

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of: )  
March 17, 2022 OSH )  
Standards Board Meeting )  
\_\_\_\_\_ )

TELECONFERENCE

*PLEASE NOTE: In accordance with section 11133 of the  
Government Code, this Board Meeting will be conducted via  
teleconference.*

THURSDAY, March 17, 2022

10:00 A.M.

Reported by:  
E. Hicks

APPEARANCES

BOARD MEMBERS:

Dave Thomas, Chairman  
Barbara Burgel, Occupational Health Representative  
Kathleen Crawford, Management Representative  
David Harrison, Labor Representative  
Nola Kennedy, Public Member  
Chris Laszcz-Davis, Management Representative  
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer  
Steve Smith, Principal Safety Engineer  
Autumn Gonzalez, Chief Counsel  
Sarah Money, Executive Assistant  
Michael Nelmidia, Sr. Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager  
David Kernazitskas, Sr. Safety Engineer  
Jennifer White, Regulatory Analyst  
Bernie Osburn, Regulatory Analyst  
Amalia Neidhardt, Senior Safety Engineer

TKO STAFF:

Erik Kuether  
Maya Morsi  
John Roensch

ALSO PRESENT:

Eric Berg, Deputy Chief of Health, Cal/OSHA

SPANISH INTERPRETERS:

Patricia Hyatt  
Estela Moll

APPEARANCES (Cont.)

PUBLIC COMMENT:

Michael Miiller, California Association of Winegrape  
Growers  
Helen Cleary, Phylmar Regulatory Roundtable  
Saskia Kim, California Nurses Association  
Mitch Steiger, California Labor Federation  
Stephen Knight, Worksafe  
Anne Katten, California Rural Legal Assistance Foundation  
Bruce Wick, Housing Contractors of America  
Robert Moutrie, California Chamber of Commerce  
Kevin Bland, California Framing Contractors Association,  
Residential Contractors Association, Western Steel  
Council  
Bryan Little, California Farm Bureau  
Tyler Blackney, Wine Institute  
Jassy Grewal, United Food and Commercial Workers, Western  
States Council  
Dan Leacox, Leacox & Associates  
Cassie Hilaski, Nibbi Brothers  
Eddie Sanchez, Southern California Coalition for  
Occupational Safety and Health (SoCalCOSH)  
AnaStacia Nicol Wright, Worksafe

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of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code sections 11125 & 11125.7(a).).

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2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210
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Personnel

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1 P R O C E E D I N G S

2 March 17, 2022

10:02 A.M.

3 CHAIR THOMAS: Good morning. How y'all doing?  
4 It's a nice day. Welcome to the March 17, 2022 Cal/OSHA  
5 Standards Board Meeting. I am Dave Thomas, Chairman. And  
6 the other Board Members present today are Ms. Barbara  
7 Burgel, Occupational Health Representative; Ms. Kathleen  
8 Crawford, Management Representative; Mr. David Harrison,  
9 Labor Representative; Ms. Nola Kennedy, Public Member; Ms.  
10 Chris Laszcz-Davis, Management Representative; and Ms.  
11 Laura Stock, Occupational Safety Representative.

12 Also present for our — from our staff for today's  
13 meeting are Ms. Christina Shupe, Executive Officer; Mr.  
14 Steve Smith, Principal Safety Engineer; Ms. Autumn  
15 Gonzalez, Chief Counsel; Ms. Sarah Money, Executive  
16 Assistant; and Mr. Michael Nelmda, Senior Safety Engineer  
17 who is providing technical support for this meeting.

18 Supporting the meeting remotely are Ms. Lara  
19 Paskins, the Staff Services Manager; Mr. David  
20 Kernazitskas, Senior Safety Engineer; Ms. Jennifer White,  
21 Regulatory Analyst; Ms. Bernie Osburn, Regulatory Analyst;  
22 and Ms. Amalia Neidhardt, Senior Safety Engineer who is  
23 providing translation services for our comments who are  
24 native Spanish speakers.

25 Via teleconference, we are joined today by Mr.

1 Eric Berg, Deputy Chief of Health, representing Cal/OSHA.

2 Today's agenda and other materials related to  
3 today's proceedings are posted on the OSHSB website.

4 In accordance with section 11133 of the  
5 Government Code, today's Board Meeting is being conducted  
6 via teleconference with an optional video component.  
7 Executive Order N-1-22 has suspended the sunset date of  
8 Government Code section 11133 until March 31st, 2022.

9 This meeting is also being live broadcast via  
10 video and audio stream in both English and Spanish. Links  
11 to these non-interactive live broadcasts can be accessed  
12 via the "Standards Board's Updates" section of the main  
13 page of the OSHSB website.

14 We have limited capabilities for managing  
15 participation during the public comment period, so we're  
16 asking everyone who is not speaking to place their phones  
17 on mute and to wait until — and wait to unmute until they  
18 are called to speak. Those who aren't able to do so will  
19 be removed from the meeting to avoid disrupting the  
20 proceedings.

21 As reflected on the agenda, today's meeting  
22 consists of two parts. First, we will hold a public  
23 hearing to receive public comments or proposals on  
24 occupational safety and health matters. Anyone who would  
25 like to address any occupational safety and health issues,



1 including any of the items on our business meeting agenda,  
2 may do so at that time. Members of the public who have  
3 submitted requests to be placed in the public comment queue  
4 via the online form or automated voicemail system will be  
5 called on in turn.

6 The instructions for the joining the public  
7 comment queue can be found on the agenda for today's  
8 meeting. You may join the — by clicking the public comment  
9 queue link in the "Standards Board Updates" section at the  
10 top of the main page of the OSHSB website, or by calling  
11 510-868-2730 to access the automated public comment queue  
12 voicemail. Please be sure to provide your name as you  
13 would like it to be listed, your affiliation — and your  
14 affiliation, (indiscernible), if any, and the topic you  
15 would like to comment on.

16 When the public comment begins, please listen for  
17 your name and an invitation to speak. When it is your turn  
18 to address the Board, please be sure to unmute yourself if  
19 you're using WebEx or dial star six on your phone to unmute  
20 yourself if you're using the teleconference line. Please  
21 be sure to speak slowly and clearly when addressing the  
22 Board and please remember to mute your phone or computer  
23 after commenting.

24 Today's public comment will be limited to two  
25 minutes per speaker, and the public comment portion of the

1 meeting will extend for up to two hours so that the Board  
2 may hear from as many members of the public as is feasible.  
3 The individual speaker and total public comment time limits  
4 may be extended by the Board Chair if practical.

5           After the public meeting has concluded we will  
6 hold a business meeting to act on those items listed on the  
7 public meeting agenda. Board does not accept public  
8 comment during its business meeting unless a member of the  
9 Board specifically requests public input.

10           We will now proceed with the public meeting.  
11 Anyone who wishes to address the Board regarding matters  
12 pertaining to occupational safety and health is invited to  
13 comment. Except, however, the Board does not entertain  
14 comments regarding variance decisions. The Board's  
15 variance hearings are administrative hearings where  
16 procedural and due process rights are carefully preserved.  
17 Therefore, we will not grant requests to address the Board  
18 on variance matters.

19           At this time anyone who would like to comment on  
20 any of the matters concerning occupational safety and  
21 health will have an opportunity to speak.

22           For our commenters who are native Spanish  
23 speakers, we are working with Ms. Amalia Neidhardt to  
24 provide a translation for their statements into English for  
25 the Board. At this time Ms. Neidhardt will provide

1 instruction to the Spanish-speaking commenters so they are  
2 aware of the public comment process for today's meeting.

3 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]  
4 Public Comment Instructions.

5 "Good morning. This meeting of the Occupational  
6 Safety and Health Standards Board is now called to order.  
7 I am Dave Thomas, Chairman. And the other Board Members  
8 present today are Ms. Barbara Burgel, Occupational Health  
9 Representative; Ms. Kathleen Crawford, Management  
10 Representative; Mr. David Harrison, Labor Representative;  
11 Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis,  
12 Management Representative; and Ms. Laura Stock,  
13 Occupational Safety Representative.

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15 consists of two parts. First, we will hold a public  
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17 occupational safety and health matters. After the public  
18 meeting has concluded, we will hold a business meeting to  
19 act on those items listed on the Business Meeting agenda.  
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21 business meeting unless a member of the Board specifically  
22 requests public input.

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23 star six on your phone to unmute yourself if you're using  
24 the teleconference line. Please be sure to speak slowly  
25 and clearly when addressing the Board and please remember

12

1 to mute your phone or computer after commenting. If you  
2 have not provided a written statement, please allow natural  
3 breaks after every two sentences so that we may follow each  
4 statement with an English translation.

5 "Today's public comment will be limited to four  
6 minutes per speaker using translation, and the public  
7 comment portion of the meeting will extend for up to two  
8 hours so that the Board may hear from as many members of  
9 the public as is feasible. The individual speaker and  
10 total public comment time limits may be extended by the  
11 Board Chair if practicable.

12 "Thank you."

13 CHAIR THOMAS: Thank you, Amalia.

14 Maya, do we have any commenters in the queue?

15 MS. MORSI: Yes, we do.

16 First up is Michael Miiller, with CAWG, followed  
17 by Helen and Saskia. So, Michael Miiller.

18 CHAIR THOMAS: Michael, can you hear us?

19 MR. MIILLER: I can, thank you. Good morning. I  
20 am Michael Miiller with the California Association of  
21 Winegrape Growers. I would like to comment briefly on  
22 petition number 596, and on the ETS. Specific to the  
23 petition, this is industry — general industry safety order  
24 section 3441B, dealing with autonomous trackers.

25 In a recent CalMatters piece, DeeDee Meyers

1 asserted California needs a research and development tax  
2 credit to help companies commit the resources that new  
3 ideas and products require. She specifically stated,  
4 "These investments create many of the incredible life  
5 changing technologies we now take for granted, including  
6 advancements in agriculture and farming here invented here  
7 in California.

8           We agree wholeheartedly with Mrs. Meyers.  
9 However, while the right hand of government, tax credit, is  
10 spurring advancements in agriculture, the left hand of  
11 government, this section of the regulations, prohibits full  
12 utilization of those advancements.

13           I appreciate that you have been receiving a lot  
14 of misinformation and hyperbole and opposition to the  
15 petition, so I encourage you to do your own research. I'm  
16 happy to work with Board staff to arrange for a tour for  
17 any Board Member who might want to visit a vineyard to see  
18 first-hand how this equipment would work safely.

19           We support the petition, and please feel free to  
20 contact me at any time.

21           Regarding the ETS, I'll try to be very brief.  
22 After two years under this pandemic, I think we can all  
23 generally agree that California is no longer in an  
24 emergency situation, and the response to the pandemic by  
25 ETS is anything but temporary. Consequently, we believe

1 the ETS needs to go.

2 The ETS and every revision of the ETS has been  
3 out of date almost as soon as it was approved by the Office  
4 of Administrative Law. That's why Governor Newsom has  
5 issued multiple executive orders to clean up the problems  
6 the ETS has created. Instead of readopting the ETS, we  
7 need to follow Governor Newsom's leadership by relying on  
8 the experts at CDPH to help us move to the endemic phase of  
9 Covid.

10 For example, Dr. Jay Waltz, a professor of  
11 medicine at South Florida said, "We're getting to a point  
12 now where the disease is beginning to behave as an endemic  
13 disease." What he means is, it's kind of part of the  
14 landscape, the same way influenza is every year. The  
15 Washington Post said this about Newsom's Smarter Plan:  
16 "What the Governor has correctly identified is a need to  
17 change from emergency response to one aimed at managing the  
18 virus."

19 Keeping the ETS in place would almost certainly  
20 result in at least one more executive order before the end  
21 of the year where the Governor has to clean up the problems  
22 the ETS creates, yet again. Please do not readopt the ETS,  
23 and thank you so much for your time and your public  
24 service. It is generally greatly appreciated.

25 Thank you.

1 CHAIR THOMAS: Only generally? Thank you.

2 MS. SHUPE: Before we move on to the next speaker,  
3 I'd just like to remind everyone that our meetings are  
4 being transcribed, so when you are speaking to the Board,  
5 please speak slowly and succinctly.

6 With appreciation, thank you.

7 CHAIR THOMAS: Who do we have next, Maya?

8 MS. MORSI: We have Helen Cleary next, with  
9 Phylmar Regulatory Roundtable.

10 CHAIR THOMAS: Hi Helen.

11 MS. Cleary: Good morning. I'm Helen Cleary.

12 I'm the director of PRR. Today we ask, where is the  
13 readoption text for the COVID-19 ETS? And what is in it?

14 The last advisory meeting was September 2020.  
15 Stakeholders continue to try and provide input at these  
16 public meetings, and we have two minutes once a month. The  
17 division responsible for drafting has been working on the  
18 text since September but does not provide any insight.

19 The Board facilitates very little discussion, and  
20 rarely are any provisions publicly debated. Board Members  
21 who are responsible for the health standards in California  
22 have expressed concern because they haven't seen it and  
23 haven't been able to provide feedback.

24 If there is no discussion amongst the Board  
25 today, and the Division doesn't share any details, the



1 Board will still once again have to vote yes or no in  
2 April, because the clock is running out. If it's not  
3 happening publicly with stakeholders, who is having the  
4 discussions in making the decisions?

5           Taking this long to share details raises major  
6 concerns the draft is overly complicated. If, after all  
7 this time, the readoption text is prescriptive and mimics  
8 the current ETS, it will be clear that California employers  
9 are being disregarded. Good employers. PRR members who  
10 have painstakingly committed themselves to protecting  
11 California's workers, despite the needless busy work,  
12 confusion, and burden the ETS has created.

13           The lack of transparency and collective effort to  
14 get this right is disheartening. But we want to believe in  
15 the process, and we do have some input to provide today.  
16 Recently there have been major updates from the White  
17 House, CDC, and other states.

18           CDC's refocusing the metrics based on community  
19 levels, which is more than just transmission rates.  
20 President Biden's national plan, and the CDC, are moving  
21 away from trying to eliminate Covid, and focusing on  
22 preventing significant disease.

23           CDC no longer recommends contact tracing in non-  
24 health care. Personal risk assessment and personal  
25 responsibility are replacing government mandates. Oregon

1 has pulled its permanent rule, and Virginia is doing so on  
2 Monday. Both states — Cal/OSHA uses as benchmarks.

3 We encourage the decision makers in California to  
4 align with these strategies and move us forward with the  
5 nation. We ask the Board to support a performance-based  
6 rule that has ability to flex and support this approach.  
7 Executive orders have become a solution to address ETS  
8 shortcomings. However, they don't address all the issues.

9 Face coverings in vehicles is one example. Other  
10 provisions that need to be revised are contact tracing and  
11 outbreak requirements. Both are extremely burdensome and  
12 lack effectiveness. Because of time, I won't go into  
13 details.

14 The State of California should be willing and  
15 able to find a solution for all stakeholders who have shown  
16 up during this crisis. If California continues this flawed  
17 strategy and issues another prescriptive standard that  
18 cannot be modified when the rest of the country is  
19 following the science and finding the balance of a  
20 practical way to address an endemic disease, California is  
21 no longer leading by example.

22 Thank you for your time and consideration today.

23 CHAIR THOMAS: Thank you, Helen.

24 Who do we have next, Maya?

25 MS. MORSI: Up next is Saskia Kim with California

1 Nurses Association.

2 CHAIR THOMAS: Ms. Kim? Can you hear us?

3 MS. KIM: Good morning. Can you hear me OK?

4 CHAIR THOMAS: Good Morning

5 MS. KIM: Thank you. Saskia Kim with the  
6 California Nurses Association. Thank you for the  
7 opportunity to speak this morning.

8 First, I'd like to welcome Chief Killip to  
9 California, to Cal/OSHA. The CNA nurses look forward to  
10 working with you to ensure California's workplaces are safe  
11 and healthy places to work.

12 As I testified before, CNA has concerns with the  
13 rollbacks and critical COVID-19 protections, including the  
14 expiration of universal indoor masking requirements. And  
15 the CDC's recent change in metrics threatens to leave many  
16 people and communities unprotected by focusing largely on  
17 hospital capacity rather than mitigating community spread.

18 If we wait until hospital capacity is strained,  
19 it will be too late. Frankly, recording disaster when  
20 dealing with a deadly virus is still causing unacceptable  
21 levels of infection, hospitalizations and deaths. In  
22 California, on average, nearly 1,000 people die every week  
23 from COVID-19.

24 CNA believes the multiple measures approach to  
25 infection control is necessary. This means using an

1 approach that includes vaccination with a booster shot,  
2 testing, isolation after infection, quarantine after  
3 exposure, and the simple and effective measure of masking.

4           Nurses are concerned about rolling back  
5 protections that help us keep each other safe. Cases are  
6 exploding in Europe, thanks to the BA2 subvariant of  
7 Omicron, and already numerous California counties have  
8 reported of BA2, and scientists monitoring California's  
9 wastewater plants have reported that BA2 mutations are  
10 increasing in all of them

11           We must be prepared and not prematurely end —  
12 declare an end to the pandemic. The ETS is an important  
13 part of this. As the Board looks to concern a new draft of  
14 the ETS, we join our colleagues who have argued for the  
15 importance of exclusion pay protections, which ensure that  
16 workers are not forced to make the impossible choice of  
17 going to work while sick or staying home without pay. And  
18 supplemental paid sick leave is not a substitute. Under  
19 California law, at least one in four workers is without  
20 access to the COVID-19 paid sick leave law. As a result,  
21 we strongly encourage the Board to retain exclusion pay as  
22 a part of the ETS.

23           Finally, we also recommend that the Board retain  
24 existing outbreak protections in the ETS. Employers must  
25 continue to record and track data on cases so that they

1 know when there has been an outbreak. Only then will  
2 workers be protected and stricter controls imposed.

3 Thank you again for the time.

4 CHAIR THOMAS: Thank you.

5 Who do we have next, Maya — Amalie — Maya?  
6 Sorry.

7 MS. MORSI: No worries. Up next is Mitch  
8 Steiger, with California Labor Federation.

9 CHAIR THOMAS: Hello Mitch. Morning.

10 MR. STEIGER: Thank you, Chair Thomas and  
11 Members. Good morning.

12 Mitch Steiger with the California Labor  
13 Federation. Appreciate the opportunity to testify.

14 But most I'd like to echo the comments from  
15 Saskia Kim from CNA, and really emphasize that it's very  
16 easy to take the wrong lessons from the fact that case  
17 numbers are at least improving right now. We've been down  
18 this road before, many times, where as soon as things start  
19 to improve we take our foot off the gas, and then Delta  
20 happens. Or Omicron happens. Or any number of other  
21 things can happen in an individual workplace that make the  
22 ETS still something that is incredibly important to  
23 maintain.

24 It's saved a lot of workers lives, it's prevented  
25 a lot of illness, and it's something that we absolutely

1 need to maintain. Regardless of where case numbers happen  
2 to be now, or a month from now, or whenever that happens.

3 But even if they don't, even if case numbers do  
4 stay in a pretty good place, there is still a great reason  
5 to have the ETS there, particularly to extend exclusion  
6 pay. It's very important to those individual workers. And  
7 as I see Kevin's latest great front style shirt, I'm  
8 reminded of the gun rights slogan, that, let me see if I  
9 can get this right, "It is better to need it and not have  
10 it, than it is to have it and not need it." No, wait. I  
11 think I got that backwards.

12 CHAIR THOMAS: You did huh.

13 MR. STEIGER: I did. "It is better to have it  
14 and not need it, than to need it and not have it." And  
15 that's how we see exclusion pay. Where, if case rates look  
16 great and exclusion pay is there, no problem. There isn't  
17 going to be any Covid, and so workers aren't going to be  
18 claiming any exclusion pay in any kind — with any kind of  
19 frequency. But if case rates do get worse, and if it turns  
20 out we do need exclusion pay, then it's great to have it  
21 there. So, we really don't see any reason to wind that  
22 back just because case rates do happen to be improving.

23 I would also really like to emphasize what Saskia  
24 said about supplemental paid sick leave. Where it really  
25 doesn't apply to about a quarter of the work force. The

1 vast majority of employers aren't covered by it, and it's  
2 about one in four workers who don't have access to it, so  
3 we really don't think arguments that exclusion is  
4 duplicative of sick leave adequately account for that fact  
5 in addition to all of the other restrictions that exist  
6 with supplemental paid sick leave. So, we would just  
7 strongly urge the Board to readopt the ETS in a form that's  
8 at least as strong as it is now. And particularly one that  
9 maintains exclusion pay.

10 Thanks a lot.

11 CHAIR THOMAS: Thank you, Mitch.

12 Who do we have next, Maya?

13 MS. MORSI: Up next is AnaStacia Nicol Wright  
14 with Worksafe.

15 CHAIR THOMAS: Hello, are you with us?

16 (pause)

17 Hello?

18 MS. MORSI: AnaStacia if you are on the phone,  
19 you can press star six to unmute.

20 MR. KNIGHT: Hi, this is Steven — Steven Knight  
21 with Worksafe. Is —

22 CHAIR THOMAS: Go ahead.

23 MR. KNIGHT: — Is it ok if I jump in here?

24 CHAIR THOMAS: Yeah, go ahead.

25 MR. KNIGHT: So, I'm a big fan of not repeating

1 points, and Mitch and Saskia have been very clear and  
2 strong upon a number of points. Sorry, Stephen Knight,  
3 Executive Director with Worksafe.

4           It was — I was taken aback by the claims made to  
5 this Board a month ago, that because of supplemental sick  
6 leave we can do away with exclusion pay, and Mitch has made  
7 clear the scope of the hole that's left, both in numbers  
8 and in the kind of coverage. It's just not a substitute.

9           To the extent that the ETS is increasingly just,  
10 "Whatever CDPH says," this Board knows better than anybody  
11 that CDPH is not charged with worker protection. The  
12 Standards Board is charged with worker protections, and  
13 orders for the general public are not the same thing as  
14 orders that protect workers. And controlling and — recom  
15 — making recommendations for public behavior in the front  
16 of a restaurant is not the same thing as what it means to  
17 have to stand shoulder to shoulder washing dishes in the  
18 back.

19           So, we need existing outbreak protections to be  
20 maintained. The — there are lots of warning signs, all  
21 around the world, and the country, and the state, and, as  
22 Mitch said, we went down this road before and we pulled,  
23 you know, our foot off the brake, and the outcome was, was  
24 quite negative. We need employers to be recording and  
25 tracking data, otherwise we don't have any data.



1                   And I'm not one of those, and I know people on  
2 this Board are not in the camp of 'if you don't count a  
3 case then it doesn't exist and so you don't have a  
4 problem'. So, thank you for your time and all of your hard  
5 work in the midst of this ongoing crisis. And that's all I  
6 have.

7                   CHAIR THOMAS: Thank you, Stephen. Appreciate  
8 it.

9                   Who do we have next, Maya?

10                  MS. MORSI: Up next is Anne Katten, with  
11 California Rural Legal Assistance Foundation. Yeah.

12                  CHAIR THOMAS: Hi Anne.

13                  MS. KATTEN: Good Morning. Hi, I'm Anne Katten  
14 with California Rural Legal Assistance Foundation. And I  
15 strongly support the comments of CNA, the Labor Federation,  
16 and Worksafe. We are also very concerned that the rollback  
17 of the mask mandate will lead to a new surge of cases,  
18 especially in crowded workplaces like produce and meat  
19 packing plants in rural areas with lower vaccination rates.

20                  The OSHA Standards Board, with Cal/OSHA have the  
21 authority and expertise to develop workplace protections,  
22 so it's very troubling to see the ETS, which should remain  
23 the foundation of protections, weakened by CDPH order.

24                  Going forward, we strongly agree that it's  
25 critical to maintain exclusion pay so employees of smaller

1 establishments can afford to take time off if they need to  
2 quarantine or recover from Covid, which I fear will happen  
3 if there is another surge in cases.

4           It's also critical to maintain requirements for  
5 recording and tracking cases and notifying workers of  
6 exposure and triggers for additional controls during  
7 outbreaks. The masking requirements need to be maintained  
8 on employer provided transportation, where especially  
9 agricultural employees may be shoulder to shoulder for long  
10 trips. And in addition, requirements for enhanced  
11 ventilation or filtration in employer provided housing is  
12 vital to be retained to prevent outbreaks.

13           (clears throat) Excuse me.

14           Employers also should be required to make face  
15 masks readily available at all times and provide N95 masks  
16 during outbreaks rather than just make them available upon  
17 request, because many workers, especially low income  
18 workers of color, are frankly afraid to request masks.

19           And finally thank you so much for all your work  
20 to develop and maintain protections for California's  
21 workers during the pandemic.

22           CHAIR THOMAS: Thank you Anne.

23           Who do we have next, Maya?

24           MS. MORSI: Up next, we have Bruce Wick with  
25 Housing Contractors of California.

1 CHAIR THOMAS: Bruce, are you here? Are you with  
2 us?

3 MR. WICK: Morning. Yes sir. I'm —

4 CHAIR THOMAS: (Indiscernible) Bruce.

5 MR. WICK: — I will try to speak slowly within my  
6 — but fully within my two minutes allocated. I'll just  
7 focus on one aspect of the ETS readoption. And that is the  
8 concept that those who are involved in working with  
9 employers to implement good safety programs know there's a  
10 big difference between writing something, and actually  
11 having it work on the, you know on the line when employees  
12 are out there working, and supervisors are there.

13 So, the EDD data shows about 1.3 million  
14 employers in California who have 25 or less employees. And  
15 they have had a myriad of regs to try and decipher. Local  
16 health jurisdictions, city, county, CDPH, Cal/OSHA. They  
17 hear about federal OSHA and CDC and they're con — trying to  
18 figure all those things out.

19 The best protection we had early on was a clear  
20 set of guidelines through the IIPP with guidance that CDPH  
21 and Cal/OSHA worked on together. That was immediate, that  
22 was fast, and that changed as information changed. So I  
23 really encourage the ETS to have the IIPP follow-up.

24 The Appeals Board has many, many 3203 violations  
25 that have been settled by employers, not going to hearing,

27

1 not saying that the — 3203 doesn't apply. So, this would  
2 be really important for all those small employers, and  
3 actually large employers too who are trying to look — sort  
4 through four or five different regulations that apply to  
5 their workplace. Let's focus on the workplaces that have  
6 the issues, and Cal/OSHA can use 3203. They've shown that  
7 effectively.

8 Thank you.

9 CHAIR THOMAS: Thank you, Bruce.

10 Who do we have up next, Maya?

11 MS. MORSI: Up next is Robert Moutrie, with  
12 California Chamber of Commerce.

13 CHAIR THOMAS: Robert.

14 MR. MOUTRIE: Good morning, Chair Thomas, Board  
15 Members. Can everyone hear me all right?

16 CHAIR THOMAS: Yeah.

17 MR. MOUTRIE: As Bruce said, I'll try to be  
18 efficient but clear in my two minutes.

19 So first, I'd like to say, we are glad to see and  
20 support the Governor's transition towards a safe and  
21 careful endemic transition, as COVID-19 really has reached  
22 that point. Clearly, I think that, we haven't talked about  
23 the numbers today much. There's been a lot of general  
24 talk.

25 But the numbers really do support that approach.

28

1 If you look at the data on state websites, and remember,  
2 that data is lagging by two weeks, the two-week old data  
3 has already shown us, come back to the point where we were  
4 on December 1<sup>st</sup>. So, we've completely resolved the holiday  
5 spike. Which is great news. And that was two weeks ago.  
6 So, we really are seeing our health outcomes improving,  
7 both in case rates and hospitalization rates. And,  
8 following the science here, we really can say that we are  
9 doing objectively better than we were.

10 In light of that, I want to touch on a couple  
11 places I think the ETS needs to be, hopefully when this new  
12 draft of the ETS is released in April, and I know there's  
13 many things that staff is working on here, including the  
14 masking change the Governor pushed for, there's a couple of  
15 places I'd like to highlight that I think we should have as  
16 changes.

17 Obviously, consistency in the masking. And,  
18 also, bringing that masking change the Governor pushed into  
19 the transportation sections. Right now, a bit of an  
20 ambiguity, and more difficult for those trying to figure  
21 out how that applies. We also look forward to updates to  
22 reflect the accurate exclusion periods, which were changed  
23 over the holidays and are presently not in the ETS text.

24 Broadly speaking, I think Michael Miiller and  
25 Helen Cleary both noted, these quick changes will continue

1 to happen as science improves and as we transition to  
2 endemic. Right. They will happen. And the IIPP offers us  
3 a way for this ETS to keep up. Because when you vote on  
4 the ETS in, I assume early April, you will be voting for  
5 something that will be in effect for eight to nine months.  
6 You know that changes like this will continue to occur, we  
7 will learn more, that our practices will improve. But if  
8 you don't put in IIPP, then you really can't keep up.  
9 Right — we want the ETS to keep up. We want it to work.  
10 But that requires it having the flexibility to match  
11 science. And right now, you know, the version we're doing,  
12 it's going to be a problem you'll see again and again. So,  
13 we urge IIPP enforcement to be in there as a part of it.

14 I think I've hit my two minutes, so I will just  
15 end by saying, I would also welcome Chief Killip. Looking  
16 forward to working with you as you walk into this, uh,  
17 storm of a setting. And, thank you all, hope you're all  
18 safe and well.

19 CHAIR THOMAS: Thank you.

20 Who do we have up next, Maya?

21 MS. MORSI: Up next is Kevin Bland, with CFCA,  
22 RCA, WSC.

23 CHAIR THOMAS: That's a lot of letters there.

24 MR. BLAND: Yeah, uh, I kind of represent the  
25 alphabet here and there.

1 I almost said your honor, I meant Chairman  
2 Thomas.

3 Thank you for the opportunity to speak. I'll  
4 make my comments brief for a change, I'll incorporate, by  
5 reference, Michael Miiller, Helen Cleary, Bruce Wick, and  
6 Rob Moutrie's not to repeat, but I will emphasize a point  
7 that I think has been a theme through — throughout, is that  
8 we are transitioning from pandemic to endemic. I hear, we  
9 heard through these meetings now through a year — we need  
10 to follow the science. CDP, CDPH, NIOSH, that this is  
11 based on science. A lot of the things we see changing, we  
12 see other states that are starting to move — eliminate  
13 their, their permanent Covid regulations.

14 We have a tool here, I think I said this at the  
15 very first meeting, in California, that we should have been  
16 very proud of, being ahead of the curve with the IIPP and  
17 its ability to follow the science and be enforced and be  
18 used by employers. So, I can't emphasize that enough.

19 Others — Another thing, I'm trying to figure out  
20 how I can weave gun rights in like Mitch did, but I just  
21 can't think of a way to do that today. But, there's also  
22 been a move we've heard NIOSH talk about moving from  
23 mandates into more individual responsibility, which would  
24 apply across the board in the context of the IIPP, and how  
25 that works, how this — they — work in conjoint with

1 recommendations. We've seen this in the executive orders  
2 from the Governor, CDPH working with Cal/OSHA.

3 I don't think it's mutually exclusive, and so  
4 that it can be used and allow us, because we have had,  
5 throughout our experience here, this constant moving  
6 target. And it probably will continue to move. And we see  
7 the spikes, and we see the downturns, and inevitably, when  
8 we adopt a hard and fast ETS rule, we see it change two and  
9 three days later. We see an executive order correcting it.  
10 And so, I'm hoping we kind of learn from that past, and  
11 hope that we can move into the future with something that  
12 is going to more mirror what recommendations are and be  
13 nimble. I think the IIPP is a means in which to accomplish  
14 that.

15 So, with that, thank you, I look forward by the  
16 way, I think our next meeting can be in person. I look  
17 forward to seeing you guys in April in person up in  
18 Oakland.

19 Thank you.

20 CHAIR THOMAS: Thank you, Kevin.

21 Who do we have next, Maya?

22 MS. MORSI: Up next is Bryan Little with  
23 California Farm Bureau.

24 CHAIR THOMAS: Bryan, can you hear us?

25 MR. LITTLE: Good morning. Can you hear me?



1 CHAIR THOMAS: Yes, go ahead.

2 MR. LITTLE: Very good. Thank you very much, I  
3 appreciate the opportunity to comment, and would like to  
4 thank the Standards Board staff, and the agency staff for  
5 all their hard work. Welcome aboard, for our new Cal/OSHA  
6 chief. Look forward to working with all of you going  
7 forward.

8 Somehow, I think we're going to have as much work  
9 to do in the future as we've always had in the past. I'd  
10 like to offer some comment this morning on the Standards  
11 Board's direction on the COVID-19 Emergency Temporary  
12 Standard.

13 I think we should all be grateful that the Covid  
14 pandemic is evolving into an endemic stage, and something  
15 that will be a part of our landscape every year in the  
16 future, very much like influenza. Governor Newsom's  
17 SMARTER Plan recognizes the need to move from an — the  
18 emergency response phase to long term management, including  
19 continuing efforts to encourage vaccination and improving  
20 treatments and making them more readily available.

21 CDC director Dr. Rochelle Walensky's call for  
22 giving the public leeway on mask wearing and similar  
23 mandates when Covid poses a lower risk, but unfortunately  
24 the current ETS structure that we have can't accom —  
25 achieve this degree of flexibility, and requires an order

1 from the Governor to allow masking flexibility, as the  
2 Governor directed in his March 1 executive order  
3 reconciling the ETS with CDPH guidance issued in late  
4 February.

5           It's time to step back from the rigid and  
6 inflexible ETS approach to a more flexible approach relying  
7 on guidance to Governors, and recognize that employers have  
8 agency in their own state — employers have agency in their  
9 own safety and health, and that they are capable of making  
10 decisions based on conditions in their own communities, and  
11 with respect to their own individual risk and tol — their  
12 own individual risks and tolerance for risk. And I'd like  
13 to associate myself from that respect with some of the  
14 folks that went ahead of me, including CAWG, Phylmar,  
15 Housing Contractors, Cal Chamber, and so on and so forth.

16           I'd also like to offer some quick comments on the  
17 petition recently filed with the Board to permit the use of  
18 GPS guided trackers and other equipment. We're moving  
19 closely towards — quickly toward adoption of autonomous  
20 vehicle technology in many applications.

21           Autonomous forklifts and other vehicles have long  
22 been in use in factories, warehouses, ports, and  
23 underground mines. Autonomous taxi and shuttle services  
24 are already being offered in many cities around the world  
25 and right here in the United States. The US Department of

1 Transportation is allowing experimentation with self-  
2 driving delivery vehicles for grocery and food delivery,  
3 and several states are testing autonomous semi-trucks.

4           GISO 3441 was designed to provide for the safe  
5 use of furrow guided tractors operating in close proximity  
6 to large numbers of agricultural employees, ahead of, or  
7 behind these vehicles. GPS guided tractors will be used  
8 very differently, and Petition 596 provides extensive guard  
9 rails to ensure the safety of employees and mind encounters  
10 of such equipment while they're in operation.

11           I talk to farmers regularly who tell me they have  
12 extreme difficulty hiring enough people to perform all the  
13 jobs that need to be done on California's farms. And  
14 mechanization, use of assistive technologies, and  
15 automation offer a means to fill this gap. In close, these  
16 technologies also offer opportunities for professional  
17 development and advances for agricultural employees. But  
18 many of these opportunities will be lost if Cal/OSHA's  
19 regulations can't accommodate rapidly advancing technology.  
20 So, we, uh — we, uh — obviously support that petition and  
21 would like to see you move forward with it.

22           Thank you for your time, and I appreciate the  
23 opportunity to comment.

24           CHAIR THOMAS: Thank you, Bryan.

25           Who do we have next, Maya?

1 MS. MORSI: Up next is Tyler Blackney with the  
2 Wine Institute.

3 CHAIR THOMAS: Tyler, can you hear us?

4 MR. BLACKNEY: Yes. Good morning, everyone. My  
5 name is Tyler Blackney. I am with Wine Institute, a public  
6 policy advocacy organization representing approximately  
7 1,000 California wineries. I first want to speak in  
8 support of petition file number 596, dealing with highly  
9 automated and autonomous agricultural equipment.

10 I want to align my comments with those of the  
11 California Association of Winegrape Growers, and the Farm  
12 Bureau, and I just want to reiterate that these tractors  
13 are quickly evolving. They have been shown to be safe.  
14 The technology is there, and they are now becoming  
15 economically feasible.

16 Many are electric and align well with state  
17 climate and renewable energy goals. These vehicles are the  
18 future, and we are asking the Board not to leave us in the  
19 past. I would like to thank you all for your due  
20 consideration of the petition and hope you can support it.

21 Additionally, we carry many of the concerns  
22 expressed by the long list of employers and community  
23 representatives related to the ETS. I do not want to  
24 repeat what has already been said, but I do want to  
25 emphasize that the ETS, over its various iterations,

1 changes via CDPH guidance in line with the science at the  
2 time, and then the necessary cleanup via executive order  
3 has caused an incredible amount of confusion in already  
4 difficult times.

5 The ETS has clearly shown itself to be inflexible  
6 in dealing with an ever-evolving pandemic. This is not the  
7 way to do public policy, and I urge Cal/OSHA to reconsider  
8 the approach in line with those already stated.

9 So, thank you for your time.

10 CHAIR THOMAS: Thank you, Tyler.

11 Who do we have next, Maya?

12 MS. MORSI: Up next is Jassy Grewal, with UFCW  
13 Western States Council.

14 CHAIR THOMAS: Jassy, can you hear us?

15 MS. GREWAL: Yes, can you hear me?

16 CHAIR THOMAS: Yeah, go right ahead.

17 MS. GREWAL: Wonderful. Good morning, my name is  
18 Jassy Grewal, legislative director with the United Food and  
19 Commercial Workers, Western States Council. First, I'd  
20 like just state our opposition to Petition 596. We did  
21 send a letter to the Board, so, there are more specifics in  
22 there, but I don't have time to go through them all in the  
23 two minutes allotted today.

24 I'd also like to echo the comments by Saskia, of  
25 CNA, Mitch, of the California Labor Federation, Stephen of

37

1 Worksafe, and Anne of CRLAF, and just express our need to  
2 continue to urge this Board to readopt the ETS and move  
3 toward a permanent standard. Our members have greatly  
4 benefitted from the protections that the ETS offers in our  
5 workplace, and in some workplaces really significantly  
6 slowing the spread of virus and saving workers lives.

7           Through the surge that we saw in December, and  
8 even as case numbers are down, the ETS still continues to  
9 protect our workers. Particularly our grocery store  
10 workers who have hundreds of interactions with the general  
11 public a day, often of whom they don't know if are Covid-  
12 positive, or not Covid-positive, including our retail  
13 pharmacists, who are the first folks who see people who are  
14 sick, and they don't know if it's the flu or if it's Covid.

15           So, we continue to urge this Board to readopt the  
16 ETS, maintain the exclusion pay provisions. Supplemental  
17 paid sick leave is a huge win for workers to be able to  
18 stay home when they're sick, but there was an exemption for  
19 smaller worksites, so it's particularly important for those  
20 workers. We have those workers in the cannabis industry  
21 who have relied on exclusion pay to be able to stay home  
22 when they are sick and are excluded from the workplace.

23           Thank you for allowing me to make public comment  
24 today.

25           CHAIR THOMAS: Thank you.

1            Maya, who do we have next?

2            MS. MORSI: We have Dan Leacox with Leacox and  
3 Associates. I think I —

4            CHAIR THOMAS: Dan —

5            MS. MORSI: — spelled that wrong.

6            MR. LEACOX: Good Morning, Board and staff. Can  
7 you hear me OK?

8            CHAIR THOMAS: Yeah, go right ahead.

9            MR. LEACOX: OK, great. I just wanted to urge  
10 the Board to listen to the business representatives. Just  
11 mindful that their advices are welling up from experience  
12 with implementing rules, and represents quite an expertise  
13 with making rules workable. And, hence, their advice is  
14 that — well worth listening to.

15            Um — Uh — But — then I want to transition to  
16 the business meeting item of permanent variances. And,  
17 already commented on that a couple of meetings ago, but  
18 just wanted to reiterate and urge a yes vote. It's a very  
19 nice change, and appropriate to reduce workload for Board,  
20 Board staff, Division staff, as well as — as well as  
21 applicants, and would ask for a little bit of comment,  
22 later on, or now if it's appropriate, on the effective date  
23 for the rule, when that might go into effect, and uh, you  
24 know we could implement the change.

25            And that's it, thank you.

1 CHAIR THOMAS: Thank you, Dan.

2 MR. LEACOX: Yup.

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

4 MS. MORSI: We have Cassie Hilaski with Nibbi.

5 CHAIR THOMAS: Hi Cassie.

6 MS. HILASKI: Hello, good morning. So, as usual,  
7 thank you all for service. I'll be short and sweet this  
8 morning. My only ask, really, this month, is that the  
9 permanent ETS regulations account for the eventual reality  
10 that Covid will become endemic at some time. I'm not  
11 suggesting we're there yet, personally I'm still in a wait  
12 and see mode. Myself, I'm not eager to throw out the  
13 protocols.

14 However, Covid will eventually become endemic.  
15 And the ETS really needs to be written with that in mind,  
16 because we have to write it right now. For some point in  
17 the future, we don't really know when that's going to  
18 happen, but you need to write the ETS with that endpoint in  
19 mind, so that whether it happens this year or next year,  
20 that there's enough flexibility in the permanent regulation  
21 that such a pivot will actually be possible when it is  
22 necessary.

23 Thank you for listening to my comments.

24 CHAIR THOMAS: Thank you, Cassie.

25 Who do we have next, Maya?



1 MS. MORSI: Up next is Eddie Sanchez, with  
2 Southern California Coalition for Occupational Safety and  
3 Health.

4 CHAIR THOMAS: Eddie, can you hear us?

5 MR. SANCHEZ: Yes, thank you.

6 Good morning, all. First of all, I'd like to  
7 welcome Jeff Killip. I look forward to working closely  
8 with the new Cal/OSHA chief. I want to thank you, Board  
9 and staff, in consideration of our comments today. My  
10 name is Eddie Sanchez, with the Southern California  
11 Coalition for Occupational Safety and Health, or SoCalCOSH  
12 for short.

13 Our organization is founded on the principal that  
14 workplace deaths and injuries are preventable. I'm here  
15 today to comment on the standard for workplace protection  
16 from COVID-19. I'll quickly echo the comments of my  
17 colleagues that we should not pull our foot off the brakes.

18 As the proverb goes: Fool me once, shame on you.  
19 Fool me twice, shame on me. We have the opportunity to  
20 learn from our past mistakes with prior Covid variants, and  
21 it would be a shame on us to repeat those past mistakes.

22 I just want to say that it's important that we  
23 retain exclusion pay, and do more to permanently protect  
24 workers from Covid, even as cases go down. I want to thank  
25 you again, Board staff, and Division, for your time and

1 consideration and work on this effort. We know you'll make  
2 the best decision to protect workers and working-class  
3 families.

4 Thank you.

5 CHAIR THOMAS: Thank you, Eddie.

6 Who do we have next, Maya?

7 MS. MORSI: I'm not sure if we should circle back  
8 with AnaStacia, since we had Stephen Knight speak, but  
9 AnaStacia was the only one that's not — that has not  
10 spoken.

11 CHAIR THOMAS: Alright, if we can well you can  
12 try and circle —

13 MS. WRIGHT: Hi. Can you guys hear me?

14 CHAIR THOMAS: Yeah.

15 MS. WRIGHT: Hi, yes. Thank you so much for  
16 circling back to me. Stephen's already actually spoken,  
17 and he covered what I was going to say, so thank you all so  
18 much.

19 CHAIR THOMAS: Thank you. Do we have any other  
20 speakers at this time, Maya?

21 MS. MORSI: At this time, we do not.

22 CHAIR THOMAS: Alright, so, at this time, we'll  
23 wait a minute or so to wait if anyone else calls in before  
24 we continue to the business meeting. And if there's any  
25 callers, Maya, just let me know.

1 MS. MORSI: OK, will do.

2 BOARD MEMBER BURGEL: Uh Dave, Dave this is  
3 Barbara. Can I make a statement now? Um — about

4 MS. SHUPE: For us —

5 CHAIR THOMAS: I'll be nice if we have time.

6 MS. SHUPE: — (indiscernible) wait until the  
7 business meeting.

8 BOARD MEMBER BURGEL: Should I hold till later?

9 MS. SHUPE: Yeah.

10 CHAIR THOMAS: Yeah.

11 MS. SHUPE: Let's wait till the business meeting.

12 CHAIR THOMAS: Thank you.

13 Alright, Maya, we have no other callers?

14 MS. MORSI: We do not have any more callers.

15 CHAIR THOMAS: Alright. Thank you very much, all  
16 the callers and those who participated. We appreciate your  
17 time and your comments.

18 The public meeting is adjourned, and the record  
19 is closed.

20 We'll now proceed with the business meeting.

21 Purpose of the business meeting is to allow the Board to  
22 vote on the matters before it and to receive briefings from  
23 staff regarding the issues listed on the business meeting  
24 agenda. Public comment is not accepted during the business  
25 meeting unless a member of the Board specifically requests

1 public input.

2           So, the first proposed safety order for adoption  
3 is title 8, chapter 3.5, subchapter 1, section 411,  
4 Applications for Permanent Variances. Ms. Gonzalez, will  
5 you please brief the Board?

6           MS. GONZALEZ: Thank you, Chair Thomas. Board  
7 staff has developed this proposal to change the Board's  
8 procedural rules governing applications for permanent  
9 variance. Under the current title 8, section 411 rule,  
10 applicants must submit six paper copies of any variance  
11 applications to the Board.

12           The Board staff will then distribute those hard  
13 copies in the mail to the various parties. With widespread  
14 use of email, especially during Covid when many of us went  
15 electronic, paper copies are now becoming rarely used by  
16 the Board. The proposed update to section 411 eliminates  
17 the requirement for six paper copies to be submitted to the  
18 Board by the variance applicants, saving them on printing  
19 and mailing costs, and saving the Board on storage of all  
20 of these excess documents.

21           The Board received three comments in support of  
22 the updates in the 45-day comment period, and no comments  
23 in opposition to the change. The proposed amended  
24 regulation is ready for the Board's consideration.

25           CHAIR THOMAS: Thank you, Autumn.

1 Are there any questions for Ms. Gonzalez?

2 Go ahead, Nola.

3 BOARD MEMBER KENNEDY: Hi, yeah, there was a  
4 question during the public comment about when that might  
5 become effective, if the vote passes.

6 MS. GONZALEZ: Oh, thanks for reminding me of  
7 that. July 1<sup>st</sup>, or if there's some delay, the next  
8 quarterly would be October 1<sup>st</sup>, so, hopefully this year.

9 BOARD MEMBER KENNEDY: Thank you.

10 MS. GONZALES: Thank you.

11 CHAIR THOMAS: Thank you. Any other questions  
12 for Autumn?

13 Good, I'll entertain a motion.

14 BOARD MEMBER LASZCZ-DAVIS: I so move

15 CHAIR THOMAS: Do I have a second?

16 BOARD MEMBER STOCK: Second.

17 CHAIR THOMAS: It's been moved and seconded. The  
18 Board adopts the revisions as proposed. Ms. Money, will  
19 you please call the roll?

20 MS. MONEY: Ms. Burgel?

21 BOARD MEMBER BURGEL: Aye.

22 MS. MONEY: Ms. Crawford?

23 BOARD MEMBER CRAWFORD: Aye.

24 MS. MONEY: Mr. Harrison?

25 BOARD MEMBER HARRISON: Aye.

1 MS. MONEY: Ms. Kennedy?

2 BOARD MEMBER KENNEDY: Aye.

3 MS. MONEY: Ms. Laszcz-Davis?

4 BOARD MEMBER LASZCZ-DAVIS: Aye.

5 MS. MONEY: Ms. Stock?

6 BOARD MEMBER STOCK: Aye.

7 MS. MONEY: Chairman Thomas?

8 CHAIR THOMAS: Aye. And the motion passes.

9 MS. SHUPE: Can we just confirm the second, I'm  
10 sorry, I missed it.

11 CHAIR THOMAS: I'm sorry, who did make the  
12 second?

13 BOARD MEMBER STOCK: Me, Laura.

14 MS. SHUPE: Thank you, Laura.

15 CHAIR THOMAS: I'm glad we came together on this  
16 very controversial issue. It's impressive. Thank you.

17 Next up, proposed decisions for variance.  
18 Proposed variance decisions for adoption are listed on  
19 consent calendar. Ms. Gonzalez, will you please brief the  
20 Board?

21 MS. GONZALEZ: On the consent calendar this month  
22 we have decisions A through G ready for the Board's  
23 consideration.

24 CHAIR THOMAS: Alright, that A through T?

25 MS. GONZALEZ: Sorry, I have a cold. It's G, as

1 in goat.

2 CHAIR THOMAS: Oh. A through G. Oh, that's a  
3 lot. OK. Are there any questions for Ms. Gonzalez on the  
4 variances?

5 Hearing none, I'll entertain a motion.

6 MR. HARRISON: Motion to approve.

7 BOARD MEMBER LASZCZ-DAVIS: Second.

8 CHAIR THOMAS: Thank you.

9 Was that Chris on the second?

10 BOARD MEMBER LASZCZ-DAVIS: Yes

11 CHAIR THOMAS: Thank you, Chris.

12 It's been moved and seconded that the Board adopt  
13 the consent calendar as proposed. Ms. Money, will you  
14 please call the roll?

15 MS. MONEY: Ms. Burgel?

16 BOARD MEMBER BURGEL: Aye.

17 MS. MONEY: Ms. Crawford?

18 BOARD MEMBER CRAWFORD: Aye.

19 MS. MONEY: Mr. Harrison?

20 BOARD MEMBER HARRISON: Aye.

21 MS. MONEY: Ms. Kennedy?

22 BOARD MEMBER KENNEDY: Aye.

23 MS. MONEY: Ms. Laszcz-Davis?

24 BOARD MEMBER LASZCZ-DAVIS: Aye.

25 MS. MONEY: Ms. Stock?

1 BOARD MEMBER STOCK: Aye.

2 MS. MONEY: Chairman Thomas?

3 CHAIR THOMAS: Aye. Once again, very impressive,  
4 Board. Thank you.

5 We'll go to reports. Division update, Mr. Berg,  
6 can you please brief the Board?

7 MR. BERG: Yes. Thank you, Chairman Thomas.  
8 Executive order N-5-22, suspended section 3205(c)(6)(A) of  
9 the ETS, which requires that unvaccinated workers wear face  
10 coverings in indoor workplaces and vehicles. That's been  
11 suspended, and that requirement will no longer be enforced.

12 However, other face covering requirements within  
13 the ETS remain in place. Including provisions requiring  
14 face coverings in outbreaks, and in employer provided  
15 transportation. Also still in place is section  
16 3205(c)(6)(B), which requires employers to provide face  
17 coverings and ensure they are worn when required by orders  
18 from CDPH. And you can look at our FAQ's, which were  
19 recently been updated, that list all the places where CDPH  
20 orders require face coverings. And CDPH also has that on  
21 their website.

22 In addition, employees can request face coverings  
23 from the employer at no cost to the employee and can wear  
24 face coverings at work regardless of vaccination status  
25 without fear of retaliation, as specified in subsection



1 3205(c) (5) (J) .

2 Thank you, that's what I have for today.

3 CHAIR THOMAS: Are there any questions for Mr.  
4 Berg? Laura?

5 BOARD MEMBER STOCK: Yeah, do you have any  
6 information about when the next draft for adoption in April  
7 will be available?

8 MR. BERG: I don't know, it will be posted as  
9 soon as we are able to. I don't know what the date.

10 CHAIR THOMAS: Do we have any —

11 BOARD MEMBER STOCK: I mean, I — I want to  
12 acknowledge the frustration of the stakeholders, and I  
13 share it, and I understand you have a lot that you're  
14 balancing. And, so, I just wanted to make a few, you know  
15 comments on my hopes for that draft that you're developing.

16 So, a couple of things is I — I — it — I — I'm  
17 — I don't believe that I feel like — we all want to  
18 believe this pandemic is over, and, as Cassie said, we  
19 don't know — we're not there yet. And, there — there's  
20 signs of future variants etc... So, I second the call for  
21 not taking our foot off the brake at this point.

22 I think in particular I've been very concerned  
23 about this move to individual responsibility. In a  
24 circumstance where CDPH is strongly recommending the  
25 continued use of masks, which indicates their beliefs that

1 they're still necessary to protect yourself from COVID-19.

2 We all know that individual choices impact  
3 everybody that they come in to contact with, and as we've  
4 heard from various people today, there are a lot of workers  
5 who have no choice whether or not to be in the workplace  
6 and be exposed to many people without any information about  
7 their vaccination status, or whether or not they're  
8 actively suffering from COVID-19.

9 So, I'm concerned about that direction, but it —  
10 it — since it's — leaves us with the importance of this  
11 provisions that are remaining in the ETS. The ventilation,  
12 the provision of masks, and I agree with the comments that  
13 — that many workers are afraid to ask. And so being able  
14 to strengthen the responsibility to provide that, to  
15 recognize the fact that some people will not be able to  
16 come forward.

17 And, obviously, exclusion pay, for all the  
18 reasons that we've heard, continues to be critical in order  
19 to be sure that people who are sick with Covid, or exposed  
20 and potentially sick are able to stay home and not infect  
21 others.

22 I also just want to comment on the call for  
23 flexibility etc. on how to deal with things in the future.  
24 I urge us to keep the outbreak provisions, and I think that  
25 they are a model for what may happen in the future, where

1 we will know that when cases rise, we are poised to be able  
2 to reinstate stronger protections.

3           And, in order to make that real, we have to  
4 really be sure that we are continuing to track cases and  
5 document them. So, I hope that a lot of those provisions  
6 that are there are going to be in the draft that we're  
7 gonna see next month and be able to vote that, and then  
8 also begin to work on an infectious disease regulation that  
9 will cover more than Covid. I want to just remind us that  
10 that's really critical to do. So. So I hope that those —  
11 that you'll be considering those as you develop the next  
12 draft.

13           Thank you.

14           CHAIR THOMAS: Thank you, Laura.

15           Barbara?

16           BOARD MEMBER BURGEL: I would like to also echo  
17 Laura's comments. I want to read a formal statement. I  
18 was quite distressed, personally and professionally, in  
19 response to the recent Covid ETS masking changes made by  
20 the Governor and followed by executive order and the CDPH.

21           I wish to publicly document my concerns as the  
22 occupational health representative to this Board. I  
23 believe that the change is premature, especially when  
24 associated with a decrease in testing, which, is sort of  
25 mind-blowing to me and shocking, and it creates an unsafe

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1 working environment for California workers who are not  
2 protected by the ATD standard.

3 On February 28, 2022, the day before the  
4 executive order on March 1<sup>st</sup> was made, there were 422  
5 recorded deaths from Covid, with over 16,000 new cases, a  
6 seven-day average of 9,000 cases that week. It is unknown  
7 how many of these deaths were associated with workplace  
8 exposure. And then the next day the Governor signed his  
9 executive order.

10 Now, the first time California recorded over  
11 16,000 cases was on December 1<sup>st</sup>, 2020. So, just reminding  
12 everyone that what we're seeing currently is much higher  
13 than we did at the beginning of this pandemic. The first  
14 time California recorded over 400 deaths from Covid was  
15 December 28, 2021, or 2020, excuse me.

16 This is when we were unvaccinated as a  
17 population. Vaccinations were, obviously, just starting to  
18 be administered on December 16 of 2020. And, the numbers  
19 posted on February 28 should have prompted continued  
20 employer protection by way of masking. Not less  
21 protection.

22 Yes, case rates have dropped, for now. In  
23 January of 2022 in California, we had a seven-day average  
24 of 100,000 cases, seven-day average in California.  
25 Yesterday, California reported over 3,000 new cases, with a

1 seven-day average of 3,800 cases this past seven days.  
2 There were 156 Covid deaths yesterday, and a seven-day  
3 average of 120 deaths.

4 Overall, our death rate since January of 2022,  
5 when we had 71% of Californians who are fully vaccinated,  
6 remain much higher when compared to one year ago, when we  
7 had a 30-40% vaccination rate in April of 2021.

8 The Omicron Covid variant, subvariant BA2 is more  
9 infectious than the prior Omicron and Delta variants, and  
10 earlier in the month, the BA2 Omicron subvariant accounted  
11 for approximately 11.6 % of cases in the United States, and  
12 I estimate that this is higher, currently.

13 So, 82% of Californians who are vaccine eligible  
14 have received at least one dose of the vaccine, 71% have  
15 been fully vaccinated. So, therefore there is a group of  
16 Californians, 18-29% of Californians who remain  
17 unvaccinated/fully vaccinated. And what's most concerning  
18 is — those that cannot get vaccinated. Either because  
19 they're under the age of five, and or are  
20 immunocompromised. Those are, in the population, the most  
21 vulnerable workers.

22 Well, obviously, not under five folks, but those  
23 individuals who are immunocompromised who are working, um,  
24 and vaccination obviously reduces the severity of illness,  
25 and hospitalization and death.

1           CDPH, which has been mentioned, CDPH is focused  
2 on community and public health exposure, and not  
3 specifically workplace exposure. California residents can  
4 choose to engage in community events, sporting events, they  
5 can choose to go to the movies, they can choose to go to a  
6 grocery store. However, workers do not have this choice.  
7 They need to show up to teach in schools, and to work in  
8 the movie theater and grocery stores, so that they can  
9 continue to feed their families and pay their rent.

10           The masking changes enacted on March 1<sup>st</sup>, and for  
11 schools on March 11, shifts important health and safety  
12 legal responsibility to the individual employee. To  
13 protect against asymptomatic transmission, from exposure to  
14 a vaccinated or unvaccinated person at work, they must  
15 decide to wear a mask, maintain a six-foot distance, limit  
16 interactions to less than 15 minutes, when possible.

17           Employers are now not continuing to test. CDPH  
18 has made this major policy change in masking. And now that  
19 the toothpaste is out of the tube, so to speak, without the  
20 check and balance of testing. So, how do we truly know the  
21 impact of this policy change without testing?

22           I urge the Board, and DOSH to reinstate well-  
23 fitting masking requirements for workplaces not protected  
24 by the ATD standard. And wish this to be publicly recorded  
25 as my feedback.

1 Thank you very much.

2 CHAIR THOMAS: Thank you, Barbara.

3 Any other questions for Eric?

4 BOARD MEMBER LASZCZ-DAVIS: Chris —

5 CHAIR THOMAS: Uh, Chris.

6 BOARD MEMBER LASZCZ-DAVIS: Just wanted to make a  
7 very brief comment. I agree, we're not out of the  
8 pandemic. We're cer—the trajectory certainly suggests  
9 that we're moving towards an endemic state. This is a good  
10 place to be.

11 However, the concern that seems to profile itself  
12 at each of our meetings is the certain perception, and  
13 many, actually, that the existing ETS is too complex, not  
14 entirely understandable, and not fluid enough.

15 I'm not sure what Eric and others can to do  
16 integrate those comments so that they're workable. But  
17 again, I'd encourage you to revisit the actual text, the  
18 actual focus, and the workability of whatever standard we  
19 end up with. I think that's absolutely critical.

20 And I know exclusion pay is a big part of this.  
21 IIPP has certainly been recommended more than once. And to  
22 the extent we can deal with the issues that have been  
23 addressed in terms of workability, I think it's important.  
24 I realize we've got issues in terms of some illness, and  
25 case rates and death, but unless the rules are written such

1 that they're workable and understandable, they're not going  
2 to do us a whole lot of good.

3 So, to whatever extent that can be modified,  
4 integrated, and strengthened, I'd encourage us to do that.  
5 And I, too, like Laura, am concerned that we're about a  
6 month away from the next meeting and we haven't even seen  
7 anything.

8 Yet, I understand the incredible workload that  
9 that group has been under. But, it leaves us with I think  
10 a less than optimal situation where we will have to vote  
11 thumbs up or thumbs down on a standard, a potential  
12 standard that we would have had little time to review, and  
13 very little time to secure input on.

14 So, those are my comments.

15 CHAIR THOMAS: Thank you, Chris.

16 Nola?

17 BOARD MEMBER KENNEDY: Uh, yeah, I am in  
18 agreement with everything Chris just said. I'd also like  
19 to add that at this point in the pandemic I'm not sure  
20 we're still at an emergency phase, and moving forward, I —  
21 because we were in an emergency we sort of threw out of the  
22 window a lot of the things that we would normally do with a  
23 workplace hazard. Like workplace hazard assessment, or fit  
24 testing for respirators. And, I think at this point we're  
25 at a place where, dealing with this as a workplace hazard,



1 we should return to how we deal with workplace hazards.

2 And that's all I wanted to say.

3 CHAIR THOMAS: Thank you, Nola.

4 BOARD MEMBER KENNEDY: And, I guess also, to  
5 expand on Chris' comment, and others' comments about not  
6 being able to see a draft yet, I do have some concerns that  
7 we might find ourselves in a situation like we did in June.  
8 And I don't want to do that.

9 CHAIR THOMAS: Thank you.

10 Any other comments from the Board for Eric?

11 MS. CRAWFORD: This is Kate. I think I need to  
12 echo both Chris and Nola. I have real, real concerns that  
13 we don't have a draft to look at. So, in the — time is of  
14 the essence. I'll just be efficient and leave it there.

15 But we need to see the draft.

16 CHAIR THOMAS: Thank you, Kate.

17 Any other comments from Board Members?

18 Alright. Thank you, Eric.

19 Legislative update. Ms. Gonzalez, will you  
20 please brief the Board?

21 MS. GONZALEZ: Thank you, Chair Thomas.

22 In your packets this month are a number of new  
23 bills for you to take a look at. I just briefly wanted to  
24 mention two of them. AB 1733, would make a change to  
25 Bagley-Keene to allow to teleconferencing. So, we're

1 obviously watching that right now within committee.

2           And then, AB 2243 is a wildfire and heat illness  
3 bill. It would require revision to the heat illness  
4 standard to include ultra-high heat, and revisions to the  
5 wildfire smoke threshold to reduce the threshold at which  
6 PPE becomes mandatory. And so that bill is currently in  
7 the Labor and Employment Committee. I just wanted to bring  
8 those to your attention.

9           Thank you.

10           CHAIR THOMAS: Thank you. Are there any  
11 questions for Ms. Gonzalez?

12           Seeing none. Executive officer's report, Ms.  
13 Shupe, will you please brief the Board?

14           MS. SHUPE: Thank you, Chair Thomas.

15           I, too, would like to take this opportunity to  
16 welcome our new Cal/OSHA chief, Jeff Killip, who started  
17 Monday, March 14, after being sworn in by our DIR director  
18 Katy Hagen. We look forward to Mr. Killip's leadership at  
19 Cal/OSHA, and his participation in future Board meetings.  
20 And I saw that he had joined us earlier, so, welcome, Jeff.

21           Looking forward to next month, the Board expects  
22 to consider a third readoption of the COVID-19 ETS. The  
23 OSHA Board staff are actively working diligently to get  
24 that finalized proposed text and have it posted for Board  
25 and public review as soon as possible, but in no case no

1 later than five days prior to the meeting. Now, please  
2 note, we'll do everything we can to get that posted ASAP.  
3 But the five days is the legal minimum.

4 Also on the agenda for April will be  
5 consideration of our fire fighter personal protective  
6 equipment regulation. This is a legislatively mandated  
7 regulation, and it will be the first in a series. This  
8 will be coming up for regular review. So, that one will be  
9 up for adoption. We'll have a proposed decision for  
10 Petition 594, and a public hearing for our First Aid  
11 regulatory proposal from the division.

12 The Board is preparing to return to in-person  
13 meetings as early as April. As Autumn noted, we're  
14 following AB 1733 very closely to see what our legal  
15 requirements will be, but the Governor's executive order,  
16 which suspended in-person meeting requirements for Bagley-  
17 Keene governed bodies, is set to expire on March 31<sup>st</sup>. In  
18 preparation for that, Board staff have booked meeting space  
19 in Oakland, and that is where we expect to be meeting. We  
20 will also be working to provide hybrid opportunities for  
21 public participation via remote means.

22 Are there any questions from the Board?

23 Thank you.

24 MS. CRAWFORD: Christina, it's Kate.

25 MS. SHUPE: Yeah that's —

1 MS. CRAWFORD: If this is the right time to ask,  
2 do you have a — a calendar of proposed rulemaking for the  
3 remainder of '22?

4 MS. SHUPE: Um, I believe what you're asking if I  
5 have adoption proposals for every rule making?

6 MS. CRAWFORD: I'm just trying to look to the  
7 future.

8 MS. SHUPE: So, looking to the future, we will be  
9 meeting on the third Thursday of every month. I'll be  
10 reporting out at least a month ahead of time on when we  
11 expect to see those proposals come up. Assuming that the  
12 third readoption is readopted in April and work on a  
13 permanent ETS continues, there is a requirement that that  
14 be considered by December of 2022. Does that answer your  
15 question?

16 MS. CRAWFORD: Well, I appreciate that review.  
17 What I was thinking is when we moved from the ETS as the  
18 priority — what is that rulemaking calendar? In the past,  
19 we've been able to have a look, or have an idea of what was  
20 coming.

21 MS. SHUPE: So, we have a number of packages that  
22 are currently in development. Some of them are indoor  
23 heat, and lead. We also have hydrogen powered industrial  
24 trucks. We have date palm operations. And we have  
25 residential fall protection and walking working surfaces,

1 as well as the next round of fire fighter personal  
2 protective equipment.

3 And so, we'll be holding AC's for some of these,  
4 we'll be working on stage one documents for some of these,  
5 we'll be bringing some of these up for public hearing. But  
6 it's difficult to provide hard dates far in advance,  
7 because there are multiple entities that are involved in  
8 each of these projects. And so. I can give you a general  
9 idea, but we expect to start the public notice for lead  
10 this year. But I'd like to continue reporting now to the  
11 Board each month.

12 CHAIR THOMAS: Laura, you had a question?

13 BOARD MEMBER STOCK: Yes. Thanks, Christina. I  
14 just noted, and maybe this is because this is under the  
15 Division's purview, but the general infectious disease  
16 regulation was not on the list you just said. And, I just,  
17 I mean I totally understand the workload, both of the Board  
18 staff and the division staff. I hope more resources can  
19 come your way to — to ease that workload.

20 But meanwhile, it seems like having at least a  
21 draft of a general infectious disease regulation, it would  
22 be really important to have something that could bridge the  
23 gap for when the ETS in Decembers expires, assuming that we  
24 re-adopt it next month. So, I just want to highlight, I'm  
25 hoping that some work can start on that, and I don't know

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1 if that's a question for Eric, about, but I just feel that  
2 timeline is really critical. Particularly to be get — to  
3 have something at least to be looking at by December.

4 MS. SHUPE: I would say that, you know Eric, you  
5 should feel free to jump in, if he has anything to add.  
6 But it's important for the Board and the public to keep in  
7 mind that the Covid regulation is not the same as what was  
8 contemplated by the Board in your proposed decision for a  
9 general industry ATD standard.

10 And so, when we talk about the Covid regulation,  
11 and the third re-adoption, and that being effective through  
12 the end of this year, there's also a permanent certificate  
13 of compliance that would be contemplated in December of  
14 2022, for Covid specifically.

15 A regulation for a general industry ATD standard,  
16 however, would require advisory committee meetings. It  
17 requires a much more in-depth process, it's not something  
18 that we would be able to push through before the end of the  
19 year.

20 BOARD MEMBER STOCK: When that process, is —  
21 Eric, go ahead. Yeah, sorry.

22 MR. BERG: I was just going to say, yeah we are  
23 working on a general infections disease standard, or a  
24 general ATD standard for non 5199 protected employees. We  
25 have been working on that, and will provide —

1 BOARD MEMBER STOCK: Do you anticipate a —

2 MR. BERG: — publicly as soon as we can.

3 Excuse me?

4 BOARD MEMBER STOCK: Do you anticipate having an  
5 advisory committee for that draft?

6 MR. BERG: Yeah, that would — that would be the  
7 plan, to have an advisory committee. You know, post it,  
8 take comments, and then have an advisory committee. Or  
9 make changes based on comments and then have an advisory  
10 committee make more changes. The normal process.

11 CHAIR THOMAS: Any other questions for Christina?

12 Seeing that we have none, we are now going to  
13 move into closed session. So we are going to temporarily  
14 recess, and I think we will come back at 11:45. Think  
15 that's enough time?

16 MS. SHUPE: It should be.

17 CHAIR THOMAS: OK —

18 MS. SHUPE: Such is good.

19 CHAIR THOMAS: We're gonna — we're gonna go into  
20 recess till 11:45, and then we'll be back to  
21 (indiscernible) for any other comments, and then  
22 adjournments.

23 So we will see you at 11:45.

24 BOARD MEMBER STOCK: Dave? Dave, can I just —  
25 when — are we signing right now onto the closed session, or

1 are we taking a break? I — I was (indiscernible).

2 CHAIR THOMAS: You know what, we can — take — we  
3 need five minutes, ten minutes.

4 MS. SHUPE: Five minutes.

5 BOARD MEMBER STOCK: Which is that, which — which  
6 amount.

7 CHAIR THOMAS: Which — what it — whichever one  
8 you want. Let's do ten minutes —

9 BOARD MEMBER STOCK: OK.

10 CHAIR THOMAS: — and we'll check in at 11:30, OK?

11 BOARD MEMBER STOCK: OK, great. Thank you.

12 MS. SHUPE: Thanks for \_\_\_

13 BOARD MEMBER STOCK: Ten minutes.

14 MS. SHUPE: — explaining. It'll be some time  
15 between 11:45 and noon.

16 CHAIR THOMAS: Ok. Got it? Between 11:45 and  
17 noon. So, stay tuned. Don't touch that dial.

18 Alright, we'll see you in a — we'll see you in a  
19 bit. Thanks.

20 (Whereupon the Board adjourned to closed session  
21 from 11:19 a.m., until 11:52 a.m.)

22 CHAIR THOMAS: Thank you, Maya. We are back in  
23 session. Sarah, can you please call roll so that we verify  
24 we have all Board Members present?

25 MS. MONEY: Ms. Burgel?



1 BOARD MEMBER BURGEL: Here.

2 MS. MONEY: Ms. Crawford?

3 BOARD MEMBER CRAWFORD: Here.

4 MS. MONEY: Mr. Harrison?

5 BOARD MEMBER HARRISON: Here.

6 MS. MONEY: I'm sorry?

7 BOARD MEMBER HARRISON: Here.

8 MS. MONEY: Oh, okay, I see you. Ms. Laszcz-

9 Davis? Excuse me, Ms. Kennedy?

10 BOARD MEMBER KENNEDY: I, too, am here.

11 MS. MONEY: Ms. Laszcz-Davis?

12 BOARD MEMBER LASZCZ-DAVIS: Here, sorry.

13 MS. MONEY: Ms. Stock?

14 BOARD MEMBER STOCK: Here.

15 MS. MONEY: Chairman Thomas?

16 CHAIR THOMAS: Here. And I wanted to — and we

17 all wish Sarah a happy birthday today, so let's give her a

18 little hand.

19 ALL: Happy birthday

20 MS. MONEY: My little festive hat.

21 BOARD MEMBER LASZCZ-DAVIS: And we won't even ask

22 you how old you are, either.

23 (laughter)

24 CHAIR THOMAS: I didn't even ask to ask the

25 question, or not to. Never mind. I wouldn't —

1 BOARD MEMBER LASZCZ-DAVIS: (laughter)

2 CHAIR THOMAS: Anyway —

3 MS. MONEY: Thank you.

4 CHAIR THOMAS: There was — we are now back in  
5 session. There was no action during the closed sect —  
6 closed session, so — and I want to welcome Chief — our new  
7 chief of Cal/OSHA, Jeff Killip. If he's still here,  
8 hopefully he is, this ran a little long. Actually, this is  
9 pretty short, for most of the meetings we've had.

10 The next Standards Board regular meeting is  
11 scheduled for April 21<sup>st</sup>, 2022 in Oakland, if all this holds  
12 up, via teleconference and video conference. Please visit  
13 our website and join our mailing list to receive the latest  
14 updates.

15 Thank you for your attendance today. There being  
16 no further business to attend to, this meeting is now  
17 adjourned.

18 Thank you very much, and we'll see you next  
19 month. Hopefully in Oakland.

20 Bye bye.

21 (The Business Meeting adjourned at 11:54 a.m.)

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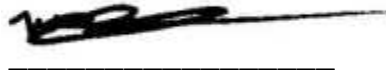
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