

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

COVID-19 PREVENTION SUBCOMMITTEE MEETING

In the Matter of:)
)
June 21, 2021 OSH)
COVID-19 Prevention)
Subcommittee Meeting)
_____)

TELECONFERENCE

*PLEASE NOTE: In accordance with Executive Order N-29-20 and Executive Order N-33-20,
the Subcommittee Meeting will be conducted via teleconference*

MONDAY, JUNE 21, 2021

10:30 A.M.

Reported by:
E. Hicks

APPEARANCES

BOARD MEMBERS:

Chris Laszcz-Davis, Subcommittee Chair and Management Representative on the Board
Laura Stock, Occupational Safety Representative on the Board
Nola Kennedy, Public Member on the Board and Liaison for the Subcommittee to the
Division

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer
Sarah Money, Executive Assistant
Michael Nelmidia, Sr. Safety Engineer
Michael Manieri, Principal Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager
Amalia Neidhardt, Senior Safety Engineer
Jennifer White, Staff Services Analyst

TKO STAFF:

John Gotcher
John Roensch
Maya Morsi
Brian Monroe
Rey Ursery

ALSO PRESENT:

Eric Berg, Deputy Chief of Health, Division of Occupational Safety and Health (Cal/OSHA)

SPANISH INTERPRETERS:

Estella Moll
Monica Desiderio

APPEARANCES (Cont.)

PUBLIC COMMENT:

Mike, Self

Cassie Hilaski, Nibbi Brothers General Contractors

Mike Donlon, Construction Employers Association

Dan Leacox, Leacox & Associates

Helen Cleary, Phylmar Regulatory Roundtable

Bruce Wick, Housing Contractors of California

Bryan Little, California Farm Bureau

Rob Moutrie, California Chamber of Commerce

Michael Miiller, California Association of Winegrape Growers

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1 PROCEEDINGS

2 JUNE 21, 2021

10:34 a.m.

3 MS. SHUPE: Good morning. This is the Subcommittee Meeting of the
4 Occupational Safety and Health Standards Board for COVID-19 Prevention. It's now
5 called to order. My name is Christina Shupe. I am the Executive Officer for the
6 Occupational Safety and Health Standards Board.

7 The subcommittee members present today are Laura Stock, Occupational
8 Safety Representative; Nola Kennedy, Public Member; and Chris Laszcz-Davis,
9 Management Representative. Also present for today's meeting are Michael Manieri,
10 Principal Engineer; Michael Nelmidia, Senior Safety Engineer; Amalia Neidhardt, Senior
11 Safety Engineer; and Jennifer White, Regulatory Analyst.

12 Today's meeting will kick off the COVID-19 Prevention Subcommittee.
13 And so we'll be going through a number of procedural steps. Mainly we'll be providing
14 procedural briefing from staff. We'll be providing staff assignments and the
15 subcommittee will be selecting a chair and then a liaison to work with the Division in
16 between public meetings.

17 At this time, we ask those of you participating in the WebEx video
18 conference to please email your name and contact information to oshsb@dir.ca.gov,
19 which will become a part of the official record for today's proceedings. While supplying
20 your information is not required, it is appreciated.

21 Today's agenda, and any materials relating to these meetings, will be
22 posted on the OSHSB website. In accordance with Executive Orders N-29-20 and N-33-
23 20, today's subcommittee meeting is being conducted via teleconference with an
24 optional video component. It's also being live broadcast via video and audio stream in
25 both English and Spanish. Links to these non-interactive live broadcasts can accessed

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1 via the "What's New" section at the top of the main page at the OSHSB website.

2 We have limited capabilities for managing participation during the public
3 comment period. So we're asking everyone who is not actively speaking to place your
4 phones or your computers on mute, and wait until you're called on to speak. Those who
5 are unable to do so will be removed from the meeting to avoid disrupting the
6 proceedings.

7 As reflected on the agenda, today's meeting will consist of just one part.
8 And that will be the conduction of the Subcommittee's business and then any
9 consideration of the public comment if needed.

10 During the public comment period, please listen for your name and an
11 invitation to speak before addressing the Subcommittee. And please remember to
12 mute your phone or computer after commenting.

13 Public comment today will be limited to 30 minutes and speakers will be
14 asked to limit their comments to 2 minutes or less.

15 At this time, I'd like to go ahead and begin the procedural briefing for the
16 subcommittee members and the public. As the Board has not had a subcommittee
17 meeting for quite some time, we're just going to go over a few of the rules that will
18 govern the subcommittee while they're meeting and while they're preparing advice for
19 the full Board.

20 As a state body, the subcommittee is governed by Bagley-Keene. The
21 subcommittee members have all recently received a Bagley-Keene refresher, as have
22 key staff members who will be supporting them.

23 What this basically means is that agendas for subcommittee meetings will
24 be posted a minimum of 10 days in advance on our website. The subcommittee
25 members will not meet amongst themselves unless it's in a publicly noticed and publicly

1 accessible meeting. However, that does not mean that stakeholder engagement
2 cannot take place. And so you'll notice that the subcommittee is made up of an
3 occupational safety representative, a public member and a management representative.
4 The Board's desire was to have a representative subcommittee that could address the
5 needs of all stakeholders.

6 As such, we encourage all participants and all stakeholders to be active in
7 your communication with your stakeholders. They can conduct those conversations.
8 They just cannot conduct them as a body, as a whole.

9 At this time does the Subcommittee have any questions about the
10 governing rules for their meetings, and their participation with stakeholders?

11 BOARD MEMBER LASZCZ-DAVIS: No, I do not.

12 MS. SHUPE: Okay, great.

13 The next thing I want to address is going to be some of the Standards
14 Board staff assignments that will be supporting the subcommittee.

15 After today, Mr. Mike, Manieri, Principal Engineer, will be stepping into
16 the management liaison role that I'm currently filling. And he will be fulfilling the
17 subcommittee with setting meeting, setting agendas and helping with the management
18 of the meeting itself.

19 Sarah Money will be assisting as Executive Assistant. She'll be preparing
20 agendas, making sure that they get posted and sharing all the required documents with
21 the subcommittee.

22 Amalia Neidhardt will be on hand to assist with the subcommittee's
23 liaison to the Division. She'll be providing regulatory support and guidance.

24 Are there any questions about the staff assignments?

25 And of course, lest I forget, the very most important piece of this

1 component or most important component to this, is Mr. Michael Nelmda and Ms.
2 Jennifer White who will be providing technical support. And then the excellent team
3 members that we have over at TKO who provide all of our technical support that allow
4 us to live stream these meetings. And provide English and Spanish live stream as well as
5 everything else that makes this open and available.

6 Okay, do we have any other questions from the subcommittee before we
7 move on?

8 (No audible response.)

9 MS. SHUPE: Okay. Seeing none, the next item on our agenda is the
10 selection of the subcommittee chair. Do I have a nomination from one of the
11 subcommittee members for the subcommittee chair?

12 BOARD MEMBER KENNEDY: I will nominate Chris.

13 MS. SHUPE: Thank you. I have a nomination. Do I have a second?

14 BOARD MEMBER STOCK: I'll second it.

15 MS. SHUPE: Thank you.

16 And, Ms. Money, can you please call role?

17 MS. MONEY: Okay. Hold on here. Then Nola nominated Chris, Laura
18 second. Okay, hold on. I'm sorry.

19 Okay, Ms. Kennedy?

20 BOARD MEMBER KENNEDY: Aye.

21 MS. MONEY: Ms. Laszcz-Davis?

22 BOARD MEMBER LASZCZ-DAVIS: I guess that's aye.

23 MS. MONEY: And Ms. Stock?

24 BOARD MEMBER STOCK: Aye.

25 MS. SHUPE: And we have a unanimous decision. Thank you. And Chris,

8

1 I'm so sorry that they threw you in front of the bus like that. (Laughter.)

2 The next item on our agenda is for the selection of the subcommittee
3 liaison to the Division. This will be the subcommittee's liaison who will be working with
4 the Division to bring the subcommittee's concerns to the Division and work with them
5 in-between public meetings. Do I have a nomination for the subcommittee liaison to
6 the Division?

7 BOARD MEMBER LASZCZ-DAVIS: I nominate Nola.

8 BOARD MEMBER STOCK: Second.

9 MS. SHUPE: Thank you. I have a nomination and a second. Ms. Money,
10 will you please call role?

11 MS. MONEY: Ms. Kennedy?

12 BOARD MEMBER KENNEDY: Aye.

13 MS. MONEY: Ms. Laszcz-Davis?

14 BOARD MEMBER LASZCZ-DAVIS: Aye.

15 MS. MONEY: Ms. Stock?

16 BOARD MEMBER STOCK: Aye.

17 MS. SHUPE: And we have a unanimous decision. Ms. Kennedy, thank
18 you so much for agreeing to do this and not placing any objections.

19 With that, we'll go ahead and move into our public comment portion for
20 this meeting. As with all Bagley-Keene governed state body meetings, the
21 subcommittee will be accepting public comment on all items on their agenda. I do need
22 to caution and let everybody know, however, that this is not a full Board meeting. And
23 so public comment will be strictly limited to the jurisdiction of the subcommittee, which
24 is the COVID-19 Prevention Regulations.

25 At this time --

1 BOARD MEMBER STOCK: Chris, can I ask a quick question, just before
2 we go into that?

3 MS. SHUPE: Yes.

4 BOARD MEMBER STOCK: I'm forgetting that on the agenda at the end
5 will we have an opportunity to identify items for the next meeting and things we want
6 to be looking into? That'll come at the end?

7 MS. SHUPE: We do, absolutely. So after the public comment portion,
8 we'll move to the subcommittee consideration. And this will be a standing item. So
9 that's why it says "if needed".

10 And once the subcommittee has had the opportunity to hear public
11 comment, they'll then be able to consider that public comment as well as any
12 stakeholder engagement or stakeholder feedback that they've received. And then take
13 that information and turn it into either new agenda items for future meetings, or
14 request to their liaison for items to investigate before their next meeting.

15 BOARD MEMBER STOCK: Great. Thank you. And I think Nola has her
16 hand up.

17 BOARD MEMBER KENNEDY: Yeah, I just wanted to ask, how frequently
18 will the subcommittee be meeting?

19 MS. SHUPE: So at this time, I'm recommending that the subcommittee
20 plan to meet twice a month, in between Board meetings. So this would be your first
21 meeting, on the 21st.

22 And then my next recommendation would be that the subcommittee
23 meet on July 13th. That would allow you to one, receive a report back from your liaison
24 on any progress that has been made on issues that you've raised or any new data that is
25 available from the Division. It'll give you an opportunity to receive feedback from the

10

1 Division on what they've learned over the preceding three weeks. And then to prepare
2 that as a summary report for the Board as a whole. And if you have recommendations
3 for the Board as whole at this point, you'd have that opportunity to meet, discuss and
4 then make those recommendations at the next Board meeting.

5 So if you meet on the 13th, you'd then have some sort of feedback or
6 recommendations or just an update for the full Board on I believe the 15th of July.

7 Chris, yeah?

8 BOARD MEMBER LASZCZ-DAVIS: Is there a timeframe, a completion
9 timeframe, the expectation?

10 MS. SHUPE: So that would be up to the Board and the subcommittee to
11 decide. My expectation is that the subcommittee may not be meeting every twice a
12 month throughout the entire COVID-19 pandemic. But as long as the regulation is
13 currently being considered for amendment, I think that it would be wise to plan for that.

14 BOARD MEMBER LASZCZ-DAVIS: Thank you.

15 MS. SHUPE: Any other questions before we move on to public comment?

16 (No audible response.)

17 MS. SHUPE: Okay. So at this time, I'm going to look at my script and
18 make sure I have everything for the public comment noted. It's amazing how much I
19 rely on Dave.

20 Okay, so just as a reminder today's public comments should be restricted
21 to the COVID-19 Prevention Regulations that are in the jurisdiction of the
22 subcommittee's scope of work.

23 We have limited capabilities for managing participation, so we're asking
24 that everybody mute your phones and your computers and wait to unmute until you're
25 invited to come speak. If you have not had an opportunity to join the queue, please

11

1 either send an email to oshsb@dir.ca.gov, or contact our staff via phone at 916-274-
2 5721 to be added to the comment queue. If you experience a busy signal or are routed
3 to voicemail, please hang up and call again.

4 At this time, Mr. Gotcher, do we have anyone in the queue?

5 MR. GOTCHER: Our first commenters will be Mike, followed by Cassie
6 Hilaski. First, Mike. And they will be representing themselves.

7 MIKE: Good morning.

8 MS. SHUPE: Good morning.

9 MIKE: Can you hear me?

10 MS. SHUPE: We can hear you.

11 MIKE: You hear me okay? Okay, good. I just had a real quick general
12 question. I had called your office just to get some general information on masks. I live
13 in Palm Desert. And I just noticed that people are still wearing masks that are working:
14 grocery stores, coffee shops, restaurants. And I was wondering is there any data or
15 testing data out there that will support wearing a mask is healthy long term. And when I
16 ask that, what I mean is you're sitting an office all day, or a coffee shop or whatever, and
17 you're constantly just breathing in your own air, recirculating it; is that a health
18 concern?

19 MS. SHUPE: Mike, I just want to clarify that this is an opportunity to
20 provide public comment to the subcommittee. But it's not a venue where we can
21 provide answers to those types of questions for you. We can, however, provide you
22 with resources at the Division that you can reach out to and contact them and also the
23 CDC.

24 MIKE: But you do the standards and the mandates for wearing masks.
25 Correct?

1 MS. SHUPE: That's correct.

2 MIKE: Okay. So you should have some kind of data that (indiscernible) --

3 MR. GOTCHER: Thirty seconds.

4 MIKE: Pardon me?

5 MR. GOTCHER: There's a two minute limit. And I was giving you warning
6 that you have 30 seconds left.

7 MIKE: Oh, okay. So basically if you're setting those standards and
8 mandates, you should have something to support that there won't be any long term
9 health issues with someone sitting in an office with a mask on all day? Correct?

10 MS. SHUPE: There are over 90 documents relied upon that back up the
11 regulations that have been adopted by the Board. Those are all publically available and
12 are part of the rulemaking record.

13 MIKE: Yeah, okay. So I'd have to search for that? You guys cannot
14 provide that?

15 MS. SHUPE: As I stated, you can go ahead and contact staff --

16 MIKE: It should be at your fingertips.

17 MS. SHUPE: -- and we can provide that in a different venue.

18 MIKE: Pardon me?

19 MS. SHUPE: You can contact staff and we can provide that information in
20 a different venue.

21 MIKE: Okay. All right. I appreciate it. Yeah, just -- I would think you guys
22 would have it right at your fingertips. So hopefully your staff does.

23 MS. SHUPE: Thank you, Mike.

24 MR. GOTCHER: Our next commenters will be Cassie Hilaski, Mike Donlon
25 and Dan Leacox with next Cassie Hilaski from Nibbi Brothers General Contractors.

1 MS. HILASKI: Hello, can you hear me?

2 MS. SHUPE: We can.

3 MS. HILASKI: All right, so thanks to all the Board Members for
4 volunteering to serve on the subcommittee. I know its extra work for all of you but it is
5 really appreciated.

6 So even with its imperfections, I think it's great that the ETS standard has
7 been updated. But there is obviously some more work to do to be prepared to keep
8 current with the state of the pandemic. Therefore, I think it's important to look forward
9 and start preparing for the end of the pandemic. And naturally the end of the ETS.

10 A good date to consider would be September 30th, 2021, which would be
11 in line with the COVID-19 pay provisions in the Labor Code.

12 I want to emphasize that preparing for an end date, and putting it on the
13 Standards Board agenda, doesn't mean that date would overrule all other factors. In
14 fact, in considering an end date, it's important to start defining the metrics that would
15 need to be in place for that end date to become a reality.

16 For example, if there were another surge or uptick in cases as the
17 economy reopens, there are already triggers in the ETS that would allow employers to
18 respond appropriately. But in such a case, September 30th may longer seem
19 appropriate and that end date could be postponed by simple votes of the Board.

20 Finally, even if the committee isn't comfortable choosing a date at this
21 time, I urge you to still start discussion to define what parameters would trigger a repeal
22 of the emergency standard. It was never meant to last forever, just like the pandemic
23 won't last forever. So we need to start thinking about when it is going to appropriate to
24 end it. Thank you very much.

25 MS. SHUPE: Thank you, Ms. Hilaski.

1 MR. GOTCHER: The next commenter is Mike Donlon from the
2 Construction Employers Association.

3 MR. DONLON: Yes, this is Mike Donlon, representing the Construction
4 Employers Association. Good morning subcommittee members, Board staff and
5 Division staff.

6 I would like to start by saying that although I disagree with the Board and
7 staff at times, I never question your commitment to employee safety and health. I
8 believe that all of you and I say this knowing many of you well, all of you to a person
9 make decisions based on what you think is best for California workers, just as I do.

10 The Construction Employers Association would recommend the Board
11 work toward repealing ETS, effective September 30th, 2021. This coincides with the
12 expiration of the California Department of Public Health requirements for negative
13 testing and vaccine verification for mega events, as well as the requirement to provide
14 COVID-19 supplemental paid sick pursuant to Labor Code 1248.2.

15 This would also give us three additional months of data. Obviously, the
16 ETS would not be repealed if case rates spike. But if cases continue to drop as they have
17 been, September 30th just makes sense.

18 This may be an optimistic recommendation, but I think we can all use a
19 little optimism right now. Thank you.

20 MS. SHUPE: Thank you, Mr. Donlon.

21 MR. GOTCHER: Our next commenters are Dan Leacox, Helen Cleary and
22 Bruce Wick with next Dan Leacox from Leacox and Associates.

23 MR. LEACOX: Good morning, everybody. The first thing I'd like to say is
24 there are good people on all sides of this issue. I share many concerns, but nobody's
25 venom. And I hope this committee can rise above the usual dialogue on these

1 contentious issues. And by that I mean is that often the proponents of a rule, like the
2 ETS, like to frame the issue as a choice between either the proposed rule or the
3 problem.

4 We see it all the time. Employers are told all the times in this venue. If
5 you oppose this rule you must not care about worker safety. Either that or you don't
6 understand the wisdom of the proposal. You see we get told that either we don't care
7 or that we're stupid about the problem. And that gets people's dander up. I can
8 understand that, where professionals can deal with it. But what I'd like to see is that it
9 really rise up to a consideration of alternatives. And the notion of repealing the ETS is
10 an alternative, right? We have permanent rules and guidance. And in fact for the first
11 six months of this we were governed by the alternatives. And so I would ask this
12 committee to -- in order to arrive (indiscernible) the usual --

13 MR. GOTCHER: Thirty seconds.

14 MR. LEACOX: -- is correctly estimate the problem, correctly estimate
15 alternative, and use available data. Don't cherry pick the data to suite some fancied
16 outcome. And this includes a correct estimation of natural immunity in the equation of
17 heard immunity. Omitting natural immunity is a bad look in the assessment of it. So
18 that's all.

19 MS. SHUPE: Thank you, Mr. Leacox.

20 MR. GOTCHER: Our next commenter is Helen Cleary, from the Phylmar
21 Regulatory Roundtable.

22 MS. CLEARY: Good morning, everybody. Happy Fathers' Day to the
23 fathers out there from yesterday.

24 My name is Helen Cleary and I'm the Director of PRR. Thank you for the
25 opportunity to speak and for discussion the subcommittee and this public forum.

1 The Board staff briefing was very informative. We're encouraged that
2 the subcommittee work will enhance transparency and aide the Board with decision
3 making.

4 To facilitate progress, we request that the subcommittee help identify
5 the objective scientific criteria that will move us to the next phase of workplace
6 requirements. Also an approach that balances responsibility for continuing mitigation
7 measures with the employer, and the community should also be considered.

8 The pandemic is not over. And all mitigation measures should not be
9 immediately eliminated. PRR members will continue to assess their operations and
10 protect their workers. However, as expressed before, the ETS just -- it can't be fixed in
11 this state. The process, simply by design, does not allow us to adapt to the ways of this
12 pandemic and evolution of scientific findings requires. The ETS continues to be a one
13 size fits all approach, yet situations are different, especially now. Employers,
14 communities, and worker populations are indifferent phases. And we encourage
15 discussion around this.

16 All PRR members believe vaccination is key to mitigate the disease. And
17 they encourage workers to get vaccinated. They continue to educate, maintain effective
18 prevention methods, and facilitate vaccination programs. One member facilitated an
19 on-site vaccine clinic six days a week with 1,500 doses a day. However after all of the
20 communication campaigns, the training and the vaccine availability, workplaces are still
21 not 100 percent vaccinated. California is not 100 percent. And that's the reality and is
22 another factor that should be considered.

23 MR. GOTCHER: Thirty seconds.

24 MS. CLEARY: We think this subcommittee is a positive step and we're
25 optimistic that those will help define what we're working towards, and encourage

1 productive stakeholder dialogue. PRR looks forward to sharing our experience with the
2 subcommittee in working together to solve this complex challenge though.

3 Thank you to all of you for committing to work on this together. It is
4 much appreciated.

5 MR. GOTCHER: Our next commenters are Bruce Wick, Bryan Little and
6 Rob Moutrie, with next Bruce Wick from the Housing Contractors of California.

7 MR. WICK: Thanks, John. And thanks committee members for agreeing
8 to extra duty. I appreciate that very much.

9 I'd like to just take a second talk about the strategy of the subcommittee.
10 I think it would be good to take just a few minutes in this thing to say what's been done
11 well. I believe there is a consensus that Cal/OSHA did well, at least initially, in
12 responding. They tried to understand what COVID was. It went from a belief that it was
13 heavily from contact exposure to airborne exposure. And Cal/OSHA made those
14 adjustments in their guidance very, very quickly.

15 They focused on compliance, safety, protecting workers. And that was
16 right.

17 Then they figured out we need to protect our investigators when they go
18 out and do investigations. And they took the time to do that. That was good.

19 And then they started enforcing heavily, under the IIPP and the ATD: 226
20 employers, \$5 million plus in penalties. That's serious enforcement that has gone on.

21 There is no such consensus, as I am aware, for the ETS. The time and
22 resources to develop it were extensive and huge. It came about eight months after we
23 all had really dug in doing the right thing. We don't talk about it. We should figure out
24 who's all covered by the ATD that will still be covered? What is --

25 MR. GOTCHER: 30 seconds.

1 MR. WICK: -- really -- thank you, John -- the impact? It created conflicts
2 and confusion with AB 654. In construction, all we did was not change protection for
3 employees, but just added more people to comply with the paperwork. The ETS has
4 always been behind and did not consider the relevant information that was being
5 developed publicly, Workers' Comp, etcetera.

6 So I think we need to look at this thing in terms of --

7 MR. GOTCHER: Two minutes.

8 MR. WICK: Thank you. Let's talk about a strategy like that. Thank you.

9 MS. SHUPE: Thank you, Mr. Wick.

10 MR. GOTCHER: Our next commenter is Bryan Little, from the California
11 Farm Bureau.

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

13 MS. SHUPE: We can.

14 MR. LITTLE: Very good. Thank you. I'd like to thank the subcommittee
15 members for the extra work that they've agreed to take on here. I know all of you all
16 are volunteers. And we appreciate the effort that you make to try to take care of these
17 very important matters that the Standards Board considers.

18 I just wanted to suggest -- and some of the people who represent
19 employers have already said some of what I wanted to say, so I probably won't use my
20 entire two minutes. But I think it's going to be important to identify clear cut criteria, so
21 that we will know when we can start to wind the ETS down.

22 I've said before, and I still believe this is true, that the original November
23 2020 ETS was obsolete the day that it was passed, or very nearly so. What we just
24 modified last week is probably going to be behind the curve very soon if it isn't already.

25 Having very clear criteria, looking at things like what vaccination rate are

1 we looking at? When do we consider ourselves to be at what amounts to herd
2 immunity? Are we even going to consider the fact that there are a certain number of
3 people out there, even who are unvaccinated, who are going to be immune as well?
4 "Can we fold that in to the criteria we're looking at? So that we can begin to know when
5 it can begin to be time to wind the ETS down and start going back to relying on things
6 like enforcement of the Injury and Illness Prevention Program requirements that the
7 agency was successfully using prior to the promulgation of the November 2020 ETS.

8 So without belaboring some of the things that Helen and --

9 MR. GOTCHER: Thirty seconds.

10 MR. LITTLE: -- others have already said, I just would urge you to please
11 consider those criteria and consider that situation. And give us some clear ideas of
12 when we might be able begin winding the ETS down. Thank you.

13 MS. SHUPE: Thank you, Mr. Little.

14 MR. GOTCHER: Our next commenters are Rob Moutrie and Michael
15 Miiller with our next commenter, Rob Moutrie, who is a policy advocate.

16 MR. MOUTRIE: Good morning, everyone. As everyone else said thank
17 you guys for taking the time to work on this. I know you're busy. And its twice weekly
18 meetings or twice monthly meetings probably don't sound like the most fun, but really
19 do appreciate the time.

20 So I'll cite two quick points. In terms of looking forward, obviously you
21 haven't had much of a chance to talk. But in terms of looking forward to where you're
22 going, I think the two issues in macro that I'd like to touch on are kind of where I see the
23 subcommittee's best role. And there's two big topics, right? Substantive changes and
24 that kind of ending triggers in macro thoughts.

25 I think the ending trigger discussion, I echo Cassie Hilaski and Mike

20

1 Donlon's comments that looking for consistency with other winding down procedures
2 is important given how the June 15th transition went. And there was some confusion
3 there. So trying to be consistent with others is something that planning ahead could be
4 a huge benefit for.

5 As to whether the ending should be a date or a metric-based program, I
6 think there's advantages on both sides. Other states are using vaccination rates and I
7 think there's some obvious logic there. But I should also note that I think that even if
8 these group were to discuss a date that date wouldn't tie you down. I mean your
9 recommendation is not binding on the Board. The Board could just decide that day, "I
10 don't want to vote to end this today." So I don't think that that needs to be viewed as a
11 lock-in date. You can (indecipherable) date without being tied.

12 As to substantive changes, I would just advise that I think if we're going to
13 discuss substantive changes in the nature of specifics than N95s, self-attestation and
14 other points, we should keep in mind the time window under which they'll be
15 considered.

16 Even moving quickly, the Board wouldn't really be looking at these
17 substantive changes for three to four months, because I assume for two reasons. One,
18 procedurally and two, because the Board doesn't want to use your second -- I assume
19 you don't want to use your second readoption too soon. And that means that when
20 considering substantive changes I would hope we keep in mind --

21 MR. GOTCHER: Thirty seconds.

22 MR. MOUTRIE: Thank you -- the time window in which they would be
23 adopted, which would be four months from now, when the state will be I estimate 15 to
24 20 percent more vaccinated, bringing us closer to 75 percent vaccination rate. I
25 consider the substantive changes in that California. Thank you.

1 MS. SHUPE: Thank you, Mr. Moutrie.

2 MR. MOUTRIE: Oh, I'm sorry. I failed to announce my organization. For
3 the record, Rob Moutrie, California Chamber of Commerce.

4 MR. GOTCHER: Okay. Our next commenter is Michael Miiller, from the
5 California Association of Winegrape Growers.

6 MR. MIILLER: Good morning. And thank you for your time. And I just
7 want to reiterate -- I'm Michael Miiller from the California Association of Winegrape
8 Growers. I just want to reiterate some of the things that people have said. First and
9 foremost, thank you for your work here. The subcommittee is just really important. I
10 think it will help guide the Board in future decisions. I thank you very much for your
11 volunteering for this effort.

12 Please keep in mind that keeping ETS in place will still result in the
13 continued chasing of our tails, as we observed in the last few weeks. And this is not
14 deficiency of the Board. I want to make that clear. It's in a deficiency of the process.
15 The process itself in putting an ETS into regulation is out the gate problematic and very
16 unmanageable and unworkable.

17 And nonetheless, I expect that that's exactly where we're headed and
18 we're probably going to keep chasing our tails for a while, and for some time to come.

19 So going forward, I'm going to ask the committee to consider three
20 things. One is vaccines. Vaccines are the most effective way of protecting workers, so
21 what can this Board do to partner with Governor Newsom and other agencies in the
22 Newsom Administration to help vaccinate the workers that the ETS is intended to
23 protect. That is the most effective thing this Board can do to protect workers.

24 Two, data. The last three Board meetings there has been a critical
25 problem. The conversation around data has back and forth. And it's been very clearly

1 stated the findings of the ETS, you have no data. We need data. So this should be an
2 ongoing and current request of this committee to Cal/OSHA. What is the data? Get us
3 reliable data, because absent reliable data it is very hard to make informed decisions.

4 And the third thing I ask for is focus on the end. What does the end look
5 like? Hopefully we're going to hit herd immunity very soon. Absent Board action in the
6 next few months, the ETS will continue in effect even though there is no data --

7 MR. GOTCHER: Thirty seconds.

8 MR. MILLER: -- (indiscernible) this problem and we are at herd
9 immunity. Thank you, John.

10 So please give us some criteria for how the committee and how the
11 Board is going to look at winding down the ETS. Employers need that. Employees need
12 that. We need to know what the future looks like.

13 Again, thank you very much for your time. And have a great morning.

14 MS. SHUPE: Thank you, Mr. Miiller.

15 MR. GOTCHER: And there are no further commenters in our queue at
16 this time.

17 MS. SHUPE: Thank you, Mr. Gotcher.

18 So that brings an end to the public comment portion of this meeting. At
19 this time we'll move on to subcommittee consideration. This will be an opportunity for
20 the subcommittee to raise any issues that they would like to discuss amongst
21 themselves. And to request further information from any of the public commenters if
22 they so choose. And also to discuss anything that they've heard during the public
23 comment period.

24 And so with that, do any of the subcommittee members have anything
25 that they would like to raise? Ms. Stock?

1 BOARD MEMBER STOCK: Yeah, so thank you to the public commenters.
2 So a couple of things, and to Nola also as you start working in the next month, next few
3 weeks.

4 So one thing, a lot of people have been talking about the need for data. I
5 agree that data is really important. And I think one really important element of that is
6 clear outbreak in workplace case information.

7 I haven't have a chance to read it closely, but I recommend -- there was
8 an article in the "San Jose Mercury News" this morning that got forwarded around and I
9 just skimmed it. That was highlighting some real deficiencies in the requirements for
10 local public health departments to report outbreak data to the State Department of
11 Public Health. And for them therefore to post it on their website.

12 And I think that really understanding in the workplace and doing
13 whatever we can to encourage employers to follow the law and report cases and
14 outbreaks to the local public health department. And the local public health
15 department to follow what they're supposed to do, which is to report them to the State
16 Department of Public Health. And for them to then post it on their website.

17 So I think being able to really track where outbreaks are happening,
18 particularly as the state opens up, is critical. So I would just highlight that as something
19 that to whatever extent we can kind of add our voice to that. And I'm going to read that
20 article a little bit more closely, because they specifically highlight glitches that have been
21 happening and departments that have or haven't been doing their required reporting.

22 So that's one thing. I just wanted to highlight and see if there's some way
23 we can work with the Division to get better data and more transparent data.

24 And secondly, I along with this a lot of people are continuing to talk about
25 we should undo the ETS. I mean I know that our last Board meeting we have agreed

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1 that we are not ready to undo the ETS. And that of course as I've stated my opinion is
2 that the pandemic is not over. There's things going on that still require vigilance.

3 But in addition to the call for people to say that we identify metrics for
4 winding it down, I wanted to continue to put the point in that it would be great to
5 identify metrics for reinstating some of the protections that have been rolled back,
6 based on the data that I'm hoping we get better at, workplace outbreaks and cases.

7 So I think that we need to just be open to all kinds of eventualities, both
8 the fact that we're having a surge in cases and therefore we need to reinstate. Or if
9 things continue to go in the right direction, I agree with everybody this wasn't ever
10 intended as a permanent standard. But I would be very reluctant to put any date on it.
11 But I think the idea of identifying metrics in both directions is useful.

12 I also just want to make one other comment on I agree with what I think
13 you were saying, Rob, about the process is so slow to actually change anything in the
14 regulation takes months. And when people say it took eight months to get this to be
15 promulgated, I don't think that was because anybody was asleep at the wheel. It's that
16 that's how long it took from when the first petition was received. And so we just know
17 that this process is really, really slow. I think the area that can be more responsive, I
18 think, and this is something maybe Nola you could also kind of get us more information
19 on, is the FAQs.

20 And that is where the interpretation of the standard, including some of
21 the issues that we've all expressed some concern about, about the verification of
22 vaccines, which as I said I think is critical. And there's actually some new information
23 out there. I read that Newsom announced this new online method, which I think is
24 something we just heard about. I went and registered my vaccine certificate. It was
25 extremely easy. And that might be something that could be useful.

1 So I think we could look to the FAQs to see whether there are
2 opportunities to clarify things. And I think that that might be more responsive as further
3 information about workplace cases occur. So those are just a couple of comments I
4 wanted to make at this point.

5 BOARD MEMBER LASZCZ-DAVIS: And I wonder if I might add that some
6 of those comments, those were well made Laura, so I appreciate that. I mean I certainly
7 rally around the need for good data.

8 The second item that I even brought that up what I think is pretty
9 important is some benchmarking, calibration with what other states are doing. We are
10 not in this journey alone. I'd like some information as to what the other states are doing
11 and some of the ways in which they have moved to resolve some of this or moved
12 toward an end goal.

13 The metrics for what I call effective success is real critical. I'm not
14 entirely sure what they are. But I do know that we're going to need to secure feedback
15 as to what's appropriate in the State of California. I'm sure there's several sets of
16 metrics that we can use.

17 One thing that I think we do need to do, as we look at an end game for
18 some of this, I think we need to go back and take a look at the IIPP and the Aerosol
19 Transmissible Disease Standards to see whether or not if the end game is a repeal of
20 this. How those can be strengthened to actually incorporate these features. So that if
21 when we end up with another pandemic or another infectious disease scenario there
22 will be a trajectory, a blueprint that people can go by, so we're not going through this
23 again.

24 I'd welcome, and I know I'm sure all three of us would welcome, lots of
25 feedback from stakeholders. Shouldn't be holding back on that. We need everybody's

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1 input.

2 And I agree, Laura, I think the FAQs are critical regardless of what
3 standards they have in place. Interpretation is subject to experience, training and a
4 whole host of other things. So the FAQs have got to deal with very clearly and
5 comprehensively.

6 So those are just my initial thoughts. So thank you.

7 BOARD MEMBER STOCK: I had one other thing I was going to say, but
8 Nola, you haven't had a chance to say anything yet. So I wanted to -- I don't know if you
9 were planning to.

10 BOARD MEMBER KENNEDY: No, go ahead, Laura.

11 BOARD MEMBER STOCK: Yeah, (indiscernible).

12 BOARD MEMBER KENNEDY: I will speak. I know how to jump in. Thank
13 you.

14 BOARD MEMBER STOCK: Oh, okay. I just didn't want to not give you that
15 opportunity.

16 I just wanted to quickly agree, Chris, with what you said today and what
17 you've said in the past. I think thinking through to the next pandemic is really, really
18 important. And I know that I think there needs to be something that is -- given how long
19 it took to get this one in place, that's a cautionary tale. And that we know now the
20 lessons that we have learned. And moving towards a permanent infectious disease
21 regulation, similar to the ATD, getting the lessons that we've learned from this one
22 would be really, really important.

23 And I know the work load at the Division is just probably indescribable,
24 not to mention at the Board level. But I think trying to figure out a way and whether
25 that needs more resources to those two entities if we can help in any way, to direct

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1 additional state resources both to the Division and the Board to get the staff necessary
2 to do this. But that said, recognizing resource limitations as quickly as we can begin to
3 conceptualize what a permanent infectious disease standard would look like, so that the
4 next time this comes around we're not going to do the same thing that takes months to
5 get that put in place. So I just wanted to agree that thinking about that is really
6 important. So thank you for bringing that up.

7 BOARD MEMBER KENNEDY: Okay, I'll speak now. Thank you, Laura.

8 No, I agree with what Laura and Chris said. I also think we do need to
9 look toward the future, to avoid the problems that we had in responding to this
10 pandemic.

11 One of the things that has struck me all along that I think -- you know, I've
12 asked why has this been so difficult? I mean it's difficult, because of the scale of it, just
13 the sheer magnitude of this problem.

14 It's also difficult for us as I think workplace health professionals, because
15 this is not a typical workplace hazard. We are looking at an intersection between a
16 public health issue and a workplace issue. And it makes it very difficult to deal with.

17 I mean most workplace hazards are hazards that the employer is well
18 aware of. It's part of their process. It's part of how they make their widgets, do their
19 work. So this is something that for the most part is outside the control of the employer.
20 They can't change their process and make it better. And I'm not saying it does not
21 represent a workplace hazard. I do think when workers are exposed at work, as they
22 can be with COVID, we do have to consider workplace protections.

23 And so I find this to be a particularly complicated issue. And I imagine
24 other infectious disease outbreaks in the future could have similar complexities and also
25 different complexities. And I think we have a big task ahead of us if we're looking at

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1 developing an infectious disease standard. And I'm not offering any solutions. I'm just
2 really recognizing how difficult I think that task is going to be to come up with
3 something that will be responsive and not have unforeseen restrictions to it. And I think
4 it's something we need to be careful about. That's it.

5 I mean, I'm really hoping we can use this subcommittee to have good
6 conversation and good presentation of ideas, so that we can move quickly between the
7 Board and the Division. And so I encourage people to speak up.

8 MS. SHUPE: And so at this point, I'm going to take a little bit of leave and
9 say for the subcommittee members, think about the structure that will work best for
10 you moving forward. Today's meeting is primarily to get us going and to get us started,
11 to get your staff assignments, to get your structure aligned and to get your feet
12 underneath you.

13 But as you move into this and you become more comfortable with it, I
14 want you to really think about the structure that works best. Is it this model that
15 follows what we use for full Board meetings, where we have business, public comment,
16 and then subcommittee consideration? Is it a model that is more of a roundtable
17 discussion?

18 But keep in mind that these are public meetings. And so there is no
19 opportunity for -- you just want to make sure that you are able to balance that open
20 discussion that you want and that you will find beneficial, with the venue in which
21 you're operating.

22 But I do invite the subcommittee members to really think about that
23 structure as we're moving forward, and to feel free to discuss changes if it benefits you
24 and the process.

25 BOARD MEMBER STOCK: Yeah, maybe I just have a couple of comments.

1 So I do think that we've had some conversations about frequency of meetings and how
2 long the meetings are lasting, particularly now as I hear that the meetings are going to
3 be -- the hope is to have them twice a month in addition to Board meetings. I know for
4 me it's going to be really difficult to have sort of open-ended meetings that go on as
5 long as it takes to get some public testimony, etcetera. I just won't be able to sustain
6 that and my actual job.

7 So with that I feel like is the challenge is how to allow public input, but
8 not be kind of like we are at Board meetings where we just are committed to being
9 there sort of however many hours it takes. That's going to be a little difficult.

10 So I think we can do some thinking about the best way to manage that
11 and still provide the public an opportunity to participate. And I think in that instance
12 written comments that are specifically targeting to the subcommittee would be
13 welcome.

14 So I don't have any answers to that immediately, but the one potential
15 suggestion, and I don't even know -- I haven't thought about it, but as we go through if
16 there's some way to hone an agenda in on a particular issue. Like let's say we're going
17 to now -- we're going to really sort of delve into the issue, for example, of vaccine
18 verification. I'm just bringing that up as an example. And so then we would be able to
19 hone in on getting input from the Board, from the Division staff and from experts and
20 then be able to say that the public comment that we're soliciting is specifically on that.
21 Or whether it's going to be some other specific issue.

22 I'm just thinking whether there may be some way to hone our agenda, so
23 that it's not every conceivable thing that's within the standard. It could just be one
24 potential idea. But I think it may take us a little bit of time to get there. We may learn
25 more once -- I'm very, very interested in the role that, Nola, you have as the liaison to

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1 the Division. Because I want to work very closely with them, who are both enforcing it
2 and had the lead role when developing it. And really understanding from them what
3 they think is going to be most useful to support their work. How can what we do
4 enhance the work they're doing?

5 So I think we may get some good information from them as their ideas of
6 what will make this processes useful for them. But I just know that if I'm going to be
7 seeking a structure that can be efficiently conducted in two hours or something like
8 that. And so that's just a challenge that we should give some thought to between now
9 and our next meeting.

10 MS. SHUPE: And I think that's an excellent way to look at it going
11 forward.

12 The public comment, you may have noted earlier today, I capped that at
13 30 minutes. Part of that was so we could accomplish the business of the subcommittee
14 in the time that was allotted. And that's the expectation going forward is that the public
15 comment period will be capped at 30 minutes. It allows for a reasonable amount of
16 public comment, but it also allows time for the subcommittee to conduct their business.

17 You talked about bringing particular items forward and focusing on those
18 on the agenda. That is absolutely within the scope of the subcommittee and something
19 you can do to focus in your during the meeting and make it more productive.

20 So to look back at our full Board meeting agendas we bring up very
21 particular items, right? A petition that needs to be discussed, a wildfire ETS that needs
22 to be focused on. You can do the same thing with the subcommittee in your agendas.
23 You can say at this meeting we're going to focus on vaccine verification. For this
24 meeting we're going to focus on N95s and respirators and their use in the workplace.
25 For this meeting we're going to focus on appropriate sources of data and what those

1 are.

2 So that absolutely is something that the subcommittee can use as a tool
3 to make your discussions more productive. Nola?

4 BOARD MEMBER KENNEDY: So another thing I'd like to consider as part
5 of this discussion is my role as liaison, and what the expectations are from the
6 subcommittee for that. And how that is going to be managed. It sounds to me like
7 maybe Amalia is going to be helpful in that in her role as helping with this committee.
8 So I'm just wondering what that's going to look like.

9 BOARD MEMBER LASZCZ-DAVIS: Do you want to hear from the
10 subcommittee, Nola?

11 BOARD MEMBER KENNEDY: Yes, please. I guess I'm expecting to leave
12 these subcommittee meetings with some sense of a charge of things I need to work with
13 the Division on and then bring back to the subcommittee, so that we can then provide a
14 report for the Board.

15 BOARD MEMBER LASZCZ-DAVIS: Yeah, you know I think the challenge is I
16 think some of the work we've got to do is to find how this subcommittee works. And
17 you know we haven't had the discussion yet. I mean this is just the launch date if you
18 will.

19 But I mean personally I envision that (indecipherable) obviously the
20 liaison to the Division. But one of my roles is to make sure that I solicit stakeholder
21 input, so that as we deal with specific issues, whether it's the N95s or vaccination or
22 self-attestation of whatever it is, that we have a robust discussion here. And then you
23 have the discussion with the Division and hopefully have some input from them even
24 before the calendared meeting that we have.

25 I just think its real hard to cobble down what this is going to look like.

1 We've got to do this for a few weeks to get some rhythm and to get some structure.
2 So whether that's what you wanted to hear or not, I think it'll take just a little bit of time
3 for us to work through this. But I think we can get there.

4 BOARD MEMBER KENNEDY: No, that's perfect.

5 MS. SHUPE: Can I make a suggestion? Perhaps is the subcommittee
6 members could identify your top two or three issues, that you think really need to be
7 looked at first. So if that happens to be benchmarking with other states and where they
8 are, or looking at metrics for either tightening regulations or relaxing them, if the
9 subcommittee could identify your top two or three issues then that's something that
10 you could bring back for your agenda on the 13th.

11 BOARD MEMBER LASZCZ-DAVIS: No, no, I think that's a great idea. Do
12 we do that in this meeting now, Christina?

13 MS. SHUPE: I see Nola shaking her head. Yeah, so if you can provide that
14 information now to Nola she can then get you information on that. And then you can
15 discuss it on the 13th before we go back to the full Board.

16 BOARD MEMBER LASZCZ-DAVIS: I mean personally, I'd like to see
17 benchmarking information. You know, what are other states doing and how are they
18 dealing with these issues? The metrics, I think are really important. And let me leave it
19 at that for the moment, that's two.

20 BOARD MEMBER STOCK: I guess I'll add to those. You know, again to
21 clarify metrics for as you said Christina, tightening or loosening restrictions, so in both
22 directions. And I would like to get more -- to talk about the vaccine verification. So that
23 is a big concern of mine, to sort of dig into more -- how that's going to look. What's that
24 going to look like, and what are other methods? And what are concerns that that we're
25 hearing from stakeholders about that from both sides. Because we've heard quite a

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1 number of concerns on both sides of that particular issue, so I guess I would add that.

2 And the date, and the metrics again, specifically the workplace outbreaks
3 and workplace cases. Just that's to me, putting a fine point on that.

4 I mean, there's other issues and I think as we go along, so I think maybe
5 that's sort of to start. I know that there are particular -- as we go forward I'll be really
6 interested to see how things are playing out.

7 You know, for example we have rolled back restrictions fairly significantly
8 for ag workers in terms of employer housing and transportation. And the rolling back in
9 public-facing places of physical distancing, and partitions. So what will be really
10 interesting is to see if we can gather any information from our stakeholders. And I don't
11 know if the Division is capturing this, to know what is the experience people are having
12 in the workplace around that?

13 And so another data point that would be interesting to hear about, and
14 this might be something particularly that the Division can provide, is information about
15 Cal/OSHA complaints and inspections. So what is coming up from the community? Are
16 there more complaints, and are there inspections and what are those inspections
17 beginning to show?

18 And I know that the distance from inspection to citation can be as long as
19 six months, so it feels -- not necessarily looking at citation data, but more complaints
20 and inspection. I don't know to the extent that any of that can be shared before it gets
21 to the end of that process. But so that's another metric that I would throw into the mix.

22 BOARD MEMBER LASZCZ-DAVIS: And I wonder, Nola, if I might add one
23 more? Actually as Laura was talking it triggered another thought.

24 I think real early on we've got to look at what the end game could look
25 like. And I think we need, and I'm not really sure who all provides input on this, because

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1 we do have a regulatory process that we have to live with. What are the implications,
2 what are the advantages and the disadvantages of staying with an ETS for a period of
3 time. What are the implications of looking at the possibility of rolling this within the
4 IIPP? What are the possibilities of expanding the ATD to incorporate an infectious
5 disease, a broadened scope of infectious disease? And what are the strengths and the
6 downsides of a standalone infectious disease standard?

7 I just think from a structural, regulatory structural standpoint, we need to
8 have some information on the front end to as we go down this journey what should we
9 be considering given the regulatory scheme, the infrastructure, the work and the
10 timing?

11 MS. SHUPE: So I'm counting and I'm counting you're up to about five or
12 six. I think that last one, Nola, just so you're reassured Amalia is going to be an excellent
13 resource on the regulatory piece. She's fabulous and has been with the Division for a
14 long time, and has been with the Standards Board for a short time. But along within our
15 scope of respect, so.

16 Okay, with that do the subcommittee members have anything else that
17 they would like to address before we adjourn?

18 (No audible response.)

19 MS. SHUPE: Okay, seeing nothing we will go ahead and notice the next
20 subcommittee meeting at least 10 days prior. At this point it looks like it will be on July
21 13th, tentatively schedules for 10:00 a.m. to noon. It will follow the same structure.
22 We will work with the Subcommittee Chair, Chris Laszcz-Davis, on posting the final
23 agenda. And OSHSB staff will work with the Subcommittee Liaison to the Division, Nola
24 Kennedy, to get some of those answers to those thorny questions the subcommittee
25 members have posed.

1 Thank you very much, and thank everyone for participating. And before
2 I forget, a special callout to our Executive Assistant Sarah Money, who has been so ably
3 supporting us and who I forgot to mention at the top of the meeting, but is always
4 present and top of mind. So thank you, Sarah.

5 BOARD MEMBER LASZCZ-DAVIS: Thank you, Sarah.

6 MS. SHUPE: Just a quick thank you again, to TKO and John Gotcher and
7 your entire team. We have thrown quite a bit at them very quickly, and they have
8 adjusted nimbly and helped us as we have grown in the last 18 months from an average
9 of 25 to 50 participants to anywhere from 800 to 1,800 participants on the regular for
10 our meetings now. This meeting already has, just as a subcommittee meeting, has
11 approximately 100 participants.

12 So I want to thank everybody for your time, especially thank you to the
13 subcommittee members for volunteering your time. I know that I've asked a lot of you,
14 the Board has asked a lot of you, and your state has asked a lot of you. And you've
15 stepped up quite ably and we appreciate it.

16 BOARD MEMBER LASZCZ-DAVIS: And by the way, Christina, thank you for
17 your facilitation.

18 (Multiple colloquy from Subcommittee members.)

19 MS. SHUPE: I'm happy to do it. And with that, we are adjourned. Thank
20 you everyone. We will see you in a couple of weeks.

21 (The Subcommittee Meeting adjourned at 11:36 p.m.)

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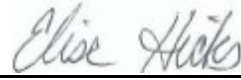
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