

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
August 17, 2023 OSH)
Standards Board Meeting)
_____)

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

County Administration Center

Room 310

1600 Pacific Highway

San Diego, CA 92101

Attend the meeting via Video Conference

THURSDAY, AUGUST 17, 2023

10:00 A.M.

Reported by:
M. Nelson

APPEARANCES

BOARD MEMBERS PRESENT AT COUNTY ADMINISTRATION CENTER:

Chris Laszcz-Davis, Management Representative, Acting Chair
Kathleen Crawford, Management Representative
Dave Harrison, Labor Representative
Nola J. Kennedy, Public Representative

BOARD STAFF PRESENT AT COUNTY ADMINISTRATION CENTER:

Amalia Neidhardt, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel and Acting Executive Officer
Michelle Iorio, Legal Counsel

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager
Sarah Money, Executive Assistant
Jesi Mowry, Administration & Personnel Support Analyst

ALSO PRESENT IN SAN DIEGO:

Eric Berg, Deputy Chief of Health, Cal/OSHA

TKO STAFF:

Maya Morsi
Sean Acrea
John Roensch
Edwin Ortega

INTERPRETERS:

Maria del Carmen Aguirre de Carcer
Brenda Tamez

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (*Online testimony)

Helen Cleary, Phylmar Regulatory Roundtable, PRR OSH Forum

Steve Johnson, Associated Roofing Contractors of the
Bay Area Counties

Bruce Wick, Housing Contractors Of California

*Denise Kniter, Los Angeles County Business Federation,
BizFed

*AnaStacia Nicol Wright, Worksafe

*Tresten Keys, AGC of California

Kevin Bland, California Framing Contractors Association,
Residential Contractors Association, and the Western
Steel Council

*Dave Smith, Dave Smith & Company

*Louis Blumberg, Adrienne Arsht-Rockefeller Foundation
Resilience Center

*Robert Moutrie, California Chamber of Commerce

*Bryan Little, California Farm Bureau

Michael Miiller, California Association of Winegrape
Growers

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1 P R O C E E D I N G

2 AUGUST 17, 2023

10:00 A.M.

3 A/CHAIR LASZCZ-DAVIS: Good morning. This
4 meeting of the Occupational Safety and Health Standards
5 Board is now called to order. I am Chris Laszcz-Davis,
6 Acting Chair for today's meeting. And the other Board
7 Members present today are Kathleen Crawford, Management
8 Representative; Dave Harrison, Labor Representative; Nola
9 Kennedy, Public Member.

10 Present from our staff for today's meeting are
11 Amalia Neidhardt, Principal Safety Engineer, who is also
12 providing translation services for our commenters who are
13 native Spanish speakers. Autumn Gonzales, Chief Counsel
14 and Acting Executive Officer for today's meeting; and
15 Michelle Iorio, Legal Counsel.

16 Also present is Eric Berg, Deputy Chief of Health
17 for Cal/OSHA.

18 Supporting the meeting remotely are Lara Paskins,
19 Staff Services Manager; Ms. Sarah Money, Executive
20 Assistant; and Ms. Jesi Mowry, Administration Video --
21 forgive me -- Jesi Mowry, Administration and Personnel
22 Support Analyst.

23 Copies of the agenda and other materials related
24 to today's proceedings are available on the table near the
25 entrance to the room, and are posted on the OSHSB website.

6

1 This meeting is also being live broadcast via
2 video and audio stream in both English and Spanish. Links
3 to these non-interactive live broadcasts can be accessed
4 via the "Meetings, Notices and Petitions" section on the
5 main page of the OSHSB website.

6 If you are participating in today's meeting via
7 teleconference or videoconference, we are asking everyone
8 to place their phones or computers on mute and wait to
9 unmute until they are called on to speak. Those who are
10 unable to do so will be removed from the meeting to avoid
11 disruption.

12 As reflected on the agenda, today's meeting
13 consists of two parts. First, we will hold a public
14 meeting to receive public comments or proposals on
15 occupational safety and health matters. Anyone who would
16 like to address any occupational safety and health issues,
17 including any of the items on our business meeting agenda,
18 may do so when I invite public comment.

19 If you are participating via teleconference or
20 videoconference, the instructions for joining the public
21 comment queue can be found on the agenda. You may join by
22 clicking the public comment queue link in the "Meetings,
23 Notices and Petitions" section on the OSHSB website, or by
24 calling 510-868-2730 to access the automated public comment
25 queue voicemail.

1 When the public comment begins, we are going to
2 alternate between three in-person and three remote
3 commenters.

4 When I ask for public testimony, in-person
5 commenters should provide a completed speaker list to the
6 staff person near the podium and announce themselves to the
7 Board prior to delivering any comments.

8 For commenters attending via teleconference or
9 videoconference, please listen for your name and an
10 invitation to speak. When it's your turn to address the
11 Board, unmute yourself if you're using WebEx, or dial *6 on
12 your phone to unmute yourself if you are using the
13 teleconference line.

14 We ask all commenters to speak slowly and clearly
15 when addressing the Board, and if you are commenting via
16 teleconference or videoconference, remember to mute your
17 phone or computer after commenting. Today's public comment
18 will be limited to two minutes per speaker, and the public
19 comment portion of the meeting will extend for up to two
20 hours, so that the Board may hear from as many members of
21 the public as is feasible. Individual speaker and total
22 public comment time limits may be extended by the Board
23 Chair.

24 After the public meeting is concluded, we will
25 hold a business meeting to act on those items listed on the

1 business meeting agenda.

2 Public meeting. We will now proceed with the
3 public meeting. Anyone who wishes to address the Board
4 regarding matters pertaining to occupational safety and
5 health is invited to comment, except however, the Board
6 does not entertain comments regarding variance matters.
7 The Board's variance hearings are administrative hearings
8 where procedural due process rights are carefully
9 preserved. Therefore, we will not grant requests to
10 address the Board on variance matters.

11 For our commenters who are native Spanish
12 speakers, we are working with Ms. Amalia Neidhardt to
13 provide a translation of their statements into English for
14 the Board.

15 At this time, Ms. Neidhardt will provide
16 instructions to the Spanish speaking commenters, so that
17 they are aware of the public comment process for today's
18 meeting.

19 Amalia?

20 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]

21 "Good morning and thank you for participating in
22 today's occupational safety and health standards board
23 public meeting. The Board Members present today are Chris
24 Laszcz-Davis, Management Representative and Acting Chair
25 for today's meeting; Kathleen Crawford, Management

1 Representative; Dave Harrison, Labor Representative and
2 Nola Kennedy, Public Member.

3 "This meeting is also being live broadcast via
4 video and audio stream in both English and Spanish. Links
5 to these non-interactive live broadcasts can be accessed
6 via the "Meetings, Notices and Petitions" section on the
7 OSHSB website.

8 "If you are participating in today's meeting via
9 teleconference or videoconference, please note that we have
10 limited capabilities for managing participation during
11 public comment periods. We are asking everyone who is not
12 speaking to place their phones or computers on mute and
13 wait to unmute until they are called to speak. Those who
14 are unable to do so will be removed from the meeting to
15 avoid disruption.

16 "As reflected on the agenda, today's meeting
17 consists of two parts. First, we will hold a public
18 meeting to receive public comments or proposals on
19 occupational safety and health matters.

20 "If you are participating via teleconference or
21 videoconference, the instructions for joining the public
22 comment queue can be found on the agenda. You may join by
23 clicking the public comment queue link in the "Meetings,
24 Notices and Petitions" section at the top of the main page
25 of the OSHSB website, or by calling 510-868-2730 to access

1 the automated public comment queue voicemail.

2 "When public comment begins, we are going to be
3 alternating between three in-person and three remote
4 commenters. When I ask for public testimony, in-person
5 commenters should provide a completed request to speak slip
6 to the attendee near the podium and announce themselves to
7 the Board prior to delivering a comment.

8 "For our commenters attending via teleconference
9 or videoconference, listen for your name and an invitation
10 to speak. When it is your turn to address the Board,
11 please be sure to unmute yourself if you're using WebEx or
12 dial *6 on your phone to unmute yourself if you're using
13 the teleconference line.

14 "Please be sure to speak slowly and clearly when
15 addressing the Board, and if you are commenting via
16 teleconference or videoconference, remember to mute your
17 phone or computer after commenting. Please allow natural
18 breaks after every two sentences so that an English
19 translation of your statement may be provided to the Board.

20 "Today's public comment will be limited to four
21 minutes for speakers utilizing translation, and the public
22 comment portion of the meeting will extend for up to two
23 hours, so that the Board may hear from as many members of
24 the public as is feasible. The individual speaker and
25 total public comment time limits may be extended by the

1 Board Chair.

2 "After the public meeting is concluded, we will
3 hold a business meeting to act on those items listed on the
4 business meeting agenda.

5 "Thank you."

6 A/CHAIR LASZCZ-DAVIS: Thank you, Amalia.

7 If there are in person participants who would
8 like to comment on any matters concerning occupational
9 safety and health, you may begin lining up at this time.
10 We will start with the first three in-person speakers, and
11 then we will go to the first three speakers in the
12 teleconference and video conference queue.

13 MS. CLEARY: Good morning, Board Members and
14 staff. Congratulations to Chris Laszcz-Davis and Nola
15 Kennedy on your reappointments. We are very happy to hear
16 that. Nice to see you back for years to come. My name is
17 Helen Cleary, and I'm the Director of PRR at Occupational
18 Safety and Health Forum.

19 Thank you for many of the proposed changes in the
20 15-day notice for indoor heat. Unfortunately, the overall
21 issue that PRR has with the regulations remains. The
22 requirements are not based on duration of exposure to the
23 temperature triggers. And this strategy creates an
24 expansive scope, which was actually underscored once we
25 started to dive into that new exception.

1 Every employee in the state will be labeled as
2 indoor or outdoor worker and need to be managed by one of
3 these roles, period. And we think that would be reasonable
4 if every employee in the state is at a substantial risk of
5 heat illness at work. But we don't believe that's true in
6 all cases.

7 Temperatures in California will be above 82
8 degrees indoors and 80 degrees outdoors at some point, but
9 those temperatures are the single determining factor. As
10 we're determining how to communicate to the Board why scope
11 and this "one size fits all" strategy is a concern of ours
12 we realize that we've said this before. We said during
13 COVID, we said it for the lead reg, and we have
14 considerable concerns for workplace violence and infectious
15 disease.

16 There seems to be a trend that general industry
17 regulations in California continue to require complex
18 employer responses, including hazard specific prevention
19 plans, and training for situations that include little to
20 no exposure. And independently, this may seem justified or
21 not a big deal. But what is not considered, is when more
22 training and resources are spent on hazards with little to
23 no risk, it can actually take attention away from
24 occupational hazards that employers and workers need to be
25 focused on.

1 Trying to cast a net around all potential
2 exposures, instead of creating occupationally specific
3 risk-based regulations is an unreasonable strategy, and PRR
4 is genuinely concerned that one of the negative unintended
5 consequences is going to be losing credibility for EHS
6 professionals and the agency. Regulations need to be
7 sensible, operational and effective at reducing
8 occupational risk, not eliminating all exposures.

9 So bringing it back to the example of heat, and
10 I'll wrap it up, a regulation makes sense when you're
11 working outside in a field when it's 95 degrees. It makes
12 sense for an employee who's canning vegetables inside when
13 the air conditioning is broken or non-existent. But it
14 does not make sense for someone working in an office, when
15 the HVAC system may malfunction once every two years for a
16 few hours in the afternoon. Or they're walking through a
17 contiguous parking garage to get to their air-conditioned
18 office. Or because they want to take the stairs, which is
19 not climate controlled, because they want to get their
20 steps in, instead of taking the elevator.

21 We hope that the Board will consider another
22 exception that addresses duration of exposure in this role.
23 And we're drafting comments to submit next week. So thank
24 you for your time today.

25 A/CHAIR LASZCZ-DAVIS: Thank you, Helen.

1 MR. JOHNSON: Good morning, Members of the Board,
2 Acting Chair, Members of the Division, regulated
3 stakeholders. My name is Steve Johnson, I'm with
4 Associated Roofing Contractors. And I want to focus my
5 comments today on the Indoor Heat Standard.

6 And I can save some time by echoing what Helen
7 Cleary just said, with Phylmar Regulatory Roundtable, I
8 agree with everything. One of the issues that we face with
9 our members is the complexity of the regulations that are
10 coming down the pipeline.

11 And when you just look at indoor heat, since
12 we're in the 15-day comment period, I want to focus my
13 comments today on indoor heat, and some of the concerns
14 that our association has with the requirements.

15 So I passed out to the Board Members and to the
16 Division, the information on the heat index that is from
17 the National Weather Service website, which is where the
18 regulations direct the regulated public to go for the
19 information on the heat index. And a big concern that I
20 have is that the heat index study, I'll just read a small
21 section here from the heat index on the origins, is based
22 on work carried out by Robert G. Steadman in 1979. And
23 it's called an "Assessment of Sultriness" Parts I and II.

24 He discusses factors that would impact how hot a
25 person would feel under certain conditions. It

1 incorporates 21 parameters and assumptions, a body mass of
2 147.7 pounds, height: 5'7", actively walking 3.1 miles per
3 hour, clothing, pants and short sleeve shirt, and heat
4 tolerance, in the shade, etc. So this formula became the
5 heat index.

6 So this is something that I have some big
7 concerns about. Out of the inputs and assumptions, they
8 only list six of the assumptions that go into the heat
9 index equation. So to the point, it requires that -- 3396
10 requires excessive administration and record keeping duties
11 for the employer. It requires the employer to purchase,
12 train employees on how to use and maintain humidity
13 instruments. And the heat index is based on a questionable
14 1979 study that uses 21 assumptions in the equation that I
15 just went over. I think this is faulty logic.

16 And I have some concerns about it. I think
17 there's still time to fix this. One of the things that I
18 would like to see is a simple measurement. I'm not even
19 arguing about the temperature inside, I'm not even arguing
20 about the trigger points. What my concern is, is that
21 during the climatization period the employers are going to
22 be stuck with taking a heat index measurement, and a
23 regular Fahrenheit dry bulb thermometer measurement for up
24 to three times a shift. And recording that and trying to
25 figure out which is higher and trying to figure out the

1 heat index.

2 This goes along with having simple regulations,
3 regulations that are easy to comply with, easy to follow.
4 The outdoor heat regulation is roughly five and a half
5 pages, the indoor heat is 15 pages. So now we have again,
6 a complex regulation that really doesn't need to be
7 complex.

8 And if we take the requirement for the heat
9 illness for the heat index measurement out, and we just
10 have a simple requirement, I think we can get in the
11 ballpark. I think we can make employees safer. And I
12 think we can make it easier for employers to comply. So
13 there is time to fix it. I really think this needs to be
14 done. And I do have some big concerns about the origins of
15 the heat illness -- the heat index calculations and where
16 that came from.

17 The other thing I wanted to talk about in the
18 Initial Statement of Reasons is that Cal/OSHA talks about
19 enforcement costs, and this is on page 24 of the Initial
20 Statement of Reasons. Cal/OSHA will enforce the proposed
21 regulation and estimates that the proposed regulation may
22 result in 15 to 25 additional inspections per year. DIR
23 estimates that overall enforcement efforts, including
24 additional inspections, will require up to one additional
25 full time equivalent Safety Engineer. The total salary of

17

1 an experienced Safety Engineer plus fringe benefits,
2 equipment, materials and transportation, is estimated to
3 cost approximately \$0.2 million per year.

4 So I want to meet this inspector, because he or
5 she is going to have to have superpowers to enforce all of
6 the indoor heat spaces in California. That's going to be
7 incredible. I mean, I want to meet them. They are going
8 to be, I'm sure it's going to be a fantastic, unbelievable
9 individual.

10 So just some of my concerns. There's also the
11 bubbling lead pot out there that we're engaged in
12 conversation with the Division on. And thank you, Eric,
13 for taking the time. That was a three-hour meeting and I
14 really felt like some of our concerns were heard. And I
15 hope that we can continue to have productive meetings like
16 this.

17 And one of the things our association does is --
18 so we currently partner with LETF to try to dig into the
19 underground economy a little bit with compliance for
20 roofing issues. So we have that partnership with Dominic.
21 Our organizers on the labor side have met with Dominic, and
22 we've reactivated that. Years ago we had the partnership
23 with LETF for roofing enforcement, and we've reactivated
24 that. And we've got our labor enforcement people who are
25 going out on job sites and going around the state, at least

18

1 in Northern California, identifying bad actors out there.

2 So that's the kind of partnership that I want to
3 see continued. Our association is open to partnering with
4 Cal/OSHA consultation on developing simple guidelines for
5 employers from these complex regulations that are coming
6 down the pipeline. Thank you.

7 A/CHAIR LASZCZ-DAVIS: Thank you, Steve.

8 MR. WICK: Acting Chair Laszcz-Davis, how's that
9 sound?

10 A/CHAIR LASZCZ-DAVIS: You said it correctly.
11 Thank you.

12 MR. WICK: All right. Good. And congratulations
13 to both of you for reappointment. Appreciate your efforts
14 and work, because you don't get much compensation for all
15 you do for us and we appreciate all your volunteer efforts
16 on our behalf. Thank you.

17 A couple of comments on indoor heat.

18 A/CHAIR LASZCZ-DAVIS: Could you introduce
19 yourself?

20 MR. WICK: Good point. I said your name right
21 and screwed up. Bruce Wick, Housing Contractors of
22 California.

23 A/CHAIR LASZCZ-DAVIS: Thank you, Bruce.

24 MR. WICK: I appreciate the opportunity, indoor
25 heat. There's -- I'll just talk about a couple of things.

19

1 I won't repeat the things Helen Leary and Steve Johnson
2 said, which I agree with. This is again, regulation being
3 done at an arm's length. And the current version we're
4 looking at says indoor locations exceptions do not apply,
5 the exception to call it an outdoor does not apply to
6 shipping containers. And we totally understand.

7 The regulation, indoor heat, needs to apply to
8 shipping containers being loaded and unloaded in
9 warehouses. That's what the intent was six years ago when
10 this thing started. But contractors use -- buy used
11 shipping containers and use them on job sites for storage.
12 And many of my contractors have those at 50 different
13 locations. There's easily half a million to a million
14 shipping containers used for storage on construction job
15 sites. The way this regulation is written today, we would
16 have to run temporary power to them and air conditioning
17 them all day long, adding to the grid. That the grid is
18 already going to be more and more overwhelmed by all of our
19 conversion to electronic stuff.

20 And then the contiguous information. Many
21 contractors have shops and warehouses and a storage
22 contiguous attached, you know? An additional storage room
23 or building. This says those buildings, even if someone
24 only goes in twice a day, have to be now air conditioned to
25 meet this standard. Because they -- I don't understand the

20

1 contiguous issue, but if they move the building one foot
2 away, and it's not connected does that mean it's now
3 outdoors or not?

4 These are the types of things that -- you know
5 we're now under a time crunch, right? Because the
6 warehouse workers who came here, here right, a couple of
7 months ago and testified are the same group of people who
8 testified six years ago, "We need help." And we haven't
9 given it to them. We failed them for this long.

10 We're under a time crunch, because if this needs
11 to pass by March of next year you're going to need to
12 notice it for vote by early February. And suddenly, we
13 don't have a lot of time to fix this.

14 So I will reiterate what Steve said. We
15 appreciate Eric set up a meeting with us, the Construction
16 Coalition On Lead, and we had a meeting in Oakland last
17 week around a table. We finally understand what this very
18 complicated regulation is intended to say by the people
19 that wrote it. And why they did it that way and what
20 they're trying to accomplish. And they understand the
21 concerns we have about trying to meet this. It took us
22 three hours of dialogue. It was intense at times, but
23 healthy, a healthy debate and dialogue back and forth. You
24 can't answer it in two minutes here or comment letters that
25 don't connect, it takes dialogue, dialogue.

1 So I would please encourage you to encourage the
2 Division to say with indoor heat, we're running out of time
3 to fix it right. We've got some serious things to address.
4 Do an informative thing by Zoom, let us understand each
5 other. And it takes dialogue back and forth. So please
6 let's get this done right, so that we effectively protect
7 the workers who need -- have needed our help for so long.
8 Thank you.

9 A/CHAIR LASZCZ-DAVIS: Thank you, Bruce. Thank
10 you.

11 Maya, do we have any remote commenters in the
12 queue at this point?

13 MS. MORSI: Yes, we have Alysia Rivers with LA
14 County Business Federation.

15 A/CHAIR LASZCZ-DAVIS: Sorry, could you repeat
16 that name, please?

17 MS. MORSI: Sorry, I was kind of far. Alysia
18 Rivers with LA County Business Federation.

19 A/CHAIR LASZCZ-DAVIS: Alrighty, thank you.

20 MS. KNITER: Hi, good morning. My name is
21 Denise. I'm with the LA County Business Federation. I
22 will be speaking instead of Alysia.

23 A/CHAIR LASZCZ-DAVIS: I didn't understand that.

24 MS. KNITER: Can you hear me?

25 A/CHAIR LASZCZ-DAVIS: Yes.

1 MS. KNITER: Good morning, Board. My name is
2 Denise. Alysia, my colleague, was not able to make the
3 meeting. So I will be speaking on behalf of BizFed, the LA
4 County Business Federation.

5 A/CHAIR LASZCZ-DAVIS: Alrighty, thank you for
6 the clarification.

7 MS. KNITER: May I begin?

8 A/CHAIR LASZCZ-DAVIS: Go ahead. Please.

9 MS. KNITER: So good morning, Board. Thank you
10 for taking our comments. As you stated I'm here on behalf
11 of the LA County Business Federation. We are also known as
12 BizFed, and we represent over 420,000 employers and 5
13 million employees in the greater Los Angeles area.

14 We agree with the Board and with the concerns
15 raised around silicosis. It's a very serious disease. But
16 as was noted during the Board meeting, it is a disease that
17 can be effectively prevented with existing best practices.
18 These best practices are not being enforced due to issues
19 with capacity. And it can probably be assumed that
20 additional regulations will also have issues being enforced
21 unless capacity is expanded.

22 So to effectively prevent silicosis, BizFed and
23 our members are asking the Board to consider a licensing
24 fee that would potentially help fund additional capacity
25 and enforcement around this issue. Bad actors will not be

1 deterred by additional regulation. So this is really an
2 issue where, if we'd like to prevent prevent silicosis we
3 need to be looking at additional enforcement. We're hoping
4 to find solutions together and be partners in finding
5 additional resources for Cal/OSHA to do so.

6 And that is my comment. If you have any
7 questions, please let me know.

8 A/CHAIR LASZCZ-DAVIS: Alrighty, thank you very
9 much, Denise.

10 Next commenter.

11 MS. MORSI: Next commenter is AnaStacia Nicol
12 Wright with WorkSafe.

13 A/CHAIR LASZCZ-DAVIS: Thank you.

14 MS. NICOL WRIGHT: Hi, everyone. Can you hear
15 me?

16 A/CHAIR LASZCZ-DAVIS: Yes, we can.

17 MS. NICOL WRIGHT: Good morning, Board Members.
18 As you all know the legislature and Governor tried to get
19 indoor heat protections set in place four years ago.
20 Instead it's August 2020 -- sorry, it's August 2023, and
21 the agencies are still working on it. And it's hot out
22 there and workers are suffering.

23 On August 4th, The New York Times reported that a
24 Phoenix restaurant moved up their prep shifts to 6:00 a.m.
25 instead of their normal 9:00 a.m., so that workers could

24

1 work in a cooler kitchen. And in the afternoon cooks are
2 taking 10 to 15 minute breaks every two hours. Recently,
3 they had to close the restaurant for two days as
4 temperatures in the kitchen reached 124 degrees.

5 However, most restaurant workers don't have the
6 good fortune of such an employer. Fast food workers are
7 especially vulnerable to these sorts of workplace hazards
8 due to the food industries' franchise business model where
9 franchisors are encouraged to keep costs low and doors
10 open, leading to an inclination to overlook mechanical
11 failures such as failed AC units and failed ventilation
12 units.

13 On August 13th "USA Today" reported on its
14 homepage about the impact on six separate families that
15 lost a loved one due to high heat. Half of them were
16 workers. And yes, there are real costs for business that
17 far outweigh the cost of protecting workers from this
18 dangerous threat.

19 In a front-page article on July 31st, "The New
20 York Times" reported that heat is costing the US economy
21 billions in lost productivity, pointing out that from meat
22 packers to home health aides, workers are struggling in
23 sweltering temperatures. "Of the many economic costs of
24 climate change, dying crops, spiking insurance rates,
25 flooded properties, the loss of productivity caused by heat

1 is emerging as one of the biggest. We know that the
2 impacts of climate change are costing the economy. The
3 losses associated with people being hot at work, and the
4 slowdowns and mistakes people make as a result are a huge
5 part."

6 On August 10th "LA Times" ran a column entitled,
7 "Employers and Governments aren't Protecting Workers from
8 Extreme Heat, Unions Might."

9 Pointing to a US Chamber of Commerce comment
10 letter to OSHA, the office said that the business argument
11 is that heat regulations are fine as long as employers
12 don't have to pay the cost, the regulations don't interfere
13 with their ability to drive employees as hard as they can,
14 and the government is forced to waste years on extensive
15 studies to support any new rule.

16 This is just a small sampling of the coverage of
17 this crisis in major state and national media over the past
18 few days. We urge you and your partner agency, Cal/OSHA,
19 to do everything in your power to ensure that we get the
20 indoor heat rule in place far in advance of next summer's
21 heat. California workers have waited too long. Thank you.

22 A/CHAIR LASZCZ-DAVIS: Thank you, AnaStacia.

23 Our next commenter, please.

24 MS. MORSI: Next commenter is Tresten Keys with
25 AGC of California.

1 MR. KEYS: Hello. Mic check.

2 A/CHAIR LASZCZ-DAVIS: We can hear you.

3 MR. KEYS: Perfect. Members of the Board, good
4 morning. My name is Tresten Keys. I am the Safety
5 Manager for Associated General Contractors of California.
6 AGC is a member-driven organization with around 900
7 companies statewide specializing in commercial
8 construction.

9 Over the past few months our members have
10 expressed valid concerns regarding the enforcement of
11 Cal/OSHA standards. We deeply appreciate the commitment of
12 Cal/OSHA to the workplace safety. We have heard consistent
13 feedback about certain challenges that have arisen.
14 Employers have reported instances of perceived lack of
15 competency during interactions with inspectors, missing
16 opening conferences, and difficulties in communication
17 particularly when it comes to documentation requests.

18 We recognize that the past couple of years have
19 been particularly challenging due to the COVID-19 pandemic.
20 This period of time has led to an understandably high
21 turnover rate among Cal/OSHA enforcement agents resulting
22 in an influx of new personnel. We appreciate the effort
23 and dedication these new agents are putting into their
24 roles as they step up to ensure the safety of workers
25 across California.

1 However, we also understand that the rapid
2 turnover in new personnel can bring about transitional
3 changes. There is a learning curve and adapting to the
4 unique landscape of California workplaces, understanding
5 the diverse industries that make up our economy, and
6 acclimating to the intricate details of Cal/OSHA's
7 regulations. We are here today to not only acknowledge
8 these challenges, but to offer our support in addressing
9 them.

10 Our organization believes that collaboration
11 between employers, employees, and regulatory agencies can
12 lead to innovative solutions that benefit everyone
13 involved. We understand that a successful partnership is
14 built on open communication, mutual understanding, and a
15 shared commitment to the safety and well-being of workers.

16 Therefore, we would like to propose a
17 collaborative effort to assist in the training and
18 development of new enforcement agents. Our resources,
19 expertise, and network can serve as a valuable asset in
20 helping these agents become well versed in the unique
21 challenges and intricacies of California's workplaces. By
22 working together, we can facilitate a smoother transition
23 for new personnel and ultimately enhance the overall
24 effectiveness of our Cal/OSHA enforcement.

25 Thank you for your time, and we look forward to

1 the opportunity of working together in the future.

2 A/CHAIR LASZCZ-DAVIS: Thank you, Tresten.

3 Do we have any commenters in person?

4 MR. BLAND: I'm here to comment.

5 A/CHAIR LASZCZ-DAVIS: You're in.

6 MR. BLAND: I'm here representing the Western
7 Steel Council --

8 A/CHAIR LASZCZ-DAVIS: You've got to introduce
9 yourself.

10 MR. BLAND: Oh, I thought I did. I said Kevin
11 Bland, but I apologize. Kevin Bland representing Western
12 Steel Council, California Framing Contractors Association,
13 and the Residential Contractors Association.

14 I won't reiterate everything that's been said by
15 my colleagues who spoke before me related to the indoor
16 heat illness. And I agree with them wholeheartedly on the
17 issues they brought up in relationship to Bruce Wick, Steve
18 Johnson, and Helen Cleary, and AGC.

19 One particular point, actually maybe two, I want
20 to bring home is one thing we testified to pretty
21 extensively and talked about prior to the 15-day notice,
22 unchanged, was this concept of if you're an outdoor
23 employer like a construction employer and you're compliant,
24 and you've been trained on the outdoor heat illness
25 regulation, and have been for years now, right?

1 I mean, I started this thing back in the
2 horseshoe with Governor Schwarzenegger when we were trying
3 to come up with what are outdoor heat, and we've been
4 training on this ever since. So I don't know how many
5 years it is now: 10, 12, 15, something like that.

6 And the simple request was if you're in
7 compliance with the Outdoor and you're primarily an outdoor
8 employer, traditionally an outdoor employer, then you would
9 be in compliance. Well, we got the exact opposite back.
10 Said, "Hey, oh. Okay, we'll take that. And so basically
11 now just train on and comply with the indoor and you're
12 good on the outdoor." That's exactly the opposite of the
13 point that we were trying to make and it added a complete
14 complexity.

15 I mean, we'll take for an example a framing
16 contractor. They're framing the house. They're laying out
17 the -- on the slab. Then they stand the walls, which are
18 open stud walls. But if you look at the definition of a
19 building or structure, I think if you look in there it says
20 even if the doors aren't on there or aren't closed, it
21 still counts as indoor because they can be, right? And so
22 now it becomes indoor. Now you've got a framer, they've
23 raised the walls and put the roof on with an open side, and
24 now they're indoor. And then they're going out to get
25 their lumber. And then they go up on the second floor to

1 lay it out, and then so on and so forth.

2 And you see how it's the same with a steel
3 structure, right, a high rise. Take a crane operator for
4 instance. Now a crane operator, if he steps outside the
5 cab, he's outdoor. If he steps inside -- or the oiler
6 that's working with the operator, now you've got one
7 employee that's outdoor and one that arguably is indoor.
8 Because is a crane going to be a vehicle? Is it outdoor
9 the way they've defined it? And they've exempted vehicles
10 from the exception and the rules.

11 So I think there's a lot of complexities that
12 were created and maybe unintended, maybe they're trying to
13 make it simpler, but it made it much more complex and
14 nearly impossible. And we're going to have to retrain a
15 whole workforce that has effectively been trained,
16 effectively combined with, in making a difference in the
17 work force with outdoor heat illness. Which maybe at first
18 was not embraced I guess, but it's been embraced now for
19 years and everyone understands it. So I think that's a big
20 issue.

21 And then we heard Bruce talk about the shipping
22 containers. We know what they meant. It was for the
23 shipping folks that are taking these and they put them on a
24 truck, and they're unloading them all day. Well, we use
25 shipping containers all over the place on construction

1 sites. And that one was exempted from the exemption, if
2 that makes sense. I don't know if that double negative
3 works. But you get the point, right? So there are some
4 issues that may seem small, which are big, they're huge.
5 And it's going to add confusion.

6 And I don't think it's going to add to safety.
7 It could deter from safety, because people are -- the
8 employees that have been out there working and
9 understanding the outdoor heat illness and been trained and
10 get trained constantly. It's a tailgate usually in the
11 summer, for most companies maybe every other week,
12 sometimes every day, now trying to figure out when they're
13 in compliance with all the training that's happened.

14 And it goes maybe beyond construction to a
15 certain degree with other industries that we see in
16 construction. That's what I'm here talking about. But
17 that's a big issue and I hope that the Board can give some
18 direction to get that corrected before it goes to --
19 becomes a rule. So thank you very much. I appreciate it.

20 A/CHAIR LASZCZ-DAVIS: Thank you, Kevin.

21 Any other commenters in person? (No audible
22 response.) Well, we can move over to the queue again.

23 MS. MORSI: Up next is Dave Smith with Dave Smith
24 and Co.

25 MR. SMITH: Yeah, good morning. Can everyone

1 hear me?

2 A/CHAIR LASZCZ-DAVIS: Good morning.

3 MR. SMITH: Good morning. Well good morning,
4 Board Members, continuing and reappointed, congratulations.
5 I'm Dave Smith, a safety consultant in California. I have
6 two issues to talk about.

7 The first is simplicity. I think a theme we've
8 heard so far in the comments is the complexity of
9 regulations is very difficult for people to actually comply
10 with and do. So I'd like to encourage those who write the
11 standards to make them as easy to do as possible. A
12 standard that is not actually performed is useless.
13 They're out of compliance. Complexity equals poor hazard
14 control.

15 I've talked to -- and last month, I remember
16 bringing up the whole issue of Table 1 in the construction
17 silica standard. And I really liked that approach, so I
18 was reading a construction product catalog. Yeah, I read
19 fun things in safety. And this is a manufacturer who has
20 developed a product that is OSHA Table 1 compliant. Now,
21 if you're -- most people are not going to know what that
22 means. But the thing that it told me is that this
23 manufacturer -- a brand name, you'd recognize it -- has
24 realized that their customers who are in the concrete and
25 masonry construction industry will see that as a benefit

33

1 without explaining all what Table 1 means. So that's
2 upstream hazard control through the use of Table 1, which
3 is a much easier to use format where the hazards actually
4 occur. So simplicity, if at all possible.

5 I'm also the author of Petition 481 first aid
6 kits, submitted in 2006, 17 years. We still can't tell the
7 California employers which first aid kit to buy, but you've
8 heard that speech before. We've also heard about the
9 delays in workplace violence and indoor heat, seven or
10 eight years. The big issue is why can't we get things
11 done?

12 I'd like to thank Board Member Laura Stock for
13 raising this delay and effectiveness issue last month, and
14 the group of Board Members that are looking into it. I
15 personally don't doubt the professional commitment of the
16 Board, staff and those with the program. But something
17 isn't working with these lengthy delays. Are adequate
18 resources provided to the Standards Board? What are the
19 roadblocks or process delays? Is new legislation needed to
20 fix these problems?

21 If it's a money issue keep in mind that the
22 Cal/OSHA program is in part funded by employers who buy
23 Workers' Compensation where the assessment is added on to
24 that Workers' Compensation premium. And those are the good
25 employers. The bad ones don't buy Workers' Comp and ignore

1 all of this. We've heard in prior meetings that
2 substantial funds are collected through this assessment.
3 So it's not like there's no money.

4 When I was thinking about this, this reminded me
5 of a quote that arose in another situation and that is
6 "follow the money." The safety orders and regulations
7 developed at the Standards Board have a direct impact on
8 the life, health and safety of the workers and all people
9 in the Golden State.

10 Like all government, the Standards Board should
11 be as transparent, effective and responsive to the people.
12 We all look forward about hearing -- I look forward to
13 hearing your reports on the effectiveness and efficiency
14 issue. Thank you very much.

15 A/CHAIR LASZCZ-DAVIS: Thank you, Dave.

16 Any other commenters in the queue?

17 MS. MORSI: Next up is Louis Blumberg with Policy
18 Advisor, Arsht-Rockefeller Foundation Resilience Center.

19 A/CHAIR LASZCZ-DAVIS: Do we -- is the person
20 available? If not, let's move on here.

21 MR. BLUMBERG: Hello. Can you hear me? Hello?
22 Hello?

23 A/CHAIR LASZCZ-DAVIS: Yes, we can hear you. Can
24 you hear us?

25 MR. BLUMBERG: Yes, I can hear you now.

1 A/CHAIR LASZCZ-DAVIS: All right. We look
2 forward to hearing from you right now.

3 MR. BLUMBERG: Thank you very much. Good
4 morning, my name is Louis Blumberg. I'm representing the
5 Adrienne Arsht-Rockefeller Foundation Resilience Center at
6 the Atlantic Council. We are working to bring climate
7 resilient solutions to 1 billion people across the globe.
8 Reducing the impacts of extreme heat to vulnerable
9 populations including indoor workers, is a priority for us.
10 And my focus is on heat policy in California. And that's
11 why I'm here to speak on the high heat standard for indoor
12 workers.

13 Towards this goal, we urge you to adopt the
14 standard as proposed now as soon as possible, preferably at
15 your next meeting. By acting then you will give the
16 administration the opportunity to secure the staff and
17 funding needed to protect indoor workers in the middle of
18 next year's heat season. So should you delay further and
19 adopt the regulation waiting till sometime in 2024 at best
20 you would be able to start protection in 2025. This delay
21 will result in harmful health and safety impacts to
22 workers, and potentially deaths that could have been
23 avoided if you act next month. People that are opposed to
24 the rule will always come up with scenarios that are
25 difficult or impossible to enforce.

1 I want to point out that much has changed in the
2 more than four years since Cal/OSHA Division submitted its
3 recommendations to you in April of 2019. For example, the
4 number of indoor workers at risk has grown significantly.
5 The number of workers in the warehouse and storage sub
6 sector has increased by 50 percent while state employment
7 overall has remained flat.

8 Also, the extreme -- the threat of extreme heat
9 has grown exponentially. Heat waves are now more frequent,
10 more intense, longer, more widespread, and more deadly.

11 Third, government leaders at all levels are
12 calling for increased government action to protect indoor
13 and outdoor workers. Notably last month President Biden
14 and 100 members of Congress asked for action. And even our
15 own Governor Newsom was on this, was on board.

16 Last month on July 11th, Governor Newsom launched
17 a heat public education and awareness campaign. The
18 campaign's section on workers tells them quote, "You have
19 the right to be protected from heat hazards at work
20 including education, and on how to stay safe, and the
21 ability to take preventive measures to avoid heat illness."

22 What workers need now, right now, is a new
23 rigorous standard to fulfill this right and fulfill the
24 Governor's vision. You have the opportunity to meet this
25 critical moment and promote health and safety for workers

1 and reduce preventable deaths. I urge you to take this
2 bold action and necessary action by adopting the proposed
3 high heat standard, as is now, for indoor workers at your
4 very next meeting. Thank you.

5 A/CHAIR LASZCZ-DAVIS: Thank you, Louis.

6 Any other commenters?

7 MS. MORSI: Up next is Robert Moutrie with the
8 California Chamber of Commerce.

9 MR. MOUTRIE: Good morning Acting Chair and
10 Members. Robert Moutrie for the California Chamber of
11 Commerce.

12 First, I'm sorry I can't join you in San Diego.
13 I was forced to stay in the unpleasant circumstance of
14 downtown Sacramento, so believe me, it is with regret that
15 I cannot be there.

16 Congratulations on your reappointments, Board
17 Member Laszcz-Davis and also Board Member Kennedy. And
18 because I see you there, also hello of course to Board
19 Members Harrison and Kate Crawford.

20 I want to briefly touch on the indoor heat
21 comments. And I'd like to echo some of the prior concerns
22 raised here, raised specifically by Helen Cleary regarding
23 the duration of exposure focus. And Steve Johnson
24 regarding the need to repeatedly take measurements, which
25 will be harder for smaller and medium-sized businesses.

1 I do also however, want to take time to thank the
2 Division staff for -- and the Board staff, for a number of
3 the changes contained in the 15-day change notice, which
4 were in response to comments raised by the Chamber and
5 others and we appreciate those improvements.

6 One new issue created by the 15-day change notice
7 that I need to draw attention to though, however is the use
8 of shipping container as kind of an exception within an
9 exception. Notably, the 15-day change includes three
10 limitations and says if a space is rarely used, etcetera,
11 then it will not be considered. However, even these three
12 limitations do not apply to shipping containers, is how
13 it's written now.

14 We think that's improper for two reasons. One,
15 shipping container is a term we think is incorrect. Marine
16 -- regulations on marine ports, use "intermodal container"
17 which I think is the more correct term. And second, the
18 three limitations in the proposed draft already exclude
19 shipping containers where they need to be excluded. That
20 is where they're being unloaded in a warehouse, for
21 example.

22 But if a shipping container is being used away
23 from that worksite as a very temporary storage space, which
24 no one's ever in then the three exceptions in the
25 regulation already would exclude it. So we don't really

1 see the need to specifically exclude shipping containers
2 when the three limitations the Division has crafted already
3 deal with that issue.

4 Next, I'd like to -- I haven't heard from my
5 colleagues at the hospitals. But I do want to flag that I
6 know there's an ongoing concern with hospitals and
7 feasibility in this text around burn units. That is that
8 burn units require when you're doing some other surgical
9 response to really full body burns, you need to have a
10 temperature in the space that is higher, so the body
11 doesn't essentially have a rejection response. It can be
12 quite bad unless the temperature is kept high. So I didn't
13 see any kind of response to that in the 15-day change. And
14 I do think that that's an urgent, urgent issue that needs
15 to be fixed, so that hospitals aren't in non-compliance as
16 they do the right medical thing.

17 And that leads me to my last quick point, which
18 is Helen raised this, and I think also another commenter
19 whose name I've forgotten. As the Board seems to tend
20 towards more and more general industry regs in response to
21 industry specific concerns, we seem to have more and more
22 of these unintended consequences to industries like
23 hospitals' burn units and other places. And that seems to
24 be a growing problem, which we can address in the future if
25 we keep regulations focused on the industries that need

1 them. And not kind of take the overly ambitious task of
2 writing a general industry task that works for everyone.

3 And I'm sorry one more touch I have to make, but
4 just there have been a couple of comments that anyone who
5 is focusing on the details of the regulations and trying to
6 clean up pieces of them, must just be trying to make delay
7 and couldn't possibly be working in good faith. And I just
8 want to say I think that is very untrue for myself, and for
9 those others who you've heard in the room, where we as the
10 people who have to implement these things have to take an
11 interest in the detailed wording of each one, because we're
12 going to have to do it. And that is uncomfortable. And it
13 can be -- I'm sure it can be annoying and troublesome. But
14 we have to take that interest since we have to be the ones
15 to implement it. So I just felt the need to respond to
16 that.

17 Thank you for your time.

18 A/CHAIR LASZCZ-DAVIS: Thank you, Rob.

19 Any other commenters?

20 MS. MORSI: Up next is Bryan Little with the
21 California Farm Bureau.

22 A/CHAIR LASZCZ-DAVIS: Are you there, Bryan?

23 MR. LITTLE: I am here. Can you hear me?

24 A/CHAIR LASZCZ-DAVIS: Yep, we can hear you.

25 MR. LITTLE: Very good. Thank you.

1 A/CHAIR LASZCZ-DAVIS: And we can see you too.

2 MR. LITTLE: That was my intention. Well, good
3 morning, Standards Board Members and staff and agency
4 staff. And also congratulations to the members of the
5 Standards Board who have been reappointed. I am Bryan
6 Little, representing California Farm Bureau, California's
7 largest general interest agricultural organization.
8 Representing producers of the hundreds of food and fiber
9 products produced in our state.

10 I'd like to offer a few comments about the
11 proposed indoor heat standard. My comments pertain to the
12 March 2023 proposed standard, and of the recently noticed
13 revisions from earlier this month. The agency has
14 struggled for years to produce a draft of an indoor heat
15 standard for one simple reason, because the agency insisted
16 on a standard that covered all employers employing people
17 in indoor locations creating a one size fits all
18 regulation. Creating a one size all regulation that has
19 proved to be impossible to make it work in the real world.

20 This was illustrated by the many iterations of
21 the indoor standard and stakeholder meetings going back to
22 2016. The regulated community expressed serious concerns
23 about these drafts. And in large part, those concerns were
24 related to the overly broad scope of the proposals. It
25 seems obvious that trying to apply the same indoor heat

1 regulations to a foundry as to a dental office will be
2 difficult at best, but that seems to have been lost on the
3 agency.

4 Farm Bureau and other stakeholders recommended an
5 approach similar to that taken by the heat illness
6 prevention standard for outdoor employment, General
7 Industry Safety Order 3395, which limits its scope to
8 specific outdoor activities of employment like agriculture,
9 landscaping, and construction. Had the agency opted to
10 limit the scope of the indoor standard to specific
11 activities like warehousing, heavy manufacturing and
12 similar activities, it's likely the agency could have
13 produced an indoor standard addressing those types of
14 indoor employment where major risks are found five years
15 ago.

16 The March 2023 standard and the revisions
17 proposed in August suffer for their overly broad scope, in
18 that it requires employers to take specific measures that
19 will be difficult to do in certain situations. An example
20 of this is the applicability of the standard to indoor
21 spaces as defined in part, as a structure that's partially
22 enclosed. Even if that partial enclosure consists of
23 moveable walls or high bay doors, whether those walls or
24 doors are open or closed.

25 Agricultural production and onsite processing

1 makes use of structures like this that house or store
2 machinery that are partially open while activity is
3 occurring there and will be closed when the site is idle,
4 or perhaps during inclement weather. Treating these
5 structures as indoor areas of employment will require
6 employers operating them to consider a solution like air
7 conditioning that is simply impossible to implement. And
8 force reliance on documentation-heavy solutions like
9 administrative solutions, and personal protective equipment
10 that more resemble outdoor employment, which is why these
11 structures should have been covered by the outdoor standard
12 rather than the indoor standard.

13 Similarly, the March 2023 proposal as proposed to
14 be amended in August exempts vehicles from requirements to
15 record temperature in the interior of the vehicle if the
16 vehicle has functioning air conditioning. This is a
17 welcome recognition that effective air conditioning
18 essentially eliminates heat illness hazards.
19 Unfortunately, it eliminates only the requirement to record
20 temperature, not the requirements of the rest of the
21 proposed standard, which winds up being a distinction with
22 little practical difference.

23 How is an employer to know if they have complied
24 with the requirements of the remainder of the standard, if
25 that's still applicable there -- that is still applicable

1 to air-conditioned vehicles if they have no records of the
2 temperature that occurred in that vehicle? This is yet
3 another example of the problems presented by the agency's
4 choice to try to create a one size fits all standard,
5 rather than a standard that addresses specific hazards
6 associated with specific activities.

7 In my role as -- in my associated role as Chief
8 Operating Officer with Farm Employers Labor Service, an
9 affiliated company of California Farm Bureau, my job is to
10 explain regulatory and legal requirements to agricultural
11 employers. I and people who do similar work with
12 employers, and the agency charged with enforcing this rule
13 will be tripping over the inconsistencies created by its
14 overly broad scope for years to come. It's my hope we
15 might reconsider this approach. Thank you very much for
16 your time and for your attention.

17 A/CHAIR LASZCZ-DAVIS: Yeah, thank you, Bryan.

18 Any other commenters?

19 MS. MORSI: Next commenter is Michael Miiller
20 with California Association of Winegrape Growers.

21 A/CHAIR LASZCZ-DAVIS: All right. Michael.

22 MR. MILLER: Good morning, Chair and Members.

23 Michael Miiller with the California Association of
24 Winegrape Growers. And I echo the congratulations to
25 Members who have been reappointed, and to all the Board

1 Members who serve on this Board. Your public service is
2 really appreciated, as you are writing law, creating law
3 that applies to workplaces and attempts to keep our
4 employees safe. So your work is really appreciated and
5 respected.

6 I'm going to comment on the indoor heat
7 regulation. Specifically, I want to align ourselves with
8 the comments from Helen Cleary, Bruce Wick, Rob Moutrie,
9 Steve, Kevin Bland and Bryan Little. We feel very strongly
10 that the broad nature of the regulation has created a bit
11 of a Schrodinger's cat situation, where there's so many
12 things that are happening to try to fix while you create
13 other situations and problems that would best be addressed
14 by avoiding the broad nature of it and focusing on the real
15 problems.

16 Specifically, we are concerned with a few
17 unintended consequences. And I'll discuss three of them
18 briefly. One is the de minimis exposure to heat issue. We
19 feel that the experts in the state of Washington and others
20 have made it clear that if a worker is exposed to less than
21 15 minutes of heat over a one-hour period that there isn't
22 really a risk there and that should not be covered by the
23 regulation.

24 But we also feel that the inside of an air
25 conditioned vehicle or the air conditioned tractor should

1 not be included as well, especially when that worker is
2 already covered by the outdoor regulation and there's no
3 additional benefit to the worker by submitting that worker
4 to coverage under the indoor heat regulation as well.

5 And also we feel like the work is already covered
6 by the actual heat regulation and the compliance is there,
7 and the efforts are being done, it makes no sense to put
8 the additional requirements of this regulation on top of
9 that. Compliance with the outdoor heat regulation should
10 be sufficient for workers who are going back and forth.

11 I raise these issues, because the unintended
12 consequences are recognized before the regulation is
13 approved. We feel the regulations should be amended to
14 prevent those unintended consequences. Whether the public
15 comment, the Board and Cal/OSHA have been made aware of the
16 unintended consequences if the Board chooses to go forward
17 without addressing those unintended consequences, we would
18 like to ask that the Board provide evidence and data to
19 support why it is choosing to have the unintended
20 consequences instead.

21 For example, what is the added benefit of
22 subjecting a worker who has de minimis heat exposure to
23 this regulation? What does this regulation do to protect
24 that specific worker in that situation versus exempting
25 them to avoid the unintended consequences? It's really

1 important to get this right out the gate, because this
2 Board doesn't do the oversight or the follow up later once
3 this regulation is approved.

4 When I was with the Assembly and the Senate in
5 policy committees if there was a bill that came before us
6 where we had -- we've been made aware of potential
7 unintended consequences we would often later hold oversight
8 hearings, or we would put a sunset date in the new law. Or
9 we would require reports in the Legislature on how that law
10 was working, so we'd have some follow up to see if there's
11 unintended consequences that had been realize or how they'd
12 been avoided. We don't have that here with this
13 regulation, so it's really important that we try to get it
14 right out the gate.

15 I want to raise an example very briefly and then
16 I'll complete. In the 1980s I was a strong supporter of
17 the effort to save the dolphins. This is because dolphins
18 were being captured in tuna fishing nets. In too many
19 cases, the capturing of dolphins was known in advance and
20 the fishing nets were used anyways. They really didn't
21 care about the unintended consequence of killing dolphins.

22 With that in mind if the unintended consequences
23 of this proposed regulation are not addressed, I would
24 metaphorically recommend against putting a dolphin-free
25 label on this regulation. This is because we all know in

1 advance that the wide net that it is casting, it will
2 definitely catch a whole bunch of dolphins. Thank you for
3 your time and attention to our concerns. We look forward
4 to working with you.

5 A/CHAIR LASZCZ-DAVIS: Thank you, Michael.

6 Any other commenters?

7 MS. MORSI: There are no more online commenters.

8 A/CHAIR LASZCZ-DAVIS: There are no additional
9 commenters? And nobody else present would like to comment?
10 Alrighty then, at this time, since we have no additional
11 commenters in the queue or in person where shall we go
12 here?

13 We're into the business meeting I believe.

14 UNKNOWN SPEAKER: Page 9?

15 A/CHAIR LASZCZ-DAVIS: Page 9, good thing I have
16 a blueprint here.

17 We will now proceed with the business meeting.
18 The purpose of the business meeting is to allow the Board
19 to vote on the matters before it and to receive briefings
20 from staff regarding the issues listed on the business
21 meeting agenda. Public comment is not accepted during the
22 business meeting unless a Member of the Board specifically
23 requests public input.

24 The proposed variance decisions for adoption are
25 listed on the consent calendar. Michelle, will you please

1 brief the Board?

2 MS. IORIO: Thank you, Acting Chair Laszcz-Davis
3 and Board Members. On the consent calendar this month we
4 have proposed decisions 1 through 47 ready for your
5 consideration and possible adoption.

6 A/CHAIR LASZCZ-DAVIS: Do we have a motion to
7 adopt the consent calendar?

8 BOARD MEMBER HARRISON: Motion to approve.

9 BOARD MEMBER CRAWFORD: Second.

10 A/CHAIR LASZCZ-DAVIS: It has been moved and
11 seconded that the Board adopt the Consent Calendar as
12 proposed. Autumn, will you please call roll?

13 MS. GONZALEZ: I will. The motion came from Dave
14 Harrison, and the second was from Kathleen Crawford. Board
15 Member Crawford.

16 BOARD MEMBER CRAWFORD: Aye.

17 MS. GONZALEZ: Dave Harrison.

18 BOARD MEMBER HARRISON: Aye.

19 MS. GONZALEZ: Nola Kennedy.

20 BOARD MEMBER KENNEDY: Aye.

21 MS. GONZALEZ: And Chair Chris Laszcz-Davis.

22 A/CHAIR LASZCZ-DAVIS: Aye. And so it passes.

23 We now have the Division Update. Eric, will you
24 please brief the Board?

25 MR. BERG: Okay, thank you. Can you hear me

1 okay? Last time I had trouble with this microphone.

2 A/CHAIR LASZCZ-DAVIS: Just a little louder.

3 MR. BERG: Okay. I can't get close enough today.

4 So I'll briefly go over the people that have been
5 commenting on the indoor heat proposal. We had the 15-day
6 change. Can you hear me now? I can't tell.

7 A/CHAIR LASZCZ-DAVIS: Yeah.

8 MR. BERG: Okay. We had the 15-day change. It
9 was posted on the Standards Board website on August 4th and
10 the 15-day comment period ends on August 22nd. So I'll
11 give a brief summary of the changes we're doing.

12 First as you recall from my briefing I did on
13 indoor heat, I think it was here in San Diego two or three
14 months ago, but we had a PowerPoint. And we had a side-by-
15 side comparison showing this proposal next to the outdoor
16 heat standard. And what we were trying to show is we tried
17 to make them as similar as possible on all places, if not
18 identical. And there's a couple of places like engineering
19 controls, administrative controls that differ, but almost
20 everything else is similar or the same.

21 And specific to engineering controls that have
22 been mentioned, those are not required when not feasible
23 such as like a hospital room where that has to be kept at a
24 certain temperature for the patient safety. Obviously,
25 it's not feasible. It's not possible to do that. So that's

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1 what it's meant to apply to in other locations where the
2 engineering controls don't make sense. It's not feasible
3 in those locations. And so that's in the existing
4 regulation.

5 And regarding the scope of the regulations,
6 leaving certain employees unprotected by omitting
7 industries from the scope of the Heat Illness Regulation
8 would not be consistent with the mandate from the Labor
9 Code to protect all employees. An employee can succumb to
10 heat illness regardless of what industry they work in. And
11 heat illness can come on and can occur in a very short time
12 duration.

13 Okay, I'll go now to the summary of our changes
14 we made.

15 A/CHAIR LASZCZ-DAVIS: Why don't you just speak a
16 little bit louder, Eric?

17 MR. BERG: Okay, sorry, sat too close.

18 In subsection (a) we added a new exception to the
19 scope of the regulation. Certain remote indoor locations
20 that are not normally occupied will be exempt from the
21 proposed indoor heat standard. These exempt locations will
22 instead be covered by the existing outdoor heat illness
23 prevention regulation section 3395. So that's in
24 subsection (a).

25 Also, in subsection (a) the scope of that

1 regulation we add an option for employers with employees
2 that go back and forth between indoors and outdoors, to
3 comply exclusively with indoor heat illness prevention
4 regulation instead of complying with both the outdoor and
5 indoor regulation. This does not include any new
6 requirements for employers, just an additional option for
7 compliance.

8 And going on to definitions, subsection (b),
9 there's a part that defines clothing that restricts heat
10 removal, because it has additional or lower thresholds when
11 clothing that restricts heat removal is used.

12 So there's an exception to that and that
13 exception was expanded. The exception that was previously
14 limited to clothing with flame or arc flash resistant
15 properties. And this exception now applies to any type of
16 clothing with certain properties.

17 And also, these properties that exempt clothing
18 have also been expanded. Clothing constructed material
19 that is air or water vapor permeable was added to this list
20 of clothing that is exempt from making -- considered
21 restricting heat removal.

22 The next change was to the definition of cooldown
23 area. The initial proposals that -- in cool down areas,
24 they had to be blocked from radiant heat and sunlight. And
25 we added "to the extent feasible" to that, which means

1 direct sunlight and radiant heat do not need to be 100
2 percent blocked if it's not feasible. So that's a small
3 change to that.

4 And then going on to subsection (e), (e) (1)
5 specifically, (e) (1) is about measuring the temperature or
6 heat index. In subsection (e) (1) (B) we made some changes
7 just to improve clarity, no real substantive. And then we
8 also add an exception to the entirety of (e) (1) about
9 measuring the temperature or heat, and heat index. Under
10 "Exemption" it exempts vehicles with effective and
11 functioning air conditioning from all of (e) (1).

12 And then moving on to (e) (2), which is all about
13 the control measures such as engineering controls or
14 administrative controls or heat protective equipment. Some
15 of the language was changed in response to comments just to
16 improve clarity, no real substantive change there.

17 And then going down to subsection (g) the title
18 was changed to just to "Climatization." This was made just
19 to make it identical to the existing outdoor regulation, so
20 they match exactly in that case. And then we also made
21 some other changes to improve clarity in the language of
22 that subsection.

23 And then going onto training, which is subsection
24 (h) we add a note making it clear that training for the
25 proposal can be integrated into the employers existing

1 training for outdoor heat illness prevention. So those
2 trainings can be combined.

3 Appendix A was then -- was also expanded to
4 include a greater temperature range of the heat index
5 table, which is taken from the National Weather Service.

6 And then I also had an update on silica.

7 A/CHAIR LASZCZ-DAVIS: Just a little bit louder,
8 again, Eric.

9 MR. BERG: Oh, sorry. We also have some info on
10 this silica emergency proposal that was discussed at the
11 last meeting.

12 We posted a discussion draft with the regulatory
13 language and held an advisory meeting last week. We
14 received very helpful feedback and input from stakeholders.
15 We continue to meet with stakeholders. And we're working
16 on revising the discussion draft and posting that again for
17 further comments.

18 And in order for us to make the December 21st,
19 2023 Standards Board meeting, that's kind of our goal. We
20 need to finish the regulatory language, get that finalized.
21 We need to finish the Finding of Emergency and Informative
22 Digest and the Notice of Proposed Emergency Action, but
23 finish all those by the end of August in order to meet --
24 to get a December Standards Board vote.

25 And then we also need to complete the Economic

1 and Fiscal Impact Assessment by mid-September in order to
2 make that December vote. So that's my update for those two
3 big things. Thanks.

4 A/CHAIR LASZCZ-DAVIS: Yeah. Thank you very
5 much, Eric.

6 Are there any questions from the Board for Eric?

7 BOARD MEMBER HARRISON: Yeah. I have just a
8 couple of comments. In regard to indoor heat, you
9 addressed vehicles being exempt with active AC, so I think
10 that addressed some of the concerns that we heard today.
11 But we did hear several comments about shipping containers,
12 or intermodal containers.

13 MR. BERG: Yeah.

14 BOARD MEMBER HARRISON: And I would like the
15 Division to take those comments into consideration.
16 Because I think those containers on construction job sites
17 are very common here. You hear -- you see there's probably
18 less projects without them than there are with, and so I'd
19 like that to be addressed as well.

20 MR. BERG: Yeah, it wasn't our intent to cover
21 them. Those are more like storage, using that as a storage
22 shed. So yeah, we'll try to fix that. And we will fix
23 that.

24 BOARD MEMBER HARRISON: Thank you.

25 MR. BERG: Because yeah we're not --

1 (indiscernible) the exception was intended to apply to
2 storage sheds. We think the feasibility exception would
3 apply anyways, but it's better to have it clearly
4 (indiscernible). So we will do that.

5 BOARD MEMBER HARRISON: Very good. Thank you.

6 A/CHAIR LASZCZ-DAVIS: All right. Any other
7 questions? Nola.

8 BOARD MEMBER KENNEDY: I just had a comment on
9 the proposed language for indoor heat. And it seems, it
10 would be helpful to me to have a definite -- you have a
11 definition for "radiant heat," but several times you refer
12 to high radiant heat. And nearly every indoor workplace
13 has radiant heat, so I think defining what makes it high
14 radiant heat would be helpful.

15 MR. BERG: Okay.

16 BOARD MEMBER KENNEDY: Okay.

17 MR. BERG: (Indiscernible.)

18 A/CHAIR LASZCZ-DAVIS: Okay. Any other
19 questions, comments from the Board?

20 With that then let me turn this over to -- we're
21 moving into Legislative Update. Let me turn this over to
22 Michelle Iorio. Will you please brief Board?

23 MS. IORIO: Thank you, Chair Laszcz-Davis. There
24 are just two bills that I wanted to quickly discuss with
25 the Board today. The first is AB 1766. This requires the

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1 Division to propose regulations regarding the safety of all
2 passenger tramways for adoption by the Board. This bill
3 has passed both houses and was approved by the governor on
4 July 23rd, 2023. And we've seen an increase in uncommon
5 variance requests regarding tramways, so updating the
6 regulations may help reduce these requests.

7 The other is SB 554. This concerns the
8 teleconferencing rules for state bodies and would reinstate
9 the rules in place during COVID with some amendments. And
10 this section should remain in effect until January 1, 2026.
11 And it's passed the Senate, the bill has passed the Senate,
12 it is now in the Assembly.

13 A/CHAIR LASZCZ-DAVIS: Alrighty. Well thank you,
14 Michelle.

15 Are there any questions for Michelle from the
16 Board? (No audible response.) Seeing as there are none,
17 let's move over to the Executive Officer's Report. Autumn
18 Gonzalez, will you please brief the Board?

19 MS. GONZALEZ: Thank you, Chair Laszcz-Davis.

20 So the Board is pleased to report on several new
21 hirings. We have Kimberly Lucero as a Legal Assistant in
22 the Legal Unit, and Kevin Goddard as a Senior Safety
23 Engineer. Ms. Lucero officially joined the staff on August
24 1st, while Mr. Goddard's first day will be August 28th.

25 On August 11th, the Governor's Office announced

1 the reappointments of Dave Thomas as Labor Representative
2 and Board Chair, Chris Laszcz-Davis as Management
3 Representative. And Nola Kennedy, who will now occupy the
4 occupational health seat previously held by Barbara Burgel.
5 Mr. Joseph Alioto will also join the Board starting next
6 month as our new Public Member Representative.

7 And looking forward to next month select OSHSB
8 staff and Board Members will attend FIRA USA 2023 in
9 Salinas, California during the week of September 18th.
10 FIRA USA is a three-day event featuring autonomous farming
11 and agricultural robotics, bringing together manufacturers,
12 industry, scientists and governing agencies. Scheduled
13 speakers include CDFA Secretary Karen Ross and Senator John
14 Laird. Executive Officer Christina Shupe will also be
15 participating in a panel on regulatory requirements on
16 September 20th.

17 Our September 21st Board Meeting will be held in
18 neighboring Marina California. The September Board meeting
19 will be Ms. Shupe's final OSHSB meeting as Executive
20 Officer and we will be missing her very much. Ms. Shupe
21 has accepted a position with the executive team at the
22 Central Valley Regional Water Quality Control Board where
23 she will serve as Assistant Executive Officer, overseeing
24 the Board's Fresno office.

25 She and chair Thomas are actively working with

1 OSHSB and DIR staff on the transition and beginning
2 recruitment efforts for the Board's next executive officer.
3 So Ms. Shupe will be here at the next Board Meeting and you
4 can say your goodbyes there.

5 Any questions from the Board?

6 A/CHAIR LASZCZ-DAVIS: Seeing that there are
7 none, thank you for that report, Autumn.

8 Let's move over to new business, future agenda
9 items. The Board appreciates your testimony. The public
10 meeting has been adjourned. And I'm in the wrong place
11 here. I'll move on over.

12 UNKNOWN SPEAKER: (Indiscernible.)

13 A/CHAIR LASZCZ-DAVIS: I know. So at any rate
14 future agenda items. Are we moving into a --

15 BOARD MEMBER HARRISON: I know there was a
16 petition filed around the cranes -- crane rule. And I
17 would just like an update on that in a future meeting.

18 MS. GONZALEZ: All right. I know it has been
19 sent over to the Division and they're looking at it, and
20 Board staff is also looking at it.

21 BOARD MEMBER HARRISON: Very good. Thank you.

22 MS. GONZALEZ: We do have closed session.

23 A/CHAIR LASZCZ-DAVIS: Well, at that point we do
24 -- we move into a closed session. And basically what
25 happens is we will move into a closed session, but we hope

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1 that that you all remain because it won't be a very long
2 closed session. And we'll resume the meeting after that,
3 okay.

4 MS. GONZALEZ: Reconvene in about 20 minutes?

5 A/CHAIR LASZCZ-DAVIS: Twenty minutes?

6 MS. GONZALEZ: Okay.

7 A/CHAIR LASZCZ-DAVIS: People watching the --
8 looking at their clocks. Okay, we'll keep it short. But
9 do hold on, we will be back. Alrighty, thank you very
10 much.

11 (Off the record at 11:20 a.m.)

12 (On the record at 11:50 a.m.)

13 The Occupational Safety Health and Health
14 Standards Board is back in session. The Board took no
15 action during closed session. And I guess that's it.

16 Adjournment. The next Standards Board regular
17 meeting is scheduled for September the 21st in Marina,
18 California, and via teleconference and video conference.
19 Please visit our website and join our mailing list to
20 receive the latest updates. We thank you for your
21 attendance today. There being no further business to
22 attend to, this business meeting is adjourned.

23 And it's so good to see you all here still, so
24 thank you.

25 (The Business Meeting adjourned at 11:50 a.m.)

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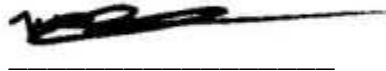
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