

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-SECOND MEETING
WEDNESDAY, MARCH 6, 2013
10:00 A.M.

REPORTED BY:
JOHN COTA

APPEARANCESCommittee Members

Dr. Paul Kimsey, Chairman (Richmond)

Lieutenant Kevin Davis (Sacramento)

Ms. Jennifer A. Harmon (San Diego)

Mr. Dan Jeffries (San Diego)

Mr. Bruce Lyle (San Diego)

Ms. Jennifer Shen (San Diego)

Mr. Mark Slaughter (Sacramento)

Mr. Kenton S. Wong (Richmond)

Staff

Dr. Bahman "Bob" Moezzi, Chief, Food and Drug Laboratory (Richmond)

Mr. Clay Larson, Chief, Abused Substances Analysis Section, Food and Drug Laboratory (Richmond)

Mr. Harbhajan Thandi, Research Scientist, Food and Drug Laboratory (Richmond)

Ms. Natallia Spell, Research Scientist, Food and Drug Laboratory (Richmond)

Also Present

Mr. Linton von Beroldingen, Criminalist Manager, California Department of Justice, Bureau of Forensic Services, (Richmond)

Mr. Russ Huck, Department of Public Health, Division of Food, Drug and Radiation Safety (Sacramento)

Ms. Peggy Campbell, Department of Public Health, Office of Legal Services (Sacramento)

Mr. Eric Jones
California Highway Patrol (Sacramento)

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1 about the agenda at this point?

2 (No response.)

3 CHAIRMAN KIMSEY: I think for the opening, on my
4 part, just a little bit of departmental news. The Forensic
5 Alcohol Program is in one of our administrative chains that
6 are pretty much in a section -- they are in the Food and
7 Drug Branch, which is in the Food, Drug and Radiation
8 Division, which is in the Center for Environmental Health.
9 We have a new Director of the Center for Environmental
10 Health, a gentleman by the name of Dr. Mark Starr, he
11 started maybe a few months ago, and so that's good news to
12 have that position filled.

13 Also just real quickly, internally, some things
14 that the Department is working on at a higher level. I
15 mean, obviously we have our budget. It looks like based on
16 the Governor's budget we are not having any direct effects
17 on any of our programs. Some of the sequester issues are
18 obviously still being worked out.

19 The Department is very much involved in the
20 Affordable Care Act implementation as it affects public
21 health and the Department is also looking -- there is a
22 national accreditation available now for health departments
23 and the Department is moving in that direction for a
24 national accreditation. But other than that unless there
25 are some questions about the Department I think we can sort

1 of move on to our draft work product. Any questions from
2 the committee?

3 (No response.)

4 CHAIRMAN KIMSEY: Okay. As my memory serves me,
5 which we should not trust, at our last meeting we pretty
6 much closed -- we had had some good discussions. We closed
7 with -- one of the items was setting up a subcommittee,
8 Jennifer Shen and I, and Jennifer has done the majority of
9 the workload pretty much pulling together the Committee's
10 letter, sort of a cover letter but also pulling together
11 some of the work out of the four bullets that are based on a
12 letter of, I think, December 12th at some point the Agency
13 -- the Department sent to the Committee.

14 That letter expressed some concerns about four
15 areas that the Committee had been working on and urged the
16 Committee to take a second look at the Department's role.
17 The Committee has been working through that. We may have
18 some additional discussion on some of that language in those
19 bullets.

20 But Jennifer and I were -- and mainly Jennifer was
21 pulling together what we talked about being sort of a cover
22 letter that would outline the Committee's response to the
23 four bullets. This cover letter would be part of the entire
24 package of our work -- work product that would be going to
25 Agency. And that package would trigger what we refer to

1 sort of as the 90 day clock for Agency review.

2 Now this is probably as good a time as any to talk
3 about the process. I'll sort of preface my comments with,
4 obviously we have been involved, this as a group, most of us
5 for a number of years. And since the legislation was --
6 that sort of created us was sort of outside some of the
7 standard sorts of processes there has been a little bit of
8 struggle, or at least we have had some discussions back and
9 forth about, you know, various roles and time frames and who
10 is going to submit what type of a situation.

11 And I don't know that that's totally clarified yet
12 but I know the Committee is very interested in getting the
13 work product up to Agency. We have been at this for a
14 number of years and there has been a lot of work, which I
15 thank you all for.

16 And so I believe we will be reviewing the cover
17 letter and the four bullet discussion again today. We'll
18 have some discussion about voting. We are obviously all
19 representing organizations or entities and we are getting
20 close to this, you know, submitting this, our work product
21 to the Health and Human Services Agency for their 90 day
22 review.

23 So with that, one of the issues that has been
24 raised. I believe the language says what we are submitting
25 is a -- what is the word -- a summary of revisions. And so

1 I believe this is what the work group feels we are going to
2 be submitting. That it's going to trigger this 90 day
3 review.

4 One of the issues, Agency has 90 days to approve
5 or disapprove any of our work product and then that work
6 product comes to the Department to write the regulations.
7 And we've had discussions in the past about, you know, we
8 are going to be submitting pretty much a strikeout version
9 of all of our work.

10 And at some point with such an extensive amount of
11 work, at least it has been my personal opinion, that there
12 may need to be some discussions at some point with our
13 Office of Regulations since they are going to be actually
14 preparing the package that is going to go to the Office of
15 Administrative Law. So whether that happens before things
16 go to Agency, our package goes to Agency, or afterwards,
17 what our interaction with the Office of Regs is really
18 unclear just because -- partly unclear because of the nature
19 of the legislation and sort of the lack of precedence for
20 what we're doing.

21 So I guess one of the questions I'll ask of the
22 Committee at this point is, how are their -- what are their
23 feelings? Do we want -- at one point very early on, some of
24 our first meetings, it looked like we were going to be able
25 to have the services of someone from the Office of

1 Regulations to advise us on things like clarity and is this
2 sufficient and the Administrative Procedures Act. That
3 turned out not to be able to happen and so we haven't really
4 had any of that kind of guidance or discussion.

5 So I guess one option is that we could have the
6 Office of Regs look at our package for those types of non-
7 substantive. In other words, we know what we want to say
8 but are there some clarity issues or some advice that they
9 could give us about certain areas. That could happen before
10 our package goes in, potentially; that could happen after
11 Agency has had their review and it comes to the Department.

12 Any feelings on the part of the Committee on the Office of
13 Regs' role or review?

14 COMMITTEE MEMBER SHEN: Paul, this is Jennifer, I
15 have a question.

16 CHAIRMAN KIMSEY: Sure.

17 COMMITTEE MEMBER SHEN: Jennifer Shen, I guess I
18 need to say now. What happens if we send it in and it's
19 looked at in that 90 day period and they have changes that
20 need to be made? Then it comes back to us again? What
21 happens? You said it next goes to the Department, but what
22 if they have some things they are disapproving of?

23 CHAIRMAN KIMSEY: It is my understanding -- good
24 question, Jennifer. It is my understanding that Agency's
25 role is they can -- I'm blanking on the exact language. But

1 they're not really about modifying. If they don't like
2 something they just take out a section. I mean, it's sort
3 of, I would assume, maybe section by section that they
4 would, you know, might remove something.

5 They are obviously not going to be in the position
6 of adding things, to my way of understanding, we are the
7 technical advice here. They may be looking at, you know,
8 maybe not accepting one of our revisions.

9 And it is my understanding also that if they take
10 out a revision and it comes to the Department, then as the
11 Department continues to work that piece that has been taken
12 out remains in effect, and I would assume, potentially --
13 and this gets into, again, untraveled ground. The Committee
14 still has some opportunity and maybe even some
15 responsibility to look at a section that Agency has removed
16 from the package.

17 Anyone sort of have a different perspective on
18 that?

19 COMMITTEE MEMBER SHEN: So in theory we could
20 submit this, they could refuse to accept any of our changes
21 and the product would go forward as is?

22 CHAIRMAN KIMSEY: Correct. I mean, if they accept
23 the whole package everything goes forward. If they take
24 something out, what they take out obviously doesn't go
25 forward but everything else does.

1 COMMITTEE MEMBER SHEN: And they could take
2 everything out.

3 CHAIRMAN KIMSEY: Theoretically, I mean, yeah. I
4 mean, keep in mind that they have seen our work product, I
5 mean, some aspect of our work product. That -- I don't even
6 want to call it a review. That a quasi-review I don't think
7 implies any future decision on their part. In other words,
8 there were four bullets that we have been discussing that
9 they, as it was expressed in the letter, wanted maybe more
10 of a departmental role in. But out of everything we
11 submitted there were comments on four bullets.

12 I don't think that means anything about what they
13 didn't comment on. I don't think we can assume that it
14 means that they approve it and I don't think we can assume
15 it means it disapproves it. I mean, that was a sort of a
16 point in time and we wanted to get some feedback, which we
17 did. But I think we -- I mean, the legislation was pretty
18 clear with regards to the agency's role so personally I
19 can't -- well, personally I wouldn't think that they would
20 reject the whole package.

21 COMMITTEE MEMBER SHEN: All right, well, I mean,
22 is there any point in having the Department look at our
23 changes before we start again, before we start the 90 day
24 review process?

25 CHAIRMAN KIMSEY: Well that's sort of the, that's

1 sort of the question. I mean, the group that would be
2 looking at it would be probably be our Office of Regs and,
3 you know, this is sort of what they do. They look at
4 clarity issues, they look at, you know, reg writing
5 language.

6 They don't look at, you know, content. They are
7 not going to be changing what we want to have reflected but
8 they would look at some of the more, you know, detailed
9 aspects, like around the Administrative Procedures Act,
10 necessity. You know, things that we've talked about and
11 referred to that are really not within our, at least in my
12 area of expertise, and I don't think really the Committee's.

13 I mean, we're laboratory and you folks are criminal
14 laboratory/forensic laboratory experts. And so we haven't
15 really had that kind of guidance.

16 COMMITTEE MEMBER SHEN: No, that's not what I
17 meant. I mean, I know that -- we can talk separately, I
18 think, about whether we want to have someone take a look at
19 this for clarity and for non-substantive changes. But we
20 made some pretty substantial, meaningful changes to address
21 Department concerns about those four bullet points. Is it
22 worth our while to send it back to those people to see if
23 this addresses their concerns.

24 What would be really, in my opinion, somewhat
25 tragic, is if we press it off for the 90 day review and

1 large portions of what we have decided get taken out and we
2 are not in a position necessarily to make a case to have
3 them modified slightly or --

4 So I am talking about a review separate from the
5 "clear enough." I'm talking about, are these changes going
6 to work for the Department? Is this product after all these
7 years going to go forward? Changes that the Committee has
8 decided should be in there.

9 CHAIRMAN KIMSEY: Well, I think that can be
10 reflected when we get to a point where we're voting. I
11 mean, I will be voting for the Department. I think we
12 agreed we were going to vote on the four bullets at some
13 point. I think if you're -- I mean, and the Department, you
14 know, based on the legislation is one of eight votes here or
15 so. And so that information, you know, would be reflected
16 to Agency. We cannot assume that Agency -- we can't assume
17 anything about how Agency is going to respond. I mean, they
18 will -- they're pretty much an independent entity.

19 So how the Department feels about these four
20 bullets and the work we have done will probably be manifest
21 when we vote. I am not sure we are to that point yet, at
22 least, but we can continue the discussion. What I was just
23 talking about is more of a technical look at things like
24 clarity that would be done by the Department that might help
25 the Committee express what they want more clearly.

1 Again, you know, there has been a summary of
2 review. I don't know that -- we had talked about, does this
3 need to be a package ready to go to the Office of
4 Administrative Law and we decided that that was not the
5 case. That the Department would have responsibility. It
6 seems, in the legislation, the Department has the
7 responsibility for promulgating the regulations to the
8 Office of Administrative Law based on what comes to them
9 from Agency, what comes back from Agency. This will all be,
10 you know, public. In other words, we will know what Agency
11 -- the full Committee will know Agency's response.

12 Where we go, if -- let's say the Agency drops out
13 two of the areas that we have worked on. I would imagine
14 the Committee would have the ability either to rework that
15 or have some further discussion or leave it as it is. I
16 think if there were things that the Committee felt strongly
17 about, I don't know. Based on the legislation, Agency has a
18 very critical role. And if Agency, if we can't, you know,
19 get an approval from Agency then I think this legislative
20 intent, we'd have to look at other avenues of getting
21 additional information or additional parts of the
22 regulations changed. Does that make sense to everybody?

23 COMMITTEE MEMBER DAVIS: Hey, Paul, this is Kevin
24 in Sacramento.

25 CHAIRMAN KIMSEY: Yes, Kevin.

1 COMMITTEE MEMBER DAVIS: I just have one question
2 to refresh my memory. The Health and Human Services Agency
3 is the parent agency of DPH, correct?

4 CHAIRMAN KIMSEY: Correct. We are one of 13
5 departments in that agency.

6 COMMITTEE MEMBER DAVIS: And how much -- I can't
7 recall. Hasn't there been a lot of turnover at Agency since
8 the last product was submitted and we got that response in
9 December of 2010?

10 CHAIRMAN KIMSEY: Yes, we have a change in
11 administrations and there is a new agency secretary. There
12 is some agency staff from the previous administration. But
13 with the new administration we have a new Agency Secretary,
14 we have a new Director of our Department of Public Health,
15 Dr. Chapman, and just recently, as I mentioned, there is a
16 new Center Director, the Center for Environmental Health
17 Director, Dr. Mark Starr, who is administratively over the
18 division and the branch that oversees the forensic alcohol
19 section.

20 COMMITTEE MEMBER DAVIS: I was just curious. I
21 mean, like you said, it's not safe to assume anything. New
22 staff you have a new take on even old things we submitted,
23 hypothetically.

24 CHAIRMAN KIMSEY: That's correct.

25 COMMITTEE MEMBER JEFFRIES: Dan Jeffries, CDAA,

1 with a comment. That I think it would be in our best
2 interest to, as we go forward, to the extent possible to try
3 and deal with the wordsmithing and clarity issues that we
4 spot so that it doesn't get held up further down the line
5 for any of those. So even though we may not be worried
6 about anything other than the content I think we should be
7 looking at those issues to the extent possible and cleaning
8 them up as we go.

9 CHAIRMAN KIMSEY: Would you recommend -- I mean,
10 would you recommend then to have our, you know, the people
11 at least in our department that do this, make these sorts of
12 assessments, the Office of Regulations, would you be
13 recommending that they look at our package before it goes to
14 Agency then?

15 COMMITTEE MEMBER JEFFRIES: Well, I would suggest
16 that we clean it up ourselves first and then we have them
17 take a look at it and see if they see any other
18 wordsmithing/clarity issues that they want us to address so
19 we don't start the process all over again.

20 CHAIRMAN KIMSEY: No, I agree, we don't want to
21 start the process all over again. I am assuming that
22 basically our package sort of reflects our current
23 understanding of what it is we need to do to change the
24 regulations. So, I mean, obviously, you know, we are not --
25 we don't have a finished package yet, we have these four

1 bullets to be talking about.

2 But I am not sure that it would be fruitful for us
3 as a committee to go back through and make some assumptions
4 about what might be clarity or what might be necessity
5 unless someone has that level of expertise. I mean, I think
6 we made our best effort, at least on the technical ideas and
7 we know what we intend to have happen. Does someone on the
8 Committee feel they have some experience on looking at
9 clarity and necessity-type review issues?

10 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries
11 again. Without jumping too far into it and claiming to be
12 an expert on a subject that I am clearly not, I have drafted
13 a number of statutes and legislation so I have some
14 experience in drafting. And very minor things like
15 replacing the word "will" with "shall" and other things just
16 would be the kind of things that the administrative people
17 would look at and say, you must change. So it just seems
18 like it might be worth making a few small changes before we
19 submit it along those lines.

20 CHAIRMAN KIMSEY: No, that's fine. I think, as a
21 committee member, if you notice something -- I mean, we all
22 can look at them again. And if we notice something from our
23 backgrounds we know needs to be clarified, by all means we
24 have -- we have that ability to do that.

25 So then are you suggesting that we as a committee

1 sort of review -- as a committee or as individuals sort of
2 review the package? Or, you know, we'd sort of do that
3 individually. But it also sounds like you're advocating
4 once we have done that that we do have the Office of -- I
5 mean, our Office of Regs take a first pass at it.

6 COMMITTEE MEMBER JEFFRIES: Well, in looking
7 through all of the proposed language I only found maybe five
8 or six changes that I would make to it for wordsmithing and
9 clarity reasons. The content of all of it I think we are
10 all in agreement with. So we could make changes off-line
11 individually or we can discuss them today, either way. But
12 I think it would make sense that once we make those changes
13 then have someone else look at it and see if they spot
14 anything.

15 COMMITTEE MEMBER SHEN: This is Jennifer. I agree
16 with this. There's going to be things in there that we can
17 probably cut and fix. What I hesitate to do is to start
18 down the road of reviewing as a committee the whole, entire
19 thing again because -- you know, we did our best as we went
20 through and I know there are things that we missed that Dan
21 probably could catch. But I don't want to get in a
22 situation where we are rehashing all these ideas all over
23 again, which (audio breaking up) review of the Committee.

24 So I would prefer to see us all take another look
25 at it. Maybe Dan can give us a few, call it a few

1 guidelines like "shall" and "will" and things to take a look
2 for and just make those changes before we send it off.

3 And then I would like to see -- I don't know how
4 long it's going to take to have it go through another review
5 process with the regulation writers. Do you anticipate
6 that's something that could be done relatively quickly or
7 are we talking about a long-time process?

8 CHAIRMAN KIMSEY: I think some of this could be
9 done simultaneously, I'm just thinking out loud. You know,
10 if we wanted as individuals to look at, highlight some
11 language for discussion. I would say, you know, obviously
12 it takes about four to six weeks at best to get another
13 meeting scheduled. I can't guarantee anything, I haven't
14 really talked to the folks about workload. But we could
15 certainly have it as our goal that they would have some
16 level of review that would sort of catch up to where we are
17 when we have our next meeting.

18 I think Kenton also -- he has nodded a little bit
19 about what Dan articulated which is, you know, the Committee
20 sort of taking another look at it but at some point having
21 the Office of Regs also take a quick look at it.

22 COMMITTEE MEMBER WONG: This is Kenton in
23 Richmond. I agree with Jennifer that I think we on the
24 technical side did our best to brush things up as succinctly
25 as we can. I think that Dan has a great idea that since he

1 has some prior experience in some of these legal matters
2 that if he can look at our draft with a careful eye and make
3 some of those non-substantive but clarity issue changes to
4 help us move it forward to be more successful in passing a
5 first pass type thing. That would help.

6 I don't know if Dr. Kimsey, do you know somebody
7 inside the Office of Regs that can help us on the inside?

8 CHAIRMAN KIMSEY: I would certainly -- I mean, I
9 don't know of anybody yet, so to speak, but that's something
10 that I think the Department would take on. Again, I can't
11 guarantee anything because we haven't really made the
12 arrangements. But if the Committee would like to have a
13 review by someone in our Office of Regs, sort of a high-
14 level review about things like clarity and necessity I would
15 certainly try and have that done to coincide with when the
16 Committee's final review of the regs.

17 I mean, it sounds like if we go that way that we,
18 you know, sort of want -- we can have some of that
19 discussion today, obviously we've got plenty of time today
20 if people -- like we could look at, you know, Dan has found
21 five areas we can talk about that, we have got our four
22 bullets. But it sounds like that the Committee feels it
23 would benefit from having another meeting where the Office
24 of Regs has taken a quick look at and maybe has some
25 suggestions or recommendations that we could review.

1 At that point, you know, it sounds like that we're
2 looking at another meeting, which is fine. But at that same
3 time, since we all do represent organizations as members of
4 this committee, in this period of time between now and our
5 next meeting we could sort of be sure that we have the buy-
6 in of our organizations about the package. Because as it's
7 reflected up to Agency it's not so much, you know, Kenton
8 Wong's or Paul Kimsey's opinion, it's the organizations that
9 we, that we represent.

10 So I don't know, you know, in your respective
11 organizations how much you have been able to keep them
12 appraised and talk about, you know, what's going on. You
13 obviously have the authority to represent your organizations
14 but there may be some "this is where we are, this is what we
15 are going to be putting forward" kind of discussions you
16 want to have.

17 Arguably that's important because Agency is going
18 to make some decisions. And there may be some -- not
19 actually consequences but some issues that may need to get
20 raised again with your organizations. I mean, we can assume
21 that the Agency approves everything at some point until they
22 tell us differently. But anyhow, this would also give us
23 time to work with our agencies or our organizations for the
24 voting at a future meeting.

25 Comments from the Committee about that sort of

1 scenario?

2 (No response.)

3 CHAIRMAN KIMSEY: I can sort of summarize. It
4 looks like we are anticipating a second meeting for getting
5 a review from the Office of Regs, from the Department,
6 about, you know, clarity and issues, et cetera.

7 And a second meeting also to, you know, actually
8 be voting, I guess, on the final four bullets. Pretty much
9 the voting has already taken place on the previous aspects
10 of the regs and so we have that.

11 So we are anticipating one more meeting where we
12 pull it all together based on what the Office of Regs says,
13 our individual reviews and what our organizational inputs
14 might be and we'd be ready to vote at that meeting.

15 Any comments on that direction, for better or for
16 worse?

17 COMMITTEE MEMBER DAVIS: Paul, when you say voting
18 on the four bullets do you mean voting on our proposed
19 response or voting if we are going to just disregard them?

20 CHAIRMAN KIMSEY: Well I would say we're voting on
21 our response.

22 COMMITTEE MEMBER DAVIS: Okay, I just wanted to
23 clarify.

24 CHAIRMAN KIMSEY: Yes, no, that's fine.

25 COMMITTEE MEMBER DAVIS: All right.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Good question.

3 CHAIRMAN KIMSEY: Yeah. And again, you know,
4 obviously we have voted -- I don't know that we voted on
5 everything but we voted on a lot of things. I think, you
6 know, at some level, it has been my personal feeling that,
7 you know, the hard issues sort of were around the four
8 bullets and it was really around the Department's role,
9 which has been, you know, a theme, you know, from the very
10 beginning. Okay, with that sort of --

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 Actually, comment from the public.

13 CHAIRMAN KIMSEY: Just a minute. Before we have a
14 comment from the public, if we assume that's sort of the
15 direction we are going to go are there any other aspects of
16 that, anything else we want to have the Department sort of
17 prepare for with the next meeting? Obviously we'll try to
18 get a review, or we will. I will make a commitment to try
19 and get a review by the Office of Regs. And we as
20 individuals are going to review it ourselves and also get
21 some feedback from our organizations. Anything else in that
22 sort of line of thinking that we need to emphasize?

23 COMMITTEE MEMBER SLAUGHTER: Yes, this is Mark
24 Slaughter.

25 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.

1 COMMITTEE MEMBER SLAUGHTER: Oh.

2 CHAIRMAN KIMSEY: Go ahead, Jennifer.

3 COMMITTEE MEMBER HARMON: Just a quick question.
4 Have you already voted on the four additions that you guys
5 made?

6 CHAIRMAN KIMSEY: No, we have not.

7 COMMITTEE MEMBER SHEN: Paul, this is Jennifer
8 Shen.

9 CHAIRMAN KIMSEY: Yes.

10 COMMITTEE MEMBER SHEN: So I guess my question is,
11 if we are going to be taking -- so we are going to take a
12 look at this letter, we are going to take a look at these
13 bullets, these four bullets, which we really have discussed
14 ad nauseam.

15 CHAIRMAN KIMSEY: Yes.

16 COMMITTEE MEMBER SHEN: If we are looking at Dan
17 taking a quick review of this and changing "wills" to
18 "shalls" and "shalls" to "wills" and things and we are
19 looking at the Office of Regulations just looking at clarity
20 issues, is there a good reason to hold off on voting on our
21 concept?

22 We are going to be putting out a draft product.
23 We can take forward a draft product to our respective
24 organizations and say, this is what the Committee has voted
25 on, this is what we want to do. And I don't think it's

1 going to matter if we change a couple of little clarity
2 issues. It's the concept that the organizations are going
3 to care about, not necessarily the wordsmithing. So is
4 there really -- I guess my question is, is there really a
5 reason to put of voting on our changes, many of which we
6 have already voted on, for another meeting?

7 CHAIRMAN KIMSEY: Right, that's a good point. I
8 think probably the intent, maybe by the end of -- we'll see
9 how the meeting goes today with the discussion of the
10 bullets. And we have had some discussions, we have sort of
11 come to a consensus. I think we may have even actually done
12 some -- I don't know, some type of voting on some aspects of
13 the bullets. But we can certainly keep that in mind for
14 today. I agree with you that I think the direction is
15 pretty clear. I think it just feels like if the Committee
16 feels that they can make a vote based on their interactions
17 with their, with their organizations. We can have that
18 discussion when we -- as we go through the bullets.

19 So we had a comment from the public?

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 Yeah, just --

22 CHAIRMAN KIMSEY: Oh, I'm sorry, excuse me. Mark,
23 you had a comment?

24 COMMITTEE MEMBER SLAUGHTER: I did. It was more
25 on the lines of an inquiry. At the last meeting there was a

1 discussion about sort of an abstract of what our changes
2 have been that could be prepared to present to our
3 organizations. Had that been done at any point?

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
5 I can answer that question. In the first place, I think the
6 actual question --

7 CHAIRMAN KIMSEY: Why don't you identify yourself.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 Clay Larson. I think the actual request was, could the
10 members get an advance view of the cover letter, and that
11 was sent to everybody. But we also prepared two documents
12 actually, that are stapled together. One was a summary of
13 the proposed revisions associated with the four bullets and
14 then a second draft of that in strikeout and underline
15 notation. So that's in your packet so you got that. And
16 that material I believe was sent to you ten days ago, I
17 believe ten days ago.

18 COMMITTEE MEMBER SLAUGHTER: Yes it was. This is
19 anticipated as being that document to present to our
20 organizations?

21 COMMITTEE MEMBER SHEN: This is Jennifer. I'm
22 trying to remember that conversation. If you're looking for
23 an abstract that kind of encapsulates everything we have
24 done and the changes we have made, that -- I already have
25 that and I might be able to try to put it together. So what

1 you're looking --

2 COMMITTEE MEMBER SLAUGHTER: That's what I'm
3 looking for.

4 COMMITTEE MEMBER SHEN: Yeah, that's what I
5 thought. And I'm -- we can talk about how to best
6 accomplish that for you but it would be a little bit
7 thicker, I think. An abstract versus just give the written
8 product. And depending on your organization it may be
9 easier or less easier for them to understand why we're
10 making the changes we are.

11 COMMITTEE MEMBER SLAUGHTER: Okay.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 Yeah, a comment from the public. First, regarding where we
14 are in the process since there's a little storied history
15 here. We've actually already submitted the summary
16 revisions; that's under the Health and Safety Code
17 100703(d). And in submitting those we sort of bifurcated
18 the process because the next section, subsection, paragraph
19 (e), states that the Committee's submission of the actual
20 revisions would trigger the 90 day review. So we have done
21 the summary revisions, we are now talking about the
22 revisions.

23 The other thing I think I would note is that we
24 talked about OOR and -- the next step is the OOR's, the
25 Office of Regulations' review of the package. And the

1 presumption in the comments seems to be that this review
2 with deal with non-substantive, clerical kind of issues.

3 I suspect that that probably -- I would assume
4 that OOR in looking at the package could also and probably
5 should also look at substantive issues. So I don't know
6 what that response is going to be, we haven't -- but I think
7 it would be probably incorrect to assume that it would just
8 be non-substantive, clerical wordsmithing kind of cleanup
9 that might take place.

10 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.

11 If we're asking the OOR to review the document can we
12 provide them some direction as to what it is the goal is
13 that we need them to review, not the substantive information
14 but actually just for clarity and it actually passing as a
15 regulation? I mean, I think we can probably provide them
16 with a packet then.

17 CHAIRMAN KIMSEY: This is Paul. I'll try and
18 answer that. I mean, obviously it depends upon how much
19 interaction we want to have with the Office of Regulations,
20 you know, and also what is substantive. Obviously we're
21 talking about things like clarity and necessity and the
22 Administrative Procedures Act.

23 Substantive strikes me as being they might change
24 or make a recommendation that the Committee wouldn't feel
25 comfortable with. And it was my intent that that wouldn't,

1 they would not sort of second guess the Committee's intent
2 or direction but that they would -- they might point out
3 maybe we can't go there, but I mean -- I don't know. I was
4 thinking of a less-intrusive review. Not to second-guess or
5 question the Committee's direction. And whether that gets
6 to substantive or minor.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 Let me just respond. I didn't mean to say that -- I think
9 if OOR was here they would acknowledge it is not their role
10 to make policy decisions so I wasn't suggesting that. But
11 if a particular process described in the new regulations, I
12 think if OOR was to determine we don't have the legal
13 authority to do that they would weigh in and that would be a
14 substantive issue. I didn't mean to say they're going to
15 say this is bad policy or good policy, I didn't.

16 CHAIRMAN KIMSEY: Okay. I mean, that is helpful.

17 And the other thing I'm concerned about is the time frame.
18 Maybe I, maybe I'm not the only one that thinks we need to
19 sort of move things along. But some reviews by the Office
20 of Regs may take longer than others.

21 And if we're trying to, you know, pull this all
22 together for another meeting in four to six weeks or two
23 months or whatever it is, I don't want to have to wait until
24 October or November because of the workload issue with the
25 Office of Regs.

1 So there's some unknowns, I guess, at this point.

2 But as long as we -- I mean, I feel comfortable now with
3 the discussion in talking with OOR about, you know, their
4 review, I am just unclear on the time frames that they will,
5 that they will have.

6 COMMITTEE MEMBER SHEN: This is Jennifer Shen.
7 You know, I'm wondering if maybe we just take a look at it,
8 you know. Dan might have expertise enough in order to have
9 us not fall into some obvious pitfalls and then maybe we can
10 skip going to the Office of Regulations to get this thing
11 moving along.

12 I am not sure, particularly if it is going to come
13 down to an issue that they are not just going to look for
14 clarity and non-substantive changes, that we want to go down
15 that road because it could definitely detour us for a
16 lengthy period of time. And I just can't imagine that we
17 could continue to let this go on and on and on forever.
18 We've got to put an end to it and get a product out at some
19 point.

20 CHAIRMAN KIMSEY: Well, and that could also be in
21 the way in which I make the request to the Office of Regs in
22 the sense that we're meeting in four to six weeks and we
23 would like to have their input and we'll just see what it
24 is. And we'll talk to them about it being, you know, things
25 around clarity, necessity and maybe some substantive issues

1 if we are going down a totally wrong path; but that it not
2 be a technical, you know, second-guessing of the Committee's
3 effort.

4 And if we can have it by our next meeting, we can
5 review it. If not, if it's going to take too much time then
6 we just keep moving forward. It is my impression in looking
7 at the legislation, it is certainly not required before we
8 submit the revisions. So -- but I think in the long run if
9 they -- if we have their input it could be helpful.

10 COMMITTEE MEMBER SHEN: I think -- this is
11 Jennifer. I think if we can have it by our next meeting in
12 four to six weeks with whatever they have been able to do, I
13 think that's a good idea and reasonable. And with some
14 clarity on your part as to what they are to be doing in
15 looking at this.

16 CHAIRMAN KIMSEY: Okay.

17 COMMITTEE MEMBER LYLE: Bruce Lyle; I agree with
18 that. And I think that I trust that you can do that, Paul.
19 To say to them what the time frame is.

20 CHAIRMAN KIMSEY: Okay. Any other comments? It
21 looks like we have a direction on that. Also I think at our
22 last meeting towards the end we -- you know, we obviously
23 had split up the four bullets. People got some recommended
24 language, we had some discussion. I think there might have
25 been -- separate from the letter that Jennifer and I worked

1 on as there some question about the training bullet that we
2 were going to try and get some more information on or is
3 that reflected in the letter, do you think, Jennifer?

4 Bullet 3.

5 COMMITTEE MEMBER SHEN: I am not aware of anything
6 else. I was looking at my highlights and I think I just had
7 a couple -- I'm trying to remember why I highlighted those.

8 I think I did it because I thought it was a language issue.

9 But I don't recall substantive changes that we needed to
10 make based on our committee discussion. It doesn't mean
11 there weren't, I just don't recall any. I thought I had
12 captured everything as we last had it.

13 CHAIRMAN KIMSEY: Okay, then do you want to walk
14 us through the letter and the four bullets?

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 Comments from the public. I think this is important. I
17 went back and read the transcripts. And in doing that I
18 think the comments from, actually from Jennifer because
19 Kenton I think missed the last meeting, there was some
20 interest in -- there was some interest in clarifying some of
21 the points, two points from the training bullet. One was a
22 clearer definition of what an outline was, or a complete
23 outline was.

24 And there was also some thought that perhaps some
25 of the detail under Article 7 that describes the training

1 might be, might reviewed, especially with respect to the
2 issue of an exemption for officers that had previously
3 received training. So there was some discussion. The
4 transcript at least shows that the -- and you, Jennifer,
5 said that you and Kenton would meet and discuss that
6 further. And it's possible that you had that meeting and
7 concluded that the current language is clear and there was
8 no need to make any further changes.

9 I would also note we did receive from you, and
10 we'll probably get to it, an e-mail in which you provided
11 some slightly different language for bullet number 1, the
12 proficiency test bullet. Those revisions weren't discussed
13 at the last meeting and so I wasn't -- everybody got a copy
14 in the packet. I wasn't clear as to what the intent was in
15 submitting that.

16 COMMITTEE MEMBER SHEN: This is Jennifer. All I
17 can tell you is that I'm doing my very best to try to
18 capture what we talk about in these meetings. And along
19 with Paul, we tried to lay that out in this letter. So if
20 there are a few wordsmithing changes or a slight difference
21 or I put something in my notes that I thought they wanted
22 that they didn't -- (indiscernible) -- I'm just doing the
23 best that I can with trying to get this down in the way
24 everybody has agreed to. So if I missed something in the
25 bullet number 1, you know, I'm certainly happy to change it.

1 CHAIRMAN KIMSEY: No, and that's fine, Jennifer.
2 I think as we go through we can look at each of the
3 individual bullets. And if there are some changes that the
4 Committee wants to make or some more discussion on any of
5 the bullets we can, we can have that.

6 And basically with regards to the letter. I
7 think, you know, the substantive nature of the content is
8 more of our interest than maybe the format kind of issues.
9 I can work with whomever when we get to that point of
10 putting it on -- of course, I guess the Committee doesn't
11 have letterhead. But, I mean, just sort of putting it in a
12 package-type process that it would, you know, go to Agency
13 and that sort of thing. So I think what we really need to
14 look at is the language that addresses the four bullets.

15 COMMITTEE MEMBER SHEN: Okay, this is Jennifer
16 again. How do you -- yeah, I saw some formatting issues as
17 I went through this. But how do you anticipate moving
18 through this? Do you want to just go through the bullets?

19 CHAIRMAN KIMSEY: I think we just maybe read
20 through each bullet and have some discussion.

21 COMMITTEE MEMBER SHEN: Okay. Do you want to read
22 through the bullets?

23 CHAIRMAN KIMSEY: Sure. I'll take the first one,
24 we'll alternate.

25 COMMITTEE MEMBER SHEN: Okay.

1 CHAIRMAN KIMSEY: The first page sort of down
2 towards the bottom we have number one: "Remove CDPH
3 evaluation of a laboratory's performance on proficiency
4 tests."

5 And the text reads: "Along with the removal of
6 licensing authority and the establishment of a review
7 committee, SB 1623 mandated one more important change with
8 respect to proficiency testing. This legislation inserted
9 language that was very specific as to how the proficiency
10 test should be administered."

11 "SB 1623 states, in part, the following:"

12 "100702.(a) All laboratories that are subject to
13 the requirements of Section 100700 shall follow the American
14 Society of Criminal Laboratory Directors/Laboratory
15 Accreditation Board (ASCLD/LAB) guidelines for proficiency
16 testing. The required proficiency test must be obtained
17 from an ASCLD approved test provider."

18 "(b) Each laboratory shall participate annually in
19 an external proficiency test for alcohol analysis."

20 "(c) Each examiner shall successfully complete at
21 least one proficiency test annually."

22 "(d) Each laboratory shall have a procedure in
23 writing that describes a review of proficiency test results,
24 and if applicable, the corrective action taken when
25 proficiency test results are inconsistent with expected test

1 results."

2 "The pertinent language in this addition is, of
3 course, that 'All laboratories that are subject to the
4 requirements of Section 100700 shall follow the ASCLD
5 guidelines for proficiency testing.' The language states
6 very clearly that 'the regulated proficiency testing must be
7 obtained from any ASCLD approved test provider.' As --" we
8 should say CDPH -- "As DPH is not an approved provider, this
9 certainly makes the activity of providing proficiency tests
10 unnecessary, or at least redundant. However, as stated in
11 the opinion of Attorney General Kamala D. Harris, No. 10-
12 501, issued December 27, 2011, subsequent to new law, the
13 amended statute requires laboratories to comply with
14 Department regulations until updated ones are in place."

15 "Our original changes to the pertinent section
16 were as follows:"

17 1261.1(a)(3) (sic), striking out, "Demonstrating
18 satisfactory performance in a proficiency testing program
19 conducted by or approved by the Department" has been struck
20 out and we added "Meeting the proficiency testing
21 requirements specified in Health and Safety Code 100702."

22 "In order to accommodate the Department's
23 concerns, we submit the following change."

24 "1216.1(a)(3) Meeting the proficiency testing
25 requirements as specified in Health and Safety Code Section

1 100702. Laboratories will direct approved providers to
2 submit all external proficiency test results as required by
3 HS 100702 to the Department. The laboratories will have
4 submitted, at a minimum, one test per analyst per year. In
5 addition, laboratory staff shall provide the Department any
6 documentation pertaining to corrective actions with respect
7 to proficiency tests."

8 That's bullet number 1. Comments from Committee
9 members?

10 COMMITTEE MEMBER JEFFRIES: Dan Jeffries from
11 CDAA. I noticed you caught one of the "wills" and changed
12 it to the "shall" when you were reading over it. I would
13 suggest that in the 1216.1(a)(3) we also change the first
14 "will" following the word "laboratory" to a "shall." An hen
15 the second use of it where we have got "the laboratory will
16 have submitted" would read better "the laboratory shall
17 submit." And then that would be my wordsmithing
18 recommendation.

19 CHAIRMAN KIMSEY: I have noted those in my copy.

20 COMMITTEE MEMBER LYLE: Bruce Lyle. The first
21 sentence is not really a sentence, it's kind of a half a
22 sentence. I'm not really sure I understand what it's
23 getting at. Meeting the proficiency testing requirements.
24 That's just sort of a lead-in for the title of it.

25 COMMITTEE MEMBER SHEN: This is Jennifer. I think

1 it's -- I think the -- I think the lines above this, if you
2 look in --

3 COMMITTEE MEMBER LYLE: (Overlapping).

4 COMMITTEE MEMBER SHEN: Makes that not a, not a
5 fragment. But I can't remember, I'd have to pull it out.

6 CHAIRMAN KIMSEY: So we're talking about the
7 sentence under Roman numeral I, Along with the removal of
8 licensing authority and the establishment of a review
9 committee? Is that the sentence?

10 COMMITTEE MEMBER LYLE: No, the proposed change to
11 1216.1(a)(3). It says: Meeting the proficiency testing
12 requirements as specified in Health and Safety Code 100702.

13 Looking back on the work product as of January 14th of '10
14 it's clear that that was intended to be a title for that
15 particular, that particular passage. Okay.

16 COMMITTEE MEMBER SHEN: 1216.1(a) says, "A
17 laboratory meets the qualifications for licensing by:" and
18 so that is why it's written that way. It's the (a)(3) by
19 meeting the proficiency test requirements.

20 COMMITTEE MEMBER WONG: So should it just be
21 underlined like it is above?

22 COMMITTEE MEMBER SHEN: Well the reason it's
23 underlined above is because that was added in -- added text.

24 So if you look at our -- at our whole work product,
25 1216.1(a) says: "A laboratory meets the qualifications to

1 perform forensic alcohol analysis by:" So then you go to
2 1216.1(a)(3), it says: meeting the proficiency test
3 requirements specified in blah-blah-blah. So that is why --

4 COMMITTEE MEMBER LYLE: Okay.

5 COMMITTEE MEMBER SHEN: That's why it's written
6 that way.

7 COMMITTEE MEMBER LYLE: Gotcha.

8 COMMITTEE MEMBER SHEN: Because it's part of a --

9 COMMITTEE MEMBER LYLE: Out of context it's --

10 COMMITTEE MEMBER SHEN: Out of context it looks
11 like a --

12 COMMITTEE MEMBER LYLE: -- a fragment.

13 COMMITTEE MEMBER SHEN: Right. But we don't have
14 to write it that way but that's why it is written that way.

15 CHAIRMAN KIMSEY: I mean, if we want to make it a
16 sentence we could just say "to meet" and drop the I-N-G. To
17 meet the proficiency testing requirements specified. But
18 these are the sort of subtleties that are lost on me.

19 COMMITTEE MEMBER LYLE: Bruce Lyle; I've got it.

20 COMMITTEE MEMBER SHEN: And if we did change that
21 we'd have to go through the rest of it and change -- because
22 1216.1(a)(2) says "Maintaining a quality control program."

23 CHAIRMAN KIMSEY: Okay.

24 COMMITTEE MEMBER SHEN: We would have to change
25 all of them.

1 CHAIRMAN KIMSEY: Right. So why don't we leave it
2 as it is.

3 COMMITTEE MEMBER LYLE: Bruce Lyle; I agree.

4 MR. VON BEROLDINGEN: It's a list of gerunds.

5 CHAIRMAN KIMSEY: I'm sorry, a comment from the
6 public?

7 MR. VON BEROLDINGEN: I beg your pardon, sir.
8 It's a list of gerunds. This is Linton from the DOJ.

9 CHAIRMAN KIMSEY: So other comments about Bullet
10 1?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 A comment from the public. I'll just make a comment once
13 because I think it applies to, I'm afraid to all four
14 bullets. I would submit that there wasn't much of an
15 attempt here to address the actual concern. The concern
16 raised in the December 15th letter was a concern regarding
17 the proposal to remove CDPH oversight and evaluation in
18 proficiency testing.

19 And simply listing -- what you're doing here is
20 you've listed Health and Safety Code requirements. And I
21 think sort of imply here that that new section of the Health
22 and Safety Code impliedly repeals the Department's authority
23 to do proficiency testing or to evaluate proficiency tests
24 or in some way conduct a proficiency testing program.

25 But actually that was the very question that the

1 AG's opinion addressed and they found that that, that was
2 not the case. So I don't, I don't see -- and I can echo the
3 same thing after all four bullets. I don't see much attempt
4 here to address the concerns raised in the December 15th
5 letter.

6 COMMITTEE MEMBER SHEN: This is Jennifer and I 100
7 percent disagree with you. Before we changed it so that it
8 would just say that we would meet the proficiency testing
9 requirements specified in the Health and Safety Code. Due
10 to the Department's concern about a lack of oversight we
11 have changed that language so that each and every
12 proficiency test taken by our analysts on a yearly basis
13 will be sent directly from the provider to the Department
14 for the Department to review to ensure that the analysts
15 are, in fact, meeting their proficiency test goals.

16 So we absolutely took into account what the
17 concern was by doing this. What we wanted to get rid of
18 were the proficiency tests that are not considered approved
19 by the Health and Safety Code 100702. We don't want to do
20 redundant work. So we are giving the Department oversight
21 by having those things.

22 And we had long conversations about this. You did
23 not -- you in particular didn't want the laboratories to be
24 responsible for getting those results back from the provider
25 and sending it to the Department. You wanted the provider

1 to send it directly to the Department and we made that
2 concession because that's something that you wanted.

3 So I would disagree that we have not taken the
4 concerns into account here.

5 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
6 And the spirit was to remove some of the redundancy that's
7 placed on the laboratories in us having to provide not only
8 all of this information to our accrediting bodies but also
9 to CDPH. And what is actually written here is still
10 mandating that redundancy to the laboratories.

11 So in the further legislation we haven't even
12 solved what the intent was, which was to remove the
13 redundancy, because we are still having to provide all of
14 this information to you as well as to our accrediting body.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
16 And responding to what Jennifer Shen said. I think the
17 narrative that you stated, in the first place, those words
18 aren't in the letter. And the argument you presented there
19 off the cuff was, I think, is more compelling than what you
20 said in the letter. So you may want to go back and look at
21 the transcripts and put some of that in the letter.

22 CHAIRMAN KIMSEY: Do we have a disagreement on the
23 interpretation of the opinion from the Attorney General?
24 I mean, because -- this is Paul. The legislation seems
25 pretty specific. We had an Attorney General letter of the

1 27th that also influences this bullet.

2 COMMITTEE MEMBER SHEN: This is Jennifer Shen
3 again. You know, I apologize for not being compelling in
4 the letter. We were trying to keep it somewhat brief. But
5 the bottom line is the Department wants to maintain
6 oversight of proficiency tests; legislation indicates the
7 proficiency tests that we should be using are approved under
8 the ASCLD/LAB guidelines.

9 So here we are trying to accommodate both things
10 by taking the proficiency tests that have been approved and
11 giving them to the Department so that they can take a look
12 -- you guys can take a look at it and make sure that you
13 have oversight of the stuff we're taking.

14 So are we arguing that I didn't write the
15 narrative well enough or are we arguing that the bullet
16 isn't correct in addressing the issues?

17 CHAIRMAN KIMSEY: Yeah, that's a very good way to
18 pose the question Jennifer; this is Paul. Comments from the
19 Committee? Does this reflect -- obviously at some point
20 we'll be voting, I guess, but does this reflect --

21 COMMITTEE MEMBER LYLE: I don't think we're
22 arguing, no.

23 CHAIRMAN KIMSEY: I'm sorry, I didn't catch, that.

24 COMMITTEE MEMBER LYLE: It's Bruce. I don't think
25 we're arguing, really.

1 CHAIRMAN KIMSEY: Okay. So any further discussion
2 on bullet number 1?

3 RESEARCH SCIENTIST SPELL: I have a question;
4 Natallia Spell. The laboratory will have submitted a
5 minimum of one test per analyst per year. This bullet
6 addressed, as I understand, it addressed the oversight in
7 terms of independent oversight. Because when I looked at
8 ASCLD/LAB guidelines I found out that they have approved
9 providers and there are two of them, forensic alcohol
10 analysis, which is CTS and CAP. And I did a little research
11 and I wrote a letter to CTS and to CAP asking them what are
12 their protocols for proficiency testing and how do they
13 evaluate the performance.

14 In case of CAPS (sic), they say they basically
15 confidential. In case of CTS, they told me that per
16 ASCLD/LAB PTPP, CTS is not allowed to judge individual
17 performance but results defined as outliers by PRC
18 guidelines are highlighted. This contradicts with ISO
19 17043-552 that requires the proficiency testing provider
20 shall not subcontract the evaluation of performance or the
21 authorization of final report.

22 In this case, in my opinion, what CTS is doing,
23 they are subcontracting the evaluation of the participants'
24 results to ASCLD/LAB. And this is my opinion. This bullet
25 is supposed to address independent oversight and in opinion

1 doesn't address it. Because it says that laboratory, yes,
2 gives the proficiency test from CTS but it doesn't say what
3 is the Department's role. Is Department supposed to
4 evaluate corrective and preventative actions by the
5 laboratory whose performance is not good enough under, let's
6 say, this PT test administered by CTS or CAPS.

7 CHAIRMAN KIMSEY: This is Paul. Two responses to
8 that. One is that the legislation is quite specific about
9 using ASCLD/LAB and so that is pretty much a moot point.

10 With regard to what the Department might do with
11 the information, that's a larger question that probably
12 relates to a number of the bullets and we can have a
13 separate discussion on that later. But I think, you know,
14 for time issues we are going to go with what the legislation
15 directed. And Jennifer, if you could continue with bullet
16 number 2.

17 COMMITTEE MEMBER SHEN: Yes I can. Okay, bullet
18 number 2 is "Remove CDPH authority to review, approve and
19 test the qualifications of persons employed by a
20 laboratory."

21 We recognize the department's role in ensuring
22 that analysts meet the criteria set forth in Title 17. It
23 is the Committee's opinion that if we provide proof to the
24 Department that analysts conducting alcohol analysis meet
25 the qualifications set forth in the proposed regulations, we

1 will have succeeded in providing the Department with an
2 oversight role. Therefore, we propose to add the following
3 verbiage to Article 2, Section 1216.

4 "1216.1(h) Every laboratory performing forensic
5 alcohol analysis will have on record with the department the
6 following:"

7 "(1) A copy of the diploma(s) or transcripts of
8 relevant education for each individual performing forensic
9 alcohol analysis for the laboratory. The relevant education
10 includes proof of a baccalaureate or higher degree in any
11 applied physical or natural science."

12 "(2) A training summary of the topic outlined in
13 1216.1(e)(2) with a completion date for each individual
14 performing forensic alcohol analysis for the laboratory."

15 "(3) Copies of qualifying tests to include written
16 and/or practical examinations for each individual performing
17 forensic alcohol analysis for the laboratory."

18 "(4) Proof of completion of a competency test
19 which follows the requirements articulated in 1216.1(e)(3)
20 for each individual performing forensic alcohol analysis for
21 the laboratory."

22 "(5) Written notification to the Department
23 alerting it that the individual has successfully completed
24 his or her training and is beginning casework; and"

25 "(6) Proof of completion of a proficiency test as

1 outlined in 1216.1(a)(3) for each analyst performing
2 forensic alcohol analysis for the laboratory."

3 CHAIRMAN KIMSEY: Committee, questions for
4 Jennifer or to address the bullet?

5 COMMITTEE MEMBER JEFFRIES: Dan Jeffries, a
6 comment. Not just wordsmithing but also clarity on this
7 one. Again the issue is with the "will have." And I think
8 it's easy to change it to "shall submit" so that the
9 language would read, "Every laboratory performing forensic
10 alcohol analysis shall submit to the department."

11 I think, though, it also brings up a clarity issue
12 of how often do you submit it? Are we asking that it be
13 submitted every year, within so many months of hiring the
14 individual? And I think that's one of the kinds of things
15 that if we address now we won't have to come back to. If we
16 agree that it should be submitted within six months of
17 hiring an individual, if within a year of hiring an
18 individual, if on an annual basis. I think it's just one of
19 those things if we make the call it addresses the clarity.

20 COMMITTEE MEMBER SHEN: This is Jennifer Shen. I
21 would say that we have to be careful about putting in some
22 sort of requirement on how long someone would have been
23 hired before you submit that information. I think
24 definitely the stuff has to be submitted. Some of it will
25 have to be submitted before someone is doing casework.

1 But, you know, we hire people who don't
2 necessarily start that alcohol training as their first
3 priority. You know, it could be a long time before someone
4 is ready to even go down that road. It could be right away
5 but I don't know we want to put that restriction in there.

6 COMMITTEE MEMBER HARMON: And this is Jennifer
7 Harmon. My only concern with some of the issues in the
8 bullet is that it is restricted to us submitting it and not
9 that the Department gets to change what the submission is.
10 So the training program that has been approved by the
11 laboratory is what is being submitted to the Department for
12 them to have on record. But again, that's for them to have
13 on record, not for them to dictate to us how it should or
14 shouldn't read.

15 CHAIRMAN KIMSEY: So to the point of, do we want
16 to put in any time frame? I mean, I think frequency. I
17 mean, if we're talking about an individual, unless something
18 changes. I mean, I would be more interested in, you know a
19 time frame than a frequency, necessarily.

20 COMMITTEE MEMBER SHEN: Jennifer Shen. I agree
21 with Jennifer that, you know, I want us to be very clear
22 that the Department has to go on the record versus we are
23 submitting something for alteration.

24 And secondly, I think our best bet is going to be
25 maybe putting in here something about how, you know, an

1 analyst -- these things have to be on the record prior to
2 getting casework or something.

3 I am just really leery of putting a time frame
4 because, you know, in my laboratory, for instance, all of
5 our analysts are trained in narcotics and alcohol and crime
6 scene reconstruction. So they may -- they may have maybe
7 three years before they start their alcohol training
8 program. I don't want to put in that kind of time
9 restriction.

10 COMMITTEE MEMBER WONG: This is Kenton in
11 Richmond. How about on (5) as a happy medium, written
12 notification to the Department within three months that the
13 individual has successfully completed training and is
14 beginning casework or something like that?

15 CHAIRMAN KIMSEY: Or say, written notification in
16 the Department alerting it that the individual has
17 successfully completed his or her training prior to
18 beginning casework.

19 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
20 Prior to completing casework. In my experience with the
21 Department that can be grossly delayed and that could put an
22 unnecessary burden on the laboratories in trying to actually
23 do their core mission, which is to do casework. So us
24 having to wait for the Department to receive notification
25 that we can put somebody on casework is pretty problematic.

1 The way I could envision it is that we are
2 basically notifying them that we are putting this person on
3 casework and that is our obligation and our only obligation.
4 Because if we have to wait for them to respond, you're
5 delaying our ability to do our job.

6 COMMITTEE MEMBER WONG: No, we get that. On (5)
7 it's just written notification. So as long as you submit --
8 as long as the labs submit the paperwork to the Department
9 then the Department is happy. You don't have to wait for a
10 response from them.

11 COMMITTEE MEMBER SHEN: Yes, and this is Jennifer.
12 Do you -- did you mean that we would submit this
13 notification within three months of the person starting
14 casework?

15 COMMITTEE MEMBER WONG: I don't know, just --

16 COMMITTEE MEMBER SHEN: I mean, if that's what you
17 mean I'm totally on board with that, if that's what you were
18 going for.

19 COMMITTEE MEMBER WONG: I was just listening to
20 Dan's some kind of time frame and then just trying to blend
21 the two.

22 CHAIRMAN KIMSEY: Yeah. My suggestion of just
23 prior to beginning casework.

24 COMMITTEE MEMBER WONG: Just prior to.

25 CHAIRMAN KIMSEY: You know, it takes out months,

1 weeks, whatever. And I think it's an accurate reflection
2 that the Department is not responding. So, you know.

3 COMMITTEE MEMBER WONG: But they are getting
4 notification.

5 CHAIRMAN KIMSEY: But they're getting
6 notification. So I think if we just say prior to beginning
7 casework, no time frame, no responsibility on the Department
8 to be approving or acknowledging, whatever.

9 COMMITTEE MEMBER SHEN: Okay, this is Jennifer.
10 So for (5) we would write, "Written notification to the
11 Department alerting it that the individual has successfully
12 completed his or her training prior to beginning casework."

13 COMMITTEE MEMBER WONG: Yeah.

14 COMMITTEE MEMBER JEFFRIES: And this is Dan
15 Jeffries again. In light of the discussion I think maybe
16 even weakening the word "submit" to "provide" would sound
17 better. So it would read, "Every laboratory performing
18 forensic alcohol analysis shall provide to the Department
19 the following." Then it makes it clear that there is no
20 overview or oversight or approval, it's just simply a matter
21 of giving a copy.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
23 A comment from the public.

24 CHAIRMAN KIMSEY: Just a moment.

25 Dan, I guess that's a subtlety. So you're talking

1 about the very first sentence up here, "Every laboratory
2 performing forensic alcohol shall submit or have on record
3 with the Department." You're just saying that they will
4 have notified the Department?

5 COMMITTEE MEMBER JEFFRIES: My suggestion was to
6 just change the language to read, "shall provide to the
7 Department the following." That's way it's clear that the
8 only obligation of the laboratory is to send a copy to the
9 Department. Submitting, kind of at least, as a connotation
10 but not a denotation of approval. You submit something for
11 approval, but if you provide a copy it's just for their
12 information. I think if we leave the word "submit" in there
13 it's a little ambiguous as to whether the Department has any
14 role in reviewing it, approving it or taking any action on
15 it.

16 CHAIRMAN KIMSEY: And so that sentence would then
17 read -- yeah, could you just restate the sentence as you
18 recommended.

19 COMMITTEE MEMBER JEFFRIES: I would recommend our
20 first sentence read, "Every laboratory performing forensic
21 alcohol analysis shall provide to the Department the
22 following:"

23 CHAIRMAN KIMSEY: Okay. Other comments?

24 COMMITTEE MEMBER SHEN: This is Jennifer. So then
25 we change (5), which I've already read, and we have no other

1 changes currently for clarification or "wills" to "shalls"
2 in (1), (2), (3), (4) or (6)?

3 COMMITTEE MEMBER WONG: No.

4 CHAIRMAN KIMSEY: There was a comment here from
5 the public?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
7 Yeah, I'm sorry. Just to comment again. We're all looking
8 at the same document here so maybe this is unnecessary but
9 the recommendation in the December letter was to restore
10 CDPH authority to review, approve and test the
11 qualifications but from the conversation it's pretty clear
12 the Committee has expressed the desires to remove the
13 Department's current authority.

14 So maybe that should be confronted up front in the
15 letter. So somebody's statement that we are going to
16 provide this oversight ignoring the details with some
17 notification -- I wouldn't change a thing, actually. I'm
18 puzzled as to why the Committee is comfortable with that
19 structure for this bullet in the letter.

20 CHAIRMAN KIMSEY: This is Paul. Obviously we did
21 receive the letter. It did have -- it told us, it gave us
22 some direction. The Committee, I believe, knows what the
23 letter has stated and this would be the Committee's proposed
24 response. And that, you know. Unless somebody from the
25 Committee wants to change more of the intent I think we need

1 to be comfortable with it. Other comments on bullet number
2 2?

3 COMMITTEE MEMBER SHEN: This is Jennifer Shen
4 again. You know, one of the things that we did -- and I
5 understand exactly your point, Clay. One of the things we
6 were trying to do, and I think we accomplish it more so in
7 bullet 3, is we are trying to beef up the regulations a
8 little bit, particularly in the area of breath alcohol, so
9 that when we send a training time line to the Department the
10 outline is what we're, what we're training on. The
11 Department oversight is -- yes, that training outline covers
12 the topics that are in this regulation. That there is a
13 science degree that is appropriate -- is appropriate as to
14 what is in the regulations.

15 So what we are trying to provide here is proof the
16 laboratories are, in fact, following what we have all
17 decided to be in the regulations and getting a new analyst
18 ready to work. So the oversight is proving to you that we
19 are, in fact, following the regulations by providing these
20 documents. You've got (indiscernible) here.

21 CHAIRMAN KIMSEY: No, I agree, Jennifer. And I
22 think sort of at the end when we get through all four
23 bullets I think we need to have a discussion, and everyone
24 please help remind me, on what is your expectation on what
25 the Department is going to do with what's submitted.

1 In other words, that's not for now but at the end
2 of all this. Because a lot of what the Committee is
3 recommending in response to the December letter is providing
4 the Department with records and information. And we are,
5 obviously I think -- well, we need to have that discussion
6 on what the Committee's expectation is that may not
7 necessarily be reflected here, or maybe it is, on what the
8 Department is going to do with these various submissions and
9 various records. But not to -- not to divert us at this
10 point. Any other questions on comments on bullet 2?

11 Then I'll start with number 3, "Remove CDPH
12 authority to review and approve training programs intended
13 for persons to qualify under regulations (e.g. breath
14 instrument operator training)."

15 "We propose to reinsert Article 4 into the
16 proposed regulations using the following verbiage."

17 "Article 4 Training of Personnel"

18 "1218. Training Program Review."

19 The highlighted yellow section here is "Section
20 1221.4(a)(3) shall submit the following to the Department to
21 demonstrate compliance with Title 17."

22 "1218.1. For training described under Section
23 1221.4(3)(3); the laboratory shall submit the following:"

24 And then we have a complete outline of training
25 which meets the requirements of Section 1221.4.

1 "A copy of the written examination together with
2 the correct answers."

3 "A written description of the practical
4 examination."

5 "A list of qualified instructors; and --" it sort
6 of ends there, at least on my copy.

7 1221.1(e) goes on, "A description of the
8 qualifications of the instructors for the training, which at
9 a minimum shall mean persons that meet the requirements
10 described under Section 1221.4(a)(4)(A)." And then
11 "Additional Requirements." And that pretty much has not
12 changed. I mean, I can read through all that if it helps.
13 But any questions? I think really what's changed here is
14 the highlighted yellow sections. Any comments from the
15 Committee on what I've read?

16 COMMITTEE MEMBER SHEN: This is Jennifer. I'm
17 looking at this and trying to (knocking sound). But I think
18 I highlighted those sections right there because I thought
19 it was sort of -- the second yellow section restated the
20 first yellow section, I thought we could probably fix that
21 somehow. It's the same thing twice, essentially. I wasn't
22 sure how to fix that so I just highlighted it so you could
23 fix it.

24 CHAIRMAN KIMSEY: Okay. Does someone have a
25 feeling on whether that needs fixing or not? It seems like

1 in some ways if that's true, if it's duplicative we could
2 just drop one of the references. Maybe it's the first one,
3 leaving 1218 as Training Program Overview and 1218.1 for
4 training described under section. That would be a
5 suggestion, just drop the first yellow highlighted area.

6 RESEARCH SCIENTIST SPELL: Natallia Spell.

7 CHAIRMAN KIMSEY: Just a moment, please, for the
8 Committee. Any comment on my proposal from the Committee?

9 COMMITTEE MEMBER LYLE: This is Bruce. So what
10 you're saying is -- with that proposal, Paul, what are you
11 talking about? That section that says "any organization,
12 laboratory, institution (indiscernible)." I'll find it.
13 Where is that going?

14 CHAIRMAN KIMSEY: Yeah, I'm sorry, you broke up
15 there a little bit. I was just thinking if these really are
16 duplicative and we're thinking about dropping one of them
17 that the first, the first reference there in 1218, if that
18 was removed, it's being restated in 1218.1. But again,
19 these are sort of the subtleties that I am unfamiliar with
20 with regards to reg writing.

21 COMMITTEE MEMBER SHEN: And we just ignore that.

22 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. My
23 recommendation is just to leave both of them in there. They
24 actually have slightly different meanings since the first
25 one is making reference to the course of instruction and the

1 second one is actually making reference to the training
2 that's required. So they actually have slightly different
3 uses so I don't think we have any harm in leaving it in
4 there.

5 CHAIRMAN KIMSEY: Okay.

6 COMMITTEE MEMBER WONG: If we did blend it so that
7 it was -- on the first one. At the first highlight "Section
8 1221.4(a)(3) shall submit the following training program to
9 the Department" and then get rid of the second one.

10 COMMITTEE MEMBER SHEN: This is Jennifer. The
11 reason I didn't try to do that was because it was going to
12 mess up our numbering.

13 (Laughter.)

14 COMMITTEE MEMBER SHEN: I did not want to do that.

15 CHAIRMAN KIMSEY: And so to summarize, basically
16 the Committee is proposing to reinsert Article 4, which
17 currently exists in the area of the training.

18 COMMITTEE MEMBER SHEN: Right. And Article 4 has
19 been sort of beefed up. So again, so that we are sending,
20 we are sending information to the Department that it didn't
21 previously have. So that at the end of the day all of these
22 laboratories were conducting extensive training programs in-
23 house above and beyond whatever it was the Department was
24 requiring. So now the Department is going to have all of
25 these things.

1 CHAIRMAN KIMSEY: As it continues down it says,
2 "The previous recommended sections to Article 7 were as
3 follows:" So that gets into the breath alcohol analysis.
4 We're calling it "testing" now.

5 COMMITTEE MEMBER SHEN: Right. And I think this
6 bullet, this bullet actually covered two different articles,
7 Article 4 and Article 7. So in order to accommodate the
8 Department's concerns here we have to reinsert Article 4
9 with some additional information and then something
10 different with the training that we had previously vested
11 for Article 7.

12 CHAIRMAN KIMSEY: Okay.

13 COMMITTEE MEMBER SHEN: So my -- if memory serves,
14 take out Article 4 altogether, now we're putting it back in
15 after beefing it up, and altered Article 7 in a way that
16 caused some concern so we have changed it, Article 7, from
17 the way we had originally changed it to try to accommodate
18 that concern.

19 CHAIRMAN KIMSEY: Okay. Comments from the
20 Committee on bullet number 3, as we're calling it?

21 COMMITTEE MEMBER JEFFRIES: Dan Jeffries with a
22 comment on 1221.4(a)(4). That it seems like the second half
23 of that paragraph is -- are comments rather than the
24 proposed language of the statute. I think we just need to
25 pull that out so that it's clear that that's our comment.

1 CHAIRMAN KIMSEY: Could you read that language?

2 COMMITTEE MEMBER JEFFRIES: I think Jennifer is
3 making the changes now. She wants to make them -- read it.

4 CHAIRMAN KIMSEY: Okay. So you're proposing
5 dropping that last couple of sentences?

6 COMMITTEE MEMBER SHEN: I think Dan's right, that
7 that was a comment we were making and somehow it got turned
8 into --

9 CHAIRMAN KIMSEY: Right.

10 COMMITTEE MEMBER SHEN: -- our bullet, which we
11 did not mean to. I will pick that up.

12 CHAIRMAN KIMSEY: Okay. So the last two
13 sentences.

14 COMMITTEE MEMBER SHEN: I think that was a
15 formatting issue. I'll take that out. So it's the --
16 1221.4(a)(4) is going to read, "The training curriculum in
17 the procedures of breath alcohol testing shall be developed
18 by forensic alcohol analysts."

19 CHAIRMAN KIMSEY: "Persons who qualify as was
20 removed --" oh I see, even there we need to stop it, okay.

21 COMMITTEE MEMBER SHEN: I don't know how that got
22 there.

23 CHAIRMAN KIMSEY: That's okay, I mean, these
24 things happen.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Comment from the public or are we still Committee still?

2 CHAIRMAN KIMSEY: Yeah, hold on just a moment.

3 Any other comments from the public on -- excuse me, from the
4 Committee on Article 7?

5 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.

6 I would say the same thing here as I said before. Again,
7 when you're using the word "submit" that suggests that they
8 have approval over the program. But if our intent is to
9 demonstrate compliance then we say "shall provide" as we
10 stated prior as opposed to "submit." And that's on 1218.

11 CHAIRMAN KIMSEY: Oh, back to 1218. Which part?
12 Oh, at the very beginning, 1218?

13 COMMITTEE MEMBER HARMON: Yeah, the very
14 beginning. It says, "shall submit the following to the
15 Department."

16 CHAIRMAN KIMSEY: Okay.

17 COMMITTEE MEMBER HARMON: As opposed to "shall
18 provide the following to the Department to demonstrate
19 compliance" in both of them.

20 CHAIRMAN KIMSEY: Dan or anyone, the difference
21 between "provide" and "submit." I am not sure, again, I am
22 not a reg writer. I mean, I'm perfectly willing to sort of
23 guess the consistency. There's probably other places in the
24 document we have used "submit." Do we want -- I mean, is
25 "provide" and "submit" significantly different?

1 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.

2 I think that they are probably semantically the same and
3 the denotation is probably the same. I think the problem is
4 that you could make an argument that submit implies that
5 someone is going to review it and approve it. Whereas it's
6 clear if you just say "provide" it means all you're doing is
7 making a copy and sending it off and then you've got no
8 further obligation. So I'm comfortable with the word
9 "provide."

10 CHAIRMAN KIMSEY: The rest of the Committee?

11 COMMITTEE MEMBER SHEN: I agree, Jennifer.

12 COMMITTEE MEMBER LYLE: I agree.

13 CHAIRMAN KIMSEY: Okay. Anything else from the
14 Committee on Article 7?

15 COMMITTEE MEMBER SHEN: Jennifer. I just want to
16 say I think the other Jennifer hit it on the head, you know.
17 Really what we tried to do as a committee, and I think it's
18 important, is be very clear on what laboratories are
19 supposed to do when it comes to (audio breaking up) their
20 employees.

21 The oversight that we are trying to provide the
22 Department tells the Department that we are, in fact, (audio
23 breaking up) regulations, regulations to be clear. And so
24 it's not -- there isn't that -- it should be, it should be
25 very obvious that we're complying. There shouldn't be a lot

1 of questions when we provide these things. They follow the
2 regulations and, and we're good.

3 That's really what we're trying to do is we are
4 trying to demonstrate compliance with the regulations. But
5 the point of these bullets then is to show that we are, in
6 fact, doing that. To give enough information, enough
7 records to the Department that it feels comfortable that we
8 are, in fact, following regulations.

9 CHAIRMAN KIMSEY: Okay. Comments from the public
10 on Article -- I guess we're on bullet 3 here, Articles 4 and
11 7.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 Clay Larson. I would note that in your citing, in reading
14 it you stopped at "additional requirements;" I wasn't sure
15 why. The subsequent two sections are all new regulation so
16 it's probably appropriate to read it.

17 And I just made some notes. Jennifer offered
18 optimistically that the labs would be providing a lot of new
19 information. This was with respect to 1218.1(a) through
20 (d). A lot of new information -- sorry, (a) through (e). A
21 lot of new information that we have never seen before. I
22 see nothing here that we don't regularly request for any
23 review of breath testing procedures.

24 Regarding the comments that -- concerning, you
25 know, the discussion of "permit" or "submit" and the desire

1 on the part of the Committee to make sure that the
2 regulations are -- trying to make sure that the regulations
3 show that there is no approval role. Again, the reader of
4 this, the ultimate reader of this will review that with
5 respect to the recommendation on the part of -- in the
6 December letter that review and approval is retained.

7 But more importantly 1218 -- not more importantly
8 but 1218.2(b) did -- this occurs only once in the four
9 bullets -- does imply a quasi-review process because it
10 states that -- you didn't read it but if the department
11 finds that the training program is not in compliance with
12 the regulations then the Department shall notify the
13 laboratory within 30 days.

14 But then it has rather puzzling language, "The
15 laboratory management" that's undefined, but "The laboratory
16 management may, but is not required to change its procedures
17 to address the Department's concerns." Then it goes on. So
18 there is, on this one bullet there is language here that
19 suggests some kind of review role. So the comfort that the
20 Committee seems to take with substituting "provides" for
21 "submits" may be in conflict with that newly-added language.

22 COMMITTEE MEMBER SHEN: Clay, this is Jennifer
23 Harmon. Two things. One, the goal here is to demonstrate
24 that we are in compliance with the regulation as the
25 regulation reads. And so the laboratories are looking for

1 an avenue in order to do that. If we provide you all of the
2 documentation that is explicitly spelled out in the
3 regulation then the Department has the ability to say they
4 have provided this or they have not provided this and
5 eliminate some of the potential interpretation that the
6 Department may take as to what they believe if sufficient or
7 not to sufficient and draw upon the regulation as that
8 argument.

9 Secondly, I would agree with you on 1218.2(b) that
10 there might be a little bit of addition that needs to be
11 added to it. What I would suggest is that we actually even
12 request that the Department has to explicitly document what
13 part of the regulation the laboratory is not in compliance
14 with so that it actually has to demonstrate exactly where in
15 the regulations that they have not met compliance.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 I'd have no problems with the second comment.

18 The first comment, which is a recurring theme, the
19 notion that the lab shall submit something that
20 demonstrates. And we use the word "notify," notifying the
21 Department. I think, as I'm growing to understand this
22 better, this basically is the ASCLD/LAB model. Basically,
23 labs are permitted to submit something, anything, which
24 attempts to address one of the listed elements, the general
25 listed elements in the ASCLD/LAB guidelines and there's very

1 little feedback. Anything is accepted. I think that's
2 probably inconsistent with a normal regulatory model. This
3 has been going on from day one. There is a fundamental
4 difference in philosophy here, I suspect.

5 CHAIRMAN KIMSEY: This is Paul. As I sort of
6 cautioned us all a little bit somewhere in one of the
7 previous bullets is this whole issue of what is on the
8 record and what the Department is going to do I want to save
9 to the -- you know, for a discussion more towards the end.
10 It's fine as we have discussed it here but I don't want to
11 have us bogged down in a philosophical discussion at this
12 point. Let's get through the language as it's reflected
13 here with additions.

14 There was a proposal, I believe by Jennifer
15 Harmon, to maybe add some language about the Department
16 needing to be explicit about where in this training program
17 it was not meeting the regulations. Did you have some
18 suggested language, Jennifer Harmon, or was that more a
19 reflection of what the intent was?

20 COMMITTEE MEMBER HARMON: Probably more of a
21 reflection of intent. I could probably come up with some
22 language; I don't know if I can come up with it right now.

23 CHAIRMAN KIMSEY: No, no, I understand. Feelings
24 from the rest of the Committee on making something that
25 explicit in the regulations or are there assumptions here?

1 This again gets to sort of the philosophical question, I
2 guess, at some point.

3 COMMITTEE MEMBER WONG: This is Kenton in
4 Richmond. At 1218.2(b) where we were just talking for
5 Jennifer Harmon. At the end of -- by letter within 30 days
6 of the specific statute area of non-compliance?

7 COMMITTEE MEMBER HARMON: Yes.

8 CHAIRMAN KIMSEY: Say that again?

9 COMMITTEE MEMBER WONG: After 30 days of the
10 specific statute area of non-compliance.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 Except it wouldn't be statutes, it would be regulations.

13 COMMITTEE MEMBER WONG: Regulations.

14 CHAIRMAN KIMSEY: Regulations.

15 COMMITTEE MEMBER WONG: Thanks, Clay.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 I'm always trying to help.

18 CHAIRMAN KIMSEY: Other feelings about the
19 additional language from the Committee?

20 COMMITTEE MEMBER SHEN: This is Jennifer Shen. So
21 if the Department finds that the laboratory's training
22 program is not in compliance with -- we were putting it at
23 the end of the sentence? How are you saying that that
24 sentence is going to read?

25 COMMITTEE MEMBER LYLE: This is Bruce. I think

1 what he's saying is if the Department finds that the
2 laboratory's training program is not in compliance with
3 these regulations the Department shall notify the laboratory
4 by letter within 30 days of the specific area(s) of
5 regulations not in compliance.

6 COMMITTEE MEMBER SHEN: Specific -- okay. What
7 did you say, Kenton, of the specific regulations?

8 COMMITTEE MEMBER WONG: Of the specific regulation
9 area of non-compliance.

10 CHAIRMAN KIMSEY: I understand what that means.
11 But this may be an area that -- is it clear?

12 COMMITTEE MEMBER SHEN: And that is the goal here.
13 If, in fact, for instance, we have someone all ready to go
14 for alcohol training and you realize the Department has
15 taken over all of these things, we have submitted an
16 employee who has a degree in basket weaving, that's an area
17 of non-compliance. And that would be -- that would be
18 something that should be brought to the laboratory's
19 attention. What we don't want to do is to get into some
20 sort of battle over what is or is not considered a physical
21 or natural science. So we don't want to take the
22 interpretation out but we want the Department to ensure that
23 the laboratory is, in fact, following what's written down
24 here.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 a quick comment. I think examples are helpful. The example
2 you just gave was from bullet 2, we are actually now
3 discussing bullet 3.

4 But I also wanted to note, we found -- as we read
5 through these we skipped the additional requirements. We
6 also started reading the previous recommended changes. The
7 Committee might want to -- which is there for reference.

8 The Committee might want to actually consider --
9 and I submit the Committee has actually not ever reviewed
10 the entirety or any of Article 7. That actually goes on to
11 the next page, which shows the current state of -- the
12 current proposal. I think the Committee, and maybe we'll do
13 this later after we do the letter, I thought we could have
14 done it before we did the letter, but it has never actually
15 gone through section by section the revisions, the final
16 revisions proposed under Article 7.

17 CHAIRMAN KIMSEY: But is there something specific
18 that you want to recommend about Article 7?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 There are some errors in there. But I think we should kind
21 of holistic -- I think the Committee -- I hate to ask the
22 Committee to do any extra -- I don't think this is extra
23 work, I think the expectation was -- again, I think the
24 record will show we haven't, the Committee hasn't looked at
25 Article 7 and the newly proposed revisions and responses.

1 CHAIRMAN KIMSEY: Well we're looking at it now,
2 correct?

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
4 Well you haven't read it yet but I guess the eyes are
5 glancing past it.

6 CHAIRMAN KIMSEY: Okay. I don't know that reading
7 it out loud is necessary.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 For every other section, however, we have looked at each
10 section and made comments and determinations. The Committee
11 can gloss over this if you'd like but I'm just saying this
12 hasn't happened yet.

13 CHAIRMAN KIMSEY: Your point is noted. Any other
14 comments from the Committee about Article 7?

15 Does the Committee want to read through it?
16 Someone want to volunteer?

17 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
18 Can we go back to 1218.2(b)? We kind of lost the
19 conversation on that.

20 CHAIRMAN KIMSEY: Sure.

21 COMMITTEE MEMBER JEFFRIES: I do actually have a
22 concern about that. It almost goes to the philosophical
23 discussion we are going to have later about how this all
24 becomes enforced. But I am not sure we want to put that the
25 Department is finding someone to be in non-compliance. That

1 again gets us to the point where we're philosophically
2 saying the Department can make a finding of non-compliance
3 and I am not sure we want to go there.

4 I think maybe we want to tone down 1218.2(b) a
5 little bit so we are not using the word "non-compliance" or
6 "finding" in it. Because really what we're going for is the
7 Department believes that the Department, the lab is not in
8 compliance and therefore they'll tell the Department or the
9 lab why they believe they're not in compliance and then the
10 lab can choose to do what they want with it.

11 But as we have it worded now we've got a finding
12 and a non-compliance and I'm sure that's going to come up in
13 court where it's going to be, isn't it true that your lab
14 was found in non-compliance by the Department? Isn't it
15 true that you're in non-compliance with this and they made
16 such a finding? I think we don't want to go there. I think
17 we want to have us more in a situation where the Department
18 is saying what they believe needs to be fixed.

19 CHAIRMAN KIMSEY: This is Paul. I think it's a
20 good point, Dan, because also if you look further down in
21 that paragraph we do say if the laboratory's management
22 elects to address the Department's concerns it will notify
23 the Department of these changes within 30 days. So, I mean,
24 there is a both of a conflict there. If --

25 COMMITTEE MEMBER DAVIS: This is Kevin -- go

1 ahead. I didn't mean to interrupt you, I thought you were
2 done, I'm sorry.

3 CHAIRMAN KIMSEY: That's fine.

4 COMMITTEE MEMBER DAVIS: I'm just curious, is this
5 existing language in Title 17 now or is this newly-drafted
6 language, 1218.2(b)?

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 Newly-drafted.

9 COMMITTEE MEMBER DAVIS: Because if it's new I'm
10 not even sure what the purpose -- is it an option just to
11 remove it completely since it seems to be so confusing and
12 allows a lab to disregard the recommendations anyway?

13 (Laughter.)

14 COMMITTEE MEMBER SHEN: One of the reasons we put
15 this -- because when we did discuss it in previous meetings
16 -- we wanted to be able to give the Department the ability
17 to respond if they felt the laboratory was not meeting
18 something. So here is all this information, it's reviewed
19 and we -- you know, to try to address the concern of
20 oversight we wanted to be able to give the Department the
21 ability to say hey, we don't think you're meeting this.

22 Now again it all comes down to, we you want to be
23 held to following regulations, we do not want to be held to
24 following interpretations outside of the regulations. So
25 it's kind of fine line but I understand completely (audio

1 breaking up). I don't want to be put in a position of
2 having non-compliance on something that is an interpretation
3 and not an actual non-compliance, that is what we are trying
4 to avoid.

5 CHAIRMAN KIMSEY: This is Paul. And this is
6 something, I'm sure it's not new to this group. But in
7 general I think if we are relatively specific in our
8 regulations there will be less room for interpretation on
9 the part of the Department. So, you know, obviously again
10 this does get to the greater philosophical question. But I
11 believe that Dan's point was, he had some concerns about the
12 word "non-compliance."

13 And I just personally sort of think that that
14 sentence about if the laboratory management elects to
15 address. I mean, I don't know that that's really an option.

16 If you are not following the regulations, however the
17 Committee wants to determine them, and we want people to be
18 following the regulations, I don't know that we should have
19 an option in here not to be.

20 But back to Dan's point, just trying to get the
21 focus back on the first part of that sentence. Yeah, the
22 first sentence. The specific regulations -- and we have "of
23 non-compliance" at the moment, if I remember Kenton's
24 suggestion. Any feelings on how we might change and not use
25 the word "non-compliance?"

1 COMMITTEE MEMBER SHEN: This is Jennifer. Maybe
2 we should go with "concerns" instead. And maybe Kevin's
3 point, we should take out -- take out the option for
4 management to respond.

5 COMMITTEE MEMBER WONG: Right.

6 COMMITTEE MEMBER SHEN: So management has to
7 respond. It doesn't mean that management has to agree. But
8 the Department needs to be able to notify the laboratory of
9 its concerns. And the laboratory really, I would say, needs
10 to respond to those concerns. So maybe that's the happy
11 medium that we could, that we could strike.

12 COMMITTEE MEMBER WONG: Will that work for you in
13 court, Dan?

14 COMMITTEE MEMBER JEFFRIES: I think so. I think
15 as long as we get rid of the word "non-compliance" we're in
16 much better shape.

17 CHAIRMAN KIMSEY: Okay, so then shall notify the
18 laboratory by letter within 30 days of -- what we would say?

19 COMMITTEE MEMBER WONG: A concern.

20 COMMITTEE MEMBER JEFFRIES: Of the areas of
21 concern.

22 CHAIRMAN KIMSEY: Of the areas --

23 COMMITTEE MEMBER SHEN: This is Jennifer. You
24 know, what I worry about there, though, is that that's itchy
25 enough that they can have all kinds of concerns (audio

1 breaking up) appropriate.

2 COMMITTEE MEMBER WONG: Then you're back to the
3 interpretation.

4 COMMITTEE MEMBER SHEN: Correct.

5 COMMITTEE MEMBER WONG: Which is not what we want.

6 COMMITTEE MEMBER SHEN: Right.

7 CHAIRMAN KIMSEY: So we need maybe a better word
8 than non-compliance but not something -- something more
9 specific than just areas of concern but not as specific as
10 non-compliance.

11 COMMITTEE MEMBER SHEN: I'm drawing a blank.

12 CHAIRMAN KIMSEY: Well it is getting close to
13 lunch. This is Paul. As my role as the Chairman I'm
14 supposed to keep track of time. Maybe this is a good point
15 to take a break for lunch. I believe we have some
16 restrictions in some areas maybe on what people can go and
17 come. You know, getting in security. What's the feeling of
18 the Committee? For how long would we like to take a break,
19 a lunch break?

20 (No response.)

21 CHAIRMAN KIMSEY: An hour?

22 COMMITTEE MEMBER WONG: Sure.

23 CHAIRMAN KIMSEY: And just say we'll come back at
24 one o'clock?

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Sure.

2 CHAIRMAN KIMSEY: We'll leave all the lines open
3 and all the connections and we'll just adjourn for an hour
4 and 58 minutes -- no, an hour, an hour and six minutes or
5 whatever.

6 COMMITTEE MEMBER WONG: Back at one.

7 CHAIRMAN KIMSEY: Back at one. Thank you, Kenton.

8 COMMITTEE MEMBER SHEN: All right, thank you.

9 CHAIRMAN KIMSEY: Okay, thank you all.

10 (Off the record at 11:55 a.m.)

11 (On the record at 1:07 p.m.)

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1 COMMITTEE MEMBER SHEN: I don't know if you want
2 to continue with "The laboratory management may, but is not
3 required, to change its procedures to address the
4 Department's concerns." Basically, I guess, in any event
5 the laboratory would respond to the Department addressing
6 its concerns.

7 I think from what I have (audio breaking up)
8 necessarily there being action because we may experience a
9 situation where clarification on the laboratory's part, the
10 Department would no longer feel that they were not meeting
11 the regulations.

12 CHAIRMAN KIMSEY: So we want a sentence there
13 specifically directing a response from the program within a
14 period of time or --

15 COMMITTEE MEMBER SHEN: I think we want to have a
16 directed response from the program. I don't know about what
17 you want to do about a period of time.

18 COMMITTEE MEMBER JEFFRIES: So can we just cut out
19 that middle, that middle sentence and just go right into it?
20 If the laboratory's management elects to address the
21 Department's concerns, it will notify the Department of
22 those changes within 30 days of receipt --

23 COMMITTEE MEMBER SHEN: Well, I think we ought to
24 take out "elect".

25 COMMITTEE MEMBER JEFFRIES: I think, compel them

1 to.

2 COMMITTEE MEMBER SHEN: Well that's --

3 COMMITTEE MEMBER JEFFRIES: -- address it.

4 COMMITTEE MEMBER SHEN: That's a discussion we
5 should have. Do we feel like the laboratory should, in
6 fact, respond?

7 The Department sends a letter saying, hey, we
8 don't think you're meeting the requirement of this
9 regulation -- let the laboratories pull that off? Or, does
10 the laboratory have to respond?

11 And I guess, I think in the spirit of what the
12 Department is looking for I think the laboratory should
13 respond. This does not mean the laboratory has to change if
14 the laboratory is having conversations about the issue. But
15 I think a response --

16 CHAIRMAN KIMSEY: Do we want to say something
17 like, the laboratory will or shall respond to the
18 Department's concerns within 30 days? That's a response.

19 COMMITTEE MEMBER SHEN: (Indiscernible).

20 COMMITTEE MEMBER JEFFRIES: How about -- Dan
21 Jeffries. How about we combine the two sentences so it
22 reads, The laboratory management shall respond in writing
23 within 30 days, but it is not required to change its
24 procedures to address the Department's concerns.

25 CHAIRMAN KIMSEY: I think the last phrase is what

1 may be problematic. I mean if they are not required to
2 address the Department's concerns then why does the
3 Department have concerns? I mean, that's again, sort of the
4 bigger philosophical question. But I think it's just the
5 last phrase, you're either going to address the Department's
6 concerns or not.

7 COMMITTEE MEMBER SHEN: This is Jennifer. I think
8 that by responding we're addressing the Department's
9 concerns.

10 So, I think if the Department says, this is our
11 concern and the laboratory says, well, even though you think
12 that's a concern, it isn't because of X, Y, Z. We have then
13 addressed the Department's concerns.

14 CHAIRMAN KIMSEY: Okay.

15 COMMITTEE MEMBER SHEN: Again. You know, it
16 really should be very clear. There should be no -- there
17 should really be no ability of the Department to have the
18 laboratories do things that are outside the scope of the
19 points we laid out here in Title 17.

20 CHAIRMAN KIMSEY: Right. I understand that, you
21 know, I understand that. I think what we may hear at some
22 level is that, generically, departments aren't supposed to
23 be interpreting. It's either supposed to, it's just
24 supposed to be clear. But, I understand the concerns.

25 I mean, historically, a lot of old Health and

1 Safety Code there was a lot of latitude for departmental
2 interpretation in the regulations in general. I think part
3 of the Administrative Procedures Act was to limit that
4 drastically. In other words, it's supposed to be clear.
5 But, I mean, it's, I understand the concerns.

6 COMMITTEE MEMBER SHEN: So by and large then, if
7 the Department were to send a concern, it should be an
8 actual concern. So it would have to be addressed.

9 CHAIRMAN KIMSEY: Correct.

10 COMMITTEE MEMBER SHEN: So, I don't know that at
11 that point the laboratory has -- back to my basket weaving
12 example. I don't think the laboratories have the ability to
13 just ignore the fact that it's in violation of one of the
14 requirements set out in Title 17.

15 CHAIRMAN KIMSEY: Okay. Dan, do you want to
16 repeat your language again, if you could, for that last
17 sentence.

18 COMMITTEE MEMBER JEFFRIES: Well I think if we
19 incorporate what Jennifer is suggesting it would read, if
20 the Department believes that the laboratory's training
21 program is not in compliance with these regulations, the
22 Department shall notify the laboratory by letter within 30
23 days with its specific concerns.

24 And then the next sentence would read, The
25 laboratory shall respond in writing within 30 days. And

1 from what I understand, what Jennifer is suggesting is we
2 just leave it at that.

3 CHAIRMAN KIMSEY: Okay. Comments from the
4 Committee on the language?

5 COMMITTEE MEMBER WONG: Do we need to say -- this
6 is Kenton in Richmond. Do we need to say that we'll respond
7 within 30 days? So that there's some teeth in it or that is
8 seems -- otherwise it's just like, well, I'll respond to you
9 three years from now. I mean.

10 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. I did
11 suggest we put the 30 days in both places. And I guess to
12 be consistent I would suggest instead of "by letter" we say
13 "in writing" in both places. So it would read, The
14 Department shall notify the laboratory in writing within a
15 30 day period. The laboratory shall respond in writing
16 within 30 days. The Department shall notify is the first
17 part and then the laboratory shall respond in writing within
18 30 days.

19 COMMITTEE MEMBER WONG: I like it.

20 CHAIRMAN KIMSEY: Okay. I guess we can move on.
21 We're basically discussing Article 7. Further along in that
22 page we did drop what was just obviously sort of an
23 editorial or a formatting error at the bottom of that page.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 I think we should skip that since these were in the letter.

1 These are the recommended changes, the previous recommended
2 changes. I think we should move to the next page and have
3 the current recommended changes. So it would be the
4 following page. It's the same sections but --

5 CHAIRMAN KIMSEY: Sure. So on the following page
6 there's an introductory paragraph.

7 "We propose changing these recommendations to the
8 following. These changes will serve to flesh out the
9 requirements for the breath testing program and to provide
10 the Department with a clear understanding of what is to be
11 included in the breath operator training program."

12 And then there is "Article 7, Requirements for
13 Breath Alcohol Analysts." Then 1221.4.

14 "Procedures for breath alcohol testing shall meet
15 the following standards:"

16 "1221.4(a)(3). Breath alcohol testing shall be
17 performed only with instruments for which the operators have
18 received training, such training to include at a minimum the
19 following schedule of subjects:"

20 "1221.4(a)(3)(A). Theory of Operation: Value and
21 purpose of forensic alcohol testing; General purpose of
22 absorption, distribution and elimination of alcohol; Theory
23 of breath alcohol analysis and, Discussion of the required
24 15 minute waiting period."

25 "1221.4(a)(3)(B). Detailed Procedure of

1 Operation: Methodology of analysis for the specific breath
2 alcohol testing instrument used by the agency."

3 "1221.4(a)(3)(C), Precautionary Checklist:
4 Description of, and adherence to, the Precautionary
5 Checklist."

6 "1221.4(a)(3)(D). Practical Experience: The
7 Precautionary Checklist is incorporated into the testing
8 sequence. Each screen prompt is discussed and reviewed by
9 the instructor. The Operation of the breath instrument
10 shall be demonstrated by the instructor. The instructor
11 shall observe the trainee perform a test on the instrument
12 while he or she acknowledges each step of the Precautionary
13 Checklist."

14 "1221.4(a)(3)(E). At the completion of the
15 training session, each breath instrument operator trainee
16 shall be required to successfully complete a written
17 examination and to achieve a passing score of a minimum of
18 80 percent."

19 "1221.4(a)(3)(F). Prior to the completion of the
20 training session, each breath instrument operator trainee
21 shall be required to successfully complete a breath test
22 accurately by following the Precautionary Checklist as
23 outlined in 1221.4(a)(3)(D)iii."

24 "1221.4(a)(3)(G). Upon successful completion of
25 the training session and successful completion of both the

1 written and practical examinations, the trainee shall be
2 issued a certificate. The certificate will indicate the
3 operator's name, Badge/ID, agency and include the
4 instructor's name."

5 "1221.4(a)(4). Training curriculum for the
6 procedures of breath alcohol testing shall be developed by
7 forensic alcohol analyst. Department notification of the
8 proposed curriculum will follow Section 1218.1."

9 "1221.4(a)(4)(A). The instructors will be, at a
10 minimum, certified breath instrument operators within two
11 years of practical experience, or, an FAAT who has
12 successfully completed the breath instrument training and
13 has at least six months of practical experience with the
14 instrument."

15 "1221.4(a)(4)(B). The breath instrument operator
16 trainees will receive, at a minimum, four hours of
17 instructional training by a certified breath instrument
18 operator."

19 "1221.4(a)(4)(C). If a breath instrument operator
20 trainee has already undergone training to operate a
21 different approved breath testing instrument, the trainee
22 may receive instruction as above excluding the portion
23 covering 1221.4(a)(3)(A)."

24 "1221.4(a)(5). An operator shall be a forensic
25 alcohol analyst or a person who has successfully completed

1 the training described under Section 1221.4(a)(3) and
2 1221.4(a)(4) and who may be called upon to operate a breath
3 testing instrument in the performance of his or her duties."

4 Note: Authority cited: Numbers of authorities.

5 I think maybe you highlighted in yellow the FAAT
6 in 1221.4(a)(4)(A) because you thought maybe it should be
7 spelled out or --

8 COMMITTEE MEMBER SHEN: You know, I'm trying to
9 remember. I think that I did that because I believe that
10 when we discussed this before that we didn't include an
11 FAAT. And I am referring in particular (audio breaking up).

12 So I threw that in there for us to discuss and highlighted
13 it so we wouldn't forget.

14 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
15 From my reading of the changes, is FAAT in for an option or
16 was FAAT removed along with FAS? I think that you only have
17 forensic alcohol analysts as an option.

18 COMMITTEE MEMBER SHEN: Maybe that's why I did
19 that.

20 COMMITTEE MEMBER HARMON: So it should probably be
21 changed to, forensic alcohol analysts.

22 CHAIRMAN KIMSEY: Okay.

23 COMMITTEE MEMBER SHEN: So the change should be
24 highlighted, FAAT to an FAS?

25 COMMITTEE MEMBER HARMON: FAA.

1 COMMITTEE MEMBER SHEN: FAA?

2 CHAIRMAN KIMSEY: And we probably should spell it
3 out. Because it's spelled out again down here in
4 1221.4(a)(5) at the bottom. An operator shall be a forensic
5 alcohol analyst or a person who has -- whatever.

6 COMMITTEE MEMBER JEFFRIES: Dan Jeffries with a
7 general comment. Is there a reason we're still including
8 what the previous recommended changes were? It's sort of
9 confusing things to say, this is what we were talking about
10 doing before but now we don't want to do that, we want to do
11 something different. Should we just get rid of all that
12 language?

13 CHAIRMAN KIMSEY: I think it serves to instruct
14 Agency that this is what the Committee had recommended
15 previously and now based on the letter of December, you know
16 so it does sort of document the change, the shift the
17 Committee has had. I think it's helpful.

18 I know it's sort of, it sort of adds a lot to the
19 letter. But, I think it helps create the point that there
20 has been some modifications as a result of the December
21 letter.

22 COMMITTEE MEMBER SHEN: This is Jennifer. What I
23 can do, I can arrange for a -- structure the letter a little
24 bit to say, previously, we removed Article 4 and we
25 suggested this. Now, we're adding in Article 4 and doing

1 this to Article 7. Because I kind of have it, I think a
2 little bit, I think it's confusing because I say, oh, we
3 took this out and we put this in and then we had this but
4 now we're going to put in this. So if I put it in a little
5 bit better order I think it will be less confusing.

6 CHAIRMAN KIMSEY: Other comments about Article 7,
7 what we're going to be including?

8 COMMITTEE MEMBER JEFFRIES: Dan Jeffries again.
9 There was some discussion at one of our previous meetings
10 about under 1221.4 a)(4)(C) as to whether or not you also
11 need a trainee to be reeducated in the detailed methodology
12 of operation. I think the discussion from (indiscernible)
13 that already happens. And when you do training you cover
14 all the methodology used by the agency regardless of the
15 instrument. And so, there was some discussion of
16 eliminating it. Is that correct that we don't need to have
17 that also in there?

18 CHAIRMAN KIMSEY: I mean, I think that may be what
19 we sort of understand to be a sort of a standard of practice
20 currently. And that may be reflected, as you say, as it's
21 reflected here. I think if we want to continue that to
22 have, you know, as part of the training, you know, this type
23 of method analysis specific to an instrument used by the
24 agency, I think it's worth leaving in.

25 If it's what is being done currently that doesn't

1 mean that if we don't leave it in it's what is going to be
2 done in the future. So, I don't know, does that sort of
3 address your question?

4 COMMITTEE MEMBER JEFFRIES: It does.

5 CHAIRMAN KIMSEY: Okay.

6 COMMITTEE MEMBER JEFFRIES: Thank you.

7 COMMITTEE MEMBER SHEN: This is Jennifer. So we
8 decided that if someone had already been trained before,
9 that really that person only needs to be trained on the new
10 instrument.

11 COMMITTEE MEMBER WONG: Correct.

12 CHAIRMAN KIMSEY: Right.

13 COMMITTEE MEMBER SHEN: So here in 1221.4(a)(4)(C)
14 it says, "If a breath instrument operator trainee has
15 already undergone training to operate a different approved
16 breath testing instrument, the trainee may receive
17 instruction as above excluding the portion covered in
18 1221.4(a)(3)(A)."

19 (Indiscernible) theory of operation covers a bunch
20 of stuff. And that person would be, based upon what we have
21 written here, required to do the detailed procures of
22 operation, which makes sense. And to really go through
23 (audio breaking up) actually be a legitimate requirement
24 because we want to use that precautionary checklist with a
25 new instrument.

1 So we tried to address that I think already.
2 Maybe we didn't address it enough. Because I think the -- I
3 think the new trainee is still going to have to take a
4 practical. You're still going to have to take a written
5 test. Everything else is still going to have to happen,
6 it's just that that theory of operation does not need to be
7 retaught.

8 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. I think
9 that was the concern of the CHP who frequently has the
10 experience of officers going from county to county and city
11 to city where the officers, every time they transfer, would
12 have to go through the entire training class all over again.

13 And the hope was to streamline it as much as
14 possible and not have to retrain them on things that they've
15 already been trained on when they go from agency to agency.
16 And so I think it would be good to include as much of that
17 as possible so they don't have to go through it again but to
18 shorten the course.

19 CHAIRMAN KIMSEY: No, I remember that discussion.
20 And I believe it was our intent to sort of try to meet that
21 request. Is there something more we need to say here?

22 COMMITTEE MEMBER DAVIS: This is Kevin in
23 Sacramento. I just also want to point out, we used the
24 term, in 1221.4(a)(4)(C) we say, operate a different
25 approved instrument. There is often cases where officers

1 transfer from one county to another with the same approved
2 instrument. So reading this at face value, that would
3 exempt them from any training once they move. Is that true?

4 And if so, is that the intent of the Committee?

5 COMMITTEE MEMBER WONG: I think so.

6 COMMITTEE MEMBER JEFFRIES: This is Jennifer --

7 COMMITTEE MEMBER DAVIS: In other words, if I'm
8 trained on the Intoxilyzer 5000 in Sacramento County and I
9 transfer to L.A. County and they use the same device, am I
10 then exempt from retraining?

11 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.

12 I would have a concern with that because county to county
13 there are differences in the operator training. The
14 software could be proprietary for each individual county and
15 you would need to learn what those prompts and specific
16 obligations are.

17 So, for an example, Kern County has the same, has
18 the same technology that Orange County has, however, their
19 software is different. So, you wouldn't want --

20 COMMITTEE MEMBER DAVIS: Right. And I understand
21 that. And my assumption was, that wasn't the intent. But
22 if you read 1221.4(a)(3), that wouldn't cover that. It
23 would allow us to just be trained once on one instrument
24 because I would have been trained on that instrument.

25 So I'm just wondering if some clarifying language

1 needs to be added if, in fact, that's the intent, to require
2 retraining of some sort.

3 COMMITTEE MEMBER JEFFRIES: And I think that goes
4 back to the question I had about (a)(3)(B) about the
5 alcohol, breath alcohol testing instrument used by the
6 agency. That's the only time we're specifically referring
7 to, an agency, at other times we're talking about the
8 instruments. So we're kind of going back and forth between
9 perhaps the same instrument at different agencies.

10 COMMITTEE MEMBER SHEN: This is Jennifer. That
11 was a very good point because, that's right. Different
12 departments have different setups for their instruments.
13 They run them differently. There is a different process.
14 So I think we need to clarify that, definitely.

15 CHAIRMAN KIMSEY: No, I think if we can clarify by
16 what's different between the agencies and the operation of
17 the machine, the individual wouldn't have to sit through the
18 whole training again. It would be the area that was unique
19 to a jurisdiction or --

20 COMMITTEE MEMBER HARMON: Again, this is Jennifer
21 Harmon. From a practical standpoint, realistically, if we
22 have somebody coming from CHP South L.A. into CHP Santa Ana
23 we would obligate them to take the entire training because
24 we just don't have the resources to provide multiple
25 training programs based on who may or may not have had

1 information.

2 So, from a practical standpoint is there a way
3 that we basically kind of eliminate that? Where if you are
4 in a new jurisdiction and it's not the exact same training
5 you have to go through it again.

6 COMMITTEE MEMBER DAVIS: This is Kevin in
7 Sacramento. I think the way to solve this would just be
8 adding something to 1221.4(a)(3) to say, alcohol testing
9 shall be performed only with instruments for which the
10 operators have received training, maybe there, by the
11 laboratory where the device is at or within the county in
12 which the device is being used or something to that effect.

13 COMMITTEE MEMBER SHEN: Hi, this is Jennifer.
14 Jennifer's point is that she does not want to have the
15 exceptions there at 1221.4(a)(4)(C). She does not want that
16 exception of any additional training. So I guess my thought
17 there is, these are minimal requirements. So, you know, I
18 would say that with truly laboratories open requiring that
19 these operators go through the entire training.

20 But she's right. I hadn't even thought about
21 that. You know, we have one course that we put forward that
22 has all of those elements in it. And it would be tough to,
23 you know, excuse the officers from the room for X amount of
24 period so they don't have to sit through this part and then
25 come back in the room for the rest of it. It would be tough

1 to put on two separate types of training, one for everything
2 but that and one that's complete.

3 CHAIRMAN KIMSEY: I have to say, I'm sympathetic
4 to both the practical aspects of having a single training
5 course that you want everybody to go through but then also,
6 I'm also sensitive to the fact that I just sat through this
7 six months ago in another county, I'm sitting through it
8 again. I don't know. I'm open to those of you that have to
9 deal with the practical realities of all of this. I see
10 both sides.

11 COMMITTEE MEMBER DAVIS: This is Kevin. I mean,
12 I'm frustrated too but that's the way it has always been so
13 it's not a big change for us. I was just making the point
14 that as it's written now we would no longer be required to
15 do that.

16 CHAIRMAN KIMSEY: Right.

17 COMMITTEE MEMBER DAVIS: Because it says, once
18 you're trained on that instrument you're done. So that has
19 to be addressed in some way. This is 1221.4(a)(3).

20 COMMITTEE MEMBER WONG: This is Kenton in
21 Richmond. How about on 1221.4(a)(4)(C) if we add, operate a
22 different approved breath testing instrument and/or
23 software? So that if there are a few officers that have
24 already been trained on the instrument that they can just
25 show up at the lab if you arrange that, like with Jennifer

1 Harmon, at a certain time and they just do the practical and
2 then they're on their way. You don't have, to like, throw a
3 whole course for them.

4 COMMITTEE MEMBER SHEN: Well again, this is
5 Jennifer. Again, this is, I think this is minimal, these
6 are minimal standards here. So if your agency requires the
7 officers to go through a whole course all over again then
8 that would certainly not be in conflict with this. But if
9 your agency decides they don't need to then you're covered.

10 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
11 My only concern with this is that Title 17 is really the
12 only regulation that we have to mandate the operator
13 training. That the laboratory has some say as to how that
14 is going to take, take shape.

15 So if we have larger agencies like the CHP as an
16 example or somebody else, who determines that they are not
17 going to do the that, it doesn't give the laboratories a
18 whole lot of weight in trying to ensure that the operator
19 training is consistent and fluid from jurisdiction to
20 jurisdiction.

21 Is there a way that we have a minimum requirement
22 that they have to go, go through the training? Because I
23 think the exclusion is problematic.

24 COMMITTEE MEMBER DAVIS: This is Kevin.
25 Another --

1 COMMITTEE MEMBER JEFFRIES: That's actually --

2 COMMITTEE MEMBER DAVIS: DOJ, they -- I think all
3 but 12 counties in the state are DOJ counties. And it is my
4 understanding they use the same device throughout the whole
5 state. So do folks who transfer counties that way have to
6 be retrained as well or are they okay?

7 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
8 My comment would be that I have actually tried cases where
9 I have had CHP officers who used a substantially similar
10 instrument in another county before they came to the Central
11 L.A. CHP. And the practical thing is that officers get
12 transferred, they start working. We can't have them not
13 making DUI arrests until they happen to get a change to go
14 through a training class because it may not happen at the
15 same time the officer has been transferred.

16 At least in the jury trials I did with the issues
17 it's pretty easy to argue, hey, this is pretty much the same
18 instrument that the officer learned when he was in Alameda
19 County or whatever, Yolo County. I am actually partial to
20 the idea of not requiring them to get trained if it's
21 substantially the same instrument but, you know, that's my
22 perspective as a prosecutor. I'd much rather be able to
23 have them testify.

24 RESEARCH SCIENTIST SPELL: I have a comment,
25 Natallia Spell. As I understand it, it boils down to

1 defining what constitutes a substantial difference and then
2 we done, right?

3 COMMITTEE MEMBER DAVIS: I think that's true if
4 what I am suggesting, that if an officer has been already
5 trained on a substantially similar instrument he doesn't
6 have to be trained again, he or she doesn't have to be
7 trained again. But basically that's true.

8 Then we get into the whole issue of, what is a
9 substantially similar instrument? Does it mean the same
10 instrument with different software? Does it mean a
11 different model of the same instrument. I imagine that gets
12 complicated.

13 CHAIRMAN KIMSEY: It does sort of default to
14 redundant training, unfortunately, which isn't the end of
15 the world. It just seems --

16 COMMITTEE MEMBER JEFFRIES: What about -- what is
17 the CHP's take on it? Because it seems like they are going
18 to be the most affected by it because there's a number of
19 times that officers transfer from one agency to another, one
20 area to another. And the amount of time -- you would end up
21 with officers who could be going for weeks without being
22 able to do breath testing because they haven't had a chance
23 to go through the local training.

24 COMMITTEE MEMBER DAVIS: This is Kevin. I mean,
25 that's happened to me personally. When I worked in San

1 Francisco we covered San Mateo County and San Francisco
2 County. And it was the same device in both places but I
3 wasn't allowed to use it in one county. And there was no
4 difference whatsoever. So it is frustrating and it is an
5 issue.

6 But just to make sure I understand correctly, I am
7 also understanding that we are now going to allow officers
8 with two years of experience to teach the course; is that
9 correct? Per 1221.4(a)(4)(A).

10 MR. VON BEROLDINGEN: Yes.

11 CHAIRMAN KIMSEY: Yes.

12 COMMITTEE MEMBER DAVIS: And that would help.
13 Because my understanding is that is not currently allowed.
14 So that would obviously help because presumably we would
15 have someone with two years of experience in every place in
16 the state.

17 COMMITTEE MEMBER WONG: That was the intent.

18 COMMITTEE MEMBER DAVIS: That would alleviate a
19 lot of it for us. Because in prior experience the issue has
20 been scheduling the training.

21 COMMITTEE MEMBER WONG: Right.

22 COMMITTEE MEMBER DAVIS: Now just because I report
23 May 1st, I can't have someone from the lab there May 1st to
24 train me. It doesn't work that way.

25 COMMITTEE MEMBER HARMON: This is Jennifer Harmon

1 again. Speaking from a lab perspective, I don't know that
2 we would be all that comfortable with turning over the
3 operator training to our officers necessarily. Is that
4 something that -- is that the intent of what was written?

5 COMMITTEE MEMBER DAVIS: I mean, I'm sure someone
6 else on the Committee can answer this but I think that, that
7 idea came back a few years ago and that was the consensus at
8 the time, at least, to allow that.

9 CHAIRMAN KIMSEY: And that's pretty much --

10 COMMITTEE MEMBER DAVIS: Unless someone else
11 recalls differently.

12 CHAIRMAN KIMSEY: No, no. I think that was quite
13 specifically the intent of 1221.4(a)(4)(A). Jennifer, you
14 have concerns, Jennifer Harmon, you have concerns that two
15 years of practical experience isn't sufficient?

16 COMMITTEE MEMBER HARMON: I -- it's not that I
17 don't believe that there are plenty of very capable officers
18 to do that but this is not practice, this is not practice
19 throughout the state. The laboratories oversee this and
20 they have for a very long time. So you're taking it, you're
21 taking the operator training away from scientists and giving
22 it to law enforcement. I don't know if that was the intent.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
24 A comment from the public, because maybe I can clarify some
25 of this. Everybody is right here. Lieutenant Davis is

1 right that the -- the regulations have long permitted
2 experienced operators, and there was no two-year
3 requirement, it wasn't defined what an experienced operator
4 was, but to provide instructions to the class.

5 But I think the major change here is the current
6 regulations require that the training is supervised by
7 laboratory staff. And the Department has always evaluated
8 supervision and interpreted, if you will, that bad word,
9 interpreted supervision as an active -- because it's the way
10 it's interpreted throughout the regulations -- as active,
11 on-site, present involvement with the training. So the
12 expectation is that the laboratory staff would be, would be
13 on-site and directly involved with the training.

14 So the real change is not the qualification of
15 instructors since that's just -- we've added two years but
16 the basic language was there before. But the change
17 eliminating the 1221.4(a)(4) eliminating any requirement
18 that the operator -- that the training be supervised by
19 laboratory staff and replacing that with the very fuzzy
20 concept that -- and I'm reading, Training curriculum in the
21 procedures of breath alcohol testing shall be developed by a
22 forensic alcohol analyst -- or plural, so I guess you have
23 got to have at least two people do it. Then it goes on to
24 say about that we're going to notify the Department. So I
25 think that's a major change.

1 And I would also note that when we get to it, when
2 you read the record-keeping procedures there is a strange
3 reference that I noticed the other day. Actually at
4 1221.4(a)(4)(B) says -- is the requirement. "The breath
5 instrument operator trainees will receive, at a minimum,
6 four hours of instructional training by a certified breath
7 instrument operator."

8 Where before instructors could be analysts or
9 experienced operators this seems to suggest that the
10 training will be by a quote/unquote certified breath
11 instrument operator.

12 So I think the major change is in those two
13 sections but in particular the section which eliminates the
14 requirement that labs directly supervise the training and
15 substitute it with some idea that the curriculum would be
16 developed by an analyst.

17 COMMITTEE MEMBER SHEN: This is Jennifer. You
18 know, I was reading this and I don't think I recall it being
19 our intention that officers take over the teaching of
20 courses on their own. So maybe the way we want to address
21 this is to put in additional verbiage in 1221.4(a)(4)(A)
22 that adds that in, that oversight of the laboratories.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
24 I'm encouraged to hear that. This was a major bone of
25 contention. And I believe, I think the language you

1 selected before, but you certainly could have a change of
2 heart from new members, was specifically chosen to at least
3 minimize the level of oversight and adopt a more train the
4 trainer approach.

5 COMMITTEE MEMBER SHEN: I do not believe it was
6 meant to minimize the oversight of the laboratories. That
7 is something I think we should discuss, putting laboratory
8 oversight back into the training.

9 CHAIRMAN KIMSEY: From a practical sense could we
10 just say, with approval or acknowledgement of the
11 laboratory, the local laboratory. I mean, I think there is
12 some advantage to train the trainer. But I guess from a
13 practical perspective what do we, what do we say here?
14 Keeping the laboratory involved but still showing some
15 flexibility. Because if we don't then we just might as well
16 go back to everybody has to sit and go through the training
17 in every jurisdiction they ever go to.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 We could always, we could always have the operator notify
20 the laboratory that it's started training.

21 CHAIRMAN KIMSEY: Or with the laboratory's
22 approval?

23 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. I think
24 we actually have two different issues and trains of thought
25 going on here. One has to do with whether or not officers

1 have to get retrained when they go from jurisdiction to
2 jurisdiction and the other has to do with whether or not the
3 training has to be conducted by the lab or conducted by just
4 another officer who is a certified breath operator. And
5 maybe we should kind of keep those two on separate lines as
6 to what we're looking at doing.

7 MR. VON BEROLDINGEN: Comment from the public,
8 Linton from the DOJ. I'm thinking that if the retraining is
9 strictly the lab portion, that that might be well
10 accomplished by an acknowledged, experienced member of that
11 agency who has the requisite experience and who is
12 recognized by the local forensic alcohol laboratory as a
13 resource for that purpose. I think there should be some
14 laboratory involvement in recognition of which officers are
15 qualified, you know, to conduct that training but I think an
16 officer can get it done.

17 COMMITTEE MEMBER SHEN: This is Jennifer. I
18 wonder if there is a difference between teaching theory
19 versus teaching the practical applications. So maybe where
20 we wind up is that a CHP officer (indiscernible) and has had
21 all the training and simply needs to know how the new
22 instrument -- the differences of the software that the new
23 instrument may be using. Maybe can get that kind of
24 training from another experienced officer with X amount of
25 years experience. But to start from scratch and needing all

1 that theory, maybe that has to be supervised by the
2 laboratory.

3 MR. VON BEROLDINGEN: Comment from the public,
4 Linton again. That's what I intended, you said it more
5 clearly.

6 COMMITTEE MEMBER SHEN: Well I got my brilliant
7 idea from you and then I stole it. So I think that's a
8 great way to go.

9 CHAIRMAN KIMSEY: So the idea is to break up the
10 training into a theoretical and a practical?

11 COMMITTEE MEMBER SHEN: That makes it sound more
12 complicated.

13 CHAIRMAN KIMSEY: But if it solves the --

14 COMMITTEE MEMBER SHEN: That's the idea.

15 CHAIRMAN KIMSEY: But if it solves the issue I
16 think that's fine. We had another comment?

17 RESEARCH SCIENTIST SPELL: Yeah, Natallia Spell.
18 I would propose to arrange it this way. You put like a so-
19 called full session and a practical session. And a full
20 session will include the scientific part. And you assemble
21 the group of individuals who need training for both parts,
22 theoretical and practical. And the practical session could
23 be set up to be out-sourced to law enforcement officers who
24 are certified breath test instrument operators.

25 And the only, the only question here is to make a

1 definition of what should be, what should be the minimal
2 difference between one instrument to another. Like maybe
3 the same model, the same software. And then if that's the
4 case then it's only needed practical session for the
5 operator, not the whole theory.

6 COMMITTEE MEMBER HARMON: This is Jennifer Harmon
7 again. In theory what you're proposing makes a lot of
8 sense. In practice what you are asking of the laboratories
9 is that we have two parts of training. One that we have to
10 write to provide them all of the theory, we have to test
11 them, we have to make sure that they know it. You certify
12 them in that.

13 You then have to set up a second portion of
14 training where we now have to train a bunch of officers who
15 could or could see doing it or we're going to have to do it.

16 We have to set up a practical and a written exam to ensure
17 that they have done that. We have to certify them in that.

18 And not only do we have to do that but we have to maintain
19 all of the records and documentation and provide all of this
20 to everybody involved in the process. This information is
21 discovered all the time.

22 So the point I am trying to make is that from a
23 practical sense us asking that the laboratories give
24 officers four hours of training once or now we are going to
25 basically fragment off this training. And the burden on the

1 laboratories, although theoretically shouldn't be that
2 great, you're really basically now requiring two types of
3 training that we have to not only maintain, provide, write,
4 update, is not -- it's really not that simple in practice.

5 RESEARCH SCIENTIST SPELL: I'm sorry, maybe there
6 is a little misunderstanding. I was addressing the problem
7 when one officer transfers from one county to another with
8 substantially the same instrument, right, to operate the
9 same instrument. What I am saying in this particular
10 situation, to address this particular concern, the lab can
11 out-source the training to local law enforcement agencies.
12 Because somebody who is a certified operator already and
13 already gone through your training, it's just to address
14 this particular narrow problem. Because it seems like it is
15 a problem for law enforcement officers.

16 COMMITTEE MEMBER HARMON: The way the current
17 regulation is written is that the laboratories are obligated
18 to oversee that training.

19 RESEARCH SCIENTIST SPELL: Yes.

20 COMMITTEE MEMBER HARMON: So that's practical or
21 theory. So unless you're going to divide that out and the
22 practical portion of all that is not under the
23 responsibility of the laboratory whatsoever, then what
24 you're asking of the laboratories is a very fragmented
25 approach and not very efficient in their ability to kind of

1 get the training done so that everybody has what they need.

2 CHAIRMAN KIMSEY: So do we have a solution?

3 COMMITTEE MEMBER SHEN: It really comes down to
4 who do you (indiscernible), the laboratories or the CHP
5 officers.

6 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. To
7 further complicate things, I think we're all assuming that
8 we're talking about an instrument in a station that is
9 maintained by the laboratory. But we also have the whole
10 realm of permanent alcohol screening devices that are out
11 there with the CHP maintaining them, getting PAS
12 coordinators, doing their own training, doing their own
13 checking. I think we have to be a little bit careful that
14 when we are throwing things in here about the training we
15 are not making it impossible for the CHP to continue doing
16 it that way.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
18 Comment from --

19 COMMITTEE MEMBER JEFFRIES: It's my understanding
20 that it does vary from county to county but in some counties
21 the CHP is doing all the PAS training and PAS coordination,
22 in other counties the laboratories are doing it. And I'm
23 not sure we want to jump into that and make the CHP change
24 the way they do their business.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Comment from the public. We had a discussion many, many
2 meetings ago regarding PAS training. And although the
3 program suggested that it would probably be appropriate to
4 actually state this in regulation the belief is, unless
5 there is some legal problems with this conclusion, the
6 belief is that these regulations would not or should not
7 apply to -- should apply to evidential breath tests --

8 MR. VON BEROLDINGEN: Correct.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 -- and not to preliminary alcohol PAS testing.

11 MR. VON BEROLDINGEN: Correct.

12 COMMITTEE MEMBER JEFFRIES: I think that probably
13 is true but I am not sure that that's consistent everywhere
14 or that everyone would agree with that.

15 COMMITTEE MEMBER SHEN: Well, what are we going to
16 do?

17 CHAIRMAN KIMSEY: Mark, did you have a comment?

18 COMMITTEE MEMBER SLAUGHTER: I did. Some of the
19 preliminary alcohol screening devices are evidentiary. And
20 I would suggest that we just take out 1221.4(a)(4)(C). The
21 training seems that it's going to happen regardless, it's
22 just a matter of whether it's going to be a four hour
23 training or some fraction thereof. But it's still going to
24 happen, the training is still going to happen.

25 CHAIRMAN KIMSEY: And so you're suggesting that if

1 we took that out this would sort of leave it up to the
2 jurisdiction?

3 COMMITTEE MEMBER SHEN: Yeah, it would, actually.
4 Maybe that's the best way to go here. Because every breath
5 operator is going to have to have this initial training.
6 After that (audio breaking up).

7 COMMITTEE MEMBER LYLE: Bruce. I agree with that.
8 and you could sort of straighten it up a little bit by
9 removing what was suggested earlier, the 1221.4(a)(4)(C),
10 but adding into 1221.4(a)(3) where it says, "Breath alcohol
11 testing shall be performed only with instruments." Qualify
12 or add, "the instruments and software."

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 I don't think we got all that.

15 CHAIRMAN KIMSEY: Yeah, I think we're having a
16 little trouble with the microphone in San Diego. If you
17 could repeat that please, for us.

18 COMMITTEE MEMBER LYLE: I was agreeing with --
19 it's Bruce in San Diego. I was agreeing with deleting
20 1221.4(a)(4)(C) but adding into 1221.4(a)(3) where it says
21 "Breath alcohol testing shall be performed only with
22 instruments for which the operators have received training"
23 and adding "performed only with instruments and software for
24 which the operators have received training."

25 COMMITTEE MEMBER WONG: Instruments and software.

1 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. Would
2 that require you, though, to retrain everyone in every
3 department every time your agency updated their software?
4 We don't want to get into that. We don't want to say every
5 time you update your own software, even if it's a minor
6 change to the software, that we have to retrain everyone.

7 COMMITTEE MEMBER SHEN: I'm thinking our CHP
8 officers are just going to have to train over and over and
9 over again their whole career.

10 (Laughter.)

11 COMMITTEE MEMBER JEFFRIES: My suggestion is to
12 get rid of the words "used by the agency" in (a)(3)(B).
13 That way we're not making it specific to the agency anymore.

14 As a practical matter I doubt there's going to be
15 a lot of rogue CHP officers training each other at night. I
16 think it's going to be standard procedure in whatever county
17 they are to follow whatever the Department tells them to do.
18 I think we may be over-thinking this.

19 COMMITTEE MEMBER SHEN: Well, I don't know that we
20 want to take out "in current use by the agency" because this
21 is a detailed procedure of operation of the particular
22 instrument used by that agency.

23 COMMITTEE MEMBER WONG: Yeah, I agree.

24 COMMITTEE MEMBER SHEN: I agree with Dan, I think
25 we're over-thinking it. Because the bottom line is the CHP

1 officer going to new agency that's got new software that
2 does something different than he or she has been doing is
3 going to have to have training. And Dan's right, that
4 person will do whatever their department --

5 So does that leave us taking out 1221.4(a)(4)(C),
6 we're taking that out?

7 CHAIRMAN KIMSEY: That's the suggestion. And I
8 think it also affects 1221.4(a)(4)(A), a couple of sections
9 above that, with regards to who is going to be considered an
10 instructor.

11 COMMITTEE MEMBER SHEN: And I -- this is Jennifer.
12 I think that there needs to be laboratory supervision over
13 this.

14 CHAIRMAN KIMSEY: So we -- I guess it got started
15 here. On 1221.4(a)(4)(A) we would drop that introductory
16 part of the sentence and say, "The instructor will be an
17 FAA, or Forensic Alcohol Analyst, who has successful
18 completed the breath instrument training."

19 RESEARCH SCIENTIST SPELL: And has at least six
20 months.

21 COMMITTEE MEMBER SHEN: Well, I don't know -- and
22 not really being (audio breaking up). I don't know how
23 frequently officers are doing that training. It's been
24 indicated that, you know, it's something that's already sort
25 of been in the regulations as long as there was laboratory

1 supervision and we sort of indicated that a laboratory
2 person is on site during that training. Is that something
3 that's going on? Are we having officers there during
4 training across the state with a laboratory person there
5 supervising? We are not doing that. I don't know, I don't
6 know how prevalent that is.

7 COMMITTEE MEMBER DAVIS: This is Kevin. I have
8 never heard of that being done and I've never seen it done.
9 But we did have lengthy discussions about allowing it. I
10 seem to recall we even had discussions about, you know, the
11 officers qualifications. Who will be doing that and those
12 sorts of things. So I mean, this was vetted out previously
13 but it sounds like we're changing course now.

14 COMMITTEE MEMBER SHEN: Yeah, I'm sorry. I'm
15 remembering, remembering those.

16 COMMITTEE MEMBER WONG: This is Kenton in
17 Richmond. Kevin is right. We were really trying to
18 alleviate some of the burden on officers having to retrain
19 over and over again when they lateral from here to there and
20 everywhere and the 1221.4(a)(4)(C) was an attempt that. And
21 we were talking about laboratory developed computer modules
22 that an officer could sit through and not have to go through
23 all the theory of operation already when it's just a
24 practical change. That they just would just do the
25 practical. That was that whole -- like I said, it was a

1 whole attempt to try and alleviate the burden on the
2 officers.

3 COMMITTEE MEMBER DAVIS: And this is Kevin again.
4 Kenton is absolutely right. It's not the training that we
5 oppose, it's the timeliness of it. When I worked in San
6 Francisco I had to wait almost two full months in which I
7 couldn't use a breath testing machine in San Mateo County,
8 even though I had been trained on the exact same device in
9 three other counties. And when I finally got the training
10 nothing at all was different, it was the same thing. Quite
11 frankly, it was a waste of time. Yet, I had to -- every
12 time I made an arrest I had to call someone out off their
13 shift, off their beat, to come do my breath test.

14 And that just seems absurd, especially with
15 technology what it is. With training delivery mechanisms,
16 you now, available via, you know, via downloads and the
17 Internet. I would think that if it's essentially the same
18 training it could be delivered that way. So I am not
19 opposed to the training, I just don't see the need to be
20 retrained on-site, you know, by a laboratory person when
21 I've already been trained on a device and I've already been
22 trained on theory of operation.

23 COMMITTEE MEMBER SHEN: Well, I mean, changing
24 these regulations are to make all sorts of things better.
25 And if that is something we need to make better then we have

1 to figure out how to do that. And the only way I can see to
2 make that happen is to bifurcate that training so that you
3 just get practical, you're just getting practical training
4 the second time out. You have to. So then you're, you
5 know. Then you might be able to get away with -- you'd have
6 an officer do that training with (sound of rapping on a
7 table) training. So if you have an on-site officer that can
8 provide that training and he has a packet that's (audio
9 breaking up) given to him by the laboratory, then that's the
10 training that he needs to follow. I mean, that may be a way
11 we could accomplish that. It really becomes just a
12 practical matter of seeing the instrument in action and
13 pressing the buttons.

14 COMMITTEE MEMBER DAVIS: This is Kevin. Was there
15 someone from DOJ there in Richmond?

16 COMMITTEE MEMBER WONG: Yeah.

17 MR. VON BEROLDINGEN: Comment from the public;
18 this is Linton Von Beroldingen. Yes.

19 COMMITTEE MEMBER DAVIS: Linton, how -- it is my
20 understanding that with DOJ counties, which I believe are
21 about 40 of the counties if not more in the state, once
22 you're trained on the EPAS you can use it anywhere in the
23 state, correct? You don't need to be retrained when you
24 transfer from one county to another.

25 MR. VON BEROLDINGEN: Yeah. Just to be correct,

1 we are fielding something we call a PEBT, for Portable
2 Evidentiary Breath Test instrument. And yes, I think that
3 training certification would be portable across county lines
4 as long as the same instrument was being used.

5 And collaterally I am looking at 1221.4(a)(4)(C)
6 and it reads, "If a breath instrument operator trainee has
7 already undergone training to operate a different approved
8 breath testing instrument, the trainee may receive
9 instruction as above excluding the portion covering" what is
10 the theory. And maybe we should take out the word
11 "different" because it might be that in certain
12 circumstances that person was moving into a new area where
13 it was still the same instrument but there might be some
14 necessity in the opinion of the DA's Office or whatever that
15 that person needs to be trained by a representative from
16 within that jurisdiction.

17 COMMITTEE MEMBER DAVIS: I mean, the point I was
18 getting to is we're really talking about 11 counties in the
19 state that are not using DOJ EPAS or PEBT devices, right?

20 MR. VON BEROLDINGEN: That would be my perception
21 at the moment.

22 COMMITTEE MEMBER DAVIS: From my understanding,
23 it's a non-issue for us in DOJ counties and I believe
24 there's only 11 non-DOJ counties in the state.

25 MR. VON BEROLDINGEN: But some of them are pretty

1 big.

2 COMMITTEE MEMBER DAVIS: Right, no, I know. But
3 if I'm LA County it's the same device in all of LA County,
4 correct? So we're talking about --

5 COMMITTEE MEMBER HARMON: No, it's not.

6 COMMITTEE MEMBER DAVIS: Oh, it's not?

7 COMMITTEE MEMBER JEFFRIES: Unfortunately, in LA
8 County it's not even the same device throughout the county.
9 We've got the sheriffs have one instrument, the LAPD has
10 another instrument, a lot of the cities have their own
11 instruments. We've got a whole mishmash of issues within
12 that county. For instance, Central LA CHP or West LA CHP
13 may have three or four different cities that they have
14 freeways in and so they've got a cross-training going on.

15 COMMITTEE MEMBER WONG: This is Kenton in
16 Richmond. I think Linton is on to something. If we just --
17 on (4)(C) if we change -- take out -- scratch out
18 "different" and put instead of "a" an "an." "Operate an
19 approved." Once an officer has been trained to operate an
20 approved breath testing instrument it doesn't matter what it
21 is, the theory of operation is basically going to be the
22 same. Well, yes/no; because some of them are IR and EC and
23 some of them are just IR.

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 And some are just EC.

1 RESEARCH SCIENTIST SPELL: But the training
2 normally covered both of their theory.

3 MR. VON BEROLDINGEN: Public comment from Linton
4 again. There is a nice word in 1221.4(a)(4)(C) which in the
5 second line is "may." And that's really very important
6 because to some extent this training process is under the
7 supervision of the laboratory that supports the
8 instrumentation then I think it can be worked out that the
9 requisite level of training, which may not be the full --

10 COMMITTEE MEMBER WONG: It can be tailored.

11 MR. VON BEROLDINGEN: -- experience, can be
12 tailored to what needs to get done there. And I'm in
13 sympathy with Jennifer Harmon's concerns about having, you
14 know, to keep more records and things like that. But under
15 the lab supervision I would delegate to the law enforcement
16 agency that is going to do this practical training. And
17 again, it has to be under the laboratory's oversight
18 supervision or, you know, whatever you want to call it.

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 Comment from the public. The current regulations require
21 the laboratory to maintain records of the training so we'd
22 have to consider -- when you start subbing stuff out you
23 have to deal with that.

24 COMMITTEE MEMBER HARMON: This is Jennifer Harmon
25 again. You know, this is an example. I am not the largest

1 county, the laboratory that I am from, but I've got 33
2 different agencies. So 33 different law enforcement
3 agencies that would have to maintain all of that information
4 and train the trainer.

5 COMMITTEE MEMBER SHEN: This is Jennifer. I don't
6 think we want to take the -- I don't think we want to have
7 the documentation (inaudible) the laboratory at this point.

8 But I am in favor of leaving this a little bit, a little
9 bit under -- opening up the option but leaving it under the
10 purview of the laboratory to decide if that extra training
11 is necessary.

12 I just don't think we're going to be able to find
13 our way to have a perfect solution that everybody is going
14 to be happy with. The laboratories aren't going to be happy
15 with one, the CHP won't be happy with another way. But if
16 it's possible to write something where it goes back to, you
17 know, a departmental decision as to how it's going to work
18 that would be a little bit better.

19 CHAIRMAN KIMSEY: When you say "department
20 decision," Jennifer, you don't mean the Department of Public
21 Health, you mean the agency with which the laboratory is in,
22 correct?

23 COMMITTEE MEMBER SHEN: That's what I mean.

24 CHAIRMAN KIMSEY: Okay, thanks.

25 COMMITTEE MEMBER WONG: Right. So this is Kenton

1 in Richmond. I think in 4(c) Linton is right because that
2 last word "may," let's say in Jennifer Harmon's
3 jurisdiction, if she doesn't want to provide any practical
4 training without the theory portion and she just says, you
5 know, what, all of the officers down here in Orange County,
6 they all need to go through the full training and we are not
7 going to offer part and parcel just practical training, that
8 may be fine for her jurisdiction.

9 But maybe up in San Mateo/San Francisco, if they
10 just say, you know what, we've got half a dozen officers
11 that are lateraling from one or the other and they're the
12 same and they make arrangements with the lab in San
13 Francisco or San Mateo just to show up for an afternoon and
14 go over the practical portion then so be it.

15 But the word "may" in 4(C) allows the lab the
16 latitude to do what will work for their agency. And for
17 Lieutenant Davis and his guys, depending on the
18 jurisdiction, it's just going to be the way it is and that's
19 going to be too bad if you're in one area where, let's say
20 Jennifer says, everybody's got to get the four hour
21 training.

22 COMMITTEE MEMBER SHEN: That's Jennifer Harmon,
23 not Jennifer Shen.

24 COMMITTEE MEMBER WONG: Right, right, right,
25 right.

1 (Laughter.)

2 COMMITTEE MEMBER WONG: I didn't want to make you
3 out to be the bad guy, Jennifer Shen.

4 COMMITTEE MEMBER DAVIS: Just a question, going
5 back to earlier about that because I'm just -- just so I
6 understand it. Someone said there's several devices used in
7 LA County. Are they under the jurisdiction of several
8 different labs? Because it is my understanding it's one LA
9 County lab. Do I not, am I not understanding that
10 correctly?

11 COMMITTEE MEMBER JEFFRIES: We have about half the
12 counties covered by the sheriff and I think he's using a
13 Data Master. And the other half is mostly LAPD and I think
14 we are now on an ECIR.

15 COMMITTEE MEMBER HARMON: And then Long Beach.

16 COMMITTEE MEMBER JEFFRIES: And then there's Long
17 Beach also. And then I think there may even be one other
18 city, maybe Pasadena might have their own. One of the other
19 cities has their own also.

20 COMMITTEE MEMBER DAVIS: But, I mean, all those
21 devices are under the jurisdiction of separate labs?

22 COMMITTEE MEMBER JEFFRIES: Yes, they are.

23 COMMITTEE MEMBER DAVIS: Okay, I was just curious.

24 COMMITTEE MEMBER SHEN: Your officers aren't doing
25 a lot of lateral transfers between LAPD and LASO, are they?

1 COMMITTEE MEMBER JEFFRIES: No, but the problem is
2 that some of our CHP offices like the CHP's East LA office
3 has jurisdiction within both the city of LA and the outside
4 unincorporated area. So depending on where they make an
5 arrest they may take a person to a sheriff's Data Master or
6 they may them to an LAPD ECIR.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 Comment from the public. We are talking only about four
9 hours of training. A number of states have an eight hour
10 requirement; there's a state that has 40 hours. So if
11 you're going to split -- you're saying that the guys will
12 take an afternoon off. If you're going to some training for
13 -- four hours is an afternoon, it's not a huge burden.

14 COMMITTEE MEMBER DAVIS: But Clay, I think you're
15 missing the point. If I transfer into an area on May 1st.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
17 Right.

18 COMMITTEE MEMBER DAVIS: And the lab is not
19 available to train me until September 1st, that's several
20 months of me not being able to do breath testing on my own.
21 And every single time I need to call someone else to come
22 do it and take them off their shift.

23 CHAIRMAN KIMSEY: Right. And this is Paul and
24 that sort of gets to the -- not that we need to put this in
25 regulation but it does get to the practical aspect of how

1 frequently do laboratories generally offer training. I
2 mean, do you wait --

3 COMMITTEE MEMBER DAVIS: I hope it's changed but
4 I've had to wait several months in some counties.

5 COMMITTEE MEMBER WONG: I think that's not
6 uncommon.

7 RESEARCH SCIENTIST SPELL: Seven months?

8 COMMITTEE MEMBER WONG: No several months.

9 RESEARCH SCIENTIST SPELL: Several, okay.

10 COMMITTEE MEMBER HARMON: Can you repeat that,
11 please.

12 CHAIRMAN KIMSEY: I just said, I guess from a
13 practical perspective it really gets -- and I am not sure we
14 can cover this in the regulations but the practical question
15 was, how frequently do laboratories offer training. The
16 comment was that sometimes two months is not unusual.

17 COMMITTEE MEMBER SHEN: That's true. In my
18 laboratory we offer that training every other month.

19 COMMITTEE MEMBER WONG: When I was with San Mateo,
20 this is Kenton in Richmond. When I was in San Mateo we just
21 used to get a list from the training officer at the CHP
22 Academy from various locations and when we got like a list
23 of, I think, 20 or 25 then we'd say, okay, we're going to
24 throw a class on.

25 Otherwise people would just say, I've lateraled

1 and now this office has six guys and this office has two
2 guys and we would just wait until there was enough to really
3 make it worthwhile. So Lieutenant Davis is very correct
4 that you could wait months until there's like enough people
5 to really make it worthwhile to throw a class and you're
6 just like hanging out in the wind.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 But there is nothing to guarantee that if you offered Breath
9 Testing Light, a two-hour course, that that would be
10 scheduled any more frequently.

11 COMMITTEE MEMBER WONG: No. But like I said, with
12 the word "may" on the (4)(C) it can give the laboratory
13 latitude to say, you know what, if you've got half a dozen
14 officers that just lateraled and they just need a practical,
15 maybe they can swing by the lab on a Thursday afternoon and
16 just make it happen, you know. Something like that. I'm
17 just saying it just gives them a lot more freedom to do
18 that.

19 COMMITTEE MEMBER JEFFRIES: And I think we even --
20 as it's currently worded, if we don't make changes to it, it
21 theoretically could be possible for an officer to -- if
22 their laboratory is okay with it, to be trained by another
23 officer. Because as it's currently worded we are only
24 requiring the breath instrument operator trainees to be
25 trained by a certified breath instrument operator. The

1 curriculum is developed through a forensic alcohol analyst.

2 So if the curriculum allows for it then the CHP could do
3 their own training on the practical part.

4 CHAIRMAN KIMSEY: And so breaking up the training
5 gets to the point, if there is sort of a didactic part of
6 the training and then there's a practical part. Would it be
7 helpful -- obviously we are in the 21st century. Could some
8 of this theoretical and didactic training be on-line and be
9 sort of statewide? Is there an organization or a company
10 that has an instrument that has thought about something like
11 that? Because if you've checked that box and you come out
12 with a certificate of an on-line theoretical training and
13 you come in and say, I need a practical part of the
14 training, maybe that would be easier for the laboratories to
15 do on a more as-needed basis. In other words, maybe you
16 only need six people, you know. I don't know, I'm just
17 trying to think a little bit outside the box to try and
18 solve what probably is not a regulatory issue, actually.

19 COMMITTEE MEMBER SHEN: This is Jennifer. I think
20 that we are all going -- we're probably going to be going
21 that way but I don't know that we want to -- I don't know
22 that we can (inaudible) back here.

23 I think leaving this -- I think leaving this the
24 way it is gives the -- gives the flexibility that we're
25 looking for. And then I think we just need to tighten down

1 perhaps the (indiscernible) on 1221.4(a)(4)(A).

2 COMMITTEE MEMBER WONG: Yes.

3 COMMITTEE MEMBER SHEN: I am in favor --
4 (indiscernible). But I'm favor of leaving this the way it
5 is and really leaving us with the agencies to decide what is
6 or is not appropriate as far as completeness of the training
7 beyond the practical aspects.

8 CHAIRMAN KIMSEY: So if we're thinking we sort of
9 now like our 1221.4(a)(4)(C) minus different. I'm just
10 trying to summarize here and move along.

11 If we go back up to 1221.4(a)(4)(A), we did have
12 some pretty strong comments, I believe from Jennifer Harmon,
13 that they wanted the -- that she wanted the instructor
14 really to be limited to a forensic alcohol analyst and not a
15 certified breath instrument operator of two years
16 experience.

17 COMMITTEE MEMBER WONG: This is Kenton in
18 Richmond. I think what we need to do is we need to make the
19 distinction that for (a)(4)(A), that that instructor portion
20 will only be for a practical portion, not the theory.
21 Because then I think we're good, right?

22 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
23 I'm not sure we even need to go there because we have in
24 1221.4(a)(4) that the curriculum is developed by the
25 forensic alcohol analyst. So the curriculum is going to be

1 set by the forensic alcohol analyst anyway. And if that
2 curriculum requires the training to be conducted by whoever
3 they decide is appropriate in that particular jurisdiction,
4 that's how they'll do it in that jurisdiction.

5 COMMITTEE MEMBER DAVIS: Good point.

6 CHAIRMAN KIMSEY: So basically then we can leave
7 1221.4(a)(4)(A) alone.

8 COMMITTEE MEMBER JEFFRIES: With -- except, I
9 guess -- I think it was Clay's comment that it should be a
10 singular analyst instead of analysts so that no one argues
11 that you have to have two of them working in conjunction.

12 CHAIRMAN KIMSEY: Okay.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 Comment from the public since I'm getting credit for that.
15 I think I would have concern, and I think whoever reviews
16 these regulations might have concern over the -- as I said
17 before, I think the language "develop a curriculum" is very
18 vague. Every state regulates this testing and every state
19 does it in order to assure some kind of, some level of
20 scientific oversight.

21 And although I don't necessarily think any of the
22 labs represented here would do this, I think it's
23 conceivable that that language is so vague that could be a
24 very brief summary of training developed by an analyst. It
25 doesn't actually say the analyst is associated with the

1 laboratory so he could do it, he could run around the state
2 and do this. A very brief description of the training which
3 is simply handed off and the lab has very little or no
4 involvement in the training subsequent to that.

5 The current language which requires that a
6 laboratory person, a laboratory staff supervise the training
7 I think was much stronger and placed California in the
8 position where it was more like the other states. I think
9 the path you're going here will make California different
10 than the other 49 states.

11 COMMITTEE MEMBER WONG: This is Kenton in
12 Richmond. Clay, I disagree with you. Because for
13 1221.4(a)(4) the training curriculum goes back to everything
14 that's stated in 1221.4(a)(3) and then all the bullet points
15 (A) through (E). So it's clearly spelled out. It's not
16 just loosey-goosey what the training curriculum is going to
17 be developed by the forensic alcohol analyst. It tells what
18 has to be in there.

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 And conceivably each of those points could be summarized. I
21 don't if that's going to happen but a one sentence statement
22 and that's handed out. It would just be handed out on one
23 eight and a half by eleven piece of paper. The training is
24 provided, the laboratory hands it off and that's it.

25 The current model involves -- the laboratory,

1 again, is supervising. They evaluate the exams. There's an
2 oversight there that is described in the regulations. Maybe
3 it should be described a little more clearly. But I think
4 this very vague language, "develop a curriculum" could lead
5 to situations where there was no scientific oversight of the
6 training.

7 COMMITTEE MEMBER SHEN: This is Jennifer. You
8 know what, I wonder, Clay. You're big on this. I tell you,
9 I think supervision by the laboratory is very vague. And
10 you are interpreting to mean that someone is on-site but
11 that is your interpretation only.

12 So, I mean, I don't have a problem with the
13 laboratory -- again, all our training is done by our
14 chemists so I don't have a problem with having laboratory
15 involvement. But I think this is simply saying laboratory
16 supervision. And then you interpreting what that means for
17 a lab is not what we want to do.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Okay, so we can define in the regulation what it means,
20 that's fine. But I think developing a curriculum is even --
21 I suppose the Department could interpret that as active and
22 on-site.

23 COMMITTEE MEMBER SHEN: I think the words
24 "developing a curriculum" are less vague than "supervising."
25 So what does that mean? What do we want? What kind of lab

1 involvement do we want to mandate exactly?

2 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
3 Lieutenant Davis, do you -- are there any programs in the
4 state that the scientists are not doing the breath operator
5 training that you know of?

6 COMMITTEE MEMBER DAVIS: No, not that I know of.

7 COMMITTEE MEMBER HARMON: Okay. Is it the desire
8 of the CHP to change the regulation to make it different
9 than what it is in practice right now? Is the hope of the
10 CHP to make it possible for operators -- you know,
11 instructors, operator-instructors to be law enforcement?

12 COMMITTEE MEMBER DAVIS: Well, it's not a simple
13 yes or no answer. Our hope is that when our officers do
14 transfer from one county to another and they're operating
15 the same device, it's problematic for us to have to wait,
16 like we've already talked about, one, two, sometimes more
17 months for them to be allowed to use a device they already
18 know how to use, simply because we haven't been able to
19 schedule on-site training.

20 So we're not opposed to training and retraining.
21 It's the having to wait for it and essentially our officers
22 are sitting on their hands with regards to doing alcohol
23 testing.

24 You know, most officers working night shift use
25 the device at least once a night, sometimes two or three

1 times a night. And if for two months I need to call someone
2 else out away from what they're doing every time that
3 occurs, that's what is problematic for us.

4 I think the reason for the officer delivering the
5 training. That was talked about, if I recall correctly, as
6 a compromise to allow us to get it done quicker. I mean, if
7 we -- if you allow an officer to do the practical delivery,
8 we could do it the day the officer reports to the office and
9 we erase that issue. Likewise, an on-line course would
10 erase that issue. There's ways around it. I just think the
11 only thing we're opposed to is having to wait any time, let
12 alone several months, for lab personnel to come on-site to
13 our office to deliver training, especially when it's a
14 device we've already been trained on.

15 COMMITTEE MEMBER SHEN: Practically speaking, if
16 there is a situation where your officer had to -- on hiring
17 would go to the laboratory and then whatever time he needed
18 with an analyst going over the procedures, that would solve
19 your problem. So it isn't that you need an officer to do
20 the training, you need not to wait.

21 COMMITTEE MEMBER DAVIS: We need the ability.
22 Whether it's on-line, whether it's an officer doing it, we
23 need the ability to get our folks trained quicker when they
24 do transfer from one county to another.

25 COMMITTEE MEMBER HARMON: Is this something --

1 COMMITTEE MEMBER DAVIS: It's impossible -- yeah,
2 go ahead.

3 COMMITTEE MEMBER HARMON: Sorry. Is this
4 something that needs to be written into the regulation or is
5 this something that you just need some sort of commitment
6 from the laboratories to provide more timely training? Is
7 it that you're opposed to having an alcohol analyst doing it
8 or is it that you just need more timely training?

9 COMMITTEE MEMBER DAVIS: I mean, I can't speak --
10 you know, I can't speak for -- I would assume, I would like
11 to assume that all of our offices have a good relationship
12 with their labs and if that request was made to make it more
13 timely it would occur. I just -- if I recall, these
14 discussions went back to the issue of transferring around
15 and the need to get it done more timely. And I think the
16 thought was -- at the time there was a consensus that for
17 the practical part of it there was no need to have a lab
18 person present to do that.

19 COMMITTEE MEMBER JEFFRIES: So as it's written
20 here does that prohibit you from allowing that to happen?

21 COMMITTEE MEMBER DAVIS: Sorry, we couldn't hear
22 you here.

23 COMMITTEE MEMBER JEFFRIES: As it's written here
24 does it prohibit you from allowing that to happen? Because
25 it seems like the way it's written right now you could do

1 that.

2 COMMITTEE MEMBER DAVIS: You mean the proposed
3 language or the current language?

4 COMMITTEE MEMBER JEFFRIES: What I'm looking at
5 right here on this piece of paper in this packet.

6 COMMITTEE MEMBER DAVIS: Yeah, yeah, yeah. Yeah,
7 the proposed language would be fine with us. I just thought
8 I heard some people saying they didn't like the idea of
9 officers doing it. But the current language would allow it.

10 COMMITTEE MEMBER SHEN: This is Jennifer. What I
11 would like to see and I would feel very comfortable with is
12 that any training that incorporates the theory could be done
13 by a lab person. Any training that is simply the practical
14 application only could in fact be done by an officer
15 following the curriculum set forth by the laboratory.

16 COMMITTEE MEMBER WONG: I concur.

17 COMMITTEE MEMBER SHEN: I'm totally fine with
18 that. But I wouldn't want to see the entire training
19 handled by an officer versus a trained laboratory person.

20 COMMITTEE MEMBER DAVIS: Yeah, and I think we'd be
21 fine with that too, provided that we wouldn't have to repeat
22 training over and over again.

23 COMMITTEE MEMBER SHEN: Right.

24 COMMITTEE MEMBER LYLE: It doesn't look like you
25 have to.

1 COMMITTEE MEMBER WONG: I totally agree with that.

2 COMMITTEE MEMBER HARMON: It looks like it could
3 be vetted out pretty simply by just directing that
4 1221.4(a)(3)(A) must be provided by a forensic alcohol
5 analyst, at minimum. And that 1221.4(a)(3)(B), (C) and (D)
6 can be provided by a forensic alcohol analyst or a certified
7 breath instrument operator with two years of practical
8 experience.

9 FOOD AND DRUG LABORATORY CHIEF MOEZZI: Yes.

10 COMMITTEE MEMBER HARMON: And you obligate the
11 theory to be taught by the scientists and you open the
12 ability to teach the practical portion, which could be just
13 instrument-specific information to anybody who has at least
14 two years of experience.

15 CHAIRMAN KIMSEY: This is Paul; that seems to
16 work. I'm assuming that then if you have ever had the
17 theory of operation presented to you by an alcohol analyst
18 you could get (B), (C) and (D) from a non-laboratory person
19 approved by the jurisdiction in a separate setting, I guess.
20 So you wouldn't have the full training again and again and
21 again.

22 COMMITTEE MEMBER HARMON: Correct.

23 COMMITTEE MEMBER SHEN: This is Jennifer. I like
24 that. And I'm wondering if we just put that -- if we --
25 should we add a subsection to 1221.4.(a)(4)(A) or do we just

1 put it in that paragraph, the verbiage that Jennifer just
2 gave us as part of that paragraph? Where do we put that?

3 CHAIRMAN KIMSEY: I would think if put, expanded
4 1221.4(a)(4)(A) again to talk a bit about what -- we
5 basically have two instructors, which is outlined here. We
6 have the non-forensic alcohol analyst. And we could just
7 say that individual can instruct in (B), (C) and (D). And
8 that further, the alcohol analyst can instruct in (A)
9 through (D). Something along that line might suffice.

10 COMMITTEE MEMBER SHEN: So the way this would read
11 then, would it stay the same? The instructors will be, at a
12 minimum, a certified breath instrument operator with two
13 years of experience, or an FAA or a forensic alcohol analyst
14 who has successfully completed blah-blah-blah. And then add
15 the additional language of, you know, this person can teach
16 that and the other person can teach this? Or would we
17 rewrite the top part of it?

18 CHAIRMAN KIMSEY: No, I think the top part, unless
19 there was a conflict, unless it doesn't reflect what we are
20 trying to say in the second sentence. But I think the top
21 part might be able to stay alone as long as the next
22 sentence outlines which type of trained instructor has what
23 responsibility.

24 COMMITTEE MEMBER SHEN: Okay. I actually -- since
25 I'll have to update this I'd like to have that spelled out.

1 Does someone want to spell that out for me?

2 COMMITTEE MEMBER JEFFRIES: I think maybe if you
3 just put, keeping -- this is Dan Jeffries. Keeping
4 1221.4(a)(4)(A) the same, just adding new language at the
5 end saying, Training in the theory of operation pursuant to
6 1221.4(a)(3)(A) shall be conducted by a forensic alcohol
7 analyst, or whatever the correct language is for an FAAT.

8 COMMITTEE MEMBER SHEN: And then what? Training
9 in the theory of operation pursuant to section code shall be
10 conducted by a forensic alcohol analyst.

11 COMMITTEE MEMBER JEFFRIES: Period.

12 COMMITTEE MEMBER SHEN: Period.

13 COMMITTEE MEMBER DAVIS: I think so.

14 COMMITTEE MEMBER LYLE: Because the instructor for
15 the rest of it doesn't have to do that.

16 COMMITTEE MEMBER SHEN: Well, that's true.

17 MR. VON BEROLDINGEN: Public comment; this is
18 Linton from the Department of Justice in Richmond. There
19 was a thought floating around a little while ago about the
20 fact that there are several different flavors of theories of
21 operation of breath alcohol analysis instruments. So my
22 question is, do we want to make sure that the theory of
23 operation includes everything that's out there or do we want
24 to make sure that the theory of operation applies to the
25 instrument in question?

1 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
2 If you look at -- as it's written down, theory of operation,
3 as I understand it, you have one, two, three and four that
4 explain kind of theory of alcohol testing in general. But
5 as far as 1221.4(a)(3)(B), you have to have a detailed
6 procedure of operation, which is about the methodology that
7 the individual will be using. So if someone is using fuel
8 cell and somebody else is using IR, that would be covered in
9 (B) and would be -- it could be jurisdictional appropriate
10 depending on where they're at. So I don't think that you
11 need to put that in theory of operation as well.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
13 Comment from the public. I think that would be inconsistent
14 the way it's been taught in the past. Detailed procedure of
15 operation is -- typically meant what button to push and what
16 prompt to respond to and what checklist to fill out. The
17 theory of operation, you don't want it to be too deep but
18 whether it's infrared spectrometry or fuel cell
19 electrochemistry, I would suggest that may not be the best
20 topic for the law enforcement personnel to handle.

21 CHAIRMAN KIMSEY: And so we would want that sort
22 of broad, all type of instrument theory coverage in the
23 theory of operations. And maybe it's just not explicit
24 enough. I don't know. It says under the iii, up there it
25 says, "Theory of breath alcohol analysis." I would think

1 that would be interpreted in a broad way but maybe not.

2 MR. VON BEROLDINGEN: Question from the public;
3 this is Linton. Mr. Jeffries, when it gets to court it's
4 unlikely, in my experience, that the arresting officer who
5 conducted a breath test of the subject arrested will be
6 likely to talk too much about the theoretical basis for the
7 measurement.

8 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.
9 Yes, that's absolutely correct, I have never seen an
10 officer testify to that. However, they almost always will
11 be asked on the stand, were you trained in the theory of
12 operation, were you trained in the detailed procedures of
13 operation. As long as the officers will say, yes, I was
14 trained in the theory of operation, I can't explain it to
15 the jury but I was trained in it, that's all we ask them to
16 be able to respond.

17 CHAIRMAN KIMSEY: So do we have a solution?

18 COMMITTEE MEMBER SHEN: This is Jennifer. I'm
19 wondering -- Clay's point that the theory of operation is
20 the correct verbiage there. Because we are really actually
21 not talking about the theory of how this operates. I mean,
22 that's just kind of what it said in the past. But we're
23 actually talking about why we're even doing this kind of
24 testing. You know, how it works based on your body
25 functions really versus the theory of the operation of the

1 instrument. Maybe that needs to be called something else.

2 CHAIRMAN KIMSEY: The theory of breath alcohol
3 analysis?

4 COMMITTEE MEMBER SHEN: Yeah, I like that better.

5 MR. VON BEROLDINGEN: Well that's what's there.

6 COMMITTEE MEMBER SHEN: Yeah, well.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
8 But that would cover also still physicochemical principles
9 and physiological principles.

10 CHAIRMAN KIMSEY: Is that a problem?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
12 I don't think that it -- it's a problem if you switch
13 instruments and they have different physical chemical
14 theories. Then you're back to needing the trainee to go
15 through the whole course.

16 COMMITTEE MEMBER SHEN: It's my thought that we
17 should make 1221.4(a)(3)(A) all about everything except for
18 the instrument. So what do we want to call that? Because
19 if we're going to do this we don't have to go through this
20 theory of how this all works section again. You're right,
21 we don't want to have in here something about IR versus, you
22 know, fuel cell. We want to make sure that that is part of
23 procedure of operation.

24 CHAIRMAN KIMSEY: You wouldn't want to cover the
25 theory or the difference of those various methods?

1 COMMITTEE MEMBER SHEN: Well, if we were going to
2 do that, I mean, and that's another option. If under the
3 theory of operation, if under (A) we need to cover how all
4 the different types work, then -- why would we do that,
5 that's a lot? I mean, the officers, frankly don't care
6 about this information.

7 COMMITTEE MEMBER WONG: True.

8 COMMITTEE MEMBER SHEN: So instead of teaching
9 them about one theory that we would be using in our
10 laboratory we'd be teaching, in order to cover ourselves we
11 have to discuss all of the different types of
12 instrumentation that are out there and that doesn't seem
13 like a good plan.

14 COMMITTEE MEMBER DAVIS: This is Kevin. Just
15 again going back to practice. I know, having been through
16 the training in about five different counties years ago,
17 that theory boiled down to telling us if it was an IR or a
18 fuel cell device. And that was usually a question on the
19 test, which is it, A or B, and that was the extent of it.
20 So, I mean, if that was -- if that continued we'd be fine, I
21 think, to cover both.

22 COMMITTEE MEMBER SHEN: And I guess, in my
23 opinion, we could stick that under Detailed Procedure of
24 Operation. Hey, this is an IR, this is how you make it
25 work.

1 COMMITTEE MEMBER DAVIS: That's all I've ever been
2 taught.

3 COMMITTEE MEMBER SHEN: You know, there is no
4 reason that that can't go under Detailed Procedure of
5 Operation. And then it doesn't matter if you switch places.
6 You know, not only do you switch jurisdictions but the
7 total, fundamental types of instruments you still can skip
8 out on the theory of operation part because you won't have
9 that part to be taught.

10 CHAIRMAN KIMSEY: This is Paul. I'm sort of
11 interjecting here as the Chair. We have less than a half
12 hour left. We've spent quite a bit of time, very positive
13 discussion on this bullet.

14 Subcommittees, if I remember correctly, can only
15 be two people. Are there two people that would sort of want
16 to take on presenting some recommendations to us next time?

17 In other words, sort of -- do we need more discussion? Can
18 we move on to Bullet 4? Are there two people that would
19 volunteer to sort of polish this up for us for next time?
20 Or do we want to spend more time and sort of get through
21 this and not have time for Bullet 4 and some other next
22 steps?

23 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
24 I have no problem assisting, I am just not really sure what
25 it is that we are not getting. I don't know that the

1 Committee has any disagreement about how to set up.

2 COMMITTEE MEMBER JEFFRIES: Dan Jeffries. The
3 only thing that I am not clear on is do we want the
4 scientists to teach everyone both ECIR technology and
5 something else that's being used, a fuel cell technology?
6 Or do we want the labs, the scientists to only teach the one
7 that they're using in their particular county?

8 Because if we set it up for the theory of
9 operation to be done by the scientists and we require them
10 to talk about either method, then we're going to have to
11 have them covering both methods. If we change it so the
12 officers are talking about it then you've got the difficult
13 situation where you've got a police officer teaching
14 science.

15 COMMITTEE MEMBER WONG: No.

16 COMMITTEE MEMBER DAVIS: This is Kevin. Every
17 time I've had this training they've gone over both, in at
18 least the five different counties I've been in. So I don't
19 know why we would change, change that.

20 COMMITTEE MEMBER SHEN: Maybe we just leave it
21 that way.

22 COMMITTEE MEMBER DAVIS: But it's a very, very
23 brief overview of it, like one slide.

24 COMMITTEE MEMBER JEFFRIES: If that's the case
25 then we could solve all this by adding a number v. under

1 theory of operation to just say "Methods of forensic alcohol
2 testing."

3 And then under (a)(3)(B) we could just change it,
4 instead of "methodology of analysis" we could just say
5 "procedures of operation for the specific breath alcohol
6 testing instruments."

7 COMMITTEE MEMBER DAVIS: I agree.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
9 Kevin, are you suggesting that when you were trained --
10 because you go back a long ways I know -- on the Intoxilyzer
11 5000, you were at the same time trained on electrochemical
12 fuel cell techniques?

13 COMMITTEE MEMBER DAVIS: Well again, when I say
14 trained I use that term loosely. I was informed that this
15 was the technology this device used. I might have gotten a
16 very, very brief explanation of that and I might have been
17 -- and then I was told that that is different from fuel cell
18 technology used like in PAS devices and how that operates.
19 So my recollection is yes, I have, I was, although very
20 briefly on both.

21 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
22 You know, from a perspective of testimony, this is not an
23 area that we -- that really should be expected of the
24 officers. And obligating so much information for them to
25 know and thinking we can convey all of that in four hours is

1 an unreasonable expectation.

2 And it should be an expectation of a scientist who
3 gets hundreds and hundreds of hours of training on this and
4 reading and review. And that information should be elicited
5 from the scientist and not an expectation of the officers.

6 So legitimizing the need for them to have all of
7 this information in the regulation is also kind of having an
8 unfair expectation of these officers to be able to deliver
9 certain information that is really not something that they
10 should be obligated to know and have information on. So to
11 minimize that would probably be better for the officers
12 themselves and that should be an obligation of the
13 scientists that are providing, you know, the expert
14 testimony on the scientific matters.

15 CHAIRMAN KIMSEY: Yeah, I don't think anyone would
16 disagree with that. I mean, that seems to be the standard
17 of practice currently. So I think part of what we don't
18 want to lose track of is that by having the alcohol analyst
19 be responsible for the theory of whatever we're going to
20 call it, instruction-operation, then an officer wouldn't
21 have to go through that again if they went to another
22 county, they would just be going through (B), (C) and (D).
23 So as long as we feel that what's in theory of operation is
24 sort of a one-time instruction then I think we're fine.

25 COMMITTEE MEMBER SHEN: This is Jennifer. I think

1 if we add that side, that is the breath alcohol testing, you
2 know, you can say, hey, you can do it this way or you can do
3 it that way. And then when you get to the detailed
4 procedure of operation that could be taught by an officer.
5 That officer doesn't have to even, doesn't have to go down
6 that road at all. So I personally like that.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 Well let me put in two cents. I think every state, and I've
9 looked at training for some other ones, every state includes
10 a scientific component. And I would submit that maybe if
11 you think about it, there may be some indirect value in
12 having the officer treat the device as something other than
13 a complete black box. Because I think that would enable him
14 to recognize that there could be contaminants in the room
15 that create problems and the nature of those contaminants.

16 It's a fact that every state does this. I mean,
17 basically we have technically unsophisticated people in many
18 cases doing scientific measurements. I think it's -- I
19 don't -- I wouldn't shy away from the value. And it may
20 stick more with some than others, the value of having some
21 scientific grounding. Maybe four hours training is not
22 enough. You know, if Kevin's right and you're only getting
23 two sentences worth of theory I think that's unfortunate. I
24 think there could be, I think there is value in providing a
25 little scientific background as to how the instruments work.

1 CHAIRMAN KIMSEY: Clay's comment led me to think
2 of a possible -- we have theory of operation for
3 1221.4(a)(3)(A) and there was some concern about the theory
4 of operation. Maybe we should just have it as scientific
5 theory. I mean, sort of point to it that this is where the
6 science is and the theory. And the (B), (C) and (D)
7 obviously get into more, you know, practical hands-on.

8 RESEARCH SCIENTIST SPELL: May I have a comment?

9 COMMITTEE MEMBER SHEN: This is Jennifer. I
10 think, I think we're good.

11 CHAIRMAN KIMSEY: Okay.

12 COMMITTEE MEMBER SHEN: If we add the "v." on to
13 this to get some of that scientific information that the
14 criminalist is -- not the criminalist -- the FAA is mandated
15 to keep, blast 1221.4(a)(4)(C in a manner that accomplished
16 one of the CHP's goals. So I guess in my opinion we're
17 good.

18 CHAIRMAN KIMSEY: Okay. Other feelings from the
19 Committee?

20 COMMITTEE MEMBER JEFFRIES: Dan Jeffries; I agree
21 with Jennifer. I think we also -- I think we've already
22 talked about it. I think we need to strike the word
23 "different" from (a)(4)(C) and make it "an" instead just to
24 be consistent with what our new concept is.

25 CHAIRMAN KIMSEY: And so let's just summarize.

1 We're going to make that change as Dan just outlined, drop
2 "different." We're going to add a "v." to Section
3 1221.4(a)(3)(A) which will say "Method of forensic alcohol
4 testing." We're pretty much leaving everything else? No,
5 we're going to add -- Jennifer had a sentence for
6 1221.4(a)(4)(A) to add on to the instructors about what they
7 will be teaching, there was a sentence there. Other
8 changes?

9 COMMITTEE MEMBER JEFFRIES: My suggestion was that
10 we drop the word "methodology" out of (a)(3)(B) and call it
11 procedures, just so that it's clear we are not -- I am not
12 sure what "methodology" means. Does that mean scientific
13 theory? If you just call it procedures I think it will make
14 it clearer that it just means the hands-on procedures to the
15 officer.

16 COMMITTEE MEMBER WONG: I like that.

17 CHAIRMAN KIMSEY: Okay. I haven't heard any
18 counters to that so we'll put in that.

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
20 Comment from the public. We also discussed, someone can
21 bring this up, discussed that possible change in
22 1221.4(a)(3). Lieutenant Davis pointed out that currently,
23 if you read it literally although the Department does
24 interpret this differently, literally could mean that once
25 you've had training on an instrument then you're good,

1 you're good to go.

2 So he suggested some changes in that to -- you
3 know, I could see two ways to go. It could be performed
4 only with instruments and procedures for which the operators
5 have received training or you could say, only the
6 instruments for which the operators have received training
7 by the laboratory that has jurisdiction over the breath
8 testing. Since jurisdiction is defined in another section.

9 There was some discussion over making 1221.4(a)(3) specific
10 for training conducted by a given laboratory.

11 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.
12 I think we should leave it as it is.

13 COMMITTEE MEMBER SHEN: I agree.

14 COMMITTEE MEMBER HARMON: We've obligated that the
15 laboratory write the curriculum. We've obligated that
16 forensic alcohol analysts provide theory of operation. And
17 we obligate them to go through a detailed procedure of
18 operation, precautionary checklist, practical experience, on
19 instruments in which they have training for.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 Well, you know, I think -- as Lieutenant Davis points out,
22 maybe he can chime in because he's a member of the
23 Committee, a little interpretation with that. If I had been
24 trained on the 7510 somewhere, maybe in California, maybe
25 another state. Then I have had training on that instrument

1 and I would never have to take training on that instrument
2 again.

3 CHAIRMAN KIMSEY: So it gets to the reciprocity
4 between counties. I mean, if you had training on an
5 instrument in San Mateo does that mean when you go to San
6 Francisco you don't need any additional training? I don't
7 know, maybe -- it might be worth putting in something here
8 about jurisdiction just so the jurisdictions can feel
9 comfortable. Somebody coming from another jurisdiction
10 understands or there is some -- I don't know, maybe there is
11 reciprocity.

12 COMMITTEE MEMBER HARMON: It does say procedure of
13 analysis for the specific breath alcohol testing instrument
14 used by the agency. CHP Santa Ana does not use the same
15 instrument that CHP South LA does.

16 COMMITTEE MEMBER WONG: Right.

17 COMMITTEE MEMBER HARMON: So you cannot go from
18 CHP South LA down to CHP Santa Ana and be able to use their
19 instrument based on the regulation as this is written.
20 Because you are not using an instrument that is used by that
21 agency.

22 COMMITTEE MEMBER WONG: Right.

23 CHAIRMAN KIMSEY: Okay.

24 COMMITTEE MEMBER WONG: You're precluded.

25 COMMITTEE MEMBER SHEN: Good?

1 CHAIRMAN KIMSEY: Good.

2 COMMITTEE MEMBER WONG: Yes.

3 CHAIRMAN KIMSEY: Anything else on Article 7?

4 Okay, Jennifer Shen, it's your turn to talk about
5 Bullet 4.

6 COMMITTEE MEMBER SHEN: Right, Four. "Remove
7 requirements for a laboratory to provide CDPH with records
8 of its activities under the regulations, including
9 notification by a laboratory of its intent to perform
10 alcohol analysis."

11 "To provide oversight, the committee agrees that
12 the Department will need to have knowledge of the activities
13 of the laboratory and its staff. Therefore we propose to
14 add the following language."

15 "Every laboratory performing (audio breaking up)
16 will have on record (audio breaking up)."

17 CHAIRMAN KIMSEY: Jennifer, you're breaking up a
18 little bit.

19 COMMITTEE MEMBER SHEN: "1216(a). Every
20 laboratory performing forensic alcohol analysis will have on
21 record with the Department the following:"

22 "(1) A statement of intent to perform or stop
23 performing alcohol analysis to include notification for
24 breath and fluid analysis specifically;"

25 "(2) The laboratory's address, as well as the

1 name, address and phone number of the laboratory's point of
2 contact;"

3 "(3) A list of laboratory personnel qualified to
4 do forensic alcohol analysis; and"

5 "(4) A list of instruments used by laboratory
6 personnel for alcohol analysis."

7 CHAIRMAN KIMSEY: Comments from the Committee?

8 COMMITTEE MEMBER JEFFRIES: This is Dan Jeffries.

9 The attorney in me jumps out once again and wants to get
10 rid of the word "will." Sorry about that. And I think we
11 either need to say either "shall submit" or "shall provide"
12 or "maintain on file" or "submit on an annual basis,"
13 whatever the Committee feels is appropriate. Whether your
14 thought is you do this every time there's a change or if you
15 do it once a year or if you do it just once and you're done,
16 I think we just need to nail that down, how often are we
17 asking this to be done.

18 CHAIRMAN KIMSEY: Just to clarify though, you had
19 the concern about the word "record."

20 COMMITTEE MEMBER HARMON: No, my concern was the
21 "will have."

22 CHAIRMAN KIMSEY: Okay.

23 COMMITTEE MEMBER HARMON: Shall provide.

24 COMMITTEE MEMBER JEFFRIES: I think "shall
25 provide" is fine. And then if you say "shall provide" you

1 want to specify annually, does it change. It certainly --
2 you would think you would have to provide it every time it
3 changes but maybe that's implied. But if you just say
4 "shall provide" it probably covers us.

5 COMMITTEE MEMBER SHEN: This is Jennifer. Because
6 many of those things, you know, I could see going here
7 between having any change. I don't know that we want to
8 lock that down to an annual something. I agree, I think
9 it's implied that if you have a new list of people doing
10 alcohol analysis we're going to have to -- we're going to
11 have to send the Department all of their information that we
12 have already discussed, anyway. So an updated list of
13 laboratory personnel would be reasonable at that time.

14 CHAIRMAN KIMSEY: And I can't think of it right
15 now but it sounds like there might be a generic sentence
16 that would say sort of exactly that, Jennifer, in the sense
17 that, you know, additions or changes in personnel, you know,
18 would be reflected -- I mean, provided to the Department. I
19 mean, changes to any of these. I mean, obviously we're
20 talking about intent and then obviously, you know, not
21 intending. But I think -- I just can't think of the
22 sentence that would reflect any changes would also be
23 provided to the Department.

24 COMMITTEE MEMBER SHEN: So, I mean, are we talking
25 about at the end of this, any changes to the above?

1 COMMITTEE MEMBER WONG: No, all you need to do is
2 on (2) or (3) just add "current." The laboratory's current
3 address, a list of current laboratory.

4 COMMITTEE MEMBER SHEN: I like that.

5 CHAIRMAN KIMSEY: Yeah, that might work.

6 COMMITTEE MEMBER JEFFRIES: That sounds like a law
7 school question. I like that "current."

8 COMMITTEE MEMBER SHEN: Okay, I've added
9 "current." (Inaudible).

10 CHAIRMAN KIMSEY: Okay, we've got about ten
11 minutes left but I don't mean to cut it off. Any other
12 comments from the Committee or the public on Bullet number
13 4?

14 COMMITTEE MEMBER SLAUGHTER: Yes, Mark Slaughter.
15 We're adding current on each sub-bullet (1), (2), (3) and
16 (4)?

17 COMMITTEE MEMBER HARMON: I believe it's just on
18 (2), (3) and (4).

19 COMMITTEE MEMBER SLAUGHTER: Okay, yes, you're
20 right; (2), (3) and (4), perfect.

21 COMMITTEE MEMBER WONG: Yes.

22 CHAIRMAN KIMSEY: Cool. Other comments?

23 Well great, we got through the four bullets. I
24 think there's a number of changes that we need to reflect
25 and get back out to the Committee that we've discussed. And

1 I'm just trying to think of -- maybe this is something again
2 where we might -- there's a little bit of work that needs to
3 be done here to reflect our discussion and our recommended
4 changes to the Committee. Do we have any, as we say,
5 volunteers to -- of a group of two of us that would take on
6 that workload.

7 COMMITTEE MEMBER SHEN: This is Jennifer. You
8 know, I'm looking -- I took notes on all of our changes. It
9 really probably will take me less than a half an hour to
10 just make them. There are not very many. There are but
11 they're small changes. For instance, adding the word
12 "current" here and there. This is not going to take too
13 long. So I probably could get that done and send it out to
14 you.

15 CHAIRMAN KIMSEY: I think that sounds like someone
16 is volunteering.

17 COMMITTEE MEMBER SHEN: Yeah.

18 COMMITTEE MEMBER JEFFRIES: And this is Dan
19 Jeffries. And I'll volunteer, if Jennifer wants to do them,
20 to send them to me, I'll take a look at it and see if I
21 catch anything else. Just to once-over it before we send
22 them out to everyone.

23 COMMITTEE MEMBER WONG: Cool.

24 CHAIRMAN KIMSEY: Okay, we'll set up a
25 subcommittee of Dan and Jennifer to, you know, prepare a new

1 document reflecting our discussions and changes as we've
2 described them today.

3 We also talked about meeting again sort of as on a
4 rapid turnaround. Maybe four to six weeks it seems is what
5 it takes to put something like this together. I will
6 approach our Office of Regulations to have them take a first
7 look at our entire package with regards to things like
8 clarity, necessity, and I believe we agreed on substantive
9 issues with regards to that. And hopefully that would also
10 reflect our desire to have their comments by our next
11 meeting.

12 I think when we get out -- when we know when our
13 next meeting is I think that it might be incumbent upon us
14 all, you know, that are obviously representing
15 organizations, that we let them know where we're going and
16 that we'll be voting on these, you know, four bullets at our
17 next meeting.

18 And I think, I know -- I representing the
19 Department, I'm obviously one vote out of eight or so. I
20 think, the Department's, you know, vote is really pretty
21 much separate from any sort of involvement that agency-wide
22 might not have. I think some of the discussion has sort of
23 led me to think that, you know, we're in sync with Agency or
24 Agency is in sync with us. And those of us that are in
25 government would realize that that's most likely not the

1 case, just different -- all being in our own reporting
2 structures. So obviously I will get the Department's
3 perspective on this and each of you will get, you know, your
4 own organizations.

5 Any other comments before we think about, maybe
6 about when in April or, you know. We're now already into
7 the first -- through the first week of March. I'm out the
8 first two weeks of April most likely and so we're looking at
9 maybe that third week of April or the fourth week of April.

10 COMMITTEE MEMBER SHEN: Yeah, Paul, I have a
11 question.

12 CHAIRMAN KIMSEY: Sure.

13 COMMITTEE MEMBER SHEN: So are you anticipating
14 giving out the corrected version of this or the version we
15 have right now that you're going to get out right away. Or
16 do you want me to move on this, and Dan to move on this
17 quickly, so that you can actually give them our corrected
18 changes?

19 CHAIRMAN KIMSEY: Yes. I mean, obviously I'll
20 have the discussion fairly soon. And as soon as you can get
21 -- I mean, obviously, we haven't changed a lot of what we
22 have recommended so don't feel pressured. They could add in
23 what you have done and we have discussed today towards the
24 end of their analysis so don't, I don't think that's an
25 issue.

1 One of the things that we haven't really talked
2 about yet and don't probably have the time is what we were
3 trying to sort of hold at the end, which was a philosophical
4 discussion about the role of the Department and, you know,
5 records with notifications coming to the Department and
6 people's understanding of what the Department would do or
7 not be doing with that.

8 I guess we can, obviously, have that on the agenda
9 for the next meeting but is there anything in anticipation
10 of that? Do we want to -- I don't know, I'm open to
11 suggestions on how we address that. If we do something in
12 anticipation of the discussion in April or sometime or we
13 just all just keep thinking about it?

14 COMMITTEE MEMBER SHEN: Jennifer. I'm wondering
15 what is the goal of that conversation?

16 CHAIRMAN KIMSEY: Maybe some clarity. Maybe we
17 already know where that is.

18 COMMITTEE MEMBER SHEN: Is it clarity on what we
19 think the Department, the Department's role is?

20 CHAIRMAN KIMSEY: Yeah. I mean, I took, I had
21 some notes in anticipation here as we were talking. You
22 know, there was -- I think there was an assumption on the
23 part of the Committee that the Department having a record or
24 something submitted to them would mean that they might not
25 take any action. I don't know that that's true.

1 And we talked about the difference between
2 submitting and providing. We obviously got, we got past the
3 compliance of regulation, compliance with the regulations to
4 the Department. But I think there might be worth having a
5 discussion on what the Department is going to be doing
6 differently as a result of this. Obviously that is part of
7 what we have been discussing all along. But we still have
8 sort of put the Department back in based on the four bullets
9 in some areas. Is that clear what the Department would do
10 with that information. I mean, it's not necessarily clear
11 to me.

12 COMMITTEE MEMBER HARMON: Paul, this is Jennifer
13 Harmon. I'm not sure that the Committee understands what
14 the intent is, other than the goal was to write the
15 regulations to be very specific to prevent any sort of
16 personal interpretations being gleaned or being drawn from
17 the regulations that's not explicitly outlined in the
18 regulations. So has the rewrite not successfully been
19 specific enough to reflect that?

20 CHAIRMAN KIMSEY: I mean, that may be something
21 that the Office of Regs can sort of tell us. But, you know,
22 again, theoretically it would be my understanding that
23 personal interpretation should never have been an issue.
24 Obviously the Department interprets policy, it has policy.

25 COMMITTEE MEMBER HARMON: I just don't know that

1 we would be here if there wasn't some sort of feeling,
2 belief, perception that that's what has actually been
3 occurring.

4 CHAIRMAN KIMSEY: Oh no, I would agree, I think
5 the legislation really did dramatically change the role of
6 the Department. And that we have had discussions now for
7 twenty-some odd meetings and the Department, being an
8 administrative agency, it is our mission to comply with
9 legislation.

10 I think a lot of our discussions have been where
11 maybe the legislation was not clear about Departmental
12 authority being removed and that's sort of where we have
13 been having our discussions. And the Department has been --
14 generally the position that I have been reflecting is that
15 the Department certainly is going to comply with the
16 legislation but that we are not necessarily sort of across
17 the board willing to have other parts of our authority that
18 remained after the legislation, diminished.

19 And so that's where we have been getting into the
20 give and take. And a lot of the voting has been reflected,
21 you know, where we have had a lot of 7-1 votes. And that's
22 fine, we're a committee and that may be just the way we're
23 going to be reporting out and I don't know that that -- I
24 mean, that just may be the reality.

25 But I think -- and again, like I said, it's

1 unclear to me that when we have, when the Department has a
2 record, we were being provided with information, how we are
3 going to act on that information.

4 COMMITTEE MEMBER SHEN: Paul, this is Jennifer.
5 Is your intent to have a discussion about how we could give
6 the Department back the authority that the Legislature took
7 away?

8 CHAIRMAN KIMSEY: No, no, no, no, no. No, no.
9 Legislation is legislation. We comply with the legislation.
10 A lot of our discussions have gone past what was in the
11 legislation, which is fine. The Committee was given very
12 broad authority to review and make recommendations about
13 these regulations.

14 And so no, that's certainly not the Department's
15 intent. I think, and maybe this is incumbent upon me and
16 our Office of Regulations to make a presentation at the next
17 meeting about what the Department's perspective is on how we
18 would enforce these regulations. I mean, these regulations
19 as they are projected by legislation, will still be in the
20 Department of Public Health and it is our responsibility to
21 enforce these regulations. And maybe that is what we need
22 to have some discussion about, what is the Department's
23 perspective on what we will be doing going forward based on
24 what the Committee's discussions have been and
25 recommendations.

1 COMMITTEE MEMBER JEFFRIES: You know, Paul, this
2 is Dan Jeffries. I think it might be helpful if we tried to
3 distill it down to a very specific example. Like if we used
4 Jennifer's example of if they think that a degree in
5 underwater basket weaving counts and the Department
6 disagrees, where do you go from there?

7 Because I think that, to me, is what happens.
8 What if, what if the lab says one thing, the Department says
9 another? Where do you come out with it? Do you just leave
10 it that they disagree? They agree to disagree? Is there
11 some way to resolve it? What does it mean that they
12 disagree? Because it sounds like we all agree that the
13 Department is no longer the final arbiter of it but that
14 doesn't mean that there is going to be something else going
15 on. So maybe if we take it to a very specific example about
16 something like that about what does it mean if someone has a
17 degree in underwater basket weaving.

18 CHAIRMAN KIMSEY: Right. To that example, I mean,
19 obviously if it's something specific in the regulation then
20 there shouldn't be any -- that's the whole issue of clarity,
21 sort of issues. I mean, obviously underwater basket weaving
22 or whatever, if that's in the regulations then it's clear;
23 if it's not then it's not. So I think to the extent that
24 the regulations are clear maybe that also ties into the
25 Office of Regulations, you know, preliminary review. There

1 shouldn't be an interpretation, and certainly a personal
2 interpretation.

3 COMMITTEE MEMBER SHEN: So your question, Paul,
4 is, what are we going to do when we reach that impasse? The
5 Department says one thing, the laboratory says another and
6 there is a disagreement. And the way everything is (paper
7 shuffling on audio) right now there is really nothing for
8 the Department to do in particular. So, I mean, I guess if
9 that's an issue. I'm wondering if that has -- I mean, I
10 don't really know how we're going to address that. And I
11 don't know that anyone is going to be willing to write in,
12 write in more authority into these regulations.

13 CHAIRMAN KIMSEY: No, no, and that's not what I'm
14 necessarily advocating. And this has been a good
15 discussion. I think maybe it's sort of incumbent on the
16 Department to explain, you know, where we think these
17 regulations are taking us. I mean, obviously -- I am not
18 advocating, you know, us re-going through all these
19 regulations again giving the Department more authority. We
20 have had those discussions, we have had interactions. So I
21 think maybe the Office of Regulations' review may help
22 enlighten the discussion for our next meeting.

23 And we're after 3:00 o'clock. Any problems for
24 anybody that they know of right now with the last two weeks
25 of April for your schedules? One week better than the

1 other?

2 COMMITTEE MEMBER WONG: Fine.

3 COMMITTEE MEMBER HARMON: There's a California
4 Association of Crime Laboratory Directors meeting the second
5 to the last week in April so that's probably not a good
6 week.

7 CHAIRMAN KIMSEY: Okay.

8 COMMITTEE MEMBER HARMON: I'm sorry, it's the
9 fourth week.

10 CHAIRMAN KIMSEY: The last week, okay.

11 COMMITTEE MEMBER HARMON: I think it's - I believe
12 it's April 24th.

13 COMMITTEE MEMBER WONG: I also have a conflict
14 that week.

15 CHAIRMAN KIMSEY: Okay, so the last week isn't
16 looking too well. How about the third week of April?

17 COMMITTEE MEMBER SHEN: We're checking on that
18 date. Because if it's the third week then I'd like to have
19 the meeting the fourth week. Let's have the meeting after
20 the CACLD if we can.

21 CHAIRMAN KIMSEY: Okay.

22 COMMITTEE MEMBER SHEN: I don't have that date on
23 me. Jennifer is looking it up.

24 COMMITTEE MEMBER SLAUGHTER: The 24th is the Last
25 week, the last full week.

1 CHAIRMAN KIMSEY: Okay. So maybe we're looking at
2 the first week of May or at least the last part of the week.
3 I mean, what day of the month -- what day of the week is
4 April 24th?

5 COMMITTEE MEMBER HARMON: Hold on just one minute,
6 I'll get you an actual date.

7 CHAIRMAN KIMSEY: Okay.

8 COMMITTEE MEMBER WONG: No, I'm okay, I think I'm
9 okay for the last week of April.

10 COMMITTEE MEMBER HARMON: Okay, it's being held on
11 April 18th and 19th. So as long as it's not in there.

12 CHAIRMAN KIMSEY: But you had a conflict the last
13 week?

14 COMMITTEE MEMBER WONG: I think I'm okay.

15 CHAIRMAN KIMSEY: Okay. So it looks like the last
16 week of April may be working, from what I'm hearing.

17 COMMITTEE MEMBER SLAUGHTER: It works here for
18 Mark Slaughter.

19 CHAIRMAN KIMSEY: Okay. And specifically would
20 Wednesday of that week work?

21 COMMITTEE MEMBER JEFFRIES: Wednesday April 24th,
22 just to be clear, is what we mean by the last week, that's
23 the day we're talking about?

24 CHAIRMAN KIMSEY: Yes.

25 COMMITTEE MEMBER HARMON: This is Jennifer Harmon.

1 Are Wednesdays the only day that we can do that?

2 CHAIRMAN KIMSEY: Oh no, no, no. It's just,
3 obviously, as you can imagine with eight people the public
4 it's hard to sort of coordinate calendars. That's why with
5 now four to six weeks ahead we might be able to get
6 something on everybody's calendar that sort of helps. But
7 no, we can do it Thursday.

8 COMMITTEE MEMBER SHEN: I would prefer a Thursday,
9 this is Jennifer.

10 COMMITTEE MEMBER LYLE: Me too.

11 COMMITTEE MEMBER HARMON: Me too, Jennifer.

12 CHAIRMAN KIMSEY: Okay, Thursdays I'm hearing.

13 COMMITTEE MEMBER JEFFRIES: Thursday, April 25th
14 is good for everyone in San Diego.

15 COMMITTEE MEMBER SLAUGHTER: That's the absolute
16 only day that doesn't work for me, Mark Slaughter.

17 (Laughter.)

18 CHAIRMAN KIMSEY: Ah, yes.

19 COMMITTEE MEMBER HARMON: Does Tuesday the 23rd
20 work for you, Mark?

21 COMMITTEE MEMBER SLAUGHTER: It does.

22 CHAIRMAN KIMSEY: Tuesday the 23rd? Going around?

23 COMMITTEE MEMBER SLAUGHTER: Yes.

24 CHAIRMAN KIMSEY: Okay. San Diego?

25 COMMITTEE MEMBER SHEN: I will do Tuesday, just

1 for Mark.

2 COMMITTEE MEMBER SLAUGHTER: Thank you.

3 CHAIRMAN KIMSEY: Okay, tentatively it looks like
4 Tuesday the 23rd. The same time frame, same set.

5 Again, thank you all very much for your time and
6 your patience and we will be in touch for April 23rd.

7 COMMITTEE MEMBER SHEN: Thank you, Paul.

8 COMMITTEE MEMBER SLAUGHTER: Thank you, Paul.

9 CHAIRMAN KIMSEY: Thank you.

10 (Thereupon, the California Department of
11 Public Health Forensic Alcohol Review
12 Committee meeting adjourned at 3:06 p.m.)

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CERTIFICATE OF REPORTER

I, John Cota, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Department of Public Health, Forensic Alcohol Review Committee meeting, that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, 2013.

JOHN COTA