

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

THURSDAY, SEPTEMBER 16, 2009

10:00 A.M.

REPORTED BY:  
JOHN COTA

APPEARANCESReview Committee Members

Dr. Paul Kimsey, Chairperson (Richmond)

Ms. Janet Anderson-Seaquist (Ventura)

Sergeant Kevin Davis (Sacramento)

Mr. Paul R. Sedgwick (San Diego)

Ms. Laura Tanney (San Diego)

Mr. Kenton S. Wong (Richmond)

Mr. Torr M. Zielenski (Sacramento)

Staff

Mr. Robert Haas, Abused Substances Analysis Section

Ms. Effie Harris, Abused Substances Analysis Section  
(Richmond)

Mr. Clay Larson, Chief, Abused Substances Analysis Section  
(Richmond)

Mr. Harby Thandi, Abused Substances Analysis Section  
(Richmond)

Also Present

Ms. Goldie L. Eng, Department of Public Health, Office of  
Legal Services (Sacramento)

Ms. Leona Gulck (San Diego)

Mr. Bill Phillips, California Department of Justice  
(Sacramento)

Ms. Patricia S. Lough, Subcommittee Member (San Diego)

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1           Okay. Let's see, on our agenda we have opening  
2 remarks and discussion. Basically this is sort of our  
3 continuing agenda from our last meeting where we were  
4 reviewing the draft regulatory work product.

5           Any questions on the agenda at this point before I  
6 give a couple opening remarks?

7           Basically just real quickly the Department is very  
8 much, although this is not necessarily relevant to the  
9 committee directly, the department is very much involved  
10 with the H1N1 issue which actually never really went away  
11 for us over the summer.

12           And we're now gearing up for the fall and the  
13 school season and the regular seasonal flu and also dealing  
14 with all the vaccine issues that you've been hearing about  
15 in the popular press where actually the vaccine, I guess the  
16 good news is the vaccine is becoming available sooner than  
17 we had anticipated.

18           We had been told initially it would be the middle  
19 of October and it looks like now it will be the first part of  
20 October. So that's the good news except we have to get  
21 those millions of doses out around the state.

22           But anyhow so we're very much preoccupied with  
23 H1N1. Also real quickly, just sort of a house keeping  
24 thing, if you're shuffling papers around a microphone it's  
25 something that we hear quite loudly. So keep in mind where

1 the microphones are and what paper shuffling you need to do.

2 Real quickly, AB 599 is on the Governor's desk  
3 with a lot of other legislation. It has some, I mean  
4 obviously a number of folks have been tracking it and  
5 organizations. The Department obviously has been tracking  
6 it. The one thing that the Department has recognized is  
7 that Section, Health and Safety Code, Section 100725 which  
8 requires the Department to be sort of the enforcer of the  
9 regulations is apparently still in, would still be in effect  
10 if the bill was passed.

11 So that section is obviously quite relevant to the  
12 Department with regards to responsibility for the  
13 regulations would still be there.

14 Those are pretty much my opening comments. Any  
15 comment on either H1N1 or the legislation or other general  
16 topics?

17 If not then why don't we go ahead and we  
18 basically --

19 COMMITTEE MEMBER TANNEY: I have a question on  
20 H1N1 even though it has nothing to do with what we're doing  
21 today.

22 CHAIRMAN KIMSEY: Sure that's --

23 COMMITTEE MEMBER TANNEY: Is that vaccine going to  
24 be available for the general public or just for people with  
25 compromised immune systems?

1           CHAIRMAN KIMSEY: That was Laura Tanney. Yeah  
2 Laura, there's going to be sort of a hierarchy, not a  
3 hierarchy but sort of a people at highest risk and that sort  
4 of listing is changing also relatively frequently. But the  
5 last I was involved with it earlier this week, people at  
6 sort of the high end for needing to be vaccinated sort of as  
7 soon as possible are pregnant women, children from the ages  
8 of, I want to say, five to eighteen and health care workers,  
9 that sort of thing.

10           I have, everything I have heard would not lead me  
11 to believe that there's going any shortage of vaccine once  
12 it becomes available.

13           There was some concern that the vaccine needed to  
14 be available sooner which it seems to be going to be, maybe  
15 as much as two weeks sooner than they had thought, sometime  
16 in the first part or the first week of October.

17           There's quite a logistics issue of getting the  
18 vaccine out around the state. It's something, you know,  
19 people don't normally think too much about. But the  
20 logistics of that, the millions of doses and that sort of  
21 thing.

22           But I have not heard of any shortage predicted for  
23 either the H1 or the seasonal flu vaccine. There's going to  
24 be basically two vaccines this year.

25           COMMITTEE MEMBER TANNEY: All right, thank you.

1 CHAIRMAN KIMSEY: Sure.

2 COMMITTEE MEMBER ZIELENSKI: This is Torr  
3 Zielenski. I have one further question on the H1N1. Is it  
4 safe after that vaccine is injected for the body to develop  
5 the anti-bodies that allow you to resist the flu? Do you  
6 know?

7 CHAIRMAN KIMSEY: Yes, well I can give you, I'm  
8 not a physician so, you know, as we always say, talk to your  
9 doctor. But generally speaking it's going to depend upon,  
10 it's still unclear to me whether it's going to be one shot  
11 of the vaccine will be protective or whether they're going  
12 to have to do two doses of the vaccine.

13 Generally speaking if you're having to go to two  
14 doses it's because the first dose was not sufficient to  
15 develop a sufficient immune response.

16 So I would imagine, and this varies from  
17 individuals, but generally speaking I would say within about  
18 seven days, seven to ten days after the initial, after the  
19 second vaccine would you be protected.

20 COMMITTEE MEMBER ZIELENSKI: Okay. Thank you.

21 COMMITTEE MEMBER WONG: I believe we have another  
22 member in Sacramento.

23 CHAIRMAN KIMSEY: Yes, someone has just joined us  
24 in Sacramento. Could you identify yourself?

25 MS. ENG: Goldie Eng with Department of Public

1 Health, Office of Legal Services.

2 CHAIRMAN KIMSEY: Welcome Goldie.

3 So I think, any other comments or issues before we  
4 get started? I think we're basically on Article 6, Methods  
5 of Forensic Alcohol Analysis.

6 We've been, as you know, been going through the  
7 various Articles and voting on the proposed changes.

8 Do we have sort of a volunteer to sort of walk us  
9 through Article 6?

10 COMMITTEE MEMBER WONG: Well, going back actually  
11 with regard to AB 599 --

12 CHAIRMAN KIMSEY: Uh-hmm.

13 COMMITTEE MEMBER WONG: -- there's, this is a  
14 similar, analogous situation that occurred with DNA and  
15 CODIS that the Forensic Alcohol Review Committee is being  
16 depended upon by other organizations, independent labs of  
17 which I'm associated with that also do law enforcement type  
18 work, and blood alcohols and toxicologies.

19 So, while the bill, I mean while the bill does not  
20 cover other accrediting bodies other agencies, independent  
21 laboratories are looking and depending on the Forensic  
22 Alcohol Review Committee to ensure that the ASCLAD/LAB  
23 accreditation is not the only accrediting body that is  
24 recognized in this Title 17 revision.

25 CHAIRMAN KIMSEY: Okay.

1 MS. LOUGH: Yeah, Kenton this is Pattie Lough.

2 COMMITTEE MEMBER WONG: Hi.

3 MS. LOUGH: When we originally submitted AB 599 we  
4 did have language in there. I mean that is quite different  
5 from what we originally submitted.

6 But we did have language in there that allowed the  
7 FARC to determine and recognize other accreditation  
8 organizations. And that has since been stricken from our  
9 language.

10 So it's certainly something that FARC in perhaps  
11 future regular meetings will want to address. We certainly  
12 don't want to include just one organization.

13 So we think that FARC is a good body to determine  
14 the validity of outside accrediting agencies.

15 COMMITTEE MEMBER WONG: Correct.

16 MR. PHILLIPS: Hi, this is Bill Phillips. Kenton  
17 you may want to contact other accrediting agencies and have  
18 them lobby for that effort so that they come to California,  
19 get themselves a lobbyist and lobby for that effort.

20 COMMITTEE MEMBER WONG: Understood. Like I said  
21 this is an analogous situation that occurred. I mean we're  
22 not the labs. I mean like there's a number of agencies in  
23 Dallas, Sorenson, DNA that uses, that the law enforcement  
24 agencies use that to enter into CODIS.

25 And that was a similar type situation. The same

1 thing happens in California. Law enforcement and crime labs  
2 doing DNA are not the only labs that enter into CODIS.  
3 Outside independent laboratories also enter into CODIS.

4 And like I said it's an analogous situation that's  
5 occurring with forensic alcohol.

6 MS. ENG: This is Goldie Eng. I just want to  
7 mention that one thing to consider is that if other  
8 accreditation agencies are included and someone must make  
9 that determination. There needs to be authority to do that  
10 and standards.

11 COMMITTEE MEMBER WONG: Understood.

12 MS. ENG: And the standards need to be in statute  
13 or regulation.

14 COMMITTEE MEMBER WONG: Agreed. I'm just saying  
15 that I think it's incorrect for the bill to legislate a  
16 monopoly with ASCLAD LAB.

17 And secondly, if you look at ASCLAD/LAB, many of  
18 the labs that are accredited under ASCLAD/LAB are only  
19 accredited under the Legacy Program which is not as good or  
20 as strong as ISO 17025.

21 And we've been saying all along that some of the  
22 problems that we've been having is that ASCLAD has better  
23 coverage of some of the issues that Department of Public  
24 Health are now, California Department of Public Health did  
25 not have.

1           And in that same spirit, for example FQS, Forensic  
2 Quality Services which provides accreditation as well as  
3 ASCLAD Lab to other private laboratories. They adhere to  
4 ISO 17025 which ASCLAD Legacy does not.

5           So it's, if you want to compare, it's even better  
6 than the ASCLAD Legacy Program. And we've been arguing that  
7 all along in FARC.

8           MS. LOUGH: Kenton, this is Pattie again. You  
9 understand that the only real reference to ASCLAD Labs with  
10 regards to alcohol analysis is proficiency testing where we  
11 simply say, we applied the ASCLAD/LAB guidelines where you  
12 have to count everybody tested every year et cetera.

13           It does not say you have to be accredited or  
14 belong to any specific accreditation organization. It just  
15 a reference regarding proficiency testing.

16           And you have to use an ASCLAD/LAB approved  
17 provider. That's really the only reference that I recall  
18 that we even mention ASCLAD/LAB.

19           COMMITTEE MEMBER WONG: Yeah, I get that. But I'm  
20 just saying that the perception there is that the work that  
21 we're doing is only being sanctioned by ASCLAD/LAB  
22 accredited laboratories.

23           That's the way that the work that we're doing  
24 looks like from the outside. Whether that fact remains that  
25 what you're saying is true, the perception there is that the

1 new Title 17 revision that we're working on only covers  
2 ASCLAD accredited laboratories which you and I both know is  
3 not true.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
5 Comment from the public. I believe when we look at the  
6 revised regulatory work product we won't see the word ASCLAD  
7 once. So I would disagree with member Wong's assertion that  
8 we are putting something together that addresses  
9 ASCLAD/LABS. Actually it doesn't make any sense.

10 CHAIRMAN KIMSEY: Other comments on 599?

11 COMMITTEE MEMBER DAVIS: This is Kevin Davis.  
12 Just for information, the California Crime Laboratory Review  
13 Task Force is still meeting. I believe their final report  
14 to the Legislature is due soon.

15 And I've seen a draft copy. They will be covering  
16 accreditation in great detail.

17 CHAIRMAN KIMSEY: Thank you.

18 COMMITTEE MEMBER DAVIS: FYI.

19 CHAIRMAN KIMSEY: Okay, great.

20 SUBSTANCES ANALYSIS SECTION CHIEF LARSON: And  
21 they have a meeting next Wednesday, right? Clay Larson.  
22 The next meeting is next Wednesday?

23 COMMITTEE MEMBER DAVIS: I believe so but I am  
24 not --

25 COMMITTEE MEMBER ZIELENSKI: Yes.

1 COMMITTEE MEMBER DAVIS: Next Wednesday?

2 COMMITTEE MEMBER ZIELENSKI: Yeah, next Wednesday  
3 in Sacramento.

4 CHAIRMAN KIMSEY: Are they covering, are there  
5 accreditation discussions covering forensic alcohol do you  
6 think?

7 COMMITTEE MEMBER DAVIS: Not specific data  
8 discipline, just laboratories in general.

9 COMMITTEE MEMBER WONG: In general.

10 CHAIRMAN KIMSEY: Okay. Any other comments? I  
11 think we're looking for someone to volunteer to walk us  
12 through Article 6.

13 MS. LOUGH: This is Pattie Lough. I'd be happy  
14 to.

15 CHAIRMAN KIMSEY: Okay. Thank you.

16 MS. LOUGH: Does anyone object that before we do  
17 that we do some clean up on some of the stuff that we've  
18 gone over? I have some minor things that I found. And  
19 others may have a few minor points.

20 CHAIRMAN KIMSEY: Okay. Let's do that. Unless  
21 there's some objections.

22 MS. LOUGH: Okay, I'll go ahead and start. On  
23 page one, Section 1215.1(c). I think the Committee had a  
24 lot of confusion. And I expect the readers will on the  
25 difference between forensic alcohol analysis and breath

1 alcohol testing that remains a topic.

2           So I'd like to propose a change where the  
3 definition says, breath alcohol testing means analysis of a  
4 sample. I'd like to propose it says, it means the  
5 facilitation of a sample of a person's breath using the  
6 instrument.

7           And then later, well I'll tell you now the  
8 justifications that I would add would be that the word,  
9 facilitation, reflects more accurately the limited functions  
10 of the breath instrument operator in simply obtaining a  
11 breath alcohol test result.

12           I think that might be more clear for people to  
13 understand the difference between forensic alcohol analysis  
14 and why breath testing is a different kind of function that  
15 does not have to be performed by an analyst.

16           Anyone want me to repeat my wording?

17           COMMITTEE MEMBER WONG: Yes, please.

18           MS. LOUGH: Okay. Breath alcohol testing  
19 definition, I would change it to say, means the facilitation  
20 of the sample.

21           COMMITTEE MEMBER TANNEY: Of what sample? To me  
22 the common definition of facilitation is help. And so there  
23 might be a scientific definition that I'm not aware of but  
24 that from just a lay person I would not understand that at  
25 all.

1 MS. LOUGH: How about another word? Because the  
2 officer is going to say, blow here. And then the person  
3 blows. The test is done automatically and the results --

4 COMMITTEE MEMBER DAVIS: What if we just said,  
5 means testing?

6 CHAIRMAN KIMSEY: Just real quickly, people need  
7 to identify yourselves. Our stenographer is having a little  
8 difficulty.

9 COMMITTEE MEMBER TANNEY: Laura Tanney. What if  
10 you say breath alcohol testing means the sampling of a  
11 person's expired breath using breath testing instruments?

12 COMMITTEE MEMBER DAVIS: That sounds better to me.

13 COMMITTEE MEMBER WONG: Yeah, that sounds better.

14 MS. LOUGH: I like that.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
16 Comment from the public. I think either now or in your, you  
17 know, in that narrative that you had below it, this looks to  
18 me like a solution in search of a problem.

19 Sampling is really only one portion. And maybe,  
20 the concern that's the portion that the operator has more  
21 control of. But obviously in order to get a breath testing  
22 result in order to determine the concentration of ethyl  
23 alcohol you have to analyze the sample.

24 COMMITTEE MEMBER TANNEY: No, because it says,  
25 this is Laura. It says, using a breath testing instrument

1 to determine the concentration. So it's the instrument  
2 itself that does the analysis.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
4 Clay Larson again, actually it says, using a breath testing  
5 instrument designed for this purpose. The purpose, you know  
6 by simple, the construction of the sentence that you're  
7 proposing, the purpose would be to sample.

8 MS. TANNEY: Or we could take out, designed for  
9 this purpose because it says using breath testing instrument  
10 in order to determine.

11 MS. LOUGH: Pattie Lough, that sounds good.

12 COMMITTEE MEMBER TANNEY: Yeah.

13 MS. LOUGH: Okay, Pattie Lough, I'll read what I  
14 have right now.

15 CHAIRMAN KIMSEY: Please.

16 MS. LOUGH: Breath alcohol testing means the  
17 sampling of a person's expired breath using a breath testing  
18 instrument. We could probably take out, in order, to  
19 determine the concentration of alcohol in a person's breath.

20 I think we should take, in order, out as well.

21 COMMITTEE MEMBER WONG: Agreed.

22 MS. LOUGH: Okay and then on under the  
23 justification on this insert, again I'll read it. And now  
24 it says the word, sampling, reflects more accurately the  
25 limited function of the breath instrument operator in simply

1 obtaining a breath alcohol test result.

2 Is that okay?

3 COMMITTEE MEMBER WONG: Yep.

4 COMMITTEE MEMBER TANNEY: Could you repeat that  
5 once more?

6 MS. LOUGH: Yes I can. The word, sampling,  
7 reflects more accurately the limited function of the breath  
8 instrument operator in simply obtaining a breath alcohol  
9 test result.

10 CHAIRMAN KIMSEY: Are there comments?

11 MS. LOUGH: Okay, hold on. I'm just making notes  
12 for myself. All right let's see, my next comment.

13 CHAIRMAN KIMSEY: Just real quick Pattie, Janet  
14 did you have, I think you might have tried to make a comment  
15 earlier.

16 COMMITTEE MEMBER ANDERSON-SEAQUIST: My comment  
17 was in support.

18 CHAIRMAN KIMSEY: Okay.

19 COMMITTEE MEMBER ANDERSON-SEAQUIST: Of the  
20 change.

21 MS. LOUGH: Okay.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
23 A comment from the public, Clay Larson. You know I'm  
24 thinking about what the operator actually does. And with,  
25 besides sampling, in some jurisdictions with some

1 instruments the operator is responsible for maintaining, for  
2 collecting subject data.

3 For some of the smaller hand-held instruments the  
4 operator actually has a function in terms of determining the  
5 adequacy of the breath sample. Determining that a full av-  
6 alveolar portion of the breath has been captured.

7 In some jurisdictions with some older instruments  
8 there is a requirement that the operator do some quality  
9 assurance-type work by determining that the duplicative  
10 analyses agree within the required precision limits.

11 So just capturing the sample may not completely  
12 capture, if you will, all the functions or roles of the  
13 instrument operator.

14 MS. LOUGH: Pattie Lough. I think those other  
15 areas of concern that are certainly important are in the  
16 breath testing section where it sets the criteria for doing  
17 breath testing. Those are all specified.

18 So I think we just want to differentiate in the  
19 definitions the difference between forensic alcohol analysis  
20 and the breath testing as breath testing is really kind of a  
21 little tiny sub-discipline out of the whole.

22 CHAIRMAN KIMSEY: Other comments?

23 MS. LOUGH: On page 4, this is Pattie. Page 4,  
24 Section 1215.1(o). In the second line I think we should  
25 take out the word, a, to perform work in forensic alcohol

1 analysis, remove the, a.

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet, I  
3 agree, sounds better.

4 MS. LOUGH: Okay. I'm just going to reference  
5 page five right now. And when we get to Article 6 I'll  
6 explain it. But on 1215.1(r) where we discuss tertiary  
7 standards.

8 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes I have, I  
9 was assigned definitions for r, f, and c. And I have some.  
10 But they require a little discussion.

11 MS. LOUGH: Yeah, I propose that if we can hold  
12 off on those definitions and I'll explain some change that  
13 we could make that might resolve that issue if everyone  
14 agrees to holding off on that.

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: I think  
16 that's fine --

17 MS. LOUGH: However, Janet if you want to go ahead  
18 and give us the one on NIST traceable versus NIST SRM.

19 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay. I have  
20 some people in quality assurance and quality management  
21 asked for some of their feedback on this.

22 And what I got for NIST traceable says, NIST  
23 traceable means that the properties of a reference are  
24 authenticated by a documented series of comparisons to a  
25 NIST reference.

1           To qualify as NIST traceable a reference must be  
2 accompanied by a certificate dating both the values of those  
3 properties that are traceable to NIST and are to be  
4 facilitated with those values.

5           So kind of a long definition. Did you want to cut  
6 it down in any way?

7           COMMITTEE MEMBER TANNEY: Yeah.

8           MS. LOUGH: This is Pattie, yeah. We can have  
9 something that is shorter.

10          COMMITTEE MEMBER ANDERSON-SEAQUIST: What about  
11 just the first sentence?

12          COMMITTEE MEMBER TANNEY: Could you say it again.  
13 This is Laura.

14          MS. LOUGH: NIST traceable means that the  
15 properties of a reference are authenticated by a documented  
16 series of a comparison to a NIST reference.

17          COMMITTEE MEMBER TANNEY: Okay. I think we have  
18 to define NIST. It's not defined anywhere else. I think  
19 you have to say the full title.

20          MS. LOUGH: It is defined in the document. It  
21 is later defined in the document. We can define it here.

22          COMMITTEE MEMBER ANDERSON-SEAQUIST: The first  
23 time it --

24          MS. LOUGH: Okay I can do that Janet. Okay.

25          COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay.

1 MS. LOUGH: Now I can't read, Okay, this is  
2 Pattie. Janet, could you repeat it one more time.

3 COMMITTEE MEMBER ANDERSON-SEAQUIST: NIST  
4 traceable means that the properties of a reference are  
5 authenticated by a documented series of comparisons to a  
6 NIST reference.

7 CHAIRMAN KIMSEY: This is Paul Kimsey in Richmond.  
8 Does NIST have a definition of NIST traceable? I mean not  
9 that this doesn't sound adequate to some extent but if we're  
10 talking about the National Institute of Standards and  
11 whatever it is.

12 COMMITTEE MEMBER ANDERSON-SEAQUIST: That kind of  
13 segues into the next definition C that I got from

14 CHAIRMAN KIMSEY: Sure, go ahead.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
16 Actually, comment from the public.

17 CHAIRMAN KIMSEY: Yep, comment here in Richmond.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
19 Clay Larson. On the definition of NIST traceable, there are  
20 a lot of verbs there, authenticate, document. I suspect  
21 that when we look at the requirements for writing  
22 regulations it begs the question, who authenticates, who  
23 documents it?

24 COMMITTEE MEMBER TANNEY: Doesn't it say  
25 authenticated by?

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Well read it again.

3 COMMITTEE MEMBER ANDERSON-SEAQUIST: NIST  
4 traceable means that the properties of a reference are  
5 authenticated by a documented series of comparisons to the  
6 NIST reference.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 So who does that?

9 COMMITTEE MEMBER ANDERSON-SEAQUIST: It says, a  
10 reference must be accompanied by a certificate stating both  
11 the values of those properties that are traceable to NIST  
12 and the uncertainties associated with those values.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 Okay, that's the longer definition.

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: Right.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 So who would issue that certificate?

18 COMMITTEE MEMBER TANNEY: Those are issued by the  
19 company.

20 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes, by the  
21 company you purchased from.

22 MS. LOUGH: That sets the standard practice. This  
23 is Pattie.

24 MR. PHILLIPS: Our precedence, this is Bill  
25 Phillips. For instance, our dry gas tanks are accompanied

1 by a certificate that say that it is NIST traceable. The  
2 manufacturer provides that.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
4 Comment from the public. And I would caution that I think  
5 that probably could be characterized by advertising because  
6 again, NIST doesn't set, NIST leaves it up to the  
7 responsibility of the manufacturer to provide that  
8 information.

9 It isn't something that NIST comes along and  
10 provides informata that says, yes this is NIST traceable.  
11 This is a claim by the manufacturer.

12 MS. LOUGH: This is Pattie. I believe that's  
13 correct.

14 COMMITTEE MEMBER TANNEY: Why don't we say, this  
15 is Laura. Why don't we say NIST traceable means and then  
16 the first part, my work number.

17 MS. LOUGH: Which I think I have.

18 COMMITTEE MEMBER TANNEY: -- and say, that has  
19 been certified as a, whatever NIST stands for, National  
20 whatever, by the manufacturer, certified as a NIST traceable  
21 by the manufacturer.

22 Although again we can't use the definition in the,  
23 the same work for the definition which is a problem, which  
24 is uncertified.

25 MS. LOUGH: This is Pattie. So we just take the

1 first part and we add something to that saying --

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: That the  
3 reference must be accompanied by a certificate stating both  
4 the values of those properties that are traceable.

5 MS. LOUGH: But we're saying that it's a  
6 document series, it's authenticated and it's the properties  
7 of a reference. So can we just add something to it to say,  
8 are certified by the manufacturer to have the properties,  
9 something like that, the properties as stated.

10 Well it's not really stated --

11 COMMITTEE MEMBER TANNEY: As required by.

12 MS. LOUGH: This means you can have a document in  
13 series.

14 COMMITTEE MEMBER ANDERSON-SEAQUIST: Right.

15 MS. LOUGH: When we talk today on Article 6 we'll  
16 probably get into, we will get into a little more nitty  
17 gritty on whether or not traceable solutions can even be  
18 used by themselves. So if we can, how about if I just  
19 propose some language there to add this certificate,  
20 certificate part two, that definition and we'll review it  
21 next time.

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Sounds good.

23 MS. LOUGH: Okay. And then Janet, the next one.

24 COMMITTEE MEMBER ANDERSON-SEAQUIST: Now the NIST  
25 standard, you have standard reference material. That goes

1 through a whole bunch of definitions here. So this  
2 definitely has to be cut down.

3 But it says, among NIST measurement services  
4 programs that of developing and providing reference  
5 materials is the largest. International vocabulary  
6 metrologies published by the International Standards  
7 Organization defines a reference material, RM, as one or  
8 more materials or substances whose properties are  
9 sufficiently homogeneous and well established to be used for  
10 calibrating apparatuses, assessing measurements, methods or  
11 assigning values to materials.

12 The IM certifies, defines certified reference  
13 materials, CRM, as a reference material one or more of whose  
14 property values are certified as traceable to an accurate  
15 realization of the unit in which the property values are  
16 prepped and for what certified value is accompanied by  
17 uncertainty as stated as level of confidence.

18 Now a NIST standard reference material is a  
19 controlled reference material that meets NIST-specific  
20 certification criteria and is issued with a certificate of  
21 analysis that details its characteristics and provides  
22 information on its appropriate uses.

23 Are you comfortable with just using the last  
24 sentence?

25 MS. LOUGH: This is Pattie. I think the last one

1 is good.

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay. So  
3 I'll --

4 MS. LOUGH: Can you repeat that slowly for me.

5 COMMITTEE MEMBER ANDERSON-SEAQUIST: I'll repeat  
6 just the last sentence. So a NIST standard reference  
7 material is a controlled reference material that meets NIST-  
8 specific certification criteria --

9 MS. LOUGH: Wait a minute, okay.

10 COMMITTEE MEMBER ANDERSON-SEAQUIST: -- and is  
11 issued with a certificate of analysis.

12 MS. LOUGH: Okay.

13 COMMITTEE MEMBER ANDERSON-SEAQUIST: -- that  
14 details its characteristics --

15 MS. LOUGH: Okay.

16 COMMITTEE MEMBER ANDERSON-SEAQUIST: -- and  
17 provides information on its appropriate uses.

18 MS. LOUGH: What's the reference for that?

19 COMMITTEE MEMBER ANDERSON-SEAQUIST: The reference  
20 for it? I'll have to pull it out --

21 MS. LOUGH: Yes, where does that definition come  
22 from? I just think we should reference it in our packet.

23 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay. I'll  
24 get the reference for you. I don't have that written down.

25 MS. LOUGH: That's fine. Okay this is Pattie.

1 I'll read what I wrote down here real quickly. SRM is a  
2 controlled reference material that meets NIST-specific  
3 certification criteria. And it's issued with a certificate  
4 of analysis that details its characteristics and provides  
5 information on its appropriate uses.

6 Does that sound right Janet?

7 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yeah, that's  
8 perfect.

9 MS. LOUGH: I think that sounds fine. Anyone  
10 opposing? Okay, that one I think we can use as is. I'll  
11 put that in. Thanks Janet and then we'll come back to that  
12 other one shortly.

13 COMMITTEE MEMBER ANDERSON-SEAQUIST: Oh the first  
14 standard is really short. I just put, is a material that is  
15 traceable to primary standards.

16 MS. LOUGH: What is that?

17 COMMITTEE MEMBER ANDERSON-SEAQUIST: A material  
18 that is traceable to a primary standard.

19 MS. LOUGH: Oh, I got you. Okay.

20 CHAIRMAN KIMSEY: Are we assuming that the NIST  
21 traceable or the SRM is the primary standard?

22 MS. LOUGH: What we're saying, this is Pattie.  
23 We're saying it's the god of the solution or NIST traceable  
24 or NIST SRM. We're saying traceable has documentation that  
25 tells us where it all came from and what it's supposed to

1 be. The SRM is the god of all solutions.

2 COMMITTEE MEMBER TANNEY: What does NIST stand  
3 for, this is Laura.

4 MS. LOUGH: National Institute of Standards and  
5 Training.

6 COMMITTEE MEMBER TANNEY: Can we put that, spell  
7 that out the first time you use it.

8 MS. LOUGH: I'll make a separate definition. I'll  
9 add, I'll make it, S will be a definition of NIST and then T  
10 will be traceable, U will be SRM, okay. And it is described  
11 later when we get into a discussion of Article 7.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
13 Comment from the public, Clay Larson. First is I'm not sure  
14 I heard you correctly. NIST is National Institute of  
15 Standards and Technology. I'm not sure that's what you  
16 said.

17 MS. LOUGH: Oh, okay, standards and technology.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
19 And also regarding Janet's definition of a tertiary  
20 standard, it doesn't appear to clearly distinguish that from  
21 a secondary standard.

22 Normally a secondary standard is a material that  
23 is, its concentration is determined by a primary standard.

24 And a tertiary standard is just its iterative  
25 process it is the material whose concentration is determined

1 based on the secondary standard.

2 So I don't think that other definition, traceable,  
3 captures that.

4 MS. LOUGH: This is Pattie. I think the only  
5 reason we're defining those terms is because we're going to  
6 use them later in our document in Article 6. We just wanted  
7 a definition.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
9 Well I just wanted a competent definition.

10 COMMITTEE MEMBER WONG: How about if we say,  
11 ultimately traceable to a primary standard since it goes  
12 from a tertiary to a secondary to a primary.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
14 Why don't we simply say, the tertiary standard is the  
15 material's concentration is determined by comparison with a  
16 secondary standard?

17 MS. LOUGH: Can we hold off on the definition of  
18 the definition of tertiary because I going to make some  
19 other proposed changes in Article 6. And then we can come  
20 back to that if we want.

21 COMMITTEE MEMBER WONG: Sure.

22 CHAIRMAN KIMSEY: Okay.

23 MS. LOUGH: And then you can tell me if you think  
24 I'm too far out of the box on that. Page 24, 1220.1(a)(2).  
25 We have in our language which is the existing language the

1 word, adequate, and, appropriate. Goldie is that going to  
2 be an issue for us?

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
4 Comment from the public.

5 CHAIRMAN KIMSEY: Well let Goldie answer first.  
6 Go ahead Goldie.

7 MS. ENG: Go ahead Clay, why don't you answer that  
8 and I'll --

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
10 Well I just --

11 MS. ENG: -- take a look at this.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
13 Well, okay. We're now in Article 6, right? So it might be  
14 appropriate just to include this as we review Article 6.

15 MS. LOUGH: No, we are doing a little bit of  
16 housekeeping before we get to Article 6.

17 CHAIRMAN KIMSEY: What page was it? Page 24?

18 MS. LOUGH: Page 24, 1220.1(a)(2).

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 And what Article is that under?

21 MS. LOUGH: Oh, that is Article 6. That is  
22 Article 6. All right, Goldie you want to start with Article  
23 6 then?

24 CHAIRMAN KIMSEY: Sure.

25 MS. LOUGH: All right, let's go ahead and start

1 with Article 6. Thank you Clay for pointing that out. Any  
2 questions on page 23?

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 Yeah, comment from, we can do this by page or we're just  
5 going to go by page. All right, comment from the public  
6 then.

7 And this comment will be, maybe I can use ditto  
8 for it because it will be repeated several times. Under  
9 Section 1220 (b)(1) there was language which reads such  
10 descriptions and these are the, descriptions of the methods  
11 of analysis shall be available and then it lists a series  
12 of, to the analyst and also to the Department on request.

13 Similar language under the record keeping section  
14 which we reviewed last time, I would submit that in order  
15 for the Department to carry out its statutorily mandated  
16 function of regulating forensic alcohol analysis it would be  
17 appropriate to have methods of analysis, among other things,  
18 available to the Department.

19 MS. LOUGH: This is Pattie. I don't believe the  
20 FARC has made that determination that the Department is a  
21 regulatory body.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 Well yeah, it's interesting. Because I would look at the  
24 language of AB 599, if you have a chance to look at it.

25 If you look at the Legislative Counsel Digest it

1 makes a statement that, existing law, and I have a copy of  
2 it, existing law, under existing law the Department  
3 regulates laboratories that perform forensic alcohol  
4 analysis.

5 So to the extent that we talk about legislative  
6 intent and both of this bill but also it's the current state  
7 also with 1623 I think that's actually a fairly clear  
8 statement of legislative intent.

9 It's captured as I say in the Legislative Counsel  
10 Digest of AB 599. So to the extent that the FAR Committee  
11 disagrees with that, that's fine. But there is another view  
12 out there.

13 MS. LOUGH: Any other comments? This is Pattie.

14 MR. PHILLIPS: This is Bill Phillips. The intent  
15 of the original legislation diluted the regulatory of the  
16 Department significantly. There's no licensing.

17 Now there's no inspection. I disagree with the  
18 ability of the Department to be able to regulate the alcohol  
19 program.

20 MS. LOUGH: Okay, this is Pattie. I'm ready to go  
21 on page 24.

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yeah, Bill  
23 and Pattie this is --

24 MS. LOUGH: I'm sorry, I didn't hear that.

25 CHAIRMAN KIMSEY: Can you repeat yourself Janet,

1 please.

2 COMMITTEE MEMBER ANDERSON-SEAQUIST: Oh, I just  
3 wanted to say, this is Janet, that I support both Bill and  
4 Pattie.

5 MS. LOUGH: Okay, thank you Janet. Page 24, I  
6 have a couple of comments. So does anyone else have any  
7 comments on that page?

8 Okay, I have one on 1220.1 (a)(2). And that's  
9 where I was asking Goldie about the use of the word,  
10 adequate and appropriate. That's the existing language  
11 currently in the regulations.

12 And I'm wondering if that would be an issue.

13 MS. ENG: Usually the terms, adequate and  
14 appropriate alone don't provide a lot of guidance. And I  
15 think the question is whether a person reading this will  
16 know what they are supposed to do or what the method is  
17 supposed to do.

18 MS. LOUGH: This is Pattie --

19 MS. ENG: If they can't make that determination  
20 then there's a clarity problem.

21 MS. LOUGH: This is Pattie. I'm wondering if we  
22 need that sentence, that section at all because later when  
23 we get into the method we talk about the ranges of alcohol  
24 testing and things like that. But I'm wondering, do we even  
25 need that section in there?

1 COMMITTEE MEMBER TANNEY: Laura Tanney, I don't  
2 believe so.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
4 Comment from the public. Some basic chemistry can provide  
5 some information here. I think the reference to specificity  
6 is an evaluation of the method's ability to distinguish  
7 alcohol from perhaps other volatile organic materials or  
8 other compounds or analytes that might be detected by the  
9 instrument of by the method.

10 So the subsequent references to accuracy precision  
11 limits for artificial samples that only contain alcohol  
12 wouldn't necessarily capture the requirements of this  
13 section.

14 MS. LOUGH: Do you have another suggestion then?  
15 A simple way of, for example we don't have to use the word  
16 adequate and appropriate.

17 COMMITTEE MEMBER TANNEY: This is Laura. Doesn't  
18 (a)(1) satisfy the same purpose by saying it has to be  
19 capable of an analysis throughout the range that we know  
20 what the adequate and appropriate for traffic law  
21 enforcement purposes.

22 And I think it's all said right in subdivision  
23 (a)(1).

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
25 Comment, again that's a reference to an accuracy and

1 precision requirement for the analysis of the one analyt  
2 alcohol. The reference to the qualitative capabilities of  
3 the instrument to distinguish alcohol from other potential  
4 interference wouldn't be captured by subsection (a)(1).

5 MS. LOUGH: We could easily take that word  
6 specificity because I hear what you're saying Clay, maybe we  
7 could take that and drop that down and so the next section  
8 where it says, the method shall be free from interference  
9 from anti-coagulants and preservatives, maybe we could  
10 discuss specificity therefore --

11 COMMITTEE MEMBER TANNEY: You could say, the  
12 method should be specific --

13 MS. LOUGH: Should be specific --

14 COMMITTEE MEMBER TANNEY: -- to the analysis of  
15 ethyl alcohol and shall be free from interference from anti-  
16 coagulants and preservatives.

17 COMMITTEE MEMBER WONG: Kenton Wong, or we can  
18 just delete out the, which is adequate and appropriate  
19 because if we just say, it's specific for ethyl alcohol and  
20 free from interference that should cover it.

21 MS. LOUGH: All right, we can just stay with --

22 COMMITTEE MEMBER TANNEY: Specific to.

23 MS. LOUGH: Specific to, the method shall be  
24 capable, say it again how you want it. Or you wanted the  
25 original section? The method shall be specific to the

1 analysis of ethyl alcohol, period?

2 MR. PHILLIPS: Just strike, which is appropriate,  
3 adequate and appropriate, with a specificity for law  
4 enforcement purposes.

5 MS. LOUGH: The method shall be specific to --

6 MR. PHILLIPS: The method shall be capable of  
7 analysis of ethyl alcohol with a specificity for law  
8 enforcement purposes.

9 MS. LOUGH: Oh, okay, just take out that other  
10 part then.

11 COMMITTEE MEMBER TANNEY: This is Laura. I'm  
12 being a little nit picky I know. But we define alcohol and  
13 ethyl alcohol in the very first section. So I still say  
14 that this is a one, it satisfies that because you're talking  
15 about, shall be capable of analysis of blood alcohol  
16 concentration where it is specifically talking about ethyl  
17 alcohol all the way through this.

18 MS. LOUGH: And what was then Clay's point is that  
19 you may have some other substance in there that is, could be  
20 additive with your --

21 COMMITTEE MEMBER TANNEY: But you have that in  
22 (a)(3) like --

23 MS. LOUGH: Well you could be adding, you could  
24 be --

25 COMMITTEE MEMBER TANNEY: We don't --

1 MR. PHILLIPS: Well (a)(3) actually talks about  
2 interference and coagulants. What we're talking about is  
3 that ethyl alcohol is a specific analyt that we're looking  
4 for not an ethyl alcohol, not isopropyl --

5 COMMITTEE MEMBER TANNEY: Bill I --

6 MR. PHILLIPS: -- none of those. So it has to be  
7 specific for ethyl alcohol.

8 COMMITTEE MEMBER TANNEY: This is Laura. I  
9 understand that but (a)(1) I mean like I said alcohol is  
10 already defined as ethyl alcohol. So I understand what  
11 you're saying. I suppose you could say, the method shall be  
12 free from interference with any other substance in the  
13 (a)(3).

14 MS. LOUGH: This is Pattie. That's why I thought  
15 if we put it in (a)(3) and consider it an interference, an  
16 interfering substance then that would draw the analyst  
17 attention to be sure that it didn't have specificity issues.

18 COMMITTEE MEMBER WONG: Kenton, I agree.

19 MS. LOUGH: Okay, so some of us feel like we  
20 should just remove some of the wording in paragraph two and  
21 others want us to add so I give this to the Committee to  
22 give me direction on how you want to do it.

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
24 Comment from the public. I think it's perfectly appropriate  
25 to keep them separate.

1           You know, and in real world cases if you have a  
2 glue sniffer with a lot of acetone, methyl ethyl ketone in  
3 his he's probably impaired but regarding these regulations  
4 that the method should be capable of reporting but  
5 distinguishing that.

6           The (a)(3) actually talks about a process in which  
7 something is added to the sample as it's collected. So it's  
8 not something that the subject, it's not materials that were  
9 in the subject's system.

10           So I think it's perfectly appropriate and much  
11 clearer to keep those two sections separate.

12           COMMITTEE MEMBER WONG: I think it's a good point  
13 Clay.

14           CHAIRMAN KIMSEY: This is Paul in Richmond. I too  
15 like the idea of keeping them separate. I mean specificity  
16 which relates to sensitivity for laboratory testing is  
17 something that, you know, laboratorians and scientists sort  
18 of deal with. And so I like the idea of a reduction of the  
19 language which was, I guess, to drop, which is adequate and  
20 appropriate for, and just say, with the specificity maybe  
21 for traffic or specificity for law enforcement, I guess.

22           COMMITTEE MEMBER WONG: How about, Kenton, how  
23 about the wording of for (a)(2), the method shall be  
24 specific for the analysis of ethyl alcohol for traffic law  
25 enforcement purposes.

1 MR. PHILLIPS: This is Bill Phillips. Are we  
2 limiting the scope of this by saying, traffic enforcement  
3 because it may be used for death investigations, other  
4 coroners may do analysis that don't relate to traffic  
5 enforcement.

6 So maybe we should strike, law and traffic  
7 enforcement.

8 COMMITTEE MEMBER TANNEY: This is Laura. Can you  
9 say, this method shall distinguish ethyl alcohol from other  
10 substances?

11 CHAIRMAN KIMSEY: That's basically what  
12 specificity implies.

13 COMMITTEE MEMBER TANNEY: I'm going to leave this  
14 to you scientists.

15 MS. LOUGH: Yes, this is Pattie. You don't want  
16 to say, from all other substances because there's only  
17 certain ones that are likely to be in the human body. And  
18 so --

19 CHAIRMAN KIMSEY: And that's basically --

20 MS. LOUGH: -- if we keep it how it is and I take  
21 out, which is adequate and appropriate, does that satisfy  
22 most peoples general terms about, you know, making too many  
23 changes. And there are other, you know, for traffic law  
24 enforcement purposes I think it probably should be in there  
25 because there's many organizations that are in steady use of

1 this information in other ways.

2 So this is specifying we're talking about traffic  
3 which is what this whole regulation is about. So if we just  
4 take out, which is adequate and appropriate --

5 COMMITTEE MEMBER WONG: Not --

6 MS. LOUGH: -- and then if you guys want to change  
7 it later we can. But --

8 COMMITTEE MEMBER WONG: I think the wording runs a  
9 little smoother if you just say, the method shall be  
10 specific for the analysis of ethyl alcohol for traffic law  
11 enforcement purposes.

12 MS. LOUGH: The method shall be specific for the  
13 analysis of ethyl alcohol for traffic law enforcement  
14 purposes.

15 COMMITTEE MEMBER WONG: Yeah. Yeah?

16 MS. LOUGH: Everyone on the Committee okay with  
17 that?

18 CHAIRMAN KIMSEY: This is Paul. I think Bill, we  
19 had a comment from the public about, we're using the word,  
20 traffic. I mean, does that limit this or Bill Phillips what  
21 was your concern?

22 MR. PHILLIPS: Just that this method is also used,  
23 not that it applies to, but it's also used for coroner's  
24 work for death investigations. It is specifically for  
25 traffic enforcement though it was designed for that

1 regulation.

2 CHAIRMAN KIMSEY: Okay.

3 COMMITTEE MEMBER SEDGWICK: This Paul Sedgwick.  
4 If it is specific for traffic law enforcement purposes, it  
5 will also be specific for coroner's work or any other  
6 analytic need.

7 COMMITTEE MEMBER WONG: Correct.

8 COMMITTEE MEMBER SEDGWICK: And so it seems  
9 appropriate to me to keep that in there.

10 MR. PHILLIPS: Yeah, I'm fine with that Paul.

11 MS. LOUGH: Okay, this is Pattie and I'm writing  
12 now.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
14 Comment from the public.

15 MS. LOUGH: On the next page I have --

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
17 Actually comment from the --

18 MS. LOUGH: -- 1220.1 (a)(4) --

19 CHAIRMAN KIMSEY: We have a comment from the  
20 public here in Richmond.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
22 Still on page 24. Under 1220.1 (b), I'll make this real  
23 quick, I would still advocate that we retain the role the  
24 Department in evaluating a laboratory issued test  
25 performances in order to, again, enable the Department to do

1 two things, in order to enable the Department to continue  
2 with its mandated function of regulating the laboratories  
3 and two, under the current language there's absolutely no  
4 direction to the, in this case the forensic alcohol analyst,  
5 as to how he or she would evaluate the laboratory's  
6 performance.

7 VENTURA PHONE: Pardon the interruption, your  
8 teleconference is taking less than three participants at  
9 this time.

10 CHAIRMAN KIMSEY: Oh no.

11 VENTURA PHONE: If you would like to continue  
12 press star-one now or the conference will be terminated.

13 CHAIRMAN KIMSEY: Whosever phone is saying that  
14 should press star-one pretty quickly.

15 COMMITTEE MEMBER ANDERSON-SEAQUIST: Okay.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
17 So Janet.

18 CHAIRMAN KIMSEY: Was that Janet or Sacramento?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 It's Janet.

21 CHAIRMAN KIMSEY: Okay.

22 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet, I just  
23 got a weird message. Did anyone else get something?

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
25 Press star one.

1 CHAIRMAN KIMSEY: Yeah, go ahead.

2 MS. LOUGH: Press star one.

3 COMMITTEE MEMBER ANDERSON-SEAQUIST: I did.

4 CHAIRMAN KIMSEY: Okay. You may have to do that  
5 periodically.

6 COMMITTEE MEMBER ANDERSON-SEAQUIST: Sorry.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
8 Anyway, back to 1220.1(b), two points, one I think the  
9 Committee should consider the need to have an external  
10 agency like the Department continue to evaluate a  
11 laboratory's proficiency test performance but also to note  
12 that the language here provides no direction to the staff,  
13 to the forensic alcohol analyst as to how they will evaluate  
14 the standard of performance.

15 MS. LOUGH: Clay, this is Pattie. Let's go back  
16 to proficiency testing. But I thought we talked about that  
17 last time. And I thought we talked about having some  
18 criteria determining if you passed and that meets the, and  
19 let me see, okay I'm looking at competency testing, hold on,  
20 okay we did cover that under competency testing.

21 We did not discuss proficiency testing because  
22 that is under the Health and Safety code to use guidelines  
23 for that. And do we need to go back now and to the Health  
24 and Safety Code on proficiency testing to see what it says?

25 Okay, under Health and Safety is says, corrective

1 action taken when proficiency results are inconsistent with  
2 expected test results. So you want to put some guidelines  
3 in there like we did, our wording, I think, is really good  
4 for competency testing and just use that same wording there.

5 CHAIRMAN KIMSEY: Pattie, this is Paul Kimsey.  
6 What part of the Health and Safety Code were you reading on  
7 the Health and Safety?

8 MS. LOUGH: Seven, 10702.

9 CHAIRMAN KIMSEY: Okay.

10 MR. PHILLIPS: Is that page 6? Is that what  
11 you're referring to Pattie? This is Bill Phillips.

12 MS. LOUGH: You mean as far as competency testing?

13 MR. PHILLIPS: Yes, where was that?

14 MS. LOUGH: Oh, let's see. Okay. We are in,  
15 let's see, all right, they've got us, we're on last the  
16 sentence in page 24 which took me to page 12? This session,  
17 that's written in wrong, 1216.1 (b) where we have a very  
18 nice definition of what the, how the test is sort of set up.

19 It talks about what the results have to be. So  
20 unless we have it someplace else in the document which I  
21 don't remember. We can determine that here where we are on  
22 page 24.

23 The ability to be, on 24 it says, the ability of  
24 methods to meet the standard of performance set forth in  
25 this section. So maybe we need to go back to the standard

1 of performance and see if we put them there.

2 Our page numbers might be different apparently.  
3 I'm trying to go through here and see if we have it  
4 someplace else.

5 To save time why I don't I make a note on my page  
6 24 that the results, we used it in competency testing. We  
7 said, results must fall within plus or minus five percent of  
8 a known value and put that in here under 1220.1 (b).

9 And that would be self-explanatory.

10 COMMITTEE MEMBER WONG: Kenton, I agree with  
11 Pattie. There's no need for having the Department evaluate  
12 that.

13 MR. PHILLIPS: Well, you could mention, this is  
14 Bill Phillips. You could mention Section 1220.1 (a)(1)  
15 because that's where it specifies what it must meet.

16 The method shall be capable of the analysis of,  
17 and so you could meet the requirements of these regulations  
18 cite Section 1220.1 (a)(1).

19 MS. LOUGH: Okay. So that last one, 1220.1 (b),  
20 the ability of the method to meet the standards of  
21 performance set forth in this section shall be evaluated by  
22 a forensic alcohol analysis using the test da, da, da and  
23 then I'll put a sentence in that says, results must fall  
24 within plus or minus five percent of the known value with  
25 that reference in there.

1 CHAIRMAN KIMSEY: Correct.

2 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.  
3 It makes the plus or minus amount extremely tight for very  
4 low levels. And it would be more appropriate to say plus or  
5 minus five percent for levels above .08 and what's more  
6 commonly used in laboratories is plus or minus .01 for  
7 levels below .08.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
9 Comment from the public. The standard of performance  
10 requirements described under 1220.1 (a)(1) only applied to  
11 concentrations above .08.

12 COMMITTEE MEMBER TANNEY: It does, it does say  
13 that there.

14 MS. LOUGH: Yeah. This is Pattie.

15 COMMITTEE MEMBER DAVIS: This is Kevin Davis.  
16 What's wrong with the way it is?

17 COMMITTEE MEMBER TANNEY: Yeah this is Laura. I  
18 don't understand what's wrong with the way it is either.

19 MS. LOUGH: The way it is it simply says of the  
20 analyst would determine if the result meets the standard of  
21 performance and --

22 COMMITTEE MEMBER TANNEY: Because we put it in the  
23 section --

24 MS. LOUGH: -- and we put that in under Standards  
25 of Performance. We put what that will be in .08 or higher

1 COMMITTEE MEMBER TANNEY: Right, I don't see  
2 what's wrong with the way it's currently written.

3 MS. LOUGH: All right.

4 COMMITTEE MEMBER TANNEY: I didn't understand  
5 that.

6 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.  
7 I agree with what they're saying there.

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
9 And Laura --

10 MS. LOUGH: Okay you have two on the Committee.  
11 Anybody else? This is Pattie.

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
13 Last comment from the public. I'm not sure it was  
14 discussed. Again, the value of having an external agency  
15 like the Department review a lab's result is it provides an  
16 independent, objective documentation of the competency of  
17 the laboratories.

18 The proposal here is to let the labs determine for  
19 themselves whether they're competent.

20 MS. LOUGH: This is Pattie. Proficiency test  
21 results can easily be admitted in the courtroom if there's a  
22 question on that. And the analyst should be fully prepared  
23 to bring their proficiency tests and documentations with  
24 them.

25 So I think, as far, you know, the documentation,

1 you can't take a test and hide your documents. All of that  
2 information has to be maintained on file and available to  
3 the courts.

4 Okay, from the Committee then we're going to leave  
5 1220.1 (b) as it is?

6 COMMITTEE MEMBER TANNEY: Yes. Laura, yes.

7 MS. LOUGH: All right, that's what I hear. So,  
8 all right, I, back up a little bit on 1220.1 (a)(4), third  
9 line, I just going to add the word, a alcohol by a  
10 qualitative test.

11 Page 25, 1220.2 (a)(1), we need to change the word  
12 method to instrument. And I put instrument in parenthesis,  
13 the instrument shall be calibrated. And that's consistent  
14 with our justification below.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
16 Comment, comment --

17 MS. LOUGH: And just for everyone's information, I  
18 have to leave today at 12:30. I don't know if you can go  
19 until 12:30 for lunch.

20 CHAIRMAN KIMSEY: Yeah, I think we can do that.  
21 We also had a comment --

22 MS. LOUGH: I have to leave at 12:30.

23 CHAIRMAN KIMSEY: That's fine. I think unless we  
24 hear differently I think we can go to 12:30. We had a  
25 comment from the public here in Richmond.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 Yeah, I actually never, I mean this seems reasonably  
3 innocuous, but I don't understand the meaning or the  
4 appropriateness of replacing method with instrument.

5 When you run a series of calibration standards you  
6 typically tweak the standards identically as the samples and  
7 so there are sampling and aliquoting procedures that are  
8 applied to both the samples and the standards.

9 So I think it's the whole method that gets  
10 calibrated. I also note that we referred to a QC run on a  
11 control and it's the method that's considered to be an error  
12 not the instrument.

13 So I actually don't see much value in switching  
14 methods to instruments since I think you're actually  
15 calibrating the whole analytical stream.

16 MS. LOUGH: Any comments from the Committee?

17 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.  
18 The method is a collection of papers. You cannot calibrate  
19 papers. You calibrate instruments.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 That's clever, I mean that's interesting but the regulations  
22 specifically describe that collection of papers you describe  
23 as a written method description.

24 MS. LOUGH: Okay so your comment. This is Pattie.  
25 Okay, my page 26, 1220.2 (a)(1)(A). Okay this is where

1 I've got some, a lot of notes on this part.

2 We were talking about secondary standards and  
3 tertiary standards then it talks of the idea that for the  
4 purposes of these regulations we called secondary standards  
5 that they applied to purchased or prepared solutions for the  
6 purposes of these regulations.

7 So we can change our nomenclature just to have  
8 secondary standards and that can apply to either purchased  
9 or prepared solutions.

10 And in this section it says, such alcohol  
11 solutions are secondary standards and we had included the  
12 fact that they could also be tertiary standards that were  
13 established using purchased secondary standards.

14 I think that kind of becomes circular in  
15 definition. So for the purposes of these regs I'm saying to  
16 use the term secondary standards to apply to prepared or  
17 purchased solutions.

18 And at this point I'm not talking about how bad  
19 it's done or how that is checked.

20 COMMITTEE MEMBER TANNEY: This is Laura. I have  
21 two comments. With that involved and deleting the  
22 definition of tertiary standards, step one.

23 And second is that going to cause confusion within  
24 your disciplines by people reading this if it has a  
25 different meaning in the scientific community.

1 MS. LOUGH: Okay, this is Pattie. Later when we  
2 talked about those solutions in detail I think it becomes  
3 very clear on how to handle those solutions.

4 MR. PHILLIPS: We then, this is Bill Phillips. Do  
5 we then have to add a definition for secondary standards?

6 MS. LOUGH: We just simply said, such alcohol  
7 solutions are secondary standards and we're sort of keeping  
8 it there.

9 The section before this, the instruments to be  
10 calibrated with standards which are water solutions of  
11 alcohol. Now we're saying we are calling those secondary  
12 standards.

13 So right now it's just general terms. This way  
14 this section remains as it was originally written because  
15 it's just the common terms. We're using a common term for  
16 the solutions.

17 COMMITTEE MEMBER TANNEY: This is Laura. Can we  
18 just combine then (a)(1) and (a)(2) and delete the (a)(2)  
19 and just say, the instruments shall be calibrated with  
20 standards which are either prepared or purchased standards  
21 and not even have the term secondary or tertiary in there?

22 MS. LOUGH: No. This is Pattie. We want to keep  
23 secondary because we are going to talk about those later.

24 COMMITTEE MEMBER TANNEY: Okay. But can you still  
25 combine them into the section, the preceding section? Just

1 to make it --

2 MS. LOUGH: We were at C, the method calibrated  
3 with standards which are water solutions of alcohol and for  
4 the purposes of these regs. So I think it's important to  
5 kind of call it that. This that there was --

6 COMMITTEE MEMBER TANNEY: It doesn't have to be  
7 combined. I was just wondering if that would make it  
8 easier. But if it's not, doesn't make it easier then don't  
9 worry about it.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
11 Comment from the public. I'm sorry, could you repeat what,  
12 I lost track here. Could you repeat the definition of  
13 1220.2 (a)(1)(A).

14 MS. LOUGH: Such alcohol solutions are secondary  
15 standards for the purposes of these regulations, secondary  
16 standards applied to prepared or purchased solutions.

17 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
18 Is that two sentences?

19 MS. LOUGH: That's two sentences. Our what  
20 alcohol solutions are secondary standards we can say, which  
21 for the purposes of these regulations applies to prepared or  
22 purchased solutions.

23 Then the justification that's down there at the  
24 page will be removed from that section and used elsewhere.  
25 And I'll just put in some kind of simple justification and

1 then we can review later. Just something that's, so I'll  
2 add the justification then we discuss later.

3 Is that okay with everybody?

4 COMMITTEE MEMBER ANDERSON-SEAQUIST: Yes, this is  
5 Janet, yes.

6 MS. LOUGH: Okay, and then that justification  
7 that's here will be removed at that point. Which brings us  
8 to 1220.2(a)(1)(B).

9 This is now describing, defining NIST or writing  
10 out what N-I-S-T means. I can just leave it as it is here.

11 But it's also going to be in our definitions, yeah.

12 COMMITTEE MEMBER TANNEY: Okay, Laura. By having  
13 secondary here isn't that then confusing because you've used  
14 for purposes of the regulations that secondary also includes  
15 to prepare.

16 MS. LOUGH: Okay, let me read this. Okay what  
17 this says here is that you will purchase, this is Pattie.  
18 That you will purchase or prepare and it gives a little  
19 description of what it means, how you can prepare it. So I  
20 think it's important here now, we said there were two kinds,  
21 you can purchase it or prepare it.

22 Now we're going to talk about what is important  
23 about those two whether you purchased or prepared it because  
24 they are going to be handled differently.

25 Let me go on. We can come back to that. I would

1 move, let's see, okay, what it's saying here is, this just  
2 me talking now, whether you buy these secondary standards or  
3 you continue to make the secondary standards, what we have  
4 to include here in a new step that must be added which is  
5 not currently done but will make the work done in California  
6 without question I think for what we had before.

7           So what we're going to say on this one is that in  
8 the following sections, whether you buy them or prepare them  
9 they must all be tested against the NIST standard reference  
10 material before they're place into use.

11           And I was going to shift around the justifications  
12 so that they're under the appropriate sections. Everybody  
13 follow that?

14           COMMITTEE MEMBER WONG: Yes.

15           MS. LOUGH: I'm trying to read my notes that I  
16 have here. I'm going to read some of my comments I made to  
17 the justifications under the (1)(b) paragraph as it's stated  
18 now. Accurate calibration of instruments using forensic  
19 alcohol testing is critical as the results directly affect  
20 criminal prosecutions. For the past thirty years, I added  
21 California laboratories have and I changed it to, then  
22 required by regulation to prepare their own secondary  
23 alcohol standard using a direct oxidimetric method employing  
24 potassium dichromate as a primary standard. These secondary  
25 standards are then used to check the calibration, I changed

1 that, check the calibration of the instrument. With the  
2 advent of ethanol-water standard reference materials  
3 produced by NIST, and alternate method has presented itself.

4 Oh, let's see what else I changed. Commercially  
5 prepared, this is added, commercially prepared secondary  
6 standards now are widely available at critical concentration  
7 levels. In this revision laboratories are given the  
8 opportunity to continue to prepare secondary standards  
9 themselves or take advantage of the purchase of NIST  
10 traceable secondary standards.

11 Now justification for (1)(b). We talked about  
12 adding the word, direct. And we talked about the change  
13 about the USNB, Bureau of Standards no longer fits. The  
14 rest of the justifications I'm putting under (1)(c) because  
15 I think that's where they go. In (1)(c) it says right now,  
16 This additional requirement was added as a final  
17 verification and most accurate test of a secondary standard  
18 that will be used to, and I changed that to, check the  
19 calibration of the instrument for testing.

20 COMMITTEE MEMBER TANNEY: I have a suggestion.  
21 This is Laura, for (a)(1)(B). Because I think it's  
22 confusing the way it's written. That you say, each forensic  
23 alcohol laboratory shall purchase Nat, and I think you can  
24 take out, National Institute of Standards and technology  
25 here because we do have it in the definition. And that will

1 shorten and clarify the paragraph. Say, each forensic  
2 alcohol laboratory shall purchase NIST traceable secondary  
3 alcohol standards, or prepare a secondary alcohol standard  
4 using a direct oxidimetric method which employs a primary  
5 standard such as NIST Potassium dichromate.

6 And then if you add something in about  
7 establishing the concentrations after that. But I also  
8 think you have the verification of the concentrations below.

9 So I'm not sure you mean to add that up in that paragraph.

10 But I think you basically say, shall purchase or  
11 establish the concentration and it should be, shall purchase  
12 or prepare. You see what I'm saying?

13 MS. LOUGH: This is Pattie. I agree. That's the  
14 old language that we're looking at. Yeah, I think that  
15 reads better because preparing a secondary instead of that.

16 COMMITTEE MEMBER TANNEY: Right.

17 MS. LOUGH: I think that sounds fine. How about  
18 the rest of the Committee?

19 COMMITTEE MEMBER WONG: I concur, that's really  
20 good Laura.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
22 Comment from the public. There is a discussion and I think  
23 a misrepresentation of the Department's approval or ability  
24 to approve. There's a comment here that the Department has  
25 approved or established the five percent error rate for the

1 direct oxidimetric method.

2           The Department establishes things through  
3 regulations. There's no requirement in the regulation  
4 regarding the accuracy and the precision of the direct  
5 oxidimetric method.

6           I think in practice if you were to poll your  
7 laboratories you would discover it's much, much better than  
8 five percent.

9           But more to the point, you then compare that five  
10 percent error with the likely error that would be obtained  
11 with, if you use the forensic alcohol method itself to  
12 establish the concentration of the secondary standard based  
13 on analysis against a NIST standard reference material.

14           To really make that comparison you'd have to have  
15 an assessment of what the error of the forensic alcohol  
16 method is.

17           And I would submit that that error is established  
18 in regulation. The regulations refer to it earlier, Section  
19 1220.1 (a)(1) set the error. The maximum error for forensic  
20 alcohol at five percent.

21           So ironically while you're suggesting that using a  
22 direct oxidimetric method to establish the concentration of  
23 the secondary against a true primary standard because the  
24 standard reference materials clearly are not primary  
25 standards.

1           But to suggest that that has a five percent error  
2 based on some comments about the Department stipulating that  
3 is incorrect. And to actually compare that method with the  
4 method proposed, to use the forensic alcohol method itself  
5 to determine the concentration of the secondary standards,  
6 again, you need an assessment of that error.

7           And, again, that error is set in regulation at  
8 five percent. So our truly using a method with a five  
9 percent error to determine the concentration of the  
10 secondary standards.

11           MS. LOUGH: This is Pattie. We're using a  
12 secondary standard to check the accuracy of the instrument.

13           If we prepared them ourselves using, doing the titration we  
14 are using the plus or minus five percent.

15           If we purchased NIST SRMs and compare that  
16 titrated value to it the NIST SRMs have a much tighter,  
17 smaller error rate. So we think our product is improved.

18           I don't see a reason to change anything the way we  
19 have it written.

20           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
21 Well I didn't think your comments were responsive to mine.  
22 I don't want to repeat them all. But the method you use to  
23 check using that NIST standard it has an error of five  
24 percent.

25           MS. LOUGH: Okay, without any other comments does

1 the Committee want me to go ahead and rework this paragraph  
2 the way I kind have changed the comment and the section  
3 itself for the next review?

4 COMMITTEE MEMBER WONG: Kenton, I agree.

5 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet, I  
6 agree.

7 CHAIRMAN KIMSEY: This is Paul, that's fine.

8 MS. LOUGH: Okay does that mean we can, it's not  
9 cast in stone yet so I'll go ahead and make changes for the  
10 next review because my notes are kind of all over the place  
11 here.

12 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is  
13 Janet. Were we going to make the changes to the verbiage  
14 that Laura had come up with?

15 MS. LOUGH: Wait Janet, which one, which part?

16 COMMITTEE MEMBER TANNEY: Where we took out, where  
17 we said, this is Laura. Each forensic alcohol laboratory  
18 shall purchase NIST traceable secondary alcohol standards or  
19 prepare a secondary alcohol standard with --

20 MS. LOUGH: Yes. Yes. Okay.

21 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is  
22 Janet.

23 MS. LOUGH: It's going to be here to review when  
24 you see it all in front of you next time.

25 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is

1 Janet, thank you. That's what I thought.

2 MS. LOUGH: Okay. With that in mind now on the  
3 next page 1220.2 (a)(2) I removed the insertion of, or  
4 tertiary, and just -- which leaves the language exactly how  
5 it is now. My justification is this subsection will remain  
6 as written as it requests current accepted practice.

7 So 1220.2 (a)(2)(A) again, I removed our addition  
8 of tertiary --

9 COMMITTEE MEMBER WONG: Kenton, Pattie do we need  
10 to back to page five and just change to a secondary then  
11 when Janet was giving the definition on 1215.1 (r)?

12 MS. LOUGH: Yeah, we will, yeah, if everyone  
13 agrees to that then we can at that point get rid of the  
14 definition for tertiary because --

15 COMMITTEE MEMBER WONG: Because her definition was  
16 perfect for a secondary. A material that is traceable to a  
17 primary standard.

18 COMMITTEE MEMBER ANDERSON-SEAQUIST: Janet, I'm  
19 for removing tertiary altogether and just putting secondary.

20 MS. LOUGH: Okay, so in our document I think we  
21 define what a secondary standard is. So I don't think it's  
22 necessary to have that in the definition. So I can get rid  
23 of the existing 1215.1 (r). Okay.

24 COMMITTEE MEMBER TANNEY: Back to page, this is  
25 Laura, back to page 28, the subdivision (a)(2). It's kind

1 of awkwardly written I think. I think it should say, the  
2 procedure shall include that at least once each day samples  
3 which include, which are either blank or secondary samples  
4 should be subjected. I don't know, something different or  
5 is this awkward?

6 MS. LOUGH: This is Pattie, let's see if we can  
7 have that in here so we can --

8 COMMITTEE MEMBER ANDERSON-SEAQUIST: This is  
9 Janet, as long as it's not interpreted that you have to do  
10 analysis everyday.

11 COMMITTEE MEMBER TANNEY: That's true.

12 COMMITTEE MEMBER ANDERSON-SEAQUIST: I still would  
13 like my weekends off.

14 MS. LOUGH: Okay, if you look at this paragraph  
15 before that then, the 1220.2 (a)(2). It says that you'll  
16 include a blank and a secondary at least once each day  
17 samples are run. So it's sort of redundant.

18 COMMITTEE MEMBER TANNEY: Where are you?

19 MS. LOUGH: Okay, just above that one, 1220.2  
20 (a)(2).

21 COMMITTEE MEMBER TANNEY: Yeah.

22 MS. LOUGH: It says, that you'll make sure that  
23 you use a blank and a secondary standard.

24 COMMITTEE MEMBER TANNEY: That's the one I'm  
25 having the problem with.

1 MS. LOUGH: Every day that you do the work.

2 COMMITTEE MEMBER TANNEY: But I mean it's just  
3 written awkwardly.

4 MS. LOUGH: Oh. Well that's the old language so  
5 go ahead and --

6 COMMITTEE MEMBER TANNEY: Do you have new  
7 language?

8 MS. LOUGH: We don't. That's the existing. So at  
9 least once each day that samples are subjected to analysis a  
10 blank --

11 COMMITTEE MEMBER TANNEY: On each day of analysis.

12 MS. LOUGH: On each day of analysis a minimum of,  
13 on each day of analysis a blank and secondary standard --

14 COMMITTEE MEMBER TANNEY: Shall be subject --

15 MS. LOUGH: Shall be run --

16 COMMITTEE MEMBER TANNEY: -- to forensic alcohol  
17 analysis. Take out the procedure.

18 MS. LOUGH: On each day of analysis a blank and  
19 secondary alcohol standard should be run at least once?

20 COMMITTEE MEMBER TANNEY: Shall be subject to  
21 forensic --

22 MS. LOUGH: Shall be --

23 COMMITTEE MEMBER TANNEY: -- alcohol analysis.

24 MS. LOUGH: I'll leave that out. On each day of  
25 analysis a blank and secondary alcohol standard, I have,

1 should, shall?

2 COMMITTEE MEMBER TANNEY: Shall.

3 MS. LOUGH: Be subject to forensic alcohol  
4 analysis. Okay, and that's being changed for clarity.

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
6 Comment from the public. You know the standard of practice  
7 actually is a bit more robust than the regulations even  
8 require. The standard practice is to include a blank and a  
9 standard with each run, with each set of samples, with each,  
10 not like clinical labs that may calibrate a method once a  
11 week and they run it continuously.

12 COMMITTEE MEMBER TANNEY: Well not with each  
13 sample, with each run.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
15 And --

16 MS. LOUGH: No, because it's -- this is Pattie.  
17 If you say run you might have four runs set up for the day  
18 or you may do one run a day. So I --

19 COMMITTEE MEMBER TANNEY: But a run can have 20  
20 different samples couldn't it?

21 MS. LOUGH: And you could have four of those in a  
22 day.

23 COMMITTEE MEMBER TANNEY: Okay, but, I don't know  
24 if you say each time you do the 20 sample run you should  
25 have at least one blank and one sample, one known. So you

1 register controls, right? Your blank and your known. And  
2 each time you do --

3 MS. LOUGH: There is another, this is Pattie.  
4 There is another one that will be run with everything  
5 throughout the day, that we haven't gotten to yet.

6 COMMITTEE MEMBER TANNEY: Oh.

7 MS. LOUGH: So this is like when you're starting  
8 your day, you run some blanks. You run those secondary  
9 samples. You know your instrument is working. That these  
10 are popping on your samples. On the samples that you're  
11 popping on there's another --

12 COMMITTEE MEMBER TANNEY: Okay, then I need to say  
13 before any analysis is performed a, or you could even say,  
14 for control purposes before any analysis is performed a  
15 blank and secondary standard shall be subject to forensic  
16 alcohol analysis.

17 MS. LOUGH: And then we have to ask Clay about  
18 that because I don't know how all the labs are set up right  
19 now. If we would be changing how other labs are doing their  
20 business?

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
22 I'm sorry I wasn't --

23 MS. LOUGH: Okay, or if we care I think it should  
24 be done before you start.

25 COMMITTEE MEMBER TANNEY: Clay, this is Laura.

1 Pattie was saying that there's a separate section that  
2 relates to running the controls with each set of samples  
3 that you run through this, whether you call it procedural  
4 method or process or whatever. That this is just basically  
5 a run that you do before each, at the beginning of each day  
6 to make sure your equipment is running properly.

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

8 The --

9 COMMITTEE MEMBER TANNEY: She wants to make sure  
10 that if we include this, if we say, before any analysis is  
11 performed a control, you know, a control including a blank  
12 and a secondary standard shall be run.

13 She wants to make sure that's not, you know, going  
14 to affect the other laboratories' way of doing things.

15 MS. LOUGH: And this is Pattie. I think it would.  
16 Leona just mentioned to me that they run those samples  
17 along with the subject samples. So the word, before, would  
18 be too specific.

19 COMMITTEE MEMBER TANNEY: But I thought you said  
20 that there was another section that dealt with samples that  
21 were run with the samples.

22 MS. LOUGH: There are but --

23 COMMITTEE MEMBER TANNEY: So do we remove this  
24 completely then?

25 MS. LOUGH: In some laboratories in California

1 they may go ahead and run these first and check the  
2 calibration of the instruments and then not run them again.

3 So they do it before. In San Diego they do it  
4 along with their subject --

5 COMMITTEE MEMBER TANNEY: With each run?

6 MS. LOUGH: And I think now --

7 COMMITTEE MEMBER TANNEY: -- is that it's better  
8 for the minimum standards that we should be requiring that  
9 they should be run with every run of the procedure.

10 MR. PHILLIPS: That's the common practice. This  
11 is Bill Phillips. With the Department we run a blank and a  
12 secondary with each run.

13 MS. LOUGH: And I don't believe everyone does  
14 that. I'm trying to think, this is Pattie. I'm trying to  
15 think of San Bernardino where they run four or five runs a  
16 day.

17 In the morning they check the calibration with  
18 these standards and the blanks. And they do use a blank on  
19 each run of 36 samples. But I don't believe that they use  
20 the secondary standards after that. I think they use a  
21 quality control reference.

22 COMMITTEE MEMBER TANNEY: But should they?

23 MS. LOUGH: Yes.

24 MR. PHILLIPS: So this is the minimum of which we  
25 could abide by.

1 MS. LOUGH: This is the minimum.

2 MR. PHILLIPS: Correct.

3 COMMITTEE MEMBER TANNEY: Right. But if you think  
4 they should, all of you scientists here. Do you want to  
5 impose that on them or --

6 MS. LOUGH: Before or in conjunction with --

7 COMMITTEE MEMBER TANNEY: You could say that.

8 MR. PHILLIPS: Shall be included is probably the  
9 best way to say it.

10 MS. LOUGH: Before or included with subject  
11 samples a blank and secondary alcohol standard shall be  
12 subject to forensic alcohol analysis?

13 COMMITTEE MEMBER TANNEY: Yeah, you want to make,  
14 this is Laura again. You want to make sure that it's using  
15 the same chain. I mean not just, let's say you have, you  
16 know, five different analytical instruments, you can't just  
17 want to run on one of them.

18 Do you know what I'm saying? This is a way to  
19 just, you know, run them through. I know you guys all know  
20 what it means but I think --

21 MS. LOUGH: For each before or included with  
22 subject samples. Oh, we could just end that, be subject to  
23 forensic alcohol analysis for each instrument used, subject,  
24 for each instrument used in blank and secondary alcohol  
25 standard must be analyzed before and included with subject

1 samples?

2 COMMITTEE MEMBER TANNEY: Concurrently or prior  
3 to. There's not an easier way to write this.

4 MS. LOUGH: For each instrument used a blank --

5 COMMITTEE MEMBER TANNEY: A set of controls  
6 including a blank and a secondary standard shall be, shall  
7 be analyzed concurrently or together with any subject  
8 samples.

9 I'd start with a set of controls, a set of  
10 controls consisting of a blank and secondary standard shall  
11 be run concurrently or prior to forensic alcohol analysis of  
12 samples for every instrument used, something like that.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
14 A comment from the public. I wouldn't use the word,  
15 controls, there to avoid confusion with the separate  
16 requirements for the analysis of quality control sample.

17 COMMITTEE MEMBER TANNEY: You can take out,  
18 controls, and just start with a set of --

19 MS. LOUGH: A blank and secondary standard shall  
20 be run concurrently or prior to analysis of subject samples?

21 COMMITTEE MEMBER TANNEY: Well I guess he didn't  
22 want to say, run, either. Shall be analyzed concurrently or  
23 prior to analysis of the --

24 MS. LOUGH: Analysis of subject samples --

25 COMMITTEE MEMBER TANNEY: Of subject samples on

1 every instrument or any instrument used.

2 MS. LOUGH: On any instrument, so what do I have?

3 Blank or secondary standards shall be analyzed concurrently  
4 or prior to analysis of subject samples on any instrument  
5 used.

6 Okay so we need a justification for that. It'll  
7 be 30. And then everything else on the 1220.2 (a)(2)(A)  
8 tertiary was removed.

9 COMMITTEE MEMBER TANNEY: Do you need that still?

10 MS. LOUGH: Will be for the purposes, we'll call  
11 that a secondary, okay, any secondary standards, or do you  
12 make it, the word is calling those secondary standards. The  
13 purposes of these, of this document.

14 Okay, and then, my justification for the rest of  
15 that, the next one, two, three, four is just that it remains  
16 as written.

17 COMMITTEE MEMBER TANNEY: Do you need this, this  
18 is Laura. Did you decide that you needed an (a)(2)(A)? The  
19 second from page --

20 MS. LOUGH: Yeah, can we, this is Pattie again.  
21 Can we remove that next 1220.2 (a)(2)(A) because we have  
22 now --

23 COMMITTEE MEMBER WONG: Combined it.

24 COMMITTEE MEMBER TANNEY: Or you can combine the  
25 two and go back to the first one and say, a blank and

1 secondary standard shall be taken through all the steps of  
2 the method and run concurrently or prior to the subject,  
3 analysis of subject samples.

4 If you, if they need to go through the other  
5 method, I mean, I don't know if you go through dilutions or  
6 what you do in order to prepare the sample. But you want it  
7 all to apply to your sample set here in example two, right?

8 Or is this a separate test?

9 MR. PHILLIPS: No, it's just making sure that it's  
10 taken through all the steps.

11 MS. LOUGH: This is Pattie.

12 MR. PHILLIPS: This is Bill, sorry.

13 MS. LOUGH: Yeah, I think if you change the (a)(2)  
14 then you don't need the (a)(2)(A).

15 COMMITTEE MEMBER ZIELENSKI: Torr Zielenski from  
16 Sacramento. The language, prior to, is that sufficiently,  
17 is that a vague term? I mean, I don't know how this stuff  
18 works necessarily, what if you test a device, before, then  
19 you're going to send out some samples and you say, I  
20 calibrated the machine before, would that --

21 MS. LOUGH: This is Pattie. Yeah, you want just  
22 to say, immediately prior?

23 COMMITTEE MEMBER ZIELENSKI: That seems to be more  
24 specific, otherwise you'd be --

25 MS. LOUGH: Or on each day.

1 COMMITTEE MEMBER ZIELENSKI: Or on each day.

2 MS. LOUGH: Okay let me type that. Where do want  
3 to put, each day?

4 COMMITTEE MEMBER TANNEY: Read it again.

5 MS. LOUGH: The secondary standards shall be  
6 analyzed concurrently or prior to analysis of subject  
7 samples on any instrument used? You want, on each day?

8 COMMITTEE MEMBER TANNEY: On each day prior to.

9 MS. LOUGH: On each day --

10 COMMITTEE MEMBER TANNEY: Currently or each day  
11 prior to --

12 MS. LOUGH: Currently or each day prior to, okay.

13 COMMITTEE MEMBER TANNEY: Yes.

14 MS. LOUGH: Okay, I'll read that one more time.  
15 Blank and secondary standards shall be analyzed concurrently  
16 or each day prior to analysis of subject samples on any  
17 instrument used. So we can take out the (a)(2)(A).

18 COMMITTEE MEMBER WONG: Yep.

19 CHAIRMAN KIMSEY: Yeah, this is Paul.

20 MS. LOUGH: Does anyone have anything else on that  
21 page?

22 CHAIRMAN KIMSEY: No, this is Paul in Richmond. I  
23 agree about the removal. I mean I'd sort of like to see it  
24 all printed but I tend to agree.

25 MS. LOUGH: Okay. Anything on page 29?

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
2 Comment from the public on page 29. I just have a note here  
3 that back in the day when we had official regulations Kathy  
4 had a comment that, set of samples, might be vague and  
5 should be defined.

6 CHAIRMAN KIMSEY: Which was the section?

7 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
8 I'm sorry 1220.3 (a)(4).

9 MS. LOUGH: What was the question on 3 (a)(4),  
10 page 29?

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
12 I just have a note that Kathy Ruebusch had a comment when we  
13 first looked at this quite a while back now. That the  
14 reference to, set of samples, would raise clarity issues and  
15 should be defined. What a, set of samples, is.

16 MR. PHILLIPS: If we eliminate, this is Bill  
17 Phillips. If we eliminated the words, each set of, with,  
18 samples analyzed for the purpose of forensic alcohol. That  
19 way it would be clear that it's, with samples, not a, set.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
21 So that could be once a week, once a month. Comment from  
22 the public, Clay Larson again. Given Bill's comments that  
23 could permit the analysis of quality control reference  
24 material once a month.

25 CHAIRMAN KIMSEY: How about if we leave in, each?

1 With, each sample.

2 COMMITTEE MEMBER TANNEY: That means you really  
3 can't accept, quality control.

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
5 That might require that you have a one-to-one ratio. Every  
6 time you do a sample you have to do a QC.

7 MS. LOUGH: Yes, that's right, sounds like it.

8 CHAIRMAN KIMSEY: Agreed.

9 COMMITTEE MEMBER TANNEY: You could say,  
10 concurrently, again. At least one sample of the quality  
11 control reference material shall be analyzed concurrently  
12 with samples analyzed for the purpose of forensic alcohol  
13 analysis.

14 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:  
15 This is Bob Haas. I don't know what the standard practice  
16 is with the forensic alcohol. But with each analytical run  
17 with other analytes we include quality control samples every  
18 ten samples typically.

19 For almost all of the other analytes that we do in  
20 this laboratory. But I'm not sure what your standard  
21 practice is. But as I think Clay has pointed out, if you do  
22 like one QC sample, you know, out of like 40 or 50 samples  
23 we wouldn't consider that adequate.

24 MS. LOUGH: This is Pattie. That is the point  
25 that we are talking about exactly. According to this, which

1 is the existing language, you only have to run one of those  
2 quality control references and you could analyze 200  
3 samples.

4 Many laboratories choose to run that sample for  
5 our office but it is not required in the current  
6 regulations. They just do it for what they think is better  
7 quality control.

8 So it's up to this Committee to determine how if  
9 they want to change that or leave it as it is. But also --

10 COMMITTEE MEMBER TANNEY: I think, this is Laura.  
11 I think we have to change it to what's minimally accepted  
12 in the scientific community currently.

13 MS. LOUGH: And this is Pattie. Again it's like,  
14 well do you want just one? If you run a hundred samples do  
15 you just run one at the beginning of that run. Or do you  
16 want to be a little more conservative and maybe do one in  
17 between and one at the end so if you're off you'd know you  
18 were off at the end of the day.

19 At the beginning and the end or at the every ten  
20 like the gentleman just said. So what does the Committee  
21 want to do?

22 FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:  
23 Well again, this is Bob Haas. I can only speak to EPA  
24 methods and FDA methods which I'm much more familiar with.  
25 And those are typically what is here is a, set of samples,

1 a, set of samples, is typically, you know, 10 or 15.

2 One does experience instrument drift during a run.

3 And having quality control samples interspersed in the run,  
4 if it's a long run, you know, obviates the error that you  
5 might see in that.

6 COMMITTEE MEMBER TANNEY: This is Laura. As a  
7 prosecutor I would imagine that the quality control for FDA  
8 would be much more stringent than for these purposes.

9 But I would hate as a prosecutor for another, you  
10 know, reputable toxicologist to come in and condemn the  
11 results of the toxicologist on my case, you know, as a  
12 defense expert and say that this is not acceptable in the  
13 scientific community.

14 And I don't know what is. But I think that, yes,  
15 this Committee needs to figure what is minimally acceptable  
16 where you would agree that for purposes of forensic alcohol  
17 analysis, it's sufficient to get an accurate result.

18 MS. LOUGH: And this is Pattie. If you start out,  
19 you run that sample at the beginning and at the very end you  
20 run that sample and it is still, you're still in agreement  
21 then I think that you're comfortable and confident that all  
22 the results in between are fine too.

23 It's not going to go out of calibration and then  
24 go back into calibration. So I think as a minimum what  
25 maybe we should improve this and say, at the beginning and

1 the end.

2           Is that what we want to say, of each set of  
3 samples? At least one sample of the quality control  
4 reference material shall be analyzed at the beginning and  
5 end of --

6           MR. PHILLIPS: Each set of samples.

7           COMMITTEE MEMBER TANNEY: Well that was the  
8 problem we had in the first place is to define, just a  
9 second --

10          MS. LOUGH: Beginning and end of --

11          COMMITTEE MEMBER TANNEY: Each, can we say, each  
12 analytical data sample and then define analytical run at the  
13 beginning? And as Bill Phillips there still?

14          MR. PHILLIPS: This is Bill Phillips. Yes --

15          COMMITTEE MEMBER TANNEY: Now did you agree with  
16 that?

17          MR. PHILLIPS: Yes.

18          COMMITTEE MEMBER TANNEY: Okay.

19          COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.  
20 Whether you call it analytical run or a set, each  
21 laboratory defines that in their own method. And I don't  
22 think it's appropriate for us to define it for them.

23          COMMITTEE MEMBER TANNEY: Define what, what  
24 terms --

25          COMMITTEE MEMBER SEDGWICK: Just say, at the

1 beginning and end of each run.

2 MS. LOUGH: Run or set or batch --

3 COMMITTEE MEMBER TANNEY: Or batch.

4 COMMITTEE MEMBER SEDGWICK: Well that leaves it  
5 open.

6 MS. LOUGH: Grouping of subject samples? Or any  
7 subject, if you run one subject sample or if you have a set  
8 of a hundred we can just say, at the beginning and end of  
9 subject samples?

10 COMMITTEE MEMBER SEDGWICK: Yeah, that is a  
11 problem. If you have one sample to run then you end up with  
12 a quality control bracketing it.

13 MS. LOUGH: Yeah, that happened.

14 COMMITTEE MEMBER TANNEY: Do you guys ever really  
15 opening up one sample where it's --

16 MS. LOUGH: That happens.

17 COMMITTEE MEMBER SEDGWICK: It happens.

18 MS. LOUGH: So far what I have is, this is Pattie.  
19 At least one sample of the quality control reference  
20 material shall be analyzed at the beginning and end. That's  
21 what I have.

22 COMMITTEE MEMBER WONG: Of each analytical batch?

23 MS. LOUGH: At the beginning and end of the  
24 analysis of subject samples. I'll just toss that out.

25 COMMITTEE MEMBER TANNEY: Yeah, let's go back to

1 the beginning of the day and the end of the day again. I  
2 think you have to say, each batch. I mean I --

3 COMMITTEE MEMBER TANNEY: Goldie you said that  
4 there was only going to be a concern of people who routinely  
5 read this and don't understand what we're talking about,  
6 right?

7 MR. PHILLIPS: Unfortunately Goldie has left the  
8 building.

9 COMMITTEE MEMBER TANNEY: Oh, that is what I  
10 understood. That as long as people who read this understand  
11 it it's going to be clear. I mean as long as people in the  
12 scientific community read this and to understand it that  
13 that would be okay.

14 CHAIRMAN KIMSEY: Well this is Paul in Richmond.  
15 I think it maybe getting to what Bob Haas was mentioning,  
16 what is sort of this standard of practice in the community  
17 now. In other words do you do something at the beginning of  
18 the day, end of the day, every 10 or 15 samples, what is QC  
19 run routinely?

20 COMMITTEE MEMBER TANNEY: It's across the board  
21 apparently that the minimally accepted has always left at  
22 the beginning according to these regulations.

23 MS. LOUGH: At least once, it doesn't say when  
24 because you could do it at the end of the day. You could do  
25 it at the beginning, the end. It's just that the existing

1 language is at least once a day you have to analyze that  
2 sample.

3 COMMITTEE MEMBER WONG: This is Kenton. I think  
4 we need to think about what the labs and kind of like what  
5 everybody is doing. Like what DOJ is doing, what San  
6 Bernardino is doing, what San Mateo is doing, what LAPD is  
7 doing. I think a lot of the auto-tray samplers are 100. Is  
8 that correct?

9 COMMITTEE MEMBER TANNEY: Labs in San Bernardino  
10 they are still doing an old fashioned, they might have 36 on  
11 a run.

12 COMMITTEE MEMBER WONG: Well I know in San Mateo  
13 we had, our largest one was, an auto sampler tray of a  
14 hundred. And we used to have after our secondary standards  
15 we have a QC and then we'd run a bunch of samples of  
16 subjects.

17 And then somewhere in the middle run we'd run  
18 another set of QCs. And then we'd run another bunch of  
19 subject samples. And then at the very end we'd run the QC  
20 again. And I think that's a good practice. I think Bob  
21 Haas has a very good point that, how many are we talking  
22 about in the analytical run.

23 And sometimes the sample comes around where you do  
24 bracket that one sample with the QC just before and just  
25 after. And that's the way the ball bounces.

1           But I think at a minimum we do need to think about  
2 what the laboratories are doing so we don't hamstring too  
3 much but then, like Laura said, you want to make sure that  
4 it's tight enough that what's going to be generally accepted  
5 as really good science and that it's tight. That no one is  
6 going to be able to come in and pooh, pooh that. That the  
7 work is not being --

8           COMMITTEE MEMBER TANNEY: That's why we don't  
9 necessarily need to know what all the labs are doing. What  
10 we need to know is what you're all comfortable with  
11 testifying to is going to represent an appropriate or an  
12 accurate analysis.

13           And if that requires some labs to run the quality  
14 control more then so be it. If that's going to be what  
15 makes you all comfortable with the results.

16           But it should be the minimum amount that you're  
17 comfortable with.

18           COMMITTEE MEMBER WONG: Correct.

19           COMMITTEE MEMBER TANNEY: Not necessarily the  
20 maximum. It should be the minimum amount where you feel  
21 that you can say and what Pattie said is that once at the  
22 beginning and once at the end of each run, to me that seems  
23 reasonable. But I don't know if you, Mr. Haas said that  
24 there is some drift. I don't know if that corrects itself  
25 by the end of the run or not.

1           But again this doesn't have to be as sensitive as  
2 the Food and Drug Administration I wouldn't think.

3           FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:  
4       Actually, this is Bob Haas again. I would think that these  
5 analytical results are at least as important as most of the  
6 general work that we do for the Food and Drug Branch here in  
7 the state or for the USFDA.

8           But aside from that this is --

9           COMMITTEE MEMBER TANNEY: Well we're reporting  
10 it --

11          FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:  
12 -- could I finish?

13          COMMITTEE MEMBER TANNEY: Well essentially between  
14 .05 and .30 to two decimal places.

15          CHAIRMAN KIMSEY: Yeah Laura, let Bob Haas finish.

16          FOOD AND DRUG LABORATORY BRANCH ACTING CHIEF HAAS:  
17 The only other comment I would make is that this is not a  
18 really onerous duty for a laboratory to perform.

19                If the samples are loaded into an auto-sampler  
20 it's, you know, you just program it into your sequence and  
21 it goes back to the quality control samples every 10 or 15  
22 or 25 or 36 or 100.

23                It's not a really difficult thing to do. I kind  
24 of like what it says right here originally, each set of  
25 samples, where the set is defined by the individual

1 laboratory.

2 COMMITTEE MEMBER TANNEY: Who was that?

3 CHAIRMAN KIMSEY: Oh, that was --

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
5 That was Bob.

6 CHAIRMAN KIMSEY: -- that was Bob Haas.

7 COMMITTEE MEMBER WONG: This is Kenton. Is there  
8 some way we can define what a set is and still satisfy the  
9 requirements of Goldie's or Kathy Ruebusch's comments that,  
10 quote, a set would be nebulous or undefined.

11 COMMITTEE MEMBER TANNEY: So the forensic alcohol  
12 toxicologists that are here, are you comfortable with once  
13 at the beginning and once at the end of a set of samples?

14 And then I would leave it that way until Goldie is  
15 here at the next review. But it's only if you're  
16 comfortable with that.

17 COMMITTEE MEMBER WONG: I think that is at a  
18 baseline minimum because we used to do more than that.

19 MS. LOUGH: Okay, Kenton this is Pattie again.  
20 Again though, I think the Committee needs to, if your going  
21 to change that to one at beginning and one at the end as a  
22 minimum, if you want to increase that I think we need to go  
23 back to the organizations and let them know that you're  
24 thinking of changing that.

25 COMMITTEE MEMBER TANNEY: I agree.

1 MS. LOUGH: Because you're representing your  
2 organization.

3 MR. PHILLIPS: Yeah there really hasn't been a  
4 defined problem to demonstrate that this is necessary. So  
5 organizations may be against it because it's not cost  
6 effective for them.

7 If there were a defined problem showing real over  
8 a set of samples we'd be seeing it in our quality control  
9 and in our proficiency samples.

10 So, you know, right at the moment I'm leaning  
11 towards one set of quality control material.

12 COMMITTEE MEMBER TANNEY: Is that Bill?

13 MR. PHILLIPS: Yes it is. At the minimum.

14 MS. LOUGH: One set. You mean at the beginning  
15 and the end?

16 MR. PHILLIPS: One set at the beginning and the  
17 end would be fine.

18 MS. LOUGH: Okay. This is Pattie. I'll go ahead  
19 and write it up like that and then we can bring that up  
20 again with Goldie.

21 COMMITTEE MEMBER TANNEY: And Kenton maybe you can  
22 check, this is Laura, maybe you can check with your  
23 organization.

24 MS. LOUGH: Yes and CAC.

25 COMMITTEE MEMBER WONG: Sure.

1 MR. PHILLIPS: Yeah it's pretty common to see  
2 laboratories doing more than this.

3 COMMITTEE MEMBER WONG: I agree with you Bill.

4 MS. LOUGH: Right.

5 COMMITTEE MEMBER WONG: And I think that's just  
6 prudent.

7 COMMITTEE MEMBER TANNEY: Everybody needs to check  
8 with your organizations and see what the minimal amount that  
9 you're comfortable with.

10 And again, we're talking about not, we're not  
11 mandating that you don't need more. You can always do more,  
12 but again, that you're called in as an expert that you would  
13 be able to have confidence in the results.

14 CHAIRMAN KIMSEY: Yeah, this is Paul. It also --

15 MS. LOUGH: I think we need --

16 COMMITTEE MEMBER TANNEY: Between experts --

17 MS. LOUGH: And --

18 COMMITTEE MEMBER TANNEY: -- but we need to know  
19 what's minimally acceptable to all of your different  
20 organizations.

21 CHAIRMAN KIMSEY: Yeah, this is Paul. I would add  
22 just as a suggestion, when you're talking to your  
23 organizations we sort of started down this road because we  
24 were looking for a definition of, set of samples.

25 COMMITTEE MEMBER WONG: Yeah.

1 CHAIRMAN KIMSEY: So, besides doing one at the  
2 beginning or one at the end or whatever your organizations  
3 think of, if there's also sort of a standard or a definition  
4 of, set of samples, that, you know, we come up with. That  
5 also might help us.

6 COMMITTEE MEMBER TANNEY: Right. This is Laura.  
7 Because if there's only one or two samples we really need.  
8 You know if it's one in the middle, one at the beginning and  
9 one at the end.

10 CHAIRMAN KIMSEY: Is there any further discussion  
11 on this?

12 MS. LOUGH: Does anybody have notes on that so we  
13 can come back to that.

14 CHAIRMAN KIMSEY: Yeah, this is Paul again. Just  
15 sort of a point of order, is there any more discussion on  
16 this particular 1220.3 (a)(4)? Have we sort of solved that  
17 one?

18 If there's no other comments we've got about 15  
19 minutes before lunch. And we're going to lose at least one  
20 of our Committee members. So I think we might want to talk  
21 a bit about the afternoon and, you know, maybe future  
22 meetings or future work.

23 Is there someone else that was on the work group  
24 subcommittee that can sort of continue walking us through  
25 the Articles after Ms. Lough has to leave this afternoon?

1 Or are we sort of, are we anticipating that we will come  
2 back after lunch and continue working or what is the feeling  
3 of the group?

4 COMMITTEE MEMBER TANNEY: This is Laura. And I  
5 have concerns if Pattie is leaving if there's nobody else on  
6 the subcommittee here.

7 CHAIRMAN KIMSEY: Okay.

8 COMMITTEE MEMBER DAVIS: This is Kevin. I agree.

9 COMMITTEE MEMBER ZIELENSKI: Yeah, Torr here in  
10 Sacramento, I agree.

11 COMMITTEE MEMBER WONG: I agree.

12 CHAIRMAN KIMSEY: Okay then, if we're going to  
13 sort of have to truncate this today at 12:30 what is the  
14 feeling of the group when we would like to continue and have  
15 our next meeting which will be our twelfth meeting.

16 Do we want to try and schedule something --

17 COMMITTEE MEMBER TANNEY: This is Laura. I can't  
18 do it next week. The soonest I can do it is the week after.

19 COMMITTEE MEMBER WONG: You have to have ten days  
20 anyway.

21 CHAIRMAN KIMSEY: Yeah, we have to sort of do the  
22 notification but I'm assuming that we would all want to do  
23 this sooner than later. So we would try and schedule  
24 something in October maybe like the second week of October  
25 whatever works with regards to the Bagley-Keene Notification

1 issues et cetera, et cetera.

2 COMMITTEE MEMBER DAVIS: This is Kevin. I agree.

3 MS. LOUGH: I agree.

4 CHAIRMAN KIMSEY: Okay. Then we'll go ahead when  
5 this is, you know, done. We'll do our usual trying to get  
6 people's calendars together for a meeting in October.

7 COMMITTEE MEMBER TANNEY: This is Laura. And Clay  
8 if you're there just so you know, because I know I'm hard to  
9 reach sometimes, I am not available the 22nd and 23rd of  
10 October.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
12 Okay. I think we'll probably send out a notice. This is  
13 Clay speaking. I don't want to take notes now.

14 I would suggest, there is a bit of work involved  
15 setting up a meeting and I am sure situations arise. But  
16 when we ask for your availability the assumption will  
17 continue to be that you'd be available for that 10 to 4 time  
18 slot on those days.

19 COMMITTEE MEMBER TANNEY: Well, the only issue  
20 being that Pattie is not even on the Committee. So, and  
21 we're relying on her.

22 CHAIRMAN KIMSEY: No, that's fine. And I think we  
23 all greatly appreciate Pattie's efforts and time that she  
24 has put in on this. But any other questions or issues about  
25 when we would meet next?

1           We'll try and work out, again, the technical issue  
2 with San Diego. But this does seem to be working relatively  
3 well.

4           If there aren't any other issues with regards to  
5 us meeting and that sort of thing, we do have ten more  
6 minutes or so. Why don't we go ahead and continue.

7           MS. LOUGH: That sounds great. This is Pattie. I  
8 think we can finish off, at least from what I've got, in the  
9 next few minutes.

10           Moving on to, any questions on page 30, the next  
11 page?

12           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
13 Yeah, a comment from the public. And maybe before the next  
14 meeting you'd have time to review, there was an interesting  
15 court case. It's a Supreme Court case. And perhaps the  
16 attorneys, I would assume, are familiar with that.

17           People versus McNeal. And it was a court case in  
18 which there was a finding -- this concerns the partition  
19 ratio and the conversion of blood, of breath results to  
20 blood results. And there was a finding that for some  
21 sections of the Motor Vehicle Code Statutes, an example, in  
22 particular the presumptive section, it is mandatory to  
23 convert breath results to blood results.

24           I don't know that that affects the, it would be  
25 interesting to see how that affects the proposed changes to

1 1220.4 to this section regarding the expression of breath  
2 results.

3           The case as Goldie pointed out, it does include  
4 references to the statutorily mandated conversion ratio. So  
5 there still may be no need to have a 2100 to one conversion  
6 language in the regulations.

7           But the justification which simply says, we no  
8 longer convert blood to breath, I'm sorry, breath to blood,  
9 is no longer adequate because in this case there are  
10 requirements under the Vehicle Code that mandate the  
11 conversion of breath results to blood results.

12           COMMITTEE MEMBER TANNEY: This is Laura. I am  
13 familiar with McNeal. And actually I was going to wait  
14 until we got through the rest of this to then go back and  
15 look at what affect, if any, that has on our definitions and  
16 the 2100.

17           And I was actually going to talk to Pattie about  
18 it because I'm not sure I, I fully understand from the  
19 scientific point of view what effect that might have.

20           But basically what, yeah, what is says is that the  
21 2100 ratio is for the -- for the details is still, I don't  
22 know. For one of the counts the 2100 is still applicable.  
23 And I believe --

24           ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
25 It was the A count that --

1 COMMITTEE MEMBER TANNEY: -- it was --

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 -- it was referred to as --

4 COMMITTEE MEMBER TANNEY: -- the details, right  
5 for business. If they can put on both individual and  
6 general deviations on that partition ratio, put those into  
7 evidence to try to convince the jury that the person, what  
8 alcohol level was required under the B count.

9 So I think we do need to look at that and make  
10 sure that by changing it pursuant to the new section that we  
11 haven't done something that we shouldn't have done.

12 So let's just let Pattie get through the other  
13 changes and then maybe go back to that. Because I think  
14 that, I think Clay if I'm not mistaken that will only affect  
15 how we define it.

16 It's also my understanding that the machine, the  
17 breath machine to automatically do that conversion. So I'm  
18 not sure that we still need to include it the way it is.  
19 But it needs to be looked at definitely.

20 MS. LOUGH: Okay, this is Pattie. I made a note  
21 then that Laura will review that for us.

22 COMMITTEE MEMBER TANNEY: With you (laughter).

23 MS. LOUGH: For somebody --

24 COMMITTEE MEMBER TANNEY: Well with somebody --

25 MS. LOUGH: With somebody for the next --

1 COMMITTEE MEMBER TANNEY: -- that first --

2 MS. LOUGH: -- okay, that first --

3 COMMITTEE MEMBER TANNEY: -- only Laura or  
4 whoever --

5 MS. LOUGH: Yeah. Well when we review --

6 COMMITTEE MEMBER TANNEY: It needs staff and/or --

7 MS. LOUGH: Okay.

8 COMMITTEE MEMBER TANNEY: -- other scientists  
9 looking at it.

10 MS. LOUGH: All right. Well we'll put that on  
11 then we'll highlight that for next time. In 1220.4 (c) I  
12 changed the word on the second line in the justification  
13 where it says, all sample types to specimen. I'm not sure  
14 why I did that.

15 I had a comment on there. So it would read, the  
16 word, blood, was removed from the phrase blood alcohol to  
17 make this section inclusive of all specimen types. I think  
18 it's a little more clearer.

19 Okay, and then they only had a question on the  
20 next one.

21 MS. GULCK: This is Leona. I just on 1220.4 (c),  
22 since we're quantitating and we've got, alcohol  
23 concentrations less than 0.01 in living subjects should be  
24 reported as negative. It's not really critical but  
25 shouldn't that be zero?

1 COMMITTEE MEMBER TANNEY: Or, you know, in other  
2 words you would say, not detected, were not detected.

3 MS. LOUGH: Well if we're quantitating with --

4 COMMITTEE MEMBER TANNEY: -- instrumentation that  
5 is capable of four decimal places and we say negative.

6 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.  
7 It may actually be irrelevant because it says --

8 COMMITTEE MEMBER TANNEY: It's not relevant,  
9 really.

10 COMMITTEE MEMBER SEDGWICK: -- it says, it may be  
11 reported as negative.

12 COMMITTEE MEMBER TANNEY: Yes.

13 MS. LOUGH: Oh, okay.

14 COMMITTEE MEMBER WONG: It doesn't say you have  
15 to.

16 CHAIRMAN KIMSEY: Comment from the public.

17 COMMITTEE MEMBER TANNEY: Which --

18 MS. LOUGH: In 1220.4 (c).

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
20 Comment from --

21 MS. LOUGH: Alcohol concentrations less than 0.01  
22 in living subjects may be reported as negative, okay. I  
23 think because the may is in there. That you can make it  
24 better if you want.

25 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

1 Comment from the public. I'm not sure that I understood  
2 what is being said in San Diego. The requirement that you  
3 truncate a result would mean that a result of 009 would be  
4 truncated to 0.

5 My recollection of looking at the very early, at  
6 the very early Advisory Committee's deliberations was there  
7 was a desire to not report a result as zero, meaning there  
8 was no alcohol, but to report it as negative.

9 COMMITTEE MEMBER TANNEY: Yeah, I remember.

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
11 But it was optional. You could report that there was  
12 absolutely no alcohol found in the subject, subject sample.

13 COMMITTEE MEMBER TANNEY: This is Laura. There's  
14 also a case law that allows us to get into evidence the  
15 third decimal point.

16 MS. LOUGH: Okay, this is Pattie. Laura I think  
17 we just leave it as it is.

18 COMMITTEE MEMBER TANNEY: Okay.

19 MS. LOUGH: And, let's see, on 1220.4 (d) do we,  
20 and Bruce isn't here but alcohol concentrations less than  
21 0.02 on post-mortem, should we remove, less, from that?

22 COMMITTEE MEMBER TANNEY: Maybe you could --

23 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.  
24 Yes, yes we should because coroner's samples include  
25 everything from urine to liver to brain.

1 COMMITTEE MEMBER TANNEY: Okay, thank you.

2 COMMITTEE MEMBER WONG: Pattie in line with the  
3 one just before do you want to change, samples, to,  
4 specimen, as well for consistency?

5 COMMITTEE MEMBER SEDGWICK: This is Paul. It  
6 should be, at least remove, blood samples.

7 MS. LOUGH: Right, blood is already removed on the  
8 one before.

9 COMMITTEE MEMBER SEDGWICK: Yeah. It should, it,  
10 where it says, post-mortem blood samples, so it probably  
11 should remove this, the word, post-mortem blood.

12 COMMITTEE MEMBER WONG: Yeah, we've already agreed  
13 on that. But I'm saying that --

14 COMMITTEE MEMBER SEDGWICK: Okay.

15 COMMITTEE MEMBER WONG: -- should we say, on post-  
16 mortem specimens to be in consistency with just above on --

17 MS. LOUGH: That's where you are, okay.

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

20 MS. LOUGH: Sorry.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:  
22 -- another comment from the public, Clay Larson. Under the  
23 definition sections, 1215.1 (1) we've defined, sample or  
24 specimen, as identical.

25 MS. LOUGH: Yes we do. So it really doesn't

1 matter. But are you more comfortable with the word,  
2 specimen, then sample? It doesn't really matter.

3 You want to leave it as, sample, and I don't have  
4 to justify it.

5 CHAIRMAN KIMSEY: Let's just leave it.

6 MS. LOUGH: Okay. Okay justify removing, let's  
7 see, okay, removing the blood. Okay. I had a question for  
8 Bruce. He's not here. Oh, maybe Paul can answer this one  
9 for us. In 1220.4 (g), Paul Sedgwick. Analytical results  
10 for tissue analysis shall be expressed in terms of a weight  
11 of alcohol in a unit weight of the specimen.

12 I had a question, this doesn't quite look right  
13 there. Is there any difference, do we need to do anything  
14 to consider whether, is that strictly for tissue if we're  
15 talking about blood? If we have heart blood or chest cavity  
16 blood does there have to be an increased system.

17 COMMITTEE MEMBER SEDGWICK: This is Paul Sedgwick.  
18 From a practical standpoint, no. The way this is written  
19 the point 4 (g) is the way laboratories do report their  
20 samples at present. And whether it is heart blood or chest  
21 cavity blood or whatever, it's still a liquid and would be  
22 reported as a volume.

23 MS. LOUGH: Okay this is Pattie. And unless  
24 there's any other questions we're done.

25 CHAIRMAN KIMSEY: This is Paul in Richmond. Any

1 other comments from the Committee members or members of the  
2 public?

3           If not, or hearing none, we'll be in touch for  
4 scheduling our next meeting sometime in the middle to late  
5 October.

6           And I want to thank you all very much for your  
7 time and efforts. And we will officially close the meeting.  
8 (Thereupon, the California Department of Public Health,  
9           Forensic Alcohol Review Committee meeting  
10 adjourned at 12:34 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 1st day of October, 2009.

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JOHN COTA