

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

FORENSIC ALCOHOL REVIEW COMMITTEE

---oOo---

850 Marina Bay Parkway
Suite B137
Richmond, California

Monday, October 18, 2010

10:00 A.M.

Reported by:
David A. Disbrow
CSR 7768

1 PARTICIPATING

2 PAUL KIMSEY

3 KENTON WONG

4 ROBERT HAAS

5 CLAY LARSON

6 KEVIN DAVIS

7 TORR ZIELENSKI

8 DAVE KOENITZER

9 RUSSEL HUCK

10 PEGGY CAMPBELL

11 BRUCE LYLE

12 PAUL SEDGWICK

13 LAURA TANNEY

14 JENNIFER SHEN

15 PATTY URIE

16

---oOo---

17

18

19

20

21

22

23

24

25

1 Monday, October 18th, 2010

2 P-R-O-C-E-E-D-I-N-G-S

3 ---oOo---

4 DR. KIMSEY: Good morning, everyone. This
5 is the Forensic Alcohol and Review Committee. It's
6 October 18th. I'm Paul Kimsey, representative for
7 the Department, and the Chair for the committee. Do
8 we have other committee members here in Richmond?

9 MR. WONG: Kenton Wong, representing the
10 California Association of Criminalists.

11 DR. KIMSEY: And who is with the public -- do
12 we have anyone here in Richmond, arguably, the
13 Department of Public Health?

14 MR. HAAS: Bob Haas, Food and Drug Laboratory
15 Branch.

16 MR. LARSON: Clay Larson, Food and Drug
17 Laboratory Branch.

18 DR. KIMSEY: And our stenographer?

19 THE REPORTER: David Disbrow.

20 DR. KIMSEY: And who do we have in
21 Sacramento?

22 MR. DAVIS: Kevin Davis, CHP.

23 MR. ZIELENSKI: Torr Zielenski, Public
24 Defenders Association.

25 MR. KOENITZER: Dave Koenitzer, DOJ.

1 DR. KIMSEY: Sacramento?

2 MR. HUCK: Russell Huck, Division Office for
3 Food and Drug and Radiation Safety.

4 MS. CAMPBELL: Peggy Campbell, legal office.

5 DR. KIMSEY: Anyone else in Sacramento?

6 MR. HUCK: That's it.

7 DR. KIMSEY: Okay. In San Diego?

8 MR. LYLE: Bruce Lyle, Coroner's Association.

9 MR. SEDGWICK: Paul Sedgwick, California
10 Association of Toxicologists.

11 MS. TANNEY: Laura Tanney, California
12 District Attorney's Association.

13 MS. SHEN: Jennifer Shen, CROP.

14 MS. URIE: And Patty Urie, a member of the
15 public, passed CPLP president.

16 DR. KIMSEY: Great. Anyone else in San
17 Diego?

18 MR. LYLE: No.

19 DR. KIMSEY: Okay. Hopefully, everyone has a
20 copy of the agenda in front of them. I guess, for my
21 opening remarks, I'm not sure if I mentioned this
22 previously, but I have a new boss. Dr. Sorenson, who
23 was the chief deputy for policy and programs moved
24 back to Florida, and Kevin Riley, Dr. Riley, has
25 replaced Dr. Sorenson as the chief deputy for policy

1 and programs, about four months ago, five months ago.
2 I don't know, I have not heard anything from Agency
3 in response to our letter. Has anyone on the line
4 received any information from the Health and Human
5 Services Agency?

6 MR. LYLE: No, I have not.

7 DR. KIMSEY: Okay.

8 MR. LYLE: Bruce Lyle. No.

9 MR. SEDGWICK: Paul Sedgwick, no.

10 DR. KIMSEY: Okay. I really have no
11 information. I mean, obviously, we'll just have to
12 wait until we hear. There's been obviously a few
13 things that may have been keeping them because --
14 with regards to a hundred days without a budget and
15 these sorts of things, but I guess we have not heard
16 anything so the -- pretty much, the agenda for this
17 meeting is to review some of the work product that
18 the committee members have come up with, the initial
19 statement of reasons, and the fiscal impact statement
20 documents that have been sent out. Before we move on
21 to the agenda, is there any other, you know, sort of
22 opening comments or questions at this point?

23 (No audible response)

24 DR. KIMSEY: Hearing none, why don't we go
25 ahead and start with the initial statement of

1 reasons. Miss Shen, would you like to walk us
2 through that?

3 MS. SHEN: Well, I certainly can. I'd just
4 like to say up front, one more time, that I know I
5 looked through a lot of the examples that were given,
6 and I know, going with some of the things that we had
7 discussed, I put this together in really what I
8 consider the best way that I possibly could. I'm not
9 married to it or the way it's put together,
10 particularly, since I wasn't a hundred percent sure
11 exactly what I was doing. So I just kind of, you
12 know, started at the beginning, started with the
13 history and worked my way through it so any
14 suggestion as to how to rework it or add things, et
15 cetera. I'm presently looking forward to hearing
16 those things. I do think that, you know, I did the
17 history, I tried to discuss some history, what you
18 see at the beginning, and then talk about the reasons
19 that we actually need to update these regulations,
20 and after that, you know, kind of summarize what it
21 was we were trying to accomplish. That's really what
22 we have here.

23 I think my last paragraph sort of leads
24 into the next section which would be acknowledging
25 our changes so to me, I guess, what I think the next

1 very large step for us is we have gone through the
2 regulations, we have made all the changes, we've
3 justified those changes, and now they need to be
4 incorporated into this document. I did some looking
5 at other ISORs and other examples. I think our
6 difficulty is that if we were taking these
7 regulations and just updating one part of this or
8 acknowledged one certain thing, it would be very
9 straightforward in how-to for that, but because we
10 are rewriting the entire thing and justifying
11 everything we do, and not do, that it doesn't seem to
12 fall ethically into this official example. I'm a
13 little unclear on how to proceed. That's kind of
14 where I am. I'm hoping that most of you have read
15 it.

16 DR. KIMSEY: Those are fine -- those are
17 comments. I've read through it and I agree with you.
18 I notice you pretty much laid out the history and
19 totality of what we've been doing. I'm not familiar
20 with ISORs, myself, but are there other comments
21 from committee members.

22 (No audible response)

23 DR. KIMSEY: I assume that there is general
24 acceptance of Jennifer's work product then. I mean,
25 any comments, edits? I don't think we have anyone

1 from the Department from their -- the Office of
2 Regulations, to comment yet on, you know, from their
3 perspective, in having done more of these. There is
4 no person from the State of California. I think
5 that's who we need right now because I think the
6 contents of this -- I think it's very well laid out,
7 and I think it's very well done, but without more
8 guidance from OOR, I don't know what else if we can
9 do. I don't know if they need to walk through every
10 change that's made in addition to the justification
11 that we already provided.

12 MS. TANNEY: Miss Shen has done a really good
13 job and must be complimented on it.

14 MR. WONG: I agree with Laura and I think
15 that Jennifer has done a great work, not having a
16 whole lot of guidance for what it is that we're
17 supposed to be doing and I think that it's just a
18 nice job that she did.

19 DR. KIMSEY: Any comments from the public?

20 (No audible response)

21 DR. KIMSEY: So what's the feeling of the
22 committee? Do we want to -- I mean, how do we want
23 to proceed? Do we want to get some feedback from the
24 Department? Do we want to wait for the feedback from
25 Agency on our knowledge? What is sort of the --

1 MR. LYLE: Bruce Lyle in San Diego. I
2 thought that we should have had some feedback from
3 Agency by now and then we could kind of go from there
4 as far as the ISOR that we have. It looks pretty
5 good to me. Not knowing what, you know, what is
6 expected of them is the hard part and so I think we
7 need to know that. If it misses the mark, in any
8 way, it would be because of some technicality along
9 those lines.

10 DR. KIMSEY: This is Paul. I tend to agree.

11 I think we owe, you know, Jennifer Shen a
12 lot of -- need to give her a lot of credit for
13 getting us to this point. Not having heard from
14 Agency, I think we're a little bit on hold and I
15 think -- I have no inside information, but obviously,
16 we have an election coming up which, as we all know,
17 may change the -- well, most likely, would change the
18 dynamic and the individuals at Agency, so I don't
19 have any good feeling for when we're going to hear.
20 Our Health and Human Service Agency has thirteen
21 departments, our department is one of those, and I
22 guess part of it is we may not hear anything until
23 after the first of the year with possibly a new
24 governor. That would be certainly true if it's a new
25 party. If it's the same party, there's sometimes,

1 you know, some individuals that cross over on the
2 political appointment side so unfortunately, I think
3 we're waiting for a response from Agency at this
4 point.

5 MR. WONG: Is there no one specifically
6 to contact for the status of where that's at or --

7 DR. KIMSEY: The committee could
8 send another letter to Agency. What was the date of
9 the letter that we sent, Jennifer? That was back in
10 -- Was it May or June?

11 MS. SHEN: I think it was May or June. I'm
12 not sure I have that letter on me unfortunately.

13 DR. KIMSEY: I don't either.

14 MS. SHEN: I'm looking to see if we have it.

15 You know, I kind of -- this is Jennifer
16 Shen. I kind of hate to see us stall at this point.
17 I mean, we all are experiencing upheaval in our
18 various offices, I think. What I'm worried about --
19 building this -- but I guess my thought is, again,
20 like for instance -- so you know, really knowing how
21 this all works, what would our next step be? Let's
22 just assume, since no one seems to have a real
23 problem with this, that we're going to go with this
24 for now. How do we want to include our changes into
25 this packet? Where do we want to each put the fiscal

1 impact in this packet? How is it going to work? Can
2 we take the next step to actually have something
3 that's closer to being submitted because at the end
4 of the day, we have to actually have a packet that we
5 can submit so let's not stop. Let's keep going, and
6 I think the next step is for us to see what elements
7 of the packet we're missing. And for me, what I
8 really need is a clear course on how to include our
9 changes in this packet. I think there's been some
10 talk about the way that we have them now is not
11 sufficient, they're not formatted correctly, and I
12 need to know exactly how to do that because I think,
13 like I said, the last paragraph I have in the ISOR is
14 going to kind of lead right into those changes, so I
15 would like to be able to accomplish that, and we want
16 to incorporate the fiscal impact statement into here
17 somehow. Now, I don't know exactly where it goes, so
18 maybe, we don't have any feedback that we can use
19 right now, particularly -- maybe, we should head down
20 that road.

21 MS. TANNEY: This is Laura. Maybe the.
22 committee should vote on this as it's currently
23 drafted, subject to changes or comments regarding
24 this format, by OOR, but at least, with respect to
25 the content, maybe we should at least vote on this

1 now for approval.

2 DR. KIMSEY: Yeah, We can do that.

3 Obviously, we haven't heard any, you know, major
4 concerns or criticisms of it, but if the committee
5 would like to have a vote on this -- we'd call it a
6 draft or --

7 MS. TANNEY: I would say that we should vote
8 on the content as final, subject to only the comments
9 of the OOR. In other words, the committee members
10 are fine with the comments, but the content --

11 MS. SHEN: -- this is Jennifer again. There
12 are a few little, as I read it, there are a few
13 little changes that I would probably need to make
14 just to make it a teeny bit clearer, nothing
15 substantive, but just, you know, taking off a word or
16 two here, and adding, maybe a title here or there, so
17 there are a few very small changes that I would want
18 to make, but other than that, you know, I don't have
19 any substantial changes I would think of making at
20 this time.

21 DR. KIMSEY: So would we like to take a vote
22 now of the committee members based on, you know,
23 basically approving this work product? I mean,
24 minus, I guess, some of the edits that might come up
25 or the reformatting? We can certainly do that.

1 MR. LYLE: Bruce Lyle. Good idea.

2 MR. LARSON: Comment from the public?

3 DR. KIMSEY: Go ahead.

4 MR. LARSON: Clay Larson, Department of
5 Public Health here in Richmond. I don't want to try
6 to speak for the Office of Regulations, but they did
7 provide, on two occasions, a number of exemplars, and
8 the standard format, and I'm not sure there is
9 anything in the statutes or regulations that speaks
10 to a specific required format, but the standard
11 format is, as Laura Tanney eluded to, is a
12 section-by-section review, narrative discussion of
13 all the changes, and the reason for those changes.
14 And you know, in some cases, I'm actually not sure,
15 that if you don't change something, that you're
16 required to provide any narrative, but OOR, and/or
17 our Office of Legal Services would be the experts
18 there. So given the exemplars that we got in the
19 past, this -- I would characterize what Jennifer has
20 done so far as kind of a preamble to the -- probably
21 a little long, because most of the preambles are not
22 that long, but it's a preamble to the actual ISOR.
23 So I would submit that we're -- we fall far short of
24 those exemplars.

25 I would also disagree with the statement

1 that Jennifer made that we have to have a package in
2 order to submit something to Agency, and we've
3 already submitted something, but this would be the
4 something that triggers the ninety days, and the
5 other -- nothing in the statutes says that you have
6 to have -- a full package would be the ISOR. It
7 would be a transmittal memo, it would be the fiscal
8 impact, and a couple other elements, and the
9 redrafted regulations, but I've read -- the statutes
10 are very short. I don't see anything in the statutes
11 that said you have to have that. I think the
12 committee has made a determination. Just to clarify,
13 I don't think the statutes actually require that.

14 MS. SHEN: This is Jennifer. Are you saying
15 that we could -- all the elements that we have talked
16 about that we need to have submitted, that we do them
17 sort of piecemeal, one at a time?

18 MR. LARSON: Well, it's hard to do two things
19 at a time, but I don't think I commented on how you
20 develop those at all. I commented on what we've
21 developed so far is -- it falls short of the mark
22 when compared with exemplars that OOR provided, point
23 one.

24 My second point was just commenting again
25 that nothing in the statutes requires that the

1 committee develop a complete package.

2 MS. SHEN: This is Jennifer. Well, I guess
3 what I would say is that what we need to add -- I'm
4 not actually opposed to the concept of this part as
5 sort of a preamble, and I'm very aware of that, as I
6 think we all are. The next part is that we have to
7 put in our justification and I need some assistance
8 in coming up with a format to use, so I think that's
9 somewhere we can go. I never intended that this
10 document here would stand all by itself with no
11 changes in it. Clearly, those changes need to be put
12 in here, and they are ready to follow, right after my
13 conclusions' sort of paragraph. Now, we need to put
14 those in and we need to come up with some sort of
15 format that we all agree is best suited to the
16 guidelines because I'm not sure that the product we
17 have right now does that as far as the changes to the
18 various sections of the statute or regulations

19 DR. KIMSEY: There had been a suggestion by a
20 committee member that we do vote on this and I think
21 there was sort of general agreement. I think
22 basically what we're voting on is the product that
23 Jennifer prepared, that we've reviewed, and that
24 basically the committee generally accepts what she
25 has stated here. I mean, obviously, there may be

1 formatting, and minor edits, but I think it's worth
2 -- it sounds like a committee member wanted to have
3 the committee going on record that we basically
4 approve this work product. Is that sort of a general
5 summary of --

6 MS. TANNEY: -- that's correct.

7 DR. KIMSEY: So why don't we go ahead and
8 vote. Obviously, I guess, we haven't necessarily
9 probably had time to look at -- talk with our various
10 organizations that we represent, but I think the
11 general feeling is that this is a work product that's
12 come up from the committee, that has been reviewed by
13 the committee, and has the general approval of the
14 committee. So let's go ahead and do a roll call
15 vote.

16 Miss Tanney?

17 MS. TANNEY: Yes.

18 DR. KIMSEY: Lieutenant Davis?

19 MR. DAVIS: Yes.

20 DR. KIMSEY: Mr. Zielenski?

21 MR. ZIELENSKI: Yes.

22 DR. KIMSEY: Mr. Lyle?

23 MR. LYLE: Yes.

24 DR. KIMSEY: Mr. Wong?

25 MR. WONG: Yes.

1 DR. KIMSEY: Mr. Sedgwick?

2 MR. SEDGWICK: Yes.

3 DR. KIMSEY: Miss Shen?

4 MS. SHEN: Yes.

5 DR. KIMSEY: Mr. Kinsey? Yes. I think.
6 before we go on to the -- some further discussion, I
7 think we wanted to back up a little bit. I think it
8 might be worth sending another letter to Agency. I
9 don't know how, you know, we have to sort of, you
10 know, craft it. It would be a relatively short
11 letter, but maybe reminding them that we have sent
12 them a package, back in May or June, and that we're
13 waiting for a response. What is the feeling of the
14 committee that we should send something to Agency or
15 should we just wait quietly?

16 MR. WONG: This is Kenton Wong. I feel like
17 sending a second letter is almost useless because
18 we've already sent the first one and we didn't get
19 any response from the first one so why would we
20 expect a response from the second one? I'm wondering
21 if there's somebody actually that we can contact, a
22 warm-blooded human being, that knows what's going on.
23 I think all of us on the committee, we just sort of
24 feel like that we understand that some of these
25 things move at the speed of Government, but having

1 said that, there has not been a whole lot of
2 guidance, and I don't know -- I feel like, when I was
3 putting together the -- what I could for the
4 financials things, that I was just kind of like
5 pinning the tail on the donkey in the dark. I really
6 didn't know, kind of like what Jennifer said, that I
7 didn't really have a good understanding of what I was
8 really doing and that's kind of disconcerting, but if
9 there's someone that we can actually contact to find
10 out what the status is, that might be a little bit
11 more direct, instead of sending another letter into a
12 black hole somewhere.

13 MS. SHEN: This is Jennifer. I agree with
14 that. Otherwise, we need to have a letter written by
15 someone with a little more -- a little higher up on
16 the totem pole than me.

17 DR. KIMSEY: I mean, there's no necessity
18 for a letter. I mean, if were going to send a
19 letter, it would come from the committee so I don't
20 know that you have to worry about, you know, who's
21 signing it. It's going to be coming from the whole
22 committee. I tend to agree with Kenton, maybe to
23 some extent, with regards to a warm body, that we can
24 call at Agency. I mean, we addressed the letter to
25 Kim Belshe, if I remember correctly, and a member of

1 the committee, oddly, other than the Chair, could
2 give Agency a call. Well, for that matter, I guess
3 the Chair could, on behalf of the committee.

4 MS. SHEN: I just think we need to have
5 someone who's us to push that a little bit.

6 DR. KIMSEY: Well, I'm not sure -- We're.
7 pretty much all at the same table here. Obviously,
8 if we ask, through the Department, if I get involved,
9 and we're pretty much asking through the Department,
10 which obviously we can do, but I think if there was
11 another member of the committee, on behalf of the
12 committee, that also got in touch with Agency, that's
13 just another venue. I mean, pretty much coming up
14 through one of thirteen different departments in an
15 Agency, a member, which is on a committee. I think
16 that's different than if we have an outside, at least
17 a Government individual from the committee contact,
18 make the phone call.

19 MS. TANNEY: Well, this is Laura Tanney.
20 I'll contact Miss Kim Belshe.

21 DR. KIMSEY: Okay.

22 MR. WONG: Laura, this is Kenton. You know,
23 I mean, Even if they tell us that, you know, "Look,
24 it's in the que, it's moving through," and like
25 Mr. Chee told us, a couple of meetings ago, that

1 there could be up to a 140, a 150 of these things
2 working their way through the que. If, you know,
3 they just tell us that, "The check's in the mail,"
4 maybe that's what it is, but at least we know that
5 somebody got it, that they're aware of it, that it's
6 not just like gone into a virtual black hole and that
7 we're sitting on their sidelines, our their fingers.

8 MS. TANNEY: I'll attempt to get in touch
9 with her this week.

10 DR. KIMSEY: Where do we want to move
11 next? Do we want to go to the fiscal impact
12 estimate? Was it Bruce -- did you pull this together
13 for us?

14 MR. LYLE: I think Kenton did.

15 DR. KIMSEY: Okay. Do you want to talk a
16 little bit about -- I guess you made your comments,
17 that -- "Pinning the tail on the donkey --"

18 MR. WONG: Like I said, when I was putting
19 together, the fiscal impact estimates, I really
20 didn't have a lot of clue as to what I was doing.
21 The only thing I could think of was the few issues
22 that I have down, that I didn't think it was going to
23 have that much affect on the local Government, maybe
24 some small costs associated with subscription fees to
25 the proficiency test providers and things such as

1 that, that in the past was like one single test for
2 the whole lab, but now, each and every analyst would
3 be required to have an annual proficiency in that
4 discipline. I don't know -- if anybody else had any
5 thoughts. Like I said, I'm totally open to any edits
6 or anything that needs to be reworked on this so I'm
7 open to suggestion.

8 MS. TANNEY: This is Laura. In Subsection D.
9 and I could be wrong about this, but I'm not sure
10 that they're interested if there's impact on
11 businesses. I think it's generally just a fiscal
12 impact on the State or on the local Government. They
13 do want businesses.

14 MS. URIE: Right. This is Patty Urie. I.
15 believe it was the total impact.

16 MS. TANNEY: Okay.

17 MS. URIE: However, with regard to that, D.
18 if I may interject, I think that the cost would be
19 the cost of proficiency testing, but they're already
20 required to, by the new health and safety
21 regulations, so they already should be doing that now
22 so that cost would be -- there would be no change
23 because the law is already changed, in that respect,
24 so I think that would take care of that.

25 Also, under the first part, A, any costs

1 that would go to those local governments that are
2 mentioned, they're already accredited, and they are
3 currently already paying the fee for all analysts
4 that are performing work, if they are accredited, so
5 there would be no net increase if they are already
6 paying that just because they are to become
7 accredited laboratories and I believe that they are
8 all accredited.

9 MS. TANNEY: They are.

10 MS. URIE: And with regard to B, it should.
11 probably be mentioned, under B, under "State
12 Government," that the Department of Justice labs
13 would fall under that, but at the same time, there
14 would be no net increase for them because they are,
15 although, all accredited. Under B, I think there
16 should probably be somewhat of an estimate of a
17 dollar amount of cost savings. I believe Chay told
18 us how many hours his laboratory spent just preparing
19 the proficiency test apples. I don't know if it was
20 600 or 900 hours a year or something like that. I
21 think it would be easy to probably come up with a
22 dollar amount just in the labor, alone on that, to
23 put in here, but it's at least that, if not more.

24 MS. SHEN: This is Jennifer. And ultimately,
25 for the Government labs, there would be probably a

1 minor decrease in costs because it would not be
2 duplicating their efforts by doing the double
3 proficiency tests which we're doing now.

4 DR. KIMSEY: Other comments on the fiscal
5 impact?

6 MR. LARSON: A comment from the public.

7 I think maybe Patty said the same thing,
8 but the presumption under A is that, appears to be,
9 that all or some of significant number of the
10 analysts would be taking external proficiency tests.
11 The statutes don't require that -- the committee
12 didn't add that requirement. In fact, ASCLD permits,
13 and my understanding, it's a very, very common,
14 permits that annual proficiency test to be a sample
15 prepared in-house or even a retest of case samples.
16 So that it's not likely that there would be any costs
17 associated with that lab, I guess, but it's not like
18 there would be any costs associated with having to
19 order, with a large lab like Los Angeles, fifty or
20 sixty external PT's, worth a couple of hundred
21 dollars each so that's probably not going to happen.
22 We didn't -- the writing regulations didn't require
23 that to happen.

24 MS. SHEN: This is Jennifer. I guess the
25 point would be then that there really are no

1 increased costs to the Government laboratories that
2 we're talking about. They're all following the
3 proficiency test guidelines from ASCLD Lab anyway, so
4 we're already there, so I don't think there will be
5 any increased costs.

6 DR. KIMSEY: Other comments?

7 MR. WONG: This is Kenton. For Clay, do you
8 have any estimate what that six or nine hundred hours
9 in labor costs comes out to?

10 MR. LARSON: Well, I think that -- I
11 wouldn't want to just guess at it, but I think under
12 the proposed revisions to the regulations, you're not
13 -- you not only eliminate the -- what we've done is
14 you've eliminated the requirement that lab staff ever have
15 an external proficiency test. It all could be done
16 internally and that's consistent with the flow of the
17 regulations of putting oversight of the labs on the
18 labs themselves somehow. I never quite got my head
19 around this concept, but I think that's the stated
20 intent in the ISOR. But I think we've eliminated a
21 number of roles in the Department. There would no
22 longer be review and approval of training procedures.
23 There are no longer provisions for site inspections.
24 There are no longer -- we even -- although the vote
25 wasn't unanimous, we even decided to eliminate the

1 requirement that the lab shall make records available
2 to the Department on request. So I think, focusing
3 on proficiency tests, that's certainly one aspect.

4 We've eliminated, I would say, virtually
5 all of the oversight roles for this department, so
6 I guess you could look at the total budget.

7 DR. KIMSEY: Yeah, and we would come up with
8 that, I mean, when we get to the point where we need
9 a figure. That would be the responsibility of the
10 Department to come up with that figure.

11 MS. SHEN: This is Jennifer. Is that
12 something we can move on then because in order to
13 complete the fiscal impact estimate, we need to have
14 the numbers.

15 DR. KIMSEY: Sure. No, no, based on the
16 ISOR, and what the committee has done so far, we'll
17 come up with that.

18 MS. URIE: This is Patty Urie. I just have
19 a question. I don't have my file in front of me for
20 this committee, but I'm just trying to recap for
21 myself what has to be in that packet. We're just
22 simply missing a cover letter at this point. We have
23 a fiscal impact statement that is near completion.
24 We have the ISOR that is -- everyone is pretty much
25 in agreement with it, with a couple of modifications.

1 We have the regulations. I think we need the list of
2 references to substantiate everything that's in the
3 regulations. I believe that list is available. It's
4 been included. What else was it that we needed then
5 to have in that packet that goes forward?

6 MR. LYLE: Bruce Lyle. I wrote something
7 called a "Statement of Determination" and sent it to
8 everybody --

9 MS. URIE: Okay.

10 MR. LYLE: -- and I thought that that was.
11 okay, but I'm not a hundred percent sure because it
12 was a while ago.

13 MS. URIE: And it wasn't included in.
14 here.

15 MR. LYLE: No.

16 MR. LARSON: There s also a transmittal
17 letter --

18 MS. URIE: A cover letter.

19 MR. LARSON: It was the equivalent of a.
20 cover memo, cover letter -- well, it's just a letter
21 saying --

22 MS. URIE: The cover letter, transmittal
23 letter, would just say, "Attached is our this, this,
24 and this." You know, it's just a real simple cover
25 letter saying it's including the ISOR, the

1 statements, and the proposed changes, and stuff. I
2 think the packet is really close to completion. The
3 Cover letter would be really brief. I don't have a
4 copy of the statement of determination in my packet
5 here, but -- I think I missed the last meeting. So
6 assuming that Laura gets some headway, when she
7 contacts the Agency, I'm thinking that maybe your
8 committee is getting really close to being happy with
9 your work product and actually submitting it and
10 getting the clock started. Once the clock gets
11 started then they have to move on it.

12 MS. SHEN: This is Jennifer. Do we have a
13 feel as to -- I mean, I'm pretty clear the cover
14 letter goes first. Do we have a feel as to how this
15 all sort of flows? See, we're going to have -- it
16 looks like to me like we're going to proceed by
17 putting our packet all together and then putting
18 it -- submitting it all at once. We have our --
19 what's missing in the ISOR now is our changes, and
20 our justification of those changes, and we can talk
21 about how we want to format those. So what kind of
22 order does this go in? Do we want to take the
23 Statement of Determination and sort of format it, and
24 the fiscal impact, and the ISOR, all the same way?
25 What kind of -- do we want to put that in some

1 certain type of order? I don't even know.

2 DR. KIMSEY: This is Paul. We can
3 certainly get an idea and the understanding of the
4 order that the various documents would go in.
5 Obviously, you know, this is all sort of pending some
6 sort of response from Agency that gives us some
7 feeling that we're headed in the direction that they,
8 you know, agree with, but yes, we can certainly get
9 an understanding of the order in which the documents
10 would be submitted.

11 MS. SHEN: Well, then it would be easier to
12 -- we want them all to sort of flow into each other,

13 DR. KIMSEY: Sure.

14 MS. SHEN: So in order to do that, we need
15 to kind of know how they flow.

16 DR. KIMSEY: We can get that.

17 MR. LYLE: Bruce Lyle. Now, as far as.
18 attaching or formatting the changes that we've made,
19 can we just use what we sent along as an attachment
20 with the letter to Agency in the same format because
21 it does -- I mean, that work product does explain
22 everything that we've -- you know, why we're doing
23 it, and the changes that we've made, you know, or
24 missions that we've created. Can it just be like
25 that?

1 DR. KIMSEY: I mean, I'm not really sure.

2 I mean, obviously, that document is our
3 work product. It might need some formatting changes,
4 but that's, you know, that's assuming that Agency
5 says, "Send us the full package." Then, you know, we
6 would, you know, maybe get some direction from them
7 on what that formatting, you know, would be. I mean,
8 there's not really a precedence that we can look to
9 and say, "This is the kind of regulation package we
10 sent to Agency last time," because this is not the
11 normal route in which regulations get to Agency. So
12 you know, I think we're treading a little bit of new
13 ground and we obviously have not yet received any
14 direction from Agency.

15 MS. SHEN: This is Jennifer. It's not our
16 plan to wait for a response before we put our packet
17 in; is it?

18 DR. KIMSEY: That's for the committee to
19 decide. Once we submit a package, it does trigger a
20 90-day clock for Agency to respond. I mean, that's
21 pretty clear in the legislation.

22 MS. SHEN: I suppose this would be one way of
23 getting them to respond then.

24 MR. HAAS: A comment from the public. This
25 is Robert Haas. In the past, the committee has been

1 very hesitant to get the 90-day clock started, I
2 think, for understandable reasons. And I guess my
3 impression has always been that the initial letter
4 was to get a preliminary review that would indicate
5 where the Health and Human Services Agency was, you
6 know, with regard to this. Since four or five months
7 has gone by without a response, it seems to me that
8 an appropriate action now would be as was suggested
9 by, I think it was Jennifer, but I'm not sure, maybe
10 it was Patty, to go ahead and do that.

11 I just might add, again, as a member of the
12 public, that with an election, what, two weeks away,
13 and a potential change of administration at the
14 Agency probably completely, if, depending on the
15 results of the election, that this might be a
16 difficult time to do that, but I certainly wouldn't
17 suggest that the committee delay any longer if that's
18 the course of action that it chooses.

19 MS. SHEN: This is Jennifer. I think that it
20 will take us a little while for us to come up with
21 our final product. I mean, I do believe, and I have
22 some tips for preparing regulation packages, in front
23 of me, that we can talk about -- I believe that it
24 will take a little bit longer to get that done, so we
25 could decide, I suppose, to -- I guess, what I don't

1 want to see happen is I don't want to see this put
2 off for some indeterminate amount of time. It seems
3 to me this has gone on much too long already, but I
4 would be all right with -- And I understand what
5 you're saying about the election. It's going to be
6 an interesting time and we don't know what's going to
7 happen, and I'd hate to see us put in our product and
8 have it disappear down the black hole of switching
9 administrations if that's what happens. So we could
10 come up with a date certain that we want to -- maybe
11 we want to wait until January 1st and submit it that
12 date or something. That would give us a deadline to
13 work with on our work product to make sure it's all
14 done, and you know, we won't be submitting it while
15 people are voting at the polls or something.

16 MS. URIE: Patty Urie. Just as an historical
17 note, since CACLB and CAC started working with the
18 Legislature to make some changes with our
19 relationship with Department of Health, that we're
20 going to be on our third governor so I don't know
21 that it really makes much difference.

22 DR. KIMSEY: And I believe it was Laura
23 Tanney that mentioned that she was going to make a
24 phone call to Agency to see what the status of things
25 were and we may get some feedback there. I will

1 certainly try and float something up through our
2 chain of command, and our Department, to see if we
3 can get some feedback. Obviously, if we get some
4 information from those two avenues, it might change,
5 but let's sort of speculate that we don't hear
6 anything. If Laura Tanney doesn't hear anything
7 specific, I don't get anything specific back, we have
8 these -- you know, we're making progress on the
9 package, as we understand it and see it. When would
10 we want to meet again? I mean, obviously, I think if
11 Laura or I hear anything, we would send out an email
12 and we would probably schedule -- well, I guess that
13 would be an informational email. I'm just thinking
14 about, you know, Bagley Keane. I'm just trying to
15 get an idea of when we would want to meet again to,
16 you know, either to make further progress or react to
17 the information or lack thereof from Agency. I, too,
18 do not want this to just sort of sit any longer than
19 it has to. And the suggestion was made that, you
20 know, obviously we have an election. We'll know who
21 the new governor is here, obviously, in November, but
22 that administration won't really take effect until
23 January.

24 What is the feeling of the committee? Do
25 we want to -- I guess, we don't have 90 days of this

1 last administration so in one sense, we're going to
2 be dealing with a new administration, whenever we
3 submit this package. I'm thinking out loud. So
4 maybe we want to have a meeting in early January, but
5 do we want to be doing anything between now and
6 January?

7 MS. SHEN: Yes, we do. This is Jennifer.
8 I don't believe -- we're not -- we can't submit what
9 we have right now so it needs to be put together as
10 one document and we need to determine how we want to
11 format our changes, if we want to change it from the
12 way they are so I would like us to have some sort of
13 date that we're aiming for and then if we get
14 information that might dissuade us from that date, we
15 could talk about it, but I just don't want to wait
16 until another two or three months before we do
17 anything. I think that we need to do something.

18 MR. WONG: This is Ken. I agree with
19 regard to what Clay was saying, that he thought that
20 this initial statement of reasons that we had, fell
21 or falls far short of the examples that were provided
22 to us --

23 MS. TANNEY: Paul, can we -- This is Laura.

24 DR. KIMSEY: Yes.

25 MS. TANNEY: I just went on the Internet

1 and just kind of Googled "Changes and regulations,"
2 and came up with a whole, what looks like an initial
3 packet called, "Notice of Proposed Rule-Making for
4 Completely Unrelated Radiation Control Law and the
5 Nuclear Regulatory Commission," and they have a whole
6 packet that they say the California Public Department
7 of Health has put together, this past July, which has
8 a whole package, it looks like, of an initial
9 statement of reasons, the fiscal impact estimate, the
10 Statement of Determination, and it says that it's on
11 file at CDPH, "Regulations at CDPH." Is that
12 something that you can get a hold of to -- just for
13 us to use as an example for formatting?

14 DR. KIMSEY: Well, I think if it's on the
15 Web like that, that's probably available to the
16 public as it is.

17 MS. TANNEY: Yeah, It says -- it's got some
18 of it on here, but it says, the packet's available
19 through -- to the public, through, it looks like,
20 CDPH, upon request, so just I thought, since you're
21 up there in Sacramento --

22 DR. KIMSEY: Sure. No, usually, it's my
23 understanding, and I don't do a lot, but it's my
24 understanding that the package that we would give to
25 the public is also available on line so I don't know

1 that there's any difference in the packet that we
2 would get from the Department versus what you would
3 get on line, but I'll certainly check.

4 MS. TANNEY: All right. Well, I can email.
5 what this is to everybody or to you to email to
6 everybody, but it's just an example, although, it's
7 called a "Notice of Proposed Rule-Making," and I'm
8 not sure it includes all of that because I'm just
9 skimming it right now, but it's got, like I said,
10 right on this email, it's got a statement, and what
11 provisions they expect to amend, and it actually
12 looks like an invitation for written comment to the
13 public, but it's got the Statement of Determinations
14 and --

15 DR. KIMSEY: Yeah, Why don't you go ahead and
16 send that link to the, you know, the committee.

17 MS. TANNEY: Okay.

18 DR. KIMSEY: And Kenton, you were saying
19 before?

20 MR. WONG: That if that's so, that we
21 probably need to get our package in line with that so
22 there is not that gap, that void.

23 DR. KIMSEY: Yeah. No, that's the order of.
24 the documents, so some more of the fiscal impact on
25 the Department, but it sounds like what was just

1 mentioned will give us an idea of even the format and
2 the order. Now, that's a document that's sort of in
3 a different track in the sense that it is now out for
4 public comment. It's a farther bit down the road
5 than we are, but that certainly could give us some,
6 you know, formatting and order ideas for our package.

7 MR. LYLE: This is Bruce Lyle. I know that
8 when I was drafting the Statement of Determination,
9 and I'm pretty sure Kenton, and anybody else that's
10 doing this, I went and looked for exemplars of them
11 and found a few. And reading the ISOR and everything
12 else, it looks like it does follow, you know,
13 depending on who we copied from or borrowed from, you
14 know, it takes on a different format. So I think
15 what we're looking for is somebody to kind of put it
16 all into one format, and I don't really know that
17 exact format matters, as long as, it falls in the
18 same format, and it's consistent throughout, and the
19 order is correct. I think the main sticking point is
20 where we stick in our work product and how that
21 looks.

22 MS. SHEN: Yeah, I agree. If you look at
23 some of the tips for preparing regulation packages,
24 in responding to public comments, you know, the way
25 they're -- you know, they want all the new

1 regulations, texts, underlines, and everything
2 repealed of a strike out. You know, there should be
3 printer's instructions at the top of the page for
4 each section. So their examples, you know, "Start
5 with section thus and so, to read," or "Adopt section
6 thus and so to read," or "Repeal section thus and so
7 to read." Again, I think it's, unfortunately for us
8 -- I worry that that will be very confusing because
9 we're changing so much, but I'm -- and I'm not even
10 sure how to start that. I'm not even sure how to
11 make that look to kind of follow their guidelines.
12 And I think somewhere in here, it says, that each
13 section should be on its own page. Well, obviously,
14 that's going to be a bit difficult for us. So there
15 are some guidelines, but they are -- they just don't
16 seem to really work for what we're doing.

17 MR. LYLE: Bruce Lyle. And that's why I
18 thought that maybe our, you know, our work product
19 that we have, and how we've written it, would
20 suffice, but I'm not a hundred percent sure.

21 MS. URIE: Patty Urie. That might be just a
22 quick question without having someone here to analyze
23 what we sent to it for content, but just a quick
24 format question, since the committee is redoing all
25 of the regulations, everything, looking at every

1 single one, at this point, if someone could just say,
2 "Yes, it does have to follow that formatting, those
3 formatting requirements," because I thought it did
4 have to follow those requirements, at one time, even
5 though we're redoing the whole thing, I thought it
6 did have to follow that, but if someone in Legal or
7 someplace could just quickly tell us, "Yes, it does
8 have to," or "No, it doesn't," that would be helpful.

9 MR. WONG: This is Kenton. Can Laura or
10 Dr. Kimsey determine that with their contact?

11 MS. TANNEY: I'll try.

12 DR. KIMSEY: Ditto.

13 MS. SHEN: This is Jennifer. So if that is
14 the case, then yeah. We can keep the same general
15 work product, but it will take -- I mean, it will
16 take some time to reformat it in that manner. I
17 mean, since the justification and everything is done,
18 I think, based upon what I've read, all we really
19 need to worry about, at this point, is I have to put
20 in what it says, what it says now, and strike all
21 that out, and then put in what it's going to say, and
22 underline it, but the problem is we've changed some
23 words in some parts. I mean, it will just be very --
24 it will be very confusing and I'll have to start each
25 little thing with a printer's instruction which also

1 will be very confusing.

2 MS. TANNEY: This is Laura. I worked on the
3 Legislation committee at CDPA and all those formats
4 are actually pretty standard for all legislation so I
5 have a feeling that we're not going to be able to
6 deviate from that because that's just the normal way
7 things are done.

8 DR. KIMSEY: I have a question for our legal
9 representative, Ms. Campbell. Laura Tanney and I are
10 going to be soliciting, getting some information
11 back, and I guess my question is, when it comes to
12 Bagley Keane, can we communicate, via email, any sort
13 of response, you know, Laura Tanney may get from
14 Agency or I may get from Agency or are we pretty much
15 -- I mean, this will just be sort of informational, I
16 would think. Can we communicate that to the
17 committee under the Bagley Keane rules?

18 MS. CAMPBELL: I think you can communicate
19 it to the committee. It's a one-way communication.
20 It would also be a public record, but I think that
21 would be fine.

22 DR. KIMSEY: Okay, thank you, because it's,
23 you know, obviously -- well, let me just say, I think
24 we want to try and schedule a meeting in January, no
25 matter what, but if something -- if Laura or I, get

1 some new information, I think that would be an
2 announcement to the committee and we might try and
3 meet sooner than January. Does that seem reasonable?

4 MS. TANNEY: Yes.

5 MR. LYLE: Yes.

6 MS. SHEN: Yes.

7 MR. SEDGWICK: Yes.

8 DR. KIMSEY: Now, did we solve the question
9 of trying to find a format for Jennifer or I mean --

10 MS. SHEN: This is Jennifer. You know, one
11 of the problems -- I think this is what Clay may have
12 been eluding to earlier -- the way it looks like
13 these are written. And again, it's sort of hard for
14 us, is that in the ISOR, as part of it, every single
15 section that there are changes to, there's a
16 discussion about them and that is separate from the
17 work product, essentially, so I guess I don't really
18 know how we would do that. So that, we would start,
19 you know, "Here are the regulations, and here's a
20 discussion about every change we're making, and
21 that's part of the ISOR," and then you have your
22 fiscal impact, Statement of Determination, all these
23 things, and then at the end, you have your actual
24 regulations with the strike outs, and the underlines,
25 and all that stuff, without any additional

1 explanation.

2 Now, I think we talked about this before.
3 What I worry about -- I guess, to me, that does not
4 seem sufficient. I realize we may have to do it
5 anyway, but for someone to be reading a justification
6 for something that they haven't looked at yet, would
7 be complicated. So then, they're reading the ISOR,
8 and looking at the justifications, and flipping back
9 to the end, looking at the regulations themselves to
10 see how that matches. So I think the way that we
11 have written it is the most efficient use of the
12 reader's time. It's pretty straightforward and you
13 see why we're doing the things we're doing, but I
14 think that our formatting issue is going to be that
15 we might have to pull the justifications out of our
16 work product, stick them in the ISOR, and just have
17 the changes to the regulations at the end.

18 MS. URIE: This is Patty Urie. I think the.
19 final document has to be in the appropriate format,
20 yes, which would be different from what we have, but
21 I think what you might do is attach one that's got
22 everything in it, as it is, for the reader --

23 MS. SHEN: -- that's probably a good idea.

24 MS. URIE: -- and as an extra reference,
25 include that, here it is together, include that with

1 each section, with each change, re, therefore, to
2 help the reader and just go ahead and let them know
3 that is a reference for them. And say in here that
4 there's a complete description of each and every
5 change and justification for you to look at, is
6 provided, but then they do have to have a clean copy,
7 how you want it to go to press, and you'll take out
8 of that clean copy the stuff that you'll put in the
9 ISOR.

10 MS. SHEN: This is Jennifer. Our other.
11 option would be -- just taking our work product as is
12 and putting it as part of our ISOR, and then at the
13 end, just having the regulations themselves with a
14 strike out, and line out. So instead of pulling the
15 justifications out of our document and having them
16 stand alone, we can have those justifications set up
17 the way we already have it so that someone can read
18 through them and see, but at the end of the document,
19 have your printer's instructions, your -- each one,
20 underlines, strike outs, as need be. So they have a
21 neat, clean copy, without justifications, as part of
22 the packet, so that way we wouldn't have to do a lot
23 of reformatting of our work product as far as the
24 justification portion goes. Does that make sense?

25 MR. WONG: This is Kenton. That makes total.

1 sense to me. Jennifer. With regard to Dr. Kimsey's
2 and Laura's query, that's why their work is critical
3 to get the direction on whether you need to pull out
4 each section and have a narrative explanation for
5 each change as opposed to going the other way because
6 it will make a huge difference in what direction
7 we're going to have to go.

8 MS. SHEN: Yeah. I guess it will. Well,
9 we're breaking new ground here. I think we need to
10 have the justifications for the section changes in
11 our ISOR. What I'm wondering is that -- if we want
12 to have them all alone because if you look at our
13 work product and you just put the 1215 authority, and
14 then just say, "We're making this change because of
15 this" or "We're making this change because of that,"
16 it doesn't make sense, without context. So again,
17 while the way we have it written, provides the reader
18 context, it's just not typical as to what you see
19 when they're -- actually providing justifications
20 without any reference to the actual wording of what's
21 in the regulations already.

22 MS. URIE: Patty Urie. I think, if you look
23 at this Page Five of the document we're looking at
24 here in San Diego, this looks pretty extensive here,
25 like ours. There's Subsection A, A-1, A-2. This is

1 just that bottom line on our that we've redone.

2 MS. TANNEY: Patty is referring to an
3 example.

4 MS. SHEN: We don't have that. We should all
5 have that example.

6 MS. TANNEY: It's an example.

7 MS. URIE: Yeah. "Continuing education for.
8 registered environmental health specialist." It has
9 nothing to do with what we're doing, other than --
10 I'm just looking on Page Five. I'm trying to
11 remember back to conversations I had in this process
12 and I think they didn't want redundancy of having the
13 text in this document. There's just something that
14 sticks in my mind, and it appears what they've done
15 here is that they've put all the justifications,
16 comments, and everything regarding these changes, to
17 each and every change that they're making, but
18 they're not putting the text in so this reader is
19 going to have to go back to the original text, read
20 this, and then go to the proposed text and it does
21 seem kind of inefficient, but I, in the back of my
22 mind, I think that's the way that they wanted it. So
23 for us, all this information that's here would just
24 be taken out of what we have right now in our changes
25 and put down here. It would be just exactly the same

1 as it is without any text at all. I think it had to
2 be like that, but you can find out, Laura, when you
3 ask them. That shouldn't be too hard, as far as just
4 pulling it out, because you've got it in this format.
5 It's just along with the text.

6 MS. SHEN: This is Jennifer. So here's a --
7 let's try this. So we have for instance, 1215.1,
8 "Definitions." We have a couple options." We can go
9 with every -- so if we did it this way: We have the
10 justifications, we have our section title, so our
11 section is 1215 -- we have our title, and then -- I'm
12 sorry, so what we could do is, for "Definitions,"
13 have one justification for our changes that would
14 encompass all of the reasons we changed our
15 definition. So that instead of saying, "We change
16 the definition of alcohol because of this, we change
17 the definition -- "

18 DR. KIMSEY: -- Jennifer, just a moment.
19 This is Paul. The stenographer has asked that you
20 slow down just a little, please.

21 MS. SHEN: Oh, I'm sorry.

22 DR. KIMSEY: That's all right.

23 MS. SHEN: "-- of forensic alcohol analysis.
24 because of this," we could -- I mean, that's kind of
25 where we're going to be if we go change by change by

1 change or do we want to try to sum up our changes per
2 section so the definition for change to be more
3 specific to, you know, reflect whatever our changes
4 are and the reasons for them, in one paragraph, that
5 would handle that whole section or do we want to
6 break it up, that we justify every little single
7 change that we've made in a separate section?

8 MS. TANNEY: This is Laura. I think, just
9 based on the example I'm looking at on line, that
10 they go through every section and say why they're
11 amending every section. It will say for example,
12 "Amend Section XXX," to reference all provisions
13 applicable to registration," and then the next one
14 is, "Add section," blah, blah, blah, to specify how
15 to register," you know, and they go through every
16 single section and say that they're either amending
17 it or adding it, and why they're amending it, and
18 adding it, but they're using general terms rather
19 than real specific justification. So they'll say,
20 "To maintain consistency with the Federal
21 regulations," for example, and ours might be, "To
22 maintain consistency with the statute," whatever, but
23 they go through every single section and provide
24 authorities, references -- authorities and
25 references, and that's for the ISOR that -- I'm

1 talking about that. And then following the ISOR is
2 the fiscal impact estimate, and following that is the
3 Statement of Determination, and that's the way this
4 is formatted, and I think that's -- and by the way,
5 this committee said at the beginning that they amend
6 their regulations all the time so apparently they've
7 had success with amending the regulations a lot.

8 MS. SHEN: And I suggest we do it exactly the
9 way that they did it.

10 MS. TANNEY: And maybe we can contact them.
11 and ask them, you know, for some guidance.

12 MS. URIE: This is Patty. I've been saying.
13 "Patty Urie." I guess, it's Patty Lowe for this
14 committee. You know, this one that I'm looking at on
15 the "Registered Environmental Health Specialist," it
16 looks like it's the format that you need for the
17 whole document. The way it's set up is exactly the
18 way that you need.

19 MS. TANNEY: Jennifer, do you want me to
20 help you, on like a subcommittee, to do the
21 formatting -- it's just to look at some of the
22 examples.

23 MS. SHEN: Well, I was just thinking -- I.
24 mean, I suppose, at this point, I think we could
25 probably go ahead with the fact that we will need to

1 have at least a clean copy of just the changes. I
2 don't know how we're going to finish up the ISOR with
3 the justifications, but I think at the end, in there,
4 we're going to have to have our regulations with the
5 timeouts, the strike outs, and the underlines so --

6 MS. TANNEY: I figure We might as well do.
7 something before the January meeting --

8 MS. SHEN: Absolutely.

9 MS. TANNEY: -- to get further along. We
10 can either have another meeting with everybody or you
11 and I or two other people can work on it to format it
12 all.

13 MS. SHEN: I think that sounds wonderful.

14 MS. TANNEY: Which, the two other people?

15 MS. SHEN: (No audible response.)

16 MS. TANNEY: Hey, are Sacramento and
17 Richmond still there?

18 DR. KIMSEY: Oh, yes. Ken and I were just
19 trying to remember if a group could be more than two
20 from the Bagley Keane aspect of things.

21 MS. CAMPBELL: A group has to be, in order.
22 for it not to constitute a meeting, it has to be less
23 than a quorum.

24 DR. KIMSEY: So then three people could get
25 together.

1 MS. SHEN: This is Jennifer. I do have.
2 Leone on my subcommittee still and probably I could
3 give her the work of doing the formatting. I
4 wouldn't want to give her the work of the --
5 necessarily doing the justification section, but as
6 far as just the formatting, that's just a lot of
7 tedious underlining, and striking out, so I think I
8 probably could actually handle that on our end. It's
9 going to be hard to split that work up, I think.

10 MR. LARSON: A comment from the public.

11 Peggy, I think if you check the Government
12 Code, there actually -- if the committee creates a --
13 if the committee formally creates a subcommittee then
14 I believe the language is "Less than three persons,"
15 so two or 2 1/2.

16 DR. KIMSEY: And I think that's what we've
17 been -- the guidance we'd been given previously.

18 MS. CAMPBELL: All right. So you're talking
19 about a subcommittee then?

20 MR. LARSON: Right, which I think that's the
21 language they used. That's the language the
22 committee is using now.

23 MS. CAMPBELL: Okay.

24 MR. WONG: What else would you call it if
25 it -- Is there something else you can call it and

1 allow three people?

2 MS. CAMPBELL: Well, if it's a formal
3 subcommittee, then there are special rules, but if
4 it's just members of a committee getting together,
5 that's less than a quorum, then it's not a meeting.

6 MR. WONG: I guess it depends what you call
7 them.

8 MS. TANNEY: We just want to make
9 nonsubstantive, editorial changes, and format
10 changes. I can't imagine that since it's
11 nonsubstantive that it would constitute a meeting
12 under any definition, but it's working together to
13 format it.

14 MR. LARSON: A comment from the public. I
15 think the committee actually, unfortunately, has gone
16 a long way towards creating what sounds to everyone
17 like a subcommittee at this point. In any case,
18 didn't Jennifer say she could do it with one other
19 person?

20 MS. SHEN: This is Jennifer. I think we can.

21 I might want to, while we're here, take one
22 of our sections and just list it, to write it out, so
23 I know exactly what it is that I'm doing and then I'm
24 going to properly delegate that to Leone, but I would
25 like to see some kind of plan for our justification

1 section, and then some kind of plan for finishing up
2 our fiscal impact. I mean, it seems like it's close,
3 but we need to add the part about the budget, and a
4 person to take care of our cover letter, our
5 transmittal memo. I'd just like to see all of these
6 parts finished so that by the time we have our next
7 meeting, we've got a product that we may need to
8 alter, change or fix a little bit, but it's -- all
9 the parts are there so that we can be ready to take
10 our next step, so that's where I'd like to see us go.

11 MR. WONG: I concur.

12 MR. LYLE: This is Bruce Lyle. I agree with.
13 that, and I'm willing to do the memo and anything
14 else that needs to be written.

15 DR. KIMSEY: Is that the cover memo, Bruce?

16 MR. LYLE: Yes.

17 DR. KIMSEY: Well, I'll certainly get the.
18 fiscal effect on State Government numbers, Item B,
19 for Kenton, for the fiscal impact estimate.

20 MR. WONG: And then, I'll rework the fiscal
21 impact and submit things with those changes.

22 MS. SHEN: This is Jennifer. So that just.
23 really leaves us with the reformatting which once I
24 know how we want to do that, that shouldn't be --
25 that's just tedious. That shouldn't be too thought

1 provoking. That just leaves us really with how we
2 want to handle the justifications, but I may be a
3 pessimist. I don't think that we're going to hear
4 much from anyone. I just hate to wait -- just sit
5 back and wait. I think if we try our very best to
6 follow the guidelines as they are, and we are in fact
7 sort of breaking new ground on our type of
8 submissions, I think we're going to be all right.

9 DR. KIMSEY: Did you mention, Jennifer, that
10 you wanted to go through an example?

11 MS. SHEN: Yes. I would like to go through.
12 an example or two until I feel comfortable with
13 exactly how we want to see our clean copy. We're not
14 at discussions, and justifications at this point, but
15 in the end, when we have are what essentially, I
16 assume, go off to, for printing, since they want each
17 one started with printer's instructions, so if you
18 want to just pick a couple -- I'm also concerned with
19 the ones we take out, not a big deal. The ones that
20 we add entirely, I'm not sure if there are any of
21 those, it's not hard, but the ones that we sort of
22 alter, at midstream, there's a few changes within a
23 paragraph that essentially stays the same. Those are
24 the ones that I want to see exactly how we want to do
25 that. I want to get it right the first time.

1 Well, I guess another question I have is so
2 when we're formatting this, if we don't make -- so
3 essentially, we're going to have the entire
4 regulations and if we don't make any changes to a
5 certain section, we just leave it as is, no
6 underlining or strike outs. So do we want to include
7 them all, every part?

8 DR. KIMSEY: I'm not sure. This is Paul in
9 Richmond. I'm not sure how that reads. That one
10 that you were looking at on line, Laura, did you see
11 sections that were left unchanged or was it just all
12 the changes?

13 MS. TANNEY: It was just the changes.

14 MS. SHEN: This is Jennifer. I believe, in
15 meetings past, that we were told that because this is
16 written so long ago, Title 17, is out of compliance,
17 that we have to bring the entire thing into
18 compliance and so therefore, we were put in a
19 position of having to justify what we left in, what
20 we changed, and what we didn't change, and we talked
21 about that several times. Is that not the case? If
22 that is the case then I would think we have to have
23 the entire thing there and we'd have to justify every
24 single section.

25 MS. URIE: Patty Urie. Which you already.

1 have. You've already done that.

2 MS. SHEN: Right.

3 MS. URIE: -- and I believe you do.

4 DR. KIMSEY: Jennifer, if you have your work
5 product in front of you, do you want to walk us
6 through one of the sections or two of the sections
7 that are an example?

8 MS. SHEN: Okay. Well, first, I think we
9 need to come to agreement on the fact that we want
10 the -- I think the entire regulation needs to be
11 present in this product. Right now, all we're
12 discussing is the clean, essentially, the clean copy,
13 at the end, that would be used to change the
14 regulations, so is everybody in agreement with that?

15 MR. LYLE: I'll help you.

16 DR. KIMSEY: This is Paul. I remember some
17 of those discussions back-and-forth, Jennifer, about
18 ADA compliance and I can't remember where it ended
19 up -- the fact that these regulations were so old
20 that we had to go through everything or whether it
21 was just where we changed -- anybody else's memory
22 more clear than mine because I think, over the years,
23 I heard it both ways.

24 MR. LYLE: It's Bruce. My memory was that
25 we had to include everything.

1 DR. KIMSEY: Okay.

2 MR. LYLE: And really, there's is so few that
3 we did not touch or change, that, to add those in, it
4 doesn't seem like that much extra work.

5 MS. SHEN: So it sounds to me like we want to
6 have the entire thing in this particular section, and
7 again, we're only talking about the section at the
8 end, the clean copy. We're not talking about the
9 justifications, and the ISOR section, so fulfilling
10 that -- all right. Well, let's do a couple of them
11 so that I know exactly how we want to do this. Let's
12 say -- in 1216(a)2, that's on Page Seven, "The
13 Department shall not be limited by these regulations
14 in performing," blah, blah, blah, and our
15 justification is, "This section will be deleted in
16 its entirety as a Rule 100 change." So when we got
17 to this portion of the regulation, I would have that
18 section written and there would just be line-outs
19 through it and that's it?

20 MS. URIE: Correct, just like your voter
21 pamphlet. Pat Urie. And then in your ISOR, you'll
22 have the section number, and you'll have the
23 statement you just read, in there --

24 MS. SHEN: Okay.

25 MS. URIE: -- so it's covered. I'm thinking

1 maybe they're going to take it apart, hold them next
2 to each other maybe.

3 MS. SHEN: Yeah, okay. All right. Does.
4 everyone agree with that -- that's how that will
5 look?

6 MR. LYLE: Yes.

7 MR. WONG: Yes.

8 MS. SHEN: Okay, I can do that. Now, what.
9 about section -- so then we can get to a section that
10 says -- I need a section where it says it stays as
11 is. We'll assume that I have now found a section
12 that says, "It stays as is." We make no changes
13 because this says what we want it to. Therefore, in
14 this document, it will just be written. There will
15 be no underlines, there will be no strike outs. It
16 will just be as it is?

17 MS. URIE: Yes. Patty Urie. You know, now.
18 that we are adopting this formatting idea, I think,
19 in your ISOR, in the very beginning, you might say
20 that, "The committee was advised by Legal that we had
21 to review the entire document because the entire
22 document was out of compliance and for that reason
23 --" if it's there, then that's fine, then you don't
24 have to, but at least explain why are we putting
25 things in that are not being changed because we were

1 told that we had to review them and see if they were
2 still necessary or --

3 DR. KIMSEY: Yeah, and on Page Three, where.
4 Jennifer talked about reasons to update the
5 regulations, the first, it said, "Regulations were
6 out of compliance," she talks about the
7 Administrative Procedures Act so there's some text
8 already there. It says, "Therefore, the regulation
9 needs to be rewritten entirely."

10 MS. URIE: Patty Urie. Yeah, that's fine.
11 It's in there.

12 MS. SHEN: Well, I've written that.
13 "Therefore the regulations need to be rewritten
14 entirely, but I suppose that's not actually accurate
15 because we didn't rewrite them entirely. So I could
16 put, "Therefore, the regulations needed to be
17 reviewed in their entirety," and "Every part of it
18 "Justified," or some such thing or "Just reviewed in
19 its entirety"?

20 MS. TANNEY: I think it's more than.
21 reviewing.

22 MR. LYLE: Yeah. You need to address it or
23 consider --

24 MS. URIE: -- yeah, "Reconsidered and.
25 rewritten where applicable."

1 MS. SHEN: Okay. "So therefore, the.
2 regulations needed to be reviewed in their entirety
3 and rewritten where appropriate or where necessary."
4 How does that sound?

5 MR. LYLE: Beautiful.

6 DR. KIMSEY: Sounds good.

7 MS. URIE: Patty Urie. And then maybe a
8 a statement so they are all included.

9 MS. SHEN: I think that I'll add a statement.
10 that that conclusion paragraph right before they
11 come, saying something along the lines of, "Due to
12 the fact that the entire document needed to be
13 reviewed, all sections are included, whether they
14 were changed or not."

15 MR. WONG: This is Kelton. Since we're
16 looking at changes, on the second paragraph, where it
17 says, "The committee was established," instead of
18 "Hundreds," it should be "Thousands."

19 MS. SHEN: Where are you looking?

20 MR. WONG: On the second paragraph, on Page
21 Three, where it says, "A committee was established."
22 At the end of the sentence, instead of "Hundreds," it
23 should be "Thousands of law enforcement and forensic
24 science community employees."

25 MS. SHEN: Three, which paragraph?

1 MR. WONG: The second paragraph.

2 MS. SHEN: Oh, "Members represent thousands.
3 of employees"?

4 MR. WONG: Right --

5 MS. SHEN: Okay.

6 MR. WONG: -- when you include "Law
7 enforcement and forensics."

8 MS. SHEN: You were right about that. I was
9 thinking small. So I'm going to add then a sentence,
10 in Page Seven of Seven, that last paragraph, I'm
11 going to add a sentence about the fact that the
12 entire document was reviewed, therefore, all the
13 sections were included in the following
14 justifications.

15 MR. LYLE: It's Bruce. And also, on your
16 last sentence, you say that, "The section includes
17 the current verbiage, proposed changes, and
18 justifications," but you won't have justifications."

19 MS. SHEN: Right, so I'll need to change that
20 as well. Okay. So then I would like to know -- so
21 if we have the one that -- we've only changed a few
22 phrases in the paragraph. For instance, so I would
23 write the paragraph -- we'd put the paragraph in as
24 it is, and then underline or strike out the things
25 that we're taking out, and then just add in the

1 things that we're putting in and underlined. So
2 ultimately, that paragraph, when you read it, won't
3 really make much sense because some of them we
4 reworked quite a bit, but that's what I need to do?

5 MS. TANNEY: Yeah. I think you're only.
6 changing one word. It's pretty straightforward;
7 cross out the one, and then add the next with the
8 underline.

9 MS. URIE: And if it gets too complex, you.
10 actually X out or strike out the full section and
11 then underline the section afterwards if it's too
12 complicated.

13 MS. SHEN: That, I think, will work. That's.
14 the only thing that I was really worried about was
15 the sections that we've changed drastically

16 MS. TANNEY: You can do that.

17 MS. SHEN: Okay.

18 MR. DAVIS: This is Kevin in Sacramento.
19 It sounds like we're going to go on this for a little
20 while. I propose taking a break or breaking for
21 lunch if we're going to keep going a while.

22 DR. KIMSEY: What's the feeling of the
23 committee? We could break a little early for lunch
24 or we could take a bio-break and come back in ten or
25 fifteen.

1 MS. SHEN: This is Jennifer. I would like to
2 -- well, actually, you know what, I think I might
3 have enough information to get started so I'm not
4 sure that we need to go too much longer. I'd like to
5 maybe discuss the justifications a little bit, but
6 other than that, I think I've got what I need to get
7 us to the next meeting.

8 DR. KIMSEY: Well, why don't we take a.
9 bio-break for ten minutes and come back at twenty of
10 noon.

11 MS. SHEN: Sounds good.

12 (Recess taken)

13 DR. KIMSEY: Okay. This is Richmond.
14 Why don't we go ahead and get started again. I
15 believe, when we were leaving, Jennifer just had a
16 few more requests for guidance.

17 MS. SHEN: Well, I feel pretty good about the
18 formatting for our final product. As far as the
19 justifications go, what I can do, just for a start,
20 just to be relatively easy is just take the
21 justifications out of our work product and plop them
22 on the end of the ISOR, so I can do that, and then
23 they wouldn't really -- I mean, they're sort of
24 floating out there by themselves. So for instance,
25 at the end of the "Conclusion" paragraph of the --

1 we'll call it the "Preamble," on the ISOR, I would
2 just put in the first section, and let's see, I'm
3 getting -- put in the first section, 1215 authority,
4 colon, and write, "This change will reflect current
5 law," and here's my cite, and that will be it. Then
6 I'll move on to the next one, and I'll just --
7 1215.1(a), "This definition will be maintained in its
8 current form as it accurately reflects 1(b), the
9 definition of alcohol," 1215 dot B -- if I could do
10 it like that -- so I guess my thought is that I will
11 just pull each section, I will cite the section, and
12 I'm just going to put the justification that we
13 already have, in its that it already is, right there,
14 with the cite, if I need it, and then move on to the
15 next section. So what we'll have is several pages of
16 just justifications, and that will end the ISOR
17 section, and then we can kind of mold in the fiscal
18 impact statement, and the Statement of Determination,
19 before we get to our final work product which will
20 not have any justifications. It will just have the
21 change in the verbiage and then I think they're done.
22 Obviously, we have to put the cover letter on the
23 front, but I think that would give us a whole package
24 then.

25 MS. TANNEY: Kenton, this is Laura. I think.

1 you're going to need to, on the fiscal impact
2 estimate, come up with actual monetary amounts. I've
3 been looking at some other samples and I'm not
4 sure -- I think you're going to have to work with the
5 Department to figure that out, like we talked about
6 before, but I think you're going to have to come up
7 with an actual estimate, not just of labor, but of
8 equipment, and everything else, travel, everything.

9 MS. SHEN: That's based on what you're seeing
10 there, Laura, with the radiation regulations?

11 MS. TANNEY: It's based on every fiscal
12 impact estimate that I've ever seen whether it be in
13 legislation or with the examples here.

14 MR. WONG: I was a little bit concerned about
15 that because when I got the very first example, to
16 kind of follow, there was a little footnote in there
17 that said you had to have some type of justification
18 for the numbers that you're putting down and I was
19 like clueless of well, how do I back up these
20 numbers, and where do they come from, and --

21 MS. TANNEY: -- well, I think that it's.
22 actually the Department that probably has that
23 information, rather than you, but I'm not --

24 DR. KIMSEY: Well, obviously, for Part B,
25 which I was going to work and get the number on, we

1 would have that information, but I think, up in A,
2 when you talk about proficiency testing costs, and I
3 think there was some discussion about membership
4 costs, I don't know --

5 MR. WONG: -- it's only about \$300 a year for
6 a subscription for an external provider, but then
7 like Clay said, if you just get one external, you
8 could share that amongst a number of different number
9 analysts and -- it's still a minimal cost overall
10 when you spread it out.

11 MS. SHEN: This is Jennifer. And is that
12 a cost that we think that we even have? If all of
13 our Government labs in California are accredited,
14 which I think they are, then everybody is already
15 doing this so passing this legislation will not
16 create a situation where someone, a laboratory, is
17 going to have to start doing something that they're
18 not already doing.

19 MR. WONG: Right.

20 MS. URIE: Except for D, so maybe you need
21 to put sort of \$300 per year cost or something on
22 these so they can see that it's minimal.

23 MS. SHEN: I think that we probably want
24 to go through this with you and do some maybe
25 brainstorming of any other costs or things that we

1 think we might that you might want to have in here so
2 that you have something to work with.

3 MR. WONG: Absolutely. I'm open to any
4 suggestion that anyone could provide on the
5 committee.

6 MS. SHEN: I think you got the hardest
7 assignment. Well, for starters, I think -- so for A,
8 I think that -- do we all agree that probably there
9 is not a fiscal effect on local Government or if
10 there is, what is it, and what kind of numbers do you
11 need to get?

12 DR. KIMSEY: Well, as you said, it's true
13 that, I guess, a number of the entities are already
14 members, but you might want to put in what those
15 costs are. I mean, not that they're not already
16 being done, but it is maybe a change from the
17 previous regulatory environment.

18 MS. SHEN: Aren't we concerned only with the
19 impact this will have on laboratories, and if there
20 is no fiscal impact, we wouldn't want to -- I think
21 we might run the risk of making it look like there is
22 a fiscal impact when there isn't.

23 MS. TANNEY: I think the biggest fiscal
24 impact that you're going to have is the savings to
25 the State, in Part B, because you're going to be

1 eliminating the need for the travel, and for the
2 proficiency testing that they do there, and for that
3 type of stuff -- the labor.

4 MS. SHEN: But I think, ultimately, this is
5 Jennifer, that B is going to be fairly substantial.

6 DR. KIMSEY: Right.

7 MS. SHEN: That's where most of your writing
8 will be, I think, will be under B.

9 MR. LYLE: And so in A, can you just -- this
10 is Bruce -- so in A, can you just say that because
11 all the local Government laboratories are, you know,
12 compliant with the legislation, as proposed, there
13 won't be any changes? Can you just have a
14 blanket-kind of an umbrella-statement like that?

15 MR. WONG: Right, no net costs increase.

16 MS. SHEN: Right. You could probably even go
17 that brief because there shouldn't be --

18 MR. WONG: Works for me.

19 MS. SHEN: Do you want to brainstorm the --

20 Are you comfortable with the State
21 Government costs that -- you're looking at --
22 everything you need to take a look at there or do you
23 want a brainstorm so -- for more ideas?

24 DR. KIMSEY: I think the Department can pull
25 that together.

1 MS. SHEN: Okay. Does anyone see any
2 changes to C that we might need to do? I guess, I
3 won't -- this is Jennifer -- if our only -- I mean,
4 even though, all the Government laboratories are
5 accredited, and I do not think that there will be any
6 sort of increase in cost with the passage of these
7 changes, there are laboratories that are not
8 accredited, private laboratories, that may need to
9 still utilize a proficiency testing program, and if
10 they're forced to go the way of the Government
11 laboratories, that would be an increase for them, so
12 do you need to outline that in C?

13 MS. URIE: Pat Urie. That's in D.

14 MS. SHEN: In D?

15 MS. URIE: Yes.

16 MS. SHEN: Sorry.

17 MS. TANNEY: Well, are we talking about a
18 requirement they have now for proficiency testing or
19 are you anticipating something in the future
20 changing? I don't think you should anticipate
21 something in the future changing.

22 MS. URIE: The new regulations, would have a
23 cost increase for them -- well, no, right, because
24 they already -- in fact, perhaps the Department can
25 let us know if they know, in fact, that the small

1 businesses are currently in compliance with
2 proficiency testing right now. Are they in fact
3 subscribing to approved providers? That's something
4 that I guess if they are then there's no net change
5 because they're already doing it.

6 MR. WONG: We are already subscribing to
7 A-Plus Forensic Analytical. We're outside proficieny
8 testing and that's what we do.

9 MS. URIE: And Clay, are you aware that
10 all other small businesses are in compliance now?

11 THE REPORTER: Who was that please?

12 MS. URIE: Miss Urie. I was wondering if,
13 in fact, all of the small laboratories that are not
14 accredited, if they are in compliance with the
15 current H and S regulations?

16 MR. LARSON: Rather than answer that question
17 directly, I think Laura Tanney was on the right
18 track. There is -- we keep talking about accredited
19 labs. There's absolutely no requirement in the
20 regulations that labs be accredited now or ever. The
21 requirement that labs subscribe to an external
22 proficiency test is a statutory requirement that's
23 not changed by the regulations, so I'm kind of
24 puzzled about this whole five minutes of conversation
25 because I --

1 MS. URIE: -- this is Patty Urie again.
2 Clay, can you tell me how many of the small,
3 non-accredited laboratories -- can you tell me that a
4 hundred percent are currently following the
5 guidelines and they are using approved providers for
6 their proficiency testing?

7 MR. LARSON: Without naming the lab, we have
8 one somewhat recalcitrant lab.

9 MS. URIE: Oh. So some are out of compliance
10 then.

11 MR. LARSON: I said one.

12 MS. URIE: One, okay.

13 MS. SHEN: This is Jennifer. Ultimately,
14 then there's no increase in costs for your private
15 laboratories either.

16 MR. LARSON: That's correct, and I think the
17 conversation started because, going back to Section
18 A, I think there's a presumption there that the
19 testing by the -- the annual testing of the examiner,
20 whatever "Examiner" means, is something that would
21 require additional external proficiency tests, and as
22 I noted earlier, nothing in the revised regulations
23 imposes that requirement. It can be an internal test
24 and typically is an internal test, so I would go back
25 to A. I think A needs to be revised, Subsection A.

1 MR. LYLE: This is Bruce Lyle. One of the
2 things I noticed when I was doing the statement of
3 determination is it focuses on non-Governmental
4 fiscal impact so it has a section for economic
5 impact, and a section for effects on small businesses
6 so if -- and what I wrote in there was "The committee
7 has made an initial determination that there may be a
8 small, but indeterminable economic impact on some
9 small businesses, specifically, those private labs
10 that do not meet ASCLD standards, and that are unable
11 to do so, may suffer from economic loss."

12 MS. TANNEY: Considering that's the exact
13 same verbiage that Kelton used, do you think maybe
14 you've shared that?

15 MR. LYLE: I think maybe he stole it from.
16 me. Well, what I'm getting at is I don't think the
17 fiscal impact statement -- I didn't think that it
18 addresses non-Governmental fiscal impact. We can
19 double up on it.

20 MS. TANNEY: It does. We just looked.

21 MS. URIE: Okay, so we can double up on it.

22 MS. TANNEY: Yeah, I have something in mind.
23 mind.

24 MR. LYLE: Never mind.

25 MS. TANNEY: You continue to refer to the.

1 "Statement of Determination." Has anyone seen that?
2 Have you submitted that to anyone?

3 MR. LYLE: Yeah, I remember submitting it
4 before the last meeting, but --

5 MR. LARSON: Okay. So we saw it at the last
6 meeting, all right.

7 MR. LYLE: -- in April, but I will definitely
8 resubmit it.

9 MS. URIE: Patty Urie. I remember getting it
10 from you, but it was quite a while ago.

11 MS. TANNEY: I remember getting it. I think.
12 I got it.

13 MS. SHEN: This is Jennifer. I wonder if.
14 maybe our first paragraph should be sort of
15 structured, sort of -- I think we're all in agreement
16 that any cost really that there would be, that the
17 laboratories would incur, would be due to the change
18 in the proficiency testing. However, since we are
19 all in agreement that all laboratories are actually
20 following, perhaps with the exception of one, are
21 following the law, as it currently stands, there
22 would be no net increase so perhaps if that was
23 written in a way where it said, "Based on such and so
24 year and time, such and so law was passed, requiring
25 the laboratories to follow these guidelines," and

1 then since this is the only area where there could be
2 a potential cost increase, because all laboratories
3 are already following this law, there is some such
4 thing like that, so you kind of -- you lay out what
5 it is that could be the problem and then lay out why
6 it isn't, and ending with, "When there is no net
7 increase," or you know, like that's kind of a lot.
8 Maybe we just ought to go with one sentence, but I
9 think we want to show that we're considering what
10 costs there could be, and I worry that if we just
11 write, "There's no cost," that maybe they won't take
12 us seriously as having done our research.

13 MS. TANNEY: Well, what if we say that, "The
14 law already requires that independent laboratories
15 engage in proficiency testing, thus, this regulation,
16 represents no additional cost"?

17 MS. SHEN: Correct. That's sort of what I
18 was trying to say.

19 MR. WONG: Say that one more time, Laura.

20 MS. TANNEY: "The law already requires
21 independent laboratories to participate in
22 proficiency testing. Thus, there are no additional
23 costs associated with these regulations."

24 MS. SHEN: This is Jennifer. I would also
25 probably add just a sentence or two that says

1 something about the fact that the only area that it
2 appears that it could increase costs is in the area
3 of proficiency testing, and then annual after that,
4 and then I think you've got your -- I think you need
5 to say that we -- it's not like all these changes are
6 going to have a fiscal impact. Only really, that one
7 could and because of this, it doesn't.

8 MS. TANNEY: Well, you could start by saying,
9 "These regulations are rewritten" or "These
10 regulations are designed to or comply or are updated
11 to comply with State law because the law already
12 requires proficiency testing."

13 MS. URIE: In 2004 or whatever, Patty Urie.

14 MS. TANNEY: "No additional costs are
15 incurred as a result of these new regulations." So
16 you're starting out by saying that the whole purpose
17 of these or not the whole purpose, but the purpose of
18 these changes is to bring them in compliance with the
19 State law as it currently exists, something like
20 that, because I don't think you should focus in on
21 the only way you could do it is by this and then say,
22 "Oh, it doesn't," because then they're going,
23 "Well --"

24 MS. SHEN: -- because at that point, you're
25 putting out that everyone is doing essentially what

1 we're saying they should do already.

2 MS. TANNEY: Right, what the law requires
3 them to do.

4 MS. SHEN: Yeah. That works for me.

5 DR. KIMSEY: Are there suggested changes to
6 the fiscal impact statement?

7 (No audible response)

8 DR. KIMSEY: Other areas, Jennifer, that you
9 need some guidance on?

10 MS. SHEN: Nope. I think I have plenty to
11 get me started.

12 DR. KIMSEY: Okay.

13 MS. SHEN: So I'm going to go ahead and make
14 the changes that we talked about, and try to more
15 closely follow the guidelines for writing one of
16 these, and make those two little changes to the ISOR
17 that we talked about, and I think I know what I need
18 to do. I'm good.

19 DR. KIMSEY: Okay. And Laura and I are going
20 to try and get some guidance from Agency and you'll
21 receive an email from us, I guess, if and when we do.
22 Barring that, we will be scheduling a meeting for,
23 realistically speaking, probably the second or third
24 week of January, considering the holiday issue. If
25 we do get some better information, we'll get it out

1 to the committee and try and have a meeting sooner,
2 but barring any -- barring getting direction from
3 Agency. I think January is our next meeting. Any
4 other comments or suggestions from the committee or
5 the public?

6 (No audible response)

7 DR. KIMSEY: If not, I want to thank you all
8 for your time and participation, and we'll be in
9 touch via email. Thank you, very much.

10 (Whereupon the foregoing
11 proceedings were concluded.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, David A. Disbrow, a duly authorized shorthand reporter, do hereby certify:

That the foregoing transcript constitutes a true, full, and correct transcript of my shorthand notes taken as such reporter of the proceedings herein and reduced to typewriting under my supervision and control to the best of my ability.

DATE

DAVID A. DISBROW