again, I don't
8 think that's necessary. If they're performing the
9 test they are either going through the precautionary
10 checklist as a part of the process or it is the
11 process. There is no way to perform a test without
12 doing something involving the precautionary
13 checklist.

14 COMMITTEE MEMBER SHEN: Okay. So we took it
15 out because we said we are doing the practical
16 exercise.

17 COMMITTEE MEMBER JEFFRIES: Right.

18 COMMITTEE MEMBER LYLE: This is Bruce.
19 Moving on to 138, I responded by saying, By removing
20 the Department's statutory authority to license
21 laboratories, the 2004 legislation left a void in
22 who/what would regulate labs and by extension, those
23 who perform forensic alcohol work. The committee
24 felt that by issuing a document of completion or a
25 certificate, laboratories would adequately fill the

1 gap left by the Department's departure.

2 COMMITTEE MEMBER SHEN: So I should put in
3 the place/entity thing again?

4 COMMITTEE MEMBER LYLE: Well, it's not
5 really a laboratory.

6 COMMITTEE MEMBER SHEN: There are observed
7 again place/entity issues.

8 COMMITTEE MEMBER LYLE: The comment before
9 about lab, I think it's the same comment that we've
10 used before.

11 COMMITTEE MEMBER HARMON: I think the key
12 part here though is the Department is saying that
13 they can't certify people even if that is
14 (inaudible) by a laboratory doing so.

15 Can a laboratory certify somebody on going
16 through a process? Alex, peripherally through the
17 Department?

18 MS. STUPPLE: You mean can the Department
19 make a laboratory certify a person?

20 COMMITTEE MEMBER HARMON: Right, because
21 basically the laboratory has to issue a certificate
22 to a breath operator. Is that a problem?

23 COMMITTEE MEMBER SHEN: That's what's been
24 being done forever, we've always done it.

25 COMMITTEE MEMBER WONG: We've always done

1 it, too.

2 COMMITTEE MEMBER LYLE: Right, but the
3 comment is saying that there's no statutory
4 authority for a laboratory to issue these licenses
5 or certificates.

6 COMMITTEE MEMBER WONG: But they're doing it
7 right now.

8 COMMITTEE MEMBER JEFFRIES: And I think we
9 just have to clarify that what we're really
10 regulating is the training that's provided by the
11 laboratory, not what the law enforcement officer is
12 doing in the field.

13 So we're saying that the laboratories are
14 regulated that if they're going to conduct training,
15 part of that process at the end of it is issuing a
16 certificate. So we're actually regulating what the
17 laboratories do as part of their training.

18 MS. STUPPLE: See, we want to change that
19 response where it says there's a void in who is
20 going to regulate labs.

21 COMMITTEE MEMBER SHEN: Yeah, because that's
22 not the issue.

23 COMMITTEE MEMBER LYLE: So maybe just use
24 that last sentence that says, The committee felt
25 that by issuing a document of completion or a

1 certificate, laboratories could assist in
2 identifying trained operators?

3 COMMITTEE MEMBER SHEN: Yeah, that is what
4 it's for.

5 COMMITTEE MEMBER LYLE: Right.

6 COMMITTEE MEMBER SHEN: That is exactly what
7 it's for. So we want to say --

8 COMMITTEE MEMBER WONG: Laboratories verify
9 that operators are trained to administer breath
10 tests.

11 COMMITTEE MEMBER SHEN: Okay. The committee
12 felt that by laboratories issuing certificates to
13 trainees upon completion of the training, it assists
14 in identifying those officers trained to administer
15 breath tests?

16 COMMITTEE MEMBER JEFFRIES: Maybe get rid of
17 officers and put operators.

18 COMMITTEE MEMBER SLAUGHTER: Operators, yes.

19 COMMITTEE MEMBER SHEN: Operators. Okay.
20 Does that work?

21 COMMITTEE MEMBER JEFFRIES: Works for me.

22 COMMITTEE MEMBER SHEN: Okay. The committee
23 felt that by laboratories issuing certificates to
24 trainees upon completion of the training, it assists
25 in identifying those operators trained to administer

1 breath tests.

2 COMMITTEE MEMBER HARMON: Sounds good.

3 COMMITTEE MEMBER SHEN: All right.

4 COMMITTEE MEMBER HARMON: Shall we try to do
5 one more before lunch?

6 COMMITTEE MEMBER SHEN: Yeah.

7 CHAIR KIMSEY: Sure.

8 COMMITTEE MEMBER LYLE: This is Bruce. 139,
9 The comment was that the review committee should
10 consider the need to include these topics, these
11 legal aspects of breath tests and any periodic
12 determination of accuracy activities performed by
13 regular instrument operators.

14 What I said was, Officers receive training
15 about the legal aspects of their jobs by other means
16 at their own agencies. Officers should be the
17 experts on the law and the vehicle code, knowing
18 when it is appropriate to take a breath sample from
19 a subject, and they should know it better than the
20 laboratory teaching the breath operator training
21 class. Therefore, it does not need to be explicitly
22 discussed in the class, or included as a requirement
23 in the regulation.

24 As for including periodic determinations of
25 accuracy (PDA) training in the class, it is not

1 relevant for all operators. There are laboratories
2 in the State that perform these determinations on
3 their own, with the officers/operators only using
4 the instruments for testing purposes. The regulation
5 should not require all operators to undergo PDA
6 training if it is not relevant to them. However, it
7 would be beneficial for those operators that do
8 perform checks on their instruments regularly to
9 have training on how to conduct PDAs.

10 Suggest adding Subsection (H), If
11 applicable, operators expected to regularly conduct
12 PDAs on breath instruments shall be trained on the
13 procedures/process.

14 COMMITTEE MEMBER JEFFRIES: I like all of it
15 up to the word however and I'd just get rid of the
16 word however. I don't know that we want to add any
17 regulations as to what the officers are supposed to
18 do, because we're now talking about what the lab is
19 doing as part of their training curriculum.

20 CHAIR KIMSEY: Which brings up the question
21 we use officers and operators sort of
22 interchangeably here, I think.

23 COMMITTEE MEMBER SHEN: Let's take that
24 officer/ operator and change it to operator only.

25 COMMITTEE MEMBER JEFFRIES: Okay.

1 COMMITTEE MEMBER WONG: I agree.

2 COMMITTEE MEMBER SHEN: What about removing
3 the last part of the comment?

4 COMMITTEE MEMBER JEFFRIES: I guess where
5 it's coming from is the Department has commented
6 that it would be appropriate. Who's that coming
7 from? Have we seen somewhere where someone from the
8 Department is saying that?

9 CHAIR KIMSEY: I don't know. It's from the
10 public comment.

11 COMMITTEE MEMBER JEFFRIES: The public
12 comment says the Department has said this is
13 necessary but I'm not sure where that's coming from.

14 MS. STUPPLE: There's a footnote 115 not
15 attached to these comments so I don't have it right
16 here.

17 CHAIR KIMSEY: We could have the
18 subcommittee look at the footnote.

19 COMMITTEE MEMBER SHEN: The Department has
20 commented that it would be appropriate. The review
21 committee should consider the need to include these.

22 Well, yeah, I don't know. The Department did
23 that?

24 COMMITTEE MEMBER JEFFRIES: Well, I think we
25 all agree on everything all the way up to however,

1 and then our only conversation is whether we feel
2 like we should regulate it, and I just don't think
3 we should.

4 COMMITTEE MEMBER SHEN: I don't know. This
5 is a member of the public, this is not the
6 Department, so I don't know what that is.

7 And frankly, the outline of breath training
8 now is much more substantial than it was before,
9 laid out in the regulation.

10 COMMITTEE MEMBER HARMON: Jennifer Harmon. I
11 would eliminate everything from however down, like
12 Dan said. Let the laboratories discern whether or
13 not additional training is necessary. They're the
14 ones who are responsible for reviewing it, which is
15 all in the standards and expectations of the
16 laboratories to know who's doing it and how they're
17 doing it and what the results are. It's in the
18 regulation.

19 COMMITTEE MEMBER SHEN: What do you think,
20 Kenton?

21 COMMITTEE MEMBER WONG: I agree.

22 COMMITTEE MEMBER SHEN: Anybody else?

23 COMMITTEE MEMBER JEFFRIES: I'm good.

24 COMMITTEE MEMBER SHEN: All right. Backing
25 up, getting rid of everything after however.

1 All right. That takes care of that one.

2 COMMITTEE MEMBER HARMON: Did you change
3 officers to operators?

4 COMMITTEE MEMBER SHEN: Yes, I did.

5 COMMITTEE MEMBER HARMON: Thank you.

6 CHAIR KIMSEY: This is Paul. We're at one
7 o'clock. Can we do a lunch in 45 minutes or 30
8 minutes? What's the committee's pleasure?

9 COMMITTEE MEMBER HARMON: Jennifer Harmon in
10 Orange County. We're going to need an hour.

11 CHAIR KIMSEY: Okay.

12 COMMITTEE MEMBER HARMON: Sorry about that.

13 CHAIR KIMSEY: That's okay. We'll start back
14 up again at two o'clock. Leave everything on,
15 please.

16 COMMITTEE MEMBER JEFFRIES: Paul, before we
17 go.

18 CHAIR KIMSEY: Yes.

19 COMMITTEE MEMBER JEFFRIES: Would you like
20 just to do a recap as we did yesterday since Mark
21 wasn't here yesterday just to kind of make it clear
22 that we've covered everything up to 139, and that
23 we're all in agreement with everything that's been
24 discussed from 97 up to 139 so far.

25 CHAIR KIMSEY: Sure. Didn't we get started

1 around 118?

2 COMMITTEE MEMBER HARMON: We actually went
3 back to 107.

4 CHAIR KIMSEY: That's correct. Okay.

5 COMMITTEE MEMBER HARMON: So let's go from
6 107 to 139.

7 CHAIR KIMSEY: Okay. This is Paul Kimsey,
8 and I agree with the discussions as presented by the
9 committee.

10 COMMITTEE MEMBER WONG: I concur.

11 COMMITTEE MEMBER SLAUGHTER: Mark Slaughter,
12 I concur.

13 COMMITTEE MEMBER JONES: Eric Jones, I
14 concur.

15 COMMITTEE MEMBER SHEN: Jennifer Shen, I
16 concur.

17 COMMITTEE MEMBER HARMON: Jennifer Harmon, I
18 concur.

19 COMMITTEE MEMBER JEFFRIES: Dan Jeffries, I
20 concur.

21 COMMITTEE MEMBER LYLE: Bruce Lyle, I
22 concur.

23 CHAIR KIMSEY: Okay. Thank you very much.
24 We'll bring it back up at two o'clock.

25 (Lunch Recess at 1:00 p.m.)

1 The other thing we've already talked a bit
2 about is setting up a subcommittee to address
3 certain issues, on behalf of the full Committee.

4 And also I think as we go through this
5 afternoon, when we recognize -- I think we're going
6 to get some repetitions on areas and that will help
7 us move a bit quicker if we just say this is a
8 repeat. And I can work, most likely, with Jennifer
9 Shen to identify those, rather than hunt and peck,
10 and reword, so if we think it's a repetition, we can
11 note that, and that we've already discussed and
12 comment on it. And then, we can come back either
13 tomorrow, or whenever, and get that text put in.

14 Alex, what is our prospect of extending the
15 meeting a little bit?

16 MS. STUPPLE: I don't know, let me look for
17 a second.

18 CHAIR KIMSEY: Okay, that's fine.

19 COMMITTEE MEMBER SHEN: Yeah, Paul, this is
20 Jennifer. I also can stay late, if that works. But I
21 took the liberty of cutting and pasting all the
22 repetitive comments, already.

23 CHAIR KIMSEY: Okay.

24 COMMITTEE MEMBER SHEN: So we should be able
25 to move through that pretty quickly.

1 CHAIR KIMSEY: Oh, okay.

2 Let's see, what else were we thinking? So
3 anyhow, Alex will check on extending the meeting a
4 little bit. I think it's a great goal to finish up
5 today.

6 So was there another area, issue we wanted
7 to discuss? Then let's go ahead and maybe we should
8 have some public comment. Any public comment?

9 Okay, I think we're back to 140.

10 COMMITTEE MEMBER LYLE: All right, this is
11 Bruce. Under 140, they have the repeat testing and
12 analysis.

13 And then there was a comment about
14 curriculum and allowing the laboratory staff to
15 develop the curriculum. What I said was the
16 curriculum development is now recognized as an
17 extremely important part of any training. The
18 original regulations did not address who would be
19 performing the curriculum development. And the
20 changes here were designed to address this.

21 The original regulations also use the
22 phrase, under the supervision, which is very clear.

23 The revised regulations deleted this unclear
24 language and replaced it with much clearer language,
25 directing the analysts to develop curriculum.

1 COMMITTEE MEMBER SHEN: Sounds great.

2 CHAIR KIMSEY: Sounds good.

3 COMMITTEE MEMBER LYLE: All right, and then
4 the next issue that was raised, supervision of the
5 training was removed because the Committee felt that
6 developing the curriculum and providing the
7 instructor were enough involvement in the process.
8 I'm into the last, paid level approval was removed
9 because the statute removed licensing ability from
10 the department. Approval of training is part of the
11 licensing process.

12 No other State agency was identified or
13 suggested as a likely approver. Scientific oversight
14 will be provided by the forensic scientists
15 performing the training, thus ensuring that breath
16 alcohol analysis is performed correctly, competently
17 and consistently in California.

18 COMMITTEE MEMBER SHEN: I think we should
19 change the word analysis to testing.

20 COMMITTEE MEMBER HARMON: Agreed.

21 CHAIR KIMSEY: And back in the middle there
22 it says, no other State agency was identified or
23 suggested as a likely approver. And we should put,
24 no other State agency was identified in the
25 legislation.

1 COMMITTEE MEMBER LYLE: Okay.

2 CHAIR KIMSEY: I mean, just so it's --

3 COMMITTEE MEMBER LYLE: Right.

4 COMMITTEE MEMBER SHEN: Okay.

5 COMMITTEE MEMBER LYLE: And I have a
6 correction of my own. Where I say, oversight will be
7 provided by the forensic scientist, we should say
8 forensic analysis, I guess, forensic alcohol analyst
9 or something, who that person actually is.

10 COMMITTEE MEMBER SHEN: Where is that?

11 COMMITTEE MEMBER LYLE: It's right after
12 where it says --

13 COMMITTEE MEMBER SHEN: So we're going to
14 put forensic alcohol analyst?

15 COMMITTEE MEMBER LYLE: Yeah, performing the
16 training.

17 COMMITTEE MEMBER SHEN: All right.

18 COMMITTEE MEMBER LYLE: And the next
19 paragraph says, what every state does is helpful
20 sometimes, but is not a compelling reason for how
21 California does something.

22 COMMITTEE MEMBER SHEN: Okay.

23 COMMITTEE MEMBER LYLE: The next comment had
24 to do with we eliminated the descriptor of persons
25 who qualify as the four forensic alcohol analysts.

1 And then it went on to say, persons who qualify as
2 was removed as redundant.

3 And then the comment, it appears that the
4 language should be retained absent any State level
5 or any external approval of personnel.

6 So I didn't really have a dog in the fight,
7 so I said we could put it back in, if you wanted.

8 COMMITTEE MEMBER SHEN: So that is (a)(4).

9 COMMITTEE MEMBER LYLE: Anybody else have
10 any --

11 COMMITTEE MEMBER SHEN: So what we've taken
12 out was under the supervision of persons who
13 qualify, and we just want to take out under the
14 supervision of and just leave person who's
15 qualified? Persons who qualify, is that what we're
16 doing?

17 COMMITTEE MEMBER LYLE: So what we did --
18 okay, let me find it again.

19 COMMITTEE MEMBER HARMON: What we have is
20 training curriculum and the procedures of blood
21 alcohol testing shall be developed by a forensic
22 alcohol analyst. Department notification of the
23 proposed curriculum will follow Section 1286.

24 COMMITTEE MEMBER SHEN: And you're
25 suggesting, Bruce, that we put in, the training

1 curriculum and the procedures of blood alcohol
2 testing shall be developed by persons who qualify as
3 a forensic alcohol analyst?

4 COMMITTEE MEMBER LYLE: Yeah, we have
5 stricken out who qualify as. And the comments were
6 we felt like we should put it back in and I didn't
7 see an argument against it.

8 COMMITTEE MEMBER HARMON: I think we already
9 defined what a forensic alcohol analyst is. I don't
10 know that we have to state that they're qualified,
11 just that we need one.

12 COMMITTEE MEMBER SHEN: I think we already
13 said it was redundant.

14 COMMITTEE MEMBER LYLE: Okay.

15 COMMITTEE MEMBER SHEN: All right. And I'll
16 write that down.

17 COMMITTEE MEMBER LYLE: And then, further on
18 in that sentence it says that, it says the forensic
19 alcohol analyst. And the comments were suggested
20 leaving in forensic alcohol analyst in a forensic
21 alcohol laboratory.

22 COMMITTEE MEMBER HARMON: The goal here is
23 to have curriculum, training curriculum that is
24 developed by a forensic alcohol analyst. That's the
25 goal. I don't know that we need to clarify any

1 further.

2 COMMITTEE MEMBER SHEN: I would agree with
3 that.

4 COMMITTEE MEMBER LYLE: Okay.

5 COMMITTEE MEMBER SHEN: So the goal is to
6 define who develops the curriculum, not where it is
7 developed, where that person works.

8 COMMITTEE MEMBER LYLE: Right.

9 COMMITTEE MEMBER HARMON: And I believe that
10 there's notification about the proposed curriculum
11 in that part of the regulation, as well. It says,
12 department notification of the proposed curriculum
13 will follow Section 1218.1. So by default it's going
14 to define those things, so they have to. Right?

15 COMMITTEE MEMBER SHEN: Yes.

16 COMMITTEE MEMBER HARMON: So I don't think
17 anything more here is needed.

18 COMMITTEE MEMBER LYLE: Okay, and then the
19 last section is similar to the others, where it says
20 that the Committee has not demonstrated, by
21 substantial evidence, how it's going to -- how that
22 proposed language is going to, you know.

23 But in this one it says the language here,
24 which authorizes the laboratory to notify the
25 Department of its training will ensure the

1 competence of breath alcohol analysis, in the
2 absence of the independent authority of a State
3 agency to approve the training.

4 So I felt like I should answer it a little
5 bit more because the commenter is indicating that
6 there is no independent authority in the State that
7 needs to approve the training. And So I just put
8 some history in there, the Legislature removed the
9 independent authority due to their ineffectiveness
10 and adversarial stance and the Committee is unable
11 and unwilling to create a new one.

12 I was speaking for the entire Committee. But
13 I don't know if, I mean, I think I'm on solid ground
14 in saying that the Committee isn't willing to create
15 a new State agency that has the authority to oversee
16 forensic alcohol testing.

17 COMMITTEE MEMBER SHEN: Yeah, I definitely
18 agree with that. But I think we need to remove -- so
19 we're not willing to create a what? A new
20 independent authority?

21 COMMITTEE MEMBER LYLE: Right.

22 COMMITTEE MEMBER SHEN: Gotcha. That is a
23 true statement, that.

24 COMMITTEE MEMBER SLAUGHTER: This is Mark
25 Slaughter. Are we even able to do that?

1 COMMITTEE MEMBER WONG: No.

2 COMMITTEE MEMBER SHEN: No.

3 COMMITTEE MEMBER SLAUGHTER: So why would we
4 put the unwilling?

5 COMMITTEE MEMBER SHEN: Just to be clear
6 that if we could, we wouldn't.

7 COMMITTEE MEMBER SLAUGHTER: Yeah, I just
8 think we're unable to.

9 COMMITTEE MEMBER SHEN: Yes.

10 COMMITTEE MEMBER SLAUGHTER: To create a
11 new, independent agency.

12 COMMITTEE MEMBER SHEN: All right.

13 COMMITTEE MEMBER LYLE: So down to 141 --

14 COMMITTEE MEMBER SHEN: Wait, Alex, do we
15 need to put that little paragraph in, because of the
16 final paragraph in 140?

17 MS. STUPPLE: Yes, I think so.

18 COMMITTEE MEMBER SHEN: Okay. Okay, great.

19 COMMITTEE MEMBER LYLE: So in 141, I said,
20 the Legislature removed the Department's authority
21 to license laboratories due to their ineffectiveness
22 and adversarial stance. The Committee believes the
23 approval of training and qualifying of the
24 structures is a part of the licensing process and
25 must be eliminated from the Department's purview in

1 order to satisfy the statute. For this reason, the
2 proposed regulations remove mention of approval and,
3 instead, focus on the qualifications of the breath
4 instruments instructors. Those qualifications
5 reflect what is successful in the real world.

6 COMMITTEE MEMBER SHEN: All right.

7 COMMITTEE MEMBER LYLE: Then in the next
8 paragraph, I felt like it was answered in that
9 statement above.

10 And then I said, because a laboratory is a
11 place where analysts do the work of the laboratory,
12 there should be no issue with the analysts
13 representing the laboratory, creating the curriculum
14 and performing the instruction.

15 I don't know if that's better said than the
16 other laboratory entity verbiage, but I didn't have
17 that in hand so I had to make something up on my
18 own.

19 COMMITTEE MEMBER SHEN: Is this a place
20 issue?

21 COMMITTEE MEMBER LYLE: Yeah.

22 COMMITTEE MEMBER SHEN: So you're going to
23 put in the place issue comment.

24 COMMITTEE MEMBER LYLE: Okay.

25 COMMITTEE MEMBER SHEN: If we need to. Will

1 that handle this thing?

2 So I'm going to take out your comment and
3 I'm going to put in see comment 118.

4 COMMITTEE MEMBER LYLE: Yeah, okay, because
5 the public comment is talking about the Committee's
6 misunderstanding of the laboratory place under the
7 issue.

8 COMMITTEE MEMBER SHEN: As if we didn't get
9 it the last 40,000 times it came up.

10 COMMITTEE MEMBER LYLE: Right, I'm still
11 misunderstanding it, apparently.

12 COMMITTEE MEMBER SHEN: So that's 118. All
13 right.

14 COMMITTEE MEMBER LYLE: Yeah. There's a
15 part, about in the middle of that same paragraph,
16 about, in the context of the statewide laboratory
17 regulations, the idea of giving oversight of
18 training to the laboratories can be viewed as an
19 oxymoron. An oxymoron is a contradiction in two
20 terms that are juxtaposed in a phrase or a sentence.
21 It is not an idea. There are no two contradictory
22 terms in the identified phrase. It might be
23 considered problematic or vexing, but not an
24 oxymoron.

25 COMMITTEE MEMBER SHEN: Well said. So you're

1 still on admittedly oversight, a different comment?

2 COMMITTEE MEMBER LYLE: Yeah, admittedly
3 oversight should occur from an external source.
4 However, the Legislature recognized the Department's
5 failure in this area and sought to correct it by
6 statute. Code Section 100725, amended in 1996,
7 conflicts with the newer statute. Therefore, the
8 newer statute must take priority.

9 COMMITTEE MEMBER SHEN: Hey, Bruce?

10 COMMITTEE MEMBER LYLE: Yeah.

11 COMMITTEE MEMBER SHEN: I need you to back
12 up to the admittedly oversight should occur from an
13 external source.

14 COMMITTEE MEMBER LYLE: Uh-huh.

15 COMMITTEE MEMBER SHEN: I'm not sure we
16 should say that.

17 COMMITTEE MEMBER LYLE: Okay.

18 COMMITTEE MEMBER SHEN: Only because, well,
19 to my opinion is that we get our external oversight
20 through accreditation and we don't need any other
21 external oversight.

22 COMMITTEE MEMBER LYLE: Right.

23 COMMITTEE MEMBER SHEN: So I don't want to
24 have anything that makes it look like we really
25 would like to have external oversight, but you guys

1 are too lame to give it to us.

2 We want to go with we don't need it because
3 we have these other things which is, I think, how we
4 all feel.

5 COMMITTEE MEMBER LYLE: Well, and they count
6 as the external oversight, right.

7 COMMITTEE MEMBER SHEN: Right.

8 COMMITTEE MEMBER LYLE: Okay.

9 COMMITTEE MEMBER SHEN: So do we want to
10 take out admittedly oversight should occur from an
11 external source?

12 COMMITTEE MEMBER LYLE: Yeah, you can take
13 it all out.

14 COMMITTEE MEMBER SHEN: Does anyone else
15 have any thought on that?

16 COMMITTEE MEMBER HARMON: I'm with you.

17 COMMITTEE MEMBER WONG: That's good.

18 COMMITTEE MEMBER SHEN: Take that whole
19 paragraph out?

20 CHAIR KIMSEY: Yeah.

21 COMMITTEE MEMBER SHEN: Okay.

22 COMMITTEE MEMBER SLAUGHTER: This is Mark.
23 By doing So did we fail to respond to the public
24 comment?

25 COMMITTEE MEMBER SHEN: Possibly.

1 COMMITTEE MEMBER LYLE: Well, yeah, the
2 comment is State level --

3 MS. STUPPLE: But is that oversight, it's
4 that oversight issue again, which we could just put
5 that language from yesterday.

6 COMMITTEE MEMBER LYLE: Okay.

7 COMMITTEE MEMBER SHEN: Which language was
8 that?

9 COMMITTEE MEMBER HARMON: That was the
10 mandamus comments.

11 COMMITTEE MEMBER WONG: 134 and 142, I think
12 it was.

13 COMMITTEE MEMBER HARMON: Thanks, Kenton.

14 COMMITTEE MEMBER SHEN: The mandamus
15 comment, all right. I'll put that mandamus thing in
16 here.

17 COMMITTEE MEMBER LYLE: Okay. All right, so
18 further down in the third paragraph there is
19 statutes require the Department to enforce the law
20 and its regulations pertaining to forensic alcohol
21 analysis. And So it's 100725 was cited as giving the
22 Department the responsibility of enforcing the law.

23 And I thought that it conflicted, the parts
24 that they're talking about conflicted with the newer
25 statutes, and that a newer statute would supersede

1 the old one.

2 COMMITTEE MEMBER SHEN: Alex?

3 MS. STUPPLE: I would, again, I would just
4 go with the oversight language.

5 COMMITTEE MEMBER SHEN: Okay.

6 MS. STUPPLE: That we had before.

7 COMMITTEE MEMBER SHEN: So should I take out
8 -- what am I taking out here, then?

9 COMMITTEE MEMBER LYLE: That whole chunk
10 right there, the Codes 100725.

11 COMMITTEE MEMBER SHEN: Okay, so that little
12 small chunk?

13 COMMITTEE MEMBER LYLE: Yeah.

14 COMMITTEE MEMBER SHEN: All right.

15 All right, now, what about the next chunk?

16 COMMITTEE MEMBER LYLE: Health and Safety
17 Code Section 100703(d), which reads, the Review
18 Committee shall evaluate commencing with Section
19 1215, with Subchapter 1 of Chapter 2, and determine
20 revisions that will limit those regulations to those
21 that the Review Committee determines are reasonably
22 necessary to ensure the competence of the
23 laboratories and employees to prepare, analyze, and
24 report the results of the tests, and comply with
25 applicable laws. In determining revisions, the

1 Review Committee shall also take into consideration
2 the advancement and development of scientific
3 processes, including the reporting results of an
4 estimated uncertainty measurement. The Review
5 Committee shall submit a summary of the revisions to
6 the California Health -- it does not mention the
7 Department enforcing or ensuring competence.

8 So that big chunk doesn't mention the
9 Department enforcing or ensuring competency. And
10 that's what the --

11 MS. STUPPLE: Wait, what was that part in
12 response to, which comment? And which part of the
13 comment?

14 COMMITTEE MEMBER LYLE: I think it's the
15 paragraph 3, the very last sentence.

16 MS. STUPPLE: I think the comment meant the
17 supervision was going to be done by the laboratory
18 staff, not CDPH, but the labs would oversee the
19 training of operators' training other operators.

20 COMMITTEE MEMBER SHEN: He's talking about
21 the paragraph that says, (inaudible), clearly is not
22 demonstrated by substantial evidence by removal of
23 the term requirement, blah, blah, blah, ending,
24 these statutes require the Department to enforce the
25 law and its regulations pertaining to forensic

1 alcohol analysis and must ensure the competence of
2 laboratories to (inaudible), which is required by --
3 he's addressing that one.

4 COMMITTEE MEMBER LYLE: So the commenter
5 cites Health and Safety Code 100703(g), so I
6 addressed that.

7 MS. STUPPLE: Okay.

8 COMMITTEE MEMBER LYLE: Because the
9 commenter is saying that it's talking about the
10 Department enforcing and ensuring competence.

11 MS. STUPPLE: Okay, I see.

12 COMMITTEE MEMBER LYLE: And there, then, it
13 did.

14 MS. STUPPLE: Okay.

15 COMMITTEE MEMBER SHEN: Okay, I think that's
16 good.

17 COMMITTEE MEMBER LYLE: And my last reply is
18 suggest interjecting subsection (b), training in the
19 theory of operation pursuant to 1221.2(a)(3) shall
20 be conducted by a forensic alcohol analyst, in the
21 second to the last paragraph.

22 COMMITTEE MEMBER SHEN: I thought we didn't
23 do that for a reason, I thought we didn't do that
24 for a reason. We didn't want to make that be a
25 forensic alcohol analyst had to do the training,

1 just oversee it. Because we had officers that were
2 highly trained, that could do the training after X
3 amount of time. Am I remembering that right?

4 COMMITTEE MEMBER HARMON: There was a
5 discussion on the train the trainer. I think that's
6 what's kind of, they wanted the ability to have a
7 train the trainer. I'm not sure how common that is
8 as practice in the State. If he could respond?

9 COMMITTEE MEMBER JONES: Well, I'm new here,
10 still. This is Eric. As far as I know, everywhere
11 I've been to, when I've received training on a new
12 instrument, it's been conducted by the lab that
13 provides the instrument. But I don't know if I've
14 ever done train the trainer. The only time I've ever
15 done something like that is with a preliminary
16 device.

17 COMMITTEE MEMBER HARMON: Yeah, I think the
18 concern here was that law enforcement wanted the
19 ability to do a train the trainer, although I'm not
20 familiar with any county that's allowing that to
21 happen. I can't speak for the State. But I'm not
22 opposed that the theory of operation is by a
23 forensic alcohol analyst. I think there's some merit
24 here.

25 COMMITTEE MEMBER SHEN: I agree. That is a

1 big battle, whoever was representing that at the
2 time.

3 COMMITTEE MEMBER HARMON: I agree with you,
4 Jennifer, on that.

5 COMMITTEE MEMBER SHEN: Okay.

6 COMMITTEE MEMBER HARMON: Dan, do you
7 remember this?

8 COMMITTEE MEMBER JEFFRIES: Yeah, I do. I
9 also agree it had to do with the train the trainer
10 issue, and I do think it was coming from CHP. But I
11 know it (inaudible), but I think the thinking was
12 there may be places in the State where you want the
13 training to be conducted by a representative from
14 the law enforcement agency.

15 COMMITTEE MEMBER SHEN: And I think it was
16 in those places where they were very spread out.

17 COMMITTEE MEMBER JEFFRIES: Okay.

18 COMMITTEE MEMBER SHEN: There was like one
19 lab and then a huge area, or something.

20 COMMITTEE MEMBER HARMON: Yeah, probably
21 DOJ.

22 COMMITTEE MEMBER SHEN: Probably.

23 COMMITTEE MEMBER LYLE: This is Bruce. So we
24 should retain the coordinated and explain why the
25 coordinated is left in there.

1 COMMITTEE MEMBER SHEN: Is that the comment
2 that it's not conducted or coordinated?

3 COMMITTEE MEMBER LYLE: The word coordinated
4 is hopelessly vague and the reference to section,
5 blah, blah, blah, is incomplete.

6 COMMITTEE MEMBER SHEN: Ah, well, there it
7 is.

8 COMMITTEE MEMBER LYLE: So coordinated is
9 hopelessly vague.

10 COMMITTEE MEMBER SHEN: Well, I think
11 hopelessly is a --

12 COMMITTEE MEMBER LYLE: We have hope.

13 COMMITTEE MEMBER SHEN: What do you do after
14 hopelessly? That's hopeless. But I don't know,
15 there's a lot of stuff that comes beyond that.

16 All right, what do you want me to do?

17 COMMITTEE MEMBER LYLE: So I'd say retain
18 the Committee will retain coordinated in order to
19 allow training, I don't know.

20 COMMITTEE MEMBER WONG: How about oversight.

21 COMMITTEE MEMBER HARMON: Can we go back? I
22 mean, the scientists, how do you feel about having
23 law enforcement do this?

24 COMMITTEE MEMBER WONG: I think we're going
25 to get really hammered on this. Because, like I

1 said, we've constantly been dealing with the
2 watering down of the requirements and that it's not
3 good, and I think this is going to be seen as one of
4 those issues. And I think we're going to get
5 hammered on it.

6 COMMITTEE MEMBER JONES: This is Eric,
7 again. Do you happen to know who the CHP
8 representative was that really advocated for this?

9 COMMITTEE MEMBER HARMON: Whoever was
10 representing in about 2013.

11 COMMITTEE MEMBER JONES: Okay.

12 COMMITTEE MEMBER HARMON: We're going to
13 look into it right now, we've got it all documented.

14 CHAIR KIMSEY: Yeah, I don't have my notes
15 going that far back, with me.

16 COMMITTEE MEMBER HARMON: Mark, do you have
17 an opinion?

18 COMMITTEE MEMBER JONES: It might have been
19 Kevin Davis.

20 COMMITTEE MEMBER SHEN: It was, it was --

21 COMMITTEE MEMBER SLAUGHTER: I do have an
22 opinion, it would be wonderful, if that helps
23 everyone. Usually, if I say wonderful, it means it's
24 not very good. It would be helpful for the defense.

25 COMMITTEE MEMBER JONES: I wouldn't see a

1 big problem with, you know, law enforcement helping
2 the lab put on the training, but it really should be
3 done by somebody with a science background, I would
4 think.

5 COMMITTEE MEMBER SLAUGHTER: I agree. This
6 is Mark.

7 COMMITTEE MEMBER SHEN: All right, let's
8 just do this then, and because we have a new CHP
9 representative we're all in agreement.

10 COMMITTEE MEMBER JONES: This is Eric,
11 again. I'm going to do my very best to see if I can
12 find out where that came from.

13 CHAIR KIMSEY: Well, we think it might have
14 been -- this is Paul. We think it might have been
15 Kevin Davis at the time, who was representing CHP.

16 COMMITTEE MEMBER JONES: Okay.

17 COMMITTEE MEMBER SHEN: Well, and his point
18 was simply that in some of these outlying areas it's
19 very difficult -- this is what I remember, it's very
20 difficult to get a laboratory person out to do the
21 training. And if you've got officers that have been
22 doing it for 15 years, they're perfectly capable of
23 training someone how to use one of the breath
24 testing devices. So that's what the argument was.

25 COMMITTEE MEMBER JONES: Well, but -- this

1 is Eric, again. While I, personally, you know, I
2 agree with that idea. I just don't think it's a good
3 idea when it comes to court purposes. Yeah, me,
4 personally, I don't think that's a good idea.

5 COMMITTEE MEMBER SHEN: All right, let's
6 leave it --

7 COMMITTEE MEMBER JONES: Does Dan have a
8 position on that at all?

9 COMMITTEE MEMBER JEFFRIES: Yeah, I think
10 the one thing I would say about it is that, as you
11 pointed out earlier, a lot of times agencies follow
12 the Title 17 rules for their preliminary alcohol
13 screening devices. It's sort of a shortcut way of
14 making sure they're doing everything properly.

15 And a lot of law enforcement agencies
16 do their own training on preliminary alcohol
17 screening devices, so this would be one area where
18 they're not following the Title 17 recommendations
19 as far as training, where they're doing something
20 different if we require that this only be done by a
21 scientist.

22 COMMITTEE MEMBER WONG: But, Dan, I think
23 they get away with that because the preliminary
24 alcohol screening device is not seen as an
25 evidentiary breath test. Not that it couldn't,

1 because I have testified to pass device results. But
2 I'm just saying that it's only looked at as like
3 another field sobriety test. It's not really looked
4 at, primarily, as evidentiary breath test.

5 COMMITTEE MEMBER JEFFRIES: Right.

6 COMMITTEE MEMBER JONES: Correct and it --
7 go ahead.

8 COMMITTEE MEMBER HARMON: I'm sorry. And
9 this is a change. So what was the expectation for
10 the last 30 plus years? So why make that change now,
11 since they've been doing it this long.

12 COMMITTEE MEMBER LYLE: Well, what was our
13 original language, coordinated?

14 COMMITTEE MEMBER HARMON: Yeah, if you read
15 that paragraph, you're going to have a --

16 COMMITTEE MEMBER LYLE: Well, the original
17 was conducted.

18 COMMITTEE MEMBER HARMON: Conducted.

19 COMMITTEE MEMBER WONG: This is Kenton, in
20 Richmond. I agree with Mark, we shouldn't do this
21 one.

22 COMMITTEE MEMBER SHEN: So when it says in
23 this paragraph that 1221.2(a)(3)(g), the proposed
24 revisions permit a certified breath instrument
25 operator with two years' experience to be an

1 instructor. Providing a description here of a
2 certified operator, the authority reference issue
3 (inaudible), the issuing operator training
4 certificate was discussed, blah, blah, blah. Where
5 else do we say that you can do this?

6 Where do we say that a certified breath
7 instrument operator, with two years' experience, can
8 be an instructor? I think we need to find that.

9 Oh, the next one. The instructors will be,
10 at a minimum, certified breath instrument operators,
11 two years' of practical experience or a forensic
12 alcohol analyst who has successfully completed the
13 training and has at least six months' of practical
14 experience with the instruments. Training in the
15 theory of operation shall be overseen by a forensic
16 alcohol analyst.

17 Yeah, how about the word overseen?

18 COMMITTEE MEMBER JEFFRIES: Well, I think it
19 gets back to if the original language was conducted,
20 the question we have is do we want to change what
21 the existing practice, law, procedure, what
22 everyone's doing now is, and is there a reason we
23 want to change it?

24 COMMITTEE MEMBER SHEN: And we put a whole
25 thing in, so this isn't the original language. This

1 is our language.

2 COMMITTEE MEMBER LYLE: That was my mistake,
3 it wasn't the original.

4 COMMITTEE MEMBER SHEN: So we added in this
5 section --

6 COMMITTEE MEMBER LYLE: Yeah, the whole
7 thing is new.

8 COMMITTEE MEMBER SHEN: -- saying that
9 someone with two years' of experience could train.
10 And we put that it shall be coordinated by a
11 forensic alcohol analyst, so we could change that
12 word, coordinated. I changed it to overseen, but we
13 could change it to, overseen or supervise. We could
14 change it to supervise, that's fine.

15 But if we no longer -- if we don't want the
16 officers to be able to do this, then we need to take
17 that whole section out.

18 COMMITTEE MEMBER WONG: Alex, if we put
19 supervise, is it still going to be seen as
20 hopelessly vague?

21 MS. STUPPLE: If you put supervise?

22 COMMITTEE MEMBER WONG: Yeah, supervised by
23 a forensic alcohol --

24 MS. STUPPLE: Yeah, that's a little vague.
25 I'm not sure if they have to be -- I mean, if they

1 have to be there to supervise, they may as well
2 provide the training, in my opinion.

3 COMMITTEE MEMBER LYLE: So you don't want it
4 to be conducted, though. You don't want to make them
5 conduct it?

6 COMMITTEE MEMBER SHEN: I don't know.

7 COMMITTEE MEMBER LYLE: Jennifer does,
8 Jennifer Harmon does.

9 COMMITTEE MEMBER HARMON: I think that this
10 is what's happening in the State, the laboratories
11 are conducting this training. Let the laboratories
12 conduct the training.

13 COMMITTEE MEMBER JEFFRIES: You know, if I
14 remember our conversation with the CHP
15 representative, I think the idea was that they
16 wanted to have the ability to do most of the
17 training, but then have someone come from the lab
18 that would do a certain portion of it, where the
19 theory of operation would be done by a scientist.
20 But the rest of it, the practical stuff could be
21 done by an officer.

22 That seems like where we were going with it,
23 but that was kind of the idea that you would have
24 instructors, and one of them would be from law
25 enforcement, and then part of the curriculum would

1 be done by a scientist.

2 COMMITTEE MEMBER SHEN: That's right,
3 because they were having officers that were
4 transferring from one office to another, and then
5 they had a different instrument, but everything else
6 they'd already learned. So they --

7 COMMITTEE MEMBER SLAUGHTER: I think it --

8 COMMITTEE MEMBER SHEN: Go ahead.

9 COMMITTEE MEMBER SLAUGHTER: This is Mark.
10 You're right on, Jennifer, it was not a different
11 instrument, it was an officer changing jurisdictions
12 or counties.

13 COMMITTEE MEMBER SHEN: Right.

14 COMMITTEE MEMBER SLAUGHTER: With the same
15 instrument and having to be recertified.

16 COMMITTEE MEMBER WONG: And just having to
17 be certified.

18 COMMITTEE MEMBER SHEN: Right. That's right.

19 COMMITTEE MEMBER SLAUGHTER: And they were
20 saying that's a joke. That's just a waste of time.
21 This officer clearly knows the theory, understands
22 it. If we just have to check the box and have
23 someone do this, why can't it be another officer?

24 COMMITTEE MEMBER JONES: And this is Eric. I
25 do agree with that sentiment, but shouldn't that be

1 up to the lab to decide, since it's their instrument
2 and they're, you know, they're responsible. They're
3 kind of like de facto responsible for making sure
4 the officer can conduct a proper test.

5 If I went from one DOJ county to another DOJ
6 county, with the same instrument, I'm probably not
7 going to have to do anything special. They're
8 probably just going to update my status or my card.

9 But if I went from one, like municipality
10 to another, where they use the same instrument,
11 yeah, the lab doesn't like the other lab or how
12 they're training. Maybe they want to, you know,
13 retrain the person. I don't know.

14 COMMITTEE MEMBER SHEN: Mark, this is
15 Jennifer. Are you sure it was that way? Because I
16 remember it being a different instrument, a
17 different piece of equipment so they had to learn
18 the ins and outs of it, but they didn't want to go
19 through the whole theory of operation again.

20 COMMITTEE MEMBER SLAUGHTER: Yeah, we did
21 discuss that as well, yes.

22 COMMITTEE MEMBER SHEN: So that they'd have
23 to do slightly different prompts, or slightly
24 different this or that, and they needed someone to
25 show them how to do that. But they certainly didn't

1 need to go through why this -- all that stuff,
2 again.

3 COMMITTEE MEMBER SLAUGHTER: Right. Right,
4 no, you're right.

5 COMMITTEE MEMBER HARMON: I think that we
6 just need to take a vote as to whether this needs to
7 be conducted, or some other word. Because I think
8 some of us believe that it should just be conducted
9 by the laboratory and others maybe aren't quite as
10 certain about that.

11 COMMITTEE MEMBER SHEN: And to be clear,
12 then, we're just talking -- we would leave this
13 alone, except change that word. And then on one end
14 of the section it would be that the forensic alcohol
15 person would have to teach the theory of operations.
16 And the other end of the spectrum it would be just
17 that they have to coordinate or oversee it. Just
18 that part, only, we're talking about, right?

19 COMMITTEE MEMBER HARMON: Correct.

20 COMMITTEE MEMBER WONG: This is Kenton, in
21 Richmond. I think, no matter what, what semantic you
22 use, whether you say oversee, supervise, coordinate,
23 I think they're all going to be seen as vague and
24 we're going to get hammered on it.

25 COMMITTEE MEMBER SHEN: Well, they all mean

1 that they don't have to actually give it.

2 COMMITTEE MEMBER WONG: Right.

3 COMMITTEE MEMBER SHEN: That's what we need
4 to decide. Do they have to give that training or
5 not?

6 CHAIR KIMSEY: How about participate in the
7 training?

8 COMMITTEE MEMBER WONG: That's even more
9 loose.

10 COMMITTEE MEMBER SHEN: I just think we need
11 to decide if the alcohol analyst has to actually
12 give the training or no. That's step one.

13 COMMITTEE MEMBER HARMON: How about we just
14 take a vote?

15 COMMITTEE MEMBER SHEN: Yes.

16 COMMITTEE MEMBER HARMON: This is Jennifer
17 Harmon, they need to conduct the training. The
18 laboratory needs to conduct the training.

19 COMMITTEE MEMBER WONG: This is Kenton. I
20 concur with Jennifer.

21 COMMITTEE MEMBER SLAUGHTER: This is Mark. I
22 concur.

23 CHAIR KIMSEY: This is Paul, I concur.

24 COMMITTEE MEMBER JONES: This is Eric.

25 CHAIR KIMSEY: I'm sorry, Eric, go ahead.

1 COMMITTEE MEMBER JONES: No, go ahead, I'll
2 be the last to vote.

3 CHAIR KIMSEY: This is Paul. I agree,
4 conduct.

5 COMMITTEE MEMBER JEFFRIES: Yeah, this is
6 Dan. As much as you'd like to do that, Eric, I want
7 to hear what you have to say. Because I believe this
8 is all coming from the CHP. And So if you think you
9 want that flexibility, I would suggest we put it in
10 there to give it to you.

11 COMMITTEE MEMBER SHEN: This is Jennifer. I
12 would tend to agree with you on that, Dan. I'm
13 willing to go whichever way Eric wants to go.

14 COMMITTEE MEMBER JONES: Oh, man, so much
15 pressure.

16 COMMITTEE MEMBER SLAUGHTER: This is Mark. I
17 can probably help Eric out a little bit, although
18 it's counterintuitive.

19 One of the arguments, I think, was that
20 there was sometimes a delay in the training that
21 they could have, so that the training cycles were
22 sometimes too long. Am I in the right area?

23 COMMITTEE MEMBER WONG: I know that's a
24 fact.

25 COMMITTEE MEMBER SLAUGHTER: And that was

1 one of the concerns voiced was that you might have
2 someone who's there for a period of time, they
3 cannot conduct the test and that creates -- because
4 of the training cycle, and they wanted to be able to
5 speed or expedite that training by having an officer
6 conduct the training.

7 COMMITTEE MEMBER JEFFRIES: And I think, if
8 I remember the conversation, it was that if you've
9 got an officer from the CHP who's moving from one
10 jurisdiction, and that officer has already been
11 trained in the theory of operation, that that
12 officer should be allowed to conduct breath testing
13 without going through the training, the theory of
14 operation yet, again, as long as he received
15 training in the operation, the practical operation
16 of it.

17 COMMITTEE MEMBER SLAUGHTER: That's right.

18 COMMITTEE MEMBER WONG: Mark was absolutely
19 correct because based on the training cycle of the
20 labs providing training to recertify officers,
21 coming in from other jurisdictions, I know when I
22 was with San Mateo County, we would only do like a
23 mini-course if we had 12 of 15. And if we didn't
24 have that minimum number, those poor officers were
25 hung out to dry and they couldn't do a breath test

1 or arrest people, and do their jobs until another
2 training class came up. So that was a definite
3 logistical problem that was raised.

4 COMMITTEE MEMBER SHEN: This is a little off
5 topic, though, because the bottom line here, we're
6 only talking about this one little portion of theory
7 of operation. So as it stands right now, no matter
8 what we put, officers who have already had theory of
9 operation and just needed to have a quick training
10 on the new piece of equipment, or whatever, can do
11 that.

12 So what we're talking about here is can the
13 theory of operation be taught by someone other than
14 a scientist, as long as the scientist is overseeing
15 what training that is? That's all we're talking
16 about.

17 COMMITTEE MEMBER WONG: Yes, depending on
18 how overseeing is defined.

19 COMMITTEE MEMBER SHEN: Who was that?

20 COMMITTEE MEMBER WONG: Kenton.

21 COMMITTEE MEMBER SHEN: Okay. So you're
22 saying that as long as a forensic alcohol analyst is
23 involved in at least the curriculum and development
24 that an operator, who's an officer, could teach the
25 theory of operation part?

1 COMMITTEE MEMBER WONG: Theoretically.

2 COMMITTEE MEMBER SHEN: All right.

3 MS. STUPPLE: I have a question, this is
4 Alex. Does the certified operator then provide a
5 certificate?

6 COMMITTEE MEMBER SHEN: That's a good
7 question, but yes. Because the certified operator
8 would have to be following the regulations.

9 MS. STUPPLE: You know, before it said only
10 labs give certificates.

11 COMMITTEE MEMBER JONES: This is Eric. I
12 honestly, I do not know of any of our offices that
13 are providing evidential training. Our office, you
14 know, our headquarters office puts on a training
15 regarding the preliminary test, every year. And we
16 talk about theory of operations. We bring in a
17 criminalist. We bring in a district attorney to
18 talk. You know, we talk at length about the theory
19 of operation.

20 But as far as I know, we're not doing any
21 evidential, you know, evidential machine training
22 and issuing any certificates.

23 COMMITTEE MEMBER HARMON: This is Jennifer
24 Harmon. As much as I appreciate all of this
25 discussion and trying to give the law enforcement

1 entities the opportunity to possibly do this in the
2 future, this is not practice and it has not been
3 practice for many, many years.

4 So we're opening up practice that does not
5 exist. We're having a conversation about something
6 that is not happening in the State of California.

7 COMMITTEE MEMBER SLAUGHTER: I agree.

8 COMMITTEE MEMBER HARMON: So I mean, why?
9 Why spend so much time and energy trying to open the
10 statute up to something that is not even taking
11 place? It's not even possible right now.

12 COMMITTEE MEMBER SHEN: Okay.

13 COMMITTEE MEMBER HARMON: Okay, I agree. So
14 let's, I mean, I hate to say let's move on, but
15 let's take -- sorry, Eric, let's move on.

16 COMMITTEE MEMBER JONES: Oh, yeah.

17 COMMITTEE MEMBER SHEN: Okay, so we need to
18 say something here. I think, then, that means that
19 we're just going to take this section and turn it
20 back to the way it was.

21 CHAIR KIMSEY: Correct.

22 COMMITTEE MEMBER SLAUGHTER: Well, I agree.
23 Mark.

24 COMMITTEE MEMBER SHEN: Okay. So 2221.2(a),
25 let me just make sure that is what it is. Okay,

1 (a)(4). Okay, so we're going to -- oh, wait. So what
2 is it going to say, now? Is it going to go back to
3 whatever it said before? It looks like -- I don't
4 know what it should say.

5 COMMITTEE MEMBER HARMON: I think it should
6 just say training on the theory of operation
7 pursuant to whatever shall be conducted by a
8 forensic alcohol analyst. That would be it.

9 COMMITTEE MEMBER LYLE: But what Jennifer's
10 asking is do we revert back to what was crossed out
11 from (a), originally? Before, (a) used to say, after
12 approval as set forth in Section 1218, the forensic
13 alcohol laboratory is responsible for the training
14 and qualifying of the instructors.

15 COMMITTEE MEMBER SHEN: Right. So this is
16 (a). So it's 1221.2(a) --

17 COMMITTEE MEMBER LYLE: It's (4)(a).

18 COMMITTEE MEMBER SHEN: (a)(4)(a), okay. If
19 it goes back to the way it was, then it says what
20 you just said, Bruce.

21 COMMITTEE MEMBER WONG: And then we're going
22 to have to put a justification for why we're going
23 back, which would be that it has stood the test of
24 time for almost the last 40 years.

25 COMMITTEE MEMBER SHEN: Okay, so --

1 COMMITTEE MEMBER JEFFRIES: So before we go
2 there, guys, we also have to remember that we added
3 that other section, the subsection (c), which was
4 also along the lines of the CHP's request. So I'm
5 not sure if we get rid of all that, then we've got
6 to get rid of the other sections, also.

7 COMMITTEE MEMBER SHEN: I think this is the
8 only section.

9 COMMITTEE MEMBER JEFFRIES: Well, our new
10 subsection (c) says, if a breath operator training
11 has already undergone training to operate approved
12 breath testing, the trainee may receive instruction
13 as above, excluding the portion covering
14 1221.4(a)(3)(a), which was supposed to refer to the
15 theory of operation.

16 COMMITTEE MEMBER WONG: No, we're going to
17 have to quash that.

18 COMMITTEE MEMBER SHEN: What we want to do
19 here is we don't want to have to retrain someone in
20 the theory of operation, again.

21 COMMITTEE MEMBER JEFFRIES: Right.

22 COMMITTEE MEMBER SHEN: Well, and that
23 shouldn't change.

24 COMMITTEE MEMBER JEFFRIES: Right. Well,
25 that's the debate. If we want to go that route,

1 where an officer, who has already gone through the
2 theory of operation doesn't have to get that part
3 again, and we want to allow the rest of it to be
4 given by a law enforcement officer and not a
5 forensic alcohol analyst, then we need to keep the
6 language in there for the first part of it. And we
7 only have to come up with what word we want. Do we
8 want to say coordinated, overseen or conducted.

9 And it sounds like what you guys, the
10 scientists are all saying is that we're saying it
11 shall be conducted.

12 CHAIR KIMSEY: Correct.

13 COMMITTEE MEMBER JEFFRIES: Which still,
14 then, leaves open the CHP's original thought of that
15 they want to have that flexibility, which is why we
16 added the sub (c) section.

17 COMMITTEE MEMBER HARMON: So keep everything
18 the way, the revision, as it stands. The only thing
19 that needs to be clarified, due to this vagueness,
20 which was pointed out by the commenter, is that it
21 needs to say shall be conducted, that's a very
22 definitive thing, by a forensic alcohol analyst, and
23 everything else remains the same.

24 And then the CHP, or anybody -- I keep
25 saying that, I'm sorry. It gives law enforcement the

1 ability to, if they move jurisdiction, somebody
2 could train the trainer on the practical portions of
3 the training, but the theory of operation has to be
4 conducted by the laboratory in that jurisdiction.

5 COMMITTEE MEMBER JEFFRIES: Yeah, I think
6 that was what the CHP, whoever it was at the time,
7 the representative, I think it was Frank Pacerello,
8 I think we go back to those days, wanted to have the
9 ability to have the CHP officer move from one
10 location to another without having to go through the
11 part and wait for the lab to show up.

12 COMMITTEE MEMBER SHEN: Okay, so what I've
13 done is 1221.4(a)(4)(a), will change from
14 coordinated to shall be conducted by.

15 COMMITTEE MEMBER JEFFRIES: Correct.

16 COMMITTEE MEMBER SHEN: And this will ensure
17 that the theory of operation is always taught by a
18 forensic alcohol analyst.

19 COMMITTEE MEMBER JEFFRIES: Right.

20 COMMITTEE MEMBER SHEN: All right. I am
21 ready.

22 COMMITTEE MEMBER JEFFRIES: Wait, before we
23 leave 141, I'm sorry. You guys, are you comfortable
24 with saying the Legislature removed the Department's
25 authority to license due to their ineffectiveness

1 and adversarial stance?

2 I don't know that we, as a Committee, need
3 to reach that conclusion.

4 COMMITTEE MEMBER SHEN: Didn't we already
5 take that out?

6 COMMITTEE MEMBER JEFFRIES: I think we might
7 want to say the Committee believes that the
8 Department's authority no longer has the authority
9 to license laboratories under --

10 COMMITTEE MEMBER HARMON: I think there was
11 a statement much earlier regarding 1623, we could
12 probably use.

13 COMMITTEE MEMBER JEFFRIES: Yeah.

14 COMMITTEE MEMBER HARMON: Just move --

15 COMMITTEE MEMBER WONG: Yeah, just state the
16 facts that 1623 eliminates the licensure.

17 COMMITTEE MEMBER HARMON: Does anyone
18 remember where that is? I think that was in --

19 MS. STUPPLE: It's 141.

20 COMMITTEE MEMBER HARMON: It's 141.

21 COMMITTEE MEMBER SHEN: 141?

22 COMMITTEE MEMBER JEFFRIES: 141 is where we
23 are, now.

24 MS. STUPPLE: Right. At the beginning is
25 where you say it's ineffective and adversarial.

1 COMMITTEE MEMBER SLAUGHTER: No, where we
2 said it before.

3 MS. STUPPLE: So you said it twice? Oh,
4 right above that, 140.

5 COMMITTEE MEMBER HARMON: Some language
6 about licensing.

7 MS. STUPPLE: There's a couple places.

8 COMMITTEE MEMBER JEFFRIES: Yeah, I think we
9 make that same statement in 140 and we might want to
10 change it. Whatever change, do it in both of them.

11 COMMITTEE MEMBER WONG: It's going to
12 reference something back to 1:72, where it talks
13 about the 2004 change in the statute to repeal the
14 Department's authority for licensure.

15 COMMITTEE MEMBER SLAUGHTER: That is what it
16 is. We have to go way back.

17 COMMITTEE MEMBER WONG: It's 1:72.

18 COMMITTEE MEMBER SHEN: Okay, that's for
19 141?

20 COMMITTEE MEMBER JEFFRIES: And I think,
21 also to be consistent we should change it in 140,
22 also.

23 COMMITTEE MEMBER SHEN: I was looking in 140
24 and I didn't see that verbiage up there.

25 COMMITTEE MEMBER JEFFRIES: The bottom, the

1 second page.

2 COMMITTEE MEMBER HARMON: There's language
3 about licensing authority, as well, in 122.

4 COMMITTEE MEMBER SHEN: All right. So on
5 this I'm just going to put see comment. All right,
6 so where is the first one, see comment which one?

7 COMMITTEE MEMBER WONG: 1:72, we should have
8 a comment there that there was a 2004 change from
9 Senate Bill 1623.

10 COMMITTEE MEMBER SHEN: Okay, 1:72. And is
11 there another one?

12 COMMITTEE MEMBER HARMON: Yeah, 122. It's
13 1:122.

14 COMMITTEE MEMBER SHEN: Okay.

15 COMMITTEE MEMBER HARMON: Licensing
16 authority was removed by SB 1623.

17 COMMITTEE MEMBER WONG: Yeah, the same
18 thing.

19 COMMITTEE MEMBER HARMON: And the removal,
20 maintained by the Committee, licensing is not an
21 option that will be considered by the Committee.

22 COMMITTEE MEMBER SHEN: Okay, I put those
23 two comments in 140. I'm just putting see comments,
24 so I'm not rewriting them again.

25 COMMITTEE MEMBER JEFFRIES: Yes.

1 COMMITTEE MEMBER SHEN: I don't see that
2 language in here that you -- I think it's not in
3 here.

4 COMMITTEE MEMBER JEFFRIES: In 140?

5 COMMITTEE MEMBER SHEN: In 140, I haven't
6 seen it.

7 COMMITTEE MEMBER JEFFRIES: It's on the very
8 bottom of the paragraph. It's the last paragraph
9 under 140, under the one that Bruce worked on.

10 CHAIR KIMSEY: Yeah, it's there on mine,
11 too. It's on page 102.

12 COMMITTEE MEMBER SHEN: Yeah, I got it.
13 Sorry, I got it.

14 All right. So then I'm going to put in -- it
15 was 121 and 1:72?

16 COMMITTEE MEMBER WONG: Yes.

17 COMMITTEE MEMBER SHEN: I'll put that in on
18 141, here. 121 and comment 1:72.

19 COMMITTEE MEMBER HARMON: And 122.

20 COMMITTEE MEMBER SHEN: Oh, 122.

21 COMMITTEE MEMBER JEFFRIES: No, 1:122.

22 COMMITTEE MEMBER HARMON: 1:122.

23 COMMITTEE MEMBER SHEN: And then the other
24 one was 1:71.

25 COMMITTEE MEMBER WONG: 1:72.

1 COMMITTEE MEMBER SHEN: 1:72 and 1:122.

2 COMMITTEE MEMBER WONG: 1:122.

3 COMMITTEE MEMBER SHEN: 1:122, okay. I just
4 have to go back up to 140 because I think I might
5 have put those in wrong. My brain is starting to
6 become melted. Oh, no, I had it right. All right,
7 okay, I'm good, I'm all caught up.

8 Did that take us through 142, now?

9 COMMITTEE MEMBER JEFFRIES: No, we're up to
10 142.

11 COMMITTEE MEMBER LYLE: Okay, it's Bruce,
12 142. The commenter had the issue with the idea that
13 the ISOR states that four hours resembles blood
14 training.

15 COMMITTEE MEMBER SHEN: Oh, yeah, this is
16 the one where we fixed it.

17 COMMITTEE MEMBER LYLE: Well, what I read
18 was that -- I mean, yeah, you fixed the ISOR. But
19 the regulation stated that the time frame will be at
20 least four hours. By setting a minimum, the
21 Committee provided a solid base standard, but
22 allowed analysts, and by extension laboratories, the
23 flexibility in going into more depth in their
24 training.

25 So I think the issue was, I mean the

1 comment, what I was gathering from it, the problem
2 was that we were only, the regulations were only
3 giving the people four hours of training, but what
4 it says is at least four hours.

5 COMMITTEE MEMBER SHEN: Well, what I put in
6 the ISOR was this was added to ensure the breath
7 instrument operators got at least four hours of
8 training, a time frame the Committee felt was
9 reasonable to cover listed topics.

10 COMMITTEE MEMBER LYLE: Perfect.

11 COMMITTEE MEMBER SHEN: Okay.

12 COMMITTEE MEMBER LYLE: Then there's a lower
13 section that says there are other proposed changes
14 to this section that are not mentioned in the ISOR
15 -- oh, never mind.

16 Proposed restriction here to training by a
17 certified breath instrument operator is inconsistent
18 with the provisions under Section 1221.2(a)(4)(a),
19 which permit a forensic alcohol analyst to be an
20 instructor.

21 So I suggested a change in wording of
22 Section 1221.2(a)(4)(c) -- or was it (b)?

23 COMMITTEE MEMBER SHEN: All right, so we
24 agree -- does everybody agree that four hours is
25 good?

1 COMMITTEE MEMBER WONG: Yes.

2 COMMITTEE MEMBER SLAUGHTER: Yes.

3 COMMITTEE MEMBER SHEN: Okay.

4 CHAIR KIMSEY: Yes.

5 COMMITTEE MEMBER SHEN: So we have this same
6 issue, again -- oh, wait, I might have lost my
7 comment. Yes, I did.

8 Okay, so the certified breath instrument
9 operator, we are doing that. Because in order to be
10 a breath instrument operator you have to go through
11 the class and you have to get a certificate, right?

12 COMMITTEE MEMBER HARMON: Sure.

13 COMMITTEE MEMBER SHEN: So why is that
14 inconsistent?

15 MS. STUPPLE: I think because who is going
16 to give the next certificate?

17 COMMITTEE MEMBER SHEN: What's the next
18 certificate?

19 MS. STUPPLE: I mean, if you can either be
20 trained by an analyst, where you get a certificate,
21 unless I'm totally reading this wrong, or you get
22 trained by a certified operator. And then, what, do
23 you get a certificate, also?

24 COMMITTEE MEMBER SHEN: The thing is that
25 you have to be trained in the theory of operation at

1 some point and then you will get a certificate.

2 MS. STUPPLE: So the certificate is just in
3 that?

4 COMMITTEE MEMBER SHEN: Yes.

5 MS. STUPPLE: Okay.

6 COMMITTEE MEMBER HARMON: It is minimally in
7 that.

8 COMMITTEE MEMBER SHEN: You might get more
9 certificates, if you're super lucky.

10 COMMITTEE MEMBER JEFFRIES: But I think
11 Alex's point is the only one they could give you is
12 the laboratory, so if you've got a police officer
13 conducting part of the training, you can't get a
14 certificate from that police officer.

15 COMMITTEE MEMBER SHEN: Well, I know, but
16 you're talking about a certified trainer, a
17 certified breath instrument operator, so any breath
18 instrument operator will have received a certificate
19 at some point.

20 COMMITTEE MEMBER JEFFRIES: Correct.

21 COMMITTEE MEMBER SHEN: So that's why
22 they're certified. They're certified breath
23 operators because they've gotten a certificate. So I
24 don't think that is inconsistent at all. Yes?

25 MS. STUPPLE: Well, would you like to make a

1 statement as to why that's not inconsistent? Because
2 it says answered prior, but I don't think it was
3 quite answered.

4 COMMITTEE MEMBER SHEN: I said all breath
5 test operators will have received a certificate and,
6 therefore, will be certified. A certificate is a
7 part of breath operator training.

8 MS. STUPPLE: Okay.

9 COMMITTEE MEMBER SHEN: Will that work?

10 MS. STUPPLE: If you think so.

11 COMMITTEE MEMBER WONG: For successful
12 completion of breath operator training.

13 COMMITTEE MEMBER SHEN: Will receive a
14 certificate and will, therefore, be certified. A
15 certificate is a mandated part of -- or is mandated
16 upon completion, or successful completion of breath
17 operator training.

18 COMMITTEE MEMBER WONG: Yeah.

19 MS. STUPPLE: But I thought it was just
20 theory of operation that got a certificate.

21 COMMITTEE MEMBER SHEN: Yeah, everybody has
22 to have that training. So it's the --

23 MS. STUPPLE: Right, but --

24 COMMITTEE MEMBER JONES: This is Eric. I
25 think where Alex might be getting hung up is we're

1 talking about an officer who has gotten theory of
2 operations, already, and then they get trained by
3 another officer on how to use the machine, and they
4 give a certificate. And I think maybe saying
5 something to the effect that only a laboratory could
6 issue a certificate might clarify that, based on
7 that or --

8 COMMITTEE MEMBER SHEN: Well, the point is
9 that we just said that everybody has to have theory
10 of operation training by the laboratory. We just
11 said that. So therefore, everybody will have a
12 certificate if they are a certified breath operator.
13 There is no other option here.

14 COMMITTEE MEMBER LYLE: Which word are we
15 talking about?

16 COMMITTEE MEMBER SHEN: Certified.

17 COMMITTEE MEMBER LYLE: Yeah, that's -- when
18 I first read this that's what I thought was the
19 problem was the whole certified part.

20 COMMITTEE MEMBER SHEN: But they have to be
21 certified.

22 COMMITTEE MEMBER LYLE: Right. And So now
23 what I'm realizing is that's really not the issue.
24 And I'm rereading the comment and it seems like it's
25 the inconsistency. I mean, the idea that -- what (b)

1 is telling people to do, what this section is
2 telling people to do is that you have to have four
3 hours of training, of instructional training by an
4 operator who's been certified before.

5 COMMITTEE MEMBER SHEN: Well, what I'm
6 reading here is that it says the analyst typically
7 will not be a certified breath instrument operator,
8 so that if the analyst is teaching this, and the
9 analyst is not a certified breath instrument
10 operator, that's the issue.

11 But I don't know about you guys, but
12 our forensic alcohol analysts all have to go through
13 the training and they all have certificates.

14 COMMITTEE MEMBER HARMON: Yep, here is the
15 same.

16 COMMITTEE MEMBER LYLE: Okay, so the two are
17 the same. And then, so that four hours, can that be
18 started -- giving the four hours to somebody,
19 because he's certified.

20 COMMITTEE MEMBER HARMON: So long as it's
21 not in the training of theory of operation.

22 COMMITTEE MEMBER LYLE: Okay, so then it's
23 fine.

24 COMMITTEE MEMBER SHEN: Yes.

25 COMMITTEE MEMBER HARMON: And I think that

1 that's what's here. And I think everybody's really
2 hung up on who's issuing a certificate. And I think
3 what Jennifer's trying to point is that a
4 certificate is, at minimum, certifying the training
5 in the theory of operation, although it may be more
6 if the laboratory deems appropriate, if the
7 laboratory's providing that training. And that's it.
8 And that it's somebody who's been certified in order
9 to provide that, and that's it.

10 COMMITTEE MEMBER LYLE: Well, no, under (g),
11 under 3(g), it says, upon successful completion of
12 training session and both successful completion of
13 both the written and practical examination. So it's
14 the full training that you're getting a certificate
15 in.

16 COMMITTEE MEMBER SHEN: Yes. But everybody
17 will have had to go through at least that, at least
18 one time.

19 COMMITTEE MEMBER LYLE: Right. So it's the
20 entire thing, not just the theory of operations. The
21 whole theory of operation doesn't really have any
22 sort of basis in this section that we're talking
23 about.

24 COMMITTEE MEMBER SHEN: Right.

25 COMMITTEE MEMBER LYLE: It has nothing to do

1 with theory of operations, that's just one component
2 of being certified.

3 COMMITTEE MEMBER SHEN: Yes.

4 COMMITTEE MEMBER LYLE: Okay, then let's get
5 off that. And then we'll talk about -- So if this is
6 all making sense to you guys, we just need to come
7 up with some words that say, no, it does make sense.
8 That a certified training -- or a certified
9 operator, breath instrument operator is -- can be a
10 forensic alcohol analysts or most forensic alcohol
11 analysts are -- or all of them are going to be
12 certified in order to teach this. No?

13 COMMITTEE MEMBER SHEN: Yeah. I mean, that's
14 the bottom line. Forensic alcohol analysts are going
15 to have to have the training and they're going to
16 have to get a certificate. And I have no problem
17 with that. I think that should be the case.

18 COMMITTEE MEMBER LYLE: Okay.

19 COMMITTEE MEMBER WONG: Agreed.

20 CHAIR KIMSEY: So what have we decided?

21 COMMITTEE MEMBER SHEN: So what's the --
22 what I have is -- say again?

23 COMMITTEE MEMBER HARMON: I said, what's the
24 commenter's problem?

25 COMMITTEE MEMBER SHEN: So what I put in

1 here is all breath test operators -- well, I put the
2 ISOR was incorrect and we'll leave it in the SSOR.

3 All breath test operators will have received
4 a certificate and will, therefore, be certified. A
5 certificate is mandated upon successful completion
6 of breath operator training.

7 And then I put, forensic alcohol analysts
8 will go through the training and will have
9 certificates, so there is no inconsistency here.

10 COMMITTEE MEMBER HARMON: I'm good with
11 that.

12 COMMITTEE MEMBER SHEN: All right, I think
13 we've beaten this one to death.

14 COMMITTEE MEMBER HARMON: Alex, are you
15 good?

16 MS. STUPPLE: Well, but I'm not on the
17 Committee, so it doesn't matter.

18 COMMITTEE MEMBER HARMON: Well, it does
19 matter. What do you have different?

20 MS. STUPPLE: I just think it's confusing.
21 It never says who's going to issue a certificate. It
22 says the training will be issued a certificate. But
23 is it under the lab, or under the law enforcement?

24 COMMITTEE MEMBER WONG: By the laboratory.

25 COMMITTEE MEMBER SHEN: By the laboratory

1 every single time.

2 MS. STUPPLE: Okay.

3 COMMITTEE MEMBER SHEN: Only the laboratory
4 can do the certificates. We're not going to say
5 that, but that's all that's happening.

6 COMMITTEE MEMBER HARMON: Alex, the
7 regulations are about the laboratory. That's what
8 these regulations are. They're not about any other
9 entity, other than the forensic alcohol laboratory.
10 So I guess, maybe for those of us who have been
11 reading these regulations for so many years, we
12 assume that that's understanding that we're talking
13 about a forensic alcohol laboratory.

14 MS. STUPPLE: Yeah.

15 COMMITTEE MEMBER HARMON: That we're not
16 talking about anybody else. Is that unclear or
17 unreasonable?

18 COMMITTEE MEMBER JONES: This is Eric. I
19 have one --

20 COMMITTEE MEMBER HARMON: Is that
21 unreasonable?

22 MS. STUPPLE: Is what unreasonable?

23 COMMITTEE MEMBER HARMON: That we're
24 assuming, when we're writing this, that we're
25 talking about those forensic alcohol laboratories

1 because that's what these regulations are
2 regulating.

3 MS. STUPPLE: No, it would have just been
4 more clear if there were like a noun, and then a
5 verb, rather than the passive will be issued. To me,
6 it's not clear. But you're right, this is about
7 labs, so perhaps it's more clear than I think it is.

8 COMMITTEE MEMBER JEFFRIES: This is Dan. You
9 know, we could just clean this all up by going back
10 to the sub as before, and just putting the words by
11 the laboratory, when we talk about the training will
12 be issued a certificate. Do you want to just do
13 that, throw that in there, then it makes it really
14 clear?

15 Right now, our language says, upon
16 successful completion of training session and
17 successful completion of both the written and
18 practical examination, the training will be issued a
19 certificate. We could add by the laboratory.

20 COMMITTEE MEMBER WONG: I agree.

21 COMMITTEE MEMBER LYLE: Yeah, that's fine.

22 COMMITTEE MEMBER SLAUGHTER: This is Mark. I
23 agree.

24 COMMITTEE MEMBER SHEN: I agree, also I'm
25 just trying to find it. So I'm going to put that in.

1 What is that, give me the --

2 COMMITTEE MEMBER JEFFRIES: It looks to me
3 like it's under what used to be called
4 1221.4(a)(3)(g), if you're looking at your old
5 language, the blue language.

6 COMMITTEE MEMBER SHEN: 1221.4, so sub what?

7 COMMITTEE MEMBER JEFFRIES: Sub
8 1221.4(a)(3)(g).

9 COMMITTEE MEMBER SHEN: All right, I have
10 done that.

11 COMMITTEE MEMBER HARMON: Does that make you
12 feel better, Alex?

13 MS. STUPPLE: Yes.

14 COMMITTEE MEMBER SHEN: All right, can we
15 move on? So do we need to have these answered
16 priors, now?

17 COMMITTEE MEMBER LYLE: Yeah, I don't think
18 they were answered prior in this section. I think
19 they were answered prior -- the sub had to do with
20 the oversight, so it was really just the oversight
21 and it was answered previously, in the oversight, I
22 felt.

23 COMMITTEE MEMBER SHEN: All right, that's a
24 mandamus here?

25 COMMITTEE MEMBER LYLE: Yeah.

1 COMMITTEE MEMBER JEFFRIES: Well, I think
2 this is a different context of oversight. I think
3 the comment goes to whether there's oversight of the
4 training that law enforcement's providing. And I
5 think we've now made the change to make it clear
6 that the certificate is only issued by the
7 laboratory.

8 So really, our response is the area's been
9 clarified by the addition of the language making it
10 clear that only a laboratory issues a certificate.

11 COMMITTEE MEMBER LYLE: Right.

12 COMMITTEE MEMBER SHEN: All right, I think
13 we're good, then.

14 COMMITTEE MEMBER JEFFRIES: Okay.

15 COMMITTEE MEMBER WONG: But the mandamus and
16 injunction's only going to come up for enforcement.

17 COMMITTEE MEMBER SHEN: Yeah.

18 COMMITTEE MEMBER JEFFRIES: That's right,
19 yeah.

20 COMMITTEE MEMBER LYLE: All right, are we
21 going to 143?

22 COMMITTEE MEMBER SHEN: Yes.

23 COMMITTEE MEMBER LYLE: Now, Dan had
24 mentioned earlier about eliminating subsection (c).

25 COMMITTEE MEMBER JEFFRIES: No, I think,

1 when I mentioned or suggested that we talk about
2 eliminating (c), I was suggesting only if we don't
3 resolve the issue about officers going from one
4 place to another. I think we've satisfactorily
5 resolved that. I think we now have a scheme in place
6 where we anticipate that the first time an officer
7 goes through training, he'll get a certificate from
8 the laboratory. And then, he or she next time goes
9 through a training will not get a new certificate.
10 And So the original certificate is referring to the
11 initial training. But that the officer will be able
12 to continue to operate breath testing equipment
13 without going through the full training, again.

14 So I think, now, we're consistent because
15 we've now described who is going to get a
16 certificate and where.

17 COMMITTEE MEMBER SHEN: I just put this has
18 been resolved, see comments on 142.

19 COMMITTEE MEMBER JEFFRIES: I think that's
20 correct.

21 COMMITTEE MEMBER SHEN: Okay, moving on.

22 COMMITTEE MEMBER LYLE: 144, the proposed
23 regulation seeks to regulate law enforcement
24 officers in the performance of specific duties while
25 working under the auspices of a laboratory or

1 analyst.

2 So that's really just the --

3 COMMITTEE MEMBER SHEN: This is more of the
4 same.

5 COMMITTEE MEMBER LYLE: Yeah, it's more of
6 the same.

7 COMMITTEE MEMBER SHEN: So I think I should
8 put see 142, again.

9 CHAIR KIMSEY: Okay.

10 COMMITTEE MEMBER SHEN: Yes?

11 COMMITTEE MEMBER JEFFRIES: The language
12 that's currently in there, the language that Bruce
13 added and see 142.

14 COMMITTEE MEMBER SHEN: All right, so we
15 have the proposed regulation seeks to regulate law
16 enforcement officers in the performance of specific
17 duties while working under the auspices of a
18 laboratory or analyst. In addition, see comment
19 1:142.

20 COMMITTEE MEMBER JEFFRIES: Yes.

21 COMMITTEE MEMBER LYLE: Have you got that,
22 Jennifer?

23 COMMITTEE MEMBER SHEN: Yes, I do, right.

24 COMMITTEE MEMBER LYLE: Okay, so 145, the
25 commenter said that the word, the proposed change

1 from the person performing, to any person
2 performing, is at least awkward and possibly unclear
3 since it suggests a level of indiscriminate
4 randomness in the identification of the person
5 performing the analysis.

6 Why have we changed it to any?

7 COMMITTEE MEMBER SHEN: I have no idea. I
8 can't believe that took an entire paragraph.

9 COMMITTEE MEMBER LYLE: I only read half of
10 it.

11 COMMITTEE MEMBER SHEN: I know, it's
12 ridiculous. I don't care. Shall we put it back to
13 any, or the, I don't care. 151.2(a)(6), why did we
14 do that.

15 COMMITTEE MEMBER LYLE: Well, we changed it
16 to any, so we'd have to change it back to the.

17 CHAIR KIMSEY: That's fine.

18 COMMITTEE MEMBER SHEN: I think the point
19 was that this --

20 MS. STUPPLE: Or a.

21 COMMITTEE MEMBER SHEN: This goes to be
22 applicable to anybody doing this. That is the point,
23 not just the person. That was the point of it, I
24 think. It doesn't matter who it is that's doing
25 this, you must keep the record.

1 COMMITTEE MEMBER WONG: To a person.

2 CHAIR KIMSEY: Kenton and Alex suggested a
3 person.

4 COMMITTEE MEMBER SHEN: Well, that doesn't
5 work. It has to be the, I think.

6 COMMITTEE MEMBER JONES: This is Eric. So in
7 the field, I know like the DOJ machines, the
8 accuracy checks are done by the officer and there's
9 usually one or two, sometimes three officers that
10 are trained to do those accuracy checks. So if we
11 make it the person, will that cause a problem if
12 there's three people doing the accuracy check in
13 that area?

14 COMMITTEE MEMBER SHEN: That's why -- I
15 think that's why we made it any, because it has to
16 apply to whether it's an officer in the field, a
17 trained person, someone in the lab. Any person doing
18 manual -- manual, whatever, determination of
19 accuracy must keep these documents. That was the
20 point of any. It wasn't really the point of being
21 wildly indiscriminate. It was to make sure that
22 everybody has to follow this, no matter who you are.

23 COMMITTEE MEMBER LYLE: Okay, so we should
24 have -- the language we should say is we'll keep the
25 word any in there because it is more encompassing

1 than just the person.

2 COMMITTEE MEMBER WONG: Right, because there
3 may be more than one person.

4 COMMITTEE MEMBER SHEN: Okay. So I'm going
5 to put the word any. All right.

6 All right. And then we have response to
7 comment on Section, this one satisfies specificity,
8 whatever.

9 COMMITTEE MEMBER LYLE: I'm going to go find
10 that for you right now because, unfortunately, I
11 didn't --

12 COMMITTEE MEMBER SHEN: I have to move my
13 car in 11 minutes.

14 COMMITTEE MEMBER LYLE: Holy cow. I think
15 it's 1:131.

16 COMMITTEE MEMBER SHEN: Oh, okay. Oh, yeah,
17 we already did this. So see comment 1:131?

18 CHAIR KIMSEY: Yes.

19 COMMITTEE MEMBER SHEN: 1:131?

20 COMMITTEE MEMBER LYLE: Yeah.

21 COMMITTEE MEMBER SHEN: All right, next.

22 COMMITTEE MEMBER LYLE: 146, the proposed
23 regulation seeks to regulate law enforcement
24 officers in the performance -- oh, that was back
25 from 144.

1 COMMITTEE MEMBER SHEN: And we did see
2 comment 1:144 in here?

3 COMMITTEE MEMBER LYLE: Yes.

4 COMMITTEE MEMBER SHEN: Along with your
5 language?

6 COMMITTEE MEMBER LYLE: Well, 1:144 has my
7 language, then it had more language so --

8 COMMITTEE MEMBER SHEN: Okay. I am taking
9 yours out and putting see comment 1:144.

10 Good grief. All right, 147.

11 COMMITTEE MEMBER LYLE: Yes.

12 COMMITTEE MEMBER SHEN: Oh, there's that
13 stupid testing and analysis again.

14 COMMITTEE MEMBER LYLE: Yeah, go back to
15 that one.

16 COMMITTEE MEMBER SHEN: All right, so what
17 comment was that?

18 COMMITTEE MEMBER HARMON: Kenton, did you
19 have that written down somewhere?

20 COMMITTEE MEMBER SHEN: I think that's
21 1:118.

22 COMMITTEE MEMBER HARMON: Yes.

23 COMMITTEE MEMBER LYLE: Yeah, that sounds
24 good.

25 COMMITTEE MEMBER SHEN: All right.

1 COMMITTEE MEMBER LYLE: No, I think you're
2 right, I think it was the first line, yeah. You are
3 correct.

4 COMMITTEE MEMBER SHEN: All right, replace
5 analytical. Why, what was what?

6 COMMITTEE MEMBER LYLE: Oh, heck, I was
7 getting tired here. Oh, under Expression of
8 Analytical Results.

9 COMMITTEE MEMBER SHEN: Oh, yeah.

10 COMMITTEE MEMBER LYLE: The commenter was
11 saying that the section which would now be titled
12 Expression of Results sets forth the requirements by
13 referring to Section 1220.4, which is entitled
14 Expression of Analytical Results.

15 COMMITTEE MEMBER SHEN: Oh, so they're not
16 the same?

17 COMMITTEE MEMBER LYLE: So yeah, we dropped
18 analytical from this one, when it's referring to
19 1220.4, which is analytical.

20 COMMITTEE MEMBER SHEN: All right, so I'm
21 just going to put replace analytical to create
22 consistency within the regulations.

23 COMMITTEE MEMBER LYLE: Awesomeness.

24 COMMITTEE MEMBER SLAUGHTER: Please, say
25 that again?

1 COMMITTEE MEMBER HARMON: I could mention
2 this, but since we're talking about breath, maybe we
3 just call it Expression of Testing Results or
4 Expression of Testing. Then you get rid of
5 analytical and breath altogether.

6 COMMITTEE MEMBER SHEN: Sounds good to me.

7 COMMITTEE MEMBER HARMON: And then you have
8 consistency with analytical or analysis and blood,
9 fluid, whatever, and testing the breath.

10 COMMITTEE MEMBER SHEN: So it would be
11 Expression of Testing Results?

12 COMMITTEE MEMBER HARMON: Yes.

13 COMMITTEE MEMBER SHEN: That works for me.
14 This is what I call minutia.

15 COMMITTEE MEMBER HARMON: Yes.

16 COMMITTEE MEMBER SHEN: Everybody good with
17 that?

18 CHAIR KIMSEY: Yes.

19 COMMITTEE MEMBER SHEN: All right, clarity
20 and consistency. All right.

21 COMMITTEE MEMBER LYLE: Okay, so for 148,
22 we're onto Article 7, now, which is records.
23 Proposed regulations seeks to -- oh, that's the law
24 enforcement one.

25 COMMITTEE MEMBER SHEN: These are all the

1 same comments we've seen before. What is all this
2 stuff? Oh, here's your by removing department,
3 laboratory, that thing.

4 COMMITTEE MEMBER WONG: 1:72 and 1:122.

5 COMMITTEE MEMBER SHEN: 1:72 and 1:122.

6 COMMITTEE MEMBER WONG: Yeah.

7 COMMITTEE MEMBER SHEN: All right. Do we
8 need any of the other stuff in here?

9 COMMITTEE MEMBER LYLE: Yeah, in this
10 section, it's a gigantic section of comments so --

11 COMMITTEE MEMBER SHEN: Okay, so we need to
12 put the thing in about the proposed regulation seeks
13 to regulate law enforcement officers. Is that 72 and
14 122?

15 COMMITTEE MEMBER LYLE: No.

16 CHAIR KIMSEY: No.

17 COMMITTEE MEMBER WONG: No, it's the next
18 paragraph down.

19 COMMITTEE MEMBER SHEN: Which one's that?
20 It's pretty recent, I thought.

21 COMMITTEE MEMBER LYLE: Well, we did it in
22 144.

23 COMMITTEE MEMBER SHEN: What is it?

24 COMMITTEE MEMBER LYLE: We did it in 144.

25 COMMITTEE MEMBER SHEN: Oh, yeah, that's

1 right.

2 COMMITTEE MEMBER LYLE: I think we just said
3 refer to something.

4 COMMITTEE MEMBER SLAUGHTER: 142.

5 COMMITTEE MEMBER SHEN: Okay, I put in see
6 comment 142 and 144.

7 COMMITTEE MEMBER WONG: With regard to the
8 community not attempting to regulate law enforcement
9 officers, was that under --

10 COMMITTEE MEMBER SHEN: I think that's --

11 COMMITTEE MEMBER WONG: -- 1:133?

12 COMMITTEE MEMBER SHEN: Was it 1:133?

13 COMMITTEE MEMBER WONG: Is that right, Dan?

14 COMMITTEE MEMBER JEFFRIES: 1:133?

15 COMMITTEE MEMBER SHEN: Is that the first
16 place it was?

17 COMMITTEE MEMBER WONG: Regulating law
18 enforcement officers.

19 COMMITTEE MEMBER SHEN: No, no, no, no.

20 COMMITTEE MEMBER JEFFRIES: No, I don't
21 think it's 133.

22 COMMITTEE MEMBER SHEN: I think it's 142 is
23 the first time you see that.

24 COMMITTEE MEMBER JEFFRIES: I think you're
25 right.

1 COMMITTEE MEMBER SHEN: Yeah, 142.

2 COMMITTEE MEMBER HARMON: I think it's 141.

3 COMMITTEE MEMBER SHEN: 141. What is 142 and
4 122?

5 COMMITTEE MEMBER LYLE: Those are the ones
6 that should replace the second one, the second
7 paragraph that I wrote.

8 COMMITTEE MEMBER SHEN: Oh, okay. I have a
9 131.

10 CHAIR KIMSEY: It looks like 131 is about
11 NIST.

12 COMMITTEE MEMBER SHEN: Yeah, I think we
13 should --

14 MS. STUPPLE: How about 133?

15 COMMITTEE MEMBER SHEN: Yeah, so we have
16 133, 142 and 144.

17 MS. STUPPLE: I don't see 142.

18 CHAIR KIMSEY: 133 does talk about a law
19 enforcement officer. Generally, a law enforcement
20 officer, whereas the analyst is generally not.

21 COMMITTEE MEMBER SHEN: Yeah, I think that's
22 the first place we see it.

23 CHAIR KIMSEY: 133. To regulate as --

24 COMMITTEE MEMBER SLAUGHTER: This is Mark.
25 Wasn't 133 specific to preliminary?

1 COMMITTEE MEMBER WONG: Yeah.

2 COMMITTEE MEMBER SHEN: Yeah, at some point
3 we decided that --

4 CHAIR KIMSEY: 132.

5 COMMITTEE MEMBER SHEN: 133, we added in the
6 Committee is not intending to regulate preliminary
7 field alcohol testing devices used by law
8 enforcement.

9 COMMITTEE MEMBER SLAUGHTER: What about 132?
10 I don't know why --

11 COMMITTEE MEMBER HARMON: Could we just
12 clarify what it is that we're trying to fix and
13 maybe we can --

14 COMMITTEE MEMBER SHEN: We're trying to say
15 that we're not regulating law enforcement.

16 COMMITTEE MEMBER JEFFRIES: Well, I think
17 the problem is we are. What we're saying is in this
18 particular aspect we're regulating the training of
19 law enforcement.

20 COMMITTEE MEMBER SHEN: Right.

21 COMMITTEE MEMBER JEFFRIES: So maybe we just
22 say that.

23 COMMITTEE MEMBER SHEN: Yeah, it's probably
24 easier at this point just to say what we want to
25 say.

1 COMMITTEE MEMBER JEFFRIES: The regulations
2 are intended to regulate the training of law
3 enforcement officers by a laboratory.

4 COMMITTEE MEMBER SHEN: All right, that is
5 what I am going to write in.

6 Okay, that takes care of the first
7 paragraph and we have a bunch more.

8 COMMITTEE MEMBER JEFFRIES: Oh, yeah.

9 COMMITTEE MEMBER LYLE: So in lieu of my
10 second paragraph, we're going to have 1:72 and 122.

11 COMMITTEE MEMBER WONG: Correct.

12 COMMITTEE MEMBER HARMON: Okay, next.

13 COMMITTEE MEMBER LYLE: And then we can
14 cross out this -- well, Alex didn't like my priority
15 statute thing, so that --

16 MS. STUPPLE: What?

17 COMMITTEE MEMBER HARMON: We used that
18 paragraph before in 141. So what did we put in 141?

19 Do you have that, Jennifer?

20 COMMITTEE MEMBER SHEN: I'm catching up with
21 you. The regulations are intended to regulate the
22 training of law enforcement --

23 COMMITTEE MEMBER SLAUGHTER: We just took it
24 out. This is Mark. I thought we just took it out.

25 COMMITTEE MEMBER SHEN: Took what out?

1 COMMITTEE MEMBER SLAUGHTER: The 100725
2 language, priority language.

3 COMMITTEE MEMBER LYLE: Yeah, I think you're
4 right.

5 COMMITTEE MEMBER SHEN: So I am taking out
6 this and then we're taking out the failure one.

7 COMMITTEE MEMBER JEFFRIES: Oh, yeah.

8 COMMITTEE MEMBER SHEN: Okay. Okay, so then
9 where are we?

10 COMMITTEE MEMBER LYLE: Yeah, I think you
11 can cross out the 100725 because it's really
12 answered in the law enforcement one.

13 COMMITTEE MEMBER SHEN: Okay.

14 CHAIR KIMSEY: Good.

15 COMMITTEE MEMBER HARMON: And we have
16 language for the (inaudible) -- that was the SB
17 1623, that we looked up before?

18 COMMITTEE MEMBER LYLE: Right.

19 COMMITTEE MEMBER HARMON: That was a while
20 ago.

21 CHAIR KIMSEY: Yeah, Jennifer Harmon, if you
22 could get a little closer to the microphone again?
23 Thank you.

24 COMMITTEE MEMBER HARMON: Oh, I'm sorry.

25 CHAIR KIMSEY: That's okay.

1 COMMITTEE MEMBER SHEN: All right, so then
2 we have (inaudible) -- Department statutory
3 authority to license laboratories. That thing, are
4 we leaving that in?

5 COMMITTEE MEMBER HARMON: No, we have other
6 language that was in there.

7 COMMITTEE MEMBER WONG: 1:72, 1:122, on the
8 middle of 109.

9 COMMITTEE MEMBER SHEN: All right, I've got
10 those in.

11 COMMITTEE MEMBER HARMON: Okay.

12 COMMITTEE MEMBER SHEN: So now we have
13 100703 which reads -- that one, are we leaving that
14 one in?

15 COMMITTEE MEMBER HARMON: No, because we
16 have language in 141 that we used, instead. Do you
17 know what that was?

18 COMMITTEE MEMBER SHEN: Yeah, I will look it
19 up. My laptop keeps freaking out on me.

20 COMMITTEE MEMBER HARMON: Because it's
21 exhausted.

22 COMMITTEE MEMBER SHEN: Yes, that's right.
23 I'm sure a lot of it's user error.

24 So 141 is what you want me to look at?

25 COMMITTEE MEMBER HARMON: Yeah, 141, he used

1 the same language in 141.

2 COMMITTEE MEMBER SLAUGHTER: It's exactly
3 the same.

4 COMMITTEE MEMBER HARMON: And is that the
5 one that was deleted also Mark?

6 COMMITTEE MEMBER SLAUGHTER: No, we did not
7 delete that one.

8 COMMITTEE MEMBER HARMON: We maintained it?

9 COMMITTEE MEMBER SHEN: Yeah, 141 --

10 COMMITTEE MEMBER SLAUGHTER: Yes.

11 COMMITTEE MEMBER SHEN: -- is at 100703,
12 which reads, shall evaluate group -- that whole
13 thing?

14 COMMITTEE MEMBER HARMON: Yes.

15 COMMITTEE MEMBER SLAUGHTER: Yeah, you kept
16 that.

17 COMMITTEE MEMBER HARMON: Okay, so let's
18 just keep it.

19 COMMITTEE MEMBER SHEN: Okay, and that is -
20 -

21 COMMITTEE MEMBER SLAUGHTER: The same.

22 COMMITTEE MEMBER SHEN: Okay, that's 141.
23 Here I go, back to 148. All right, so he has it in
24 here already.

25 COMMITTEE MEMBER SLAUGHTER: That's right.

1 COMMITTEE MEMBER SHEN: Do you want me to
2 take it out or just leave it in?

3 COMMITTEE MEMBER SLAUGHTER: We could leave
4 it, unless you're just using the abbreviated see
5 141.

6 COMMITTEE MEMBER SHEN: Yeah, I can. I just
7 have to take out -- I'll take out what he put and
8 put see 141.

9 COMMITTEE MEMBER HARMON: It points out the
10 redundancy of all of this.

11 COMMITTEE MEMBER SHEN: All righty.

12 CHAIR KIMSEY: And if we're done with 148, I
13 think it's time for you to move your car, Jennifer.

14 COMMITTEE MEMBER SHEN: Oh, yikes. Yes, it
15 is.

16 CHAIR KIMSEY: So let's take a bio, parking,
17 moving break.

18 (Off the record at 3:34 p.m. to 3:45 p.m.)

19 CHAIR KIMSEY: Okay, let's start. Our
20 stenographers are starting.

21 COMMITTEE MEMBER LYLE: Okay, this is Bruce,
22 we're talking about 149.

23 COMMITTEE MEMBER SHEN: Yeah.

24 COMMITTEE MEMBER LYLE: And I say to refer
25 to my comment 1:148. That would be the Health and

1 Safety Code 100703.

2 COMMITTEE MEMBER SHEN: Okay, so which
3 comment is that? That is 141, I think.

4 COMMITTEE MEMBER SLAUGHTER: Yes.

5 COMMITTEE MEMBER LYLE: Yeah, you're right.
6 You're right.

7 COMMITTEE MEMBER SHEN: Okay, I put that in,
8 see 141.

9 COMMITTEE MEMBER LYLE: Yes.

10 COMMITTEE MEMBER SHEN: Okay. All right.

11 COMMITTEE MEMBER LYLE: Okay, so in 150, the
12 comment was saying that the proposed revisions to
13 the section would requirement that the laboratory
14 keep records of staff's performance on proficiency
15 tests and examinations. So this is a comment within
16 1222.1(a)(1). And my comment or my reply to that is
17 that the proficiency test records are covered in
18 Section 1222.1(a)(5).

19 COMMITTEE MEMBER SHEN: Yes.

20 COMMITTEE MEMBER JEFFRIES: Correct.

21 COMMITTEE MEMBER SHEN: All right.

22 COMMITTEE MEMBER LYLE: Four, because it's a
23 new -- is it 5 or 4, from the newest of the new?

24 COMMITTEE MEMBER JEFFRIES: It looks like
25 the newest of the new, 5, laboratory performance

1 evaluation on alcohol analysis is shown by results
2 of proficiency tests, so I think it is now 5.

3 COMMITTEE MEMBER LYLE: Okay, perfect.

4 COMMITTEE MEMBER SHEN: (a)(5), yeah.

5 COMMITTEE MEMBER LYLE: All right.

6 COMMITTEE MEMBER SHEN: Language, but not
7 limited to records --

8 COMMITTEE MEMBER LYLE: Pardon me?

9 COMMITTEE MEMBER SHEN: Then we have a (3),
10 just omitting proposed language, but not limited to
11 the records --

12 COMMITTEE MEMBER LYLE: Both.

13 CHAIR KIMSEY: It's either that or list -- I
14 mean, they're asking that we list all the records
15 that must be retained. Do we have that somewhere
16 else?

17 COMMITTEE MEMBER SHEN: Well, the thing is
18 that the laboratories have to keep records of the
19 staff's performance of tests and examinations. That
20 has to be done. Every accredited laboratory has to
21 do that.

22 COMMITTEE MEMBER HARMON: But it says,
23 minimally, have education, experience and training.
24 And, clearly, we've already defined what has to be
25 submitted to the Department in an earlier part of

1 the regulation.

2 COMMITTEE MEMBER SHEN: So the Department
3 will have all of the stuff.

4 COMMITTEE MEMBER HARMON: So the
5 Department's going to have all of that.

6 CHAIR KIMSEY: Oh.

7 COMMITTEE MEMBER HARMON: So I don't know
8 that it's necessary to list every single document
9 that is going to be considered part of that record,
10 since it's already listed in the regulation as to
11 what has to be provided.

12 COMMITTEE MEMBER JEFFRIES: Although, I kind
13 of agree with Bruce's comment that suggests
14 eliminating the language but not limited to the
15 record. Because by not limited to, it implies that
16 we think there's something more that the lab should
17 be keeping, but we're not saying what it is that we
18 think the lab -- what is in addition to that. So I
19 would agree with Bruce that getting rid of that
20 language, but not limited to, takes us back to the
21 way it was before.

22 COMMITTEE MEMBER SHEN: Okay, including
23 education -- okay, so we all agree.

24 CHAIR KIMSEY: Yes.

25 COMMITTEE MEMBER SHEN: And why are we doing

1 that? We're doing that because?

2 COMMITTEE MEMBER JEFFRIES: Well, I think
3 the but not limited to suggests that we want more
4 records kept.

5 COMMITTEE MEMBER SHEN: That's what I want
6 to say here?

7 MS. STUPPLE: The comment said that it would
8 be better to list all of the records that must be
9 retained.

10 CHAIR KIMSEY: And I think Jennifer Harmon
11 mentioned that we've got that list somewhere else.

12 COMMITTEE MEMBER HARMON: Yes. It would be
13 redundant to list every record that is being
14 retained, as we've already stated in the regulation
15 what has to be provided to the Department to meet
16 the regulation, which includes education, experience
17 and training. So I don't believe that we need to
18 list every record that is being retained, as it's
19 already documented in the regulation as to what has
20 to be submitted to the Department.

21 COMMITTEE MEMBER SHEN: I have to actually
22 say, I think that we could leave the but not limited
23 to in there because that means there's more things,
24 and then we can follow that up with the reason
25 that's in there is because we don't feel it's

1 necessary to list every single thing.

2 COMMITTEE MEMBER HARMON: And every single
3 thing could be different from agency to agency. But
4 the scope minimally should be this. This is a
5 minimum expectation.

6 COMMITTEE MEMBER SHEN: Yeah, because it's
7 hard to justify why we would take that out. Why we
8 would take out the words but not limited to.

9 COMMITTEE MEMBER JEFFRIES: Well, I think
10 it's because we added it.

11 COMMITTEE MEMBER SHEN: I know. But I think
12 we should leave it in there because it shows that we
13 -- whatever it is that we have that would go to the
14 weight of if someone's qualified or not is available
15 and then we have to keep it. Without having to very
16 specifically list every single thing.

17 COMMITTEE MEMBER HARMON: Kenton, do you
18 have any thoughts?

19 COMMITTEE MEMBER WONG: Well, the commenter
20 is saying that that verbiage is vague.

21 COMMITTEE MEMBER SHEN: But not limited to
22 is vague?

23 COMMITTEE MEMBER JEFFRIES: I think it's not
24 the but limited, it's not that it's vague, but it
25 implies that there are more areas --

1 COMMITTEE MEMBER WONG: Right.

2 COMMITTEE MEMBER JEFFRIES: -- but you don't
3 explain what those areas are.

4 COMMITTEE MEMBER HARMON: It's going to be
5 dependent on each laboratory.

6 COMMITTEE MEMBER JEFFRIES: But are they
7 going to be more than about education, experience or
8 training? Do you want to keep track of their
9 residence, home, or anything else that's going to --
10 it's not clear what you mean, if not one of those
11 three areas. What else would there be?

12 COMMITTEE MEMBER LYLE: Yeah, I mean, is
13 there another thing that you're thinking of that
14 somebody could -- another record that somebody could
15 have that you would want to be submitted or be kept,
16 that isn't being kept? Because it's not limiting
17 you. I mean, if I want I can keep, you know, how
18 many times they shaved this week. But I don't have
19 to keep that because it's not regulated.

20 What's regulated is you have to -- in the
21 minimum, you have to have the education, experience
22 and training. But other than that, and I don't know
23 if we -- I don't think we need to say that there's
24 other things out there that could be kept. Because
25 there are, but it doesn't -- we don't need to say

1 that they're there because we're not saying that you
2 have to keep them.

3 COMMITTEE MEMBER SHEN: Okay, so let's do
4 this, listing every record that is retained is
5 redundant. We are removing but not limited to the
6 records because we believe all records will fall
7 within the purview of education, experience and/or
8 training.

9 COMMITTEE MEMBER JEFFRIES: Correct.

10 COMMITTEE MEMBER LYLE: Right.

11 COMMITTEE MEMBER SLAUGHTER: I like that.

12 COMMITTEE MEMBER SHEN: Okay, I'm looking at
13 this and it sounds like this is saying, the comment
14 is saying that we have removed the requirement to
15 maintain proficiency test results.

16 COMMITTEE MEMBER SLAUGHTER: This is Mark.
17 That was the first thing I was thinking was that --
18 is what they're hoping you would keep.

19 COMMITTEE MEMBER SHEN: Yeah, well, we do
20 keep it. It says to keep it.

21 COMMITTEE MEMBER SLAUGHTER: I know.

22 COMMITTEE MEMBER SHEN: That's kind of a
23 lame comment, then.

24 COMMITTEE MEMBER LYLE: Well, that's why I
25 said it's covered in 1(a)(5), proficiency tests.

1 COMMITTEE MEMBER WONG: While we're mulling
2 over that, on the very top of 111, it says, the term
3 examiner's not even defined or used in the
4 regulation, so we need to change examiner to each
5 forensic alcohol analyst shall successfully
6 complete, blah, blah, blah, blah. So replace
7 examiner just for consistency.

8 COMMITTEE MEMBER HARMON: Yes.

9 COMMITTEE MEMBER SLAUGHTER: Wait, where?

10 COMMITTEE MEMBER WONG: At the very top of
11 111.

12 COMMITTEE MEMBER SLAUGHTER: The term
13 examiner is not defined, I see.

14 COMMITTEE MEMBER WONG: It should be
15 forensic alcohol analyst.

16 COMMITTEE MEMBER SHEN: Okay, so we're
17 changing --

18 COMMITTEE MEMBER HARMON: Well, that's in
19 the Health and Safety Code.

20 COMMITTEE MEMBER SHEN: Oh, yeah, that's
21 true.

22 COMMITTEE MEMBER HARMON: Or, Kenton, is it
23 somewhere else in the regulation that we're not
24 seeing, 2001216?

25 COMMITTEE MEMBER LYLE: Well, that's what

1 they're saying, but it's not in 1222.1(a).

2 COMMITTEE MEMBER WONG: They're saying that
3 examiner is a term that we use that we don't use
4 anywhere else in the regulation document.

5 COMMITTEE MEMBER HARMON: So they're saying
6 the Health and Safety Code said that.

7 COMMITTEE MEMBER SHEN: Yeah, it says the
8 term examiner is not defined or even used in the
9 regulation So therefore, we have no idea what it
10 means, apparently.

11 COMMITTEE MEMBER HARMON: Well, I would
12 disagree with that because we actually cite the
13 Health and Safety Code.

14 COMMITTEE MEMBER SHEN: Right. So okay, so
15 basically, we absolutely do keep proficiency test
16 records. We're fine there. We're listing every
17 record that is retained is redundant, the words but
18 not limited to were removed. Because all records
19 will fall under the purview of education, experience
20 or training.

21 And then we're not going to address
22 examiner because we're not changing the Health and
23 Safety Code, so we don't really care about that.

24 COMMITTEE MEMBER LYLE: Yeah, I'm not sure
25 what the commenter was after with that.

1 MS. STUPPLE: I think that the commenter was
2 trying to say that the competence of staff
3 performing forensic alcohol analysis is never
4 evaluated by an external entity. Because if you keep
5 going down --

6 COMMITTEE MEMBER HARMON: Yeah, that's the
7 last --

8 MS. STUPPLE: -- I think that's the crux of
9 it.

10 COMMITTEE MEMBER SHEN: That's the last
11 point is that we don't need to have an external --
12 it says that we -- there's no requirement for an
13 examiner that came from an external source.

14 COMMITTEE MEMBER HARMON: Proficiency
15 testing is under where? Sorry.

16 COMMITTEE MEMBER SHEN: Well, let's see, I
17 mean I think we all think it's external, but maybe
18 it isn't.

19 COMMITTEE MEMBER HARMON: It actually says,
20 laboratories shall direct approved providers to
21 submit all external proficiency test results. And in
22 the exact regulation it says we're using external
23 proficiency providers.

24 COMMITTEE MEMBER SHEN: Yeah, so the comment
25 would be wrong here, as well.

1 COMMITTEE MEMBER HARMON: Yes.

2 CHAIR KIMSEY: Okay.

3 COMMITTEE MEMBER SHEN: Because we have to
4 do an external, we have to follow the Health and
5 Safety Code.

6 COMMITTEE MEMBER HARMON: That is --

7 COMMITTEE MEMBER SHEN: An approved
8 proficiency test, which the Department is not, which
9 is what our whole problem is.

10 COMMITTEE MEMBER HARMON: Yes. And that
11 would be under 1216.1(a)(2).

12 COMMITTEE MEMBER SHEN: Did you say 1219.1?

13 COMMITTEE MEMBER HARMON: 1216 -- I'm sorry,
14 1216.1(a)(2).

15 COMMITTEE MEMBER SHEN: Okay, and that --

16 COMMITTEE MEMBER HARMON: Which explicitly
17 says that laboratories shall direct approved
18 providers to submit all external proficiency test
19 results, as required by H&S 100702, to the
20 Department, and so on and so forth.

21 COMMITTEE MEMBER SHEN: All right.

22 COMMITTEE MEMBER LYLE: And the last comment
23 is, finally, the language here should be revised to
24 require laboratory -- to retain records of staff's
25 former qualifications as forensic alcohol

1 supervisors since this can be the basis for the
2 qualification as a forensic qualified analyst under
3 blah, blah, blah.

4 So is that true?

5 COMMITTEE MEMBER SHEN: Well, I mean, yeah,
6 we're kind of at the crux of a new -- hopefully, a
7 new era here, so we'll have to be able to sort of
8 grandfather in our people who already were
9 qualified.

10 COMMITTEE MEMBER LYLE: Okay, so with that
11 in mind, I suggested adding a subsection (i) and
12 there's the language for it.

13 COMMITTEE MEMBER SHEN: I like that.

14 COMMITTEE MEMBER HARMON: And you're going
15 to put a subsection, Bruce, in where?

16 COMMITTEE MEMBER LYLE: A subsection Bruce
17 under 1222.1(a)(1)(i).

18 COMMITTEE MEMBER SHEN: All right. Any
19 thoughts on that, Kenton?

20 COMMITTEE MEMBER WONG: No.

21 COMMITTEE MEMBER SHEN: I think that's good.
22 All right, 151.

23 COMMITTEE MEMBER LYLE: 151. Oh, I say,
24 since the issue is covered in Section 1222, which
25 was 148, there is no need to repeat it here.

1 COMMITTEE MEMBER SHEN: I think adding that
2 into the one prior is plenty here. Yeah, see comment
3 150.

4 COMMITTEE MEMBER LYLE: Oh, is it 150?

5 COMMITTEE MEMBER SHEN: The one we just did?
6 This is retaining results, still. I mean, retaining
7 qualification information.

8 We just did this in the last comment.

9 COMMITTEE MEMBER LYLE: Right.

10 COMMITTEE MEMBER SHEN: So we just need to
11 change that comment so that it's more encompassing
12 of anyone who has previous alcohol activity under
13 qualifications.

14 COMMITTEE MEMBER LYLE: Okay.

15 COMMITTEE MEMBER SHEN: Not just whatever it
16 was we said here.

17 COMMITTEE MEMBER LYLE: Right.

18 COMMITTEE MEMBER SHEN: Oh, what do we say,
19 to retain analyst -- well, that's fine.

20 COMMITTEE MEMBER LYLE: Yeah.

21 COMMITTEE MEMBER SHEN: Forensic alcohol
22 analysts, under section blah, blah, blah, laboratory
23 shall retain records of the analysts' former
24 qualifications. I think that's perfectly find.

25 COMMITTEE MEMBER LYLE: Yeah, I think it

1 covers it.

2 COMMITTEE MEMBER SHEN: All right, done.
3 152?

4 COMMITTEE MEMBER LYLE: 152, maintenance and
5 calibration should be considered plan language and,
6 therefore, do not need to be further defined in
7 regulations.

8 COMMITTEE MEMBER SHEN: Absolutely.

9 COMMITTEE MEMBER LYLE: Okay, you guys agree
10 with that?

11 COMMITTEE MEMBER JEFFRIES: Yes.

12 COMMITTEE MEMBER SLAUGHTER: Agreed.

13 COMMITTEE MEMBER LYLE: Although there are
14 no regulations directing the instruments be
15 maintained and calibrated, if there are records
16 should be kept, or suggest reinstating Section
17 1220.2(a)(5).

18 COMMITTEE MEMBER WONG: This is Kenton.
19 Jennifer Shen?

20 COMMITTEE MEMBER SHEN: Yes.

21 COMMITTEE MEMBER WONG: I think for
22 retaining records --

23 COMMITTEE MEMBER SHEN: Yeah.

24 COMMITTEE MEMBER WONG: -- that goes all the
25 way back to 158.

1 COMMITTEE MEMBER SHEN: 158, okay.

2 COMMITTEE MEMBER WONG: Here, it talks about
3 sending the Department diplomas, training summaries,
4 any and all appropriate qualifying tests, proof of
5 completion of competency tests, blah, blah, blah,
6 blah, blah.

7 COMMITTEE MEMBER SHEN: Is that what we need
8 for comment 150?

9 COMMITTEE MEMBER WONG: Yeah.

10 COMMITTEE MEMBER SHEN: 151, rather?

11 COMMITTEE MEMBER WONG: Yeah.

12 COMMITTEE MEMBER SHEN: Okay, and so then
13 which comment is that?

14 COMMITTEE MEMBER WONG: 158.

15 COMMITTEE MEMBER SHEN: Okay, thank you.

16 COMMITTEE MEMBER HARMON: This is Jennifer
17 Harmon. Not to complicate things, but we only
18 addressed testing instruments, which says we
19 differentiated the difference between breath and
20 fluid analysis, we probably should use both terms,
21 testing and analysis here.

22 COMMITTEE MEMBER SHEN: Where are you?

23 COMMITTEE MEMBER HARMON: I'm on 1221 -- I'm
24 sorry, 1222.1(a)(6). Records of determination of
25 accuracy, maintenance and/or calibration of testing

1 instruments as a laboratory may perform.

2 COMMITTEE MEMBER SHEN: Yeah, because these
3 records are for everything, not just breath testing,
4 correct?

5 COMMITTEE MEMBER HARMON: That's correct.
6 And So just to continue the continuity, we should
7 use both terms.

8 COMMITTEE MEMBER SHEN: Yeah, I agree. So
9 let's -- So we put in -- well, we have testing
10 instruments as the laboratory may -- well, what we
11 have is calibration of testing instruments, as the
12 laboratory may perform. Do we want to say testing or
13 -- what's wrong with that?

14 COMMITTEE MEMBER HARMON: Because testing
15 implies breath only, at least that's what the
16 continuity has been.

17 COMMITTEE MEMBER SHEN: So how about taking
18 out testing? Records of determinations of accuracy,
19 maintenance and/or calibration of instruments as a
20 laboratory may perform.

21 COMMITTEE MEMBER HARMON: The whole thing is
22 bad.

23 COMMITTEE MEMBER SHEN: All right, let's
24 rewrite that.

25 COMMITTEE MEMBER JEFFRIES: Well, I think

1 the reason why I have problems rewriting it is
2 because originally the statute was talking about
3 that the lab shall keep records of the tests -- or
4 the work they do on behalf of law enforcement
5 agencies.

6 But we're changing the meaning of it, now,
7 to talk about labs shall keep their own internal
8 records.

9 COMMITTEE MEMBER SHEN: Right.

10 COMMITTEE MEMBER JEFFRIES: So I think
11 that's why we're having the difficulty. So maybe
12 that's the question, do we want to require labs to
13 keep records of what they're doing on behalf of the
14 law enforcement agencies?

15 COMMITTEE MEMBER HARMON: This is Jennifer
16 Harmon. They should have records for both breath and
17 blood testing.

18 COMMITTEE MEMBER JEFFRIES: Yeah.

19 COMMITTEE MEMBER HARMON: And the scope of
20 what this is asking for is totally appropriate and
21 actually expands the statute a little bit.

22 COMMITTEE MEMBER SHEN: Yeah, I'm trying to
23 think of how long we keep those records. We don't
24 want to make them too long.

25 COMMITTEE MEMBER HARMON: Well, you have to

1 keep them for an accreditation cycle, minimally.

2 COMMITTEE MEMBER SHEN: Yeah, yeah.

3 COMMITTEE MEMBER HARMON: Which right now is
4 four to five years.

5 COMMITTEE MEMBER JEFFRIES: Everybody all
6 right?

7 COMMITTEE MEMBER WONG: Yeah. It's not
8 written, anyway.

9 COMMITTEE MEMBER JEFFRIES: Jennifer, in San
10 Diego, still there?

11 COMMITTEE MEMBER SHEN: I'm still here.

12 COMMITTEE MEMBER JEFFRIES: So we are
13 expanding the records requirements, but we're not
14 really talking about how long the records should
15 shall be kept. Although, under sub (a), we're saying
16 for a period of at least three years.

17 COMMITTEE MEMBER HARMON: It all says three
18 years, which is what it is right now, anyway, for
19 the less-inclusive --

20 COMMITTEE MEMBER JEFFRIES: Is there a
21 reason you -- I like the original idea of getting
22 word of the testing, entirely. So record of
23 determinations of accuracy, maintenance and/or
24 calibration as the laboratory may perform. Or, you
25 can even get rid of as the laboratory may perform.

1 That way you keep all your records for three years.

2 COMMITTEE MEMBER HARMON: Records of
3 determination of accuracy, maintenance and/or
4 calibration of instruments.

5 COMMITTEE MEMBER JEFFRIES: Yeah, I like
6 that.

7 COMMITTEE MEMBER WONG: Yeah, I like it.

8 COMMITTEE MEMBER SHEN: So we're doing what?

9 COMMITTEE MEMBER JEFFRIES: We're changing
10 122.1(a) new (6), to read just record of
11 determination of accuracy, maintenance and/or
12 calibration of testing instruments period.

13 COMMITTEE MEMBER HARMON: Just instruments.

14 COMMITTEE MEMBER JEFFRIES: I'm sorry, get
15 rid of the word testing.

16 COMMITTEE MEMBER SHEN: Of instruments
17 period.

18 COMMITTEE MEMBER JEFFRIES: Or semi-colon,
19 as I think Jennifer suggested, correctly.

20 COMMITTEE MEMBER SHEN: Records of
21 determination of accuracy, maintenance and/or
22 calibration of instruments.

23 COMMITTEE MEMBER HARMON: Semi-colon.

24 COMMITTEE MEMBER SHEN: Semi-colon.

25 COMMITTEE MEMBER JEFFRIES: And just to

1 clarify, I'm not sure you need to say and/or, maybe
2 just put and.

3 COMMITTEE MEMBER HARMON: Yes.

4 COMMITTEE MEMBER SHEN: Okay.

5 COMMITTEE MEMBER LYLE: Okay, are we good
6 with that?

7 COMMITTEE MEMBER SLAUGHTER: Yes.

8 COMMITTEE MEMBER LYLE: Go on to 153.

9 COMMITTEE MEMBER SHEN: Okay.

10 COMMITTEE MEMBER WONG: Yes.

11 COMMITTEE MEMBER HARMON: Alex, are you
12 still with us?

13 MS. STUPPLE: Yes.

14 COMMITTEE MEMBER HARMON: Okay. You just let
15 us know if you have a concern?

16 MS. STUPPLE: Okay. I got a little confused
17 on that one but --

18 COMMITTEE MEMBER HARMON: Are you
19 unconfused?

20 MS. STUPPLE: No.

21 COMMITTEE MEMBER HARMON: Just trust us on
22 this one.

23 COMMITTEE MEMBER SHEN: Just trust us on
24 this one, I like that.

25 COMMITTEE MEMBER LYLE: Trust me, I work for

1 the government.

2 (Laughter)

3 COMMITTEE MEMBER SHEN: All right, let's
4 knock this out, 153, let's go.

5 COMMITTEE MEMBER LYLE: 153, after reviewing
6 this comment and the proposed language in this
7 section -- hello?

8 COMMITTEE MEMBER JONES: Bruce?

9 COMMITTEE MEMBER LYLE: Yes.

10 COMMITTEE MEMBER JONES: Yeah, I think I
11 actually wrote this one and after looking at some of
12 this stuff, I think you can probably scratch
13 everything I wrote in the comment section. It's been
14 addressed prior.

15 The first paragraph, there, looks like it's
16 talking about the training concerns that we had
17 before, with removing a forensic alcohol analyst
18 from the training. Was that comment 141?

19 COMMITTEE MEMBER HARMON: Yes.

20 COMMITTEE MEMBER LYLE: Yes.

21 COMMITTEE MEMBER JONES: I think you might
22 be able to put see 141 for that one.

23 COMMITTEE MEMBER SHEN: Okay.

24 COMMITTEE MEMBER JONES: And then the second
25 paragraph there, I think we literally just addressed

1 that in the previous comment.

2 COMMITTEE MEMBER LYLE: Yes, I think we did.

3 COMMITTEE MEMBER SHEN: Okay, so that's 152.

4 COMMITTEE MEMBER JONES: So yeah, you can
5 delete everything I said because I didn't really
6 know what I was talking about anyways, at that
7 point.

8 (Laughter)

9 COMMITTEE MEMBER LYLE: I'm glad there's
10 somebody else on this subcommittee that doesn't know
11 what they're talking about.

12 (Laughter)

13 COMMITTEE MEMBER LYLE: You can take it over
14 from here, Eric.

15 COMMITTEE MEMBER JONES: I will do my best.
16 I'm only here for a few more minutes, but I'll do my
17 best.

18 COMMITTEE MEMBER LYLE: Okay, thank you.

19 COMMITTEE MEMBER JONES: So number 154, I
20 basically wrote a paragraph that said -- it talks
21 about in the ISOR, record-keeping requirements, and
22 it talks about scientific standards, and I basically
23 wrote a paragraph that said that the laboratories
24 should really be responsible for creating their own
25 stuff. So I guess I'll just read this.

1 After reviewing this comment and considering
2 how the effect of the appeal of Section 1222.2 would
3 impact breath alcohol testing, it was determined no
4 change to be made. Ultimately, the maintenance,
5 calibration and accuracy testing of breath alcohol
6 testing equipment are the responsibility of the
7 laboratory which issued the equipment. Laboratories
8 should be responsible for creating procedures to
9 endure the maintenance, calibration and accuracy
10 testing of their equipment, and the maintenance of
11 records relating to those devices, even if the
12 procedures rely on -- and instead of law
13 enforcement, maybe operators.

14 Today, most breath alcohol testing has lock-
15 out features to ensure timely accuracy tests, and
16 data ports which transmit testing records back to
17 laboratories. It should be the responsibility of the
18 individual laboratory to create a process which
19 addresses the needs of their area. If some law
20 enforcement already maintains test subject records
21 and arrest, and incident reports, which are
22 submitted to the appropriate prosecuting authority.

23 COMMITTEE MEMBER LYLE: Here, here.

24 COMMITTEE MEMBER JEFFRIES: Yeah, I think
25 that sounds good. The only thing I wasn't clear on

1 is after hearing this commenting concern how the
2 effect of repeal of 1222.2 would impact breath
3 testing, it was determined no changes should be
4 made.

5 Do you mean that 1222.2 should not be
6 repealed?

7 COMMITTEE MEMBER JONES: I was referring --
8 the public comment asked us to make a change, or at
9 least I thought it did, and I was referring to the
10 public comment, if that makes any sense.

11 COMMITTEE MEMBER JEFFRIES: Yeah.

12 COMMITTEE MEMBER HARMON: We probably should
13 just add something that, in light of the new wording
14 in 1222.1(a)(6), 1222.2 is redundant. So because we
15 kind of cover it all there.

16 COMMITTEE MEMBER JONES: Sounds good.

17 COMMITTEE MEMBER SHEN: All right. So am I
18 adding or doing anything here? No?

19 COMMITTEE MEMBER JEFFRIES: My suggestion
20 would be just get rid of the it was determined that
21 no changes should be made. That it was determined
22 that 1222.2 should be deleted.

23 COMMITTEE MEMBER WONG: Due to redundancy.

24 COMMITTEE MEMBER SHEN: Okay, yeah, got you.

25 COMMITTEE MEMBER HARMON: All right, I did

1 find an inconsistency with us pulling 1222.2,
2 though. And that's we don't have records of the
3 testing performed on breath tests, we only have
4 records of samples analyzed by the laboratory.
5 Sorry, I'm not sure which comment that goes to, but
6 we do need to fix that.

7 COMMITTEE MEMBER WONG: You don't have
8 records of breath tests that have been administered
9 under your lab?

10 COMMITTEE MEMBER HARMON: No, I'm talking
11 about in the regulation.

12 COMMITTEE MEMBER WONG: Oh.

13 COMMITTEE MEMBER HARMON: The regulation, we
14 eliminated 1222.2, everything that was in there. And
15 one of the records that was in 1222.2, under (a)(2),
16 was records of analyses performed, results and
17 identities of persons performing analysis.

18 And all we have here is records of samples
19 analyzed by that laboratory under these regulations
20 that result in the identity of persons performing
21 the analyses.

22 So it should be records of samples analyzed
23 by the laboratory and breath tests of these results,
24 under these regulations, that result in the identify
25 of persons performing the analyses.

1 COMMITTEE MEMBER SHEN: I don't know that we
2 want to do that. I don't know, I'm trying to think.
3 This, again, is not my area of specialty. I'm trying
4 to decide -- I don't know if we have -- if we, the
5 laboratory, keep these breath alcohol strips.

6 COMMITTEE MEMBER HARMON: Most laboratories
7 upload those results. Most entities upload those
8 subject tests and PDAs to the laboratory, and the
9 laboratory is the custodian of those records.

10 COMMITTEE MEMBER SHEN: We have all of the
11 -- we have it on a database. But the actual strips,
12 themselves, we don't have.

13 COMMITTEE MEMBER HARMON: Right. And most
14 would argue the database is the primary record.

15 COMMITTEE MEMBER SHEN: Okay.

16 COMMITTEE MEMBER HARMON: Sorry.

17 COMMITTEE MEMBER SHEN: So why don't we just
18 add that in under 1222.1.

19 COMMITTEE MEMBER HARMON: Right, or you can
20 add it to 122 point -- yeah, 1222.1(3) needs an
21 addition to it.

22 COMMITTEE MEMBER SHEN: Yeah, let's just do
23 that.

24 COMMITTEE MEMBER HARMON: So it should
25 probably read records of samples analyzed by that

1 laboratory and breath test results under these
2 regulations.

3 COMMITTEE MEMBER SHEN: All right. So what
4 comment am I going to put that under?

5 COMMITTEE MEMBER HARMON: Oh, I don't know.
6 Well, under this comment, 154, is regarding 1222.2.

7 COMMITTEE MEMBER SHEN: Okay.

8 COMMITTEE MEMBER HARMON: Which is of the
9 elimination. So if you eliminate it, you're going to
10 have to address it somewhere else.

11 COMMITTEE MEMBER SHEN: Right. Okay, so I'm
12 just going to put in there that we're going to
13 change that at the end of this comment.

14 COMMITTEE MEMBER HARMON: Anyone else want
15 to say anything?

16 COMMITTEE MEMBER LYLE: Yeah, I think we
17 should focus on making sure we do 1221.1(a)(3)
18 correctly, since that's the actual regulation. And I
19 think what Jennifer is proposing is to say records
20 of breath test results, samples analyzed by that
21 laboratory under these regulations, their results
22 may identified persons performing analysis. Is that
23 what you're --

24 COMMITTEE MEMBER HARMON: Yes.

25 COMMITTEE MEMBER LYLE: So that's where we

1 would put it in and that's the critical place.

2 COMMITTEE MEMBER HARMON: Right. Otherwise,
3 it's not in there at all.

4 COMMITTEE MEMBER SHEN: So records of
5 samples analyzed by that laboratory under these
6 regulations, and breath test results -- and breath
7 test results?

8 COMMITTEE MEMBER LYLE: Yeah, reversing it
9 so that it would read, records of breath test
10 results, samples analyzed by that laboratory under
11 these regulations, they result in the identity of
12 the person performing the analysis.

13 COMMITTEE MEMBER SHEN: Okay.

14 COMMITTEE MEMBER LYLE: Because the last two
15 only refer to the samples analyzed.

16 COMMITTEE MEMBER SHEN: Okay, breath test
17 rests -- breath test results, comma?

18 COMMITTEE MEMBER LYLE: Comma.

19 COMMITTEE MEMBER SHEN: Okay.

20 COMMITTEE MEMBER LYLE: As analyzed by the
21 laboratory.

22 COMMITTEE MEMBER SHEN: And then the thing,
23 the rest of the thing.

24 COMMITTEE MEMBER LYLE: Right.

25 COMMITTEE MEMBER SHEN: Okay.

1 COMMITTEE MEMBER JONES: 155?

2 COMMITTEE MEMBER HARMON: No, we're on the
3 new one, we're on the new one.

4 COMMITTEE MEMBER JONES: I think we're on a
5 new one.

6 COMMITTEE MEMBER LYLE: We're on a new one.

7 COMMITTEE MEMBER JONES: So this one -- this
8 one, real quick, it talked about the ISOR and
9 scientific documents within the ISOR. And I know in
10 past ones, is that something we would have to
11 address?

12 COMMITTEE MEMBER SHEN: Alex?

13 MS. STUPPLE: I don't know. I mean, if you
14 have documents that you did in fact rely on, they
15 would be included. If you do not rely on them, they
16 do not need to be included.

17 COMMITTEE MEMBER JONES: So I've learned
18 through this Committee we can't update the ISOR, but
19 we have in this.

20 MS. STUPPLE: Yeah, we're doing an SSOR and
21 supplemental. It's kind of like the new ISOR. So if
22 there's anything in making these revisions that
23 we've depended on, we need to include that.

24 COMMITTEE MEMBER JONES: Okay.

25 COMMITTEE MEMBER SHEN: I don't think we

1 included -- I don't think we relied on anything new.

2 COMMITTEE MEMBER JONES: Okay, I just
3 basically said, however, the Committee should
4 consider updating the -- I guess it would be SSOR,
5 with current reference materials. For many, no
6 scientific changes were contained in any of the
7 updated reference materials. No changes should be
8 made to the proposed language.

9 COMMITTEE MEMBER SHEN: I think that's
10 perfect.

11 MS. STUPPLE: How about that ISO whatever
12 that is?

13 COMMITTEE MEMBER HARMON: ISO 17025?

14 MS. STUPPLE: Yeah, maybe.

15 COMMITTEE MEMBER HARMON: We're not using
16 it.

17 MS. STUPPLE: I thought we --

18 CHAIR KIMSEY: I think it was referred to as
19 part of an ASCLAD -- part of ASCLAD. I think ASCLAD
20 was trying to include it or has about (inaudible) --

21 COMMITTEE MEMBER SHEN: I think that's their
22 regulations.

23 CHAIR KIMSEY: Yeah, it's not us.

24 COMMITTEE MEMBER SHEN: All right, let's
25 move on.

1 COMMITTEE MEMBER JONES: Okay, 2:1, this
2 appears to be a general comment. After reviewing the
3 comment, it should be noted that the authority of
4 this Committee comes from -- please correct me if
5 I'm wrong -- California Health and Safety Code
6 Section 100703, which lists Department of Public
7 Health as one of the organizations which shall be
8 represented.

9 And that, I put in the language that I
10 did above with, however, the Committee should
11 consider updating the, it should be SSOR, the
12 current reference materials. For many, no scientific
13 changes were contained in any of the updated
14 reference materials. No changes should be made in
15 the proposed language.

16 COMMITTEE MEMBER SHEN: All right. I mean, a
17 lot of this stuff we're not going to be able to do
18 anything with, it's just --

19 MS. STUPPLE: Yeah, you can -- don't worry
20 about that, yeah.

21 COMMITTEE MEMBER JONES: 2:2, again, this
22 appears to be a general comment. And I just
23 literally put the same thing from above.

24 COMMITTEE MEMBER SHEN: Perfect. Yeah, we
25 can't do anything with this stuff.

1 COMMITTEE MEMBER SLAUGHTER: No.

2 MS. STUPPLE: It's all irrelevant.

3 COMMITTEE MEMBER JONES: I felt like you
4 guys were giving me the hardball questions.

5 MS. STUPPLE: I know.

6 (Laughter)

7 COMMITTEE MEMBER JONES: I'm like, holy cow,
8 how do I even answer this.

9 COMMITTEE MEMBER JEFFRIES: Welcome to the
10 Committee, Sergeant.

11 COMMITTEE MEMBER SHEN: Yeah, really.

12 COMMITTEE MEMBER JONES: 2:3, so I think
13 this was actually a continuation of the last
14 comment, if I was looking at this correctly. And,
15 again, I might not be.

16 COMMITTEE MEMBER SHEN: No, you are.

17 COMMITTEE MEMBER JONES: But the response
18 will address the concerns as they appear. It should
19 be noted these proposed regulations deal solely with
20 ensuring laboratories conduct forensic alcohol
21 testing and defines what current scientific
22 standards and, in compliance with existing laws.
23 Overall laboratory management, e.g., computer
24 systems, process improvement activities should not
25 be included in these regulations.

1 And then this next part that's italicized,
2 it may or may not be right. But, however, these
3 proposed regulations should include language which
4 details a laboratory's response in the event that
5 they discover a process or a reporting error.

6 And I couldn't find anything like that, but
7 it might be in there.

8 COMMITTEE MEMBER HARMON: There is one
9 statement about corrective actions regarding
10 proficiency tests should be reported to the
11 Department. Correct, Jennifer?

12 COMMITTEE MEMBER SHEN: Yes, that is
13 correct.

14 COMMITTEE MEMBER HARMON: So we covered it.

15 COMMITTEE MEMBER JONES: Okay, so you can
16 get rid of that.

17 The definitions in Section 1215 should be
18 reorganized alphabetically, if that's what OAL
19 wants.

20 COMMITTEE MEMBER SHEN: And we did it. I did
21 that.

22 COMMITTEE MEMBER JONES: The methods for
23 forensic alcohol analyst should be moved after
24 requirements of breath alcohol testing. And I don't
25 remember why I said that. Give me a second, I'll --

1 COMMITTEE MEMBER SHEN: No, we don't want to
2 do that.

3 COMMITTEE MEMBER HARMON: No.

4 COMMITTEE MEMBER JONES: Copy that.

5 COMMITTEE MEMBER SHEN: Okay. A lot of this
6 stuff was just general unhappiness.

7 CHAIR KIMSEY: You're right.

8 COMMITTEE MEMBER JONES: And the other
9 question I had and, again, this is probably more
10 ignorance on my part, the fact that it says tissue,
11 do you think the regulations deal with tissue or is
12 it just t--

13 COMMITTEE MEMBER HARMON: Yes, they do.

14 COMMITTEE MEMBER WONG: Yeah, we do.

15 COMMITTEE MEMBER JONES: Okay, copy that.

16 COMMITTEE MEMBER HARMON: You did a nice
17 job, though, I have to say.

18 COMMITTEE MEMBER LYLE: We're a subcommittee
19 effort, all right.

20 (Laughter)

21 COMMITTEE MEMBER JONES: 2:4, after
22 reviewing this comment and the proposed language,
23 California Code of Regulations, Title 17, revision
24 1, to determine this proposal -- this is more canned
25 language from before -- proposal developed in

1 accordance with scientific standards. I don't think
2 the ISOR is -- anything new was relied on.

3 Additionally, they said something about, it
4 almost seemed to me like they were questioning
5 ASCLD/LAB. And I just said that ASCLD/LAB was
6 specifically mentioned in Health and Safety Code
7 100700.

8 COMMITTEE MEMBER SHEN: Nicely done. Yeah, I
9 just don't think we need to do much with this. I
10 mean, what we going to -- in collusion have chosen
11 the sweep language, to capture the low-hanging
12 fruit. I mean, what a bunch of garbage. We can't do
13 anything with it.

14 COMMITTEE MEMBER LYLE: We need to step up
15 our game.

16 COMMITTEE MEMBER SHEN: I k now.

17 COMMITTEE MEMBER JONES: 2:5, this was all
18 about the ISOR. Is this something that we have to
19 address then or --

20 COMMITTEE MEMBER SHEN: No.

21 COMMITTEE MEMBER JONES: Okay.

22 COMMITTEE MEMBER SHEN: I don't think so.
23 Alex, these are all -- this is all stuff that has
24 nothing to do with the actual regulation.

25 MS. STUPPLE: Yes, I think -- let me see.

1 COMMITTEE MEMBER SHEN: And we're not going
2 to put in a whole faulty management specific to our
3 regulations at this point, nor are we trying to meet
4 the six APA standards. I mean, this is not how it's
5 written.

6 MS. STUPPLE: Yeah, they're too general of
7 statements.

8 COMMITTEE MEMBER SHEN: It's too general for
9 a while. I mean, like part 2, a new wave forward?
10 That's not going to help us. We can't answer that.

11 COMMITTEE MEMBER JONES: Okay, because on
12 that one I just used canned language from before.

13 COMMITTEE MEMBER SHEN: Yeah, which is
14 perfect.

15 COMMITTEE MEMBER JONES: Okay.

16 COMMITTEE MEMBER JEFFRIES: Are we going to
17 keep the comments, though? If so we probably should
18 delete the ones about, however, the Committee should
19 consider updating. You know, we can get rid of that.
20 The rest of the language is nice and responsive. But
21 I just don't know if we want to -- since we're
22 considering that we're deciding not to do it that
23 way, we should get rid of that language.

24 COMMITTEE MEMBER JONES: Yeah, I'm fine with
25 that. I was just doing the best I could.

1 COMMITTEE MEMBER SHEN: Yes. Well, should I
2 take it out and put not relevant?

3 COMMITTEE MEMBER JEFFRIES: No, I think most
4 of the language that Eric created is good and really
5 helpful, and should be in there somewhere. So I
6 think it's nice to have it in here.

7 I just think the paragraph that starts with,
8 the Committee should issue additional language which
9 clarified -- just get rid of that paragraph all the
10 way through to submit.

11 And then he picks it up again, the proposed
12 regulations have clear requirements, so I think
13 that --

14 COMMITTEE MEMBER SHEN: Okay.

15 COMMITTEE MEMBER JEFFRIES: I think just
16 that one paragraph.

17 COMMITTEE MEMBER SHEN: Yeah, I agree.

18 CHAIR KIMSEY: There's also a sentence in
19 the second bullet, on page 123, that says, however,
20 the Committee should consider updating the ISOR with
21 current reference materials.

22 COMMITTEE MEMBER SHEN: That's sort of
23 canned. But we're just going to say that there isn't
24 any.

25 CHAIR KIMSEY: Right, okay.

1 COMMITTEE MEMBER SHEN: Okay. I think we did
2 not do the new wave, so we're done with that one,
3 right?

4 COMMITTEE MEMBER JEFFRIES: Everything in
5 there's fine.

6 COMMITTEE MEMBER JONES: So that box where
7 it says, requirements of a quality management
8 system, I didn't know if that was an actual numbered
9 item, or just like a formatting thing?

10 COMMITTEE MEMBER SHEN: No, this is all just
11 more stream of consciousness by the person.

12 COMMITTEE MEMBER JONES: Okay. So if it's
13 part of the one from above, I think you could just
14 move that comment. But I wasn't really sure where
15 that came from or if this was a specific --

16 COMMITTEE MEMBER SHEN: The problem with
17 this is, is that this is put in here as comments we
18 have to answer. But this is not -- I mean, these are
19 not, hey, I have a problem with this, or this, or
20 this. This is a huge like diatribe on how the whole
21 thing should be redone. So we can't -- we just have
22 to ignore all of these and not waste any time on
23 them, whatsoever.

24 COMMITTEE MEMBER JEFFRIES: Well, I think,
25 Jennifer, if we leave the first of Eric's comments

1 and then strike everything from however, we're good,
2 then we've responded to it.

3 COMMITTEE MEMBER SHEN: Yeah, I agree.

4 COMMITTEE MEMBER SLAUGHTER: I agree.

5 COMMITTEE MEMBER SHEN: So this is pages and
6 pages of this stuff and it's quite a while before we
7 get to another comment.

8 So we're ignoring all the requirements of
9 the quality management system one.

10 COMMITTEE MEMBER JEFFRIES: And then the
11 same thing with 2:8, if we get rid of everything
12 started with however, we're in good shape.

13 COMMITTEE MEMBER SHEN: 2:8, I'm not even --
14 I can't even get to there.

15 MS. STUPPLE: Actually, just get rid of all
16 of that because we're going to fix the authority
17 reference, anyway, so --

18 COMMITTEE MEMBER SHEN: What page is that? I
19 can't even get to it.

20 COMMITTEE MEMBER SLAUGHTER: It's 129.

21 COMMITTEE MEMBER SHEN: Did I fly by it?

22 COMMITTEE MEMBER SLAUGHTER: She's already
23 passed it, okay.

24 COMMITTEE MEMBER SHEN: 2:5, ISOR claims.
25 No, my page numbers are different than yours because

1 I have all this extra stuff. I'm getting crabby.

2 Okay, I finally found 2:8. All right, so
3 what am I doing on 2:8, here?

4 COMMITTEE MEMBER JEFFRIES: Get rid of
5 everything after the word however.

6 COMMITTEE MEMBER HARMON: So keep it all
7 expect --

8 MS. STUPPLE: Get rid of all of it because
9 we're going to -- I'm going to fix the authority and
10 reference.

11 COMMITTEE MEMBER SHEN: Okay, all of 2:8,
12 right?

13 CHAIR KIMSEY: Yes.

14 MS. STUPPLE: Yeah.

15 COMMITTEE MEMBER SHEN: Okay.

16 COMMITTEE MEMBER JONES: 2:9, purpose of the
17 statute. The response will address points that
18 appear in the comment. Submitting records to the
19 California Department of Public Health provides for
20 a records review by a State agency, in work or
21 reporting by a laboratory, which is then discovered
22 by a court would cause law enforcement agencies to
23 stop using their services. This would, in essence,
24 eliminate a large portion of revenue, thus there's
25 strong pressure for laboratories conducting forensic

1 alcohol analysis to do quality work.

2 I guess I was kind of thinking about a
3 private lab when I wrote that, so you might want to
4 wordsmith, instead of revenue, something else.

5 COMMITTEE MEMBER HARMON: Well, the DOJ, are
6 they fee-for-service?

7 COMMITTEE MEMBER SHEN: I think so.

8 COMMITTEE MEMBER JONES: Okay.

9 COMMITTEE MEMBER SHEN: I think that's all
10 good, I like it.

11 COMMITTEE MEMBER JONES: Okay.

12 COMMITTEE MEMBER JEFFRIES: Well, you could
13 just get rid of the words, this would in essence
14 eliminate a large portion of their revenue, thus,
15 and then pick it up with there is strong pressure
16 for laboratories conducting forensic analysis to do
17 quality work. That's the conclusion, anyway.

18 COMMITTEE MEMBER HARMON: Yeah, just get rid
19 of that one sentence.

20 COMMITTEE MEMBER SHEN: All right.

21 COMMITTEE MEMBER JONES: Okay, quality
22 control procedures are clearly described in
23 sections, and I don't know if these are from the
24 ones that I looked at, at the time, but Sections
25 1220.2 and 1220.3. However, these proposed

1 regulations should include language which details
2 the -- you can delete everything after -- you can
3 delete the however to the period.

4 COMMITTEE MEMBER HARMON: That's great. And
5 I think there's quality control procedures in
6 another part of the statute, as well, which would
7 include breath.

8 COMMITTEE MEMBER JEFFRIES: So if we just
9 get rid of the words from however to the end of that
10 bullet, we're good.

11 COMMITTEE MEMBER SHEN: Yeah, we're good.
12 Okay.

13 COMMITTEE MEMBER HARMON: And you have
14 quality control procedures in 1221.4, also if you
15 want to add that.

16 COMMITTEE MEMBER SHEN: 1221.4?

17 COMMITTEE MEMBER HARMON: Yes, that covers
18 breath testing.

19 COMMITTEE MEMBER SHEN: Got it. Moving on.

20 COMMITTEE MEMBER JONES: And there was some
21 part of this that was kind of alluding to the fact
22 that an officer may be -- I thought there was
23 something in here about an officer could be confused
24 with a forensic alcohol analyst. So I talked about
25 the definition of forensic alcohol analyst includes

1 the word method. Methods are not employed by law
2 enforcement when testing or collecting samples. And
3 I'm not 100 percent sure if that's correct but --

4 COMMITTEE MEMBER SHEN: That's great.

5 COMMITTEE MEMBER JONES: Copy that.

6 2:10, again will address the points as they
7 appear in the comment. Definitions should be
8 arranged alphabetically. You can delete the --

9 COMMITTEE MEMBER SHEN: On this one, I think
10 did you answer -- did you answer all of the
11 different things to every single one of the
12 definitions?

13 COMMITTEE MEMBER JONES: Possibly.

14 COMMITTEE MEMBER SLAUGHTER: It looks like
15 that you did.

16 COMMITTEE MEMBER SHEN: So I'm wondering,
17 this is one of those ones where we already talked
18 about every single definition in the first several
19 pages. Do we want to just say see comments 1
20 whatever to 1 whatever?

21 COMMITTEE MEMBER JONES: That's probably
22 going to be more accurate than what I came up with,
23 anyways.

24 COMMITTEE MEMBER SHEN: I hate to take that
25 work away from you, I'm sorry.

1 COMMITTEE MEMBER JONES: Oh, that's okay. It
2 was a good learning experience for me.

3 COMMITTEE MEMBER SHEN: We knew this was
4 going to be the problem because we had three public
5 people who said the exact same thing.

6 COMMITTEE MEMBER SLAUGHTER: Right.

7 COMMITTEE MEMBER SHEN: So I don't know how
8 to -- wait. So Jennifer, can you give me the number
9 comments, what to what?

10 COMMITTEE MEMBER WONG: 115.

11 COMMITTEE MEMBER SHEN: So I think we should
12 start with whatever the very first one was, all the
13 way through the last one.

14 COMMITTEE MEMBER WONG: It starts at 114 and
15 goes through 115.

16 COMMITTEE MEMBER SHEN: Okay. That will take
17 care of all of the definitions, right?

18 COMMITTEE MEMBER JONES: I believe so.

19 MS. STUPPLE: Except for that trademark
20 thing.

21 COMMITTEE MEMBER JONES: Oh, yeah. What do
22 you think about that one?

23 COMMITTEE MEMBER SHEN: Which one?

24 COMMITTEE MEMBER JONES: There was something
25 in here about a trademark. And is it referred in

1 NIST?

2 COMMITTEE MEMBER LYLE: Yeah, 12:15(o).

3 COMMITTEE MEMBER SHEN: Well, I just said it
4 wrong, that's all. I put that in.

5 MS. STUPPLE: Yeah, that was changed.

6 COMMITTEE MEMBER JONES: Okay.

7 COMMITTEE MEMBER SLAUGHTER: Good.

8 COMMITTEE MEMBER SHEN: I just put the wrong
9 thing in.

10 COMMITTEE MEMBER JONES: I think that was
11 actually the end of mine.

12 COMMITTEE MEMBER LYLE: Yeah.

13 COMMITTEE MEMBER HARMON: Yes.

14 COMMITTEE MEMBER JONES: And, unfortunately,
15 I actually have to go.

16 CHAIR KIMSEY: Perfect timing.

17 COMMITTEE MEMBER SHEN: Nice job.

18 CHAIR KIMSEY: Thank you very much.

19 COMMITTEE MEMBER LYLE: Thanks, Eric.

20 CHAIR KIMSEY: So is that the end of the
21 subcommittee?

22 COMMITTEE MEMBER SLAUGHTER: No.

23 COMMITTEE MEMBER SHEN: I think we're in
24 the --

25 MS. STUPPLE: Yes.

1 COMMITTEE MEMBER SHEN: I think we have
2 Ken's, now.

3 CHAIR KIMSEY: Yeah, but I mean, are we
4 transitioning to another subcommittee?

5 COMMITTEE MEMBER HARMON: Yes.

6 CHAIR KIMSEY: Yeah, I just wanted to pause
7 for a second and see if there's any public comments.
8 Hearing none, let's move on. So 2:11 deals with
9 Article 2. Is that where we are?

10 COMMITTEE MEMBER HARMON: Is Kenton still
11 here?

12 CHAIR KIMSEY: Yes, he's here.

13 COMMITTEE MEMBER HARMON: Okay. Kenton, do
14 you want to go over yours?

15 COMMITTEE MEMBER WONG: Sure. Mark and I
16 were looking more at the high points on the possible
17 obstacles to obtaining OAL approval. So I think the
18 only thing that we had was we just ignored a lot of
19 this stuff.

20 COMMITTEE MEMBER SHEN: Okay, so what --
21 yeah, what I did, Kenton, is I filled these in. The
22 ones that you guys didn't specifically talk about.

23 COMMITTEE MEMBER WONG: Yeah.

24 COMMITTEE MEMBER SHEN: Because starting
25 here we have a bunch of the same stuff.

1 COMMITTEE MEMBER WONG: Yeah, I mean,
2 they're talking about stupid stuff, like career
3 advancement or job ladders. And it's like, but the
4 regulation doesn't care about that at all, it's
5 irrelevant. Anyway, that's an example.

6 MR. SLAUGHTER: Right.

7 COMMITTEE MEMBER WONG: But go ahead,
8 Jennifer.

9 COMMITTEE MEMBER SHEN: All right, So and I
10 did this late at night, without much sleep, so
11 you'll have to forgive me if I've got it -- so the
12 first thing was 121 (a), was see comments for 134.

13 COMMITTEE MEMBER HARMON: I'm sorry.

14 CHAIR KIMSEY: Alex, you're paper shuffling.

15 MS. STUPPLE: Okay, hold on, let me get
16 there really quick.

17 CHAIR KIMSEY: Okay.

18 COMMITTEE MEMBER JEFFRIES: And, Jennifer,
19 do you have what you've prepared? Do you want to
20 just e-mail it to us so we can be following along?

21 COMMITTEE MEMBER SHEN: Can I do that?

22 MS. STUPPLE: No.

23 COMMITTEE MEMBER SHEN: I didn't think so.

24 COMMITTEE MEMBER JEFFRIES: Oh, you mean,
25 even now we can't because all it would be -- can you

1 send it to the Committee, who will send it back out
2 to everyone?

3 COMMITTEE MEMBER SHEN: I would happily do
4 that, but I don't think I can. And I'm actually not
5 sure that I'm capable of e-mailing something this
6 large, anyway.

7 COMMITTEE MEMBER JEFFRIES: Okay.

8 COMMITTEE MEMBER SHEN: So I'm not going to
9 read all of this stuff, but I'm just going to say
10 what we put in here, because we can read what the
11 issue is.

12 So there's a current authority code
13 thing, which I'm going to ignore.

14 COMMITTEE MEMBER JEFFRIES: Okay, so you're
15 starting at page 133, with 2:11?

16 COMMITTEE MEMBER SHEN: Yeah, 2:11. And the
17 first thing is that she says, subsection 1216(a),
18 the Committee overreaches the scope of its
19 authority, blah, blah, blah.

20 So 1216(a), see comments under 134.

21 MR. SLAUGHTER: Got it.

22 COMMITTEE MEMBER SHEN: The personnel are
23 required to follow regulations to achieve
24 proficiency, blah, blah, blah, so that's where that
25 is.

1 Then the next thing -- hang on, my computer
2 is freaking out. Are you guys there, still?

3 CHAIR KIMSEY: Oh, yes.

4 COMMITTEE MEMBER SHEN: You got really quiet
5 all of the sudden.

6 Subsection 1215.1(a), I see comments under
7 17. And then I put that -- then I just copied and
8 pasted those comments because they're the same
9 comments. And that's all about the removal of the
10 personnel titles.

11 CHAIR KIMSEY: Okay.

12 COMMITTEE MEMBER SHEN: Is this good enough
13 for you guys?

14 CHAIR KIMSEY: Yes.

15 COMMITTEE MEMBER SLAUGHTER: Yes.

16 COMMITTEE MEMBER SHEN: Okay. And then the
17 next is 1216.1(a)(4), so that one. I put in the
18 verbiage about the Department has not conducted
19 outside inspections routinely for decades. The
20 regulations were modified to reflect actual
21 practice. Something about the sections, and annual,
22 and blah, blah, blah, all that stuff.

23 And then, her next one is 1216.1(b)((1). And
24 then I wrote that that was already addressed. It's
25 the whole career ladder thing, again.

1 COMMITTEE MEMBER SLAUGHTER: Yeah, right.

2 COMMITTEE MEMBER SHEN: 1216.1(b)(4)(a), the
3 Committee agrees, after input from the Department,
4 has removed the section in its entirety. That's the
5 part about qualifying people who were born in the
6 Stone Age. And that got me through that one.

7 CHAIR KIMSEY: Yeah.

8 COMMITTEE MEMBER SLAUGHTER: Perfect.

9 COMMITTEE MEMBER SHEN: Okay, 2:12, agree
10 that forensic alcohol laboratory tests cannot have
11 discretion -- oh, wait, cannot have discretion. What
12 is that?

13 Basically, I put the -- what I put in here,
14 I don't know why, I was delirious at this point.
15 But, basically, I put in the whole place entity
16 issue thing.

17 COMMITTEE MEMBER WONG: Yeah. And then on
18 the very last thing, just before 2:13, qualified
19 instructors, such as a forensic alcohol analyst.

20 COMMITTEE MEMBER SHEN: Oh, oh, here it is.
21 So 1218(a) and (b) are unclear. Explain how the
22 laboratory has discretion to alter a training
23 program.

24 So I agree that a forensic alcohol
25 laboratory cannot have discretion. The wording will

1 be changed to laboratory which, as described in the
2 definition, referring to place entity issues
3 addressed in the public comments. So that's how I
4 handled that one.

5 The qualifications of the qualified
6 instructors will be detailed in the submissions to
7 the Department, as outlined in the regulations.

8 COMMITTEE MEMBER SLAUGHTER: Yeah.

9 COMMITTEE MEMBER SHEN: Okay. Then 2:13, I
10 said that tissue was removed from the header.
11 Because I'm ignoring all the authority reference
12 stuff.

13 COMMITTEE MEMBER SLAUGHTER: Yeah.

14 COMMITTEE MEMBER SHEN: Okay, then 2:14,
15 calibration of instruments. The language has been
16 changed to read, and I apparently changed some
17 language. Let's see, what did I do here?

18 Calibration of -- okay, so subsection
19 1220(b)(2), she says, calibration of what?
20 Subsection contains clarity and consistency issues,
21 you all see that?

22 COMMITTEE MEMBER SLAUGHTER: Yeah.

23 COMMITTEE MEMBER WONG: Yes.

24 COMMITTEE MEMBER HARMON: We're just trying
25 to get there.

1 COMMITTEE MEMBER SHEN: Sorry. I know, I'm
2 not --

3 COMMITTEE MEMBER HARMON: I know you want to
4 move this along, so I get it. Go ahead.

5 COMMITTEE MEMBER SHEN: Okay, so calibration
6 of instrument. Language has been changed to read,
7 and I changed it to say, each such description shall
8 include the instrument calibration procedures and
9 the quality programs or methods. So I put the word
10 instrument in there.

11 COMMITTEE MEMBER SLAUGHTER: Yeah.

12 COMMITTEE MEMBER SHEN: Is that good?

13 COMMITTEE MEMBER SLAUGHTER: Yeah.

14 COMMITTEE MEMBER WONG: Yes.

15 COMMITTEE MEMBER SHEN: All right, her next
16 point was 1220.3(a)(1), needs to be broken out and
17 expressed severally. And I agreed with that. So I
18 changed 1220.3(a)(1) -- oh, wait, sorry, I disagreed
19 with that.

20 I said, the Committee disagrees. The
21 language is clear as written. That is what I said.
22 Never mind, I did not agree with her.

23 COMMITTEE MEMBER HARMON: What did they want
24 broken out?

25 COMMITTEE MEMBER SHEN: They wanted the --

1 they want acquiring and analyzing broken out.

2 COMMITTEE MEMBER HARMON: Oh, okay.

3 COMMITTEE MEMBER SHEN: Okay. And then
4 1220.3(a)(5), I wrote found in error is common
5 language and readily understood by the practitioner.

6 I don't know, we don't use out of control.
7 Does everybody else use out of control?

8 COMMITTEE MEMBER HARMON: No, not generally.

9 COMMITTEE MEMBER WONG: Only with our kids.

10 COMMITTEE MEMBER SHEN: I know, exactly,
11 that's what I was thinking.

12 Then 1220.4, expressing and reporting are
13 two different things. I wrote, expression has been
14 used for decades with no issues. All right.

15 COMMITTEE MEMBER SLAUGHTER: Agreed.

16 COMMITTEE MEMBER SHEN: Okay, 2:15?

17 COMMITTEE MEMBER SLAUGHTER: Yes.

18 COMMITTEE MEMBER SHEN: Going down to
19 Section 1221.1, the wording of this title is not
20 consistent with the title of blood, urine and
21 breath. The sentence structure is unclear.

22 I wrote, the Committee disagrees that the
23 wording is unclear.

24 She said, 1221.4(2) is incorrectly numbered.
25 I agreed and I fixed it.

1 MS. STUPPLE: I think it was just that the
2 strike out was through the 4.

3 COMMITTEE MEMBER WONG: That's right.

4 MS. STUPPLE: So you couldn't tell it was
5 struck out.

6 COMMITTEE MEMBER SHEN: Yeah, it was struck
7 out. It was something weird, but it's fixed.

8 MS. STUPPLE: It was supposed to be struck
9 out.

10 COMMITTEE MEMBER SHEN: Yeah. Then no
11 discretionary checklist thing.

12 Discretionary checklist has been in place as
13 is for decades, with no clarity issues. So I didn't
14 feel like we had to make a bunch of stuff up for it.

15 And then, she says, pre-breath instrument
16 operators, that whole thing, that they aren't -- we
17 don't clarify them.

18 So I wrote, the Committee feels that the
19 regulations adequately outline the difference
20 between forensic alcohol analysts and breath
21 instrument operators.

22 COMMITTEE MEMBER HARMON: Okay.

23 COMMITTEE MEMBER SHEN: Okay. Then there's
24 something about interests, I agreed, so I cited it
25 properly.

1 And that 1221.3 is an orphan section and has
2 clarity and consistency issues.

3 And I said, we disagree.

4 2:16 --

5 COMMITTEE MEMBER HARMON: Where is it?

6 COMMITTEE MEMBER SHEN: 1221.3.

7 COMMITTEE MEMBER JEFFRIES: I think it's
8 struck out, isn't it?

9 COMMITTEE MEMBER HARMON: I don't even think
10 it exists.

11 COMMITTEE MEMBER SHEN: I think it exists. I
12 looked this up and --

13 MS. STUPPLE: It exists.

14 COMMITTEE MEMBER JEFFRIES: It got
15 renumbered, then.

16 COMMITTEE MEMBER HARMON: Did it get
17 renumbered?

18 COMMITTEE MEMBER SHEN: Well, I'll have to
19 find that, now, 1221.3.

20 MS. STUPPLE: No.

21 COMMITTEE MEMBER LYLE: I'm looking right at
22 it.

23 COMMITTEE MEMBER SHEN: I think it's still
24 there. I think I found it.

25 COMMITTEE MEMBER SLAUGHTER: That was

1 stricken out.

2 MS. STUPPLE: Was it?

3 COMMITTEE MEMBER JEFFRIES: 1221.3.

4 COMMITTEE MEMBER SLAUGHTER: 1221.3.

5 COMMITTEE MEMBER SHEN: 1221.3.

6 COMMITTEE MEMBER SLAUGHTER: Right.

7 COMMITTEE MEMBER HARMON: I can't find it in
8 the one with your changes, Jennifer.

9 COMMITTEE MEMBER JEFFRIES: I think there
10 was strike out there, yeah.

11 COMMITTEE MEMBER SHEN: Oh, yeah, because
12 you know why, because it's now 1221.5.

13 MS. STUPPLE: It used to be 1221.5.

14 COMMITTEE MEMBER SHEN: Yes, and now it's
15 actually supposed to be 1221.3.

16 MS. STUPPLE: Correct.

17 COMMITTEE MEMBER HARMON: So expression of
18 tests --

19 COMMITTEE MEMBER SLAUGHTER: Oh, got it.

20 COMMITTEE MEMBER HARMON: So 1221.5,
21 expression of test results is actually 1221.3.

22 COMMITTEE MEMBER SHEN: I think so. I'm not
23 even sure, but that's the one she's talking about.

24 MS. STUPPLE: Yeah.

25 COMMITTEE MEMBER JEFFRIES: Yeah, you're

1 right.

2 MS. STUPPLE: Yes.

3 COMMITTEE MEMBER SHEN: So I just -- we're
4 leaving it there, right?

5 MS. STUPPLE: Yeah, I don't even know what
6 orphan section means.

7 COMMITTEE MEMBER JEFFRIES: We were relying
8 on you, Alex.

9 COMMITTEE MEMBER SHEN: I think it means
10 that it's just out there all by itself, alone, with
11 no entity that --

12 COMMITTEE MEMBER JEFFRIES: Right.

13 COMMITTEE MEMBER SHEN: All right, 2:16 --

14 MS. STUPPLE: Where is this?

15 COMMITTEE MEMBER SHEN: Section 1222, the
16 sentence is unclear, represent should be described
17 and documented. I agreed and I have changed that.

18 COMMITTEE MEMBER HARMON: Well, I don't even
19 -- okay, got it.

20 COMMITTEE MEMBER SHEN: The forensic alcohol
21 laboratories shall maintain records which clearly
22 represent their activities.

23 COMMITTEE MEMBER HARMON: Okay, got it,
24 thanks. Yeah, that's good.

25 COMMITTEE MEMBER SHEN: Okay, 2:17, then

1 there's just a bunch of not relevant stuff. She's
2 just listed piles of documents.

3 So Alex, I just wrote not relevant under all
4 of these things. You can't answer to this.

5 MS. STUPPLE: Yeah. She's kind of
6 highlighted some stuff within it, but it's not -- it
7 didn't seem to be a comment so --

8 COMMITTEE MEMBER SHEN: No. We are ignoring
9 that. I don't care what you think.

10 MS. STUPPLE: You're good.

11 COMMITTEE MEMBER HARMON: It does reference
12 a blog, Alex.

13 COMMITTEE MEMBER SHEN: All right, so that
14 takes us to 3.1, quality control program. Here's
15 some changes we actually made.

16 COMMITTEE MEMBER HARMON: Oh, wait, so you
17 skipped over -- okay, so nothing was discussed in
18 17, 18, 19, 20, so now you're in 3.1?

19 COMMITTEE MEMBER SLAUGHTER: Yes.

20 COMMITTEE MEMBER SHEN: You know, it's just
21 a whole --

22 COMMITTEE MEMBER HARMON: Okay, got it.

23 COMMITTEE MEMBER SHEN: So the 3.1, quality
24 control program. The Committee discussed this and
25 agreed. The language will be changed to include the

1 following, 1220.3(a)(1)(a).

2 COMMITTEE MEMBER HARMON: 1220 --

3 COMMITTEE MEMBER SHEN: 1220.3(a)(1)(a).

4 COMMITTEE MEMBER HARMON: Got it.

5 COMMITTEE MEMBER SHEN: Quality control
6 reference sample is NIST traceable and has been
7 verified against a NIST SRN, and a quality control
8 reference sample is from a different lot than the
9 secondary standard, then 1220.3(a)(2) is not
10 required.

11 So we discussed this in our last meeting.

12 COMMITTEE MEMBER HARMON: Okay.

13 COMMITTEE MEMBER SHEN: So I just put in the
14 things that we had agreed to.

15 Okay, 3.2, the Committee discussed this and
16 agreed. The new verbiage will read as follows,
17 1220.4(b), analytical results shall be recorded to
18 the second or third decimal place. When recording to
19 the second decimal place, delete the third decimal
20 place when present.

21 COMMITTEE MEMBER SLAUGHTER: Right.

22 COMMITTEE MEMBER SHEN: All right. Okay, 4.1
23 really wasn't anything. I just put handled in other
24 comments.

25 5.1, I wrote, the Committee agrees with your

1 comments, changes were made to address your
2 concerns. See 5.2 or 5.5.

3 Language on page 15, requiring verifications
4 of (inaudible) to CRM, that whole thing. I wrote,
5 the Committee discussed and agreed. The language
6 will be changed as follows, 1220.1(a)(1)(b), if a
7 (inaudible) is secondary standard, CRN, has been
8 certified as analytically verified against a NIST
9 SRN, 1220.2(a)(1)(b) is not necessary.

10 Now, did I -- I know we changed that
11 somewhere earlier.

12 COMMITTEE MEMBER WONG: Yeah.

13 COMMITTEE MEMBER SHEN: Is that the right
14 verbiage?

15 COMMITTEE MEMBER HARMON: Didn't we discuss
16 this yesterday, sometime?

17 COMMITTEE MEMBER WONG: Yes, we did.

18 COMMITTEE MEMBER SHEN: I had copied and
19 pasted this well before yesterday, so I may have
20 gotten that wrong. So I need to go back and check to
21 make sure it's the same as what we said before,
22 wherever that was.

23 COMMITTEE MEMBER HARMON: Wait, I'm sorry,
24 what was the question, Jennifer?

25 COMMITTEE MEMBER SHEN: We talked about this

1 particular thing yesterday, somewhere in our
2 journey.

3 COMMITTEE MEMBER HARMON: Yes.

4 COMMITTEE MEMBER SHEN: But I remember Dan
5 had some specific things he wanted changed.

6 COMMITTEE MEMBER HARMON: He didn't want,
7 necessary. He wanted requires.

8 COMMITTEE MEMBER SHEN: What I will do, I'm
9 going to highlight this, I'll just go back to
10 whatever it was we discussed yesterday and make sure
11 it's the same.

12 COMMITTEE MEMBER HARMON: Yeah, because he
13 thought it was a verification. Right, Dan, it was a
14 verification that was not required, not the statute?

15 COMMITTEE MEMBER JEFFRIES: Correct.

16 COMMITTEE MEMBER SHEN: Okay, so I just need
17 to fix that. I did that several days ago, so --

18 Okay, 5.3, the Committee discussed and
19 agreed, the new verbiage will read as follows,
20 1220.(4)(b), analytical results shall be required to
21 -- that's the place one again.

22 5.4, the Committee discussed and agreed the
23 new language will read as follows, 1216.1(b)(4).
24 Persons who have completed 1216.1(a)(b)and (f), and
25 1216.1(b)(3) may conduct analysis on samples for

1 determining alcohol concentration.

2 So we discussed that at the previous
3 meeting, also that you were able to do analyses
4 before you've done all of the training. Do they all
5 remember that?

6 CHAIR KIMSEY: Yes.

7 COMMITTEE MEMBER SLAUGHTER: Yes.

8 COMMITTEE MEMBER HARMON: I'm sorry,
9 Jennifer, which one are we even on?

10 COMMITTEE MEMBER SHEN: Sorry, 5.4.

11 COMMITTEE MEMBER HARMON: 5.3 -- 5.4 or 5.3?

12 COMMITTEE MEMBER SHEN: 5.4.

13 COMMITTEE MEMBER HARMON: Okay.

14 COMMITTEE MEMBER SLAUGHTER: Four.

15 COMMITTEE MEMBER SHEN: So that is the one
16 that we agreed that they only had to have some
17 training before they could do work.

18 All right, are you ready for me to go on?

19 CHAIR KIMSEY: Yes.

20 COMMITTEE MEMBER SHEN: All right, 5.5. I
21 just wrote agreed. Changes noted above will assist
22 in this endeavor.

23 COMMITTEE MEMBER HARMON: Okay.

24 COMMITTEE MEMBER SHEN: 6.1, this is out of
25 the purview of the Committee, so I don't really know

1 what to do about all that. That seems like an Alex
2 thing.

3 MS. STUPPLE: Yeah, I don't know.

4 COMMITTEE MEMBER SHEN: All right, 7.1. Is
5 everybody with me?

6 COMMITTEE MEMBER SLAUGHTER: Yes.

7 CHAIR KIMSEY: Yes.

8 COMMITTEE MEMBER SHEN: I wrote not
9 relevant.

10 MS. STUPPLE: To all of it?

11 COMMITTEE MEMBER SHEN: So this is 7.1,
12 because he says a bunch of stuff before he gets to
13 the point. But again, this spread sheet didn't just
14 give us the problem, it gave us all of his verbiage.
15 So I don't need to talk about the fact that he's
16 publicly applauding our work.

17 MS. STUPPLE: No, but after that?

18 COMMITTEE MEMBER SHEN: When he gets into
19 it, it's actual into it. But he doesn't get into the
20 issue until -- because it's just cutting and pasting
21 his Word document until it gets down to the point,
22 which is that he doesn't like the four hours.

23 COMMITTEE MEMBER JEFFRIES: Where are you,
24 Jennifer?

25 MS. STUPPLE: But what about the labor

1 costs?

2 COMMITTEE MEMBER HARMON: 7.1. Okay, so
3 under 1221.4, you're saying all of that is going
4 to --

5 COMMITTEE MEMBER SHEN: So 7.3 is where I
6 actually put a comment, because 7.3 is where it
7 actually gets to the meat of the matter. Which is,
8 my question to the FARC and Department is, simply,
9 if it isn't broken, why fix it.

10 MS. STUPPLE: But he's also saying it's
11 going to increase labor costs.

12 COMMITTEE MEMBER SHEN: So what I said is
13 the Committee discussed, at length, and feels the
14 regulations as written are reflective of best
15 practices.

16 So the bottom line is we went round,
17 and round, and round, and round about what we have
18 to do for the breath training program. And everybody
19 on our Committee agreed that what we were doing is
20 mandatory. And it doesn't matter if it increases
21 labor costs. It doesn't matter if he doesn't want to
22 teach for four hours and he only wanted to teach for
23 30 minutes. The Committee decided that. So that's
24 kind of where we are.

25 So his whole point is he doesn't want

1 anything changed, but we didn't agree with that.

2 COMMITTEE MEMBER SLAUGHTER: This is Mark. I
3 don't know how we could respond to increased labor
4 costs.

5 CHAIR KIMSEY: Well, alleged increased labor
6 costs.

7 COMMITTEE MEMBER SLAUGHTER: Right.

8 COMMITTEE MEMBER SHEN: So if you read this,
9 it's like a whole paper on the point that he just
10 doesn't want some of these changes to be made.

11 So my thought is that we're just going to
12 say that we discussed -- we discussed all of these
13 issues at great length and we believe that this is
14 best practices, which is what our job is.

15 CHAIR KIMSEY: Well, also the fact that the
16 funding legislation directed the Committee to make
17 these changes.

18 COMMITTEE MEMBER HARMON: Well, there's
19 still a substantial amount of the regulation
20 maintained in these expectations. Most of it is just
21 further specification of what is required, not that
22 it wasn't required in the first place.

23 Do you see what I mean?

24 COMMITTEE MEMBER SHEN: Yeah.

25 COMMITTEE MEMBER HARMON: Like we -- there's

1 quite a bit here, but just explain it further,
2 explain what the expectation is, not that the
3 expectation didn't exist.

4 COMMITTEE MEMBER SHEN: So I can just put
5 that, too. So many of these expectations were in
6 place already, they're just further specified?

7 COMMITTEE MEMBER HARMON: Yes.

8 COMMITTEE MEMBER SHEN: Okay, I don't think
9 we need too much more than that. Do you think, Alex?

10 MS. STUPPLE: Well, there's the part about
11 the \$276,000.

12 COMMITTEE MEMBER HARMON: That should be
13 dependent on Agency.

14 COMMITTEE MEMBER LYLE: Well, and whoever
15 this is, this is Bruce, may have a 2,300
16 (inaudible), but all of them aren't making arrests
17 on -- or they're not pulling people over. I mean, if
18 they're with the Sheriff's Department, probably more
19 than half of them are working on the --

20 COMMITTEE MEMBER HARMON: And there's no
21 expectation in here that every deputy has to be
22 trained.

23 COMMITTEE MEMBER SHEN: Right.

24 MS. STUPPLE: Right.

25 COMMITTEE MEMBER SHEN: He just doesn't want

1 to have to do the amount of work that it requires to
2 train someone, that we are laying out in these
3 regulations. We are saying that we think that's what
4 he has to do.

5 MS. STUPPLE: Yeah, we've got a little --

6 COMMITTEE MEMBER SHEN: We've had endless
7 amounts about this conversation. I mean, we talked
8 about this particular thing for at least five years.

9 COMMITTEE MEMBER HARMON: The Committee was
10 tasked with updating the regulations to reflect
11 practice and that's all that's being done here so --

12 COMMITTEE MEMBER SHEN: To reflect the best
13 practice.

14 COMMITTEE MEMBER HARMON: Yes.

15 COMMITTEE MEMBER SHEN: All right, I'm
16 putting that in, too.

17 We have no -- I mean, we are absolutely not
18 going to be changing anything based upon this so --

19 MS. STUPPLE: Oh, yes, I second that.

20 COMMITTEE MEMBER SHEN: I don't -- all
21 right, so I have, the Committee discussed at length
22 and feel the regulations as written are reflective
23 of best practices. Many of these expectations are in
24 place already and these are just further clarified.
25 And the Committee was tasked with updating

1 regulations to reflect best practices, which we have
2 done here.

3 I think we should move on.

4 COMMITTEE MEMBER HARMON: I second that.

5 COMMITTEE MEMBER WONG: Agreed.

6 COMMITTEE MEMBER SHEN: Anybody else, add
7 more?

8 COMMITTEE MEMBER SLAUGHTER: no.

9 COMMITTEE MEMBER SHEN: Okay, we still have
10 8, person 8 to go.

11 CHAIR KIMSEY: It's our last person.

12 COMMITTEE MEMBER SHEN: I know. Oh, yeah,
13 here's the smoke and mirrors masterpiece, shocked
14 and horrified.

15 All right, so the first thing I put is these
16 comments are irrelevant, as we did before because
17 they're about the ISOR.

18 All this is very general, Alex?

19 MS. STUPPLE: Yeah. When I got to number 2,
20 on 149, I wasn't sure.

21 COMMITTEE MEMBER SHEN: On 149?

22 MS. STUPPLE: Page 149.

23 COMMITTEE MEMBER SHEN: I'm on page 161. So
24 that doesn't mean much to me, personally.

25 MS. STUPPLE: Oh, okay, never mind.

1 COMMITTEE MEMBER HARMON: It's 8.1, number
2 2.

3 COMMITTEE MEMBER SHEN: 8.1, number 2. I
4 have to skip all of this one, because it's all about
5 the ISOR.

6 MS. STUPPLE: But it didn't really say --

7 COMMITTEE MEMBER SLAUGHTER: And there's no
8 questions?

9 MS. STUPPLE: Yeah.

10 COMMITTEE MEMBER SHEN: Yeah, it's just a
11 bunch of garbage. So I mean, there's plenty of more
12 specific things to say later, all of which are
13 exactly like somebody else's.

14 All right, section by section comments on
15 8.2.

16 COMMITTEE MEMBER HARMON: Okay, you're on
17 8.2, okay.

18 COMMITTEE MEMBER SHEN: Yeah, I blew by 8.1.
19 8.2, so the first thing I put is that under
20 Section 1215(f), is I put in our comments about the
21 removal of three personnel titles to address that
22 one. Yes?

23 CHAIR KIMSEY: Okay.

24 COMMITTEE MEMBER SHEN: Okay.

25 COMMITTEE MEMBER HARMON: I would like to go

1 on the record on one of their comments, that they
2 actually said that the courts would not confuse a
3 forensic alcohol supervisor with an actual
4 supervisor in the laboratory.

5 COMMITTEE MEMBER SHEN: Well, that's
6 ridiculous, it happens all the time.

7 COMMITTEE MEMBER HARMON: That happens
8 repeatedly in court.

9 COMMITTEE MEMBER SHEN: It's problematic. Of
10 course, the people who are commenting aren't actual
11 forensic alcohol people. They don't work in an
12 actual crime lab, so they would not know these
13 things.

14 All right, so the only thing here is that
15 one. And So I put in why we were getting rid of it,
16 so I think --

17 COMMITTEE MEMBER SLAUGHTER: Wait.

18 COMMITTEE MEMBER SHEN: Are we good on 8.2?

19 COMMITTEE MEMBER SLAUGHTER: Wait, what did
20 we do, we did removal of --

21 COMMITTEE MEMBER SHEN: I said, the
22 Committee felt the removal of the three personnel
23 titles added clarity and conciseness to the
24 regulations. The old titles are not used in current
25 laboratories and the title supervisor, in

1 particular, causes some confusion. The Committee
2 felt it best to have one title and to articulate,
3 through the regulations, what an analyst must do to
4 be considered proficient. So that is the comment.

5 Most of this we went through before, because
6 it's all the same comment.

7 COMMITTEE MEMBER HARMON: Yes.

8 COMMITTEE MEMBER SHEN: So 8.3 is the steps
9 of procedures that we discussed.

10 COMMITTEE MEMBER HARMON: Yes.

11 COMMITTEE MEMBER SHEN: So I put in the
12 comments that we used before.

13 COMMITTEE MEMBER HARMON: Okay.

14 COMMITTEE MEMBER SHEN: So here, I put the
15 procedure was more applicable, but I also have that
16 direction from the statute thing, so I'll change
17 that to be what it's supposed to be. So we don't
18 need direction from the statute.

19 COMMITTEE MEMBER HARMON: Okay.

20 COMMITTEE MEMBER SHEN: 8.4, I put in the
21 thing that we discussed for competency tests. We
22 changed the word (inaudible) to testing, to add
23 clarity. With this change, the Committee feels the
24 definition of competency tests is clear.

25 COMMITTEE MEMBER HARMON: Yes.

1 COMMITTEE MEMBER SHEN: 8.5, this is we
2 removed the words technical support. We felt
3 continuing competence is common, blah, blah, blah.
4 We talked about that before, too.

5 All right?

6 CHAIR KIMSEY: Okay.

7 COMMITTEE MEMBER SLAUGHTER: Yes.

8 COMMITTEE MEMBER SHEN: 8.6, definition of
9 (inaudible) is not correct. I fixed that.

10 8.7, the definition of standard
11 reference material is not correct. I put that
12 comment in.

13 These are all the exact same comments we
14 used at the beginning, way back yesterday morning.

15 CHAIR KIMSEY: Correct.

16 COMMITTEE MEMBER SHEN: 8.8, I think this
17 section is misplaced. This is all the stuff about we
18 all want to have Article 3 back in there.

19 COMMITTEE MEMBER HARMON: Okay.

20 COMMITTEE MEMBER SHEN: So I just put we
21 took it out and we put in everything that she's
22 talking about is in Article 2, exactly like we said
23 before.

24 8.9 is the proficiency testing program, and
25 the voluntary ASCLD/LAB, and the whole thing about

1 how their university does this better.

2 I put the Committee disagrees and then we
3 put all that stuff about the proficiency testing
4 that we've talked about before. That it's been
5 antiquated, that we have outside labs, and a whole
6 bunch of stuff about proficiency tests that we
7 talked about before and is everywhere else.

8 You don't want me to read all five
9 paragraphs, do you?

10 COMMITTEE MEMBER JEFFRIES: No.

11 COMMITTEE MEMBER SHEN: No, okay.

12 COMMITTEE MEMBER SLAUGHTER: Nope.

13 COMMITTEE MEMBER SHEN: all right, hang on,
14 I got to get to the next one here, which is way
15 down. 8.10, physical or natural science. So the
16 Committee agrees and the regulations have been
17 changed to state and then the way we changed the
18 sciences, the science degrees.

19 COMMITTEE MEMBER HARMON: okay.

20 COMMITTEE MEMBER SHEN: 8.11, this is the
21 reviewing and approving training protocols. So I
22 think Alex, I may need to put that mandamus thing in
23 here because we haven't done any of that, yet. The
24 Committee feels --

25 MS. STUPPLE: Yeah.

1 COMMITTEE MEMBER SHEN: So this is the thing
2 about we feel with defending it, it's all good, but
3 then I'll put the mandamus comment in -- mandamus.

4 MS. STUPPLE: Yeah.

5 COMMITTEE MEMBER SHEN: All right. I might
6 not be able to talk tonight.

7 All right, that's the end of that one. He
8 just goes on and on about how we don't have anyone
9 qualified, but we're not worried about that because
10 we answered that.

11 8.12, competency test is vaguely defined. We
12 feel that it isn't. The Committee feels that
13 competency test is a common term used in forensic
14 laboratories to describe a practical examination
15 that shows competency prior to a training being
16 allowed to do independent work. The inclusion of
17 competency tests versus proficiency tests more
18 closely resembles common practice. I will change the
19 word paper to testing. So that's all the verbiage.

20 MS. STUPPLE: How about predetermined value
21 equivalent to true value?

22 COMMITTEE MEMBER HARMON: Where is this?

23 CHAIR KIMSEY: It's sort of in the middle.

24 MS. STUPPLE: In 8.12, in the middle.

25 COMMITTEE MEMBER SHEN: Well, I guess, also

1 the next thing I said was the Committee feels that
2 the level of detail suggested is not necessary.
3 Completion of a competency test and its adherence to
4 regulations will be forwarded to the Department for
5 review.

6 We actually didn't want the word review,
7 though, what did we make that word?

8 CHAIR KIMSEY: Just submit it to the
9 Department.

10 MS. STUPPLE: Repository.

11 COMMITTEE MEMBER SHEN: All right, what are
12 you looking at, Alex?

13 MS. STUPPLE: Nothing, go on.

14 COMMITTEE MEMBER SHEN: Oh, all right. 8.13,
15 are we on 8.13?

16 COMMITTEE MEMBER SLAUGHTER: Yes.

17 COMMITTEE MEMBER SHEN: So the bottom line
18 of this one is how does the summation of
19 information, alone, ever ensure compliance? These
20 proposed amendments will not allow any other type.

21 So I put the whole training submission
22 comment and then I'll stick in the mandamus thing.

23 COMMITTEE MEMBER HARMON: Okay.

24 MS. STUPPLE: Yeah.

25 COMMITTEE MEMBER SHEN: All right, 8.14.

1 Proposed changes are irrelevant and unnecessary,
2 under 1218(b). The Committee concluded the addition
3 of this language clarified the intent to allow for
4 changes in training, as necessitated by advanced in
5 technology, as appropriate, without the requirement
6 of additional legislative changes.

7 So we do not think it's irrelevant. We
8 thought it was important.

9 And then, so then the next part is 1218(c),
10 about rendering believe regarding notification, and
11 30 days, and what the outline of training means. So
12 I just put exactly what we put before.

13 COMMITTEE MEMBER HARMON: Yes.

14 COMMITTEE MEMBER SHEN: So that was the
15 noncompliance with 30-day limits that potentially
16 impact the weight given by the court to evidence,
17 and all that stuff. In fact, I think that's you, and
18 Jennifer, and Dan's stuff.

19 Doesn't that belong to you, that you wrote
20 over and over again? I put that there. And I'll add
21 the mandamus comment -- mandamus.

22 8.15.

23 COMMITTEE MEMBER SLAUGHTER: Yes.

24 COMMITTEE MEMBER SHEN: I think I put -- I
25 put that same comment again, that Jennifer and Dan

1 wrote, the big long one, that cites the table --

2 COMMITTEE MEMBER HARMON: It's all Dan.

3 COMMITTEE MEMBER SHEN: What?

4 COMMITTEE MEMBER HARMON: That was all Dan.

5 COMMITTEE MEMBER SHEN: I wrote that thing
6 that Dan wrote and I'm going to add the mandamus in
7 here.

8 COMMITTEE MEMBER HARMON: Okay.

9 COMMITTEE MEMBER SHEN: Okay, 8.16,
10 collection handling.

11 CHAIR KIMSEY: Just seven pages to go.

12 COMMITTEE MEMBER SHEN: I know.

13 COMMITTEE MEMBER HARMON: We already
14 addressed the volume issue.

15 COMMITTEE MEMBER SHEN: The volume of
16 sample, yeah, the existing language is vague as to
17 the meaning of sufficient and is unnecessary. I put
18 that thing that you guys wrote.

19 COMMITTEE MEMBER HARMON: Okay.

20 COMMITTEE MEMBER SHEN: The tryer of fact
21 cannot be -- that whole thing.

22 COMMITTEE MEMBER HARMON: Okay.

23 COMMITTEE MEMBER SHEN: Okay, 8.17, I put in
24 the Dan thing, again. This is more oversight stuff,
25 right?

1 CHAIR KIMSEY: Yes.

2 MS. STUPPLE: Uh-hum.

3 COMMITTEE MEMBER SHEN: So I put the
4 mandamus in there. Do I need to put the thing about
5 we haven't been doing (inaudible) methods in the
6 Department for a while? I'll put that in there, too.

7 COMMITTEE MEMBER HARMON: We haven't been
8 submitting them since 2006.

9 COMMITTEE MEMBER SHEN: All right.

10 COMMITTEE MEMBER HARMON: July 2006.

11 COMMITTEE MEMBER SHEN: All right, so I'll
12 put that in there.

13 All right, Article 5, 8.18. The language to
14 be modified to incorporate wet chemistry technique.
15 The language should be, the method shall employ
16 calibration standard, which is our water solution
17 for the -- So I changed that. There will be a change
18 to before?

19 COMMITTEE MEMBER HARMON: Yep.

20 COMMITTEE MEMBER SHEN: Okay, and that's all
21 there is there, I think.

22 1220.2(1)(c).

23 COMMITTEE MEMBER HARMON: Under 8.18?

24 COMMITTEE MEMBER SHEN: Yeah, all this other
25 stuff talks about the DO method versus the gas

1 chromatograph method and --

2 COMMITTEE MEMBER HARMON: Well, if they're
3 relevant because there's new legislation that a lot
4 of laboratories don't have to do it.

5 COMMITTEE MEMBER SHEN: Right. It is
6 irrelevant. Should I put that in there?

7 COMMITTEE MEMBER HARMON: AB 2425,
8 accredited labs do not have to do it. It technically
9 has nothing to do with this Committee.

10 COMMITTEE MEMBER SHEN: All right, do you
11 want to put that in here or just ignore it?

12 COMMITTEE MEMBER HARMON: I don't know. What
13 do you think, Alex?

14 MS. STUPPLE: Put it in.

15 COMMITTEE MEMBER SHEN: Okay, so it's 2025?
16 I can't remember.

17 CHAIR KIMSEY: Yes, AB 2425.

18 COMMITTEE MEMBER HARMON: AB 2425.

19 COMMITTEE MEMBER SHEN: So AB 2425 what?

20 COMMITTEE MEMBER HARMON: Provided an
21 exception of ASCLD/LAB accredited laboratories to no
22 longer do direct oxidation analysis. So the
23 Legislature felt that there may be more appropriate
24 methodologies, independent of the Committee.

25 COMMITTEE MEMBER SHEN: All right, I'll fix

1 that later. But, yes, I got that in there.

2 Okay, that gets us to -- because that's all
3 the old stuff, gas chromatograph So clearly, we
4 don't care about any more of that.

5 8.19, breath sample collection for a field
6 inspection, to relocate them. Relocation's
7 unnecessary.

8 So I put -- so I put what Bruce said here,
9 but we decided not to do that. We repeated it and I
10 wrote rescind or repeal. Why did I do that?

11 COMMITTEE MEMBER HARMON: So we repealed it.
12 We just relocated it. We didn't repeal it, we
13 relocated it so that it was with all of the other
14 breath stuff.

15 COMMITTEE MEMBER SHEN: Okay, so I am --

16 COMMITTEE MEMBER HARMON: It's in Article 7,
17 also I don't know if --

18 COMMITTEE MEMBER SHEN: What comment does
19 this one -- where is this comment, elsewhere?
20 Because we did all of this, where we talked about
21 what to do with the --

22 COMMITTEE MEMBER HARMON: Yeah, this is in
23 Bruce and --

24 COMMITTEE MEMBER SHEN: Yeah, I just put a
25 thing here, which is quite different when they're

1 actually done with it. So I just need that comment.

2 COMMITTEE MEMBER LYLE: Okay, let me find
3 it. Yeah, it's under 1:125.

4 COMMITTEE MEMBER SHEN: The Section 1:125?

5 COMMITTEE MEMBER LYLE: Correct.

6 COMMITTEE MEMBER SHEN: Okay, so I should be
7 able to just put that in and that's it.

8 COMMITTEE MEMBER LYLE: I think So yeah.

9 COMMITTEE MEMBER SHEN: All right.

10 COMMITTEE MEMBER HARMON: That was the
11 1:125?

12 COMMITTEE MEMBER SHEN: Yeah, that's what I
13 want to do. But I'll just get rid of all of this
14 other thing that's in it. I think I just copy and
15 paste it.

16 COMMITTEE MEMBER LYLE: Okay.

17 COMMITTEE MEMBER SHEN: Sorry, I'm just
18 trying to -- I have to have enough written down on
19 these so that I can remember what I did later.

20 CHAIR KIMSEY: You'll have a subcommittee
21 person, most likely, taking notes.

22 COMMITTEE MEMBER SHEN: Okay. So what are we
23 on then, 8:20?

24 COMMITTEE MEMBER HARMON: Well, you're still
25 on 8:19, there's an awful lot in there.

1 COMMITTEE MEMBER SHEN: Oh, all right.

2 COMMITTEE MEMBER HARMON: So you addressed
3 the first part.

4 CHAIR KIMSEY: We also threw the baby out
5 with the bathwater at some point.

6 COMMITTEE MEMBER HARMON: And we reinstated
7 most of the words, so I don't think that matters.

8 They talk a lot about alveolar composition.

9 COMMITTEE MEMBER SHEN: Yeah, so we just --
10 we handled all this under that other one.

11 COMMITTEE MEMBER LYLE: Right, we left that
12 in.

13 COMMITTEE MEMBER SHEN: That's what I mean,
14 I think that comment before, we did all -- we
15 changed all of that under that one comment.

16 COMMITTEE MEMBER HARMON: Yeah, I think --
17 no, you're right, you're right.

18 COMMITTEE MEMBER LYLE: Yeah, and then it
19 talks about continuous and we did that, too.

20 COMMITTEE MEMBER HARMON: Yeah, I think we
21 did all of it.

22 COMMITTEE MEMBER WONG: That's 1:133.

23 COMMITTEE MEMBER SHEN: All right, so --
24 what did you say?

25 COMMITTEE MEMBER WONG: For 1019, for a 15-

1 minute wait, that's the 1:133.

2 COMMITTEE MEMBER SHEN: So it's not all
3 under whatever one I put?

4 COMMITTEE MEMBER HARMON: 126 -- 145.

5 COMMITTEE MEMBER LYLE: No, I think it's
6 under 125.

7 COMMITTEE MEMBER SHEN: I think it's just,
8 yeah --

9 COMMITTEE MEMBER HARMON: Yeah, 125 has it,
10 too.

11 COMMITTEE MEMBER SHEN: So should I put --
12 just 125 is all I need?

13 COMMITTEE MEMBER HARMON: I think so.

14 COMMITTEE MEMBER SHEN: All right. So that
15 gives us 8:20.

16 COMMITTEE MEMBER HARMON: We took it back.
17 We put the .08 to a 3.0.

18 COMMITTEE MEMBER SHEN: Right, okay.

19 COMMITTEE MEMBER LYLE: Yeah.

20 COMMITTEE MEMBER HARMON: That was in a
21 previous one, also.

22 COMMITTEE MEMBER SHEN: Can you tell me what
23 that was?

24 COMMITTEE MEMBER HARMON: That was also
25 Bruce's. It looks like 130, maybe. Yeah, 130, so

1 1:130.

2 COMMITTEE MEMBER WONG: Yeah, that's
3 correct.

4 COMMITTEE MEMBER SHEN: All right, so that's
5 a see comment 1:130 there.

6 COMMITTEE MEMBER HARMON: Yeah.

7 COMMITTEE MEMBER SHEN: All right, and then
8 I put irrelevant under the conclusion. Although, I
9 do think -- where is that thing about for the FARC,
10 by the FARC and whatever that thing is? That was
11 terribly.

12 COMMITTEE MEMBER LYLE: Sadly enough, that
13 is beginning to look more like government of the
14 FARC, by the FARC, for the FARC.

15 COMMITTEE MEMBER HARMON: That's under 8:21.
16 We haven't gotten there, yet.

17 COMMITTEE MEMBER SLAUGHTER: Yes.

18 COMMITTEE MEMBER LYLE: We don't have 8:21,
19 now. The only thing on 8:20, the very first sentence
20 is a section that introduces a term true value over
21 reference sample, true value in quotes.

22 COMMITTEE MEMBER SHEN: Oh, did I miss one
23 here? Did I miss 8:20?

24 COMMITTEE MEMBER LYLE: No, 8:20, but we
25 started in the second paragraph or something. So it

1 talks about true value and the commenter seems to
2 think that we need to define that.

3 To me, it seems like it's common language,
4 but I think maybe we need to indicate that we've
5 read the comment and that it's common language.

6 COMMITTEE MEMBER SHEN: Yeah. Do we all
7 agree?

8 COMMITTEE MEMBER LYLE: Or am I off?

9 COMMITTEE MEMBER SLAUGHTER: Agreed.

10 COMMITTEE MEMBER SHEN: All right.

11 COMMITTEE MEMBER LYLE: Thank you.

12 COMMITTEE MEMBER SHEN: Okay, now we're on
13 8:21.

14 COMMITTEE MEMBER LYLE: Yeah.

15 COMMITTEE MEMBER SHEN: Now, you can all see
16 that I had this huge smile on my face. Irrelevant.
17 Irrelevant. Alex, it's totally irrelevant.

18 MS. STUPPLE: Yes, yes.

19 COMMITTEE MEMBER SHEN: Here it is, sadly
20 enough, this is beginning to look like the
21 government of the FARC, by the FARC, and for the
22 FARC.

23 Yeah, so I think we're done. That's it,
24 right?

25 COMMITTEE MEMBER HARMON: That's it.

1 COMMITTEE MEMBER JEFFRIES: You know, I hate
2 to throw a wet blanket on, but I do think we should
3 consider the possible obstacles and make sure that
4 we're comfortable with the -- or that Alex is
5 comfortable. She raises some very good points in
6 there.

7 I think we've dealt with all of them, but do
8 we want to take a minute and make sure that we've
9 addressed all the issues that she raised?

10 COMMITTEE MEMBER SHEN: Absolutely. We
11 definitely do need to do that because -- I'm just
12 happy to be done with these comments.

13 COMMITTEE MEMBER JEFFRIES: Yes.

14 CHAIR KIMSEY: I also have -- this is Paul.
15 I'm going to propose that we set up a subcommittee,
16 that we vote on this, have a subcommittee that the
17 whole Committee delegates responsibility and
18 authority to work, clean up the comments as may be
19 necessary.

20 We've obviously jumped around a little bit
21 and, obviously, a subcommittee can --

22 COMMITTEE MEMBER WONG: Carefully.

23 CHAIR KIMSEY: -- look a little more
24 carefully if there are questions about what the
25 intent of the full Committee had been. We've done

1 this in the past. And I just want to sort of put
2 that to a vote of the full Committee.

3 I recommend Jennifer Shen and myself be that
4 subcommittee.

5 COMMITTEE MEMBER SLAUGHTER: I agree.

6 CHAIR KIMSEY: Mark Slaughter agrees.

7 COMMITTEE MEMBER WONG: I second.

8 CHAIR KIMSEY: Kenton Wong agrees.

9 Paul Kimsey agrees.

10 COMMITTEE MEMBER HARMON: Jennifer Harmon, I
11 agree.

12 COMMITTEE MEMBER LYLE: Bruce Lyle agrees.

13 COMMITTEE MEMBER JEFFRIES: Dan Jeffries
14 agrees.

15 COMMITTEE MEMBER SHEN: Jennifer Shen
16 agrees. Jennifer agrees.

17 I'm never doing anything, ever again.

18 (Laughter)

19 CHAIR KIMSEY: Did you have some other
20 comments, Alexandra, that you wanted us to look at?

21 MS. STUPPLE: What about number 12 on the
22 list of possible obstacles?

23 COMMITTEE MEMBER HARMON: Can you just give
24 us what that obstacle is?

25 MS. STUPPLE: Oh, I'm sorry.

1 COMMITTEE MEMBER LYLE: It's where the
2 laboratory actually has a proficiency test.

3 COMMITTEE MEMBER SHEN: Don't we say we have
4 to pass a proficiency test?

5 COMMITTEE MEMBER LYLE: Where did we say it?

6 COMMITTEE MEMBER SHEN: Or did we just have
7 to pass the competency test?

8 CHAIR KIMSEY: No. No, we said you had to
9 pass a proficiency test.

10 COMMITTEE MEMBER WONG: Yeah.

11 COMMITTEE MEMBER HARMON: Hold on, let's see
12 if we can find it. It's going to be --

13 MR. LARSON: Can we have a quick comment
14 from the public, while we're waiting?

15 CHAIR KIMSEY: Sure, let's open it up for
16 public comment.

17 MR. LARSON: I can't believe I'm suggesting
18 that we extend this meeting any longer, but I don't
19 believe the Committee discussed -- discussed all the
20 comments produced by subcommittee number four. There
21 doesn't seem to be much there of any value. But I
22 don't know that they actually looked at that.

23 CHAIR KIMSEY: Which subcommittee, which
24 number?

25 MR. LARSON: This report.

1 CHAIR KIMSEY: Ah, e-mail that was sent to
2 Alex -- let's see, it's from Kenton to Alex and Don.

3 COMMITTEE MEMBER HARMON: I found it.

4 COMMITTEE MEMBER SHEN: Well, I think,
5 Kenton, we need to look at your -- you guys
6 discussed these possible obstacles, I believe.

7 COMMITTEE MEMBER WONG: Yeah. And a lot of
8 them that we covered along, over the last two days.
9 I was checking them off.

10 COMMITTEE MEMBER SHEN: Yes.

11 MR. LARSON: The bottom part covers comments
12 to the public comments, page 132. There's not much
13 there, but that was the best you could do.

14 COMMITTEE MEMBER SHEN: I think Kenton's
15 right, though, we covered most of these.

16 CHAIR KIMSEY: Correct.

17 COMMITTEE MEMBER HARMON: I can address the
18 proficiency test issue as soon as we're ready.

19 CHAIR KIMSEY: Okay, go ahead.

20 COMMITTEE MEMBER HARMON: Okay, so the
21 concern by Alex about whether a successful
22 proficiency test is submitted, okay, actually, under
23 12 -- I'm hoping I'm citing this properly, 1216.1.

24 MS. STUPPLE: Oh, yes, okay.

25 COMMITTEE MEMBER HARMON: Okay, it says,

1 proof of completion of a proficiency test, as
2 outlined in 1216.1(a)(2), for each analyst
3 performing forensic alcohol analysis for the
4 laboratory.

5 And then, if you go to 1216.1(a)(2), meeting
6 the proficiency testing requirements specified in
7 Health and Safety Code 100702, laboratories shall
8 direct approved providers to submit all external
9 proficiency test results as required by HS 100702,
10 to the Department. The laboratory shall submit, at
11 minimum, one test per analyst, per year. In
12 addition, laboratory staff shall provide the
13 Department any documentation pertaining to
14 corrective actions with respect to proficiency
15 tests.

16 MS. STUPPLE: Okay.

17 COMMITTEE MEMBER HARMON: So what that means
18 is that not only do they have to submit their
19 results, successful or unsuccessful, but if it's
20 unsuccessful they have to demonstrate what they're
21 doing to fix it.

22 MS. STUPPLE: Okay.

23 COMMITTEE MEMBER HARMON: Yeah. Which as a
24 side note, is what is required through accrediting,
25 the accrediting bodies, as well.

1 COMMITTEE MEMBER WONG: With a correction
2 action.

3 COMMITTEE MEMBER HARMON: So it's
4 duplicative, but it's being done.

5 COMMITTEE MEMBER SHEN: So I think we
6 handled, we talked about 1, already.

7 COMMITTEE MEMBER JEFFRIES: Let's just
8 clarify. When we talked about one, Alex says it's as
9 required by statute. What statutes require it? I
10 just want to make sure we are covering it.

11 COMMITTEE MEMBER SHEN: I think it's --

12 MS. STUPPLE: No, that you discuss it -- are
13 you talking about number 1?

14 COMMITTEE MEMBER SHEN: Yeah.

15 MS. STUPPLE: It was just that you had to
16 discuss the reporting of uncertainty measurements.

17 COMMITTEE MEMBER SHEN: Which we agreed that
18 we had.

19 COMMITTEE MEMBER HARMON: Right.

20 MS. STUPPLE: Right. This was written
21 before --

22 COMMITTEE MEMBER SLAUGHTER: -- we had the
23 discussion.

24 MS. STUPPLE: Yeah.

25 COMMITTEE MEMBER JEFFRIES: Okay.

1 COMMITTEE MEMBER SHEN: And then the number
2 2 is going to be handled by that mandamus clause.

3 MS. STUPPLE: Right.

4 COMMITTEE MEMBER JEFFRIES: Let me make sure
5 I understand, though. Alex, you're not saying that
6 we're charged as required, to require reporting of
7 necessary measurements. It's just that you're saying
8 we need to discuss it, correct?

9 MS. STUPPLE: Correct.

10 COMMITTEE MEMBER JEFFRIES: Okay, thank you.
11 Sorry. Sorry, Jennifer.

12 COMMITTEE MEMBER SHEN: No, no worries. So
13 number 2 is we added the mandamus language to handle
14 it.

15 MS. STUPPLE: Yeah.

16 COMMITTEE MEMBER SHEN: And number 3, I
17 think we were pretty clear of the definitions of
18 dividing out laboratory versus forensic alcohol
19 laboratory. You're all right with that?

20 MS. STUPPLE: Yeah. Well, really the only
21 ones that I would point out, now, are number 7,
22 which you guys went over, so that's fine. About the
23 two years' of analytical experience, whether that's
24 full time or, you know, twice over two years'.

25 And then, actually, I meant the direct

1 jurisdiction of the laboratory rules.

2 CHAIR KIMSEY: On number 9?

3 MS. STUPPLE: Yeah, on number 9.

4 COMMITTEE MEMBER JEFFRIES: Let's look at
5 that, then. What do we have under 1221.1(b)? We have
6 (inaudible) may be used for the testing of breath
7 samples in places other than forensic alcohol
8 laboratories, and by persons other -- forensic -- we
9 left a word out. Other -- I think you must have
10 meant other than forensic alcohol analysts, only if
11 such places and persons are under the direct
12 jurisdiction of a government agency or forensic
13 alcohol laboratory.

14 So I guess there is a question about what we
15 mean by under the direct jurisdiction. Because
16 they're not -- we're not talking about that they're
17 employees of the laboratory. And I see Alex's point,
18 that when we're talking about whatever local law
19 enforcement agency, they might be affiliated with
20 the county crime lab, but they're not under their
21 jurisdiction.

22 MS. STUPPLE: Yeah.

23 COMMITTEE MEMBER HARMON: But could they be
24 under the direct jurisdiction of the laboratory as a
25 default mechanism, as if there is no municipal

1 laboratory? So if there's no municipal laboratory,
2 then they're in the jurisdiction of a county
3 laboratory. If there is no county laboratory,
4 they're under the jurisdiction of a State?

5 COMMITTEE MEMBER JEFFRIES: Well, I guess
6 this is my question, how would you prove that Costa
7 Mesa Police Department's under the direct
8 jurisdiction of the Orange County Crime Lab?

9 COMMITTEE MEMBER HARMON: Because we're the
10 only ones who provide the service for the county.

11 CHAIR KIMSEY: Right.

12 COMMITTEE MEMBER JEFFRIES: Right, but
13 there's no statute saying that the City of Costa
14 Mesa must respond to the Orange County Crime Lab.
15 They could choose to have their own crime lab or go
16 to another crime lab.

17 COMMITTEE MEMBER HARMON: And that's true
18 and has been the case, and can be done.

19 COMMITTEE MEMBER JEFFRIES: And So but the
20 direct jurisdiction would imply that there's some
21 requirement that you have control over them.

22 COMMITTEE MEMBER HARMON: So how is it --
23 that they use a government agency of some to do this
24 kind of work, or a forensic alcohol laboratory.

25 And this has been in place since 2006,

1 because licensure has been gone since then. So for
2 the last nine years, this has been an issue that had
3 not come up.

4 COMMITTEE MEMBER JEFFRIES: How about, what
5 if we, instead of saying, under the direct
6 jurisdiction, said are affiliated with a government
7 agency or forensic alcohol laboratory. Is that --

8 COMMITTEE MEMBER HARMON: Well, and then I
9 would say -- depending on the entity, they may have
10 an MOU, right?

11 COMMITTEE MEMBER JEFFRIES: Yeah.

12 COMMITTEE MEMBER HARMON: Or a joint aid
13 agreement or --

14 COMMITTEE MEMBER JEFFRIES: Is that where
15 you were going with this, Alex, that --

16 MS. STUPPLE: Yeah.

17 COMMITTEE MEMBER JEFFRIES: -- we're really
18 not -- because jurisdiction, I think, implies the
19 specific legal meaning.

20 MS. STUPPLE: Yes.

21 COMMITTEE MEMBER JEFFRIES: And, really,
22 you're affiliated with the Costa Mesa Police
23 Department, but you don't have jurisdiction over
24 them.

25 COMMITTEE MEMBER HARMON: Well, technically,

1 as Orange County as an example, we have an MOU with
2 the County Board of Supervisors that obligates us to
3 provide those services to anyone within the County
4 of Orange.

5 COMMITTEE MEMBER JEFFRIES: Right.

6 COMMITTEE MEMBER HARMON: Free of charge. So
7 we actually do have direct jurisdiction because we
8 have a binding -- we have a binding obligation
9 through the Board of Supervisors to do so.

10 I don't know that that's the case with
11 everybody else.

12 COMMITTEE MEMBER WONG: That doesn't happen
13 everywhere, because like at Forensic Analytical
14 Sciences we have independent contracts with like
15 Hayward P.D., Fremont P.D., Piedmont P.D., Berkeley
16 P.D., and we do all of their law enforcement stuff.
17 Alameda County doesn't do their stuff.

18 COMMITTEE MEMBER HARMON: Can we say
19 something, are under the direct jurisdiction of a
20 government, sole agency, or forensic alcohol
21 laboratory?

22 COMMITTEE MEMBER JEFFRIES: How about, or
23 are affiliated with?

24 COMMITTEE MEMBER SLAUGHTER: I like that.
25 This is Mark.

1 MS. STUPPLE: Yeah.

2 COMMITTEE MEMBER SLAUGHTER: I like the
3 affiliation.

4 COMMITTEE MEMBER JEFFRIES: I think that
5 would clear it up for us, if we do that, are under
6 the direct jurisdiction or are affiliated with a
7 government agency.

8 COMMITTEE MEMBER WONG: I think that
9 verbiage is good because we're not a governmental
10 lab, but we're still a forensic alcohol lab, under
11 Title 17.

12 COMMITTEE MEMBER JEFFRIES: Yeah.

13 COMMITTEE MEMBER HARMON: Right.

14 COMMITTEE MEMBER SHEN: All right, so what
15 do you want me to say?

16 COMMITTEE MEMBER JEFFRIES: That the
17 language will be changed to read, places and persons
18 are under the direct jurisdiction or affiliated with
19 a government agency or forensic alcohol laboratory.

20 COMMITTEE MEMBER SHEN: Okay.

21 COMMITTEE MEMBER HARMON: So it should be
22 under the direct jurisdiction of or affiliated with
23 a government agency or forensic alcohol laboratory.

24 COMMITTEE MEMBER SHEN: All right, got it.

25 COMMITTEE MEMBER JEFFRIES: And what was the

1 other one you had a concern about, Alex?

2 MS. STUPPLE: That might be it, actually.

3 COMMITTEE MEMBER JEFFRIES: How about your
4 number 7?

5 MS. STUPPLE: We -- 7? Oh, yeah, that one.
6 But, I mean, you guys talked about it so --

7 COMMITTEE MEMBER JEFFRIES: Yeah, I think we
8 addressed that one. How about number 11, we never
9 talked about who has the right to view records if
10 there's any kind of, you know, Public Records Act
11 requests, or Freedom of Information Act, or anything
12 else. Do you want us to talk about that?

13 MS. STUPPLE: I mean, people may wonder who
14 is -- why do laboratories have to keep this
15 information.

16 COMMITTEE MEMBER HARMON: It's all
17 discoverable for the court process.

18 CHAIR KIMSEY: Absolutely.

19 COMMITTEE MEMBER HARMON: It's all
20 discoverable.

21 MS. STUPPLE: Okay.

22 COMMITTEE MEMBER JEFFRIES: Yeah, I'm not
23 sure that any of it would be available, other than
24 through discovery on a criminal case. I'm not sure
25 that, for instance, if you had a --

1 MS. STUPPLE: It would.

2 COMMITTEE MEMBER JEFFRIES: -- they would
3 not have to respond to a Freedom of Information Act,
4 or anything else for the private lab. But if they
5 are providing services that are going to be used in
6 court on a criminal case, or even a civil case, it
7 would be discoverable.

8 MS. STUPPLE: Okay. Yeah, I think that's
9 all.

10 CHAIR KIMSEY: Okay, other items to cover?

11 COMMITTEE MEMBER SHEN: I want to know what
12 we need to do, now? I mean, you and I -- and I have
13 some stuff to do on the spread sheet, to make sure
14 that it's all organized and up to date. Then, we go
15 through the Title 17, itself, and make the changes.

16 CHAIR KIMSEY: Correct.

17 COMMITTEE MEMBER SHEN: Okay. What needs to
18 be done? Because this all has to be turned in on
19 Friday.

20 CHAIR KIMSEY: Yeah, besides those two
21 items, I'm a little rum-dumb here. Alex, what else
22 do we need to do for the deadline on Friday. Can you
23 remember offhand?

24 MS. STUPPLE: So we essentially need to do
25 kind of like a new ISOR, but it doesn't have to be

1 as long. And by that, I just mean the policy part at
2 the beginning. And I can handle a lot of that
3 because it talks about authority and stuff like
4 that.

5 And then, answer all the comments, make the
6 right changes, and then go through subsection by
7 subsection, where we've made changes, and say why
8 we've made the change.

9 COMMITTEE MEMBER SHEN: So we already did
10 that, right?

11 MS. STUPPLE: I know. But I'm just thinking
12 what the document will look like at the end.

13 CHAIR KIMSEY: Yeah.

14 MS. STUPPLE: And then --

15 COMMITTEE MEMBER SHEN: Isn't it going to
16 look like -- isn't it going to look like what it
17 looks like right now?

18 MS. STUPPLE: Yeah, but it will also look
19 like the ISOR, where it's like subsection -- if you
20 made a change, not in response to a comment, it
21 needs to be explained somewhere.

22 COMMITTEE MEMBER SHEN: Okay, so all the
23 changes we made were, barring small, you know, edits
24 and things, all the changes we made were in response
25 to a comment.

1 MS. STUPPLE: Yeah, there were some, like
2 you just made one just now, in response -- not in
3 response to a public comment.

4 COMMITTEE MEMBER SHEN: Oh, because that
5 was --

6 MS. STUPPLE: It's not a big deal, it just
7 has to be in a list somewhere.

8 COMMITTEE MEMBER SHEN: I just don't see how
9 we can make another list. I mean, we have to -- it
10 has to be -- in order for me to -- for it,
11 realistically, to get done in time, we have to go
12 with what we have.

13 MS. STUPPLE: Okay.

14 COMMITTEE MEMBER SHEN: So I don't know,
15 like the ISOR, we fixed a lot of the problems with
16 it.

17 MS. STUPPLE: I know, I think we can just
18 put that in, put new authority and reference, all
19 the --

20 COMMITTEE MEMBER JEFFRIES: Here's another
21 suggestion, that we find a place in the public
22 comments that we can respond to the comment by
23 saying we cleaned up the direct jurisdiction by
24 adding the language or affiliated with, because I'm
25 sure there's a reference in there, I saw it

1 somewhere, about jurisdiction over the laboratories.
2 Maybe just put it in that one.

3 COMMITTEE MEMBER HARMON: I can look right
4 now. I will look.

5 MS. STUPPLE: Okay.

6 COMMITTEE MEMBER JEFFRIES: And that makes
7 it --

8 COMMITTEE MEMBER SLAUGHTER: This is Mark.
9 Are we meeting tomorrow?

10 CHAIR KIMSEY: I'm sorry, Mark, what was
11 that?

12 COMMITTEE MEMBER SLAUGHTER: I was asking if
13 we were meeting tomorrow. But I have got to leave at
14 this point.

15 CHAIR KIMSEY: No, we're not meeting
16 tomorrow. And thank you very much for your time
17 today and yesterday.

18 COMMITTEE MEMBER HARMON: Should we get a
19 vote before Mark leaves?

20 COMMITTEE MEMBER SLAUGHTER: Yes.

21 COMMITTEE MEMBER JEFFRIES: And I think just
22 to make sure we're clear on Bagley-Keene, we
23 probably should do it as a roll call vote to make
24 sure we all agree with it.

25 CHAIR KIMSEY: Okay, Mark has already said

1 yes.

2 COMMITTEE MEMBER SLAUGHTER: That's correct.

3 CHAIR KIMSEY: Paul Kimsey, yes.

4 COMMITTEE MEMBER WONG: Kenton Wong, yes.

5 COMMITTEE MEMBER LYLE: Bruce Lyle, Yes.

6 COMMITTEE MEMBER HARMON: Jennifer Harmon,

7 yes.

8 COMMITTEE MEMBER JEFFRIES: Dan Jeffries,

9 yes.

10 COMMITTEE MEMBER SHEN: Jennifer Shen, yes.

11 CHAIR KIMSEY: Okay, thank you very much,

12 Mark.

13 COMMITTEE MEMBER SLAUGHTER: Thank you.

14 COMMITTEE MEMBER HARMON: Thanks, Mark.

15 CHAIR KIMSEY: With regards -- while
16 Jennifer remembers looking something up, with
17 regards to our next meeting, I'm totally befuddled
18 at the moment. So if you have an idea for the need
19 of another meeting coming up in the future, just e-
20 mail me. If we, in the Department, think there's a
21 need for a meeting, we'll get in touch with you.

22 But at this point, I have no prediction on
23 the necessity for another meeting at this point, in
24 a particular time frame.

25 COMMITTEE MEMBER JEFFRIES: I think we have

1 one last housekeeping thing we might have to
2 address, and that's determining whether the changes
3 we've made we consider to be sufficiently related or
4 not sufficiently related. What do you think, Alex?

5 MS. STUPPLE: What? I don't understand the
6 question.

7 COMMITTEE MEMBER JEFFRIES: Whether we're
8 now on a 45-day additional comment period or a 15-
9 day additional comment period, once we go beyond
10 this, depends on whether the changes we made were
11 sufficiently related or not sufficiently related,
12 doesn't it?

13 MS. STUPPLE: Oh, okay. Right, yes. No, it's
14 definitely going to be 45 days.

15 COMMITTEE MEMBER JEFFRIES: Okay, I think
16 that's right. I think we made some changes that
17 would not be reasonably obviously from the notice.
18 And so I don't see how we get around that. I think
19 it's got to be 45.

20 MS. STUPPLE: Yeah.

21 COMMITTEE MEMBER JEFFRIES: Okay.

22 COMMITTEE MEMBER HARMON: I found the
23 reference.

24 CHAIR KIMSEY: Okay.

25 COMMITTEE MEMBER HARMON: It's 1:122, and it

1 specifically references 1221.1(b). There's a whole
2 bunch about (inaudible) and things like that. But I
3 think you can go ahead and stick the change in
4 there.

5 CHAIR KIMSEY: Okay, thank you.

6 COMMITTEE MEMBER SHEN: So am I -- I am
7 confused. What is this?

8 COMMITTEE MEMBER HARMON: Alex was saying we
9 just made a change that was not in reference to a
10 public comment.

11 COMMITTEE MEMBER SHEN: Right.

12 COMMITTEE MEMBER HARMON: So in order to
13 make things simpler, we found a public comment and
14 which you can make that change.

15 COMMITTEE MEMBER SHEN: Oh, I'm sorry, okay.

16 COMMITTEE MEMBER HARMON: And it's in 1:122.

17 COMMITTEE MEMBER SHEN: Thank you.

18 COMMITTEE MEMBER HARMON: And it
19 specifically references 1221.1(b).

20 COMMITTEE MEMBER SHEN: Thank you. Sorry, my
21 brain is completely gone.

22 COMMITTEE MEMBER HARMON: No problem. So
23 hopefully, the explanation we already provided to
24 you will be sufficient to add there.

25 COMMITTEE MEMBER SHEN: Yeah, so I should

1 put that one in that one. So my goal is to not go to
2 bed until this is organized.

3 COMMITTEE MEMBER JEFFRIES: So then, in
4 1:122, we're adding the reference to -- in response
5 to the comment we've added the word or affiliated
6 with to clarify it.

7 CHAIR KIMSEY: Correct.

8 COMMITTEE MEMBER SHEN: Correct. And that
9 means, then, everything else -- all the changes
10 should be in public comment, then.

11 COMMITTEE MEMBER HARMON: That is correct.

12 COMMITTEE MEMBER SHEN: So we should be able
13 to use that spread sheet, along with the current
14 ISOR, or SSOR, or whatever it is, and then the
15 updated Title 17.

16 CHAIR KIMSEY: Do we want to go into what's
17 going to happen after Friday?

18 COMMITTEE MEMBER HARMON: Yes, please, so we
19 can get back to our professional organization. Thank
20 you for raising that.

21 CHAIR KIMSEY: And it's a little bit past my
22 memory at the moment, but Alex, can you --

23 MS. STUPPLE: It will go back out for public
24 comments, for 45 days. But the only thing that --
25 the only things that can be commented on are changes

1 that you made to the text this time, and then we'll
2 have to have another reading.

3 COMMITTEE MEMBER HARMON: And the 45-day
4 clock starts when?

5 MS. STUPPLE: When Dawn sends it to OAL or
6 puts it out for notice, notices it.

7 COMMITTEE MEMBER HARMON: Okay, so what kind
8 of time frame are we actually looking at?

9 MS. STUPPLE: If it's Friday -- I have a
10 calendar, just a second.

11 COMMITTEE MEMBER HARMON: Sorry.

12 MS. STUPPLE: That's okay.

13 COMMITTEE MEMBER JEFFRIES: I think it's
14 actually -- if we can calculate, because we may want
15 to think about when our next meeting should be.

16 MS. STUPPLE: According to this -- what's
17 the date?

18 CHAIR KIMSEY: The 17th.

19 COMMITTEE MEMBER HARMON: The 17th.

20 MS. STUPPLE: Okay, so the end -- if we did
21 this by Friday, the end of the 45-day public comment
22 period would be January 17th.

23 COMMITTEE MEMBER HARMON: Okay, so that's --

24 MS. STUPPLE: So around, maybe, February 1st
25 would be a good time for a meeting.

1 COMMITTEE MEMBER HARMON: Are we starting a
2 clock, again?

3 MS. STUPPLE: No, this is within the one
4 year.

5 COMMITTEE MEMBER JEFFRIES: So if we meet on
6 February 1st, and we make additional changes then,
7 yes, we'll start the public comment clock, again.
8 But if we don't make any further changes, then that
9 wraps it up at that point and we don't have any
10 other clocks running. Right?

11 MS. STUPPLE: Well, yeah, if you don't make
12 any changes, then you'll just have the FSOR, which
13 is the Final Statement of Reasons. If you make any
14 small changes, it will go out for 15 days. And you
15 don't really have the option of making any large
16 changes, without starting over. Starting the clock
17 over, not starting everything over.

18 COMMITTEE MEMBER SHEN: So Alex, when we get
19 this next round of public comment, which I'm sure
20 we'll be getting, we don't have to answer anything
21 that has anything to do with anything, other than a
22 change that we've made.

23 MS. STUPPLE: In this round, yes.

24 COMMITTEE MEMBER SHEN: This round. Okay, so
25 anything else we would just say not appropriate, or

1 something?

2 MS. STUPPLE: Correct.

3 COMMITTEE MEMBER SHEN: Okay.

4 COMMITTEE MEMBER JEFFRIES: But we did make
5 a number of changes, so to be fair about it, I think
6 there are a number of things the public can comment
7 on.

8 COMMITTEE MEMBER SHEN: Oh, I think that,
9 too, but I mean it's --

10 COMMITTEE MEMBER JEFFRIES: Yeah.

11 COMMITTEE MEMBER SHEN: -- it's going to get
12 smaller every time, I would think.

13 COMMITTEE MEMBER HARMON: Hopefully.

14 COMMITTEE MEMBER JEFFRIES: So really, we
15 should be talking about doing a meeting sometime
16 that first or second week of February.

17 MS. STUPPLE: Yes.

18 COMMITTEE MEMBER JEFFRIES: And the irony of
19 meeting on Groundhog's Day, for anyone that's seen
20 the movie, would be appropriate.

21 (Laughter)

22 COMMITTEE MEMBER HARMON: I'm with Dan,
23 let's do that.

24 COMMITTEE MEMBER SHEN: I think so. I think
25 we should just because.

1 CHAIR KIMSEY: We'll take it under
2 advisement.

3 COMMITTEE MEMBER HARMON: That would be
4 Tuesday, the 2nd, there.

5 COMMITTEE MEMBER JEFFRIES: And, actually, I
6 would suggest a different day. I'll be down here in
7 Orange County, on a field trip with my son's class.
8 But we'll be on an overnight boat trip.

9 COMMITTEE MEMBER HARMON: Oh, fun.

10 CHAIR KIMSEY: Okay, any other business of
11 the Committee? If not, hearing none, I want to thank
12 you all for your tenacity, and persistence, and a
13 little bit of sense of humor. And we'll be in touch
14 with potentially having a meeting in the early part
15 of February.

16 COMMITTEE MEMBER HARMON: Sounds great.

17 CHAIR KIMSEY: Thank you all.

18 COMMITTEE MEMBER HARMON: Thank you,
19 Jennifer, get some sleep.

20 COMMITTEE MEMBER SHEN: I will, bye.

21 CHAIR KIMSEY: We're done.

22 (Adjourned at 5:41 p.m.)

23 --o0o--

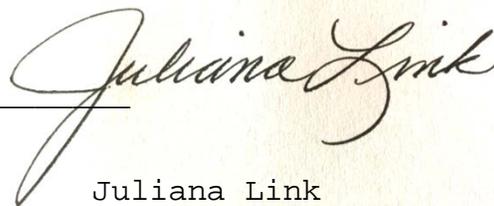
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I do hereby certify that the testimony in the

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 11th day of December, 2015.

A handwritten signature in black ink, reading "Juliana Link", is written over a light-colored rectangular background. A horizontal line is drawn across the page, passing behind the signature.

Juliana Link
CER-830

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

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IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of December, 2015.



Terri Harper
Certified Transcriber
AAERT No. CET**D-709