Occupational Safety and Health Standards Board

Public Meeting and Business Meeting

March 21, 2024

County Administration Center
Room 310
1600 Pacific Highway
San Diego, California

AND

Via teleconference / videoconference

Occupational Safety and Health Standards Board

Meeting Agenda

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
Tel: (916) 274-5721
www.dir.ca.gov/oshsb

MISSION STATEMENT

The mission of the Occupational Safety and Health Standards Board is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for California workers.

AGENDA

PUBLIC MEETING, PUBLIC HEARING, AND BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PLEASE NOTE: In accordance with section 11123 of the Government Code, Board members, as well as members of the public, may elect to participate via videoconference.

March 21, 2024 at 10:00 a.m.

Attend the meeting in person:

County Administration Center
Room 310
1600 Pacific Highway
San Diego, CA 92101

Attend the meeting via videoconference:

1. Go to www.webex.com
2. Select "Join a Meeting"
3. Enter the meeting number: **1469 63 6425**
4. Join the meeting through your WebEx application **OR** through your browser
5. Videoconference will be opened to the public at 9:50 a.m.

Attend the meeting via teleconference:

1. Dial (844) 992-4726
2. Enter the meeting number **1469 63 6425** and follow the prompts
3. Teleconference will be opened to the public at 9:50 a.m.

Live video stream and audio stream (English and Spanish):

1. Go to https://videobookcase.com/california/oshsb/
2. Video stream and audio stream will launch as the meeting starts at 10:00 a.m.

Public Comment Queue:

Those attending the Occupational Safety and Health Standards Board (Board) meeting in person will be added to the public comment queue on the day of the meeting.

Those attending the meeting remotely who wish to comment on agenda items may submit a request to be added to the public comment queue either in advance of or during the meeting through one of the following methods:

ONLINE: Provide your information through the online comment queue portal at https://videobookcase.org/oshsb/public-comment-queue-form/

PHONE: Call (**510) 868-2730** to access the automated comment queue voicemail and provide†: 1) your name as you would like it listed; 2) your affiliation or organization; and 3) the topic you would like to comment on.

† Information requested is voluntary and not required to address the Board.

I. **CALL TO ORDER AND INTRODUCTIONS**

II. **PRESENTATION**

A. Presentation on Residential Fall Protection

- Name of Presenter TBD, OSHA Directorate of Construction

III. **PUBLIC MEETING (Open for Public Comment)**

This portion of the Public Meeting is open to any interested person to propose new or revised standards to the Board or to make any comment concerning occupational safety and health (Labor Code section 142.2). *The Board is not permitted to take action on items that are not on the noticed agenda, but may refer items to staff for future consideration.*

This portion of the meeting is also open to any person who wishes to address the Board on any item on today's Business Meeting Agenda (Government Code (GC) section 11125.7).

Any individual or group wishing to make a presentation during the Public Meeting is requested to contact Sarah Money, Executive Assistant, at (916) 274-5721 at least three weeks in advance of the meeting so that any logistical concerns can be addressed.

A. PUBLIC COMMENT

B. ADJOURNMENT OF THE PUBLIC MEETING

IV. **PUBLIC HEARING**

A. EXPLANATION OF PROCEDURES

B. PROPOSED SAFETY ORDERS (Revisions, Additions, Deletions)

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Appendix A to Section 5144
Fit Testing Procedures (Mandatory) (HORCHER)

V. **BUSINESS MEETING – All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.**

The purpose of the Business Meeting is for the Board to conduct its monthly business.

A. PROPOSED SAFETY ORDER FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 3396
Heat Illness Prevention in Indoor Places of Employment
(Heard at the May 18, 2023 Public Hearing)

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. **Consent Calendar**

C. REPORTS

1. Legislative Update

2. Division Update

3. Acting Executive Officer's Report

D. NEW BUSINESS

1. Future Agenda Items

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

E. CLOSED SESSION

Matters Pending Litigation

1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270

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

Matters on Appeal

1. 22-V-054T Operating Engineers Local 3, District 80

Personnel

F. RETURN TO OPEN SESSION

1. Report from Closed Session

G. ADJOURNMENT OF THE BUSINESS MEETING

Next Meeting: April 18, 2024
Gilroy City Hall
Council Chambers
7351 Rosanna Street
Gilroy, CA 95020
10:00 a.m.

CLOSED SESSION

1. If necessary, consideration of personnel matters. (GC section 11126(a)(1)).

2. If necessary, consideration of pending litigation pursuant to GC section 11126(e)(1).

3. If necessary, to deliberate on a pending decision. (GC section 11126(c)(3)).

PUBLIC COMMENT

Efforts will be made to accommodate each individual who has signed up to speak. However, given time constraints, there is no guarantee that all who have signed up will be able to address the State body.

Each speaker is invited to speak for up to two minutes. The Board Chair may extend the speaking time allotted where practicable.

The total time for public comment is 120 minutes, unless extended by the Board Chair.

The public can speak/participate at the meetings before items that involve decisions.

In addition to public comment during Public Hearings, the Board affords an opportunity to members of the public to address the Board on items of interest that are either on the Business Meeting agenda, or within the Board's jurisdiction but are not on the noticed agenda, during the Public Meeting. The Board is not permitted to take action on items that are not on the noticed agenda, but may refer items to staff for future consideration. The Board reserves the right to limit the time for speakers.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1 (800) 735-2929 (TTY) or 1 (800) 855-3000 (TTY-Spanish).
Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the meeting.

TRANSLATION

Requests for translation services should be made no later than five (5) days before the meeting.

NOTE: Written comments may be emailed directly to oshsb@dir.ca.gov no later than 5:00 p.m. on the Tuesday prior to a scheduled Board Meeting.

Under GC section 11123, subdivision (a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The Board Chair may adopt reasonable time limits for public comments in order to ensure that the purpose of public discussion is carried out. (GC section 11125.7, subd. (b).)

Members of the public who wish to participate in the meeting may do so via livestream on our website at https://videobookcase.com/california/oshsb/. The video recording and transcript of this meeting will be posted on our website as soon as practicable.

For questions regarding this meeting, please call (916) 274-5721.

Occupational Safety and Health Standards Board

Public Hearing

Fit Testing Procedures (Mandatory) (HORCHER)

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

APPENDIX A TO SECTION 5144

FIT TESTING PROCEDURES (MANDATORY) (HORCHER)

HYPERLINKS TO RULEMAKING DOCUMENTS:

NOTICE/INFORMATIVE DIGEST

PROPOSED REGULATORY TEXT

BASIS FOR RULEMAKING

U.S. Department of Labor

Occupational Safety and Health Administration
Ronald Dellums Federal Building
1301 Clay Street, Suite 1080N
Oakland, CA 94612

February 8, 2024

Cathy Dietrich
Associate Governmental Program Analyst
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833

Dear Cathy Dietrich:

Per the advisory opinion request made February 5, 2025, we completed our review of the proposed occupational safety and health standard: Title 8, General Industry Safety Orders, Appendix A to section 5144; Fit Testing Procedures (Mandatory) (HORCHER). The standard appears to be at least as effective as the Federal standard, however during our review we did note two minor editorial differences to the federal appendix that are not changed in the proposal, one of which changes the meaning of the clause substantively.

1) In the Bitrex section, section 4.(b)(4) currently states "This nebulizer ***shall not*** be clearly marked to distinguish it from the screening test solution nebulizer." The federal appendix states "This Nebulizer ***shall*** be clearly marked to distinguish it from the fit test solution nebulizer." Bolded italics are mine to highlight the difference.

2) In the Quantitative Fit Test (QNFT) Protocols, section C.2.(a)(6) states, "The in-mask sampling device (probe) shall be designed and used ***to*** that the air sample is drawn…" I believe the bold, italicized "to" should be a "so."

Should you wish to discuss our review, please contact me at 510-637-3837.

Sincerely,

MATTHEW KUZEMCHAK, CIH
Area Director

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
	Group 16. Control of Hazardous Substances Article 107. Dusts, Fumes, Mists, Vapors and Gases	The State proposes to adopt the federal language verbatim with only minor editorial/formatting differences as the addition of two alternative methods to the ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocols in Appendix A Fit Testing Procedures (Mandatory) for title 8 of the California Code of Regulations §5144 Respiratory Protection (8 CCR §5144). See Federal Register, Volume 84, No. 187 pages 50739-50756, September 26, 2019.
Appendix A to §1910.134 – Fit Testing Procedures (Mandatory) Part I. OSHA – Accepted Fit Test Protocols	Appendix A to Section 5144: Fit Testing Procedures (Mandatory) Part I. OSHA-Accepted Fit Test Protocols	
A. Fit Testing Procedures – General Requirements The employer shall conduct fit testing using the following procedures. The requirements in this appendix apply to all OSHA-accepted fit test methods, both QLFT and QNFT. *****	A. Fit Testing Procedures – General Requirements. The employer shall conduct fit testing using the following procedures. The requirements in this appendix apply to all OSHA-accepted fit test methods, both QLFT and QNFT. *****	No changes.
14. Test Exercises. (a) Employers must perform the following test exercises for all fit testing methods prescribed in this appendix, except for the two modified ambient aerosol CNC quantitative fit testing protocols, the CNP quantitative fit testing protocol, and the CNP REDON quantitative fit testing protocol. For the modified ambient aerosol CNC quantitative fit testing protocols, employers shall ensure that the test subjects (*i.e.*, employees) perform the exercise	14. Test Exercises. (a) Employers must perform the following test exercises for all fit testing methods prescribed in this appendix, except for the two modified ambient aerosol CNC quantitative fit testing protocols, the CNP quantitative fit testing protocol and the CNP REDON quantitative fit testing protocol. For ~~these two~~ the modified ambient aerosol CNC quantitative fit testing protocols, employers ~~must~~shall ensure that the test subjects (i.e., employees) perform the	This section of Appendix A to 8 CCR §5144 modified to align language with Appendix A to §1910.134. Replaced the word “Part” with “section” for consistency with the rest of Appendix A to 8 CCR §5144 (e.g. Part I.C.6(b) to section I.C.6(b)).

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
procedure specified in Part I.C.4(b) of this appendix for full-facepiece and half-mask elastomeric respirators, or the exercise procedure specified in Part I.C.5(b) for filtering facepiece respirators. Employers shall ensure that the test subjects (i.e., employees) perform the exercise procedure specified in Part I.C.6(b) of this appendix for the CNP quantitative fit testing protocol, or the exercise procedure described in Part I.C.7(b) of this appendix for the CNP REDON quantitative fit testing protocol. For the remaining fit testing methods, employers shall ensure that the test exercises are performed in the appropriate test environment in the following manner: *****	exercise procedure specified in section I.C.4(b) of this appendix for ~~the CNP quantitative fit testing protocol~~ full-facepiece and half-mask elastomeric respirators, or the exercise procedure described in section I.C.5(b) of this appendix for filtering facepiece respirators. Employers shall ensure that the test subjects (i.e. employees) perform the exercise procedure specified in section I.C.6(b) of this appendix for the CNP quantitative fit-testing protocol, or the exercise procedure described in section I.C.7(b) of this appendix for the CNP REDON quantitative fit testing protocol. For the remaining fit testing methods, employers ~~must~~shall ensure that ~~employees perform~~ the test exercises are performed in the appropriate test environment in the following manner: *****	
B. Qualitative Fit Test (QLFT) Protocols *****	B. Qualitative Fit Test (QLFT) Protocols *****	No changes.
2. ISOAMYL ACETATE PROTOCOL Note: This protocol is not appropriate to use for the fit testing of particulate respirators. If used to fit test particulate respirators, the respirator must be equipped with an organic vapor filter. (a) Odor Threshold Screening	2. Isoamyl Acetate Protocol NOTE: This protocol is not appropriate to use for the fit testing of particulate respirators. If used to fit test particulate respirators, the respirator must be equipped with an organic vapor filter. (a) Odor Threshold Screening. Odor threshold screening, performed without wearing a	

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
Odor threshold screening, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate at low levels. *****	respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate at low levels. *****	
(6) A test blank shall be prepared in a third jar by adding 500 cc of odor-free water. *****	(6) A test blank shall ~~by~~be prepared in a third jar by adding 500 cc of odor-free water. *****	This section of Appendix A to 8 CCR §5144 modified to align language with Appendix A to §1910.134.
3. SACCHARIN SOLUTION AEROSOL PROTOCOL The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test. (a) Taste threshold screening. The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin. *****	3. Saccharin Solution Aerosol Protocol. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test. (a) Taste threshold screening. The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin. *****	No changes.
(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours. *****	(14) The nebulizer shall ~~ge~~be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours. *****	This section of Appendix A to 8 CCR §5144 modified to align with the language used in Appendix A to §1910.134.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
(b) Saccharin solution aerosol fit test procedure. (1) The test subject may not eat, drink (except plain water), smoke, or chew gum for 15 minutes before the test. *****	(b) Saccharin solution aerosol fit test procedure. (1) The test subject may not eat, drink (except ~~for~~ plain water), smoke, or chew gum for 15 minutes before the test. *****	This section of Appendix A to 8 CCR §5144 modified to align with the language used in Appendix A to §1910.134.
(6) As before, the test subject shall breathe through the slightly open mouth with tongue extended, and report if he/she tastes the sweet taste of saccharin. *****	(6) As before, the test subject shall breathe through the slightly open mouth with ~~the~~ tongue extended, and report if ~~he/she~~they taste~~s~~ the sweet taste of saccharin. *****	This section of Appendix A to 8 CCR §5144 modified to align with the language used in Appendix A to §1910.134. Updated gender-specific pronouns to make them more inclusive and changed “tastes the sweet taste of saccharin” to “taste the sweet taste of saccharin.”
5. IRRITANT SMOKE (STANNIC CHLORIDE) PROTOCOL This qualitative fit test uses a person's response to the irritating chemicals released in the “smoke” produced by a stannic chloride ventilation smoke tube to detect leakage into the respirator. *****	5. Irritant Smoke (Stannic Chloride) Protocol. This qualitative fit test uses a person's response to the irritating chemicals released in the “smoke” produced by a stannic chloride ventilation smoke tube to detect leakage into the respirator. *****	No changes.
(c) Irritant Smoke Fit Test Procedure *****	(c) Irritant Smoke Fit Test Procedure *****	No changes.
(3) The test operator shall direct the stream of irritant smoke from the smoke tube toward the faceseal area of the test subject, using the	(3) The test operator shall direct the stream of irritant smoke from the smoke tube toward the ~~faceseal~~face seal area of the test subject,	Corrected spelling of “faceseal” to “face seal.”

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
low flow pump or the squeeze bulb. The test operator shall begin at least 12 inches from the facepiece and move the smoke stream around the whole perimeter of the mask. The operator shall gradually make two more passes around the perimeter of the mask, moving to within six inches of the respirator. ***** C. Quantitative Fit Test (QNFT) Protocols The following quantitative fit testing procedures have been demonstrated to be acceptable: Quantitative fit testing using a non-hazardous test aerosol (such as corn oil, polyethylene glycol 400 [PEG 400], di-2-ethyl hexyl sebacate [DEHS], or sodium chloride) generated in a test chamber, and employing instrumentation to quantify the fit of the respirator; Quantitative fit testing using ambient aerosol as the test agent and appropriate instrumentation (condensation nuclei counter) to quantify the respirator fit; Quantitative fit testing using controlled negative pressure and appropriate instrumentation to measure the volumetric leak rate of a facepiece to quantify the respirator fit.	using the low flow pump or the squeeze bulb. The test operator shall begin at least 12 inches from the facepiece and move the smoke stream around the whole perimeter of the mask. The operator shall gradually make two more passes around the perimeter of the mask, moving to within six inches of the respirator. ***** C. Quantitative Fit Test (QNFT) Protocols. The following quantitative fit testing procedures have been demonstrated to be acceptable: Quantitative fit testing using a non-hazardous test aerosol (such as corn oil, polyethylene glycol 400 [PEG 400], di-2-ethyl hexyl sebacate [DEHS], or sodium chloride) generated in a test chamber, and employing instrumentation to quantify the fit of the respirator; Quantitative fit testing using ambient aerosol as the test agent and appropriate instrumentation (condensation nuclei counter) to quantify the respirator fit; Quantitative fit testing using controlled negative pressure and appropriate instrumentation to measure the volumetric leak rate of a facepiece to quantify the respirator fit.	No changes.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
*****	*****	
3. AMBIENT AEROSOL CONDENSATION NUCLEI COUNTER (CNC) QUANTITATIVE FIT TESTING PROTOCOL. The ambient aerosol condensation nuclei counter (CNC) quantitative fit testing (PortaCount®) protocol quantitatively fit tests respirators with the use of a probe. The probed respirator is only used for quantitative fit tests. A probed respirator has a special sampling device, installed on the respirator, that allows the probe to sample the air from inside the mask. A probed respirator is required for each make, style, model, and size that the employer uses and can be obtained from the respirator manufacturer or distributor. The primary CNC instrument manufacturer, TSI Incorporated, also provides probe attachments (TSI mask sampling adapters) that permit fit testing in an employee's own respirator. A minimum fit factor pass level of at least 100 is necessary for a half-mask respirator (elastomeric or filtering facepiece), and a minimum fit factor pass level of at least 500 is required for a full-facepiece elastomeric respirator. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test. (a) PortaCount® Fit Test Requirements.	3. Ambient ~~a~~Aerosol ~~c~~Condensation ~~n~~Nuclei ~~c~~Counter (CNC) ~~q~~Quantitative ~~f~~Fit ~~t~~Testing ~~p~~Protocol. The ambient aerosol condensation nuclei counter (CNC) quantitative fit testing (~~Portacount~~ ™ PortaCount®) protocol quantitatively fit tests respirators with the use of a probe. The probed respirator is only used for quantitative fit tests. A probed respirator has a special sampling device, installed on the respirator, that allows the probe to sample the air from inside the mask. A probed respirator is required for each make, style, model, and size that the employer uses and can be obtained from the respirator manufacturer or distributor. The primary CNC instrument manufacturer, TSI ~~Inc.~~Incorporated, also provides probe attachments (TSI mask sampling adapters) that permit fit testing in an employee's own respirator. A minimum fit factor pass level of at least 100 is necessary for a half-mask respirator (elastomeric or filtering facepiece), and a minimum fit factor pass level of at least 500 is required for a full facepiece ~~negative pressure~~elastomeric respirator. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test. (a) ~~Portacount~~PortaCount® Fit Test Requirements.	This section of Appendix A to 8 CCR §5144 modified to align with the language used in Appendix A to §1910.134.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
(1) Check the respirator to make sure the sampling probe and line are properly attached to the facepiece and that the respirator is fitted with a particulate filter capable of preventing significant penetration by the ambient particles used for the fit test (e.g., NIOSH 42 CFR 84 series 100, series 99, or series 95 particulate filter) per manufacturer's instruction. ***** (5) Follow the manufacturer's instructions for operating the Portacount® and proceed with the test. (6) The test subject shall be instructed to perform the exercises in section I. A. 14. of this appendix. ***** (b) PortaCount® Test Instrument. (1) The PortaCount® will automatically stop and calculate the overall fit factor for the entire set of exercises. The overall fit factor is what counts. The Pass or Fail message will indicate whether or not the test was successful. If the test was a Pass, the fit test is over.	(1) Check the respirator to make sure the sampling probe and line are properly attached to the facepiece and that the respirator is fitted with a particulate filter capable of preventing significant penetration by the ambient particles used ~~by~~for the fit test (e.g. NIOSH 42 CFR 84 series 100, series 99 or series 95 particulate filter) per manufacturer's instruction. ***** (5) Follow the manufacturer's instructions for operating the ~~Portacount~~PortaCount® and proceed with the test. (6) ~~t~~The test subject shall be instructed to perform the exercises in section I. A. 14. of this appendix. ***** (b) ~~Portacount~~PortaCount® Test Instrument. (1) The ~~Portacount~~PortaCount® will automatically stop and calculate the overall fit factor for the entire set of exercises. The overall fit factor is what counts. The Pass or Fail message will indicate whether or not the test was successful. If the test was a Pass, the fit test is over.	This section of Appendix A to 8 CCR §5144 modified to align with the language used in Appendix A to §1910.134.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures noted.

SCOPE: Applicable throughout state unless otherwise

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
(2) Since the pass or fail criterion of the PortaCount® is user programmable, the test operator shall ensure that the pass or fail criterion meet the requirements for minimum respirator performance in this Appendix. ***** 4. MODIFIED AMBIENT AEROSOL CONDENSATION NUCLEI COUNTER (CNC) QUANTITATIVE FIT TESTING PROTOCOL FOR FULL-FACEPIECE AND HALF-MASK ELASTOMERIC RESPIRATORS. (a) When administering this protocol to test subjects, employers shall comply with the requirements specified in Part I.C.3 of this appendix (ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol), except they shall use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in section I.C.3(a)(6) of this appendix. (b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and duration procedures, including the order of administration, described in Table A-1 of this appendix. **Table A-1 - Modified Ambient Aerosal CNC Quantitative Fit Testing Protocol for Full**	(2) Since the pass or fail criterion of the ~~Portacount~~PortaCount® is user programmable, the test operator shall ensure that the pass or fail criterion meet the requirements for minimum respirator performance in this appendix. ***** 4. Modified Ambient Aerosol Condensation Nuclei Counter (CNC) Quantitative Fit Testing Protocol for Full-Facepiece and Half-Mask Elastomeric Respirators. (a) When administering this protocol to test subjects, employers shall comply with the requirements specified in section I.C.3 of this appendix (ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol), except they shall use the test exercises described below in subsection (b) of this protocol instead of the test exercises specified in section I.C.3(a)(6) of this appendix. (b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and duration procedures, including the order of administration, described in Table A-1 of this appendix. Table A-1 - Modified Ambient Aerosol CNC Quantitative Fit Testing Protocol for Full	This section of Appendix A to 8 CCR §5144 added verbatim from Appendix A to §1910.134. The four deviations from Appendix A to §1910.134 are: (1) Spelling correction of the word aerosol (see the titles of Table A-1 and A-2). (2) Replacing “Part” with “section” for consistency with the rest of the regulation (e.g. Part I.C.3 to section I.C.3). (3) Updated gender-specific pronouns to make them more inclusive. (4) Added periods at the end of all sentences in Table A-1 and A-2 for consistency.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures noted.

SCOPE: Applicable throughout state unless otherwise

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE

Facepiece and Half-Mask Elastomeric Respirators

Exercises[1]	Exercise procedure	Measurement procedure
Bending Over	The test subject shall bend at the waist, as if going to touch his/her toes for 50 seconds and inhale 2 times at the bottom[2]	A 20 second ambient sample, followed by a 30 second mask sample.
Jogging-in-Place	The test subject shall jog in place comfortably for 30 seconds	A 30 second mask sample.
Head Side-to-Side	The test subject shall stand	A 30 second mask sample.

Facepiece and Half-Mask Elastomeric Respirators

Exercises[1]	Exercise procedure	Measurement procedure
Bending Over	The test subject shall bend at the waist, as if going to touch their toes for 50 seconds and inhale 2 times at the bottom.[2]	A 20 second ambient sample, followed by a 30 second mask sample.
Jogging-in-Place	The test subject shall jog in place comfortably for 30 seconds.	A 30 second mask sample.
Head Side-to-Side	The test subject shall stand in place,	A 30 second mask sample.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910			STATE: General Industry Safety Orders			RATIONALE
	in place, slowly turning his/her head from side to side for 30 seconds and inhale 2 times at each extreme[2]			slowly turning their head from side to side for 30 seconds and inhale 2 times at each extreme.[2]		
Head Up-and-Down	The test subject shall stand in place, slowly moving his/her head up and down for 39 seconds and inhale 2 times at each extreme[2]	A 30 second mask sample followed by a 9 second ambient sample.	Head Up-and-Down	The test subject shall stand in place, slowly moving their head up and down for 39 seconds and inhale 2 times at each extreme.[2]	A 30 second mask sample followed by a 9 second ambient sample.	
[1]Exercises are listed in the order in which they are to be administered.			[1]Exercises are listed in the order in which they are to be administered. [2]It is optional for test subjects to take additional breaths at other times during this exercise.			

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures noted.

SCOPE: Applicable throughout state unless otherwise

<table>
<tr><th>FEDERAL: §1910</th><th>STATE: General Industry Safety Orders</th><th>RATIONALE</th></tr>
<tr>
<td>[2]It is optional for test subjects to take additional breaths at other times during this exercise.

5. MODIFIED AMBIENT AEROSOL CONDENSATION NUCLEI COUNTER (CNC) QUANTITATIVE FIT TESTING PROTOCOL FOR FILTERING FACEPIECE RESPIRATORS.

(a) When administering this protocol to test subjects, employers shall comply with the requirements specified in Part I.C.3 of this appendix (ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol), except they shall use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in section I.C.3(a)(6) of this appendix.

(b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and duration procedures, including the order of administration, described in Table A-2 of this appendix.

Table A-2 - Modified Ambient Aerosal CNC Quantitative Fit Testing Protocol for Filtering Facepiece Respirators</td>
<td>5. Modified Ambient Aerosol Condensation Nuclei Counter (CNC) Quantitative Fit Testing Protocol for Filtering Facepiece Respirators.

(a) When administering this protocol to test subjects, employers shall comply with the requirements specified in section I.C.3 of this appendix (ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol), except they shall use the test exercises described below in subsection (b) of this protocol instead of the test exercises specified in section I.C.3(a)(6) of this appendix.

(b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and duration procedures, including the order of administration, described in Table A-2 of this appendix.

Table A-2 - Modified Ambient Aerosol CNC Quantitative Fit Testing Protocol for Filtering Facepiece Respirators
<table>
<tr><th>Exercises[1]</th><th>Exercise procedure</th><th>Measurement procedure</th></tr>
<tr><td>Bending Over</td><td>The test subject shall bend at the</td><td>A 20 second ambient sample, followed by</td></tr>
</table>
</td>
<td></td>
</tr>
</table>

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures noted.

SCOPE: Applicable throughout state unless otherwise

FEDERAL: §1910			STATE: General Industry Safety Orders		RATIONALE
Exercises[1]	**Exercise procedure**	**Measurement procedure**			
Bending Over	The test subject shall bend at the waist, as if going to touch his/her toes for 50 seconds and inhale 2 times at the bottom[2]	A 20 second ambient sample, followed by a 30 second mask sample.		waist, as if going to touch their toes for 50 seconds and inhale 2 times at the bottom.[2]	a 30 second mask sample.
Talking	The test subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor for 30 seconds.	A 30 second mask sample.	Talking	The test subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor for 30 seconds. They will either read from a prepared text such as the Rainbow Passage,	A 30 second mask sample.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures noted.

SCOPE: Applicable throughout state unless otherwise

FEDERAL: §1910			STATE: General Industry Safety Orders			RATIONALE
	He/she will either read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song			count backward from 100, or recite a memorized poem or song		
Head Side-to-Side	The test subject shall stand in place, slowly turning his/her head from side to side for 30 seconds and inhale 2 times at each extreme[2]	A 30 second mask sample.	Head Side-to-Side	The test subject shall stand in place, slowly turning their head from side to side for 30 seconds and inhale 2 times at each extreme.[2]	A 30 second mask sample.	
			Head Up-and-Down	The test subject shall stand in place, slowly moving their head up and down for 39	A 30 second mask sample followed by a 9 second ambient sample.	

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
<table><tr><td>Head Up-and-Down</td><td>The test subject shall stand in place, slowly moving his/her head up and down for 39 seconds and inhale 2 times at each extreme[2]</td><td>A 30 second mask sample followed by a 9 second ambient sample.</td></tr></table> [1]Exercises are listed in the order in which they are to be administered. [2]It is optional for test subjects to take additional breaths at other times during this exercise.	<table><tr><td></td><td>seconds and inhale 2 times at each extreme.[2]</td><td></td></tr></table> [1]Exercises are listed in the order in which they are to be administered. [2]It is optional for test subjects to take additional breaths at other times during this exercise.	
6. CONTROLLED NEGATIVE PRESSURE (CNP) QUANTITATIVE FIT TESTING PROTOCOL. The CNP protocol provides an alternative to aerosol fit test methods. The CNP fit test method technology is based on exhausting air from a temporarily sealed respirator facepiece to generate and then maintain a constant negative pressure inside the facepiece. The rate of air exhaust is controlled so that a constant negative pressure is maintained in	~~4~~6. Controlled ~~n~~Negative ~~p~~Pressure (CNP) ~~q~~Quantitative ~~f~~Fit ~~t~~Testing ~~p~~Protocol. The CNP protocol provides an alternative to aerosol fit test methods. The CNP protocol provides an alternative to aerosol fit test methods. The CNP fit test method technology is based on exhausting air from a temporarily sealed respirator facepiece to generate and then maintain a constant negative pressure inside the facepiece. The rate of air exhaust is	This section of Appendix A to 8 CCR §5144 modified to align with the section multilevel hierarchy formatting and language used in Appendix A to §1910.134. Updated gender-specific pronouns to make them more inclusive.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
the respirator during the fit test. The level of pressure is selected to replicate the mean inspiratory pressure that causes leakage into the respirator under normal use conditions. With pressure held constant, air flow out of the respirator is equal to air flow into the respirator. Therefore, measurement of the exhaust stream that is required to hold the pressure in the temporarily sealed respirator constant yields a direct measure of leakage air flow into the respirator. The CNP fit test method measures leak rates through the facepiece as a method for determining the facepiece fit for negative pressure respirators. The CNP instrument manufacturer Occupational Health Dynamics of Birmingham, Alabama also provides attachments (sampling manifolds) that replace the filter cartridges to permit fit testing in an employee's own respirator. To perform the test, the test subject closes his or her mouth and holds his/her breath, after which an air pump removes air from the respirator facepiece at a pre-selected constant pressure. The facepiece fit is expressed as the leak rate through the facepiece, expressed as milliliters per minute. The quality and validity of the CNP fit tests are determined by the degree to which the in-mask pressure tracks the test pressure during the system measurement time of approximately five seconds. Instantaneous feedback in the form of a real-time pressure	controlled so that a constant negative pressure is maintained in the respirator during the fit test. The level of pressure is selected to replicate the mean inspiratory pressure that causes leakage into the respirator under normal use conditions. With pressure held constant, air flow out of the respirator is equal to air flow into the respirator. Therefore, measurement of the exhaust stream that is required to hold the pressure in the temporarily sealed respirator constant yields a direct measure of leakage air flow into the respirator. The CNP fit test method measures leak rates through the facepiece as a method for determining the facepiece fit for negative pressure respirators. The CNP instrument manufacturer Occupational Health Dynamics of Birmingham, Alabama also provides attachments (sampling manifolds) that replace the filter cartridges to permit fit testing in an employee's own respirator. To perform the test, the test subject closes ~~his or her~~their mouth and holds ~~his/her~~their breath, after which an air pump removes air from the respirator facepiece at a pre-selected constant pressure. The facepiece fit is expressed as the leak rate through the facepiece, expressed as milliliters per minute. The quality and validity of the CNP fit tests are determined by the degree to which the in-mask pressure tracks the test pressure during the system measurement time of approximately five	

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
trace of the in-mask pressure is provided and used to determine test validity and quality. A minimum fit factor pass level of 100 is necessary for a half-mask respirator and a minimum fit factor of at least 500 is required for a full facepiece respirator. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.	seconds. Instantaneous feedback in the form of a real-time pressure trace of the in-mask pressure is provided and used to determine test validity and quality. A minimum fit factor pass level of 100 is necessary for a half-mask respirator and a minimum fit factor of at least 500 is required for a full facepiece respirator. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.	
(a) CNP Fit Test Requirements *****	(a) CNP Fit Test Requirements. *****	No changes.
(7) The QNFT protocol shall be followed according to section I. C. 1. of this appendix with an exception for the CNP test exercises. *****	(7) The QNFT protocol shall be followed according to section I.~~-~~C.~~-~~1. of this appendix with an exception for the CNP test exercises. *****	This section of Appendix A to 8 CCR §5144 modified to align with the language used in Appendix A to §1910.134. Removed the extra spacing in the section reference from I. C. 1. to I.C.1.
(c) CNP Test Instrument. *****	(c) CNP Test Instrument. *****	No changes.
(1) The test instrument must have an effective audio-warning device, or a visual-warning device in the form of a screen tracing, that indicates when the test subject fails to hold his or her breath during the test. The test must be terminated and restarted from the beginning when the test subject fails to hold his or her breath during the test. The test subject then may be refitted and retested.	(1) The test instrument must have an effective audio warning device, or a visual-warning device in the form of a screen tracing, that indicates when the test subject fails to hold ~~his or her~~their breath during the test. The test ~~shall~~must be terminated and restarted from the beginning when the test subject fails to hold ~~his or her~~their breath during the test. The test subject then may be refitted and retested.	This section of Appendix A to 8 CCR §5144 modified to align with the language used in Appendix A to §1910.134. Updated gender-specific pronouns to make them more inclusive.

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

<table>
<tr><th>FEDERAL: §1910</th><th>STATE: General Industry Safety Orders</th><th>RATIONALE</th></tr>
<tr><td>*****</td><td>*****</td><td></td></tr>
<tr><td>7. CONTROLLED NEGATIVE PRESSURE (CNP) REDON QUANTITATIVE FIT TESTING PROTOCOL.

(a) When administering this protocol to test subjects, employers must comply with the requirements specified in paragraphs (a) and (c) of part I.C.6 of this appendix (“Controlled negative pressure (CNP) quantitative fit testing protocol,”) as well as use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in paragraph (b) of part I.C.6 of this appendix.

(b) Employers must ensure that each test subject being fit tested using this protocol follows the exercise and measurement procedures, including the order of administration described in Table A-3 of this appendix.

Table A-3 - CNP REDON Quantitative Fit Testing Protocol
<table><tr><th>Exercises[1]</th><th>Exercise procedure</th><th>Measurement procedure</th></tr></table>
*****</td><td>~~5~~7. Controlled ~~n~~Negative ~~p~~Pressure (CNP) REDON ~~q~~Quantitative ~~f~~Fit ~~t~~Testing ~~p~~Protocol.

(a) ~~CNP REDON Fit Test Requirements~~. When administering ~~the CNP REDON~~this protocol to test subjects, employers must comply with the ~~CNP fit test~~ requirements specified in sections I.C.~~4.~~6(a) and (c) of this appendix (“Controlled negative pressure (CNP) quantitative fit testing protocol,”) as well as use the test exercises described below in subsection (b) of this protocol instead of the test exercises specified in section I.C.6(b) of this appendix.

(b)~~ CNP REDON Test Exercises. (1)~~ Employers must ensure that each test subject being fit tested using this protocol follows the exercise and measurement procedures, including the order of administration~~,~~ described ~~below~~ in Table A-~~1~~3 of this appendix.

Table A-~~1~~3. - CNP REDON Quantitative Fit Testing Protocol
<table><tr><td>Exercises(1)</td><td>Exercise procedure</td><td>Measurement procedure</td></tr></table>
*****</td><td></td></tr>
<tr><td>(c) After completing the test exercises, the test administrator must question each test subject</td><td>(~~2~~c) After completing the test exercises, the test administrator must question each test</td><td>This section of Appendix A to 8 CCR §5144 modified to align with the section multilevel</td></tr>
</table>

SOURCE OF FEDERAL OSHA STANDARD(S): 29 CFR 1910.134 Appendix A Fit Testing Procedures

SCOPE: Applicable throughout state unless otherwise noted.

FEDERAL: §1910	STATE: General Industry Safety Orders	RATIONALE
regarding the comfort of the respirator. When a test subject states that the respirator is unacceptable, the employer must ensure that the test administrator repeats the protocol using another respirator model. (d) Employers must determine the overall fit factor for each test subject by calculating the harmonic mean of the fit testing exercises as follows: *****	subject regarding the comfort of the respirator. When a test subject states that the respirator is unacceptable, the employer must ensure that the test administrator repeats the protocol using another respirator model. (~~3~~d) Employers must determine the overall fit factor for each test subject by calculating the harmonic mean of the fit testing exercise as follows: *****	list hierarchy formatting used in Appendix A to §1910.134.
	~~(c) CNP REDON Test Instrument. When administering the CNP REDON protocol to test subjects, employers must comply with the CNP test instrument requirements specified in section I.C.4.(c) of this appendix.~~ ***** Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.	This section of Appendix A to 8 CCR §5144 removed to align with the language used in Appendix A to §1910.134.

Occupational Safety and Health Standards Board

Business Meeting

Occupational Safety and Health Standards Board

Business Meeting

Standards for Adoption

Heat Illness Prevention in Indoor Places of Employment

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

NEW SECTION 3396

HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

HYPERLINKS TO RULEMAKING DOCUMENTS:

TEXT FOR BOARD CONSIDERATION

FINAL STATEMENT OF REASONS

INITIAL STATEMENT OF REASONS

MOVED, That the following resolution be adopted:

WHEREAS, On March 31, 2023, the Occupational Safety and Health Standards Board, pursuant to Government Code Section 11346.4, fixed the time and place for a Public Hearing to consider the revisions to Title 8, General Industry Safety Orders, new section 3396, Heat Illness Prevention in Indoor Places of Employment.

WHEREAS, Such Public Hearing was held in person in San Diego, California and via teleconference and videoconference, on May 18, 2023, and there are now before the Occupational Safety and Health Standards Board the proposed revisions to Title 8, General Industry Safety Orders, new section 3396, Heat Illness Prevention in Indoor Places of Employment; therefore, be it

RESOLVED By the Occupational Safety and Health Standards Board in regular meeting held in person in San Diego, California and via teleconference and videoconference, on March 21, 2024, that the proposed revisions to Title 8, General Industry Safety Orders, new section 3396, Heat Illness Prevention in Indoor Places of Employment, be adopted.

RESOLVED That the Occupational Safety and Health Standards Board shall file with the Office of Administrative Law a sufficient number of copies of said filing documents and a copy of the rulemaking file for use by the Office of Administrative Law.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

_____
DAVE THOMAS, CHAIRMAN

_____

_____

_____

_____

_____

_____

Certified As A Regulation
Of the Occupational Safety
And Health Standards Board

BY:_____
Autumn Gonzalez, Chief Counsel

DATED: March 21, 2024

FIRST 15-DAY NOTICE (AUGUST 4, 2023)

HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

From:	Mary Ann Pham
To:	DIR OSHSB
Cc:	info@pasmaonline.org
Subject:	3396 Heat Illness Prevention in Indoor Places of Employment - Comments
Date:	Friday, August 4, 2023 1:57:55 PM
Attachments:	Outlook-i2o4tpnl.png Outlook-cvyzf0ne.png Outlook-hdiwocon.png Outlook-fj2knvid.png

Good Day,

I request further clarification on §3396(a) Scope and Application. For applicability, this is determined to be “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present”. Upon review of the proposed regulation, there is no definition for “indoor work areas”. It is understandable for smaller offices where there is one thermometer, although a number of worksites operate with a large square footage and utilize more than one thermometer in the work area. From my past experience working with a variety of office suites with an open cubicle layout, it is not uncommon for the HVAC system to malfunction during the summer and have a section of the office is kept at a reasonable 72 degrees Fahrenheit, while another section of the office is hot at 81 degrees Fahrenheit with air vents blowing at 96 degrees Fahrenheit due to a broken AC unit. In cases like those, how would this regulation be applied?

Please provide:

- A definition for "indoor work areas"
- Consideration for indoor work areas which have multiple temperature readings in various sections that do not have floor to ceiling separations.
- Consideration between ambient air temperature and influent air that may adversely affect a section of employees who are technically in workspaces where the ambient air temperature does not meet the threshold temperature.
- How to apply the regulation when the indoor work area ambient air temperature is not uniform throughout the work area.

I'm not sure how to enforce this regulation if I have office management who justify keeping staff in environments where the overall temperature of the office is tolerable while a section is blowing hot air directly onto a handful of employees who can't move to another workstation because they need hardware that is only available where the hot air is blowing (ex: sit and stand).

To ensure that we have Cal/OSHA's support when providing guidance to management for a safe work area, please modify 3396 to address the concerns identified above.

Regards,

Mary Ann Pham
Safety Officer II
501 Shatto Pl., Suite 401, Los Angeles, CA 90040
Office of Health and Safety Management
Mobile: 213-435-3350
Email: PhamM@dcfs.lacounty.gov
www.dcfs.lacounty.gov

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2023 Board Vice President
Public Agency Safety Management Association (PASMA) - South Chapter
Email: info@pasmaonline.org

From: ofc ilwu26.com
To: DIR OSHSB; Stephen Knight
Subject: Please see attached letter
Date: Friday, August 4, 2023 8:03:55 PM
Attachments: 20230804200612.pdf

Hello Christina and Stephen,

Please see the attached letter.

Respectfully,

Luisa Gratz

AUGUST 4, 2023 BY E-MAIL

TO: CHRISTINA SHOPE <oshsb@dir.ca.gov>

TO: STEPHEN KNIGHT, WORKSAFE
<sknight@worksafe.org>

FROM: LUISA GRATZ PRES. LOCAL 26, ILWU
<ofc@ilwu26.com>

RE: OSH STRATEGY GROUP - 15 DAY CHANGE NOTICE ON THE INDOOR HEAT STANDARD NEW SECTION OF TITLE 8, § 3396 GEN. IND. SAFETY ORDER

HELLO CHRISTINA & STEPHEN,

THANK YOU FOR SENDING ME THIS NOTICE OR I WOULD NOT KNOW ABOUT THIS "15 DAY CHANGE NOTICE."

I HAVE BEEN WORKING WITH AMALIA NEIDHART OVER THE PREVIOUS YEARS AS AN ADVOCATE FOR FUNDAMENTAL CHANGES THAT ACTUALLY MAKE A DIFFERENCE IN THE TERMS & ACTUAL CONDITIONS, PHYSICAL AND MENTAL, UNDER WHICH WORKERS IN CALIFORNIA MUST "TOIL" IN NON AIR CONDITIONED WORK ENVIRONMENTS THAT ARE INDOOR, & ALSO, ON PLATFORMS, UPSTAIRS ON FLOORS WITHOUT COOLING OR AIR CIRCULATION, ENDURING CONVECTION CURRENTS & RISING TEMPERATURES COMBINED WITH INCREASING HUMIDITY & STORAGE.

THE "HEAT INDEX INCLUDES HUMIDITY" &,

CONT. →

WAS NOT ADEQUATELY ADDRESSED IN THIS STANDARD PROPOSAL.

ALSO IGNORED BUT VERY RELEVANT, IS THE CLOTHING WORN BY A WORKER OR REQUIRED OF THE WORKER AS A CONDITION OF EMPLOYMENT. "COTTON", NOT POLYESTER. SOME BODY COVERINGS ARE ESSENTIAL TO PROTECT THE WORKERS SAFETY & HEALTH. WHEN THESE TERMS & CONDITIONS EXIST, AND THEY DO, THE HEAT INDEX MUST BE REDUCED TO A COMFORT LEVEL THAT CAN BE MAINTAINED THROUGHOUT THEIR WORK DAY.

FURTHERMORE, & ALSO IGNORED IN THIS PROPOSED STANDARD, IS A RELEVANT IDENTIFICATION OF SPECIFIC WORK CATAGORIES, SOME OF WHICH IS AT A DESK OR COONTER, OTHER WORK IS REPETITIVE, LIGHT WEIGHT, VERY HEAVY, REPETIVIVE LIFTING & OTHER CUMULATIVE MOVEMENTS GENERATING BODY HEAT IN ADDITION TO THE "HEAT INDEX. "WORK DESCRIPTION IS AN ESSENTIAL COMPONENT TO THE INDOOR HEAT (CONTROL) STANDARD. WITHOUT A WORK DESCRIPTON & RELEVANT APPLICATION IT IS NOT A USEFUL PROPOSAL FOR WORKERS WHO NEED IT, & WILL DEPEND ON ITS INTEGRITY

CONT →

FOR THEIR PHYSICA & MENTAL HEALTH AT WORK. CLIMATE CHANGE IS REAL. LAWS MUST CHANGE TO REFLECT CARE OR THEY ARE USELESS. LETS BE REAL.

THE DEFINATION OF A "UNION REPRESENTATIVE IS IMPORTANT SO THAT THERE IS NO AMBIGUITY. THE STANDARD MUST ALSO BE EFFECTIVE FOR WORKERS IN NON-UNION WORKPLACES FOR WORKER ENFORSEMENT, NOT ARGOMENTS WITH AN EMPLOYER WHOSE COMFORT LEVEL IS IN AN AIR CONDITIONED OFFICE OR WORK ENVIRONMENT.

THIS SHOULD NOT BE A NUMBERS GAME WORKING DECIMAL POINTS ON A TEMPERATURE GUAGE,..... 70°, 80°, 79.55555°, ??

RECORD KEEPING REQUIREMENTS MUST INCLUDE WORKERS' RECORDS IN ENGLISH AND IN SPANISH, AND BASED ON TOOLS THAT ARE ACCURATE & RELIABLE FOR BOTH WORKERS AND EMPLOYERS, WITH UNION APROOVAL & WORKER APROOVAL WHERE THERE IS NO UNION.

I CURRENTLY HAVE SEVERAL AMENDED PROPOSALS OF THE INDOOR HEAT STANDARD. PLEASE FORWARD MY LETTER TO THE PERSONS IDENTIFIED ON YOUR E-MAIL. THANK YOU IN ADVANCE FOR ALL YOU & WORKSAFE CONTINUE TO DO FOR WORKING PEOPLE. Tricia Gratz, I-26 ILWU

From: Stephanie Phelps
To: DIR OSHSB
Subject: Email of Support, California El Camino Real Association of Occupational Health Nurses - Heat Illness Prevention in Indoor Places of Employment
Date: Friday, August 11, 2023 6:17:45 PM

To whom it may concern,

The California El Camino Real Association of Occupational Health Nurses (CECRAOHN) supports the proposed heat illness prevention in indoor places of employment regulation. Thank you.

Sincerely,
Stephanie Phelps
CECRAOHN President

From: Michael Chaskes
To: DIR OSHSB
Subject: Amend Title 8 to Protect Outdoor Workers from heat
Date: Friday, August 11, 2023 7:22:19 AM

Dear Cal OSHA,

It's come to my attention that an amendment to Title 8 has been proposed to you, to protect outdoor workers from the dangers of extreme heat in our rapidly changing climate. Access to fresh, cool water; adequate break time in a cool area; work cessation for laborers suffering heat illness; and monitoring of temperature/heat index are eminently reasonable and crucial requirements for California employers to abide by.

I urge and petition you:

To amend Title 8, General Safety Industry Orders (GSI), to include proposed Section 3396 to address the increased risk of heat exposure and illness by indoor workers as extreme heat becomes more prevalent across the state of California. The Petitioner asks that Section 3396 be implemented in full, immediately and that there are additional measures in place to ensure continued compliance and enforcement.

Thank you for your attention.

Sincerely,

Michael Chaskes
2707 Federal Ave.
Los Angeles, CA 90064

From: Norma Wallace
To: DIR OSHSB
Cc: Money, Sarah@DIR
Subject: indoor heat -Heat Illness Prevention Plan
Date: Tuesday, August 15, 2023 8:12:29 PM
Attachments: image001.png

Hello,
This is for public comment:
Can guidance be included in this plan for school busses? We are in much need of indoor guidance for extreme heat for school buses.
Thank you!

Norma A. Wallace, **CSRM**
Executive Director-JPA
Tuolumne County Superintendent of Schools
175 Fairview Lane
Sonora, Ca. 95370
(209) 536-2035
(209) 533-9513 Fax

Tuolumne JPA
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From: Leder, Leslie on behalf of Moutrie, Robert
To: DIR OSHSB
Cc: Shupe, Christina@DIR; Park, Keummi@DIR; Berg, Eric@DIR; Neidhardt, Amalia@DIR
Subject: Comment Letter - 15 Day Change Notice re Heat Illness Prevention
Date: Wednesday, August 16, 2023 2:10:21 PM
Attachments: 8.16.23 - Cal Chamber 15-day Change Heat Illness Letter.pdf

Good afternoon,

Attached is our comment letter for the 15 day change notice re Health Illness Prevention in Indoor Places of Employment. If you have any questions, please reach out to me.

Thank you,

Rob Moutrie
Policy Advocate

CalChamber.
HR Expert & Business Advocate™

California Chamber of Commerce
1215 K Street, 14th Floor
Sacramento, CA 95814

T 916 930 1245
F 916 325 1272

August 16, 2023

Chair David Thomas and Board Members
Occupational Safety & Health Standards Board
Department of Industrial Relations, State of California
2520 Venture Oaks Way
Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

SUBJECT: HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT COMMENTS ON PROPOSED TEXT FOR ADOPTION.

Dear Chair Thomas and Members of the Board:

The California Chamber of Commerce submits this letter to provide comment upon the 15-day change notice issued on August 4, 2023 regarding the Heat Illness Prevention in Indoor Places of Employment draft regulation (the "15-day Change" and "Draft Regulation," respectively). Our recommended revisions will provide clarity to foster better compliance and improved employee safety and health.

We were involved with the development and implementation of the Outdoor Heat Illness Regulation (Section 3395) and have significant experience with how to effectively prevent heat illness. We take the safety and health of employees very seriously – and though we oppose the Draft Regulation, we hope the below comments provide helpful input regarding improving the final text, should it be passed by the Standards Board.

Appreciated Improvements in the 15-day Change

The 15-day Change includes multiple improvements over the present draft which are appreciated. These include:

- Exception for rarely-occupied spaces subject to certain terms – Section (a)(1)(C).
- Improvement to the definition of clothing that restricts heat – Section (b)(3).
- Improvement to the definition of cooldown area to recognize that certain workplaces cannot avoid all potential radiant heat sources – Section (b)(4).
- Removal of minor contradiction in when temperature measurements must be taken – Section (e)(1).
- Exemption from temperature testing for vehicles with air conditioning – Section (e)(1).
- Clarification that training for Indoor Heat and Outdoor Heat Regulations can be handled as one training – Section (h) NOTE.

These changes are improvements in the clarity and feasibility of the text for California's workplaces, and are appreciated.

Issues Created by the 15-day Change: Treatment of Shipping Containers

Issue #1 – Exception Unnecessary. The 15-day Change includes a provision to exclude rarely occupied spaces from its scope Section (a)(1)(C)), which is greatly appreciated by California's employers, as we believe such spaces do not present the same risk as a workplace where workers spend lengthy periods in high heat. To be specific, this exception requires that the subject location is:

- "not normally occupied when employees are present or working in the area or at the worksite"
- "not contiguous with a normally occupied location"
- Occupied by employees for "less than 15 minutes in any one-hour period"

These requirements ensure that the exception does not become the proverbial "exception that swallows the rule," while still appropriately excluding places like tool sheds or other rarely-used storage spaces.

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
www.calchamber.com

However, this exception contains its own exception which excludes "vehicles or shipping containers." While we understand that vehicles pose unique issues, we are surprised at the exclusion of shipping containers. Shipping containers are, in many worksites, used as storage and rarely entered. This is particularly true on construction sites, though it can also occur in agricultural settings. It can also occur when a shipping container is left alone at an intermediate storage location (logistics industry) before it is shipped further along its route. In these cases, we believe the exception should apply.

We appreciate that there may be circumstances where a shipping container should ***not*** be covered by the exception – such as when it is used as a temporary office or workshop. Similarly, we understand that if a shipping container is being unloaded – and workers are in and out of it for a long period – then that perhaps should not fall under the exemption. However, ***each of these circumstances is already addressed by the exemption's three limitations***. In the event that a storage container is used as an office – it would not qualify. If it is being fully unloaded, then it would certainly be "normally occupied when employees are present or working in the area."

In other words: we do not see why "shipping containers" should be treated this way, regardless of their usage, when any other structure (wooden shed, school bungalow, etc.) would be examined based on its ***usage***. For that reason, we would request the following change:

"(C) Indoor locations that meet all of the following criteria are considered outdoors and are covered by Section 3395 and not this section. ~~This exception does not apply to vehicles or shipping containers.~~ Criteria for this exception are: …"

Issue #2 - Terminology of "Shipping Container." The term "shipping container" is problematic by itself. Preferably, this definition would not be used, and the focus can remain on the operational traits of the space, as discussed above. As noted above, the use of the term is not necessary as the exception's terms resolve any concerns.

If a definition/term is going to be used, it should be consistent with other regulations. For example, we would propose use of the term "intermodal container"[1], which would appear to be a better fit for indoor heat regulation and is already in use in the marine shipping industry. Notably, the term is also used by federal OSHA.[2]

Conclusion

Thank you for the opportunity to provide feedback on this important issue.

Sincerely,

Robert Moutrie
Policy Advocate

Copy: Christina Shupe cshupe@dir.ca.gov
Keummi Park kpark@dir.ca.gov
Eric Berg eberg@dir.ca.gov
Amalia Neidhardt aneidhardt@dir.ca.gov

[1] Intermodal container is defined in Section 3460 as "A reusable cargo container of rigid construction and rectangular configuration, intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes without intermediate cargo handling. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system, demountable or with attached wheels. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging."

[2] Fed OSHA definition in Section 1917.2 – Definitions, available at https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.2#:~:text=Intermodal%20container%20means%20a%20reusable%20cargo%20container%20of,water%20and%20one%20or%20more%20other%20transport%20modes.

From: Lee Sandahl
To: DIR OSHSB
Subject: Fwd: Indoor heat
Date: Monday, August 21, 2023 8:14:43 AM

---------- Forwarded message ---------
From: **Lee Sandahl** <leesandahl@gmail.com>
Date: Sun, Aug 20, 2023 at 8:12 PM
Subject: Fwd: Indoor heat
To: Stephen Knight <sknight@worksafe.org>

---------- Forwarded message ---------
From: **Lee Sandahl** <leesandahl@gmail.com>
Date: Sun, Aug 20, 2023 at 7:34 PM
Subject: Indoor heat
To: Stephen Knight <sknight@worksafe.org>

The northern Ca district council of the International Longshore and Warehouse Union and the Teamsters Union were joint sponsors of four indoor heat bills starting with assembly member Richardsons bill AB_1045 in 2007. Her bill was followed by Assembly member Swansons bill AB-838 in 2009 and Senator Mendosa's in 2015, and Senators Leyva's in 2016 which was signed into law in 2016 by Governor Brown.

The real tragedy here is that since the bill was signed into law 7 years ago workers in many indoor heat related industries have suffered and died because of the lack of perminate language addressing the standard for indoor heat.

Control measures for workers having to wear protective clothing
Cotton should be the material chosen. It will safely protect workers more so that any other material choice.

The index should be set st 80 degrees f.

Work discretion, identification, is necessary to the indoor heat control standard. Workers need description and relevant application for their physical and mental health at work.

The definition of a union representative is important so that there is no uncertainty. The standard must also be effective for workers who are not represented by a union .

Record keeping requirements should include workers records in English and Spanish. Accuracy is very important for both workers and employers the accuracy will help facilitate issues for employers, workers represented by unions and approval from workers who are not represented by a union.

The Northern California District Council of the ILWU advocates for fundamental changes that make a difference in the terms and conditions, physical and mental , that workers in Ca. deal with indoor environments.

Lee Sandahl, on behalf of the Northern Ca.District Council of the ILWU.

Stephen, I am having dificulty sending emails with my commputor. Could use please forward this to the CAL Osha standards board for me.I will continue to work with the computer and email it around to more people. Want you to have the availbility to forward it on to more people in the committee. It's just an issue wither with my computer or email.
Thanks for your help,
Lee

From: Michael Miiller
To: DIR OSHSB
Cc: Shupe, Christina@DIR; Park, Keummi@DIR; Berg, Eric@DIR; Neidhardt, Amalia@DIR; Jackson R. Gualco (jackson_gualco@gualcogroup.com)
Subject: Comments on the 15-Day Notice of Proposed Modifications -- HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT
Date: Friday, August 18, 2023 11:18:31 AM
Attachments: image004.png
Ag Coalition Letter Indoor Heat Regulation 15-Day Comment FINAL.pdf

Good Morning,

Please accept the attached document as public comments from the agricultural coalition identified on the signature and logo pages.

Thank you in advance for consideration of these comments and please confirm receipt.

Have a great weekend,

Michael

MICHAEL MIILLER | **California Association of Winegrape Growers** | **Director of Government Relations**
1121 L Street, Suite 304 | Sacramento, CA 95814 | michael@cawg.org
Office (916) 379-8995 | Mobile (916) 204-0485 | www.cawg.org | www.cawgfoundation.org |
www.unifiedsymposium.org ***—Begins January 23, 2024***

The most effective way to reach me is at my mobile number or e-mail.

August 18, 2023

Chair David Thomas and Board Members
Occupational Safety & Health Standards Board
Department of Industrial Relations, State of California
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

SUBJECT: COMMENTS ON PROPOSED REGULATION
(15-Day Notice of Proposed Modifications)
HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

Dear Chair Thomas and Members of the Board:

The undersigned organizations representing California's agricultural industry submit this letter to comment on the 15-day change notice issued on August 4, 2023, regarding the Heat Illness Prevention in Indoor Places of Employment draft regulation (the "15-day Change" and "Draft Regulation", respectively).

We take the safety and health of our employees very seriously. Therefore, we agree with the intent of the Draft Regulation, which is to protect employees from potential unhealthy exposure to heat. That is why our past comments have asked that this Draft Regulation be focused on the direct problem it is tackling instead of taking a single-solution approach that applies to all industries.

After the 15-day Change, we continue to see this Draft Regulation as one that will result in unintended consequences, which is the inevitable result of the size-fits-all approach this regulation is taking. Consequently, the concerns we raised in our letter dated May 17 largely remain. Attached is the May 17 letter for your further consideration.

We appreciate that the 15-day Change improves various provisions of the Draft Regulation. With this letter we will focus our comments only on the 15-day Change.

NOTE: Where the division and the board determine that additional changes cannot be made to address our concerns with unintended consequences (attached amendments #1, #2 and #4), we formally and respectfully request data and evidence be provided in the public record that quantifies the benefit to the employee in rejecting the suggested changes to the Draft Regulation. Pursuant to Government Code Section 11346.8 (c), we ask the board to include its response to this paragraph in the final statement of reasons.

De Minimis Exposure

We previously asked that de minimis exposure to heat (less than 15 minutes in a 60-minute period) not be included in the scope of the Draft Regulation. Instead, the 15-day Change amends the scope by exempting 15-minute exposure but only under the following circumstances:

- The workers are working outdoors (though this is unclear);
- The exception does not apply to vehicles or shipping containers;
- The indoor location is not normally occupied when employees are present or working in the area or at the worksite; and
- The indoor location is not contiguous with a normally occupied location.

We appreciate that the amendment helps address the situation where workers work both indoors and outdoors, however, we remain concerned that the amendment does not comport with the findings of occupational health experts and of other states, including Washington state, which has recognized that de minimis exposure in the workplace creates no significant health risk, and safety standards for de minimis exposure provide no quantifiable benefit to the worker.

We believe Amendment #1 on the attached document (Potential Amendments to Proposed Title 8 Section 3396) addresses our concern with the scope of the Draft Regulation while also achieving its goal. We are happy to work with the board and division staff on refinements if needed.

If board and division staff believe that this regulation must cover de minimis exposure, we formally and respectfully request that data and evidence be provided in the public record that quantifies the benefit of the Draft Regulation for an employee who has only de minimis exposure to heat.

Sections 3395 & 3396

In the following places, the 15-day Change provides reference to how an employer may comply with section 3395 by complying with this Draft Regulation instead.

- **3396 (a)(1)(C) Indoor locations that meet all of the following criteria are considered outdoors and are covered by section 3395 and not this section.**
- **3396 (a)(5) Employers may comply with this section in lieu of section 3395 for employees that go back and forth between outdoors and indoors.**
- **3396 (h)(2) NOTE: Where employees are covered by section 3395 and this section, the training program for this section can be integrated into section 3395 training.**

In so doing, this 15-day Change is essentially altering the scope and application of Section 3395 and the measures required to comply with Section 3395 without actually amending Section 3395. This is both improper (the Board and Agency should amend Section 3395 if that is its intent) and confusing for the regulatory community in trying to understand the interaction between Section 3395 and 3396.

Section 3395 (a)(1) states that the scope and application is "all outdoor places of employment." But nowhere in Section 3396 (a)(1)(C) does it state that the worker to which this provision applies must be working outdoors. This creates confusion in the following hypothetical example:

Worksite A is indoors. Worksite B is considered to be "indoors" because it meets the exemption criteria of Section 3396 (a)(1)(C). An employee works only indoors for XYZ Company in both Worksite A and Worksite B. Under Section 3396 (a)(1)(C), Worksite B would be considered outdoors and subject to Section 3395 even though that employee never actually works outdoors.

While this amendment in the 15-day Change is likely an easily correctable drafting error, it highlights the problems presented in the way these three amendments to the Draft Regulation change the scope and application of Section 3395 and the compliance measures required without actually amending Section 3395.

Consequently, for purposes of clarity, we believe that any change in the scope, purpose, and enforcement of Section 3395 should be made by amending Section 3395. This should be a noncontroversial change which may be as simple as adding the following to Section 3395 (a), "*Except as provided in Section 3396,*". However, absent this technical correction in drafting, we believe this Draft Regulation creates a construction of law problem for the public in trying to determine how to comply with the plain language of these regulations.

Compatibility with Section 3395

If the purpose of the Draft Regulation is to protect employees from heat illness, and the employer is already fully complying with Section 3395, because the workplace in question falls within the scope of Section 3395, we believe the goal of the Draft Regulation is already being achieved through Section 3395. If this is not the case, we formally and respectfully ask the board staff and division staff to provide data and evidence in the public record of the quantifiable benefits of the Draft Regulation to employees who are already being covered under Section 3395.

The amendments in the 15-day Change touch on this issue, but do not resolve our concern. We believe Amendment #2 on the attached addresses this concern while also respecting the goal of the Draft Regulation. We are happy to work with board and division staff on refinements if needed.

Definition of Designated Representative

In the 15-day Change, Section 3396 (e)(1)(B)(3) was amended to add the following, "**The records shall be made available to employees, designated representatives as defined in section 3204, and representatives of the Division at the worksite and upon request**."

This creates confusion as Section 3204 was written for a very different and broader purpose than Section 3396 -- The "detection, treatment, and prevention of occupational disease." Access to records under that section includes "exposure records and analyses using exposure or medical records." Consequently, by referencing the definition of "designated representative" in Section 3204, this amendment in the 15-day Change seems to inadvertently require access to the following:

> *"Any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis."*

This is not an accurate description of the records required under Section 3396(e)(1)(B)(3), as the records required by that section are of temperature or heat index measurements rather than employee medical records. In short, the reasons for access to records in Section 3204 are inconsistent with Section 3396. Therefore, for purposes of clarity and consistency in drafting, we believe that "designated representative" should not be defined by reference to Section 3204 and should instead be defined in Section 3396 (b) (Definitions).

Suggested Amendment #3 on the attached deletes the reference to Section 3204, and instead copies the applicable provisions of the definition from Section 3204 and properly places it in Section 3396 (b). We view this as a technical amendment that should not be controversial or in any way change the intended scope and effect of the Draft Regulation.

Vehicles

In the 15-day Change, the amendments to Section 3396 (e)(1) create an exemption for "Vehicles with effective and functioning air conditioning." We believe if the vehicle is equipped with effective and functioning AC, the inside of that vehicle should be exempt from the entirety of the Draft Regulation. While we appreciate the proposed exemption, we are concerned that it is limited to only provisions related to the following requirements:

- The employer shall measure the temperature and heat index, and record whichever is greater.
- The employer shall also identify and evaluate all other environmental risk factors for heat illness.

This means that employers would still need to do the following for work that is done entirely inside an air-conditioned vehicle:

- Provision of water.
- Access to cool-down areas (such as the inside of a cool vehicle?)

- Use of control measures to minimize the risk of heat illness.
- Emergency response procedures.
- Acclimatization requirements where applicable.
- Training.
- Creation and implementation of a Heat Illness Prevention Plan.

The Draft Regulation applies to "all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present." While the 15-day Change amendments state the employer need not record the temperature inside an air-conditioned vehicle, the employer would still need to monitor the temperature inside the vehicle to determine how to comply with the provisions of the Draft Regulation from which the air-conditioned vehicle has been exempted.

We believe Amendment #4 provides a reasonable exception for vehicles with effective and functioning air conditioning. We also appreciate that because this Draft Regulation is intended to cover a wide litany of industries, there are substantial challenges in writing this in a way that covers all potential sources of workplace indoor heat while also avoiding unintended consequences. Which is why we have asked this Draft Regulation to be more narrowly focused.

However, if this Draft Regulation continues to define the inside of an air-conditioned vehicle as indoors, we formally and respectfully ask the board staff and division staff to provide data and evidence in the public record of the quantifiable benefits of the Draft Regulation to employees who are working inside a vehicle with effective and functioning air conditioning.

Overall Concerns Aligned with Chamber

Our organizations align ourselves with the comments in the letters submitted by the California Chamber of Commerce.

Conclusion

To keep employees safe and healthy, we believe the Draft Regulation needs further clarification. We hope that this letter is helpful in further amending the Draft Regulation to make it clear while also maintaining its purpose. These amendments would go a long way toward making compliance with the Draft Regulation more achievable, should it be approved by the board.

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

Sincerely,

See Signatures Below

Attachment: Potential Amendments to Proposed Title 8 Section 3396

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Timothy A. Johnson, President/CEO
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Grower-Shipper Association of Central California

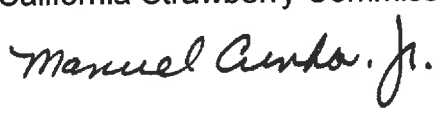
Roger Isom, President/CEO
California Cotton Ginners and Growers Association
Western Agricultural Processors Association

Bryan Little
Director, Employment Policy
California Farm Bureau

Joani Woelfel, President & CEO
Far West Equipment Dealers Association

Casey Creamer, President
California Citrus Mutual

Rick Tomlinson, President
California Strawberry Commission



Manuel Cunha, Jr., President
Nisei Farmers League

Submitted by California Association of Winegrape Growers
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California Apple Commission
California Blueberry Association
California Blueberry Commission
Olive Growers Council of California

Richard Matoian, President
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Ian LeMay, President
California Fresh Fruit Association

Pete Downs, President
Family Winemakers of California

Tim Schmelzer
Vice President, California State Relations
Wine Institute

Potential Amendments to Proposed Title 8 Section 3396
Heat Illness Prevention in Indoor Places of Employment
Submitted by Agricultural Coalition

AMENDMENT #1

This amendment is intended to avoid applying the regulation to de minimis or transient exposure to heat.

(a) Scope and Application.
(1) This section applies to all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit **for 15 minutes or more in a 60-minute period,** when employees are present **and all indoor work areas with conditions covered by subparagraph (2)**.

AMENDMENT #2

This amendment is intended to avoid the overlap of indoor and outdoor heat illness prevention regulations.

(a) Scope and Application.
(5) This section shall not apply to employees working both indoors and outdoors whenever those employees are covered by section 3395. ~~Employers may comply with this section in lieu of section 3395 for employees that go back and forth between outdoors and indoors.~~

AMENDMENT #3

This amendment clarifies the definition of "designated representative."

Section 3396(b)(5) **"Designated representative," means any individual or organization to whom an employee gives written authorization to exercise a right of access. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative.**

Section 3396(e)(1)(B)(3) Records, as required by subsection (e)(1)(A), shall be retained for 12 months or until the next measurements are taken, whichever is later, The records shall be made available to employees, designated representatives ~~**as defined in section 3204**~~, and representatives of the Division at the worksite and upon request."

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

AMENDMENT #4

This amendment clarifies that the inside of an air-conditioned vehicle is not subject to this regulation.

Section 3396 (b)(12) "Indoor" refers to a space that is under a ceiling or overhead covering that restricts airflow and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed. All work areas that are not indoor are considered outdoor and covered by section 3395. **EXCEPTION 2: Indoor does not refer to the interior passenger areas of a car, truck, van, bus, tractor or other vehicle with effective and functioning air conditioning.**

Section 3396 (e)(1)(B)
EXCEPTIONS to subsection (e)(1)
~~**(B) Vehicles with effective and functioning air conditioning.**~~

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

May 17, 2023

Chair David Thomas and Board Members
Occupational Safety & Health Standards Board
Department of Industrial Relations, State of California
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

SUBJECT: COMMENTS ON PROPOSED REGULATION
HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

Dear Chair Thomas and Members of the Board:

The undersigned organizations representing California's agricultural industry submit this letter to provide comment on the proposed Heat Illness Prevention in Indoor Places of Employment draft regulation ("Draft Regulation"). We take the safety and health of our employees very seriously – and in that vein, we agree with the intent of the regulation, which is to protect employees from potential unhealthy exposure to heat. That is why our past comments have asked that this regulation be focused on the direct problem it is tackling instead of taking a single-solution approach that applies to all industries.

Unfortunately, the Division instead chose to pursue a broad-based regulation that in its current form applies to the workplaces experiencing the most extreme heat, the inside of a comfortable air-conditioned vehicle and everything in between. Predictably, that approach has several unintended consequences that we would respectfully like to see resolved.

Therefore, we are basing our comments on the proposal as is currently before the board and focusing our comments on how this would apply specifically to agricultural employers and their employees. While we oppose the Draft Regulation, we hope the comments below and proposed amendments provide helpful feedback in improving the final text, should it be approved by the Board.

Scope and Application

As written, the Draft Regulation takes effect whenever an employee is exposed to heat that equals or exceeds 82 degrees Fahrenheit. This is without regard to the length of time the employee actually experiences this heat. This could be for as little as a few minutes or several hours.

There are dozens of situations where an employee could temporarily be exposed to heat between 81 and 87 degrees where there is no danger of heat illness. For example, an employee may accidentally shut off the AC or incorrectly sets the thermostat. These situations are quickly resolved and don't necessitate a regulatory mechanism to protect the employee from heat.

It is widely accepted that exposure to moderate heat for less than 15 minutes in any 60-minute period is considered "incidental exposure," meaning there is no need for additional regulatory protection. For example, the State of Washington's "Safety Standards for Agriculture", Chapter 296-307 WAC contains an exemption for such incidental exposure. See: https://lni.wa.gov/safety-health/safety-rules/chapter-pdfs/WAC296-307.pdf#WAC_296_307_097

We believe Amendment #1 on the attached document (Potential Amendments to Proposed Title 8 Section 3396) addresses our concern with the scope of the Draft Regulation while also achieving its goal. We are happy to work with board and division staff on refinements if needed.

Compatibility with Section 3395

The Draft Regulation currently fails to address how employees who are covered by both the Draft Regulation and Section 3395 (Heat Illness Prevention in Outdoor Places of Employment), will switch compliance regimes. For an agricultural employer, an employee can work both indoors and outdoors in the same work shift. This is not uncommon.

For example, if an employee works in a winery that has open air wine tasting (indoors and outside), the Draft Regulation requires compliance with two different standards that are intended to do the same thing – Protect the employee from heat illness. A similar example may be a mechanic who maintains agricultural equipment both in a maintenance shed and, in the lot, outside.

If the purpose of the Draft Regulation is to protect the employee from heat illness, and the employer is already fully complying with Section 3395 for that employee throughout that workday, what is the public policy achieved in adding a whole new layer of regulations?

We believe Amendment #2 on the attached addresses this concern while achieving the goal of the Draft Regulation and we are happy to work with Board and division staff on refinements if needed.

Shaded Area that meets the Requirements of Subsection 3395 (d)

A further issue of compatibility with Section 3395 is relative to the shade area provided for outdoor employees. We appreciate that under the Draft Regulation the definition of "indoors" includes an exception for "shaded area that meets the requirements of subsection 3395 (d) and is used exclusively as a source of shade." However, as written, this exemption defines the space itself vs. the situation in which that space is being utilized. This creates a bit of confusion.

For example, if a barn is being used as a cool down area under 3395 (d) by Employee Group A, while Employee Group B (perhaps at a different time) also uses the barn for other indoor activities covered under the Draft Regulation, that barn is not used exclusively for shade purposes under 3395 (d). Therefore, for Employee Group A who all work exclusively outdoors, is that barn exempt from the Draft Regulation?

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

If the exception does not apply to this example, the employer would need to comply with section 3395 and when providing shade, the employer would also need to comply with the Draft Regulation.

We suggest that in defining indoor, Amendment #3 could clarify this exception by providing the following for employees covered by section 3395, "indoor does not refer to a shaded area that meets the requirements of subsection 3395 (d) when being used as a source of shade."

Vehicles

As written, the definition of "indoors" is very broad and "refers to a space that is under a ceiling or overhead covering that restricts airflow and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed." This would seem to include the inside of a vehicle. Remember, the very nature of operating a vehicle means the inside of the vehicle will often be hot until the AC cools it down.

If the Draft Regulation applies to vehicles, please consider the situation where an agricultural employee drives an employer-provided pick-up truck in July. The employee gets into the truck, starts the engine, turns on the AC and the inside of the truck quickly cools to 72 degrees. In this scenario, is the employer required to keep the detailed records needed to demonstrate compliance with the Draft Regulation?

We believe if the vehicle is equipped with AC that is maintained and is operational, the inside of a vehicle should be exempt from the Draft Regulation. It is widely accepted that an operational indoor AC unit should be able to cool the interior of the building to the "sweet spot" of 78 degrees to 82 degrees at a minimum. Therefore, in the attached amendment, we used the goal of 80 degrees to demonstrate that the AC is in operating order sufficient to continuously cool the entire interior of the vehicle.

We believe Amendment #4 provides a reasonable exception for vehicles that recognizes how vehicles are cooled and also assures that the AC is operational in that vehicle as a condition of the exception. In other words, the exception would not apply to a vehicle where there was no AC or the AC was not in working order.

Assessment and Control Measures

We appreciate that the Draft Regulation attempts to provide a variety of feasible control measures to protect employees from heat. We also recognize that in some agricultural work settings, such as a green house, the type of control measures available may be limited.

In some agricultural workplaces, heat is inherent in the work and the only feasible controls are to monitor and minimize the exposure to heat and then to follow the Access to Cool-Down Areas and Provision of Water procedures under 3396 (c) and (d) of the Draft Regulation.

Amendment #5 is an attempt to make clear that, "To the extent that the employer demonstrates engineering controls and personal heat-protective equipment are unfeasible, the employer shall monitor and minimize the amount of time employees' are exposed to heat to minimize the risk of heat illness." We believe this is the intent of the

Draft Regulation, but absent such clarity, it will be very difficult for an employer to demonstrate compliance.

Overall Concerns

Our organizations align ourselves with the comments in the letter submitted by the California Chamber of Commerce on May 16.

Conclusion

To keep employees safe and healthy, the Draft Regulation needs clarification. We hope that this letter can help in amending the Draft Regulation to make it clear while also maintaining its purpose. These amendments would go a long way toward making compliance with the Draft Regulation more achievable, should it pass.

Sincerely,

See Attached Signatures

Attachment: Potential Amendments to Proposed Title 8 Section 3396

Copy: Christina Shupe cshupe@dir.ca.gov
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Western Agricultural Processors Association

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Wine Institute

Potential Amendments to Proposed Title 8 Section 3396
Heat Illness Prevention in Indoor Places of Employment
Submitted by Agricultural Coalition

AMENDMENT #1

This amendment is intended to avoid applying the regulation to de minimis or transient exposure to heat.

(a) Scope and Application.
(1) This section applies to all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit **for 15 minutes or more in a 60-minute period,** when employees are present **and all indoor work areas with conditions covered by subparagraph (2)**.

AMENDMENT #2

This amendment is intended to avoid the overlap of indoor and outdoor heat illness prevention regulations.

(a) Scope and Application.
(5) This section shall not apply to employees working both indoors and outdoors whenever those employees are covered by section 3395.

AMENDMENT #3

This amendment clarifies that a shaded area that is sometimes used for other purposes is still exempt from this regulation whenever it is used for shade to comply with the outdoor heat illness prevention regulation.

(12) "Indoor" refers to a space that is under a ceiling or overhead covering that restricts airflow and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed. All work areas that are not indoor are considered outdoor and covered by section 3395.
EXCEPTION 1: ~~**Indoor**~~ **For employees covered by section 3395, indoor** does not refer to a shaded area that meets the requirements of subsection 3395 (d) ~~**and is used exclusively**~~ **when being used** as a source of shade ~~**for employees covered by section 3395**~~.

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

AMENDMENT #4

This amendment clarifies that the inside of an air-conditioned vehicle is not subject to this regulation.

(12) "Indoor" refers to a space that is under a ceiling or overhead covering that restricts airflow and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed. All work areas that are not indoor are considered outdoor and covered by section 3395.
EXCEPTION 2: Indoor does not refer to the interior passenger areas of a car, truck, van, bus, or tractor when that vehicle is equipped with air conditioning that is in operating order sufficient to continuously maintain the entire interior of the vehicle at a temperature of less than 80 degrees Fahrenheit.

AMENDMENT #5

This amendment is intended to recognize that in some workplaces, like a green house, heat is inherent in the work and the only feasible controls are to monitor and minimize the exposure to heat and then to follow the Access to Cool-Down Areas and Provision of Water procedures under (c) and (d).

(e) Assessment and Control Measures. This subsection only applies to work areas subject to one or more of the conditions listed in subsection (a)(2).
(2) **(D) Exposure Controls. To the extent that the employer demonstrates engineering controls and personal heat-protective equipment are infeasible, the employer shall monitor and minimize the amount of time employees' are exposed to heat to minimize the risk of heat illness.**

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

From: Rich Brandt
To: DIR OSHSB
Subject: Cal/OSHA - 15-Day Notice Heat Illness - Indoors in the workplace
Date: Tuesday, August 22, 2023 1:03:17 PM

To whom it may concern,

We would have a few concerns and comments about these subsections:

- subsection (a)(1) exception (C) (scope) – *A new exemption for rarely-occupied/short-term spaces, such as storage sheds.*
Comments: I think this needs further elaboration because this can mean vaults and other possible confined spaces.

- subsections (e)(1) and exceptions to subsection (e)(1) (assessment) – *Clarification of when temperatures are to be measured.*
Comments: When & How are temperatures to be measured? Criteria? Devices? Who is responsible for the measuring and notifications?

- subsection (e)(2)(C) (control measures) – *Apparent tightening of when PPE is required by removing consideration of administrative controls.*

Comments: What PPE is the rule referencing?

- subsection (f)(2)(C) (emergency response procedures) – *Clarifying that employers must contact emergency services in the event of heat illness.*

Comments: Would the construction/set medic and/or an on-site Occupational Nurse/Doctor still be the first line of defense? or is it 911 only?

Thank you,

Rich Brandt
Manager, OSF Production Safety
Studio Health, Safety & Security
E: rbrandt@netflix.com
Ph: +1 (562) 900-2784

From: Dufour Law
To: DIR OSHSB
Subject: Comments: Proposed Heat Illness Prevention for Indoor Places of Employment Standard
Date: Tuesday, August 22, 2023 2:35:11 PM
Attachments: 2023-08-22_LTR_OSHSB_Comments-on-Proposed-HIP-Standard.pdf

Good afternoon:

Please find attached comments to the referenced proposed standard.

Katherine Bonner
Paralegal to James T. Dufour
Dufour Law
819 F Street
Sacramento, CA 95814
(916) 553-3111

DUFOUR

California Safety, Environmental, & Regulatory Law

James T. Dufour, M.S., J.D., C.I.H.
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August 22, 2023

VIA EMAIL: oshsb@dir.ca.gov

Ms. Christina Shupe, Executive Officer
California Division of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Re: Proposed Heat Illness Prevention for Indoor Places of Employment

Dear Ms. Shupe:

Our firm represents and counsels a number of clients in several different industries that will be affected by the Board's Proposed Indoor Heat Illness Prevention (HIP) Standard. For example, our clients include refuse collectors and recyclers, candy manufacturers, building material manufacturers, food processors, metal finishers, landscaping and horticulture product manufacturers, and others. Those clients that have employees in outdoor working environments have effectively implemented the § 3395 Outdoor Heat Illness Prevention Standard, including its primarily administrative requirements, including shade, drinking water, work scheduling, training, supervision, and emergency response, significantly reducing the risk of heat illness.

Although indoor heat illness risk involves some additional aspects, the same measures if effectively implemented through an Indoor HIP Standard as proposed are appropriate and should be incorporated as principal components of the Proposed § 3396 Safety Order. However, our clients have grave concerns regarding the feasible engineering controls provision contained in § 3396(e), as discussed below.

Supported Provisions and Minor Commentary

We have been advised that our clients' generally support and can feasibly implement the following provisions, as amended in the current Proposed Safety Order:

> § 3396(a)(1) Scope and Application and EXCEPTIONS, in particular, (a)(1)(C), which reasonably addresses comments received in response to the initial publication of this Proposed Safety Order and its public hearing. There are many of these "in and out"

situations in client operations and the flexibility provided is more appropriate than the previous "at any time" approach.

§ 3396(e)(1) EXCEPTION (B). The amendment expressly addressing vehicles by exemption from assessment and control measures for (B) vehicles with effective and functioning air conditioning is appropriate and should be included in the final rule. However, to further clarify the status of vehicles, open cab vehicles (such as excavators, loaders, and industrial trucks) should be deemed subject to the Outdoor HIP Standard.

To reiterate support for other administrative requirements of the § 3395 Outdoor HIP Standard that have been shown to improve safety in hazardous heat situations, our clients agree with the following provisions of proposed § 3396 with certain minor modifications:

- § 3396(c) Provision of Water.
- § 3396(f) Emergency Response Procedures
- § 3396(g) Acclimatization, except a definition of "close observation" should be included in § 3396(b) Definitions. The definition should, to the extent practicable, include objective criteria and alternatives. For example, an appropriate frequency of observations and/or alternatives, such as a buddy system.
- § 3396(h) Training. The training provisions are reasonable and appropriate, although the provisions relating to an employer's emergency response obligations at (G), (H), and (I) should be included instead in supervisor training at § 3396(h)(2).
- § 3396(i) Heat Illness Prevention Plan.

These provisions, which closely parallel the Outdoor HIP Standard's requirements, can be credited for improving the safety of outdoor work, and indoor work as well. In fact, the relatively small number of serious and fatal indoor heat illness cases presented in the Standardized Regulatory Impact Assessment (SRIA) is largely due to employers who have routinely practiced these safeguards in the absence of a specific standard.

Our clients Oppose § 3396(e) Assessment And Control Measures As Currently Proposed

The feasible engineering controls provisions in the amended 15-day proposal are not cost-effective compared to the measures that have been shown to be effective at preventing heat illness in outdoor work, primarily through administrative controls and shade, which can be practically imported into indoor work as most of the proposed standard accomplishes. However, adding excessively expensive engineering controls on top of automatically required engineered cool-down areas is not supported by substantial evidence as necessary to prevent indoor heat illness. This over-reach subverts the Proposed Safety Order with grossly-underestimated costs in the SRIA, seriously affecting employer resources regardless of size and type of business; not to mention concern over vexatious litigation of the feasibility of such controls.

The specific provision in the proposal giving rise to these concerns is § 3396(e)(2)(A) Engineering control.

> "Engineering controls…
>
> 1. Use engineering controls to reduce the temperature, heat index, or both, whichever applies, to the lowest feasible level, except to the extent that the employer demonstrates such controls are infeasible; and
>
> 2. Use engineering controls to otherwise minimize the risk of heat illness, except to the extent that the employer demonstrates such controls are infeasible."

The Requirement For Feasible Engineering Controls In Addition To Cool-Down Areas Is Not Supported By Legal Precedent Or Substantial Evidence

The feasible engineering controls requirement are in addition to the cool-down areas required by § 3396(d), which are by any definition, engineering controls with no express feasibility limitation. Our clients would concur with this requirement as the sole means of engineering control. Just imagine how the Outdoor HIP Standard would be improved if it included cool-down areas. However, the Proposed Safety Order bypasses this logic in favor of the most expensive control measures. The introductory cover letter's reference to the Appeals Board's *Campbell Soup Company* Decision After Reconsideration (DAR) – a noise citation abatement case (Cal/OSHA 77-0701, May 5, 1980) defining the employer's burden of proof as to show that a technology identified by Cal/OSHA must be implemented as far as it will go regardless of cost exposes the intent of the proposed regulation. Fortunately, this is not as clear a precedent as intended because after a successful writ of mandate petition in Sacramento Superior Court, the Appeals Board vacated this DAR and granted Campbell Soup's appeal:

> "It is the Order of the Occupational Safety and Health Appeals Board, pursuant to Peremptory Writ of Mandate issued by the Superior Court of California, County of Sacramento, No. 289247, that the Order dated July 31, 1978, and the Grant of Petition for Reconsideration and Decision After Reconsideration dated May 5, 1980, are set aside, and that the appeal from a general violation of Section 5098 is granted." [*Campbell Soup* DAR, March 11, 1981, No. 77-R2D3-701]

In view of the fact that federal OSHA, although not controlling in California, uses a more balanced engineering and administrative control regime in comparable enforcement matters, including its Noise Standard and likely its eventual Proposed Indoor and Outdoor Heat Illness Standards despite having statutory authority to apply cost-benefit analysis. Therefore, the Board is urged to ensure prompt and effective implementation of an Indoor Heat Illness Prevention Safety Order to revise its standard to make cool-down areas the primary engineering control, followed by a combination of administrative and practical engineering controls if necessary to provide effective heat illness prevention.

The SRIA Report Is Inaccurate In That It Exaggerates Indoor Heat Illness Prevalence and Benefits, Minimized Cost Estimates, And Does Not Provide Substantial Evidence To Support The Proposed Standard

The SRIA for the Proposed Indoor Heat Illness Prevention Standard [Rand Corp., September 2021] fails to demonstrate that additional protective measures beyond the primarily administrative requirements of the Outdoor HIP Standard would significantly reduce indoor employee heat illnesses and deaths, which are very low compared to outdoor incidence (an average of less than 1 death and 185 heat illnesses in this State per year based on actual workers' compensation data for the years 2010 to 2018) without a standard in place. This study speculates that climate change may add to these figures and increase the benefit of the standard for employees. However, it is well established after more than two decades of outdoor heat illness regulation that the rules accomplishing most of the reduction in illness cases and fatalities were the administrative provisions: water, training of employees and supervisors, emergency response, low-cost shade, and rest periods. In addition, as shown by the history of the Outdoor HIP Standard, it has been amended three times since its adoption in 2005, which is also available to the Board if the initial Indoor HIP Standard is not as effective as anticipated.

The Board's Action To Publish A 15-Day Comment Period Prior To Disclosing Comments Received In Response To The Initial Proposed Rulemaking Suggests A Rush To Impose A Difficult Compliance Schedule, Especially If The Engineering Controls Provision Is Retained

At the May 18, 2023, public hearing, Board representatives indicated the intent to have an Indoor HIP Standard in place by the summer of 2024. Our clients would be severely impacted if the feasible engineering controls provision in addition to cool-down areas are required because an effective date in early 2024 will not afford sufficient time to perform the § 3395(c) assessment and implementation of feasible engineering controls. Therefore, as urged in the previous comments, the Board should substantially modify the Standard's feasible engineering controls provision or, at a minimum, establish a subsequent effective date for engineering controls (except cool-down areas) of at least one year after the initial effective date.

The Proposed Standard Is Subject To CEQA Requiring An Environmental Impact Report

As a final comment, based on any reasonable analysis of the potential costs of engineering controls implemented by the estimated 196,000 facilities believed to be affected by the proposed standard, the SRIA cost estimate of up to $1.1 billion in ten years, most of which expected to be invested in engineering controls is extremely low and may not even reflect the cost of universal cool-down areas in nearly two thousand establishments. Nonetheless, as most of these control measures will consume significant electrical power and water, there is substantial evidence that the Indoor HIP Standard will have a significant effect on the environment, including increased consumption of electricity and demands on the electrical grid, and electric generator plants primarily powered by fossil fuels producing regulated pollutants including greenhouse gases through thermal combustion processes. Consequently, CEQA requires the sponsoring agency – the Standards Board – to prepare an Environmental Impact Report (EIR).

We appreciate the opportunity to comment on this important and impactful proposed Safety Order. Should you have any questions or require further clarification on any of these comments, please do not hesitate to contact us.

Very truly yours,

JAMES T. DUFOUR

JTD:kb

From: Oseguera, Alex
To: DIR OSHSB
Subject: Proposed Heat Illness Prevention for Indoor Places of Employment
Date: Tuesday, August 22, 2023 12:49:26 PM
Attachments: 2023-08-22_LTR_WM-Comments-on-Revised-Proposed-Standard-Final .pdf

Dear Ms. Shupe,

WM appreciates the opportunity to provide the attached comments on this important Proposed Standard and thanks Cal/OSHA for addressing our concerns. WM will continue its efforts to have world class facilities for its employees and supports developing innovative solutions that will help the state meet sustainability efforts while maintaining a safe work environment. Should you have any questions or require further clarification on any of these comments, please do not hesitate to contact us.

Alex Oseguera
Director of Government Affairs
California, Hawaii
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AUG 2 2 2023

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

August 22, 2023

via e-mail to oshsb@dir.ca.gov
Ms. Christina Shupe, Executive Officer
California Division of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

RE: Proposed Heat Illness Prevention for Indoor Places of Employment

Dear Ms. Shupe:

I. Introduction

Waste Management ("WM") is the leading provider of comprehensive waste management and recycling services in the United States with more than 49,000 employees across North America. At WM, employee safety is a core value, and we welcome Cal/OSHA's and the Standards Board's commitment to improving the safety of indoor workers with the proposed Heat Illness Prevention for Indoor Places of Employment regulation ("Proposed Standard"). WM has considerable experience with protecting employees from heat stress and illness in both outdoor and indoor working environments.

WM has reviewed the modified text of the Proposed Standard, as well as the other changes in the administrative record offered as part of the Standard Board's 15-day Notice of Proposed Modification to California Code of Regulations ("15-Day Notice") issued on August 4, 2023. WM appreciates the effort regarding the revision the Standard's Board has offered in response to the comments. The Standards Board has, however, made a *de facto* modification to the text by including the Occupational Safety and Health Appeals Board's (Appeals Board) Campbell's Soup Company Decision After Reconsideration ("Campbell's Soup Company DAR") in the administrative record, dramatically changing the regulation by burdening employers to install unreasonable engineering controls. This modification has the effect of creating a stringent standard for infeasibility without modifying the actual text of the regulation, and in the process increasing the economic impact of the regulation beyond that analyzed in the Standardized Regulatory Impact Assessment ("SRIA"). Based on this significant change in the burden of the Proposed Standard on employers, WM cannot support subdivision (e) of the Proposed Standard as written when viewed in light of the recently disclosed and stringent *de facto* infeasibility standard.

WM also notes that the current administrative record is devoid of evidence that the Standards Board has considered the environmental impacts of the Proposed Standard. Considering

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Standard Board's *de facto* stringent definition of infeasibility, the Proposed Standard effectively requires the installation of numerous cooling or ventilation systems, all of which operate on electricity. Sixty five percent of the electricity generated in California is through thermal and nonrenewable energy, some of which emits greenhouse gases and criteria air pollutants. Thus, the Proposed Standard, by mandating the installation of new ventilation and cooling systems, will result in an adverse impact on the environment. WM also notes that some of the administrative controls – such as shifting work to cooler hours – could have adverse noise impacts by shifting heavy equipment work to times when residents are at home and not at work, and engineering controls will increase noise levels in the work environment. The Standards Board must analyze those impacts, but, again, the administrative record is currently devoid of any such analysis.

WM remains committed to providing a safe workplace for our employees. This is best accomplished by revising the Proposed Standard to use an iterative approach for implementing engineering controls. Nevertheless, the Standards Board must revise the SRIA and conduct a publicly reviewed environmental analysis otherwise final action on the Proposed Standard would be arbitrary, capricious, and contrary to California law.

II. WM Supports Revisions Made in Response to Public Comments

WM has extensively implemented the administrative requirements, including providing drinking water and shade, contained in Section 3395 of Title 8 of the California Code of Regulations, the Heat Illness Prevention in Outdoor Places of Employment General Industry Safety Order ("Outdoor HIP Standard") at our facilities and in our refuse collection vehicle operations. These measures have proven to effectively minimize heat stress and illness amongst our employees. Consequently, the provisions of the Proposed Standard matching the requirements of the Outdoor HIP Standard should be maintained as the principal components of the Proposed Safety Order.

Accordingly, WM supports the following provisions, as amended in the current Proposed Safety Order:

> § 3396(a)(1) Scope and Application and EXCEPTIONS, in particular, (a)(1)(C), which reasonably addresses comments received in response to the initial publication of this Proposed Safety Order and its public hearing. There are many of these "in and out" situations in WM operations and the flexibility provided is more appropriate than the previous "at any time" approach.
>
> § 3396(e)(1) EXCEPTION (B). The amendment expressly addressing vehicles by exemption from assessment and control measures for (B) vehicles with effective

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and functioning air conditioning is appropriate and should be included in the final rule. However, to further clarify the status of vehicles, open cab vehicles (such as excavators, loaders, and industrial trucks) should be deemed subject to the Outdoor HIP Standard.

To reiterate support for other administrative requirements of the § 3395 Outdoor HIP Standard that have been shown to improve safety in hazardous heat situations, WM agrees with the following provisions of proposed § 3396 as written:

§ 3396(c) Provision of Water.
§ 3396(f) Emergency Response Procedures
§ 3396(g) Acclimatization, except a definition of "close observation" should be included in § 3396(b) Definitions. The definition should, to the extent practicable, include objective criteria and alternatives. For example, an appropriate frequency of observations and/or alternatives, such as a buddy system.
§ 3396(h) Training. The training provisions are reasonable and appropriate, although the provisions relating to an employer's emergency response obligations at (G), (H), and (I) should be included instead in supervisor training at § 3396(h)(2).
§ 3396(i) Heat Illness Prevention Plan.

These provisions, which closely parallel the Outdoor HIP Standard's requirements, can clearly be credited for improving the safety of outdoor work, and are anticipated to improve indoor work conditions as well. In fact, the relatively small number of serious and fatal indoor heat illness cases presented in SRIA is largely due to employers who have routinely practiced these safeguards in the absence of a specific standard.

III. WM is Opposed to Subdivision (e) in the Proposed Standard Based on the Overly Stringent *De Facto* Modification Defining Infeasibility.

Subdivision (e)(2) of the Proposed Standard requires employers to install engineering controls when workplace conditions meet the criteria in subdivision (a)(2) except to the extent engineering controls are infeasible. The original text of the proposed standard, however, neither defines "infeasible" nor provides any criteria upon which an employer or the Division of Occupational Safety and Health ("Division") could determine if engineering controls are infeasible. In the absence of a regulatory definition, infeasibility is subject to interpretation based on the plain meaning of the word "infeasible," the Legislature's mandate to the Standards Board in Labor Code § 6720, and with reference to federal OSHA processes, which includes potential application of a cost-benefit analysis.

In the 15-Day Notice, the Standards Board added to the administrative record the Appeals Board's Campbell Soup Company DAR (Cal/OSHA 77-0701, May 5, 1980). The 15-Day Notice

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provided no supporting explanation, only that it was being added to the rulemaking file. The Campbell's Soup Company DAR is a noise citation abatement case, and the primary issue was whether engineering noise controls were feasible in Campbell's Soup Company's can manufacturing plant. The Appeals Board applied one of the most stringent standards for determining infeasibility, essentially requiring the installation of such controls to be physically impossible to be deemed infeasible. Based on a review of the current posture of the Proposed Standard, and the text of the Campbell's Soup Company decision, the only readily apparent purpose of including that decision in the administrative record is to create a definition of "infeasible" to apply to engineering and other controls, without modifying the text of the regulation. Put another way, the Standards Board created a *de facto* definition of "infeasible" by including this material in the administrative record. Because the 15-Day Notice invited comments on the inclusion of the listed materials in the administrative record, WM's following comments on subdivision (e) are timely based on the effect of the Campbell's Soup Company DAR and its rationale regarding subdivision (e) as adopted by the Board.

A. The Inclusion of the Campbell's Soup Company Case To Define Infeasibility Violates the Administrative Procedure Act.

First, to be a valid regulation, a regulation must meet the clarity standard specified in the Administrative Procedure Act. Government Code § 11346.2; Government Code § 11349. The Office of Administrative Law has further explained this standard in Section 16 of Title 1 of the California Code of Regulations.

> "A regulation shall be presumed not to comply with the 'clarity' standard if, among other things, the regulation uses terms which do not have meanings generally familiar to those 'directly affected' by the regulation, and those terms are defined neither in the regulation nor in the governing statute."
> *Menefield v. Board of Parole Hearings*, (2017) 13 Cal.App.5th 387, 393

Because "infeasible" is not defined in any Standards Board regulation or the Labor Code, the Standard Board's effort to remedy this by merely including an administrative decision in the rulemaking record is inconsistent with the Administrative Procedure Act.

In addition, while agencies rely on administrative adjudication decisions when adopting or modifying regulations, such administrative precedents are final, binding decisions, either because those decisions were not appealed, or the decision was upheld by courts if the administrative decision was litigated. The Campbell's Soup Company DAR does not meet that standard because the Appeals Board later set aside the cited decision and granted the employer's appeal, specifically:

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> "It is the Order of the Occupational Safety and Health Appeals Board, pursuant to Peremptory Writ of Mandate issued by the Superior Court of California, County of Sacramento, No. 289247, that the Order dated July 31, 1978, and the Grant of Petition for Reconsideration and Decision After Reconsideration dated May 5, 1980, are set aside, and that the appeal from a general violation of Section 5098 is granted." [Campbell Soup DAR, March 11, 1981, No. 77-R2D3-701]

Thus, the Standard Board's reliance on the initial Campbell's Soup Company DAR to establish the infeasibility criteria in the Proposed Standard is highly questionable because that decision was vacated under an order of the California Superior Court. This compounds the error already created by not defining the term in regulation or referring to a statutory definition as required by the Administrative Procedure Act.

B. The SRIA Report is Rendered Inaccurate and Understates Compliance Costs Based on the De Facto Infeasibility Definition.

The SRIA significantly underestimates the costs of compliance with the engineering controls requirements of the Proposed Standard because it did not apply the same standard for determining infeasibility that the Standards Board proposes through its inclusion of the Campbell's Soup Company DAR in the administrative record.

This error is patent in the first sentence of the SRIA's economic analysis of control measures, which states:

> This requirement mandates that employers use engineering ***or*** administrative control measures ***or*** provide personal heat-protective equipment when any of the regulatory thresholds have been reached.
> (SRIA p.26, emphasis added)

The SRIA assumes that employers have ***the option*** to use administrative controls or personal protective equipment in lieu of engineering controls. This assumption is manifested in the economic analysis as shown in Table 3 on page 28 and Table 4 on page 29 of the SRIA where it shows that only 60 percent of the affected Type 1 industries and only 25 percent of the affected Type 2 industries would install engineering controls. This is counter to the language in subdivision (e)(2)(A), which states:

> "Engineering controls. Engineering controls shall be used to reduce and maintain both the temperature and heat index to below 87 degrees Fahrenheit when employees are present . . . .except to the extent that the employer demonstrates such controls are infeasible. When such controls are infeasible to meet the temperature and heat index thresholds, the employer ***shall***:

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1. Use engineering controls to reduce the temperature, heat index, or both, whichever applies, ***to the lowest feasible level***, except to the extent that the employer demonstrates such controls are infeasible; and

2. ***Use engineering controls to otherwise minimize the risk of heat illness***, except to the extent that the employer demonstrates such controls are infeasible."

Thus, once the conditions in subdivision (a)(2) are met, the Proposed Standard mandates the installation of engineering controls. Even if the engineering controls will not result in full compliance with the temperature and heat index requirements, engineering controls still must be installed to reduce the temperature and heat index to the lowest feasible level. Simply stated, the Proposed Standard viewed in light of the stringent Campbell's Soup Company DAR infeasibility standard requires employers to install ***some*** sort of engineering control unless it is physically impossible to install ***any*** sort of engineering control.

This inconsistency between the SRIA's assumptions on when engineering controls will be required compared to the *de facto* infeasibility standard bootstrapped into the Proposed Standard by including the Campbell's Soup Company DAR into the administrative record results in the SRIA's analysis being flawed in multiple ways.

First, the SRIA does not consider all the regulatory conditions imposed on employers by the cool-down area requirements in the Proposed Standard. Cool-down areas for indoor employees – unlike the Outdoor HIP standard – must meet specific temperature requirements unless the employer can meet the stringent Campbell's Soup Company infeasibility standard. Even then, the infeasibility standard applies only with respect to maintaining the cool-down area at a specific temperature. In most instances, employers will be required to implement some engineering controls listed in Table 2 to achieve the temperature requirements. The SRIA provides no evidence that simply purchasing a $120 pop-up shade structure will meet the temperature requirements of the Proposed Standard. Instead, if a cool-down area does not already exist, employers will be required to not only create a cool-down area, but also procure and operate portable cooling equipment, such as the portable cooling unit listed in Table 2 of the engineering controls analysis to meet the cool-down area temperature standard. Thus, even before addressing employees working in the conditions in subdivision (a)(2), employers will already have significantly higher engineering controls compliance costs to meet the Proposed Standard compared to what is estimated in the SRIA.

Second, the SRIA attempts to winnow down the estimated compliance costs by creating three types of industries based on how heat might be created in the indoor environments and then makes assumptions based on the percentage of employees in those industries that might be

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affected to arrive at a per-employee compliance cost. This is flawed because the costs for engineering controls are not based on the number of affected employees, but on the costs to make the workplace comply with the temperature and heat index standards, regardless of the number of employees that work in that environment.

The waste management industry is a prime example of how the SRIA's "cost-per-employee" methodology is flawed. One of the most important developments in waste management is the use of materials recovery facilities to segregate recyclable and organic materials from other wastes to meet California's landfill diversion and greenhouse gas reduction goals. Materials recovery facilities have large volumes of airspace where relatively few employees work compared to the square footage of the facility. The working areas of these facilities are both significantly affected by outdoor temperature and sunlight, as well as having indoor heat sources. The indoor heat sources include: internal combustion engines in heavy equipment that moves the various materials within the facility; the heat created by electric motors that run waste segregating equipment; and, heat created by other friction sources in the waste segregating equipment. Accordingly, such facilities are likely to meet the conditions in subdivision (a)(2) in the working areas in some weather conditions.[1]

While WM has installed cool-down rooms in many materials recovery facilities with a high level of effectiveness in preventing heat illness for our employees, under subdivision (e)(2) of the Proposed Standard, materials recovery facilities will be required to have some sort of engineering controls installed in the working areas of these facilities. The large airspace within the working areas combined with various internal heat sources make it unlikely that the simple engineering controls analyzed in Table 2 – such as a 5-ton portable air conditioner – will achieve compliance with the Proposed Standard. To the contrary, it would appear under the Campbell's Soup Company stringent infeasibility standard, operators of materials recovery facilities will have to install very large ventilation and cooling systems that cool the entire airspace of a cavernous materials recovery facility because such systems would reduce the temperature or heat index to some level or otherwise minimize the risk of heat illness and is not physically impossible, which is the requirement of the Proposed Standard when subdivisions (e)(2)(A)(1) and (e)(2)(A)(2) are read in the context of the Campbell's Soup Company's infeasibility standard. These systems would in turn use a significant amount of electricity to operate the cooling and ventilation systems, significantly increasing recurring operating costs. Thus, it is more likely the costs to install cooling and ventilation systems for one materials recovery facility will exceed the $600,000 first-year compliance costs, and operating those

[1] A similar analysis would apply to any facility that has large volumes of airspace, such as warehouse facilities.

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systems will exceed the $200,000 annualized recurring costs listed for the entire NAISC code 56 industry shown in Table 6 of the SRIA.[2]

In the absence of the Standards Board conducting a survey that includes both the number of facilities that would be impacted by the regulation, but also presenting facts about what employers must implement to comply with the regulation, the SRIA is fatally flawed because it does not have the requisite factual basis to estimate the compliance costs.

Third, the SRIA assumes that only 60 percent of Type 1 employers and 25 percent of Type 2 employers will install engineering controls, with the remainder of employers using either administrative controls or personal protective equipment. This is inconsistent with the regulatory language. The SRIA must assume that 100 percent of these employers will incur some sort of engineering control costs in the absence of evidence that 60 percent of Type 1 employers and 25 percent of Type 2 employers can prove that it is physically impossible to install any sort of engineering controls in their workplace. Thus, the SRIA underestimates the costs for Type 1 and Type 2 employers to comply with the Proposed Standard without any consideration of whether the engineering controls analyzed in Table 2 will in fact achieve the requirements of the Proposed Standard, which as previously described, the effectiveness of the controls described in Table 2 are likely overestimated because they focus on cooling a subset of employees and not cooling the working environment.

Because of these flaws, the SRIA does not serve as substantial evidence to support the Standards Board's compliance with the Administrative Procedure Act's economic impact analysis. Moreover, the SRIA fails to demonstrate that additional protective measures beyond the primarily administrative requirements of the Outdoor HIP Standard would significantly reduce indoor employee heat illnesses and deaths, which – under the baseline conditions that the law requires the SRIA to consider – are very low compared to outdoor incidence (an average of less than 1 death and 185 heat illnesses in this State per year based on actual workers' compensation data for the years 2010 to 2018). To the contrary, it is well established after more than two decades of outdoor heat illness regulation that the rules accomplishing most

[2] NAISC Code 562, which is a subsector of NAISC Code 56 is defined as:
[E]stablishments engaged in the collection, treatment, and disposal of waste materials. This includes establishments engaged in local hauling of waste materials; operating materials recovery facilities (i.e., those that sort recyclable materials from the trash stream); providing remediation services (i.e., those that provide for the cleanup of contaminated buildings, mine sites, soil, or ground water); and providing septic pumping and other miscellaneous waste management services. See https://www.bls.gov/iag/tgs/iag562.htm (viewed on August 20, 2023).

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of the reduction in heat illness cases and fatalities were the administrative provisions: water, training of employees and supervisors, emergency response, low-cost shade, and rest periods.

C. The Proposed Standard is Arbitrary and Capricious Because It Requires Immediate Compliance with Expensive and Onerous Engineering Controls Requirements Without Regard to the Ability to Procure and Install Engineering Controls.

The Board's action to commence the 15-day comment period prior to disclosing comments received in response to the initial proposed rulemaking suggests a rush to impose a difficult compliance schedule, especially if subdivision (e)(2) is retained as written, including the stringent Campbell's Soup Company infeasibility standard.

At the May 18, 2023, public hearing, Standards Board representatives indicated the intent to have an Indoor HIP Standard in place by the summer of 2024. WM, among many other industries, would be severely impacted if the requirements of subdivision (e)(2) remain in addition to the requirements of subdivision (d) to ensure cool-down areas meet the temperature requirements. These improvements are capital-intensive improvements requiring many months to procure and install equipment in an economy that has not fully recovered from the various supply chain impacts induced by the pandemic. There is not sufficient time to perform the § 3395(e) assessment, then implement engineering controls in 2024.

D. The Standards Board Should Revise the Proposed Standard to Create an Iterative Approach for Imposing Expensive and Onerous Engineering Controls.

WM strongly urges the Standards Board to revise the Proposed Standard to allow employers to first employ the same administrative controls that have been effective in reducing outdoor heat illness – including using cool-down areas, providing water, and conducting heat illness training – unless and until there is evidence that such measures are ineffective at improving indoor conditions. The Standards Board could write regulatory standards that trigger the Division to require employers to address the need for engineering controls. Better yet, as shown by the history of the Outdoor HIP Standard, which has been amended three times since its adoption in 2005, implement the Proposed Standard without the mandate for engineering controls, and amend the regulation if the initial Proposed Standard is not as effective as anticipated.

In addition, for situations in which cool-down areas must be constructed or modified, or if the Standards Board nevertheless requires engineering controls in the Proposed Standard, the Standards Board should, as urged in the previous comments, substantially modify the Proposed Standard to provide an implementation period for employers to construct or modify cool-down areas, as well as to grant at least one year after the initial effective date for employers to

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conduct the required analyses and construct engineering controls, should an analysis conclude engineering controls are appropriate and feasible.

IV. The Standards Board Must Prepare an Environmental Impact Report Because There Is Substantial Evidence The Proposed Standard May Have A Significant Adverse Impact On The Environment[3]

In the SRIA, the Standards Board acknowledges that engineering controls required under the Proposed Standard will require electricity, including that the engineering controls could conflict with various energy conservation policies. In 2021, over 65 percent of the electricity generated in the State of California was generated using thermal and nonrenewable fuels. As discussed in more detail subsequently, having accepted that compliance with the Proposed Standard will increase the demand for electricity, the Standards Board must analyze the potential adverse environmental impacts tied to increasing the demand for electricity, especially the air quality impacts from thermal and nonrenewable fuels. In addition, to the extent that the Standards Board identifies administrative controls such as shifting work to cooler times of the day, as a means of compliance with the Proposed Standard, the Standards Board needs to analyze the potential noise impacts associated with various activities such as waste collection occurring when more people are at home and not at work. As of the date of this letter, the rulemaking record is devoid of evidence that the Standards Board has analyzed any of the potential adverse environmental impacts that would indirectly result from complying with this Proposed Standard. Adopting a final rule without conducting the required analysis would be a violation of the California Environmental Quality Act.

A. CEQA Applies To The Proposed Standard

The California Environmental Quality Act applies to the discretionary approval of a "project," by a public agency, which is an activity that may cause a direct or reasonably foreseeable indirect physical effect on the environment. (See Public Resources Code, §§ 21080, 21065; CEQA Guidelines, §§ 15357 [Discretionary Project], 15378(a) [Project], 15379 [Public Agency includes any state agency, board, or commission], 15358(a)(2) [Effects includes indirect or secondary impacts]. The adoption of a new or amended regulation, as here, by a public agency can be a discretionary approval of a "project" resulting in foreseeable environmental impacts and triggering the need for prior environmental review under CEQA. (*See Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 206 [regulations adopted by the Fish and Game Commission

[3] WM has presented the evidence readily available within the 15-day comment period in addressing the impacts from the modified text as well as the addition of the Campbell's Soup Company DAR to the rulemaking record. WM reserves the right to supplement this letter with additional evidence within the timelines for presenting grounds for noncompliance with CEQA set forth in Public Resources Code section 21177. *See Make UC a Good Neighbor v. Regents of University of California* (2023) 88 Cal.App5th 656, 690.

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fixing the date of hunting season is a project subject to CEQA]; *Dunn-Edwards Corp. v. Bay Area Air Quality Management District* (1992) 9 Cal.App.4th 644, 657-658 [regulations reducing the VOC content of architectural coatings is a project and not categorically exempt under CEQA]; *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal. App. 4th 681, 698 [ARB's approval of Low Carbon Fuel Standard (LCFS) regulations prior to completion of environmental review violated CEQA]; see also, *POET, LLC v. State Air Resources Bd.* (2017) 12 Cal. App. 5th 52, 57 ["when an agency's activity involves a regulation (as compared to building a physical structure, such as a road or power plant), the whole of the activity constituting the 'project' includes the enactment, implementation, and enforcement of the regulation"].)

While the Standards Board is required by Labor Code section 6720 to create an indoor heat illness standard, the Standards Board still has the ability and authority to mitigate environmental damage to some degree, and therefore the Proposed Standard is a discretionary project, and subject to the California Environmental Quality Act. *Friends of Westwood v. City of Los Angeles* (1987) 191 Cal.App.3d 259.

B. An EIR Is Required Because There is Substantial Evidence The Proposed Standard May Have A Significant Adverse Effect on the Environment

A CEQA Lead Agency is required to prepare an Environmental Impact Report ("EIR") when substantial evidence in the record supports a fair argument that the project may have a significant effect on the environment. (*See Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988; see also *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 ["[n]ot only does CEQA apply to revisions or amendments to an agency's general plan, but CEQA reaches beyond the mere changes in the language in the agency's policy to the ultimate [secondary or indirect] consequences of such changes to the physical environment"].)

1. *Substantial Evidence Supports a Fair Argument that the Proposed Standard May Have Significant Adverse Impacts on Air Quality and Energy Demand.*

The 15-Day Notice issued by Standards Board, Standards Board injected the application of the Campbell's Soup Company DAR's infeasibility standard to the Proposed Standard. As previously discussed, the Campbell's Soup Company decision stands for the proposition that employers must install some sort of engineering control to reduce the temperature and heat index in indoor work areas unless it is physically impossible for the employer to install ***any*** engineering control. Thus, when addressing indoor heat, the implications of the Campbell's Soup Company DAR is that employers will be required to install and operate any number of cooling or ventilation systems, such as fans and air conditioning systems, to meet the requirements of the Proposed Standard. As acknowledged in the SRIA, these systems consume electricity. SRIA at 13-14. The statewide increase in consumption of electricity to

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comply with the Proposed Standard will place further demand on the electrical grid and require a substantial number of electrical power generating stations to generate the needed electricity. Furthermore, fossil fuel combustion generates various air pollutants – including greenhouse gases and various regulated criteria pollutants - thus creating a reasonably foreseeable indirect physical change in the environment that must be analyzed by the Standards Board as the Lead Agency for the Proposed Standard. (*See* CEQA Guidelines Appendix G Checklist (requiring CEQA Lead Agencies to determine if a project would directly or indirectly generate greenhouse gas emissions or result in a cumulatively considerable increase of any criteria pollutant for which a region is in nonattainment). The Standards Board's analysis must also consider the potential increase in energy demand from compliance with the proposed regulation pursuant to Appendix F [Energy Conservation] of the CEQA Guidelines. (See *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 201 [EIR invalidated for commercial project because it failed to include a detailed statement setting forth the mitigation measures proposed to reduce the wasteful, inefficient, and unnecessary consumption of energy].)

The Standards Board's analysis must also consider the reasonably foreseeable cumulative increases in statewide energy demand that required engineering controls would consume once installed by employers to comply with the Proposed Standard. This is because changes in weather patterns and climate have resulted in increased use of cooling with almost three-fourths of California households now using air conditioning. In 2022, thermal and nonrenewable-fired power plants provided 65 percent of the state's total net generation.[4] As noted above, this demand would likely increase as employers comply with the Proposed Standard.

Even without additional demands on the electrical grid, the California Independent System Operator (Cal-ISO) frequently issues so-called "flex alerts" during heat waves as the demand for electricity severely taxes the ability of the existing electrical grid to satisfy the demand for electricity. The increased use of electricity-consuming cooling systems may dramatically increase the demand for electricity (and resulting potential increase in burning of thermal and nonrenewable energy), [5] increasing the frequency of flex alerts, making it even more difficult for Cal-ISO to meet the demands for electricity, resulting in the following direct and reasonably foreseeable indirect physical changes in the environment.

2. *Substantial Evidence Supports A Fair Argument That Shifting Work To Cooler Hours And Installing Engineering Controls May Have A Significant Adverse Impact Due To Noise.*

The Proposed Standard lists in the definition of "Administrative Controls" "shifting work earlier or later in the day" as an example of an administrative control. Shifting tasks that generate noise

[4] See https://www.eia.gov/state/analysis.php?sid=CA
[5] See https://www.energy.ca.gov/data-reports/energy-almanac/california-electricity-data/2021-total-system-electric-generation

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to an earlier or later time has the effect of shifting noise generated by that activity or related activities to similar times. If these activities occur in noise sensitive areas – such as residential areas – then the noise associated with those activities may adversely impact adjacent noise receptors. For example, if a waste hauling company were to shift materials recovery to different hours of the day (if allowed by existing operating permits and/or contractual obligations with municipalities), the related waste collection process would similarly have to shift hours of operation. This would put waste collection trucks that generate noise in residential and commercial areas at times when more sensitive receptors might be present.

Another noise impact that must be analyzed are increases in ambient noise in the work environment associated with engineering controls. For example, Table 2 in the SRIA lists 60,000 to 90,000 BTU portable air conditioners as a potential engineering control. While noise levels for units that size were not readily available, smaller units – 8,000 to 14,000 BTU – can create up to 56 decibels of additional noise.[6] When combined with other noise sources in the workplace, the addition of the noise generated by engineering controls could exceed regulatory thresholds, or otherwise have a significant adverse impact on noise levels. CEQA imposes an obligation on the Standards Board as the Lead Agency to analyze these impacts.

As of the date of this letter, WM has been unable to locate any publicly available information showing that the Standards Board has analyzed and considered the potential air quality, energy demand, and noise impacts associated with the various compliance measures employers may implement to comply with the Proposed Standard. The Standards Board must prepare the requisite analyses prior to adopting the Proposed Standard to comply with the California Environmental Quality Act.

C. The Proposed Standard is not Exempt From Environmental Review under CEQA.

CEQA provides several "categorical exemptions" applicable to categories of projects and activities that the Natural Resource Agency has determined generally do not pose a risk of significant impacts on the environment. For the reasons explained herein, the Project here is not exempt from CEQA under any of the potential exemptions. Even if the Standards Board were to find one or more categorical exemptions applied, exceptions to reliance on the exemption preclude reliance on a categorical exemption for the following general reasons. Specifically, the project is subject to several exceptions to the use of a categorical exemption found at CEQA Guidelines Section 15300.2, subdivisions (b)-(c). This section prohibits the use of categorical exemptions under the following relevant circumstances:

[6] https://www.newair.com/blogs/learn/how-loud-is-a-normal-portable-air-conditioner

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(b) "Cumulative Impact - when the cumulative impact of successive projects of the same type in the same place, over time, is significant; and

(c) Significant Effect - where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;"

In the case of the proposed Indoor Heat Standard, because the Campbell's Soup DAR will impose a duty upon employers to install and operate electricity consuming engineering controls, which, in turn, increases energy demands - resulting in indirect air emissions, including greenhouse gas and criteria pollutants, depending on the energy source, the Proposed Standard will result in cumulative impacts and potentially significant effects on the environment due to unusual circumstances unique to the proposed regulatory change.

The amendments to section 3396 also conflict with the plain language of CEQA Guidelines, § 15061, subdivision (b)(3)—the so-called "common sense" exemption from CEQA. That exemption applies to: "A project that qualifies for neither a statutory nor a categorical exemption may nonetheless be found exempt under . . . the 'common sense' exemption, which applies '[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment' (CEQA Guidelines, § 15061, subd. (b)(3))." (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380.) In other words, this exemption does not apply "'to activities which have the potential for causing environmental effects.'" (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 113-116.)

The lead agency—here, the Standards Board—"ha[s] the burden to elucidate the facts that justified its invocation of CEQA's common sense exemption" where "legitimate questions [are] raised about the possible environmental impacts" of the project. (*Muzzy Ranch*, *supra*, 41 Cal.4th 372 at p. 387].) "[I]f a reasonable argument is made to suggest a *possibility* that a project will cause a significant environmental impact, the agency must refute that claim to a certainty before finding that the exemption applies." (*Davidon*, at p. 118, italics original.) To do so, the agency must document and provide its own findings in support of its determination. (*Id.* at p. 115.) This is a difficult standard for agencies to satisfy, and applications of the Common Sense Exemption are rarely upheld because of its narrow definition. (See e.g., *Muzzy Ranch*, *supra*, 41 Cal.4th at pp. 389–390 [common sense exemption applied where the lead agency was "simply incorporate[ing] existing general plan and zoning law restrictions" and any potential impacts "ha[d] already been caused by the existing land use policies and zoning regulations"]; *Davidon*, *supra*, 54 Cal.App.4th at pp. 118–119 [Common Sense Exemption did not apply where the lead agency failed to provide substantial evidence of a lack of environmental effect resulting from an ordinance providing for geological study and tests of foothills area]; see also *Natural Resources Defense Council, Inc. v. City of Long Beach* (C.D. Cal., July 14, 2011, No. CV 10-

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826 CAS PJWX) 2011 WL 2790261, at *5 [city could not rely on Common Sense Exemption where there was "at least a possibility that the [modifications to the City's "Clean Truck Program"] m[ight] have [had] a significant environmental effect"].) On the flip side, petitioners have a low threshold for successfully challenging the invocation of the Common Sense Exemption, as they only need to set forth a "reasonable argument as to the possibility" that a project will cause a significant environmental impact. (*Muzzy Ranch*, at p. 387.)

The proposed regulatory amendments to section 3396 do not fall within the plain language of the statute because there is at least a possibility that it will have a significant effect on the environment due to increases in energy and electricity demands and, indirectly, increases in GHG and criteria pollutants from increased reliance on engineering controls such as A/C. The Initial Statement of Reasons does not appear to consider any of these issues, much less include a factual basis or documented findings justifying any decision, if one has been made, that the amendments are exempt from CEQA.

Thus, the Standards Board must conduct the appropriate analysis of the potential environmental impacts of the Proposed Standard prior to adopting the standard.

V. Conclusion

Cal/OSHA standards establishing criteria for employee safety are required by law to be clear, as clarity is defined in the Administrative Procedure Act and its implementing regulations. In addition, regulations should give employers a reasonable amount of time to implement capital-intensive construction projects when such projects are necessary to comply with the regulations. The law also requires proposed regulations to be supported by appropriate economic and environmental impact analyses.

Defining the term "infeasible" by bootstrapping an invalid prior agency decision into the administrative record does not meet the legal standard for clarity. In addition, by attempting to create a de facto definition of infeasible using the Appeals Board's Campbells Soup Company DAR, the Standards Board has rendered the SRIA inaccurate. In addition, there is substantial evidence that supports a fair argument that the Proposed Standard may result in significant, adverse indirect physical changes in the environment, requiring the Standards Board to prepare an Environmental Impact Report prior to adopting the Proposed Standard.

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WM appreciates the opportunity to comment on this important Proposed Standard and thanks Cal/OSHA for addressing our concerns. WM will continue its efforts to have world class facilities for its employees and supports developing innovative solutions that will help the state meet sustainability efforts while maintaining a safe work environment. Should you have any questions or require further clarification on any of these comments, please do not hesitate to contact us.

Sincerely,

Alex Oseguera
Director of Government Affairs, Waste Management
California, Hawaii

From: Ryan Allain
To: DIR OSHSB
Subject: Indoor Heat Illness Regulations Comments
Date: Tuesday, August 22, 2023 12:00:39 PM
Attachments: Outlook-nhil3wfb.png
CRA and NRF Comment Letter -- Indoor Heat Illness Regulations.pdf

Hello --

On behalf of the California Retailers Association, the National Retail Federation, and our member companies, please see the attached comment letter for the modified indoor heat illness regulations.

Please reach out to me with any questions.

Thank you,

Ryan Allain
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California Retailers Association and National Retail Federation's Comments to the California Occupational Safety and Health Standards Board on the Notice of Modification to California Code of Regulations to Add New Section 3396 of the General Industry Safety Orders

Proposed Rulemaking Concerning Indoor Heat Illness Prevention Standard

The California Retailers Association (CRA), National Retail Federation (NRF), and their members respectfully submit this letter in response to the proposed Section 3396, Heat Illness Prevention in Indoor Places of Employment, to Title 8 of the California Code of Regulations (C.C.R.).

BACKGROUND

CRA is the only statewide trade association representing all segments of the retail industry, including general merchandise, department stores, mass merchandisers, online marketplaces, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware, and home stores. CRA works on behalf of California's retail industry, which operates over 400,000 retail establishments with a gross domestic product of $330 billion annually and employs one-fourth of California's total employment.

NRF is the world's largest retail trade association with over 16,000 members. NRF represents the largest private-sector industry in the United States. In 2018, the U.S. retail industry had nearly 4.2 million establishments, paid $2.3 trillion in labor income, and contributed $3.9 trillion to the national GDP in 2018. In that period, the industry also provided over 32 million direct employment to American workers. Retail also supported nearly 20 million indirect and induced employment across nine occupations.[1]

The retail industry is committed to protecting employees in the workplace. Naturally, CRA and NRF welcome initiatives that effectively abate or prevent occupational hazards without unduly burdening employers. Conversely, we oppose regulations that are not necessary, scientifically supported, practically feasible, or appropriately tailored in scope and application.

COMMENTS

CRA and NRF oppose the currently proposed C.C.R. Title 8, Section 3396. The new regulation will only undermine employers' ability to nimbly counter known or potential indoor heat stressors. Nonetheless, CRA and NRF offer the following insights to assist the Standards Board in revising and improving Section 3396.

I. Application Thresholds Under Subsections (a)(1)-(2) Are Baseless.

Section 3396's application thresholds are baseless. Under Subsection (a)(1), all regulatory measures but Subsection (e) apply to "all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present." It is critical to understand that

[1] *The Economic Impact of the US Retail Industry*, NRF (May 2020), https://cdn.nrf.com/sites/default/files/2020-06/RS-118304%20NRF%20Retail%20Impact%20Report%20.pdf.

workers have different temperature points at which they experience physiological discomfort or detriment.[2] Likewise, how individuals respond to and manage heat stressors depends on multiple variables such as work type and intensity, climate conditions, genetics, and physical traits.[3] And no scientific study shows that heat becomes unacceptable or dangerous starting at 82 degrees in every indoor work area for every exposed worker. Moreover, convenience seems to be the only discernible reason for settling on 82 degrees.[4] Thus, Subsection (a)(1)'s application threshold is subjective, uninformed, and arbitrary.

Likewise, the threshold under Subsection (a)(2) lacks any scientific basis. Under Subsection (a)(2), certain conditions trigger Subsection (e)'s additional duties to assess and use control measures to mitigate the risk of heat illness. The conditions include a temperature or heat index at or above 87 degrees; the threshold is at or above 82 degrees when employees wear clothes that restrict the removal of heat or work in a radiant heat area. According to the initial statement, employees working under these conditions face an increased risk of heat-related death, illness, and injuries.[5] But just as before, there is no discussion of any scientific research or data to support that these conditions pose an increased heat illness risk or why they require Subsection (e)'s specific protective measures. The lack of scientific support is troubling and inconsistent with the rulemaking procedures Cal/OSHA must follow.

Using the heat index as a threshold is especially problematic here. A heat hazard assessment based on the heat index is appropriate only for outside locations.[6] The heat index's irrelevance for indoor heat is evident in Subsection (b)(9)'s definition as well, under which heat index "means a measure of heat stress developed by the National Weather Service for outdoor environments…" But the same definition inexplicably states that "heat index refers to conditions in indoor work areas" for Section 3396, which is a brazen attempt to support a regulatory measure with pseudo-science. Most importantly, the heat index is not a scientifically reliable source to determine what heat illness is possible or probable based on any particular index.[7] Thus, requiring employers to record the heat index if it is greater than the temperature, or relying on the heat index to determine when employers must use control measures to mitigate heat illness, is not logically or legally sound.

II. Subsection (a)(1)(C)'s Exception Is Unworkable.

Subsection (a)(1)(C)'s attempt to exempt certain indoor work areas is unworkable for several reasons. The first criterion is that a location is not normally occupied. Yet, because Section 3396 never defines "normally occupied," employers must speculate regarding when an area meets

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[2] *Heat and Health*, World Health Organization (Jun. 1, 2018), https://www.who.int/news-room/fact-sheets/detail/climate-change-heat-and-health.
[3] *See generally* Josh Foster, et al., *Individual Responses to Heat Stress: Implications for Hyperthermia and Physical Work Capacity*, 11 Frontiers in Physiology, Sep. 11, 2020.
[4] *Initial Statement of Reasons*, Cal. OSHSB (May 18, 2023), https://www.dir.ca.gov/oshsb/documents/Indoor-Heat-ISOR.pdf.
[5] *Initial Statement of Reasons*, *supra*.
[6] Heat Stress, Environmental Health and Safety, University of Iowa, https://ehs.research.uiowa.edu/occupational/heat-stress.
[7] *Secretary of Labor v. United States Postal Service, et al.*, Docket No. 26-1813, at 61 (OSHRC ALJ Jul. 29, 2020).

the definition. Language defining what instances suffice as normally occupied is critical so that employers do not risk possible enforcement actions for locations that they reasonably considered as "not normally occupied" based on their self-created or assessed metrics. The lack of "a reasonable and practical construction that is consistent with probable legislative intent" for this provision makes it impermissibly vague and vulnerable to future challenges.[8]

The second criterion requires the location to be not contiguous with a normally occupied location. This too requires knowing the full scope of "normally occupied" because a location may qualify as an exception if none of the locations that it shares border with is normally occupied. As before, the undefined "normally occupied" makes this exception almost impossible to figure out. The absence of scientific data showing that an indoor heat hazard may be present in locations that are contiguous to an occupied location is yet another example of speculative rulemaking that will not survive in future litigations.

The third mandates that employees must be present in the location for less than fifteen minutes in any one hour. The keyword "present" is again undefined, thereby making all "presence" in the location enough to run the clock regardless of how short its duration is. And why the exception applies at fourteen minutes and fifty-nine seconds but not after one second later remains unexplained, which makes the time constraint's purpose dubious. Further, there is no way of knowing if the time constraint is shared among all the employees or if each gets his or her own fourteen minutes and fifty-nine seconds. Last, the regulation is silent on how employers are to verify that a location did not have employees' presence for less than fifteen minutes in any one hour.

Separately, making shipping containers ineligible for Subsection (a)(1)(C)'s exception is not warranted. Shipping containers are usually not indoor work areas. Even when shipping containers are on job sites, they normally serve to hold items or equipment that employees use during work and store away after work. The exception's three requirements—as haphazard as they are—will adequately rule out containers converted into an office-like space. Excluding shipping containers also conflicts with the existing regulatory definition of intermodal containers, under which shipping containers can and should be exempt from the indoor heat illness standard.[9]

III. The Proposed Regulation is Infeasible with Real World Application of "Cool Down" Areas and Acclimatization.

Unlike other occupational hazards like excessive noise, indoor heat stressors do not pose a uniform kind or degree of harm to the exposed employees. Accordingly, employers must tailor efforts to mitigate or prevent the risk of heat illness in indoor work areas based on each area's circumstances and needs. Unfortunately, many of the proposed protective measures are a one-size-fits-all approach.

Subsection (d) requires providing cool-down areas large enough to accommodate all employees on recovery or rest. Subsection (d) also requires employers to encourage and allow

[8] *See Teichert Const. v. Cal. Occupational Safety & Health Appeals Bd.*, 140 Cal.App.4th 883, 890–91 (2006).
[9] Cal. Code Regs. Tit. 8, § 3460.

employees to take preventative cool-down rest whenever employees feel the need to do so. When employees are taking a preventative cool-down, employers have to monitor and ask whether the employees are experiencing symptoms of heat illness, encourage them to remain in the cool-down area, and not order them back to work until signs of heat illness have abated. These measures are onerous burdens on employers and are infeasible.

For instance, employees in a warehouse may experience varying temperatures throughout the day based on their job assignments, —such as opening or closing bay doors—weather conditions, and a myriad of other factors. But if the temperature equals or exceeds 82 degrees for even one second, employees can take preventative cool-down rests for as long as they wish by claiming that they are hypersensitive to such temperature and the employer would have no recourse against this abuse. Thus, Subsection (d)'s utter disregard for business and operational needs in favor of employee safety from inadequately proven indoor heat threats at 82 degrees or higher will cause unjust economic loss for employers.

Subsection (g)'s measures ignore the well-established science that acclimatization is a complex process that depends on multiple factors.[10] Moreover, living in a particular climate naturally acclimatizes workers even if they are not working. In other words, daily activities such as loading groceries into the car, performing yard work, or walking in the neighborhood serve as some measure of acclimatization. Cal/OSHA's insistence on rigid acclimatization protocols ignores this fact. The regulation insists on setting the threshold at temperature points that have not been proven to be dangerous for every employee in every indoor work condition. The regulation also fails to elucidate what closely observing employees during a heat wave entails. The amorphous requirement unfairly forces employers to guess while facing potential enforcement actions and penalties. This provision also highlights a fundamental issue Cal/OSHA has declined to address: Employee exposure to heat is not limited to workplace exposure. On the contrary, heat exposure is not only a workplace hazard—it is a public hazard. Cal/OSHA should adhere to the science and recognize this issue.

Finally, Cal/OSHA must explicitly acknowledge that individuals react differently to heat exposure. An employee could be working at heat levels of 75 degrees and suffer a heat illness. A different employee could work at heat levels of 95 degrees and suffer no ill effects. Given how individualized the reaction to heat is, Cal/OSHA should state in the rulemaking record that the fact that an individual worker suffers a heat illness does not mean that the employer's heat stress program is not compliant or qualitatively deficient.

Additional CRA Feedback and Proposed Amendments

Standards to prevent heat illness must be reasonably feasible and regulate core body temperature to be effective. We believe the revised proposed language still falls short on both fronts. First, the proposed modifications to the standard do not contain sufficient guardrails to prevent abuse while simultaneously creating significant administrative and financial burdens for employers. This combination will make successful implementation nearly impossible without

[10] *See generally* John E. Greenleaf, et al., *Acclimatization to Heat in Humans*, National Aeronautics and Spaces Administration (April 1989), https://ntrs.nasa.gov/api/citations/19890016187/downloads/19890016187.pdf.

substantial reductions in productivity. Second, as written, the standard fails to account for commonly accepted and more objective methodologies regarding the monitoring and prevention of heat stress illness. To combat both concerns, we propose "alternative means" language below, which will prevent abuse by employees and employers alike and reduce unnecessary administrative and financial burden through objective means of monitoring heat stress.

Reasonable Implementation

The proposed modifications to the regulation have no guardrails related to the frequency and duration of preventative cool-down rests, creating concerns for reasonable implementation. Paragraph (d)(2) specifies a minimum rest of five minutes but does not specify a maximum duration or frequency for these preventative cool-down rests. As proposed, the standard is ripe for abuse. Without an upper limit for frequency or duration, employees could designate their entire shift as a preventative cool-down break. This, in combination with required monitoring during preventative cool-down rests, has the potential to remove two employees from their work for an entire shift. The resulting reduction in productivity would be untenable for any business.

Additionally, the added text defining preventative cool-down rests as recovery periods appears to imply that Cal. Lab. Code § 226.7 (c), effective 1 January 2027, would also apply, requiring employers to pay each employee one additional hour of pay each time an employer objects to such practice. This creates a direct financial incentive for employees to request breaks, regardless of need. Conversely, there is potential for unscrupulous employers who do not value occupational and environmental health and safety to abuse this standard to prevent employees from exercising their rights to preventative cool-down breaks.

Accounting for More Objective Methodologies

The revised proposed language also does not address alternative, authoritative, and recognized practice guidelines for heat illness prevention provided by the American Conference of Governmental Industrial Hygienists (ACGIH). ACGIH issued an updated Heat Stress and Strain TLV Documentation in 2022, based on an extensive review of peer-reviewed literature related to heat illness risk. Federal OSHA frequently relies upon ACGIH, including for the annotated PEL tables, demonstrating the reliability of these standards. Disregarding these standards discards decades of work done by occupational and environmental health and safety professionals to arrive at an objective method for protecting nearly all workers from heat illnesses. We propose language that accounts for ACGIH's methodology below. Note that a similar Alternative Means structure was adopted in the Federal OSHA Silica Standard (29 CFR 1926.1153(c)(1).

Adopting the ACGIH's Heat Stress and Strain (2022) methodology would provide employers with a recognized means of ensuring preventative cool-down breaks remain reasonable and an objective method of ensuring heat stress and strain remain below the Threshold Limit Value (TLV). The proposed rule does not specify a WBGTi measurement method alternative to heat index or temperature. The standard should allow for a demonstration of employee exposures below the ACGIH TLV as an alternative performance measure to demonstrate Assessment and Control Measures. The TLV can be expressed as $56.7 - 11.5 \log_{10}M$, where M is the metabolic rate in Watts. It is especially important to consider a TLV alternative because humidity can vary substantially inside versus outside a building and within sections of the same building. The need to evaluate, potentially, each room of a building (or multiple locations within large rooms) is

excessively burdensome and does not provide actual protection to employees. Further, the use of a TLV alternative helps avoid "feasibility" interpretation questions that are inevitable if the regulation is adopted as proposed. Requiring employers maintain worker exposures below an objective TLV makes the standard easier to understand, implement, and enforce.

Additionally, employers should be able to use objective, physiological indicators to demonstrate conformance to the TLV. Doing so limits the potential for abuse as discussed above, and also ensures employees are not returning to work before their symptoms have sufficiently subsided. Using an objective means of monitoring symptoms like core body temperature or heart rate better protects both employees and employers than the subjective methods currently proposed.

Proposed Alternative Means Language

At a minimum, Section 3396 should provide employers with the option to utilize ACGIH physiological or environmental monitoring methods to reduce heat illness. Proposed language for Section 3396 may be as follows:

(e)(3) Alternative Means.

(A) Employers may utilize ACGIH evaluation methods to evaluate exposures to heat strain. Where evaluation measures ensure that employee exposure is less than the TLV, section (e)(2) shall not apply.

(B) Employers may utilize physiological measurements or environmental WBGTi-TWA measurements representative of an employee's work shift to determine conformance with the TLV.

(C) Employee preventative cool-down breaks may be moderated by objective physiological or environmental WBGTi-TWA measurements demonstrating conformance to the TLV.

CONCLUSION

CRA and NRF appreciate the Standards Board's effort to give employees greater protection from indoor heat illness. But the proposed Section 3396's flaws—from its scientifically unsupported regulatory scope and application to overgeneralized control measures—will make protecting employees in the workplace more difficult for employers across all industries. For the proposed regulation to truly work, the regulation should be based on science and best practices. CRA and NRF invite the Standards Board to collaborate with the retail industry to improve Section 3396.

Sincerely,

Ryan Allain
Director, Government Affairs
California Retailers Association

Edwin Egee
Vice President, Government Relations
National Retail Federation

From: Chris Seymour
To: DIR OSHSB
Cc: Chris Seymour
Subject: written comments / indoor heat illness prevention
Date: Tuesday, August 22, 2023 4:08:12 AM
Attachments: FF15U indoor heat modif comments 2023_08_22.pdf

Attached are comments from the Fight for $15 and a Union California Steering Committee on modifications to the proposed CalOSHA standard on Heat Illness Prevention in Indoor Places of Employment. These comments are filed in response to the 15-day notice posted at https://www.dir.ca.gov/oshsb/documents/Indoor-Heat-15-Day.pdf

Would you please reply to confirm that you have timely received these comments and that the Occupational Safety and Health Standards Board will consider them ini preparing the final standard?

Thanks much. Sincerely,

Chris Seymour
Strategic Initiatives Coordinator - SEIU Public Division
mobile 718/757-0065
chris.seymour@seiu.org

August 22, 2023

David Thomas, Chair
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

By email: oshsb@dir.ca.gov

Dear Chair Thomas and members of the Occupational Safety and Health Standards Board:

Fight for $15 and a Union recognizes and appreciates the work of the Division of Occupational Safety and Health in developing the proposed standard on Heat Illness Prevention in Indoor Places of Employment. As leaders of an organization that unites fast-food workers in California and around the country to fight for improved conditions and a say in the industry, we support the proposed standard as an important step toward protecting workers from the danger of heat illness. Please consider these comments on the proposed modifications to the draft standard as you prepare the final version.

I. Supported modifications: We appreciate and support the following proposed changes to the draft indoor heat illness prevention standard.

- **3396 (e)(1)(B) Temperature and heat index measurements:** We support the addition of language to require temperature measurements "where employees work and at times during the work shift when employee exposures are expected to be the greatest." As a McDonald's worker stated in a recent complaint about excessive heat in a Los Angeles restaurant, "the store's lobby always feels cooler than the kitchen because the AC works there but it does not work sufficiently or is broken in the kitchen. … The fact that the lobby is cooler than the kitchen makes me feel like McDonald's prioritizes the comfort of their customers and does not care about jeopardizing our health."[1]

- **3396(e)(1)(B)(3) Records availability:** We agree with the modification that requires employers to make heat records available to employees and to designated representatives, as defined in California Code, section 3204.[2]

- **3396(f)(2)(C) Emergency response procedures:** Our experience supports requiring employers to include "contacting emergency medical services" in their response procedures when workers show signs of heat illness. Fast-food coworkers report that managers have failed to call paramedics when workers are experiencing heat illness

[1] Complaint to CalOSHA re: McDonald's, 2838 Crenshaw Blvd, Los Angeles CA 90016, July 31, 2023.
[2] Cal. Code Regs. §3204 (c)(3). Access to Employee Exposure and Medical Records. https://www.dir.ca.gov/title8/3204.html

symptoms. For example, a KFC franchise owner in La Puente "screamed" at a worker to come in to work in a hot store because of an inspection of the store that day even though the worker was vomiting and had left the day before, feeling she was going to faint from the heat. When the manager saw the worker's condition, she sent the worker home, without calling 911. The worker went to the emergency room and received IV fluids for dehydration.[3]

II. **Modifications not made:** The absence from the latest draft standard of several key modifications we and other worker advocates suggested will limit its protection of fast-food and other workers in California, and we urge the board to reconsider the decision not to include these changes.

3396(e)(2)(A) Engineering controls: Fast-food workers know that functioning air conditioning is the only way to control heat in our workplaces. The six excessive heat complaints filed by fast-food workers since the May 18, 2023 hearing on the draft standard[4] and the 27 heat-related complaints filed with our original comments almost invariably cite broken or ineffective air conditioning – or air conditioning that managers do not turn on – as a reason for the overheated conditions in their workplaces. Consider the experience of workers at a Cinnabon in Northridge in June:

"It was so hot at work that [redacted] started throwing up from the heat, and everyone on shift walked off the job because it was unsafe to continue working … Three days after we walked out, management had the AC fixed, but then it started leaking on July 7, 2023, [through the ceiling, forming puddles on the floor] and since then management keeps leaving the AC off, and the store gets too hot."[5] We therefore suggest adding the following sentence to Subsection (e)(2)(A) in the proposed standard:

In establishments with radiant heat sources, when other engineering controls fail to reliably and consistently maintain temperatures below the action threshold, the employer shall provide air conditioning and ensure its proper functioning unless the employer demonstrates that doing so is infeasible.

- **3396(d)(2) Access to cool-down areas:** As noted in our comments on the prior draft standard, managers routinely prevent fast-food workers from taking meal and rest breaks already required under California labor law.[6] Fast-food managers have recently

[3] Complaint to CalOSHA re: KFC, 939 N Hacienda Blvd, La Puente CA 91744, October 29, 2021.
[4] The six complaints are: Complaint to CalOSHA re: McDonald's, 3868 E 3rd Street, East Los Angeles CA 90063, May 31, 2023; Complaint to CalOSHA re: Carl's Jr, 1346 Saratoga Ave, San Jose CA 95129, July 18, 2023; Complaint to CalOSHA re: Cinnabon, 9301 Tampa Ave Space 108, Northridge CA 91324, July 31, 2023; Complaint to CalOSHA re: McDonald's, 2838 Crenshaw Blvd, Los Angeles CA 90016, July 31, 2023; Complaint to CalOSHA re: McDonald's, 950 W Floral Dr, Monterey Park CA 91754, August 3, 2023; Complaint to CalOSHA re: Church's Chicken, 1886 University Ave, Riverside CA 92507, August 8, 2023.
[5] Complaint to CalOSHA re: Cinnabon, 9301 Tampa Ave Space 108, Northridge CA 91324, July 31, 2023.
[6] Fight for $15 and a Union, Skimmed & Scammed: Wage Theft From California's Fast-Food Workers, May 2022, p.

called workers "crazy" and said they were lying when they complained about unsafe heat[7] and joked that excessive heat "is a way to burn calories."[8] Given this record, it is essential that CalOSHA make it mandatory that workers take cool-down breaks when the threshold standard applies.

- **(e)(2)(A) Conditions under which an indoor work area is subject to all provisions of this section:** As Worksafe noted in its comments on the earlier draft heat illness prevention standard, a standard of 82 degrees in workplaces with radiant heat sources, such as restaurants, puts many workers at risk for heat illness – let alone the 87 degree standard for some workplaces. Adequately protecting against heat illness requires a lower threshold.

III. We believe that, for restaurants and similar workplaces, the **Heat Illness Prevention Plan** required by subsection (i)(5) of the draft standard will necessarily include the measures we advocate in these comments and our original comments – such as functioning and effective air conditioning, mandatory cool-down breaks and a lower temperature threshold. As we have contended above, fast-food restaurants are not safe without those provisions. When we experience heat in our workplaces that threatens to cause heat illness and when employers fail to employ those methods to protect us, we intend to cite the requirement for an *effective* Heat Illness Prevention Plan.

IV. **Item for inclusion in revised Statement of Reasons: Franchisor responsibility.** We provided evidence in our comments on the prior draft standard that at least some fast-food franchisor corporations meet the definition under CalOSHA's existing Multiemployer Policy of either "creating employers" or "controlling employers" – or both. To ensure clarity for all parties, we again urge the Division to revise the statement of reasons for the indoor heat standard to memorialize that the indoor heat standard will apply to multiple employers under the Multiemployer Policy.

Workers in the accommodation and food services industry, which includes restaurants, represent a full 40 percent of the employees covered by the proposed rule, according to the Standardized Regulatory Impact Assessment commissioned by CalOSHA.[9] That is far and away the largest group of workers covered by the proposal – one-and-a-half times as many as the

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7. https://fastfoodjusticeahora.com/scammed/

[7] Complaint to CalOSHA re: Carl's Jr, 1346 Saratoga Ave, San Jose CA 95129, July 18, 2023.

[8] Complaint to CalOSHA re: McDonald's, 2838 Crenshaw Blvd, Los Angeles CA 90016, July 31, 2023.

[9] David Metz et al., Standardized Regulatory Impact Assessment (SRIA) of the Proposed California Regulation for Heat Illness Prevention in Indoor Places of Employment, Rand Education & Labor, Prepared for the California Department of Industrial Relations, Division of Occupational Safety and Health, September 2021, Table 1, p. 12. https://dof.ca.gov/wp-content/uploads/sites/352/Forecasting/Economics/Documents/Indoor-Heat-Illness-Prevention-SRIA.pdf

next largest group, manufacturing employees.[10] It is therefore essential that CalOSHA heed the voices of fast-food workers, who represent a low-wage, predominantly Latina/Latino, majority women[11] workforce within accommodation and food services that is particularly vulnerable to heat illness.

We thank the Division for proposing this important standard and urge careful consideration of the lived experience of fast-food workers to ensure that the standard meets the goal of adequately protecting workers from heat illness.

Sincerely,

Olivia Garcia, McDonald's, San Jose

Alondra Hernandez, Burger King, Oakland

Angelica Hernandez, McDonald's Los Angeles

Laura Pozos, McDonald's, Los Angeles

Pablo Narvaez, KFC Fremont

For the Fight for $15 and a Union California Steering Committee

[10] David Metz et al., Standardized Regulatory Impact Assessment (SRIA) of the Proposed California Regulation for Heat Illness Prevention in Indoor Places of Employment, Rand Education & Labor, Prepared for the California Department of Industrial Relations, Division of Occupational Safety and Health, September 2021, Table 1, p. 12. https://dof.ca.gov/wp-content/uploads/sites/352/Forecasting/Economics/Documents/Indoor-Heat-Illness-Prevention-SRIA.pdf

[11] Kuochih Huang, Ken Jacobs, Tia Koonse, Ian Eve Perry, Kevin Riley, Laura Stock and Saba Waheed, "The Fast-Food Industry and COVID-19 in Los Angeles," Los Angeles: UCLA Labor Center and Labor Occupational Safety and Health; Berkeley: UC Berkeley Labor Center and Labor Occupational Health Program, February 2021, Table 9, Table 6. https://laborcenter.berkeley.edu/wp-content/uploads/2021/05/The-Fast-Food-Industry-and-COVID-19-in-Los-Angeles-v2.pdf

From: Nick Chiappe
To: DIR OSHSB
Cc: Chris Shimoda
Subject: CTA Written Comments on Heat Illness Prevention in Indoor Places of Employment Regulation
Date: Tuesday, August 22, 2023 3:01:37 PM
Attachments: image002.png
image003.png
image004.png
image005.png
image006.png
image007.png
Comments - Heat Illness Prevention.pdf

Hello,

Please find the California Trucking Association's comments on the Heat Indoor Prevention in Indoor Places of Employment Regulation attached to this email.

Thank you,
Nick

Nick Chiappe | Government Affairs Associate
California Trucking Association
4148 East Commerce Way
Sacramento, CA 95834
C: (916) 296-6218 | **E**: nchiappe@caltrux.org
W: www.caltrux.org

California Trucking Association
4148 East Commerce Way, Sacramento, CA 95834
www.caltrux.org

SUBMITTED ELECTRONICALLY

August 22, 2023

Occupational Safety and Health Standards Board
Department of Industrial Relations
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

RE: Heat Illness Prevention in Indoor Places of Employment, Section 3396

The California Trucking Association (CTA) appreciates the opportunity to submit the following comments on the Occupational Safety and Health Standards Board's (OSHSB) Heat Illness Prevention in Indoor Places of Employment regulation.

We have concerns about Section 3396(c) Provision of Water relating to an employer's ability to provide water to employees who operate commercial vehicles that do not begin their shift at or return to an employer's facility. We believe additional clarification is imperative to ensure the smooth implementation of this section while preventing unintentional violations that may arise when it is infeasible for an employer to provide potable water at the beginning of an employee's shift.

Many commercial vehicle drivers, such as long-haul truck drivers, typically do not start or end their workdays at an employer owned facility. This poses considerable challenges for employers complying with the requirements of this section. We believe an employer should not be in violation of this section if they implement policies that allow an employee driver to maintain and provide themselves with water pursuant to the section's requirements throughout their shift.

The current language is vague and does not provide flexibility for commercial vehicle operators such as truck drivers who depart and return to their personal residences. To address this concern, we recommend an employer should be exempt from Section 3396(c) if adequate training is provided with resources on where water can be provided during a shift, or by encouraging the use of personal water storage devices within their vehicle when it is infeasible for an employer to provide water especially at the start of a driver's shift.

We appreciate the opportunity to provide comments and if you have any questions or concerns, please do not hesitate to contact me by email at nchiappe@caltrux.org.

Sincerely,

Nick Chiappe
Government Affairs Associate
California Trucking Association

From: Louis Blumberg
To: DIR OSHSB; Hagen, Katie@DIR
Cc: Guzman, Sulma@DIR; Ping, Deanna@DIR; Shickman Kurt
Subject: Comment letter re. 15-Day Notice Heat Rule for Indoor Workers
Date: Tuesday, August 22, 2023 3:09:22 PM
Attachments: ARRC ltr re. 15-day notice OSHSB heat rule.pdf

Attached, please find the comments of the Adrienne Arsht - Rockefeller Foundation Resilience Center on the high heat standard for indoor workers. Please acknowledge receipt of this letter.

Thank you,

Louis Blumberg

Louis Blumberg
blumbergwestconsulting@gmail.com
+1-415-271-3749

Christina Shupe, Executive Director
California Occupational Safety and Health Standards Board
via email: oshsb@dir.ca.gov.

August 22, 2023

Re: comments on modifications to Section 3396: Heat Illness Prevention in Indoor Places of Employment.

Director Shupe and members of the Standards Board:

These are the comments of the Adrienne Arsht – Rockefeller Foundation Resilience Center (Arsht-Rock) at the Atlantic Council on the 15-Day Notice for modifications to Section 3396: Heat Illness Prevention in Indoor Places of Employment. Arsht-Rock is working to bring Climate Resilience Solutions to one billion people across the globe. Reducing the impacts of extreme heat is a priority for Arsht-Rock, especially in California given its leadership on workplace safety policy. We thank the Cal OSHA Division and the Occupational Safety and Health (OSH) Standards Board staff for their work on this important regulation. .

Arsht-Rock supports the rule with the proposed modifications and urges you to adopt it as soon as possible.

Urgent adoption is essential – The record is clear that the safety and health of indoor workers is imperiled by high heat and thus regulatory protection by your Board is justified, urgent and required. The proposed rule has been before the Board for more than four years, sufficient time to act. Thus, we urge you to adopt the proposed high heat standard for indoor workers at your October meeting if possible and if not, at the November meeting at the latest. By acting then you will have an opportunity to begin implementation of the needed protections for the heat season in 2024. Should you delay adopting this regulation until some unspecified time in 2024, as reported at your May meeting, protection for indoor workers will be delayed until 2025. This will result in health and safety injuries, and potentially, deaths to workers that could have been avoided if you act in the next three months.

Much has changed since the Cal OSHSA Division submitted its recommendations to the Standards Board in April of 2019. Most notably:

1. The number of indoor workers at risk has grown significantly. For example, the number of workers in the warehouse and storage sector has increased by 50% while state employment overall has remained flat.

2. The threat of extreme heat has grown exponentially. Massive heat domes have covered California and the Western United States setting new high temperatures widely. At one point, one-third of the US Populations was under a high heat watch. Heat waves have become more frequent, more intense, longer, more widespread and deadlier.

3. Government leaders are calling for increased government action to protect indoor (and outdoor) workers. Notably:

    - President Biden issued a directive to the Secretary of Labor to issue the first-ever national Hazard Alert for heat and to take additional actions to protect workers. July 27, 2023.[1]

    - One Hundred and Twelve members of the US Congress requested that Acting Labor Secretary Julie Su and Assistant Secretary Doug Parker for OSHA requesting, " the fastest possible implementation of an Occupational Safety and Health Administration (OSHA) workplace heat standard to ensure that millions of people can go to work with greater confidence that they will return to their families alive and uninjured."[2]

    - CA Governor Newsom - on July 11th, Governor Newsom launched HeatReadyCA, a $20 million extreme heat public education and awareness campaign. The campaign's section on workers tells them, "You have the right to be protected from heat hazards at work, including education on how to stay safe and the ability to take preventative measures to avoid heat illness."[3]

    What workers need now is a new, rigorous standard to fulfill the Governor's direction and implement this right. The OSH Standards Board has the opportunity to meet this critical moment and promote health and safety for workers and reduce preventable deaths. I urge you to take this bold and necessary action by adopting the proposed high heat standard for indoor workers at your next meeting.

Temperature threshold should be 80°F - However, should the Standards Board delay further, we request that you set the temperature threshold for action at 80°F consistent with California's heat protection standard for outdoor workers[4] and with the standard in Oregon.[5] The science supports this threshold.

Conclusion - The proposed rule has been amended several times since it was first presented to the Standards Board. Changes have been made in response to various proposed hypothetical scenarios. Further delay to respond to new scenarios will obfuscate the clear and well-reasoned protections in the rule as proposed in this notice and will delay implementation. Inaction is unacceptable as the planet continues to warm and the health and safety threat to indoor workers increases. As members of Congress noted, "Protection

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[1] https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/27/fact-sheet-president-biden-to-announce-new-actions-to-protect-workers-and-communities-from-extreme-heat/#:~:text=The%20President%20will%20also%20announce,protect%20workers%20from%20extreme%20heat.

[2] https://casar.house.gov/sites/evo-subsites/casar.house.gov/files/evo-media-document/congressional-letter-to-biden-administration-on-extreme-heat.pdf

[3] https://heatreadyca.com

[4] https://www.dir.ca.gov/title8/3395.html

[5] https://www.revisor.mn.gov/rules/5205.0110/

from extreme heat is a matter of life and death for many workers and their families across the United States." Please adopt this new rule as soon as possible.

Thank you for your consideration of these comments and please do not hesitate to contact us if you have questions or would like to discuss our recommendations.

Sincerely,

Louis Blumberg
Senior Climate Policy Advisor
Adrienne Arsht-Rockefeller Foundation Resilience Center

From:	Helen Cleary
To:	DIR OSHSB
Cc:	Shupe, Christina@DIR; Neidhardt, Amalia@DIR; Eckhardt, Susan@DIR; Berg, Eric@DIR; Killip, Jeff@DIR; Hagen, Katie@DIR
Subject:	PRR Comments: 15-Day Notice of Proposed Modifications to Indoor Heat
Date:	Tuesday, August 22, 2023 3:24:27 PM
Attachments:	PRR Comments_OSHSB_15-Day Notice_Indoor Heat Proposed Rulemaking_8_22_23.pdf

Hello Board Members and Staff,

Please accept the attached written comments from the PRR OSH Forum in response to the Board's 15-Day Notice of Proposed Modifications to the Heat Illness Prevention in Indoor Places of Employment Proposed Rulemaking, §3396.

Thank you for your consideration.

Have a great rest of the week!

Helen

Helen Cleary
Director
Phylmar Regulatory Roundtable, PRR-OSH Forum
m: 916-275-8207
e: hcleary@phylmar.com
w: www.phylmar.com/regulatory-roundtable

August 22, 2023

State of California
Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Ventura Oaks Way, Suite 350
Sacramento, CA 95833
OSHSB@dir.ca.gov

RE: 15-Day Notice of Proposed Modifications to Heat Illness Prevention in Indoor Places of Employment Proposed Rulemaking: §3396

Board Chair Thomas and Board Members:

Please accept these comments and recommendations from the **Phylmar Regulatory Roundtable (PRR) Occupational Safety and Health OSH Forum** in response to the California Occupational Safety and Health Standards Board's (Board) 15-Day Notice of Proposed Modifications (15-Day Notice) to the new General Industry Safety Orders in Title 8: §3396. Heat Illness Prevention in Indoor Places of Employment (Indoor Heat), noticed on August 4, 2023.

PRR offers the following feedback and recommendations to the Board and California's Division of Occupational Safety and Health (Division or Cal/OSHA) to improve clarity and reduce the negative and unnecessary impact this regulation will have on California workplaces. Specific recommendations to the proposed text are documented in **green bold, for additions**, and ~~red strikethrough,~~ for deletions.

§3396(a) Scope and Application

PRR appreciates the Division's attempt to address industry concerns regarding applicability of the requirements on storage sheds and workers moving between indoor and outdoor spaces; however, PRR remains concerned with the expansive and unnecessary scope and impact this proposed standard will have on *every* workplace in the State of California. This concern was underscored after members critically analyzed the new exception in (a)(1)(C) and the significant implications of the use of "contiguous" in (a)(1)(C)2.

PRR member facilities include large buildings that are used for storage or for vehicle dispatch and may also contain smaller enclosed offices and work areas. These smaller work areas may be housed within the larger structure or connected by a corridor. Many of these larger spaces, because they are not normally occupied, are either maintained above the proposed temperature triggers, or are not temperature controlled. It can be common for workers to traverse through the corridors and large open

spaces to get to their actual workspace, which is typically ventilated, or temperature controlled. These large open spaces would not meet the definition of outdoor and because they are contiguous with active workspaces, they do not meet the exemption criteria. However, despite temperatures being above the triggers (82 and 87 degrees Fahrenheit, 82/87° F), workers walking through or accessing them for short periods of time would not be at risk of heat illness. Other examples of areas that are inappropriately included in this standard are emergency stairwells, large indoor airplane hangars, and indoor car parking areas.

As drafted, the proposed standard requires the entire structure, not just the offices inhabited by employees, to be actively monitored and managed to ensure temperatures are maintained below 87°F anytime employees are present. This includes after regular office hours when Heating, Ventilation, and Air Conditioning (HVAC) systems are typically adjusted to save energy and costs. If the employer can prove it is infeasible to reduce the temperature, employees will still need to be constantly monitored or managed with administrative controls or personal heat-protective equipment. The application of the rule to these types of indoor spaces would not substantially reduce the risk of heat exposure or improve the safety and health of the worker. Yet, it will require constant oversight and management by the employer. Failure to differentiate occupancy and employee use in large indoor areas or sections like stairwells will not only create a financial drain on the company, but if engineering controls are put in place in these areas at a time when the California Energy Commission is struggling to find ways to meet current and future electrical demand, it will further stress California's electric grid. In addition, unnecessary use of engineering controls, such as air conditioning, is not in alignment with the sustainability efforts directed in Governor Newsom's Executive Order N-8-23[1]. We do not believe this level of regulation is reasonable or a practical use of California's energy and employer resources. Especially when the employee is simply passing through the area and the risk of heat illness is low or non-existent.

PRR's overall concern can be distilled down to the fact that the proposed standard unnecessarily labels every employee in the State as an indoor or outdoor worker subject to management under the requirements in §3395 or §3396, without exception. As PRR has highlighted in previous comments, this is regardless of an actual risk of heat illness. To reduce this overly broad scope it is imperative that the Board consider a third compliance option.

Truly effective occupational safety and health regulations target the workplaces that create occupational hazards and protect employees at a considerable risk of exposure. This proposed regulation fails to accomplish this. Unfortunately, it will waste valuable resources and call into question the credibility of not only the health and safety professionals who will work to implement the onerous requirements but the Board and Cal/OSHA as well.

[1] Executive Order N-8-23 directs the Governor's Office of Business and Economic Development to collaborate with the State agencies and the community on adoption of best practices regarding clean energy and infrastructure. https://www.gov.ca.gov/wp-content/uploads/2023/05/5.19.23-Infrastructure-EO.pdf

PRR urges the Board to consider this unnecessary impact and direct the Division to draft a reasonable solution focused on workers with an actual, substantial risk of occupational exposure to heat. Specifically, we propose an exemption that does not just change the classification of the structure from indoor to outdoor, but an exception that considers duration of exposure.

(a)(1)(C)

PRR appreciates inclusion of the exception in §3396(a)(1)(C); however, members are concerned about overly prescriptive elements and confusing language. Specifically, the addition of "vehicles and shipping containers," which inappropriately identifies just *two types* of spaces that meet the overly broad definition of "indoor." The exceptions listed in (a)(C) 1., 3. sufficiently describe the types of spaces that meet the exception criteria and including "vehicles and shipping containers" is not necessary.

For example, a shipping container located in a warehouse with workers assigned to unload it would not meet the criteria in 1. or 3. It is reasonable to assume that workers with a possible risk of heat illness would be unloading for more than 15 minutes in an hour and it would be difficult to argue that the space is not normally occupied if a worker is assigned to perform specific duties inside the space. A worker's occupation of a vehicle that creates a risk of heat illness is also captured in the exception criteria in 1. or 3. for the same reasons.

Some PRR members have repurposed actual shipping containers as outside storage units for maintenance and equipment. Employee access to these storage areas is incidental and for short periods of time. These situations and containers accurately meet the exception criteria in 1. – 3. But, because they are a "shipping container", they would not fall under the exception.

PRR was encouraged to hear at the August 17, 2023, Board meeting, the Division is planning to address industry concerns regarding shipping containers. To reduce concerns surrounding both vehicles and shipping containers while still maintaining the intent, PRR suggests deleting "vehicles and shipping containers" from the proposed text. As an alternative, the Division can craft FAQs that provide examples of the types of workspaces that do and do not meet the exception criteria. An FAQ is the appropriate place to include these types of specifics.

PRR also recommends changing the use of "locations" to "spaces" in (a)(1)(C). We believe that using spaces is more accurate in this subsection than location which refers to geography and is not a *type* of "indoor" environment the regulation is trying to describe.

Finally, changes in the 15-Day Notice reflect the Division's attempt to address workers that go back and forth between outdoor and indoor but in doing so, have created a new burden for employers to follow both standards. The added exception implies that indoor spaces that meet the listed criteria *must* be treated as outdoor. We are hopeful this is not the intent and recommend the revision below to clarify employers may solely follow §3396 for spaces that meet the listed criteria in the exception in (a)(C).

(a)(1)(C)2.

PRR members do not believe the criteria listed in (a)(1)(C)2. and the use of "contiguous" is clear or provides additional value to the exception or regulation. A restroom or storage area located inside of a building would be part of the larger definition of indoor and is not considered an outdoor place of employment subject to §3395. To eliminate the concern while still maintaining the intent, PRR suggests deleting the term "contiguous." Again, PRR recommends the Division craft FAQs to clarify the intent.

(a)(5)

PRR members appreciate and support the newly proposed (a)(5). It provides needed clarity and is a rational solution to our previously expressed concerns regarding workers that go between indoor and outdoor spaces. However, PRR members believe additional language that clarifies employers may continue complying with §3395 is needed for further improvement. This will ensure individual workplaces are accurately managed and employer responsibilities align with the primary work environment of their operations. It will also prevent unnecessary duplication and changes to successful outdoor heat illness prevention plans already implemented and support business continuity for employers and employees while maintaining employee protections.

Furthermore, not including this additional language creates ambiguity and implies employers currently following §3395 are now required to be covered under the indoor standard, §3396. Requiring employers with outdoor operations to switch from outdoor requirements to indoor requirements would expand the scope and applicability of the outdoor heat standard, §3395, without following the required rulemaking process; this is inappropriate and creates excessive burden not previously considered. It is also inappropriate for such a significant requirement to be included in a 15-Day Notice without considering the economic impact this will have on employers currently following the outdoor heat standard.

If the Board's intention is to impose indoor heat requirements on outdoor operations for employees who go back and forth, PRR believes it is necessary that the Board provide evidence and data that demonstrates the outdoor heat standard does not adequately address the employees it was originally designed to protect and appropriately propose modifications to the outdoor heat standard, under a new rulemaking.

PRR Recommendations for §3396. (a)

For all of the above reasons, PRR recommends the following changes to the Scope and Application of §3396.

> (1)(C) Indoor **spaces** ~~locations~~ that meet all of the following criteria **may be** ~~are~~ considered outdoors and are covered by section 3395 and not this section. ~~This exception does not apply to vehicles or shipping containers~~. Criteria for this exception are:

1. The indoor **space** ~~location~~ is not normally occupied when employees are present or working in the area or at the worksite; and

~~2. The indoor location is not contiguous with a normally occupied location; and~~

2. ~~3.~~ Employees are present in the indoor **space** ~~location~~ for less than 15 minutes in any one-hour period.

(1)(D) For indoor spaces not normally occupied or used for persons to momentarily pass through, the employer is not required to comply with this section.

(5) Employers may comply with this section in lieu of section 3395 for employees that go back and forth between outdoors and indoors. **Employers with primary outdoor operations may continue to comply with section 3395 in lieu of this section.**

§3396(b) Definitions

PRR supports the proposed changes to the definition of "clothing that restricts heat removal," §3396(b)(3). PRR members believe that the revisions are appropriate and align with advances in fabrics and design of clothing employees wear to enhance their health, safety, and comfort at work.

Some PRR members are concerned that light-weight coveralls worn by workers over their clothing may be perceived by inspectors as "clothing that restricts heat removal." These coveralls are light-weight, breathable, and used to prevent uniforms and personal clothing from getting soiled; they are not used to protect the wearer from chemical, biological, physical, radiological, or fire hazard, nor do they protect from contamination. For these reasons, we do not believe coveralls meet this definition and request the Division provide an FAQ to alleviate concern and potential misinterpretations.

PRR also supports the consideration of feasibility that has been added to the definition of "cool-down area," §3396(b)(4). This revision acknowledges operational and physical limitations employers and employees may encounter in the workplace.

§3396(e) Assessment of Control Measures

PRR's significant concerns regarding temperature taking, the ambiguity of feasible engineering controls, and the requirements to maintain temperature records at the worksite remain. To help employers determine engineering controls that will satisfy the Division's definition of feasible, PRR recommends the Agency provide guidance and examples prior to a rule becoming effective. This is necessary to allow employers time to prepare and ensure compliance.

PRR supports EXCEPTION (B) that allows employers to forgo temperature taking and recording if the vehicle has air conditioning. This is one practical consideration in this overly complex and operationally challenging section.

PRR also appreciates that the Board accepted PRR's recommended changes in (e)(2)(C). This revision ensures this section is written accurately.

§3396(g) ~~Close Observation During~~ Acclimatization

This change does not accurately describe the subsequent requirements in this section and should be changed back to what was originally proposed. "Close Observation" is exactly what is required of the employer in this section, and it is not accurate to state that this section is "acclimatization." The definition of acclimatization is specific to a process the body experiences and this section is specific to a worker being watched. Despite this title being used in the outdoor heat standard, it is not appropriate to continue to inaccurately describe this element in the General Industry Safety Orders of Title 8.

PRR also highlights that this section does not appropriately consider the inherent limitations of monitoring solo workforces. As expressed in our previous comments, requiring critical infrastructure workers to work in pairs so that everyone is monitored may not be possible due to limited manhours and emergency operations. PRR is concerned this will have unintended consequences on the communities these workers serve, especially during emergency operations. We continue to strongly urge the Board to revise this section so that requirements can be appropriately applied to solo workforces. For example, remote observation and communication via voice and electronic means should be acceptable. This section should also be drafted to allow innovative technologies such as biometric monitoring.

§3396(h) Training NOTE

PRR appreciates the added NOTE that allows employers to combine training programs and training requirements from §3395 and §3396. This will help streamline the administrative process and reduce potential confusion amongst workers.

APPENDIX A

At least eight (8) heat index readings in the chart in Appendix A differ from the National Weather Service (NWS) Heat Index Chart 2019 that is referenced in the documents[2] relied upon in this rulemaking. This is both concerning and disappointing, particularly because at least one of the heat indexes in the actual

[2] The document listed as 8. "U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Weather Service (NWS) Heat Index Chart 2019. Accessed July 24, 2023. https://web.archive.org/web/20190718054317/https://www.wrh.noaa.gov/psr/general/safet y/heat/heatindex.png" in the "Additional Documents Relied Upon" on page 2 of the 15-Day Notice conflicts with the chart in Appendix A.

NWS Chart 2019 is below the temperature threshold in the regulation and the chart in Appendix A reflects a heat index which would trigger employer requirements. For example, when the temperature is 82° F, and relative humidity is 70%, the heat index in the NWS Chart referenced by the 15-Day Notice is listed at 86° F and the heat index included in Appendix A lists the heat index at 88° F. PRR recommends the Division review all the heat index measurements in the chart and revise for accuracy.

Closing

While PRR appreciates improvements to the text, particularly regarding clarity, and supports many of the changes proposed in the 15-Day Notice, we do not believe the changes effectively address PRR member concerns expressed in our comments submitted on May 16, 2023, at the Public Hearing and at previous Board meetings. We reiterate the overall reasons we believe the proposed Indoor Heat standard is unreasonable:

- The regulation implies that every worker is at risk of heat illness whenever the temperature in an indoor space is higher than 82° F, regardless of environmental factors and actual time spent inside.
- It will require every employer in the state to create programs, training, and procedures for workers regardless of an actual risk of heat illness.
- It is designed for fixed work locations and does not consider mobile workforces and solo workers.
- The standard requires the same response for incidental and short duration exposures as environments that experience high-heat conditions and expose employees for extended periods of time.
- The proposed Indoor Heat regulation will compel every office building, and potentially every vehicle, to run air conditioning systems 24/7, 365 days a year. The negative impact and demand this will create on California's energy grid and California businesses' sustainability programs and resources is not considered by the Board or Division.

PRR members understand the hazard of heat to workers and agree that employers need to protect them from heat illness in the workplace. Unfortunately, as drafted, the Indoor Heat rulemaking is another example of a general industry regulation with a scope too large to be reasonably managed. The result is arduous requirements for situations that will produce little to no risk of heat illness. This is out of alignment with the basic principles for effective occupational safety and health regulations.

PRR hopes that the Board and Division hear and respond to our concerns with additional revisions to the Indoor Heat proposed rulemaking.

Thank you for your consideration.

Sincerely,

Helen Cleary
Director
PRR OSH Forum

CC:

Katrina Hagen	khagen@dir.ca.gov
Christina Shupe	cshupe@dir.ca.gov
Amalia Neidhardt	aneidhardt@dir.ca.gov
Jeff Killip	jkillip@dir.ca.gov
Eric Berg	eberg@dir.ca.gov
Susan Eckhardt	seckhardt@dir.ca.gov

PRR is a member-driven group of 37 companies and utilities, 19 of which rank amongst the Fortune 500. Combined, PRR members employ more than 1.7 million American workers and have annual revenues in excess of $1 trillion. Individual PRR members are Environmental Health and Safety (EHS) professionals committed to continuously improving workplace safety and health. PRR provides informal benchmarking and networking opportunities to share best practices for protecting employees. In addition, members work together during the rulemaking process to develop recommendations to federal and state occupational safety and health agencies for effective workplace regulatory requirements. These comments and recommendations are based on the experience and expertise of PRR members, however, the opinions expressed in them are those of PRR and may differ from beliefs and comments of individual PRR members.

From: Gregory Stevenson
To: DIR OSHSB
Subject: Proposed Indoor Heat Illness Standard - Comment.
Date: Tuesday, August 22, 2023 3:41:43 PM
Attachments: Comments-Indoor-Heat-Illness-Prevention 2023-08-22.docx

Hello There.
I have attached a letter commenting on the Proposed Indoor Heat Illness Standard.
Please let me know if you have any questions.
Regards
Greg

Greg Stevenson | Environmental Manager

BASALITE
BUILDING PRODUCTS, LLC
2150 Douglas Blvd. Suite 260
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916-343-2108
email: greg.stevenson@basalite.com
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BASALITE®
Building Products, LLC

2150 Douglas Blvd, Suite 260
Roseville, CA 95661

Ms. Christina Shupe, Executive Officer
California Division of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Sent via e-mail to oshsb@dir.ca.gov

RE: Proposed Heat Illness Prevention for Indoor Places of Employment

Our facilities and operations have extensively implemented the administrative requirements, including providing drinking water and shade, contained in § 3395, Heat Illness Prevention in Outdoor Places of Employment (Outdoor HIP Standard), which have proven to effectively minimize heat stress and illness among our employees. Consequently, the provisions of the Outdoor HIP Standard similarly applicable to prevent indoor heat illness are appropriate and should be maintained as a principal component of the Proposed Safety Order.

Accordingly, we support the following provisions, as amended in the current Proposed Safety Order:

> § 3396(a)(1) Scope and Application and EXCEPTIONS, in particular, (a)(1)(C), which reasonably addresses comments received in response to the initial publication of this Proposed Safety Order and its public hearing. There are many of these "in and out" situations in our operations and the flexibility provided is more appropriate than the previous "at any time" approach.
>
> § 3396(e)(1) EXCEPTION (B). The amendment expressly addressing vehicles by exemption from assessment and control measures for (B) vehicles with effective and functioning air conditioning is appropriate and should be included in the final rule. However, to further clarify the status of vehicles, open cab vehicles (such as excavators, loaders, and forklifts) should be deemed subject to the Outdoor HIP Standard.
>
> To reiterate support for other administrative requirements of the § 3395 Outdoor HIP Standard that have been shown to improve safety in hazardous heat situations, we agree with the following provisions of proposed § 3396 as written:
>
> - § 3396(c) Provision of Water.
> - § 3396(f) Emergency Response Procedures

- § 3396(g) Acclimatization, except a definition of "close observation" should be included in § 3396(b) Definitions. The definition should, to the extent practicable, include objective criteria and alternatives. For example, an appropriate frequency of observations and/or alternatives, such as a buddy system.
- § 3396(h) Training. The training provisions are reasonable and appropriate, although the provisions relating to an employer's emergency response obligations at (G), (H), and (I) should be included instead in supervisor training at § 3396(h)(2).
- § 3396(i) Heat Illness Prevention Plan.

<u>We Oppose § 3396(e) Assessment and Control Measures.</u>

The lack of detail in crucial areas of the proposed rule will seriously affect employers, regardless of size and type of business and will increase the volume of vexatious litigation that they face.

The specific provisions in the proposal giving rise to these concerns are § 3396(e)(1)(B) 1 &2.

Measurements shall be taken "where employees work and … when employee exposures are expected to be the greatest". This is exceptionally vague and open to abuse by all parties. This entire piece of legislation hinges on an accurate assessment of risks to workers. What it gives us is a word salad that will be litigated in court for years to come. The Division's laziness in not attempting to include even basic requirements like the number of measurements required per worker at a location, or how close to the worker do the measurements need to be performed is unworkable and very disappointing.

<u>We Oppose § 3396(b)(9) &(11) Testing Equipment Required.</u>

According to the proposed §3396(b)(9) & (11) we are going to have to buy a six inch Globe Thermometer to measure radiant heat along with a dry bulb temperature and relative humidity at a cost of $2200. For example, this is the price for a Testo 0602-0743 six inch Globe and Testo 400 Digital thermometer set from T Equipment. If only one of these required thermometers are purchased at each the 196,000 affected facilities the cost would be $431,200,000, and we are still to take our first measurement.

If we are able to use the much cheaper and more plentiful integrated Wet Bulb Globe Temperature (WGBT) meters at $100 to $400 each the additional costs of monitoring for this new rule would be dramatically reduced but would still be in the order of $19,600,000 to $78,400,000. There are even WGBT models that can be worn on the worker, which is likely the most accurate place to collect exposure data.

This over-reach subverts the Proposed Safety Order with grossly underestimated costs in the Standardized Regulatory Impact Assessment (SRIA)

The SRIA Report is inaccurate and does not provide substantial evidence to support the Proposed Standard.

The SRIA for the Proposed Indoor Heat Illness Prevention Standard [Rand Corp., September 2021] fails to demonstrate that additional protective measures beyond the primarily administrative requirements of the Outdoor HIP Standard would significantly reduce indoor employee heat illnesses and deaths, which are very low compared to outdoor incidence (an average of less than 1 death and 185 heat illnesses in this State per year based on actual workers' compensation data for the years 2010 to 2018) without a standard in place. This study speculates that climate change may add to these figures and increase the benefit of the standard for employees. However, it is well established after more than two decades of outdoor heat illness regulation that the rules accomplishing most of the reduction in illness cases and fatalities were the administrative provisions: water, training of employees and supervisors, emergency response, low-cost shade, and rest periods. In addition, as shown by the history of the Outdoor HIP Standard, it has been amended three times since its adoption in 2005, which is also available to the Board if the initial Indoor HIP Standard is not as effective as anticipated.

The Proposed Standard is subject to CEQA requiring an Environmental Impact Report.

As a final comment, based on any reasonable analysis of the potential costs of engineering controls implemented by the estimated 196,000 facilities believed to be affected by the proposed standard, the SRIA cost estimate of up to $1.1 billion in ten years, most of which expected to be invested in engineering controls is extremely low and may not even reflect the cost of universal cool-down areas in nearly two thousand establishments. Nonetheless, as most of these control measures will consume significant electrical power and water, there is substantial evidence that the Indoor HIP Standard will have a significant effect on the environment, including increased consumption of electricity and demands on the electrical grid and electric generator plants primarily fueled by natural gas as its combustion produces regulated pollutants, including greenhouse gases. Consequently, CEQA requires the sponsoring agency – the Standards Board – to prepare an Environmental Impact Report (EIR). There is no information in the rulemaking record that this process had been planned or completed.

We appreciate the opportunity to comment on this important proposed Safety Order. Should you have any questions or require further clarification on any of these comments, please do not hesitate to contact us.

Sincerely,

Greg Stevenson
Environmental Manager
Email: greg.stevenson@basalite.com
2023-08-22

From: Anne Katten
To: DIR OSHSB
Subject: Indoor heat 15 day comment
Date: Tuesday, August 22, 2023 4:15:03 PM
Attachments: indoor heat 15 day comment CRLAF et al.pdf

Please see attached comment letter from CRLAF, Worksafe, CRLA Inc., SEIU-CA and CNA

Thank you

Anne Katten

--
Anne Katten
Pesticide and Work Safety Project Director
2210 K Street, Suite 201 | Sacramento, CA 95816
Tel. (916) 446-7904 ex 110 | Fax. (916) 446-3057
akatten@crlaf.org | www.crlaf.org

WORKSAFE
safety, health, and justice for workers
seguridad, salud y justicia para los trabajadores

August 22, 2023

Dave Thomas, Chair
Occupational Safety and Health Standards Board

RE: Comments on proposed modifications to proposed regulation on heat illness prevention in indoor places of employment (Title 8 CCR proposed section 3396)

Via email: oshsb@dir.ca.gov

Dear Chair Thomas and Members of the Occupational Safety and Health Standard Board:

Thank you for providing this opportunity to comment on these proposed modifications.

8CCR 3396 (a)(1)(C) Exceptions to Indoor work locations covered by this regulation
We appreciate that this proposed exception for certain employer controlled indoor work locations specifies that locations that meet these criteria are considered outdoors and are therefore covered by section 3395. Workers who work both indoors and outdoors need the protections afforded by both regulations because exposure conditions are different indoors and outdoors. Since the proposed indoor regulation follows the same format as the outdoor regulation employers will be able to combine training and other requirements in a straightforward manner.

We also appreciate and strongly support the decision to consider vehicles and shipping containers as indoor work spaces covered by 8 CCR 3396 and to exclude both from this exception. Both vehicles and shipping containers capture and concentrate outdoor heat so it is very important to control this heat with all feasible controls. In addition, employees operating extremely hot vehicles are at elevated risk of injuring themselves and others in accidents if

they develop heat illness symptoms. In addition to employees operating vehicles it is important that airplane cabin cleaners are also protected from excessive indoor heat exposure.

While we also appreciate that this proposed exception is limited to indoor locations not normally occupied when employees are working and not contiguous with normally occupied work locations, we still have concerns that the exception removes all obligation for the employer to control the temperature in these non-contiguous buildings that would be allowed to be occupied up to 15 minutes per hour. We interpret these "not normally occupied and not contiguous" locations to include storage rooms, utility rooms and even plumbed bathrooms that are in separate structures without a common wall but this should be addressed either in definitions or interpreted in a Frequently Asked Questions (FAQ) document. Feasible ventilation and insulation should be required in these locations especially given that the proposed exception allows work in these locations up to 15 minutes per hour which can constitute 25% of an 8-hour day.

It is unclear whether or not the employer would be required to monitor the temperature in these non-contiguous, not normally occupied indoor locations but some monitoring would seem to be required to determine appropriate administrative controls, such as scheduling the short-term work in these locations during cooler parts of the day or limiting trips to these locations on hotter days.

In addition, some cooling should be provided on hot days in bathrooms that have plumbing and electricity so that employees will not limit fluid intake to avoid having to use the bathroom and also to prevent a scenario where a worker passes out in the bathroom and then develops heat stroke or falls and hits their head. This exception would disproportionately impact employees in packing houses and dairies where restrooms are often not connected to the barn/building where the work is being performed.

Lastly, we are concerned that this exception will create unnecessary challenges to enforcement and make employer's recordkeeping more burdensome.

Temperature requirements in burn units adequately addressed by feasibility requirements
As Eric Berg explained at the OSH Standard's Board meeting on August 17th, 2023, an exception is not needed for hospital burn units because the proposed standard's provision regarding feasibility of engineering controls is sufficient to address the issue regarding the periodic need for high indoor heat in hospital burn units. Other requirements under the standard would and should still apply, including administrative controls, personal heat-protective equipment, cool-down areas, and exposure assessments. Administrative controls (particularly breaks and adequate staffing to reduce heat exposure time in the patient rooms) and access to cool-down areas are critical needs for staff in burn units.

8CCR 3396 (a)(5) Compliance with section 3396 in lieu of section 3395 permissible for employees who go back and forth between indoors and outdoors
This provision or exception is too broad and should be eliminated. Employees who go back and forth between indoors and outdoors may be working at considerable distance from the indoor location during parts of the workday. In such circumstances they need ready access to drinking water and need shade and other protections when the ambient temperature reaches 80F when working outdoors.

8CCR 3396(b)(3) Definition of clothing that restricts heat removal
We support the increased specificity in this definition but remain concerned that the definition excludes many types of clothing and PPE that restrict heat removal.

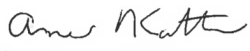
3396 (e)(1)(B) Temperature and heat index measurements:
We support the increased specificity of requiring that both initial and follow-up temperature or heat index measurements be taken where employees work and at times when employee exposures are expected to be the greatest.

8CCR 3396(e)(1)(B)(3) Records availability
We support the revision which requires that records of temperature or heat index measurements be made available to employees and also to designated representatives as defined in section 3204 both at the worksite as well as upon request. This will help employees understand the extent of exposure to heat in the workplace and how it is being addressed.

8CCR 3396(f)(2)(C) Emergency Response Procedures
We strongly support adding the added specification of the employer's emergency response procedures "Including contacting emergency medical services". Prompt medical attention for heat illness saves lives and prevents long term disability.

Conclusion
Thank you for your careful attention to these comments. The amount of time that goes into reviewing these comments is appreciated, however, we were disappointed to see that many of our suggestions to make the regulation more worker protective were not incorporated into this revision. While we think this standard could and should be stronger we do not wish to delay adoption of an indoor heat standard and request that you address these concerns in the final statement of reasons if a second set of revisions is not possible.

Sincerely,



Anne Katten
California Rural Legal Assistance Foundation
akatten@crlaf.org

AnaStacia Wright
Worksafe

Estella Cisneros
California Rural Legal Assistance, Inc.

Beth Malinowski
SEIU State Council

Carmen Comsti
California Nurses Association

From: Kevin Riley
To: DIR OSHSB
Subject: Comments on modification to New Section 3396: Heat Illness Prevention in Indoor Places of Employment
Date: Tuesday, August 22, 2023 4:31:46 PM
Attachments: Riley Comment Letter Indoor Heat Aug 2023.pdf

Good afternoon,

Attached please find my comments to the most recent modifications to the proposed Cal/OSHA standard for Heat Illness Prevention in Indoor Places of Employment.

Thanks,
Kevin

Kevin Riley, PhD, MPH (*he/him)*
Director
UCLA Labor Occupational Safety & Health Program

UCLA

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Los Angeles, CA 90095-1478
Cell: 310-617-8288

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August 22, 2023

RE: Comments on revisions to proposed regulation on heat illness prevention in indoor places of employment (Title 8 CCR Section 3396)

Dear Chair Thomas and Members of the Occupational Safety and Health Standard Board:

I appreciate the opportunity to weigh in on the proposed regulation on Heat Illness Prevention in Indoor Places of Employment (Title 8 CCR Section 3396). I offer the following comments on the most recent modification to the proposed standard:

Employers may comply with section 3396 in lieu of section 3395 for employees who go back and forth between indoors and outdoors (Section (a)(5))
I'm concerned that this language is too vague and leaves outdoor workers at an increased risk of exposure to heat than the existing outdoor heat standard allows. This language seems to indicate that employers with outdoor workers who go indoors at some point during the workday and for an unspecified amount of time could opt to follow Section 3396 with its threshold of 87 degrees F for temperature or heat index, rather than the more protective threshold of 80 degrees F that Section 3395 requires. It could also result in outdoor workers losing access to shade, drinking water, and other provisions required under Section 3395.

Some clarification is needed here to specify what proportion of time outdoors versus indoors Cal/OSHA deems reasonable for employers to opt for Section 3396 – ideally, employers should be given the option to follow Section 3396 only if employees spend the vast majority of their workdays indoors.

The concerns about this language also underscores the challenges in establishing two different action thresholds for outdoor and indoor work, a recommendation we and other stakeholders had made during the last round of comments in May 2023.

Definition of clothing that restricts heat removal (Section (b)(3))
I support the increased specificity in this definition but remain concerned that the definition excludes many types of clothing and PPE that restrict heat removal, as noted in our comments from May 2023. This is particularly true in the case of workers wearing various forms of respiratory protection.

Temperature and heat index measurements (Section (e)(1)(B))
I support the increased specificity of requiring that both initial and follow-up temperature or heat index measurements be taken where employees work and at times when employee exposures are expected to be the greatest.

Records availability (Section (e)(1)(B)(3))
I support the revision which requires that records of temperature or heat index measurements be made available to employees and also to designated representatives as defined in section 3204 both at the worksite as well as upon request. This will help employees understand the extent of exposure to heat in the workplace and how it is being addressed.

Emergency Response Procedures (Section (f)(2)(C))
I strongly support adding the added specification of the employer's emergency response procedures "including contacting emergency medical services." Prompt medical attention for heat illness saves lives and prevents long term disability.

Finally, I'm disappointed that the Board did not make additional modifications recommended by LOSH and other stakeholders during the last comment period, including adopting lower action thresholds to align with the existing outdoor heat standard (Section 3395), and requiring that training be offered in a language and educational level that workers understand. I urge the Board to reconsider these issues to ensure the new indoor standard is as robust and effective as possible for the diverse workforce across our state.

Thank you for your continued work to move forward with this urgently needed standard.

Sincerely,

Kevin Riley, PhD MPH
Director, UCLA Labor Occupational Safety and Health (LOSH) Program
Principal Investigator, Western Region Universities Hazmat Worker Training Consortium
kriley@irle.ucla.edu
310-617-8288

From: Lawson, Jeremy@CALFIRE
To: DIR OSHSB
Cc: Spillner, Nina@CALFIRE
Subject: RE: 15-DAY NOTICE: Heat Illness Prevention in Indoor Places of Employment
Date: Tuesday, August 22, 2023 4:39:54 PM
Attachments: image002.png
image003.png
image004.png
image005.png
image006.png
mobile 1.png
mobile 2.png
mobile 3.png
Indoor Heat Regulation 2nd Round Comment Period.pdf
Importance: High

Please see CAL FIRE's comments for the Heat Illness Prevention in Indoor Places of Employment.

For visual reference, also included are images of our Mobile Equipment shop in Davis and hanger at McClellan Park.

Thank you,

Jeremy Lawson
Staff Chief – Safety and EMS Programs
715 P St., Sacramento, CA 95814
(209) 332-0891 Cell

From: Christina Shupe <oshsb@dir-ca.ccsend.com> **On Behalf Of** Christina Shupe
Sent: Friday, August 4, 2023 11:28 AM
To: Spillner, Nina@CALFIRE <nina.spillner@fire.ca.gov>
Subject: 15-DAY NOTICE: Heat Illness Prevention in Indoor Places of Employment

15-DAY NOTICE
COMMENTS DUE 8/22/2023

Aviso de 15-días
Comentarios Deben Recibirse 8/22/2023

Occupational Safety and Health Standards Board

NOTICE OF PROPOSED MODIFICATIONS TO CALIFORNIA CODE OF REGULATIONS

TITLE 8: New Section 3396 of the General Industry Safety Orders

Heat Illness Prevention in Indoor Places of Employment

Written comments on these modifications or documents relied upon must be received by **5:00 p.m. on August 22, 2023** by mail or email:

MAIL
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

EMAIL
oshsb@dir.ca.gov

Comments received after 5:00 p.m. on August 22, 2023 will not be included in the record and will not be considered by the Board.

Please confine your comments to the modification of the text and the additional documents. This proposal will be scheduled for adoption at a future Standards Board Business Meeting.

Access the 15-Day Notice for Heat Illness Prevention in Indoor Places of Employment.

For additional information on Board activities, please visit the OSHSB website.

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Junta de Normas de Seguridad y Salud Ocupacional

AVISO DE MODIFICACIÓN DE LA PROPUESTA DEL CÓDIGO DE REGULACIONES DE CALIFORNIA

TÌTULO 8: Nueva Sección 3396 de las Órdenes de Seguridad de la Industria en General

Prevención de enfermedades causadas por el calor en lugares de trabajo cerrados

Comentarios escritos sobre estas modificaciones o de los documentos de respaldo deben recibirse antes de **las 5:00 p.m. del 22 de agosto de 2023** por correo o correo electrónico.

CORREO
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350

Sacramento, CA 95833

CORREO ELECTRÓNICO
oshsb@dir.ca.gov

Los comentarios recibidos después de las 5:00 p.m. del 22 de agosto 2023 no se incluirán en el registro y no serán considerados por la Junta.

Por favor, limite sus comentarios al texto modificado con respecto a su versión original y los documentos añadidos. Esta propuesta se programará para su adopción en una futura Reunión de Negocios de la Junta de Normas.

Acceda al Aviso de 15 días para
Prevención de enfermedades causadas por el calor en lugares de trabajo cerrados.

Para obtener información adicional sobre las actividades de la Junta, visite el sitio web de
OSHSB.

Únase a nuestra lista de correo

Occupational Safety and Health Standards Board | (916) 274-5721
2520 Venture Oaks Way, Suite #350, Sacramento, CA 95833 | www.dir.ca.gov/oshsb

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
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SACRAMENTO, CA 94244-2460
(916) 653-7772
Website: www.fire.ca.gov

August 22, 2023

Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
oshsb@dir.ca.gov

Department of Forestry and Fire Protection's (CAL FIRE) Comments on Proposed Heat Illness Prevention in Indoor Places of Employment, Section 3396

Thank you for the opportunity to comment on the proposed revisions to Title 8, Section 3396 of the General Industry Safety Orders on Heat Illness Prevention in Indoor Places of Employment. After review of the changes made to the exceptions of this section from the first comment period, CAL FIRE would like submit suggested changes for consideration by the Occupational Safety and Health Standards Board ("Board").

Subsection (a)(1) exception (C) (scope) defines indoor places that are to be considered outdoor and covered under section 3396 of California Code of Regulations. Fighting fires indoors isn't explicitly exempted from these regulations. While likely not intended to restrict or limit the ability of firefighters to fight structural fires indoors, without an exemption it could be implied incorrectly. CAL FIRE believes that firefighting activities should be exempted from the requirements of this regulation. Firefighters frequently spend more than 15 minutes fighting fire within a structure in a given hour. Should CAL FIRE be required to follow this regulation for firefighting activities, a firefighter would be required to exit an indoor space no later than 15 minutes past their point of entry, regardless of the fire activity. This requirement would have a significant impact to the operational capabilities of CAL FIRE and could present a life safety concern for personnel. Should a firefighter be required to exit the indoor space before the fire is extinguished, there is a potential for the fire to increase in size, complexity, and intensity. As building or structural fires grow, they have a potential to spread to other nearby buildings and/or create a separate wildland fire as a result. This presents a safety concern for not only the CAL FIRE employees responding to extinguish these fires, but for communities and the general public. Our firefighters are conditioned and trained and our procedures for structural firefighting meet all requirements of sections 3395 and 5144(g)(3)&(4) for IDLH atmospheres. This includes access to rapid cooling measures, radio communication, a buddy system, close supervision and observation, and implementing emergency response procedures when necessary.

Additionally, CAL FIRE believes that mobile equipment workshop and aircraft hangar operations should be considered for addition under (a)(1) EXCEPTIONS of this regulation.

CAL FIRE believes that anytime the garage and/or hangar roll-up style doors are opened, the indoor location should be considered an outdoor work location, covered by California Code of Regulations, Title 8, Section 3395 Heat Illness Prevention in Outdoor Places of Employment. The need to open these doors frequently and have them remain open, including to move vehicles and/or aircraft, does not allow for effective engineering controls to keep the location cool as an indoor workplace. The doors are not able to be kept closed, as it can create an immediately dangerous to life or health (IDLH) atmosphere due to the inability to circulate outdoor airflow when engines are running. These specific workplace exemptions under (a)(1), will allow CAL FIRE to continue protecting employees from heat-related injuries and illnesses under the outdoor regulation requirements while maintaining the operational abilities and readiness required as a first response agency.

Please feel free to reach out to Staff Chief Jeremy Lawson for questions or further details on CAL FIRE's position and perspective. Chief Lawson can be reached via email at Jeremy.Lawson@fire.ca.gov or by phone at (209) 332-0891.


PORTACOOL
PORTACOOL


CAL FIRE
118
1721

Wet Bulb Globe Temperature vs Heat Index

Source: weather.gov/ict/wbgt

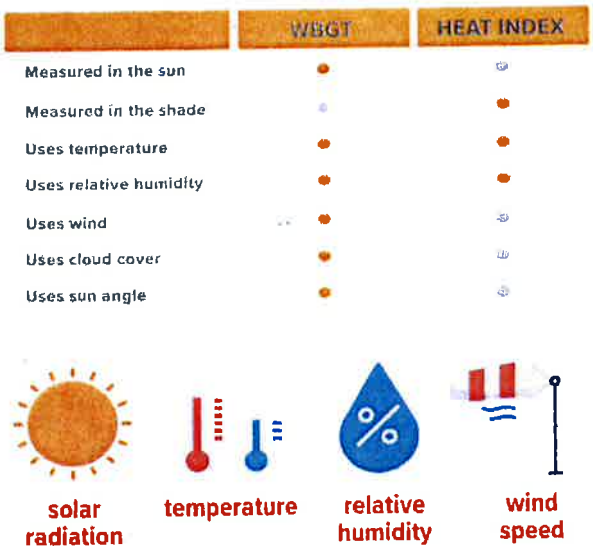
While the WBGT and Heat Index both attempt to describe how "hot" it is and the potential for heat related stresses, they go about it in different ways.

Bottom-line upfront >>>> what value should you use? For day-to-day activities, heat index will serve you well. If you work outside or plan on any sort of vigorous outdoor activity in the full sun, use the WBGT.

► **Heat Index** is more commonly used and understood by the general public - the higher the values the hotter it's going to feel and the higher the threat for heat related illnesses. It's calculated from the temperature and relative humidity. What's not commonly known is that Heat Index assumes you are in the shade.

► **WBGT** also uses the temperature and humidity in its calculation, but temperatures are measured in direct sunshine. It also factors in wind speed, sun angle and cloud cover.

Comparing WBGT and Heat Index



Examples

Temp F	Dew Point F	RH %	Sky %	Wind mph	Heat Index F	WBGT F
90	65	42	05	03	92	89
90	65	42	05	13	92	83
90	65	42	65	13	92	81
90	70	52	10	06	96	88
90	70	52	60	06	96	86
90	70	52	60	13	96	85
100	70	39	10	13	108	90
100	70	39	10	5	108	94
100	70	39	65	05	108	91

Website: National Weather Service (NOAA)

Heat Index is Based on a Study → 44 years Old.

WGBT = WBGT Wet Bulb Globe Temp

Origins:

The WBGT date back to the 1950s specifically the United States Marine Corp Recruit Depot on Parris Island, SC. Recruits were required to perform high intensity exercise in a high humidity, high temperature environment. Many soldiers succumbed to heat related illness. In response, a joint effort between the Department of the Navy and Army doctors studied the effects of heat on exercise performance. The result was the WBGT.

WGBT uses several atmospheric variables for its calculations: temperature, humidity, wind speed, sun angle, and cloud cover. Temperatures are measured in the sunlight.

The military uses the WBGT to gauge the potential for heat related stresses to this day. OSHA uses the WBGT as a guide to managing workload in direct sunlight as do athletic departments (college and high school) and other events involving strenuous work or activity. If you work or exercise in direct sunlight, this is a good element to monitor.

Inputs:

- Temperature (in sun)
- Relative Humidity
- Wind speed
- Cloud cover
- Sun angle

Equation:

$$WBGT=0.7T_w+0.2T_g+0.1T_d$$

- T_w = Natural wet-bulb temperature (combined with dry-bulb temperature indicates humidity)
- T_g = Globe thermometer temperature (measured with a globe thermometer, also known as a black globe thermometer)
- T_d = Dry-bulb temperature (actual air temperature)

For more information on WBGT:

Heat Index

Origins:

The Heat Index is based on work carried out by Robert G. Steadman in 1979 ("An Assessment of Sultriness, Parts I and II") where he discussed factors that would impact how hot a person would feel under certain conditions. It incorporates 21 parameters and assumptions: body mass (147.7 lbs), height (5'7"), actively walking (3.1 mph), clothing (pants and short sleeve shirt), heat tolerance, in the shade, etc. This formula became the "heat index". It is the traditional measurement of heat stress due to high temperatures and high humidity.

It is important to note that the heat index is calculated for shady areas. *Direct sunlight can add as much as 15 degrees to the heat index.*

OSHSB
PUBLIC HEARING meeting
RECEIVED
8/17/23

Inputs:

- Temperature (in shade)
- Relative Humidity

Assumptions:

- Body mass (147.7 lbs)
- Height (5'7")
- Actively walking (3.1 mph)
- Clothing (pants and short sleeve shirt)
- Sunlight and UV exposure
- Heat tolerance

Equation:

$$\text{Heat Index} = -42.379 + 2.04901523T + 10.14333127R - 0.22475541TR - 6.83783(10^{-3}T^2) - 5.481717(10^{-2}R^2) + 1.22874(10^{-3}T^2R) + 8.5282(10^{-2}TR^2) - 1.99(10^{-6}T^2R^2)$$

- T = ambient dry temperature (in Fahrenheit)
- R = relative humidity (percentage)

For more information on the heat index:

- Heat Index
- Heat Index Climatology

SECOND 15-DAY NOTICE (NOVEMBER 9, 2023)

HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

From: ofc ilwu26.com
To: DIR OSHSB
Subject: Indoor Heat Standards
Date: Monday, November 27, 2023 9:38:25 AM
Attachments: indoorheatstandard112723.pdf

Hello,

Please see attachment.

Thank you.

Luisa Gratz
ILWU, Local 26 President
5625 S Figueroa St. | Los Angeles, CA 90037
Tel: (323)753-3461
Fax: (323)753-1026

NOVEMBER 27,, 2023 BY E-MAIL

TO: DAVE THOMAS - CHAIR, OSH BOARD <oshb@dir.ca.gov>
TO: ANA STACIA WRIGHT, POLICY MANAGER
WORKSAFE <awright@worksafe.org>
TO: ANNE KATTEN <akatten@cnlaf.org>
FROM: LUISA GRATZ - PRES. LOCAL 26, ILWU

RE: INDOOR HEAT STANDARD E-MAIL 11-21-23 3:23 PM

HELLO ANA STACIA, ANNE, & DAVE,

THANK YOU FOR YOUR ONGOING HARD WORK IN BEHALF OF STRUGGLING WORKING PEOPLE, WHO OTHERWISE HAVE NO VOICE IN THESE MATTERS. WITHOUT THESE REGULATIONS AND STANDARDS REQUIRING COMPLIANCE & ENFORCEMENT, ESPECIALLY WITH KNOWN EFFECTS OF CLIMATE CHANGES AFFECTING ALL OF US IN VARIOUS WAYS, MORE WORKERS WOULD GET SICK, & MANY DIE.

I AM REQUESTING THAT A SECTION BE INCLUDED THAT PROTECTS WORKERS THAT LOAD & UNLOAD SHIPPING CONTAINERS & TRUCK VANS.

THIS WORK IS NOT ONLY PHYSICALLY CHALLANGING BUT FREQUENTLY PERFORMED UNDER PRODUCTION STANDARDS, ALGORITHMS, IN THESE PHYSICAL STRUCTURS WITH OUT AIR CIRCULATION, TEMPERATURE & HUMIDITY CONTROL, & FEAR OF DISCIPLINE.

PLEASE ADD A SECTION FOR THIS WORKFORSE TO RELY ON FOR THEIR HEALTH & SAFETY.

CONT. —

ALSO, WHERE IN A WAREHOUSE IS THE HEAT INDEX MONITORED IS CRITICAL TO THE EFFECTIVENESS OF THIS PROPOSED STANDARD. MOST RECENTLY CONSTRUCTED WAREHOUSES HAVE HIGH CEILINGS, SOME HAVE TWO OR THREE FLOORS, RACKS WITH RAW MATERIALS, OR PACKAGED GOODS, INTERCEPTING AIR CIRCULATION. HEAT IS STORED FROM DAYLIGHT HOURS AND RISES TO A SECOND & THIRD LEVEL WITH NO AIR CIRCULATION OR COOLING PROVIDED TO THE WORKERS IN THOSE LOCATIONS. AIR IS OFTEN STALE / STAGNANT ALONG WITH HEAT & HUMIDITY.

WE HAVE BEEN STRUGGLEING WITH THIS "INDOOR HEAT STANDARD" FOR DECADES WHILE WORKERS CONTINUE TO SUFFER. LETS PASS A "MEANINGFULL", ENFORSEABLE "STANDARD."

LASTLY, PLEASE ADD AN EXPLANATION FOR WORKERS SO THAT THEY CAN READ & UNDERSTAND PAGES 14 & 15, APPENDIX A, HEAT INDEX CHART, TEMPERATURE & HUMIDITY, SO THAT ANY WORKER CAN EASILY CALCULATE THE INDEX, & MONITOR THEIR WORK ENVIRONMENT ACCURATELY.

THANK YOU IN ADVANCE FOR YOUR CONSIDERATION.

RESPECTFULLY,

Linda Grady - PRES. LOCAL 26, ILWU

C.C. CHRISTINA SHOPE - OSH BD.

C.C. STEPHEN KNIGHT - WORKSAFE

From:	Michael Miiller
To:	DIR OSHSB
Cc:	agonzalez@dir.ca.gov; Park, Keummi@DIR; Berg, Eric@DIR; Neidhardt, Amalia@DIR; Matthew Allen (mallen@WGA.COM); Taylor Roschen - California Farm Bureau Federation (troschen@kscsacramento.com); Melissa Werner (Melissa@politicalsolutions.us); Anna Ferrera; Tricia Geringer (tricia@agcouncil.org); Bryan Litt;e (blittle@cfbf.com); pete@familywinemakers.org; Tim Schmelzer; Louie Brown; Lauren Smillie; Jackson R. Gualco (jackson_gualco@gualcogroup.com)
Subject:	COMMENTS ON PROPOSED REGULATION (Nov. 9 Amendments) HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT
Date:	Tuesday, November 28, 2023 9:02:23 AM
Attachments:	image004.png Ag Coalition Letter Indoor Heat Regulation 2nd 15 Day Notice FINAL.pdf

Good Morning,

Attached are comments from a coalition of ag organizations relative to the recent amendments to the proposed indoor heat illness prevention standards.

Thank you for your consideration, and please confirm receipt.

Sincerely,

Michael

MICHAEL MIILLER | **California Association of Winegrape Growers** | **Director of Government Relations**
1121 L Street, Suite 304 | Sacramento, CA 95814 | michael@cawg.org
Office (916) 379-8995 | Mobile (916) 204-0485 | www.cawg.org | www.cawgfoundation.org |
www.unifiedsymposium.org ***—Begins January 23, 2024***

The most effective way to reach me is at my mobile number or e-mail.

November 27, 2023

Chair David Thomas and Board Members
Occupational Safety & Health Standards Board
Department of Industrial Relations, State of California
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

SUBJECT: COMMENTS ON PROPOSED REGULATION (Nov. 9 Amendments)
HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

Dear Chair Thomas and Members of the Board:

The undersigned organizations representing California's agricultural industry submit this letter to provide comments on the amendments released on November 9 to the proposed Heat Illness Prevention in Indoor Places of Employment draft regulation. Please refer to our prior comments submitted on May 17 for our continued concerns.

This letter is focused only on the November 9 amendments and raises the following issues relative to scope and application.

- How the recent amendments deal with incidental heat exposure (especially relative to vehicles).
- How the recent amendments define indoor locations.
- How the recent amendments deal with the crossover between Sections 3395 (outdoors) and 3396 (indoors).

In raising these issues, suggested amendments, which are intended to resolve our concerns, are highlighted in red.

Incidental Heat Exposure

We recommend the following amendment which borrows from existing law in Washington.
https://lni.wa.gov/safety-health/safety-rules/chapter-pdfs/WAC296-307.pdf#WAC_296_307_097

> Scope and Application (a)(1)
> Exceptions
> (C) This section does not apply to incidental heat exposures where an employee is exposed to temperatures above 82 degrees Fahrenheit for less than 15 minutes in any 60 minute period ~~**and not subject to any of the conditions listed in subsection (a)(2)**~~.

In relying on science and medical data, Washington's existing outdoor heat exposure regulation states that it, "*Does not apply to incidental exposure. Incidental exposure means an employee is not required to perform a work activity outdoors for more than 15 minutes in any 60-minute period*."

This proposed regulation appears to assume that exposure to a temperature of 87 degrees or greater is inherently dangerous even for only a few minutes in a controlled setting where the temperature is immediately adjusted downward to a comfortable level. But there is no scientific or medical data to support that assumption.

Additionally, because the new amendments in (a)(1)(C) apply to vehicles (where hot temperatures are immediately adjusted downward via air-conditioning), we recommend clarifying the vehicle exception as follows:

Scope and Application (a)(1)
Exceptions
(D) Vehicles with effective and functioning air conditioning.

We appreciate the existing exception for vehicles relative to assessment and control measures. However, we believe the exception should apply to the entire regulation. Keep in mind the following:

1) As a matter of public policy, no additional protections for workers are achieved by applying any of Section 3396 to the inside an air-conditioned vehicle. If the vehicle has effective and fully functioning air conditioning, by design (and as provided in the Section 3395 definition of "shade" that specifically cites as acceptable shade a "…car running with air conditioning") that vehicle provides a place of relief from heat.
2) With that in mind, for outdoor ag workers the inside of an air-conditioned vehicle may serve as a cool-down area. Bringing that vehicle into this regulation creates confusion due to the crossover between Sections 3395 and 3396 (which is discussed later in this letter).
3) Even if that confusion is resolved, there is no measurable additional safety provided by requiring compliance with both sections in that situation. If a worker is already covered by Section 3395, it makes no sense to then require compliance with additional Section 3396 requirements when that employee is inside a vehicle with effective and functioning air conditioning.

Compatibility with Section 3395

The newest proposed amendments strike the following: ~~*"(5) Employers may comply with this section in lieu of section 3395 for employees that go back and forth between outdoors and indoors.*~~" This is the opposite of what was suggested in our initial comment letter.

In that letter we suggested the following amendment, which we continue to suggest:

(a) Scope and Application.
(5) This section shall not apply to employees working both indoors and outdoors whenever those employees are covered by section 3395.

Taking the opposite approach, as in the new amendments, creates several problems whereby an employer would need to comply with dueling heat illness prevention standards for the same worker, in the same workplace, and during the same shift.

This is made worse by the fact that, while both standards are intended to address the same exact safety issue (heat illness prevention), those standards are inconsistent. Below are two examples of those inconsistencies:

1. The requirements for measuring "temperature" are different between Section 3395 and proposed 3396.
   - Outdoor requirements provide that "*the thermometer should be shielded while taking the measurement, e.g., with the hand or some other object, from direct contact by sunlight*."
   - To the contrary, the proposed indoor requirements provide for use of "*a thermometer freely exposed to the air* without *considering humidity or radiant heat*."
   - The definition of "Radiant Heat" in the proposed indoor requirements, "*Sources of radiant heat include the sun...*"

   Therefore, the existing outdoor standard literally **requires** consideration of the sun when taking the temperature, while the proposed indoor standard would **prohibit** consideration of the sun. How would these contradictory provisions be applied relative, for example, to an indoor cool-down area that has windows to the exterior when used by outdoor workers?

2. Additionally, the definitions of "Personal risk factors for heat illness" are inconsistent. Proposed Section 3396 refers to, "use of medications that affect the body's water retention or other physiological responses to heat." While Section 3395 refers to, "use of ***prescription*** medications that affect the body's water retention or other physiological responses to heat." ***Emphasis added***.
   This inconsistency begs a few questions:
   - What is the purpose of not including the word "prescription" in the definition of "personal risk factors for heat illness" in the proposed regulation?
   - Is an employer supposed to consider whether the outdoor employee's medications are prescribed, but only when that employee is outdoors?
   - In the list of definitions in Section 3396, only one definition provides that the definition applies to only Section 3396 (which is found in the definition of "Heat Wave"). Therefore, do the rest of the definitions in Section 3396 apply more broadly? If so, that creates all kinds of problems as this section could inadvertently affect the applicability of several other sections of Title 8.

We believe the definitions in Section 3396 are not intended to be broadly applied and we therefore recommend the following technical amendment, "(b) Definitions **(for the purpose of this section only)**" and that this same phrase be deleted from the definition of "Heat Wave". NOTE: Absent this amendment, these definitions would create confusion as to their intended application.

These are important considerations, because when an outdoor employee is brought indoors to cool-down, unless that indoor space is used exclusively as a cool-down area, it is considered an indoor area that falls under Section 3396. This is true even if that employee is indoors for cool-down purposes only.

Keep in mind that if an employee, for example, seeks shade inside an air-conditioned building, that building is not likely to be used exclusively as a cool down area. Consequently, under the proposed indoor standard, that employee would be considered to be indoors, even though that cool-down period is the full extent of that employee's work shift indoors.

The amendment to add subparagraph (5) to paragraph (a) as suggested on page 4 of this letter would resolve this problem. However, if that amendment is not made, at a minimum we recommend the following amendment:

Section 3396 (b)(13)
EXCEPTION: Indoor does not refer to a shaded area that meets the requirements of subsection 3395(d). **This exception applies only to employees during a cool-down period provided under subsection 3395(d).** ~~**and is used exclusively as a source of shade for employees covered by section 3395**~~.

Conclusion

To provide for the highest level of health and safety, the proposed indoor heat illness prevention standard needs clarification. We hope this letter can help in amending the proposal to make it clear while also maintaining its purpose.

These amendments would go a long way toward making compliance more achievable, should the proposed regulation become law. It is our hope that this is a goal shared by all.

Sincerely,

See Attached Signatures

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

Copy: Autumn Gonzalez agonzalez@dir.ca.gov
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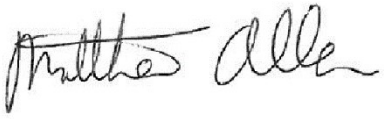
Eric Berg eberg@dir.ca.gov
Amalia Neidhardt aneidhardt@dir.ca.gov

Michael Miiller
Director of Government Relations
California Association of Winegrape Growers



Matthew Allen
Vice President, State Government Affairs
Western Growers

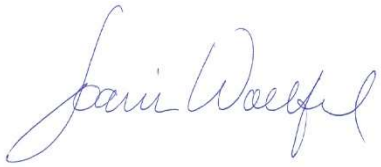
Tricia Geringer
Vice President of Government Affairs
Agricultural Council of California

Timothy A. Johnson
President/CEO
California Rice Commission

Christopher Valadez
President
Grower-Shipper Association of Central California

Roger Isom
President/CEO
California Cotton Ginners and Growers Association
Western Agricultural Processors Association

Bryan Little
Director, Employment Policy
California Farm Bureau



Joani Woelfel
President & CEO
Far West Equipment Dealers Association

Casey Creamer
President
California Citrus Mutual

Rick Tomlinson
President
California Strawberry Commission

Manuel Cunha, Jr.
President
Nisei Farmers League

Todd Sanders
Executive Director
California Apple Commission
California Blueberry Association
California Blueberry Commission
Olive Growers Council of California

Richard Matoian
President
American Pistachio Growers

Ian LeMay
President
California Fresh Fruit Association

Pete Downs
President
Family Winemakers of California

Tim Schmelzer
Vice President, California State Relations
Wine Institute

Mike Montna,
President/CEO
California Tomato Growers Association

From: Leder, Leslie on behalf of Moutrie, Robert
To: DIR OSHSB
Cc: agonzalez@dir.ca.gov; Park, Keummi@DIR; Berg, Eric@DIR; Neidhardt, Amalia@DIR
Subject: Comment Letter - 2nd 15-Day Change Notice re Heat Illness Prevention
Date: Tuesday, November 28, 2023 2:24:30 PM
Attachments: 11.28.23 - CalChamber 2nd 15-day Change Heat Illness Comment Letter.pdf

Good afternoon,

Attached is our coalition comment letter for the 2nd 15-day change notice re Health Illness Prevention in Indoor Places of Employment. If you have any questions, please reach out to me.

Thank you,

Rob Moutrie
Policy Advocate

CalChamber
HR Expert & Business Advocate™

California Chamber of Commerce
1215 K Street, 14th Floor
Sacramento, CA 95814

T 916 930 1245
F 916 325 1272

November 28, 2023

Chair David Thomas and Board Members
Occupational Safety & Health Standards Board
Department of Industrial Relations, State of California
2520 Venture Oaks Way
Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

SUBJECT: HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT COMMENTS ON 2nd 15-DAY CHANGE NOTICE

Dear Chair Thomas and Members of the Board:

The California Chamber of Commerce and the undersigned submit this letter to provide comment upon the second 15-day change notice related to the draft Heat Illness Prevention in Indoor Places of Employment regulation, which was issued on November 9, 2023 (the "Second 15-day Change" and "Draft Regulation," respectively). Our recommended revisions will provide clarity to foster better compliance and improved employee safety and health.

We were involved with the development and implementation of the Outdoor Heat Illness Regulation (Section 3395) and have significant experience with how to effectively prevent heat illness. We take the safety and health of employees very seriously—and though we oppose the Draft Regulation, we hope the below comments provide helpful input regarding improving the final text, should it be passed by the Standards Board.

Appreciated Improvements in the Second 15-day Change:

We appreciate that the Second 15-day Change improves upon the prior 15-day change notice (the "First 15-day Change") in several key areas. Notably, the Second 15-day Change includes the following improvements:

- Attempted broadening of the exception for rarely-occupied spaces subject to certain terms from its prior version – Section (a)(1)(C).
- Improvement to the definition of clothing that restricts heat by broadening what may be considered "clothing that restricts heat removal" – Section (b)(3).

These improvements help ensure that the Draft Regulation is feasible for California's employers, particularly those small- and medium-sized employers who struggle most with regulatory compliance.

Issues Created by the Second 15-day Change:

Issue #1 – New "De Minimis" Exemption Appears Unintentionally Non-functional Due to Drafting.

Though we appreciate the attempt to broaden the exemption contained in (a)(1)(C) from specific spaces (excluding vehicle and shipping containers) in the First 15-day Change, the language in the Second 15-day Change appears non-functional due to an apparent drafting issue. For context, this exemption was proposed as applying to storage sheds or other temporary indoor spaces that are far from powered structures or do not have air conditioning and are only used rarely. However, in the Second 15-day Change, its provisions would seem to exclude those very structures. We propose changes below to address this issue.

The new (a)(1)(C) exemption provides that the Draft Regulation "does not apply to incidental heat exposures where an employee" meets two conditions. First, the exposure must be less than 15 minutes in any 60-minute period—this requirement is clear, feasible, and effective. The second requirement, however,

appears to erase the entire exemption; the exemption does not apply if the exposure is "subject to any of the conditions listed in (a)(2)".

Subsection (a)(2)'s requirements are slightly above the scope of the regulation itself—where the Draft Regulation is triggered at 82 degrees[1] Fahrenheit, and subsection (a)(2) applies whenever the temperature "equals or exceeds 87 degrees Fahrenheit…" or when it exceeds 82 degrees if restrictive clothing is worn. Whether the threshold is 82 or 87 degrees, the core issue is that removing any structure above 87 degrees from the exemption ***erases the entire exemption***.

Any storage shed or small indoor space on a warm day will rise above 87 degrees. The whole purpose of the exemption was to allow ***brief*** exposures above this threshold. As a result, limiting the exemption to situations that are essentially outside the scope of the regulation renders the exemption essentially pointless. To give the exemption a functional purpose, it needs to exempt structures that would otherwise fall under the scope of the regulation. Our proposed amendment would be as follows:

> C) This section does not apply to incidental heat exposures where an employee is exposed to temperatures above 82 degrees Fahrenheit for less than 15 minutes in any 60-minute period ~~*and not subject to any of the conditions listed in subsection (a)(2)*~~**.**

This amendment would do the following:

- Preserve the core of the provision—exempting suitably brief exposure from coverage.
- Remove the provision which makes the exemption unworkable—the inclusion of (a)(2) as a limitation.

Notably, this exemption is in line with Washington state's Outdoor Heat Regulation, which provides that it "does not apply to incidental exposure. Incidental exposure means an employee is not required to perform a work activity outdoors for more than 15 minutes in any 60-minute period. This exemption may be applied every hour during the work shift."[2]

The functional consequences of not addressing the above concern with (a)(1)(C) will include:

- Any momentary entry into a storage shed to grab a tool triggers temperature measurement obligations under (e)(1).
- Any momentary entry into an impromptu indoor space triggers a hierarchy of control obligations, including potentially installing engineering controls in the impromptu space.
- Obligations under subsections (c) & (d) regarding provision of water & access to cooldown areas.[3]

Issue #2 – Deletion of Subsection (a)(5).

We are concerned with the deletion of subsection (a)(5), which was, in our reading, an imperfect but appreciated attempt to address any concerns about differences in compliance between the Draft Regulation and the presently operating Outdoor Heat Standard (Title 8, Section 3395). With the deletion of (a)(5), we are concerned that employers (particularly smaller/mid-sized employers) will need to train on/review two standards where using one would be simpler to train on and implement. Also, minor differences exist between the two, including the temperature measurement requirements and the definition of personal risk factors for heat illness.[4]

Issue #3 – Air-Conditioned Vehicle Exemption Should be in Scope of Draft Regulation.

The Second 15-day Change added an exemption from subsection (e) (1) (relating to temperature measurement) for "vehicles with effective and functioning air conditioning." We believe this exemption is better placed in subsection (a) (Scope).

---

[1] All temperatures are in Fahrenheit unless otherwise noted.
[2] WAC 296-307-09710, available at: default.aspx (wa.gov).
[3] Of course, obligations under subsection (c) & (d) may effectively be already triggered if the Outdoor Heat Regulation is in effect that day for the workers.
[4] These differences and their implications are discussed more thoroughly in the comment letter provided by the California Association of Winegrape Growers, dated November 27, 2023.

Exempting vehicles with "effective and functioning air conditioning from only (e)(1) —and not (e)(2) relating to control measures—creates a problem of documentation. Though an employer is *theoretically* not required to have their employees comply with (e)(1) and test the temperature of a vehicle upon entering it—they still have to document that their control measure (in this case, air conditioning) was "used to reduce and maintain both the temperature and the heat index below 87 degrees …" In order to demonstrate that its control measure was effective, employers will be asked for documentation … which appears to necessitate temperatures be taken. In other words: in order to document compliance with (e)(2), employers are still effectively required to comply with (e)(1), rendering the exemption ineffective. In practical terms, this means employers will still need to engage in the unnecessary and wasteful act of taking the temperature in a vehicle equipped with air conditioning in order to demonstrate compliance.

To address this problem, we urge an amendment to treat air-conditioned vehicles similar to their treatment in the Protection from Wildfire Smoke regulation (Title 8, Section 5141.1), which exempts "[e]nclosed vehicles in which the air is filtered by a cabin air filter…" as part of its scope (Subsection 5141.1 (a)(2)(B)).

This change would still require employers to ensure that their vehicles have functioning air conditioning—the core of the present provision —but avoid the unnecessary documentation issue noted above. In addition, this change would have the added benefit of preventing outdoor workers from jumping between the outdoor and indoor heat regulations when they step into an air-conditioned vehicle.[5]

Also notably, this change would functionally *not* eliminate obligations to provide water and cool down opportunities, as the worker would be covered by such obligations before they step into the vehicle under the existing Outdoor Heat Regulation if they work outside. Conversely, if they work in an indoor environment prior to stepping into the vehicle, that indoor space will be covered by the Draft Regulation and will require such measures if the temperature meets the relevant threshold.

Specifically, we urge the following changes:

(a) Scope and Application.

(1) This section applies to all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.

EXCEPTIONS:

…

(E) This section does not apply to vehicles with effective and functioning air conditioning.

Issue #4 – All Definitions Should Be "For Purposes of This Section Only" Instead of Just "Heat Wave."

The Second 15-day Change added a note that the definition of "heat wave" was "for the purpose(s) of this section only." Prior to the Second 15-day Change, the phrase appeared in one other definition (heat index), but in no other definitions. The inclusion of this language in two definitions, but no others, suggests that other definitions in this section *may* apply outside of this regulation. These definitions include terms that may have slightly different definitions in other contexts, such as "acclimatization," "engineering control," "indoor," "relative humidity," "shielding," "temperature," or "union representative." In order to address ambiguity related to which definitions apply for purposes of the Draft Regulation only, we urge the following amendment:

[5] Though we acknowledge attempts by Division staff to bring the Draft Regulation into consistency with the Outdoor Heat Regulation, we still believe small and unsophisticated employers should be able to review one regulation and know their compliance obligations if their employees are outside except for stepping into an air-conditioned vehicle. Otherwise, small businesses will be forced to waste their time reviewing the Draft Regulation merely to conclude that it largely mirrors the Outdoor Heat Regulation.

(b) Definitions.

The following definitions apply for purposes of this subsection only.

…

(9) "Heat index" means a measure of heat stress developed by the National Weather Service (NWS) for outdoor environments that takes into account the dry bulb temperature and the relative humidity. ~~*For purposes of this section, h*~~ *H*eat index refers to conditions in indoor work areas. Radiant heat is not included in the heat index.

(10) "Heat wave" means any day in which the predicted high outdoor temperature for the day will be at least 80 degrees Fahrenheit and at least ten degrees Fahrenheit greater than the average high daily outdoor temperature for the preceding five days~~*, for the purpose of this section only*~~.

Conclusion

Thank you for the opportunity to provide feedback on this important draft regulation.

Sincerely,

Robert Moutrie
Policy Advocate
California Chamber of Commerce
on behalf of

American Composites Manufacturers Association
Associated Builders and Contractors, California
Associated Roofing Contractors of the Bay Area Counties
California Association of Joint Powers Authorities
California Association of Sheet Metal and Air Conditioning Contractors, National Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Chamber of Commerce
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Farm Bureau
California Framing Contractors Association
California Fresh Fruit Association
California League of Food Producers
California Retailers Association
California Tomato Growers Association
California Walnut Commission
Chemical Industry Council of California
Family Business Association of California
Housing Contractors of California
PCI West – a Chapter of the Precast/Prestressed Concrete Institute
Residential Contractors Association
Western Agricultural Processors Association
Western Growers Association
Western Steel Council

Copy: Autumn Gonzalez argonzalez@dir.ca.gov
Keummi Park kpark@dir.ca.gov
Eric Berg eberg@dir.ca.gov
Amalia Neidhardt aneidhardt@dir.ca.gov

From: Anne Katten
To: DIR OSHSB
Subject: Comments on Indoor Heat Reg 2nd 15 day revision
Date: Tuesday, November 28, 2023 3:04:28 PM
Attachments: Indoor heat reg 2nd 15 day comments CRLAF et al.pdf

Please see attached. Thank you.

--
Anne Katten
Pesticide and Work Safety Project Director
2210 K Street, Suite 201 | Sacramento, CA 95816
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akatten@crlaf.org | www.crlaf.org

WORKSAFE
safety, health, and justice for workers
seguridad, salud y justicia para los trabajadores

November 28, 2023

Dave Thomas, Chair
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

RE: Comments on second notice of proposed modifications to proposed CCR 3396 Heat Illness Prevention in Indoor Places of Employment

Via email: oshsb@dir.ca.gov

Dear Chair Thomas and Members of the Occupational Safety and Health Standard Board:

Thank you for the opportunity to comment on these proposed revisions.

8CCR 3396 (a)(1)(C) Exceptions to Indoor work locations covered by this regulation
We support narrowing the proposed 15 minute per hour exception so that it only applies if the temperature or heat index does not exceed 87 F when employees are present or exceed 82 F when employees work in a high radiant heat area or wear clothing that restricts heat removal. Without these limits, employees could be compelled to work without protection of the standard in indoor areas at extremely hot temperatures for fully 25% of an eight-hour workday. This would put workers at risk of serious illness or even fatality, as Eric Berg explained at the last Standards' Board meeting.

Even with these limitations, we remain concerned that a 15 minute per hour exception will allow far more than incidental heat exposure. We are also concerned that it will be very challenging and time consuming to enforce and will make employer's recordkeeping more burdensome.

We are also unclear about how compliance with this proposed exception will be documented given that the assessment and control measures sub-section of the regulation (e)(1)(B) only requires that measurements be taken "where employees work and at times during the work-shift when exposures are expected to be the greatest" and "again when reasonably expected to be 10 degrees or more above the previous measurement".

In light of the foreseeable enforcement challenges, we also oppose the proposed inclusion of 15 minute per hour work in vehicles and shipping containers in the exception. Both vehicles and shipping containers capture and concentrate outdoor heat so it is very important to control this heat with all feasible controls.

8 CCR 3396 (a)(1)(D) Exception for emergency operations directly involved in the protection of life or property
We recognize the need for some exception for unforeseen emergency operations directly involved in the protection of life or property but, at minimum, more explanation of the types of work this would and would not encompass should be included in the Final Statement of Reasons and an FAQ document. Prevention of serious health risks to employees is of course also always more important than the protection of property.

Deletion of 8CCR 3396 (a)(5) Exception for employees that go back and forth between indoors and outdoors
We strongly support deletion of "(a)(5) Employers may comply with this section in lieu of section 3395 for employees that go back and forth between indoors and outdoors." Employees who go back and forth between indoors and outdoors could still be working at a considerable distance from the indoor location during parts of the workday. In such circumstances, they need ready access to shade and drinking water when working outdoors.

Definition of high radiant heat source
We support the addition of the definition of "high radiant heat source" which adds clarity.

Vehicles with working air conditioning
We also oppose the industry request to exempt work in vehicles with working air conditioning from the proposed regulation because it takes some time for air conditioning to cool a vehicle down to 82 F and air conditioning systems can lose effectiveness over time or break down and need repair. We note also that for interpretation of the Exception to the assessment of control measures (e)(1)(B), which was proposed in the first 15-day notice of revisions, a definition for "Effective and Functioning vehicle air condition system" is needed in the regulation or at the very least in the Final Statement of Reasons and FAQs for interpretation of the regulation.

Training about acclimatization
We think it is important for training to cover the requirement for close observation during acclimatization. We therefore propose the following modification:

Training (Section (h)(1)(D))
(D) the concept, importance, and methods of acclimatization **including the requirement of close observation during acclimatization** pursuant to the employer's procedures under subsection (i)(5).

Conclusion
Thank you for your careful attention to these comments and for making some modifications which narrow proposed exceptions based on our past comments. Workers cannot be made to face further significant delay; real protections must be put immediately in place through emergency measures if there is any further extended delay. This past year has been the hottest on record and scientists predict the next year will be even hotter. The risk to the health and safety of workers is growing as the at-risk workforce is also increasing. Effective protections must be put in place through emergency measures if there is any further extended delay. Five years is already too long for workers to wait for this essential protection. While we recommend the aforementioned suggestions to provide for a *more* effective standard, the proposal represents the basis for an effective standard to start protecting California workers from the dangers of indoor heat. We urge the Board to adopt it, or emergency measures, as soon as possible.

Sincerely,

Anne Katten
California Rural Legal Assistance Foundation

Ana Vicente
California Rural Legal Assistance Inc.

Navnit Puryear
California School Employees Association

Enrique Huerta
Climate Resolve

Beth Malinowski
SEIU State Council

Jassy Grewal
UFCW Western States Council

AnaStacia Nicol Wright
Worksafe

From: Dan Glucksman
To: DIR OSHSB
Subject: ISEA comments to proposed CA Sec. 3396 - Indoor Heat Stress Rule
Date: Tuesday, November 28, 2023 4:25:13 PM
Attachments: CA.indoor.heat.Nov.28.2023.comments.pdf

Dear Ms. Money and CA Occupational Safety and Health Board Members,

ISEA submits these comments to California's proposed indoor heat stress rule. These comments focus on adding a reference to electrolyte replenishment to the definition of water at Sec. 3396(c). Provision of Water.

Thank you for your attention to these comments. Please contact me at 703-795-6064 or at dglucksman@safetyequipment.org with any questions or for more information about the topic.

Sincerely,

Dan

Daniel Glucksman
Senior Director for Policy
Int'l Safety Equipment Assn
www.safetyequipment.org
dglucksman@safetyequipment.org
703-795-6064

Nov. 28, 2023

Occupational Safety and Health Standards Board
2520 Venture Oaks Way
Suite 350
Sacramento, California 95833
oshsb@dir.ca.gov

Re: Comments on Proposed Indoor Heat Stress Standard

Dear Occupational Safety and Health standard Board,

The International Safety Equipment Association (ISEA) appreciates the opportunity to submit these comments. ISEA is the association for companies that design, test, manufacture and supply a wide range of personal protective equipment and other means of protection people at work, such as through electrolyte replenishment beverages.

ISEA believes Sec. 3396(c) should follow other state and federal agencies and allow electrolyte replenishment beverages as acceptable alternatives to water. In addition, ISEA asks that a reference to electrolyte beverages be included in the definition of "Provision of Water." In some cases, electrolyte replenishment power can be mixed with fresh, pure water. (Text of the definition of water is attached below in Appendix 1)

Washington State – Outdoor Heat Stress Regulations.

Washington State's Outdoor Heat Exposure (WAC 296-62-095) regulation defines "Drinking Water" at WAC 296-62-09520(3) as:

> "potable water that is suitable to drink and suitably cool in temperature. Other acceptable beverages include drinking water packaged as a consumer product, and electrolyte-replacing beverages (i.e., sports drinks) that do not contain high amounts of sugar, caffeine or both, such as energy drinks."

OSHA

OSHA regulations allow a water cooler where electrolyte replenishment beverages can be provided. 29 CFR 1910.141(b)(1)(iii) states:

> Portable drinking water dispensers shall be designed, constructed, and serviced so that sanitary conditions are maintained, shall be capable of being closed, and shall be equipped with a tap.

OSHA's Water. Rest. Shade. Program

OSHA's Water.Rest.Shade. Program has was launched more than a decade ago. For many years now, it has promoted the benefits to workers of drinking electrolyte replenishment drinks.

> "Employers should provide cool water for workers to drink. Proper hydration is essential to prevent heat-related illness. For those working two hours or more, also provide access to additional fluids that contain **electrolytes.**
>
> For short jobs, cool potable water is sufficient. Workers should be encouraged to drink at least one cup (8 ounces) of water every 20 minutes while working in the heat not just if they are thirsty.
>
> For longer jobs that last more than two hours, employers should provide electrolyte-containing beverages such as sports drinks. Workers lose salt and other **electrolytes** when they sweat. Substantial loss of electrolytes can cause muscle cramps and other dangerous health problems. Water cannot replace electrolytes; other types of beverages are needed. Water or other fluids provided by the employer should not only be cool, but should also be provided in a location that is familiar to the workers, near the work, easy to access, and in sufficient quantity for the duration of the work.[1]" (emphasis added)

Comments from OSHA SBREFA on Heat Stress

In reviewing the comments from OSHA's recently-concluded Small Business Regulatory Enforcement Fairness Act discussions with Small Entity Reviewers, a number of small business regularly, and successfully, provide electrolyte replenishment beverages to employees.

> "In jointly submitted written comments, two SERs stated: Indeed, even though we provide our crews with coolers of water, they are always adding **electrolyte** powder to it, sometimes in less concentrated form, to make it a little less sweet. Those regularly come back empty. Accordingly, we do not think employers should be penalized for providing other, safe hydrating options in place of water, especially since these options are often healthier than water (any options that include **electrolytes** provide essential nutrients and minerals), and water is often part of the mixture or an ingredient of these options already.[2]" (emphasis added)

[1] www.osha.gov/heat-exposure/water-rest-shade
[2] www.osha.gov/sites/default/files/Heat-SBREFA-Panel-Report-Full.pdf (quote is on doc. page 24; PDF page 30)

NIOSH's "Occupational Exposure to Heat and Hot Environments" states that:

> "During prolonged sweating lasting more than 2 hours, workers should be provided with sports drinks that contained balanced electrolytes to replace those lost during sweating, as long as the concentration of electrolytes/carbohydrates does not exceed 8% by volume."[3]

ASSP A10.50

> American Society for Safety Professionals (ASSP) A10.50 – Heat Stress Program Management Standard is expected to be published in the near future. ISEA urges Cal/OSHA to review it when it is available. ISEA staff members were part of the development of this document, and we understand it will reflect OSHA and NIOSH thinking on electrolyte replenishment for those working in high heat environments.

Thank you for your attention to these comments. ISEA understands Cal/OSHA is also addressing and updating worker protection to lead exposures and addressing a respirable silica exposure crisis among those who cut engineered stone.

Contact me at 703-795-6064 or at dglucksman@safetyequipment.org if you have any questions or would like additional information about these comments.

Sincerely,

Dan Glucksman

Daniel I. Glucksman
Senior Director for Policy

[3] https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf; document page 9, Sec. 1.7.3(g)

Appendix 1

Proposed Sec. 3396(c)

(c) Provision of Water. Employees shall have access to potable drinking water meeting the requirements of sections 1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working and in indoor cool-down areas required by subsection (d). Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent consumption of water, as described in subsection (h)(1)(C), shall be encouraged.

From:	Helen Cleary
To:	DIR OSHSB
Cc:	Hagen, Katie@DIR; Gonzalez, Autumn@DIR; Neidhardt, Amalia@DIR; Killip, Jeff@DIR; Berg, Eric@DIR; Eckhardt, Susan@DIR
Subject:	PRR Comments: 2nd 15-Day Notice of Modifications to Indoor Heat
Date:	Tuesday, November 28, 2023 4:45:05 PM
Attachments:	PRR Comments_OSHSB_2nd 15-Day Notice_Indoor Heat Proposed Rulemaking_28 Nov 2023.pdf

Hello Board Members and Staff,

I hope you all had a lovely Thanksgiving holiday that provided time to relax with friends and family.

Please accept the attached written comments from the PRR OSH Forum in response to the Board's 2nd 15-Day Notice of Proposed Modifications to the Heat Illness Prevention in Indoor Places of Employment Proposed Rulemaking, §3396.

Thank you for your consideration and have a great week.

Helen

Helen Cleary
Director
Phylmar Regulatory Roundtable, PRR-OSH Forum
m: 916-275-8207
e: hcleary@phylmar.com
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November 28, 2023

State of California
Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Ventura Oaks Way, Suite 350
Sacramento, CA 95833
OSHSB@dir.ca.gov

RE: 2nd 15-Day Notice of Proposed Modifications to the Heat Illness Prevention in Indoor Places of Employment Proposed Rulemaking: §3396

Board Chair Thomas and Board Members:

Please accept these comments and recommendations from the **Phylmar Regulatory Roundtable (PRR) Occupational Safety and Health OSH Forum** in response to the California Occupational Safety and Health Standards Board's (Board) 2nd 15-Day Notice of Proposed Modifications (2nd 15-Day Notice) to the new General Industry Safety Orders in Title 8: §3396. Heat Illness Prevention in Indoor Places of Employment (Indoor Heat), noticed on November 9, 2023.

Specific recommendations to the Board and California's Division of Occupational Safety and Health's (Division or Cal/OSHA) proposed text in the 2nd 15-Day Notice are documented in **green bold, for additions**, and ~~red strikethrough,~~ for deletions. These comments do not address all of PRR's concerns with the proposed draft of the Indoor Heat standard; please reference previously submitted comments for additional recommendations.

Occupational Heat Strain

PRR continues to see the need for an indoor heat regulation to protect workers at risk of occupational heat strain. However, **we do not agree or support the Division's assertion, in the proposed Indoor Heat regulation, that a worker is at risk of heat illness when they simply walk into, or through, a space that is 87 degrees Fahrenheit and above (87° F).** Workload, physical activity, endurance, time spent exposed to the high-heat conditions, in addition to an individual's personal risk factors are all key elements that this regulation does not consider.

PRR understands and supports the Division and Board's goal to keep the regulation simple – we are not advocating inclusion of these factors in the regulation; however, without considering contributing factors

beyond temperature and heat index, there needs to be some measured approach that ensures this regulation is practical, and necessary, for the thousands of California employers and workers it will impact. As drafted, **the proposed standard unnecessarily includes workers who are not at risk of occupational heat stress; this will waste valuable time and employer resources.**

Since the beginning of this rulemaking, PRR has recommended that the time spent exposed to the temperature triggers needs to be considered in an effective indoor heat standard. We specifically recommended that the rule should not apply for momentary exposures and suggested, for simplicity, less than 15-minutes in a one-hour timeframe be used to determine applicability. We were pleased to see in the first 15-Day Notice that the Division had included such an exception. However, we were concerned that the Division's proposed language that excluded shipping containers and contiguous areas would unnecessarily limit the application of the exception to situations that do not create a risk of heat illness. Specifically, the use of repurposed shipping containers as storage units and the act of employees *traversing through* areas to get to their actual workspaces that are climate controlled. This includes indoor parking structures, stairwells, and large buildings for equipment storage and vehicle dispatch. These types of areas meet the proposed standard's definition of "indoor" but are not occupied for long periods, cannot be climate controlled or, for energy efficiency, should not be maintained under 87°F. Most importantly, **movement and temporary occupation of these areas do not create a risk of heat illness.**

We urge the Board to ensure that the Division proposes a practical solution to address short duration and incidental exposures to heat in indoor spaces. **If the Division and Board will not offer an exception that can be reasonably applied for these types of situations, we ask for data and studies that validate an automatic temperature trigger of 87°F that will result in occupational heat stress.**

§3396(a)(1)(C) Scope and Application

PRR was encouraged to hear at the August 17, 2023, Board meeting, the Division planned to address PRR, and Board member, concerns regarding shipping containers. PRR appreciates the Division's attempt to address these concerns including incidental exposure to heat with the modifications in the 2nd 15-Day Notice. Unfortunately, the deletions from the previous draft and new exception in (a)(1)(C) does not solve the issue PRR communicated in previously submitted comments. The proposed new exception in (a)(1)(C) will require repurposed shipping containers, storage units, and unoccupied indoor spaces accessed for short amounts of time, to be managed in the same way as workspaces employees spend all day working inside. This is not reasonable.

The Division's proposal to exclude incidental heat exposures that are less than 15-minutes in a 60-minute period is highly restrictive due to the limited window of 82 – 87°F. **It defeats the purpose of allowing short duration exposures to be excluded from the burdensome elements in the rule** and will create new elements of complexity to manage.

It is very likely that the effort to determine if the situation meets the parameters will outweigh the benefit of utilizing the exception – by the time the employer determines that the temperature falls within the 5-degree window, the worker will have left the space. In addition, the benefit of trying to control temperatures in indoor parking structures, stairwells, and large unoccupied spaces to below 87°F most likely will not be worth the cost and expended energy. In addition, repurposed shipping containers and storage sheds simply cannot be temperature controlled. Despite this, short duration exposures that meet the conditions in (a)(2) (i.e., 82°F with heat restrictive clothing and 87°F) will create little to no risk of heat illness.

As shared in public comment at the November 16, 2023, Board meeting, PRR continues to advocate that the exemption for incidental exposures should not have an associated temperature trigger. In response, Deputy Chief of Health, Eric Berg, stated that the Agency would not do that. The reason given was if a worker performed high exertion activities for 15 minutes in 110°F temperatures they could die. PRR points out that this is an extreme example that borders not meeting the exception (i.e., 15 minutes) and if the employee was performing a high-exertion work activity it would not be considered an "incidental" occupational exposure. Mr. Berg did not offer an example that is representative of the types of situations and spaces the exemption was designed to exclude and PRR is concerned about: walking *through* a space or grabbing a tool in an unoccupied storage shed. Moreover, **the Division has not offered any scientific data that validates high-exertion work activities in a space that is between 82-87°F for less than 15-minutes will result in heat stress or actual heat illness.** The lack of additional "documents relied upon" for this proposed change in the 2nd 15-Day Notice indicates the Division did not rely on data or scientific reasoning that supports limiting the exemption to a 5-degree window, below 87°F.

It is unreasonable and infeasible to require the employer to know and actively manage all situations that are highly impacted by individual risk factors not related to the assigned job duties (i.e., age, obesity, blood pressure, alcohol and drug intake and diet). Especially when the worker's behavior in the workplace is incidental to their specific work task, their movement is not monitored, the area is not controlled, and the time exposed is as short as traversing a parking structure, climbing a set of stairs, or obtaining a tool.

<u>Proposed Temperature of 95°F for Incidental Exposures</u>

If the Division contends that a temperature trigger is required for incidental exposures to meet the exception, PRR proposes a temperature of 95°F. This will align with the outdoor regulation for high heat conditions and the Division's proposal in the first 15-Day Notice of Modifications for short duration exposures to follow the outdoor heat requirements in §3395 (Outdoor Heat).

NIOSH's Recommended Work/Rest Schedule

To support our recommendation of 95°F, PRR provides the National Institute of Occupational Safety and Health's (NIOSH's) recommended Work/Rest Schedule to prevent heat stress[1]. The temperature trigger of 95°F is significantly lower than NIOSH's recommended rest-to-work ratio when performing "heavy work" for a period of 15 minutes in its Heat Stress Work/Rest Schedules Fact Sheet[2]. For example, ***NIOSH recommends a 45-minute rest period if a worker performs heavy work for 15 minutes when it's 105°F***. If there is 60% humidity or more, NIOSH recommends adding 9°F to the temperature. Using a trigger of 95°F with 60% humidity, the adjusted temperature would equal 104°F and require 40 minutes of rest for 20 minutes of heavy work. Also, NIOSH's rest recommendation for *45 minutes* of heavy work in 95°F temperatures is 15 minutes and workers performing moderate and light work may not need to rest at all.

PRR's recommendation of 95°F would be protective and prevent death during situations, as suggested by Deputy Chief, Eric Berg, and more practical than the proposed 87°F. Despite the proposed exception not being labeled as a work/rest schedule, it follows the same scientific logic as NIOSH's work/rest recommendations and requires the employer to respond with preventative and protective measures if the temperature and time spent extends beyond the allowable parameters – the additional requirements in the proposed standard would ensure that exposures longer than 15-minutes are managed with additional protections, including engineering and administrative controls.

The Board's proposed rulemaking[3] relies on a NIOSH publication on Heat Stress Hydration and PRR recommends NIOSH's recommended Work/Rest Schedule is relied upon for the Board to propose a temperature trigger that is higher than 87°F.

[1] NIOSH Heat Stress – Recommendations webpage links to the NIOSH Work/Rest Schedules Fact Sheet; https://www.cdc.gov/niosh/topics/heatstress/recommendations.html#rest
[2] NIOSH Work/Rest Schedules Fact Sheet; https://www.cdc.gov/niosh/mining/UserFiles/works/pdfs/2017-127.pdf
[3] Number 10. in the Additional Documents Relied Upon in the 2nd 15-Day Notice include the NIOSH Heat Stress Hydration publication; https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-126.pdf

NIOSH Heat Stress Work/Rest Schedule:

Temperature (°F)	Light Work Minutes Work/Rest	Moderate Work Minutes Work/Rest	Heavy Work Minutes Work/Rest
90	Normal	Normal	Normal
91	Normal	Normal	Normal
92	Normal	Normal	Normal
93	Normal	Normal	Normal
94	Normal	Normal	Normal
95	Normal	Normal	45/15
96	Normal	Normal	45/15
97	Normal	Normal	40/20
98	Normal	Normal	35/25
99	Normal	Normal	35/25
100	Normal	45/15	30/30
101	Normal	40/20	30/30
102	Normal	35/25	25/35
103	Normal	30/30	20/40
104	**Normal**	**30/30**	**20/40**
105	Normal	25/35	15/45

Humidity

- 40% humidity: Add 3 °F
- 50% humidity: Add 6 °F
- 60% humidity or more: Add 9 °F

Oregon OSHA's Current Heat Illness Prevention Requirements

In support of a higher temperature trigger in the exception, PRR also offers to the Board Oregon OSHA's current Heat Illness Prevention regulation, OAR 437-002-0156[4]. Oregon's rule is initially triggered by a heat index of 80°F but only requires water, rest, communication, and training. This aligns with Cal/OSHA's Outdoor Heat standard. More importantly, **Oregon OSHA's Heat Illness Prevention** regulation **does not apply to *"incidental heat exposures where an employee is not required to perform work activities for more than 15 minutes in any sixty-minute period."*** [5] This regulation has been in effect since June 2022; *PRR is not aware of it being ineffective at protecting workers through the hot summers of 2022 and 2023.*

In addition, Oregon OSHA's regulation allows employers to follow NIOSH's Work/Rest Schedule as an option for compliance when temperatures are over 90°F[6]. Oregon OSHA also allows an additional

[4] OAR 437-002-0156 (1); https://osha.oregon.gov/OSHARules/adopted/2022/ao3-2022-text-alh-heat.pdf
[5] OAR 437-002-0156 (1)(a)(A); https://osha.oregon.gov/OSHARules/adopted/2022/ao3-2022-text-alh-heat.pdf
[6] Employers in Oregon may follow NIOSH's recommendations found in Appendix A of OAR 437-002-0156 during high heat practices. (High-heat practices are required when the heat index is over 90° and engineering and

compliance option during high-heat conditions, (over 90°F), when the employer implements additional elements including a written heat illness prevention plan that addresses use of Personal Protective Equipment (PPE), heat restrictive clothing, and intensity of work. To comply, the employer may implement a simplified work rest schedule of 10 minutes every two hours; 15 minutes every hour when the heat index is greater than 100°F. This approach also aligns with Cal/OSHA's Outdoor Heat regulation. Again, these protections are for non-incidental exposures over 15-minutes in a 60-minute period.

We acknowledge that the requirement to implement specific work/rest schedules differs from Cal/OSHA's proposed indoor heat illness prevention strategy; however, we offer this comparison because the duration and objective to reduce occupational heat stress aligns with the proposed exception in (a)(1)(C) and illustrates that limiting Cal/OSHA's exception to a window of 82 – 87°F is unnecessary and overly-restrictive. Again, it is important to point out that NIOSH's recommendation for a ***45-minute rest period when a worker performs heavy work for 15 minutes is triggered by a temperature of 105°F***. This is 18 degrees higher than the Division's proposed 87°F maximum, which does not consider exertion, and is based on actual scientific studies and data on occupational heat stress.

PRR Recommendations for §3396. (a)(1)(C)

To appropriately limit the scope and unnecessary impact, while addressing the Division's concern to protect employees performing high-exertion work activities for short periods of time, PRR recommends the following:

(1)(C) This section does not apply to incidental heat exposures where an employee is exposed to temperatures above 82 degrees Fahrenheit ***and below 95 degrees Fahrenheit*** *for less than 15 minutes in any 60 minute period.* ~~*And not subject to any of the conditions listed in subsection (a)(2).*~~

Workers Who Switch Between Indoor and Outdoor

Workers that move between indoor and outdoor spaces are still not adequately addressed in this regulation. This will create confusion, duplication, and unnecessarily use resources without improving worker safety. Workers should be managed under regulations specific to their operations – if a worker is primarily outdoor, they should be protected under the already established Outdoor Heat Standard (§3395). If they primarily work indoors, employers should follow the indoor heat requirements.

PRR members appreciated and supported the intent of (a)(5) that was proposed in the first 15-Day Notice. We highlighted concerns with the proposed language and recommended revisions to the text but agreed that clarification was needed. We were surprised to see this exception was completely deleted in

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administrative controls do not reduce the temperature or limit exposure.
https://osha.oregon.gov/OSHARules/adopted/2022/ao3-2022-text-alh-heat.pdf#div2appA

the 2nd 15-Day Notice and were not aware, as Eric Berg indicated at the November 16, 2023, Board meeting, stakeholders requested deletion.

As drafted the proposed Indoor Heat Standard will create confusion and unnecessarily impact outdoor work situations that are effectively being managed under the Outdoor Heat Standard. To help correct this, PRR, again, recommends the following language.

PRR Recommendation for (a)(5)

(a)(5) Employers may comply with this section in lieu of section 3395 for employees that go back and forth between outdoors and indoors. Employers with primary outdoor operations may continue to comply with section 3395 in lieu of this section.

Solo and Remote Workers

PRR members continue to be concerned about the ability to comply when managing remote and solo workers under this standard. Specifically, the phrases "encourage," "shall be monitored," "closely observed," "offered onsite first aid" in subsections (d), (f), and (g), indicate the need for a supervisor to be physically present; this will not be possible and is not a reasonable expectation. We do, however, support the need for the employer to provide effective communication, training, and emergency response procedures for these employees working by themselves and in remote locations. If the Board does not rectify these valid concerns, we recommend the Division drafts practical FAQs that address employers operational challenges in the field.

Additional Proposed Changes

(a)(1)(D) – PRR supports the added language that emergency operations are exempt from the standard. This is an important consideration that will help employers and workers committed to the safety of their communities.

(b)(12) – PRR appreciates the clarification added to the standard by inclusion of an accurate definition of "high radiant heat source."

Appendix A – PRR was glad to see the National Weather Service Heat Index Chart (2019) has been corrected. However, we note that since requirements are triggered at 87°F, the bottom two-thirds of the chart is not necessary and creates more paperwork with no value add.

Summary

PRR members understand the hazard of heat to workers and agree that employers need to protect them from heat illness in the workplace. As drafted, the proposed Indoor Heat regulation includes arduous requirements for situations that will produce little to no risk of occupational heat stress.

California employers and businesses should not be compelled to maintain and manage structures that are not meant to be occupied to a temperature below 87°F. The application of the rule to these types of indoor spaces would not substantially reduce the risk of occupational heat illness or improve the safety and health of the worker. Yet, it will require constant oversight and management by the employer along with significantly increased energy consumption and cost. **Failure to differentiate occupancy and employee use will not only create a financial drain on the company, but if engineering controls are put in place in these areas at a time when the California Energy Commission is struggling to find ways to meet current and future electrical demand, it will further stress California's electric grid.**

We do not believe this level of regulation is reasonable or a practical use of California's energy and employer resources, especially when the employee is simply passing through the area and the risk of heat illness is low or non-existent.

Thank you for your consideration.

Sincerely,

Helen Cleary
Director
PRR OSH Forum

CC:

Katrina Hagen	khagen@dir.ca.gov
Autumn Gonzalez	ARGonzalez@dir.ca.gov
Amalia Neidhardt	aneidhardt@dir.ca.gov
Jeff Killip	jkillip@dir.ca.gov
Eric Berg	eberg@dir.ca.gov
Susan Eckhardt	seckhardt@dir.ca.gov

PRR is a member-driven group of 37 companies and utilities, 19 of which rank amongst the Fortune 500. Combined, PRR members employ more than 1.7 million American workers and have annual revenues in excess of $1 trillion. Individual PRR members are Environmental Health and Safety (EHS) professionals committed to continuously improving workplace safety and health. PRR provides informal benchmarking and networking opportunities to share best practices for protecting employees. In addition, members work together during the rulemaking process to develop recommendations to federal and state occupational safety and health agencies for effective workplace regulatory requirements. These comments and recommendations are based on the experience and expertise of PRR members, however, the opinions expressed in them are those of PRR and may differ from beliefs and comments of individual PRR members.

THIRD 15-DAY NOTICE (DECEMBER 22, 2023)

HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

From: Norma Wallace
To: DIR OSHSB
Cc: Jean Wolfgang
Subject: TITLE 8: New Section 3396 of the General Industry Safety Orders
Date: Wednesday, January 3, 2024 3:53:49 PM
Attachments: image001.png

Please include guidelines for school bus drivers when transporting in the extreme heat as well as classroom temperature parameters for school staff.

Thank you,

Norma A. Wallace, CSRM
Executive Director-JPA
Tuolumne County Superintendent of Schools
175 Fairview Lane
Sonora, Ca. 95370
(209) 536-2035
(209) 533-9513 Fax

Tuolumne JPA
Serving Schools Since 1980
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From:	Cherie Reed
To:	DIR OSHSB
Cc:	Geoffrey Sims
Subject:	Heat Illness Prevention in Indoor Places of Emp0loyment
Date:	Wednesday, January 3, 2024 4:37:30 PM
Attachments:	OSHA Proposed Indoor Heat Illness Prevention Comment Letter 01-03-2024.pdf

Good Afternoon,

Please see attached Nisei Farmers League comment letter for the proposed Heat Illness Prevention in Indoor Places of Employment measure.

Let me know if you have any questions.

Sent on Behalf of Manuel Cunha, Jr.

Thank you,

Nisei Farmers League
Celebrating 50 years
1971 to 2021

Growers Looking Out For Growers and Farm Workers

Cherie Reed
Office Manager
Nisei Farmers League
1775 North Fine Avenue
Fresno, CA 93727
Office - 559-251-8468
Creed@niseifarmersleague.com

NISEI FARMERS LEAGUE
1775 N. Fine Avenue
Fresno, CA 93727
(559) 251-8468

January 4, 2024

Ms. Sarah Money
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833

And via e-mail: oshsb@dir.ca.gov

Proposed Regulation:	Title 8, California Code of Regulations § 3396
Publication Date:	March 31, 2023
Regulation Title:	Heat Illness Prevention in Indoor Places of Employment

Dear Ms. Money:

The Nisei Farmers League represents the interests of more than 460 farmers, ranchers, packers, and processors who operate within California's verdant San Joaquin Valley. Please accept this as the Nisei Farmers League's response to the solicitation for public comment on the proposed "Heat Illness Prevention in Indoor Places of Employment" promulgated by the California Occupational Safety and Health Standards Board (hereafter, OSHA).

BACKGROUND

OSHA published the proposed regulations, which purport to require employers with indoor places of employment to take preventative measures and to provide employees with drinking water and "cool-down" areas in instances of extreme heat. This proposed regulation additionally would require employers to "closely [observe employees] during acclimatization", provide training, and render timely emergency aid "in situations of significantly higher heat exposure." (Proposed Regulations, at page 2.)

Beginning in the 1980's OSHA was directed by the State to develop heat regulations following the deaths of several farm workers from heat-related sources, while working in outdoor settings. In 2005, then-Governor Schwarzenegger signed the nation's first heat regulations following the deaths of five more farmer workers, requiring access to shade for at least five minutes of "recovery time . . . when a worker feels symptoms of heatstroke, including headache, muscle cramps, vomiting, and weakness." (Los Angeles Times, August 3, 2005.)

In 2008, a pregnant young woman, Maria Isabel Vasquez Jimenez, died after working nine hours in the hot sun without access to shade or drinking water.

Following this tragic and highly-publicized death, OSHA codified regulations (Title 8, CCR § 3395)) pertaining to outdoor worksites with temperatures exceeding 80 degrees Fahrenheit.

The regulation set forth the need for "recovery time" for workers, access to water, and medical care. For the first time, OSHA propagated a regulatory scheme defining acclimatization and establishing regulatory controls and penalties for employers' failures to provide safe outdoor working environments.

PROPOSED REGULATIONS

OSHA now proposes additional regulations pertaining to worksites that are shaded, but not mechanically-cooled, or indoor conditions where working temperatures are not mitigated by other means.

The proposed regulations apply to work areas where the temperature equals or exceeds 87 degrees Fahrenheit when employees are present (or 82 degrees Fahrenheit when workers are required to wear "clothing that restricts heat removal" which is presumed to apply, for example, to ironworking or metal fabrication activities.)

The proposed regulations require the employers to provide drinking water (Prop. Reg. Title 8, CCR § 3396(c)), access to "cool-down" areas where employees can rest and be monitored for symptoms (Prop. Reg. Title 8, CCR § 3396(d)), assessment and control measures to measure and post temperature readings (Prop. Reg. Title 8, CCR § 3396(c)(1)(b)) and monitor employee "acclimatization" (Prop. Reg. Title 8, CCR § 3396(g)), provide training (Proposed Regulation Title 8, CCR § 3396(h)), provide emergency medical response (Prop. Reg. Title 8, CCR § 3396(f)), and produce a separate Heat Illness Prevention Plan, similar to that used for outdoor worksites (Prop. Reg. Title 8, CCR § 3396(i)).

POSITION STATEMENT

The Nisei Farmers League objects and opposes, in its entirety, OSHA's proposed regulation as follows:

There is No Scientific or Factual Basis for Imposition of Proposed Regulation

Nowhere in OSHA's proposed Regulations pertaining to indoor facilities is there any scientific or medical basis setting forth and explaining the need for this additional regulatory requirement. When OSHA was directed to establish working condition regulations pertaining to outdoor worksites in the 1980's, it followed the death of an employee who had crawled beneath a truck, seeking cover from the sun, as well as deaths of other agricultural workers.

In 2005, the Schwarzenegger Administration established heat regulations, however, it is notable that these regulations did not address indoor facilities. Following the tragic death of Maria Isabel

Vasquez Jimenez in 2008, OSHA enacted, on an emergency basis, regulations that have since been codified as Title 8, CCR § 3395.

While OSHA took considerable steps to promulgate regulations surrounding outdoor worksites where temperatures exceed 80 degrees Fahrenheit, it remains unclear what has now prompted this new regulatory requirement to impose similar mandates for employers who have workers toiling in indoor worksites, during high temperature extremes.

Nisei Farmers League believes that this creates an unjust burden on the agricultural industry. It is inferred that OSHA's proposed regulation is intended to apply to all industries where workers work in indoor work environments and the proposed regulation requires employers to use "engineering controls" to fabricate barriers between the heat-producing source and the employees. According to OSHA, these "engineering controls" include air conditioning, cooling, fans, evaporative coolers, or natural ventilation.

By and large, there are no agricultural worksites where heat production is a routine byproduct of the sorting, packaging, or otherwise processing of agricultural products, whether the products be crops, tree crops, or animal husbandry.

Generally, while agricultural work activities may take place in covered or indoor facilities, there is no heat production byproduct that occurs from this work, as you find in other industries, such as ironwork, sheet metal fabrication, and other machine-aided production.

Because of this, Nisei Farmers League requests that the agricultural industry be specifically excluded from requirements imposed under Proposed Regulation Title 8, CCR § 3396. At the very least, it is urged that OSHA retract the proposed regulations and reconsider the unintended consequences of such a broad-brush regulatory scheme resulting to the agricultural industry.

The Proposed Regulations Lack Clarity and Are Overly-Broad

Assuming that OSHA refuses to exempt the agricultural industry from the provisions of Proposed Regulation Title 8, CCR § 3396 and/or refuses to retract and reconsider, Nisei Farmers League further objects to Proposed Regulation Title 8, CCR § 3396(d)(1) pertaining to workers' "access to cool down areas."

By its very language, the Proposed Regulation is unclear how the employer will be able to fabricate additional covered space that workers may use for cool-down periods "without having to be in physical contact with each other." Based on this new proposed requirement, are employers being encouraged to use air conditioning or other mechanical means to mitigate high temperatures in these cool-down areas – which is contrary to California's air pollution standards surrounding use of additional machinery during peak power usage periods in the course of extreme weather conditions?

Additionally, Proposed Regulation Title 8, CCR § 3396(d)(2)(C) requires employers, or their management teams, to make medical assessments to determine if "signs or symptoms of heat illness have abated." This places an undue burden on the employer, exposing employers to liability for determinations that should be best made by medical practitioners.

Based on all of the above, it is requested that the agricultural industry be specifically exempted from the provisions of Proposed Regulation Title 8, CCR §3396 or, at the very least, that OSHA retract and reconsider the proposed regulation in its entirety.

The Nisei Farmers League thanks you for the opportunity to be heard on this important issue. The work of the California Department of Labor, Division of Industrial Relations, and the California Occupational Safety and Health Standards Board in furthering workplace protections is appreciated by the League and its constituent members.

Very Truly Yours,

MANUEL CUNHA, JR.
President

GEOFFREY H. SIMS, ESQ.
General Counsel

GHS:cr

From:	Anne Katten
To:	DIR OSHSB
Cc:	Berg, Eric@DIR
Subject:	Comments on 3rd Revision to Proposed Indoor Heat Illness Prevention Regulation
Date:	Thursday, January 11, 2024 6:49:08 PM
Attachments:	Indoor heat reg 3rd Rev Comments CRLAF et al.pdf

Please see attached comments. Thank you.

--
Anne Katten
Pesticide and Work Safety Project Director
2210 K Street, Suite 201 | Sacramento, CA 95816
Tel. (916) 446-7904 ex 110 | Fax. (916) 446-3057
akatten@crlaf.org | www.crlaf.org

January 12, 2024

Dave Thomas, Chair
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

RE: Comments on third notice of proposed modifications to proposed CCR 3396 Heat Illness Prevention in Indoor Places of Employment

Via email: oshsb@dir.ca.gov

Dear Chair Thomas and Members of the Occupational Safety and Health Standard Board:

We urge you to adopt the standard because a specific indoor heat regulation is long overdue and urgently needed even though we are concerned that it is not as protective as it should be.

We support exclusion of vehicles without effective and functioning air conditioning and shipping or intermodal containers during loading, unloading or related work from the exception which exempts indoor work at or above 82 F and below 95 F for less than 15 minutes in any 60-minute period from protection of this standard. Both vehicles and shipping containers capture and

concentrate outdoor heat so temperatures could be expected to rise during a 15-minute work period.

While we recognize that the "clock is running out" and there isn't time for any more revisions to this proposal, for the record, we do not think that raising the upper temperature limit for this exception from 87 F to 95 F is justified or health protective and we strongly oppose allowing this exception without adjusting for high humidity, and especially when employees are wearing clothing that restricts heat removal or are working in high radiant heat areas because these conditions greatly increase the dangers of working at temperatures between 82 and 95 F even for short time periods.

This would seem to exempt from coverage of the standard a laundry worker who is directed to work 15 minutes every hour in a highly humid room where the temperature was 94 F as long as their other work area was at a temperature or heat index (slightly) below 82 F. We are similarly concerned with the implications of this change for healthcare workers, including nurses, regularly staffing high heat acute care settings like burn units and birthing centers.

We note that NIOSH's work/rest schedules for workers wearing chemical resistant suits advise a schedule of 15 minutes work and 45 minutes rest for heavy work at 90 F and to stop moderate or heavy work at 95 F. Performing moderate to heavy work at 81 F during the remainder of an hour does not constitute rest and we are confident that NIOSH did not envision that this table would be used to exempt employees from training, supervision and other requirements related to heat illness prevention and recognition.

We also remain concerned that this exception will be challenging to enforce. We are unclear about how compliance with this proposed exception will be documented given that the assessment and control measures sub-section of the regulation (e)(1)(B) only requires that measurements be taken “where employees work and at times during the work-shift when exposures are expected to be the greatest” and “again when reasonably expected to be 10 degrees or more above the previous measurement”.

It is therefore critical that the Division and Standards Board staff explain how it will be enforced in the Final Statement of Reasons and that the Division provides criteria for adequate record keeping in FAQs.

We would also like to highlight for the Board’s attention an article written January 8th of this year by the SF Chronicle, “California is poised to protect workers from extreme heat — indoors”. The article details issues similar to what employee advocates have been expressing throughout the adoption process for this standard.

Adoption of this rule will complete an action in California’s Extreme Heat Action Plan under Track B, Goal 2, E4 on p. 23 and is well-aligned with Governor Newsom’s statement when he launched HeatReadyCA.com last summer stating, “You [workers] have the right to be protected from heat hazards at work, including education on how to stay safe and the ability to take preventative measures to avoid heat illness.”

To reiterate, we urge you to adopt the standard because a specific indoor heat regulation is long overdue and urgently needed even though we conclude that it is not as protective as it should be.

Sincerely,

Anne Katten, MPH
California Rural Legal Assistance Foundation

AnaStacia NIcol Wright, JD
Worksafe

Maegan Ortiz
Instituto de Educacion Popular del Sur de California (IDEPSCA)

Margaret Reeves, Staff Scientist
Pesticide Action Network

Jassy Grewal, MPA
UFCW Western States Council

Mitch Steiger, Legislative Representative
California Federation of Teachers (CFT)

Ana Vicente
California Rural Legal Assistance Inc.

Jonathan Parfrey, Executive Director
Climate Resolve

Beth Malinowski, Government Relations Advocate
SEIU California

From:	Helen Cleary
To:	DIR OSHSB
Cc:	Hagen, Katie@DIR; Gonzalez, Autumn@DIR; Neidhardt, Amalia@DIR; Killip, Jeff@DIR; Berg, Eric@DIR; Eckhardt, Susan@DIR
Subject:	PRR Comments: 3rd 15-Day Notice for Indoor Heat
Date:	Friday, January 12, 2024 9:30:59 AM
Attachments:	PRR Comments_OSHSB_3rd 15-Day Notice_Indoor Heat Proposed Rulemaking_12 Jan 2024.pdf

Hello Board Members and Staff,

Please accept the attached comments from the PRR OSH Forum on the Board's 3rd Notification of Modifications to the proposed Indoor Heat rulemaking.

Thank you for your consideration and have a wonderful weekend!

Helen

Helen Cleary
Director
Phylmar Regulatory Roundtable, PRR-OSH Forum
m: 916-275-8207
e: hcleary@phylmar.com
w: www.phylmar.com/regulatory-roundtable

January 12, 2024

State of California
Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Ventura Oaks Way, Suite 350
Sacramento, CA 95833
OSHSB@dir.ca.gov

RE: 3rd 15-Day Notice of Proposed Modifications to the Heat Illness Prevention in Indoor Places of Employment Proposed Rulemaking: §3396

Board Chair Thomas and Board Members:

Please accept these comments and recommendations from the **Phylmar Regulatory Roundtable (PRR) Occupational Safety and Health OSH Forum** in response to the California Occupational Safety and Health Standards Board's (Board) 3rd 15-Day Notice of Proposed Modifications (3rd 15-Day Notice) to the new General Industry Safety Orders in Title 8: §3396. Heat Illness Prevention in Indoor Places of Employment (Indoor Heat), noticed on December 22, 2023.

These comments are predominantly limited to the single proposed change in the 3rd 15-Day Notice. They do not address all PRR's concerns with the proposed draft of the Indoor Heat standard; please reference PRR's previously submitted comments from May 16, 2023, August 22, 2023, and November 28, 2023, for additional information and feedback.

Proposed Exception - Since the beginning of this rulemaking, PRR has recommended that time spent exposed needs to be considered for a practical indoor heat standard. We continue to maintain our previous recommendation that short, *incidental* exposures should not be limited by a temperature trigger. However, because of the Division's clear stance that any exclusion would require a temperature limitation, PRR recommended a temperature trigger of 95 degrees Fahrenheit (95°F) in our comments submitted on November 28, 2023.

PRR appreciates that the Board and Division accepted our recommendation of 95°F as a temperature trigger in the 3rd 15-Day Notice. As detailed in our comments submitted on November 28, 2023, 95°F aligns with §3395 (Outdoor Heat), for high heat conditions and follows the scientific logic of the National Institute of Occupational Safety and Health's (NIOSH) recommended work/rest schedule[1].

[1] NIOSH Work/Rest Schedules Fact Sheet; https://www.cdc.gov/niosh/mining/UserFiles/works/pdfs/2017-127.pdf

Unnecessary Scope of the Exception - However, despite our support of the proposed change, we highlight that a temperature trigger of 95°F, or any other temperature limitation, does not adequately address workers momentarily accessing storage units to obtain supplies or a tool. As drafted, **the proposed standard still unnecessarily includes workers who are not at risk of occupational heat stress; this will waste valuable time and employer resources.**

In addition, we are concerned that limiting the exception to 95°F implies that every employer in the State of California will be required to create, implement, and manage a Heat Illness Prevention Program and training simply because they have a single outdoor storage shed or a heating, ventilation, and air conditioning system (HVAC) that *may* malfunction. This is despite the low probability of occurrence and low risk of actual heat illness from incidental exposure. This includes every office worker and building in California with state-of-the-art HVAC systems -- such a scope is unreasonable and unnecessary.

Occupational safety and health regulations should not be drafted to capture every extreme, one-off, situation. Effective regulations target known occupational hazards and workers at risk. Heat illness is not an occupational risk for office workers. In addition, the Outdoor Heat rule effectively manages and protects workers who will temporarily access outdoor storage sheds. PRR continues to believe that the Division unnecessarily expanded the scope and impact of the Indoor Heat regulation, and this is a missed opportunity for smart public policy.

Indoor Heat Rulemaking Post-Mortem - To alleviate frustration and scrambling by all stakeholders during future rulemakings, PRR suggests the Board and Division review and conduct what many in industry refer to as a post-mortem. We have looked back and reviewed PRR's experience during this rulemaking process and offer the following observations for Board consideration.

In response to industry concerns about the proposed text, the Division, some Board members, and labor advocates highlighted that during the pre-rulemaking process multiple revisions and nine drafts were proposed based on stakeholder and employer feedback. We think it is important to point out that, during this time, one of the primary issues PRR highlighted was the lack of consideration of an exception that addressed low-risk, low-exposures in indoor spaces that cannot be climate controlled. Issues resulting to workers already managed by the Outdoor Heat regulation who will briefly enter spaces that meet the definition of "indoor" were also discussed at Advisory Committee meetings and submitted comments. However, neither were addressed during pre-rulemaking or in the original draft proposed on March 31, 2023.

The Division and Board finally attempted to address some or part of these concerns in *three* 15-Day Notices without consultation with stakeholders, including the Board, on how the proposed language would impact various operations in the state. Two of these 15-Day Notices were issued over the holidays. Review of the proposed text in the first 15-Day Notice and the 2nd 15-Day Notice clearly illustrate that the exceptions proposed were unnecessarily complex, convoluted, and limiting. PRR believes that the resulting frustration and stakeholder scramble could have been avoided if effective dialogue was

facilitated prior to issuing substantial revisions in multiple 15-Day Notices. Instead, stakeholders were left to propose solutions during 15-Day time periods, over two holidays, that would meet the Division's unknown parameters. PRR was unaware that the Division's intent and goal was to have an exclusion based on a temperature trigger until the Thursday, November 16, 2023, Board meeting; written comments were due six working days later the Tuesday after Thanksgiving. This has essentially run out the clock leaving the Board with a flawed draft to vote on. Moreover, it is thousands of employers in the State who will be left to implement and manage the burdensome and convoluted requirements in the final regulation.

PRR respectfully recommends that the Board and Division review and evaluate this experience and ensure future regulations are not drafted and proposed in a similar way.

Summary - Again, PRR appreciates the Division and Board's implementation of PRR's recommendation in the 3rd 15-Day Notice. While it does not resolve larger issues of the proposed rule it is an improvement to the exception proposed in the 2nd 15-Day Notice. In addition, it is supported by research performed by NIOSH and aligns with the Outdoor Heat regulation.

Sincerely,

Helen Cleary
Director
PRR OSH Forum

CC:

Katrina Hagen	khagen@dir.ca.gov
Autumn Gonzalez	ARGonzalez@dir.ca.gov
Amalia Neidhardt	aneidhardt@dir.ca.gov
Jeff Killip	jkillip@dir.ca.gov
Eric Berg	eberg@dir.ca.gov
Susan Eckhardt	seckhardt@dir.ca.gov

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From: Leder, Leslie on behalf of Moutrie, Robert
To: DIR OSHSB
Cc: agonzalez@dir.ca.gov; Park, Keummi@DIR; Berg, Eric@DIR; Neidhardt, Amalia@DIR
Subject: Comment Letter -3rd 15-Day Change Notice re Heat Illness Prevention
Date: Friday, January 12, 2024 10:50:28 AM
Attachments: 1.12.24 - CalChamber 3rd 15-day Change Heat Illness Comment Letter.pdf

Good morning,

Attached is our coalition comment letter for the 3rd 15-day change notice re Health Illness Prevention in Indoor Places of Employment. If you have any questions, please reach out to me.

Thank you,

Rob Moutrie
Policy Advocate

CalChamber
HR Expert & Business Advocate™

California Chamber of Commerce
1215 K Street, 14th Floor
Sacramento, CA 95814

T 916 930 1245
F 916 325 1272

January 12, 2024

Chair David Thomas and Board Members
Occupational Safety & Health Standards Board
Department of Industrial Relations, State of California
2520 Venture Oaks Way
Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

SUBJECT: HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT COMMENTS ON 3rd 15-DAY CHANGE NOTICE

Dear Chair Thomas and Members of the Board:

The California Chamber of Commerce and the undersigned submit this letter to provide comment upon the third 15-day change notice related to the draft Heat Illness Prevention in Indoor Places of Employment regulation, issued on December 22nd, 2023, with comments due on January 12, 2024 ("Third 15-day Change"). Notably, at times this letter will reference the second 15-day change which was issued on November 9, 2023 (the "Second 15-day Change"), or the regulation generally (the "Draft Regulation")).

We were involved with the development and implementation of the Outdoor Heat Illness Regulation (Section 3395) and have significant experience with how to effectively prevent heat illness. We take the safety and health of employees very seriously—and though we oppose the Draft Regulation, we hope the below comments provide helpful input regarding improving the final text, should it be passed by the Standards Board.

Appreciate Extension of 15-day Period in Light of Holiday Season.

As an initial matter, we appreciate the extension of the 15-day period to allow comments until January 12, 2024, in light of the significant holidays taking places during what would otherwise have been the comment period (Christmas, New Years) and the vacation time/family gatherings that are extremely common during this period. All of these joyful disruptions to the workplace business make it more difficult for covered employers to receive, analyze, and respond to the changes contained therein – so the extension is greatly appreciated and also helps stakeholders provide more helpful feedback.

Issue Created by the Third 15-day Change: The "De Minimis Exposure" Exemption Appears Rarely Usable, and Includes Strange Exemptions.

The Third 15-day Change makes further adjustments to Section (a)(1)(C), which focuses on rarely-used spaces (the "Exemption"). This provision is *critical* to ensuring that the Draft Regulation does not generate absurd compliance obligations that are completely divorced from any benefit for workers. However, we remain concerned that this provision will be functionally useless as written, for the reasons outlined below.

1) The Exemption's ceiling – 95 degrees – means that it will rarely be useful.

The Exemption's two fundamental limitations are: exposure must be brief (less than 15 minutes in a 60-minute period) and that even a moment of exposure cannot be above 95 degrees. In other words, it will only apply to an indoor space that *falls into a temperature range of 13 degrees (*82-95 degrees Fahrenheit) and is used briefly but is also *not* a container or a vehicle. Our concern is that these thresholds make the exemption rarely applicable – and seem to create absurd outcomes.

For example – on a hot summer day, a storage shed that is distant from any power lines or main facilities may rise in temperature above 95 degrees. Nevertheless, any employee stepping inside will grab the necessary items, and step out within moments – making any exposure inconsequential. However, with the

Exemption as written, even stepping into such a shed for *ten seconds* would trigger the full obligations of the Draft Regulation, including control measures and measurements.

Put simply, we believe that 95 degrees is too low a threshold for brief exposures. The solutions to this problem could include:

- Elimination of the 95-degree threshold entirely, as brief exposures are, by their nature, less dangerous.
- A different temperature threshold for very brief exposure – such as 115 degrees for less than 5 minutes in a 60-minute period.

2) The Exemption's exclusion of containers does not appear based in science or health concerns.

The Third 15-day Change reverts back to the same principle contained in a prior draft of excluding containers, defined as "Shipping or intermodal containers during loading, unloading, or related work."[1] As noted in our letter of August 16th regarding the first 15-day change, we believe limiting the exception to non-shipping containers makes little sense. A shipping container is not qualitatively different than a storage shed, or a trailer, or a bungalow ... it restricts airflow, and has a roof and four walls. As a result, we do not believe the exemption should exempt storage containers.

Furthermore, we do not understand why shipping containers used in one fashion should be treated differently than others. Is a shipping container a different hazard if it is used for other purposes? In addition, to what other purpose might a storage container be used other than *storing* things, which is comprised of *loading them, and unloading them.*

3) The Exemption's exclusion of vehicles appears in conflict with existing judicial interpretation of the Outdoor Heat Regulation.

Present judicial interpretation of Section 3395 makes clear that an un-airconditioned vehicle is *considered covered under Section 3395*.[2] However, the Third 15-day Change suggests that un-airconditioned vehicles *are covered by Section 3396*, instead of Section 3395 as per present judicial interpretation. If this is not addressed, it will be unclear if employers are required to: (1) apply Section 3395 to un-airconditioned vehicles, in line with present judicial interpretation; or (2) apply the newly passed Section 3396 because unairconditioned vehicles are specifically *not* excepted even if they are used briefly.

To address the above issues, we urge the following changes:

(C) This section does not apply to incidental heat exposures where an employee is exposed to temperatures at or above 82 degrees Fahrenheit and below ~~9~~115 degrees Fahrenheit for less than 15 minutes in any 60-minute period. ~~This exception does not apply to the following:~~

~~1. Vehicles without effective and functioning air conditioning; or~~

~~2. Shipping or intermodal containers during loading, unloading, or related work.~~

Removing the exceptions to the Exemption simplifies its functioning and avoids the confusion about whether vehicles would fall under Section 3395 or 3396. Furthermore, the 95-degree Fahrenheit cap is too low for the Exemption to function but raising this to 115-degrees Fahrenheit will not significantly alter worker safety, but will avoid absurd compliance obligations.

[1] As an aside – we appreciate the incorporation of "intermodal containers" as requested in our letter of August 16th, 2023.

[2] *See* In the Matter of the Appeal of AC Transit, 2019 CA OSHA App. Bd. Lexis 60. Inspection No. 310060629, Formerly Docket 08-R1D4-0135 (upholding the lower court's decision that an unairconditioned bus was an outdoor space and therefore covered by Section 3395).

Conclusion

Without addressing the above issues, the workplaces that will see any benefit from the Exemption will be few and far between – and confusion will be sown regarding un-airconditioned vehicles.

We hope that, if these issues are not addressed prior to this Draft Regulation going to the Standards Board for a vote in 2024, they can be addressed in an FAQ or in a subsequent revision to the Draft Regulation.

Thank you for the opportunity to provide feedback on this important draft regulation.

Sincerely,

Robert Moutrie
Policy Advocate
California Chamber of Commerce
on behalf of

American Composites Manufacturers Association
Associated Roofing Contractors of the Bay Area Counties
California Association of Winegrape Growers
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Farm Bureau
California Framing Contractors Association
California Fresh Fruit Association
California Tomato Growers Association
California Walnut Commission
Housing Contractors of California
PCI West – a Chapter of the Precast/Prestressed Concrete Institute
Residential Contractors Association
Western Agricultural Processors Association
Western Growers Association
Western Steel Council

Copy: Autumn Gonzalez argonzalez@dir.ca.gov
Keummi Park kpark@dir.ca.gov
Eric Berg eberg@dir.ca.gov
Amalia Neidhardt aneidhardt@dir.ca.gov

From: Michael Miiller
To: DIR OSHSB
Cc: Neidhardt, Amalia@DIR; Berg, Eric@DIR; Park, Keummi@DIR; agonzalez@dir.ca.gov
Subject: Ag Coalition Letter Indoor Heat Illness Prevention Reg
Date: Friday, January 12, 2024 3:12:03 PM
Attachments: image004.png
Ag Coalition Letter Indoor Heat Regulation 3rd 15 Day Notice.pdf

Good Afternoon,

Attached are comments from the agricultural coalition in response to the recent amendments to this proposed regulation. Please confirm receipt.

We look forward to working with you on this important regulatory change.

Thank you,

Michael

MICHAEL MIILLER | **California Association of Winegrape Growers** | **Director of Government Relations**
1121 L Street, Suite 304 | Sacramento, CA 95814 | michael@cawg.org
Office (916) 379-8995 | Mobile (916) 204-0485 | www.cawg.org | www.cawgfoundation.org |
www.unifiedsymposium.org ***—Begins January 23, 2024***

The most effective way to reach me is at my mobile number or e-mail.

January 12, 2023

Chair David Thomas and Board Members
Occupational Safety & Health Standards Board
Department of Industrial Relations, State of California
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

SUBJECT: COMMENTS ON PROPOSED REGULATION (Dec. 22 Amendments)
HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

Dear Chair Thomas and Members of the Board:

The undersigned organizations representing California's agricultural industry submit this letter to provide comments on the amendments released on December 22 to the proposed Heat Illness Prevention in Indoor Places of Employment draft regulation. Please refer to our prior comments submitted on May 17 and November 27 for our continued concerns.

This letter is focused only on the December 22 amendments and raises concerns relative to scope and application. Specifically, we are concerned with how the recent amendments deal with incidental heat exposure (especially relative to vehicles).

Incidental Heat Exposure

We appreciate that the recent amendments appear to be an attempt to address our previously stated concerns. However, as currently drafted, by placing the cap at 95 degrees, it means the incidental heat exposure exception will rarely be useful, especially for a vehicle.

Therefore, we continue to recommend the following amendment

> Scope and Application (a)(1)
> Exceptions
> (C) This section does not apply to incidental heat exposures where an employee is exposed to temperatures above 82 degrees Fahrenheit and below ~~**95**~~ **115 (?)** degrees Fahrenheit for less than 15 minutes in any 60 minute period. ~~**This exception does not apply to the following:**~~
> ~~**1. Vehicles without effective and functioning air conditioning; or**~~
> ~~**2. Shipping or intermodal containers during loading, unloading, or related work.**~~
> **(D) Vehicles with effective and functioning air conditioning.**

In part, the above borrows from existing law in Washington. In relying on science and medical data, Washington's existing outdoor heat exposure regulation states that it, "*Does not apply to incidental exposure. Incidental exposure means an employee is not required to perform a work activity outdoors for more than 15 minutes in any 60-minute period*."

The 115-degree cap is suggested by the California Chambert of Commerce, and we see this as a reasonable cap and therefore align ourselves with that approach.

This regulation as currently proposed would needlessly (but perhaps intentionally?) require that outdoor agricultural employees, who are already covered under the existing outdoor heat illness prevention regulation, would also be covered under this proposed indoor heat illness prevention regulation when they are in a vehicle that has effective and fully functioning air conditioning. This does not seem to be an unintended consequence of the regulation as this concern has been raised several times in writing and in testimony before the board.

This therefore begs the question of what added safety benefit does this new requirement provide for those outdoor ag employees when they enter a vehicle? As that vehicle provides a place that is cooler than the outdoors, there would seem to be no added benefit whatsoever.

Conclusion

Without addressing the above concerns, few employees (if any) would see any benefit from the exemption. To provide for the highest level of health and safety, the proposed indoor heat illness prevention standard needs clarification. We hope this letter can help in amending the proposal to make it clear while also maintaining its purpose.

Please consider the adage, “Say what you mean and mean what you say.” This advice is especially relevant when writing law. The concerns raised in this letter are easily resolved and we respectfully ask for consideration of our suggested amendments.

The amendments proposed in this letter would go a long way toward making compliance more achievable should the proposed regulation become law. It is our hope that this is a goal shared by all.

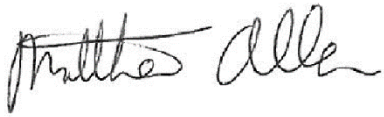
Sincerely,

See Attached Signatures

Copy: Autumn Gonzalez agonzalez@dir.ca.gov
Keummi Park kpark@dir.ca.gov
Eric Berg eberg@dir.ca.gov
Amalia Neidhardt aneidhardt@dir.ca.gov

Submitted by California Association of Winegrape Growers
1121 L Street, #304 | Sacramento, CA 95814 | (916) 204-0485 | Michael@CAWG.org

Michael Miiller
Director of Government Relations
California Association of Winegrape Growers



Matthew Allen
Vice President, State Government Affairs
Western Growers

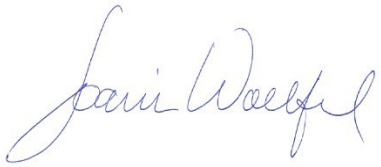
Tricia Geringer
Vice President of Government Affairs
Agricultural Council of California

Timothy A. Johnson
President/CEO
California Rice Commission

Christopher Valadez
President
Grower-Shipper Association of Central California

Roger Isom
President/CEO
California Cotton Ginners and Growers Association
Western Agricultural Processors Association

Bryan Little
Director, Employment Policy
California Farm Bureau

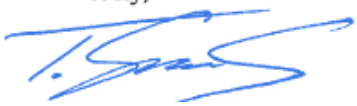


Joani Woelfel
President & CEO
Far West Equipment Dealers Association

Casey Creamer
President
California Citrus Mutual

Rick Tomlinson
President
California Strawberry Commission

Manuel Cunha, Jr.
President
Nisei Farmers League

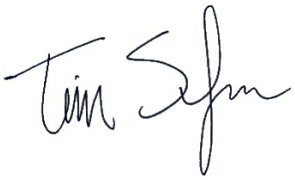


Todd Sanders
Executive Director
California Apple Commission
California Blueberry Association
California Blueberry Commission
Olive Growers Council of California

Richard Matoian
President
American Pistachio Growers

Ian LeMay
President
California Fresh Fruit Association

Pete Downs
President
Family Winemakers of California



Tim Schmelzer
Vice President, California State Relations
Wine Institute

Occupational Safety and Health Standards Board

Business Meeting

Proposed Variance Decisions

CONSENT CALENDAR—PROPOSED VARIANCE DECISIONS
MARCH 21, 2024, MONTHLY BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED DECISIONS FOR BOARD CONSIDERATION, HEARD ON February 21, 2024

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
1. 01-V-001M2	PAR Electrical Contractors, Inc.	2940.2(a)(1) and (2) 2940.6(h) 2940.7(b)(6) 2941(f) 2944(f)	GRANT
2. 14-V-348M1	PAR Electrical Contractors, Inc.	3638(a)(1)	GRANT
3. 22-V-125M1	110 South Boyle L.P.	Elevator	GRANT
4. 23-V-093M1	ARE-SD Region No. 47, LLC	Elevator	GRANT
5. 23-V-302M1	AS P6 Owner, LLC	Elevator	GRANT
6. 23-V-555	CRP/WP ALTA CUVEE VENTURE, LLC	Elevator	GRANT
7. 23-V-556	CRP/WP ALTA CUVEE VENTURE, LLC	Elevator	GRANT
8. 23-V-620	Pierri Enterprises Limited Liability Company	Elevator	GRANT
9. 23-V-621	1317 Jefferson LA LLC	Elevator	GRANT
10. 23-V-622	Rancho Sierra I LP	Elevator	GRANT
11. 23-V-623	200-240 Twin Dolphin, LLC	Elevator	GRANT
12. 23-V-624	Menlo BCSP 405 Property LLC	Elevator	GRANT
13. 23-V-625	Keren Development LLC	Elevator	GRANT
14. 23-V-626	William Ashley Inc.	Elevator	GRANT
15. 23-V-627	Campus Pointe Commercial, LP	Elevator	GRANT
16. 23-V-628	SI XX LLC	Elevator	GRANT
17. 23-V-629	1850 Outer RP, LLC	Elevator	GRANT
18. 23-V-630	City of Oakland	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
19. 23-V-631	Hollywood Park Residential Investors, LLC	Elevator	GRANT
20. 23-V-632	Kendry Addition Venture, LLC	Elevator	GRANT
21. 23-V-633	Tarrar Enterprises DBA Tarrar Utility Consultants, Inc.	Elevator	GRANT
22. 24-V-001	Residency at the Mayer LP	Elevator	GRANT
23. 24-V-002	313-317 N Rodeo Drive, LLC	Elevator	GRANT
24. 24-V-004	Western Landing, L.P.	Elevator	GRANT
25. 24-V-005	TI Lots 3-4, LLC	Elevator	GRANT
26. 24-V-006	Elements 2A, LLC	Elevator	GRANT
27. 24-V-007	Euclid Investment Group LLC	Elevator	GRANT
28. 24-V-008	3240 Wilshire Boulevard Mid Rise, LLC	Elevator	GRANT
29. 24-V-009	Moss Bros. Auto Group	Elevator	GRANT
30. 24-V-012	Merced County Employee's Retirement Association	Elevator	GRANT
31. 24-V-013	939 N. Spaulding Ventures LLC	Elevator	GRANT
32. 24-V-014	842 S Kingsley Dr LLC	Elevator	GRANT
33. 24-V-015	TTLE Mirza, Inc.	Elevator	GRANT
34. 24-V-016	City College of San Francisco	Elevator	GRANT
35. 24-V-017	Starwood Capital Group	Elevator	GRANT
36. 24-V-018	Union & B LLC	Elevator	GRANT
37. 24-V-019	202 Nash, LLC	Elevator	GRANT
38. 24-V-020	Village of Escaya II, LLC	Elevator	GRANT
39. 24-V-021	Smoky Hollow Industries, LLC	Elevator	GRANT
40. 24-V-022	RSF Calson 1 Propco, LLC	Elevator	GRANT
41. 24-V-023	Nihal Lodging, LLC	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
42. 24-V-024	Jefferson Westchester, LLC	Elevator	GRANT
43. 24-V-025	Clawiter Industrial, LLC	Elevator	GRANT
44. 24-V-026	Arlington Heights LP	Elevator	GRANT
45. 24-V-027	HSRE-MPCCA Oakland MOB, LLC	Elevator	GRANT
46. 24-V-028	Piper Way Senior Housing LP	Elevator	GRANT
47. 24-V-029	City of Livermore	Elevator	GRANT
48. 24-V-030	San Francisco Unified School District	Elevator	GRANT
49. 24-V-031	University of California, Santa Cruz	Elevator	GRANT
50. 24-V-032	University of California, Santa Cruz	Elevator	GRANT
51. 24-V-033	University of California, Santa Cruz	Elevator	GRANT
52. 24-V-034	University of California, Santa Cruz	Elevator	GRANT
53. 24-V-035	University of California, Santa Cruz	Elevator	GRANT
54. 24-V-036	University of California, Santa Cruz	Elevator	GRANT
55. 24-V-037	University of California, Santa Cruz	Elevator	GRANT
56. 24-V-038	University of California, Santa Cruz	Elevator	GRANT
57. 24-V-039	Nela Overland LLC	Elevator	GRANT
58. 24-V-040	Sanctuary Centers of Santa Barbara, Inc.	Elevator	GRANT
59. 24-V-041	6406 Hoover St., LLC	Elevator	GRANT
60. 24-V-043	City of Indio, CA	Elevator	GRANT
61. 24-V-044	The Sobrato Organization	Elevator	GRANT
62. 24-V-045	The Sobrato Organization	Elevator	GRANT
63. 24-V-046	Slevin Auto Capital	Elevator	GRANT
64. 24-V-047	Lynx Property Management, Inc.	Elevator	GRANT
65. 24-V-048	Bell Street Gardens, L.P.	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
66. 24-V-049	986 South Van Ness, LLC	Elevator	GRANT
67. 24-V-050	202 Nash, LLC	Elevator	GRANT
68. 24-V-051	LA Arena Company, LLC dba Crypto.com Arena	Elevator	GRANT
69. 24-V-052	Morgan Hill Senior Housing, LP	Elevator	GRANT
70. 24-V-053	Napa Valley Hospitality LLC	Elevator	GRANT
71. 24-V-054	Bennett Valley Housing Partners, L.P.	Elevator	GRANT
72. 24-V-055	Lightfighter Village, L.P.	Elevator	GRANT
73. 24-V-056	Pinole Housing, L.P.	Elevator	GRANT
74. 24-V-057	500 Miller Ave, LLC	Elevator	GRANT
75. 24-V-058	North East Medical Services	Elevator	GRANT

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application to Modify Permanent Variance by: PAR Electrical Contractors, Inc.	Permanent Variance No.: 01-V-001M2 and 14-V-348M1 Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: PAR Electrical Contractors, Inc.	OSHSB File No.: 01-V-001M2 and 14-V-348M1 PROPOSED DECISION Hearing Date: February 21, 2024

A. Subject Matter and Jurisdiction

1. The following person or entity ("Applicant") has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, as follows:,[1]:

Preexisting Permanent Variance Nos.	Preexisting Variance Holder of Record
01-V-001	PAR Electrical Contractors, Inc.
01-V-001M1	PAR Electrical Contractors, Inc.
14-V-348	PAR Electrical Contractors, Inc.

2. This proceeding is conducted in accordance with Labor Code section 143 and section 401, et. seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

B. Procedural Matters

1. This hearing was held on February 21, 2024 via videoconference by the Board with Hearing Officer, Kelly Chau, both presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, Steven Churchwell and Luke Moore, appeared on behalf of the Applicant. Larry McCune appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

[1] Unless otherwise stated, all references are to title 8, California Code of Regulations.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Division Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

Official notice is taken of the Board's files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On February 21, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

C. Findings of Fact

1. The Applicant requests modification of the variance holder specified within Board records of previously granted Permanent Variance Nos. 01-V-001 and 01-V-001M1 and 14-V-348.

2. Application Section 2, declared to be wholly truthful under penalty of perjury by Application signatory, states that the person or entity named in Application Section 2, acquired the variance from the employer to whom it was issued subject to the existing variance referenced in Application Section 1.

3. Cal/OSHA has evaluated the request for modification of person or entity of record holding Permanent Variance Nos. 01-V-001 and 01-V-001M1 and 14-V-348, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in Permanent Variance Nos. 01-V-001 and 01-V-001M1 and 14-V-348 with the exception of the conditions below to accurately reflect the name change.

4. The Board finds the Application Section 2, declaratory statements of the Applicant signatory to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which, in substantial part, grant of preexisting Permanent Variance Nos. 01-V-001 and 01-V-001M1 and 14-V-348 was based, respectively.

5. The Board finds the current person or entity having custody of Permanent Variance Nos. 01-V-001 and 01-V-001M1 and 14-V-348 to be in fact:

PAR Western Line Contractors, LLC (PWLC)

D. Decision and Order

1. Variance applications 01-V-001M2 and 14-V-348M1 are conditionally GRANTED, as specified below, such that, within Board records, the person or entity holding Permanent Variance Nos. 01-V-001 and 01-V-001M1, and Permanent Variance Nos. 01-V-001, 01-V-001M1 and 01-V-001M2 as well as 14-V-348 and 14-V-348M1, respectively, shall be:

    - PAR Western Line Contractors, LLC (PWLC)
    - All conditions with PAR Electrical Contractors, Inc. as the variance holder are modified to list PAR Western Line Contractors, LLC or PWLC as the variance holder

2. Permanent Variance Nos. 01-V-001 and 01-V-001M1 and 14-V-348, being only modified as specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance Nos. 01-V-001M2 amd 14-V-348M1.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application to Modify Permanent Variance by:

110 South Boyle L.P.

Permanent Variance No.: 22-V-125M1
Proposed Decision Dated: February 23, 2024

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: 110 South Boyle L.P.	Permanent Variance No.: 22-V-125M1 PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. The following person or entity ("Applicant") has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1] as follows:

Preexisting Permanent Variance No.	Applicant Name	Preexisting Variance Address of Record
22-V-125	110 South Boyle L.P.	110 S. Boyle Ave. Los Angeles, CA

2. This proceeding is conducted in accordance with Labor Code section 143 and section 401 et seq. of the Occupational and Safety Health Standard Board's ("Board" or "OSHSB") procedural regulations.

B. Procedural Matters

1. This hearing was held on February 21, 2024, via videoconference by the Board with Hearing Officer, Kelly Chau, presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, Jennifer Linares with Schindler Elevator Corporation appeared on behalf of the Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance application per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of variance application
PD-4	Review Draft of Proposed Decision

4. Official notice is taken of the Board's rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On February 21, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

C. Findings of Fact

1. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the address specified in the records of the Board at which Permanent Variance 22-V-125 is in effect, is more completely, and correctly the different address information specified in below subsection C4.

2. Cal/OSHA has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in Permanent Variance File No. 22-V-125.

3. The Board finds the above subpart C1referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 22-V-125 was, in part, based.

4. The Board finds the correct address by which to designate the location of each conveyance the subject of Permanent Variance No. 22-V-125, to be:

1800 E. 1st Street
Los Angeles, CA

D. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

E. Decision and Order

1. Permanent Variance Application No. 22-V-125M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each conveyance being the subject of Permanent Variance Nos. 22-V-125 and 22-V-125M1 shall have the following address designation:

1800 E. 1st Street
Los Angeles, CA

2. Permanent Variance No. 22-V-125, being only modified as to the subject location address specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 22-V-125M1.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance by:

ARE-SD Region No. 47, LLC

OSHSB File No.: 23-V-093M1
Proposed Decision Dated: February 23, 2024

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

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KATHLEEN CRAWFORD, Member

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DAVID HARRISON, Member

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NOLA KENNEDY, Member

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CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: ARE-SD Region No. 47, LLC	Permanent Variance No.: 23-V-093M1 PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. The following person or entity ("Applicant") has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1], as follows:

Preexisting Permanent Variance No.	Applicant Name	Preexisting Variance Address of Record
23-V-093	ARE-SD Region No. 47, LLC	4110 Campus Point Ct. San Diego, CA

2. This proceeding is conducted in accordance with Labor Code section 143, and section 401, et seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

B. Procedural

1. This hearing was held on February 21, 2024 via videoconference by the Occupational Safety and Health Standards Board ("Board") with Hearing Officer Kelly Chau, both presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, Fuei Saetern, with KONE, Inc., appeared on behalf of the Applicant, Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

4. Official notice is taken of the Board's files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On February 21, 2024, the hearing and record closed and the matter was taken under submission by the Hearing Officer.

C. Findings of Fact

1. The Applicant requests modification of the address of the unchanging variance location specified within Board records for each elevator the subject of previously granted Permanent Variance 23-V-093.

2. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the address, specified in the records of the Board, at which Permanent Variance 23-V-093**.** is in effect, in fact is more completely and correctly the different combination of addresses specified in below subsection C.5.

3. Cal/OSHA has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in Permanent Variance No. 23-V-093.

4. The Board finds the above subpart C.2 referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 23-V-093 was, in part, based.

5. The Board finds the correct address by which to designate the location of each elevator the subject of Permanent Variance No 23-V-093M1, to be:

4155 Campus Point Ct.
San Diego, CA

D. Decision and Order

1. Permanent Variance Application No. 23-V-093M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator

being the subject of Permanent Variance Nos. 23-V-093, and 23-V-093M1, shall have the following address designation:

4155 Campus Point Ct.
San Diego, CA

2. Permanent Variance No. 23-V-093, being only modified as to the subject location address specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 23-V-093M1.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance by:

AS P6 Owner, LLC

OSHSB File No.: 23-V-302M1
Proposed Decision Dated: February 23, 2024

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

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CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: AS P6 Owner, LLC	Permanent Variance No.: 23-V-302M1 PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. The following person or entity ("Applicant") has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at Title 8 of the California Code of Regulations[1] as follows:

Preexisting Permanent Variance No.	Applicant Name	Preexisting Variance Address of Record
23-V-302	AS P6 Owner, LLC	Aggie Square - Parking Structure 6 2800 49th Ave. Sacramento, CA

2. This proceeding is conducted in accordance with Labor Code section 143 and section 401 et seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

B. Procedural Matters

1. This hearing was held on February 21, 2024 , via videoconference by the Board with Hearing Officer Kelly Chau, both presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Jose Ceja and Mark Wickens appeared on behalf of Occupational Safety and Health ("Cal/OSHA").

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

4. Official notice is taken of the Board's rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On February 21, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

C. Findings of Fact

1. The Applicant requests modification of the address of the unchanging variance location specified within Board records for each conveyance the subject of previously granted Permanent Variance 23-V-302.

2. The Applicant requests modification of the quantity of elevators the subject of previously granted Permanent Variance No. 23-V-302, to decrease the quantity of elevators from four to three and a change in address

3. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the number of elevators has decreased from 4 to 3 and that the address, specified in the records of the Board, at which Permanent Variance 23-V-302 is in effect, in fact is more completely, and correctly the different address information specified in below subsection C.5.

4. Cal/OSHA has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in Permanent Variance No. 23-V-302.

5. The Board finds the above subpart C.3 referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 23-V-302 was, in part, based.

6. The Board finds the correct address by which to designate the location of each conveyance the subject of Permanent Variance No. 23-V-302M1, to be:

Aggie Square - Parking Structure 6
2800 49th St.
Sacramento, CA

E. Decision and Order

1. Permanent Variance Application No. 23-V-302M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each conveyance being the subject of Permanent Variance Nos. 23-V-302, and 23-V-302M1, shall have the following address designation:

Aggie Square - Parking Structure 6
2800 49th St.
Sacramento, CA

2. Additionally, the quantity of elevators to a total of (3) are the subject of Permanent Variance No. 23-V-302M1, is hereby modified.

3. Permanent Variance No. 23-V-302, being only modified as to the subject location address specified in above Decision and Order section 1, and having a decrease of quantity of elevators, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 23-V-302M1.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau

Kelly Chau, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding:

Mitsubishi Elevators (Group IV)

Permanent Variance No.: See section A.1 Table

Proposed Decision Dated: February 23, 2024

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

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JOSEPH M. ALIOTO JR., Member

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KATHLEEN CRAWFORD, Member

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DAVID HARRISON, Member

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NOLA KENNEDY, Member

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CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: Mitsubishi Elevators (Group IV)	Permanent Variance No.: See section A.1 Table PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject and Procedural Matters

1. Each below listed applicant ("Applicant") has applied for permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1] as follows:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
23-V-555	CRP/WP ALTA CUVEE VENTURE, LLC	12915 Foothill Blvd. Rancho Cucamonga, CA	1
23-V-556	CRP/WP ALTA CUVEE VENTURE, LLC	12975 Foothill Blvd. Rancho Cucamonga, CA	1
24-V-002	313-317 N Rodeo Drive, LLC	319 N. Rodeo Drive Beverly Hills, CA	3
24-V-058	North East Medical Services	1430 Taraval Street San Francisco, CA	1

2. This proceeding is conducted in accordance with Labor Code section 143 section 401, et seq. of the Board's procedural regulations.

3. This hearing was held on February 21, 2024 via videoconference by the Board with Hearing Officer, Kelly Chau, presiding and hearing the matter on its merit in accordance with section 426.

4. At the hearing, Matt Jaskiewicz with Mitsubishi Electric, Elevator Division appeared on behalf of each Applicant, Jose Ceja and Mark Wickens appeared on behalf of Cal/OSHA.

[1] Unless otherwise noted, all references are to California Code of Regulations, title 8.

5. At the hearing, documentary and oral evidence was received, and by stipulation of all parties, documents were accepted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

6. Official Notice is taken of the Board's rulemaking records and variance decisions concerning the safety order requirements from which variance is requested. At the close of hearing on February 21, 2024, the record was closed and the matter taken under submission by the Hearing Officer.

B. Findings of Fact

1. Each section A1 table specified Applicant intends to utilize Mitsubishi elevators at the location and in the number stated in the table in Item A1. The installation contracts for these elevators were signed on or after May 1, 2008, thus making the elevators subject to the Group IV Elevator Safety Orders.

2. As reflected in the record of this matter, Cal/OSHA evaluation as PD-3, and testimony at hearing, it is the professionally informed opinion of Cal/OSHA that grant of requested variance, subject to conditions and limitations in substantial conforming with those set out per below Decision and Order, will provide Occupational Safety and Health equivalent or superior to that provided by the safety order requirements from which variance is sought.

C. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

D. Decision and Order

As of such date as the Board adopts this Proposed Decision, each Application for Permanent Variance listed in the above section A.1 table, is conditionally GRANTED to the extent each Applicant of record shall have permanent variance from section 3141 ASME A17.1-2004, sections 2.10.2.2 (only to the extent necessary to permit the intermediate rail to be located at a point other than halfway between the top rail and the surface on which the railing is installed), 2.10.2.4 (only to

the extent necessary to permit a bevel sloping that conforms with the variance conditions) and 2.14.1.7.1 (only to the extent necessary to permit the car top railing to be inset to clear obstructions when the conveyance is elevated to perform work on the machine and/or governor). The variance applies to the location and number of elevators stated in the section A.1 table, and the variance is subject to the above limitations and following conditions:

1. The car top railing may be inset only to the extent necessary to clear obstructions when the conveyance is located at the top landing to perform work on the machine and/or governor.

2. Serviceable equipment shall be positioned so that mechanics, inspectors, and others working on the car top can remain positioned on the car top within the confines of the railings and do not have to climb on or over railings to perform adjustment, maintenance, minor repairs, inspections, or similar tasks. Persons performing those tasks are not to stand on or climb over railing, and those persons shall not remove handrails unless the equipment has been secured from movement and approved personal fall protection is used.

3. All exposed areas outside the car top railing shall preclude standing or placing objects or persons which may fall, and shall be beveled from an intermediate or bottom rail to the outside of the car top.

4. The top surface of the beveled area shall be clearly marked. The markings shall consist of alternating 4-inch red and white diagonal stripes.

5. The Applicant shall provide a durable sign with lettering not less than ½-inch high on a contrasting background. The sign shall be located on the inset top railing; the sign shall be visible from the access side of the car top, and the sign shall state:

CAUTION
DO NOT STAND ON OR CLIMB OVER RAILING.
PERSONNEL ARE PROHIBITED FROM REMOVING HANDRAIL
UNLESS THE EQUIPMENT HAS BEEN SECURED FROM MOVEMENT
AND APPROVED PERSONAL FALL PROTECTION IS USED.

6. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing will be measured from the car top and not from the required bevel).

7. A mechanical means (e.g., locking bar mechanism) that will secure the car to the guide rail to prevent unintended movement shall be provided and used during machine and/or governor

car-top work. The mechanical means (e.g., locking bar mechanism) shall have a safety factor of not less than 3.5 for the total unbalanced load.

8. An electrical switch or a lockout/tagout procedure shall be provided that will remove power from the driving machine and brake when the mechanical means (e.g., locking bar mechanism) is engaged.

9. In order to inhibit employees from working outside the car top railing, sections shall not be hinged and they shall be installed by means that will inhibit (but not necessarily completely preclude) removal. The Applicant shall ensure that all persons performing work that requires removal of any part of the car top railing are provided with fall protection that is appropriate and suitable for the assigned work. That fall protection shall consist of a personal fall arrest system or fall restraint system that complies with section 1670.

10. The bevel utilized by the Applicant in accordance with the variance granted from ASME A17.1-2004, section 2.10.2.4 shall slope at not less than 75 degrees from the horizontal to serve as the toe board; however, that slope may be reduced to a minimum of 40 degrees from the horizontal as may be required for sections where machine encroachment occurs.

11. If the Applicant directs or allows its employees to perform tasks on the car top, the Applicant shall develop, implement, and document a safety training program that shall provide training to Applicant employees. Components of the training shall include, but not necessarily be limited to, the following: car blocking procedures; how examination, inspection, adjustment, repair, removal and replacement of elevator components are to be performed safely, consistent with the requirements of the variance conditions; applicable provisions of the law and other sources of safety practices regarding the operation of the elevator. A copy of the training program shall be located in the control room of each elevator that is the subject of this variance, and a copy of the training program shall be attached to a copy of this variance that shall be retained in any building where an elevator subject to this variance is located. The Applicant shall not allow Certified Qualified Conveyance Company (CQCC) or other contractor personnel to work on the top of any elevator subject to this variance unless the Applicant first ascertains from the CQCC or other contractor that the personnel in question have received training equivalent to, or more extensive than, the training components referred to in this condition.

12. Any CQCC performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.

13. Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA, and a Permit to Operate shall be issued before the elevator is placed in service.

14. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.

15. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA, or by the Board on its own motion in the procedural manner prescribed.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding: Schindler 3300 with SIL-Rated Drive to De-energize Drive Motor (Group IV)	Permanent Variance No.: Per table, in Jurisdictional and Procedural Matters below Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: Schindler 3300 with SIL-Rated Drive to De-energize Drive Motor (Group IV)	Permanent Variance No.: Per table, in Jurisdictional and Procedural Matters below PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Jurisdictional and Procedural Matters

1. Each below listed applicant ("Applicant") has applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8, of the California Code of Regulations[1] as follows:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
23-V-620	Pierri Enterprises Limited Liability Company	14863 Clark Ave. Hacienda Heights, CA	1
24-V-023	Nihal Lodging, LLC	3435 Reed Ave. West Sacramento, CA	2
24-V-040	Sanctuary Centers of Santa Barbara, Inc.	115 West Anapamu St. Santa Barbara, CA	1
24-V-041	6406 Hoover St., LLC	6406 S. Hoover St. Los Angeles, CA	1
24-V-043	City of Indio, CA	100 Civic Center Drive Indio, CA	1

2. This proceeding is conducted in accordance with Labor Code section 143 and section 401, et seq. of the Board's procedural regulations.

3. This hearing was held on February 21, 2024 via videoconference by the Board with Hearing Officer, Kelly Chau, presiding and hearing the matter on its merit in accordance with section 426.

[1] Unless otherwise noted, all references are to California Code of Regulations, title 8.

4. At the hearing, Jennifer Linares, with Schindler Elevator Corporation, appeared on behalf of the Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

5. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

6. Official notice taken of the Board's rulemaking records, and variance decisions concerning the safety order requirements from which variance is requested. At close of hearing on February 21, 2024 the record was closed and the matter taken under submission by the Hearing Officer.

B. Relevant Safety Order Provisions

Applicant seeks a permanent variance from section 3141 [ASME A17.1-2004, sections 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.5.4, 2.26.1.4.4(a), 8.4.10.1.1(a)(2)(B), 2.14.1.7.1, and 2.26.9.6.1]. The relevant language of those sections are below.

1. Suspension Means

Section 3141 [ASME A17.1-2004, section 2.20.1, Suspension Means] states in part:

> Elevator cars shall be suspended by steel wire ropes attached to the car frame or passing around sheaves attached to the car frame specified in 2.15.1. Ropes that have previously been installed and used on another installation shall not be reused. Only iron (low-carbon steel) or steel wire ropes, having the commercial classification "Elevator Wire Rope," or wire rope specifically constructed for elevator use, shall be used for the suspension of elevator cars and for the suspension of counterweights. The wire material for ropes shall be manufactured by the open-hearth or electric furnace process, or their equivalent.

Section 3141 [ASME A17.1-2004, section 2.20.2.1(b), On Crosshead Data Plate] states in part:

> The crosshead data plate required by 2.16.3 shall bear the following wire-rope data:
>
> (b) the diameter in millimeters (mm) or inches (in.)

Section 3141 [ASME A17.1-2004, section 2.20.2.2(a) and (f) On Rope Data Tag] states in part:

A metal data tag shall be securely attached-to-one of the wire-rope fastenings. This data tag shall bear the following wire-rope data:

(a) the diameter in millimeters (mm) or inches (in.)

[…]

(f) whether the ropes were non preformed or preformed

Section 3141 [ASME A17.1-2004, section 2.20.3, Factor of Safety] states:

The factor of safety of the suspension wire ropes shall be not less than shown in Table 2.20.3. Figure 8.2.7 gives the minimum factor of safety for intermediate rope speeds. The factor of safety shall be based on the actual rope speed corresponding to the rated speed of the car.

The factor of safety shall be calculated by the following formula:

$$f = \frac{S\ x\ N}{W}$$

where:

N= number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S= manufacturer's rated breaking strength of one rope

W= maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

Section 3141 [ASME A17.1-2004, section 2.20.4, Minimum Number and Diameter of Suspension Ropes] states:

The minimum number of hoisting ropes used shall be three for traction elevators and two for drum-type elevators.

Where a car counterweight is used, the number of counterweight ropes used shall be not less than two.

The term "diameter," where used in reference to ropes, shall refer to the nominal diameter as given by the rope manufacturer.

The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

Section 3141 [ASME A17.1-2004, section 2.20.9.3.4] states:

> Cast or forged steel rope sockets, shackle rods, and their connections shall be made of unwelded steel, having an elongation of not less than 20% in a gauge length of 50 mm (2 in.), when measured in accordance with ASTM E 8, and conforming to ASTM A 668, Class B for forged steel, and ASTM A 27, Grade 60/30 for cast steel, and shall be stress relieved. Steels of greater strength shall be permitted, provided they have an elongation of not less than 20% in a length of 50 mm (2 in.).

Section 3141 [ASME A17.1-2004, section 2.20.9.5.4] states:

> When the rope has been seated in the wedge socket by the load on the rope, the wedge shall be visible, and at least two wire-rope retaining clips shall be provided to attach the termination side to the load-carrying side of the rope (see Fig. 2.20.9.5). The first clip shall be placed a maximum of 4 times the rope diameter above the socket, and the second clip shall be located within 8 times the rope diameter above the first clip. The purpose of the two clips is to retain the wedge and prevent the rope from slipping in the socket should the load on the rope be removed for any reason. The clips shall be designed and installed so that they do not distort or damage the rope in any manner.

2. Inspection Transfer Switch

Section 3141[ASME A17.1-2004, section 2.26.1.4.4(a), Machine Room Inspection Operation] states:

> When machine room inspection operation is provided, it shall conform to 2.26.1.4.1, and the transfer switch shall be
>
> (a) located in the machine room[.]

3. Seismic Reset Switch

Section 3141[ASME A17.1-2004, section 8.4.10.1.1(a)(2)(b), Earthquake Equipment] states:

> *(a)* All traction elevators operating at a rated speed of 0.75 m/s (150 ft/min) or more and having counterweights located in the same hoistway shall be provided with the following:
>
> *(1)* seismic zone 3 or greater: a minimum of one seismic switch per building
>
> *(2)* seismic zone 2 or greater:
>
> > *(a)* a displacement switch for each elevator
> >
> > *(b)* an identified momentary reset button or switch for each elevator, located in the control panel in the elevator machine room

4. Car-top Railings

Section 3141[ASME A17.1-2004, section 2.14.1.7.1] states:

> A standard railing conforming to 2.10.2 shall be provided on the outside perimeter of the car top on all sides where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.

5. SIL-Rated System to Inhibit Current Flow to AC Drive Motor

Section 3141[ASME A17.1-2004, section 2.26.9.6.1] states:

> Two separate means shall be provided to independently inhibit the flow of alternating current through the solid state devices that connect the direct current power source to the alternating-current driving motor. At least one of the means shall be an electromechanical relay.

Findings of Fact

Based on the record of this proceeding, the Board finds the following:

1. Applicant intends to utilize Schindler model 3300 MRL elevator cars at the locations listed in Jurisdictional and Procedural Matters, section 1.

2. The installation contract for these elevator was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.

3. The Schindler model 3300 MRL elevator cars are not supported by circular steel wire ropes, as required by the Elevator Safety Orders (ESO). They utilize non-circular elastomeric-coated steel belts and specialized suspension means fastenings.

4. No machine room is provided, preventing the inspection transfer switch from being located in the elevator machine room. The lack of machine room also prevents the seismic reset switch from being located in the elevator machine room.

5. Applicant proposes to relocate the inspection transfer switch and seismic reset switch in an alternative enclosure.

6. The driving machine and governor are positioned in the hoistway and restrict the required overhead clearance to the elevator car top.

7. Applicant proposes to insert the car-top railings at the perimeter of the car top.

8. Applicant intends to use an elevator control system, model CO NX100NA, with a standalone, solid-state motor control drive system that includes devices and circuits having a Safety Integrity Level (SIL) rating to execute specific elevator safety functions.

C. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

D. Decision and Order

Each Application being the subject of this proceeding, per the table in Jurisdictional and Procedural Matters, section A1 above, is conditionally GRANTED, to the extent that each such Applicant shall be issued permanent variance from section 3141 shall be GRANTED subject to the following conditions and limitations:

Elevator Safety Orders:

• Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, and 2.20.9.5.4 (Only to the extent necessary to permit the use of the Elastomeric-coated Steel Belts proposed by the Applicant, in lieu of circular steel suspension ropes.);

• Inspection transfer switch: 2.26.1.4.4(a) (Only to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room);

• Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Only to the extent necessary to permit the seismic reset switch to reside at a location other than the machine room. room);

• Car-Top Railing: 2.14.1.7.1 (Only to the extent necessary to permit the use of the car-top railing system proposed by the Applicant, where the railing system is located inset from the elevator car top perimeter);

• Means of Removing Power: 2.26.9.6.1 (Only to the extent necessary to permit the use of SIL-rated devices and circuits as a means to remove power from the AC driving motor, where the redundant monitoring of electrical protective devices is required by the Elevator Safety Orders).

Conditions:

1. The elevator suspension system shall comply to the following:

    a. The suspension traction media (STM) members and their associated fastenings shall conform to the applicable requirements of ASME A17.1-2013, sections:

        2.20.4.3 – Minimum Number of Suspension Members

2.20.3 – Factor of Safety
2.20.9 – Suspension Member Fastening

b. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection and testing of the STM members and fastenings and related monitoring and detection systems and criteria for STM replacement, and the Applicant shall make those procedures and criteria available to the Certified Competent Conveyance Mechanic (CCCM) at the location of the elevator, and to Cal/OSHA upon request.

STM member mandatory replacement criteria shall include:

i. Any exposed wire, strand or cord;
ii. Any wire, strand or cord breaks through the elastomeric coating;
iii. Any evidence of rouging (steel tension element corrosion) on any part of the elastomeric-coated steel suspension member;
iv. Any deformation in the elastomeric suspension member such as, but not limited to, kinks or bends;

c. Traction drive sheaves must have a minimum diameter of 72 mm. The maximum speed of STM members running on 72 mm, 87 mm and 125 mm drive sheaves shall be no greater than 2.5 m/s, 6.0 m/s and 8.0 m/s respectively.

d. If any one STM member needs replacement, the complete set of suspension members on the elevator shall be replaced. Exception: if a new suspension member is damaged during installation, and prior to any contemporaneously installed STM having been placed into service, it is permissible to replace the individual damaged suspension member. STM members that have been installed on another installation shall not be re-used.

e. A traction loss detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.1. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.12.

f. A broken suspension member detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.2. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.13(a).

g. An elevator controller integrated bend cycle monitoring system shall monitor actual STM bend cycles, by means of continuously counting, and storing in nonvolatile memory, the number of trips that the STM makes traveling, and thereby being bent, over the elevator sheaves. The bend cycle limit monitoring means shall automatically stop the car normally at the next available landing before the bend cycle correlated residual strength of any single STM member drops below 80 percent of full rated strength. The monitoring means shall prevent

the car from restarting. The bend cycle monitoring system shall be tested annually in accordance with the procedures required by condition 1b above.

h. The elevator shall be provided with a device to monitor the remaining residual strength of each STM member. The device shall conform to the requirements of Cal/OSHA Circular Letter E-10-04, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

i. The elevator crosshead data plate shall comply with the requirements of ASME A17.1-2013, section 2.20.2.1.

j. A suspension means data tag shall be provided that complies with the requirements of ASME A17.1-2013, section 2.20.2.2.

k. Comprehensive visual inspections of the entire length of each and all installed suspension members, to the criteria developed in condition 1b, shall be conducted and documented every six months by a CCCM.

l. The Applicant shall be subject to the requirements set out in Exhibit 2 of this Decision and Order, "Suspension Means Replacement Reporting Condition," Incorporated herein by this reference.

m. Records of all tests and inspections shall be maintenance records subject to ASME A17.1-2004, sections 8.6.1.2 and 8.6.1.4, respectively.

2. If the inspection transfer switch required by ASME A17.1-2004, section 2.26.1.4.4 does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

3. If the seismic reset switch does not reside in the machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

4. If there is an inset car-top railing:

   a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on the railings to perform adjustments, maintenance, repairs or inspections. The Applicant shall not permit anyone to stand or climb over the car-top railing.

   b. The distance that the railing can be inset shall be limited to not more than 6 inches.

   c. All exposed areas of the car top outside the car-top railing where the distance from the railing to the edge of the car top exceeds 2 inches, shall be beveled with metal, at an angle of not less than 75 degrees with the horizontal, from the mid or top rail to

the outside of the car top, such that no person or object can stand, sit, kneel, rest, or be placed in the exposed areas.

d. The top of the beveled area and/or car top outside the railing shall be clearly marked. The markings shall consist of alternating 4-inch diagonal red and white stripes.

e. The applicant shall provide durable signs with lettering not less than 1/2 inch on a contrasting background on each inset railing. Each sign shall state:

CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING

f. The Group IV requirements for car-top clearances shall be maintained (car-top clearances outside the railing will be measured from the car top and not from the required bevel).

5. The SIL-rated devices and circuits used to inhibit electrical current flow in accordance with ASME A17.1-2004, section 2.26.9.6.1 shall comply with the following:

a. The SIL-rated devices and circuits shall consist of a Variodyn SIL-3 rated Regenerative, Variable Voltage Variable Frequency (VVVF) motor drive unit, model VAF013 or VAF023, labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/FSP 1556.00), and followed by the applicable revision number (as in 968/FSP 1556.00/19).

b. The devices and circuits shall be certified for compliance with the applicable requirements of ASME A17.1-2013, section 2.26.4.3.2.

c. The access door or cover of the enclosures containing the SIL-rated components shall be clearly labeled or tagged on their exterior with the statement:

Assembly contains SIL-rated devices.
Refer to Maintenance Control Program and
wiring diagrams prior to performing work.

d. Unique maintenance procedures or methods required for the inspection, testing, or replacement of the SIL-rated circuits shall be developed and a copy maintained in the elevator machine/control room/space. The procedures or methods shall include clear color photographs of each SIL-rated component, with notations identifying parts and locations.

e. Wiring diagrams that include part identification, SIL, and certification information shall be maintained in the elevator machine/control room/space.

f. A successful test of the SIL-rated devices and circuits shall be conducted initially and not less than annually in accordance with the testing procedure. The test shall demonstrate that SIL-rated devices, safety functions, and related circuits operate as intended.

g. Any alterations to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the alteration of SIL-rated devices, the alterations shall be made in conformance with ASME A17.1-2013, section 8.7.1.9.

h. Any replacement of the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the replacement of SIL-rated devices, the replacement shall be made in conformance with ASME A17.1-2013, section 8.6.3.14.

i. Any repairs to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the repair of SIL-rated devices, the repairs shall be made in conformance with ASME A17.1-2013, section 8.6.2.6.

j. Any space containing SIL-rated devices and circuits shall be maintained within the temperature and humidity range specified by Schindler Elevator Corporation. The temperature and humidity range shall be posted on each enclosure containing SIL-rated devices and circuits.

k. Field changes to the SIL-rated system are not permitted. Any changes to the SIL-rated system's devices and circuitry will require recertification and all necessary updates to the documentation and diagrams required by conditions d. and e. above.

6. Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in service prior to the Permit to Operate being issued by Cal/OSHA.

7. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way that the Applicant was required to notify them of the docketed application for permanent variance per sections 411.2 and 411.3.

8. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA or by the Board on its own motion in the procedural manner prescribed.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

DATED: February 23, 2024

Kelly Chau, Hearing Officer

EXHIBIT 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows Cal/OSHA to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by Cal/OSHA is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by Cal/OSHA, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt Cal/OSHA from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of Cal/OSHA to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

EXHIBIT 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to Cal/OSHA within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to Cal/OSHA, to the following address (or to such other address as Cal/OSHA might specify in the future): DOSH Elevator Unit, 2 MacArthur Pl., Suite 700, Santa Ana, CA 92707, Attn: Engineering section.

2. Each such report shall contain, but not necessarily be limited to, the following information:

    a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.

    b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).

    c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.

    d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.

    e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.

    f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.

    g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

    h. All information provided on the crosshead data plate per ASME Al7.l-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

k. Any other information requested by Cal/OSHA regarding the replacement of the suspension means or fastenings.

3. In addition to the submission of the report to Cal/OSHA, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to Cal/OSHA referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding: KONE Monospace 500 Elevators (Group IV)	OSHSB File No.: see section A.1 table of Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: KONE Monospace 500 Elevators (Group IV)	Permanent Variance Nos.: See Section A.1 Table Below PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. The applicants ("Applicant") below have applied for permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1], as follows:

Permanent Variance No.	Applicant Name	Variance Location Address	No. of Elevators
23-V-621	1317 Jefferson LA LLC	1317 W. Jefferson Blvd. Los Angeles, CA	1
23-V-623	200-240 Twin Dolphin, LLC	200 Twin Dolphin Dr. Redwood City, CA	1
23-V-624	Menlo BCSP 405 Property LLC	405 Industrial Rd. San Carlos, CA	4
23-V-625	Keren Development LLC	845 S. St. Andrews Place Los Angeles, CA	1
24-V-013	939 N. Spaulding Ventures LLC	939 N. Spaulding Ave. West Hollywood, CA	1
24-V-014	842 S Kingsley Dr LLC	842 Kingsley Los Angeles, CA	1
24-V-026	Arlington Heights LP	3300 W. Washington Blvd. Los Angeles, CA	1
24-V-027	HSRE-MPCCA Oakland MOB, LLC	3900 Manilla Ave. Oakland, CA	1
24-V-029	City of Livermore	2023 Veterans Way Livermore, CA	2

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

24-V-030	San Francisco Unified School District	1415 Owens St. San Francisco, CA	2
24-V-031	University of California, Santa Cruz	514 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-032	University of California, Santa Cruz	520 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-033	University of California, Santa Cruz	524 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-034	University of California, Santa Cruz	526 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-035	University of California, Santa Cruz	530 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-036	University of California, Santa Cruz	532 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-037	University of California, Santa Cruz	534 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-038	University of California, Santa Cruz	538 Porter-Kresge Rd. Santa Cruz, CA	1
24-V-051	LA Arena Company, LLC dba Crypto.com Arena	1111 S. Figueroa St. Los Angeles, CA 90015	1

2. The subject title 8, safety order requirements are set out within section 3141 incorporated ASME A17.1-2004, sections 2.18.5.1 and 2.20.4.

B. Procedural

1. This hearing was held on February 21, 2024 , via videoconference, by delegation of the Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Kelly Chau, both presiding and hearing the matter on its merit, in accordance with section 426.

2. At the hearing, Fuei Saetern, with KONE, Inc., appeared on behalf of each Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

4. Official notice is taken of the Board's files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On February 21, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

C. Findings of Fact

1. Each respective Applicant intends to utilize the KONE Inc. Monospace 500 type elevator, in the quantity, at the location, specified per the above section A.1 table.

2. The installation contract for this elevator was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.

3. Each Applicant proposes to use hoisting ropes that are 8 mm in diameter which also consist of 0.51 mm diameter outer wires, in variance from the express requirements of ASME A17.1-2004, section 2.20.4.

4. In relevant part, ASME A17.1-2004, section 2.20.4 states:

> *2.20.4 Minimum Number and Diameter of Suspension Ropes*
>
> *…The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.*

5. An intent of the afore cited requirement of ASME A17.1-2004, section 2.20.4, is to ensure that the number, diameter, and construction of suspension ropes are adequate to provided safely robust and durable suspension means over the course of the ropes' foreseen service life.

6. KONE has represented to Cal/OSHA, having established an engineering practice for purposes of Monospace 500 elevator design, of meeting or exceeding the minimum factor of safety of 12 for 8 mm suspension members, as required in ASME A17.1-2010, section 2.20.3—under which, given that factor of safety, supplemental broken suspension member protection is not required.

7. Also, each Applicant proposes as a further means of maintaining safety equivalence, monitoring the rope in conformity with the criteria specified within the *Inspector's Guide*

to 6 mm Diameter Governor and 8 mm Diameter Suspension Ropes for KONE Elevators (per Application attachment "B", or as thereafter revised by KONE subject to Cal/OSHA approval).

8. In addition, each Applicant has proposed to utilize 6 mm diameter governor ropes in variance from section 3141, incorporated ASME A17.1-2004, section 2.18.5.1.

9. ASME A17.1-2004, section 2.18.5.1, specifies, in relevant part:

> *2.18.5.1 Material and Factor of Safety.*
>
> *… [Governor ropes] not less than 9.5 mm (0.375 in.) in diameter. The factor of safety of governor ropes shall be not less than 5…*

10. The Board takes notice of Elevator Safety Order section 3141.7, subpart (a)(10):

> *A reduced diameter governor rope of equivalent construction and material to that required by ASME A17.1-2004, is permissible if the factor of safety as related to the strength necessary to activate the safety is 5 or greater;*

11. Applicants propose use of 6mm governor rope having a safety factor of 5 or greater, in conformity with section 3141.7(a)(10), the specific parameters of which, being expressly set out within Elevator Safety Orders, take precedence over more generally referenced governor rope diameter requirements per ASME A17.1-2004, section 2.18.5.1. Accordingly, the governor rope specifications being presently proposed, inclusive of a factor of safety of 5 or greater, would comply with current Elevator Safety Orders requirements, and therefore not be subject to issuance of permanent variance.

12. Absent evident diminution in elevator safety, over the past decade the Board has issued numerous permanent variances for use in KONE (Ecospace) elevator systems of 8 mm diameter suspension rope materially similar to that presently proposed (e.g. Permanent Variance Nos. 06-V-203, 08-V-245, and 13-V-303).

13. As noted in Permanent Variance Nos. 18-V-044, and 18-V-045, Decision and Order Findings, subpart B.17 (hereby incorporated by reference), the strength of wire rope operating as an elevator's suspension means does not remain constant over its years of projected service life. With increasing usage cycles, a reduction in the cross-sectional area of the wire rope normally occurs, resulting in decreased residual strength. This characteristic is of particular relevance to the present matter because, decreasing wire rope diameter is associated with a higher rate of residual strength loss. This foreseeable reduction in cross-sectional area primarily results from elongation under sheave rounding load, as well as from wear, and wire or strand breaks. However, these characteristics need not compromise elevator safety when properly accounted for in the engineering of elevator suspension means, and associated components.

14. The presently proposed wire rope is Wuxi Universal steel rope Co LTD. 8 mm 8x19S+8x7+PP, with a manufacturer rated breaking strength of 35.8 kN, and an outer wire diameter of less than 0.56 mm, but not less than 0.51 mm. Cal/OSHA's safety engineer had scrutinized the material and structural specifications, and performance testing data, of this particular proposed rope, and conclude it will provide for safety equivalent to ESO compliant 9.5 mm wire rope, with 0.56 mm outer wire (under conditions of use included within the below Decision and Order).

15. The applicant supplies tabulated data regarding the "Maximum Static Load on All Suspension Ropes." To obtain the tabulated data, the applicant uses the following formula derived from ASME A17.1 2004, section 2.20.3:

W = (S x N)/ f

where

W = maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

N = number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S = manufacturer's rated breaking strength of one rope

f = the factor of safety from Table 2.20.3

16. ASME A17.1-2010 sections 2.20.3 and 2.20.4 utilize the same formula, but provide for use of suspension ropes having a diameter smaller than 9.5 mm, under specified conditions, key among them being that use of ropes having a diameter of between 8 mm to 9.5 mm be engineered with a factor of safety of 12 or higher. This is a higher minimum factor of safety than that proposed by Applicant, but a minimum recommended by Cal/OSHA as a condition of variance necessary to the achieving of safety equivalence to 9.5 mm rope.

17. Cal/OSHA is in accord with Applicant, in proposing as a condition of safety equivalence, that periodic physical examination of the wire ropes be performed to confirm the ropes continue to meet the criteria set out in the (Application attachment) *Inspector's Guide to 6 mm Diameter Governor and 8 mm Diameter Suspension Ropes for KONE Elevators.* Adherence to this condition will provide an additional assurance of safety equivalence, regarding smaller minimum diameter suspension rope outer wire performance over the course of its service life.

18. Cal/OSHA, by way of written submissions to the record (Exhibit PD-3)and stated position at hearing, is of the well informed opinion that grant of permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings

1. A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

E. Decision and Order

Each permaent variance application the subject of this proceeding, per above section A.1 table, is conditionally GRANTED, to the extent that each such Applicant shall be issued permanent variance from section 3141 incorporated ASME A17.1-2004, section 2.20.4, in as much as it precludes use of suspension rope of between 8 mm and 9.5 mm, or outer wire of between 0.51 mm and 0.56 mm in diameter, at such locations and numbers of Group IV KONE Monospace 500 elevators identified in each respective Application, subject to the following conditions:

1. The diameter of the hoisting steel ropes shall be not less than 8 mm (0.315 in) diameter and the roping ratio shall be two to one (2:1).

2. The outer wires of the suspension ropes shall be not less than 0.51 mm (0.02 in.) in diameter.

3. The number of suspension ropes shall be not fewer than those specified per hereby incorporated Decision and Order Appendix 1 Table.

4. The ropes shall be inspected annually for wire damage (rouge, valley break etc.) in accordance with "KONE Inc. Inspector's Guide to 6 mm diameter and 8 mm diameter steel ropes for KONE Elevators" (per Application Exhibit B, or as thereafter amended by KONE subject to Cal/OSHA approval).

5. A rope inspection log shall be maintained and available in the elevator controller room / space at all times.

6. The elevator rated speed shall not exceed those speeds specified per the Decision and Order Appendix 1 Table.

7. The maximum suspended load shall not exceed those weights (plus 5%) specified per the Decision and Order Appendix 1 Table.

8. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of the elevator equipment in the hoistway is required. If the service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.

9. The installation shall meet the suspension wire rope factor of safety requirements of ASME A17.1-2013 section 2.20.3.

10. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing or testing the elevators shall be provided a copy of this variance decision.

11. Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA and a "Permit to Operate" issued before the elevator is placed in service.

12. The Applicant shall comply with suspension means replacement reporting condition per hereby incorporated Decision and Order Appendix 2.

13. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.

14. This Decision and Order shall remain in effect unless duly modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA, or by the Board on its own motion, in the procedural manner prescribed.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau, Hearing Officer

Appendix 1

Monospace 500 Suspension Appendix 1 Table.

Variance Number	Elevator ID	Minimum Quantity of Ropes (per Condition 3)	Maximum Speed in Feet per Minute (per Condition 6)	Maximum Suspended Load (per Condition 7)
23-V-621	Elevator 1	5	200	8254
23-V-623	PG2	8	200	13207
23-V-624	A	8	350	11706
23-V-624	B	8	350	11706
23-V-624	C	8	350	11706
23-V-624	D	8	350	11706
23-V-625	1	7	200	11556
24-V-013	1	7	150	12247
24-V-014	1	7	150	12247
24-V-026	1	7	150	12247
24-V-027	1	7	150	12247
24-V-029	1	7	150	12247
24-V-029	2	7	150	12247
24-V-030	1	7	200	11556
24-V-030	2	7	200	11556
24-V-031	R1R2	7	150	12247
24-V-032	R10	7	150	12247
24-V-033	A2	7	150	12247
24-V-034	R9	7	150	12247

24-V-035	G2	7	150	12247
24-V-036	R4	7	150	12247
24-V-037	R8	7	150	12247
24-V-038	R6	7	150	12247
24-V-051	Elev #11	7	150	12247

Appendix 2

Suspension Means Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to Cal/Osha within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to Cal/OSHA, to the following address (or to such other address as Cal/OSHA might specify in the future): Cal/OSHA Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering section.

2. Each such report shall contain, but not necessarily be limited to, the following information:

    a. The State-issued conveyance number, complete address, and Permanent Variance number that identifies the permanent variance.

    b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).

    c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.

    d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.

    e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.

    f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.

    g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

    h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that

pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

k. Any other information requested by Cal/OSHA regarding the replacement of the suspension means or fastenings.

3. In addition to the submission of the report to Cal/OSHA, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to Cal/OSHA referencing the information contained in above Appendix 2, section 2, Subsection (a), above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding: KONE Monospace 300 Elevators (Group IV)	OSHSB File No.: see section A.1 table of Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: KONE Monospace 300 Elevators (Group IV)	Permaent Variance Nos.: See Section A.1 Table Below PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. The Applicants ("Applicant") belowhave applied for permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1], as follows:

Permanent Variance No.	Applicant Name	Variance Location Address	No. of Elevators
23-V-622	Rancho Sierra I LP	1724 S. Lewis Rd. Camarillo, CA	1
23-V-633	Tarrar Enterprises DBA Tarrar Utility Consultants, Inc.	813 First St. Brentwood, CA	1
24-V-028	Piper Way Senior Housing LP	3294 Piper Way Redding, CA	1
24-V-052	Morgan Hill Senior Housing, LP	16685 Church St. Morgan Hill, CA	2
24-V-053	Napa Valley Hospitality LLC	3701 Main St. American Canyon, CA	2
24-V-054	Bennett Valley Housing Partners, L.P.	702 Bennett Valley Rd. Santa Rosa, CA	2
24-V-055	Lightfighter Village, L.P.	229 Hayes Circle Marina, CA	2
24-V-056	Pinole Housing, L.P.	811 San Pablo Ave. Pinole, CA	1

[1] Unless otherwise noted, references are to the California Code of regulations, title 8.

2. The safety order requirements are set out in section 3141 incorporated ASME A17.1-2004, sections 2.18.5.1 and 2.20.4.

B. Procedural

1. This hearing was held on February 21, 2024 via videoconference by the Occupational Safety and Health Standards Board ("Board" or "OSHSB") with Hearing Officer, Kelly Chau, both presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, Fuei Saetern, with KONE, Inc., appeared on behalf of each Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

4. Official notice is taken of the Board's files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On February 21, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

C. Findings of Fact

1. Each respective Applicant intends to utilize the KONE Inc. Monospace 300 type elevator, in the quantity, at the location, specified per the above section A.1 table.

2. The installation contract for this elevator was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.

3. Each Applicant proposes to use hoisting ropes that are 8 mm in diameter which also consist of 0.51 mm diameter outer wires, in variance from the express requirements of ASME A17.1-2004, section 2.20.4.

4. In relevant part, ASME A17.1-2004, section 2.20.4 states:

> *2.20.4 Minimum Number and Diameter of Suspension Ropes*
>
> *…The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.*

5. An intent of the afore cited requirement of ASME A17.1-2004, section 2.20.4, is to ensure that the number, diameter, and construction of suspension ropes are adequate to provided safely robust and durable suspension means over the course of the ropes' foreseen service life.

6. KONE has represented Cal/OSHA, having established an engineering practice for purposes of Monospace 300 elevator design, of meeting or exceeding the minimum factor of safety of 12 for 8 mm suspension members, as required in ASME A17.1-2010, section 2.20.3—under which, given that factor of safety, supplemental broken suspension member protection is not required.

7. Also, each Applicant proposes as a further means of maintaining safety equivalence, monitoring the rope in conformity with the criteria specified within the *Inspector's Guide to 6 mm Diameter Governor and 8 mm Diameter Suspension Ropes for KONE Elevators* (per Application attachment "B", or as thereafter revised by KONE subject Cal/OSHA approval).

8. In addition, each Applicant has proposed to utilize 6 mm diameter governor ropes in variance from section 3141, incorporated ASME A17.1-2004, section 2.18.5.1.

9. ASME A17.1-2004, section 2.18.5.1, specifies, in relevant part:

> *2.18.5.1 Material and Factor of Safety.*
>
> *… [Governor ropes] not less than 9.5 mm (0.375 in.) in diameter. The factor of safety of governor ropes shall be not less than 5…*

10. The Board takes notice of section 3141.7, subpart (a)(10):

> *A reduced diameter governor rope of equivalent construction and material to that required by ASME A17.1-2004, is permissible if the factor of safety as related to the strength necessary to activate the safety is 5 or greater;*

11. Applicants propose use of 6mm governor rope having a safety factor of 5 or greater, in conformity with section 3141.7(a)(10), the specific parameters of which, being expressly set out within Elevator Safety Orders, take precedence over more generally referenced governor rope diameter requirements per ASME A17.1-2004, section 2.18.5.1.

Accordingly, the governor rope specifications being presently proposed, inclusive of a factor of safety of 5 or greater, would comply with current Elevator Safety Orders requirements, and therefore not be subject to issuance of permanent variance.

12. Absent evident diminution in elevator safety, over the past decade the Board has issued numerous permanent variances for use in KONE (Ecospace) elevator systems of 8 mm diameter suspension rope materially similar to that presently proposed (e.g. Permanent Variance Nos. 06-V-203, 08-V-245, and 13-V-303).

13. As noted by the Board in permanent Variance Nos. 18-V-044, and 18-V-045, Decision and Order Findings, subpart B.17 (hereby incorporated by reference), the strength of wire rope operating as an elevator's suspension means does not remain constant over its years of projected service life. With increasing usage cycles, a reduction in the cross-sectional area of the wire rope normally occurs, resulting in decreased residual strength. This characteristic is of particular relevance to the present matter because, as also noted by Board staff, decreasing wire rope diameter is associated with a higher rate of residual strength loss. This foreseeable reduction in cross-sectional area primarily results from elongation under sheave rounding load, as well as from wear, and wire or strand breaks. However, these characteristics need not compromise elevator safety when properly accounted for in the engineering of elevator suspension means, and associated components.

14. The presently proposed wire rope is Wuxi Universal steel rope Co LTD. 8 mm 8x19S+8x7+PP, with a manufacturer rated breaking strength of 35.8 kN, and an outer wire diameter of less than 0.56 mm, but not less than 0.51 mm. Cal/OSHA safety engineers have scrutinized the material and structural specifications, and performance testing data, of this particular proposed rope, and conclude it will provide for safety equivalent to ESO compliant 9.5 mm wire rope, with 0.56 mm outer wire (under conditions of use included within the below Decision and Order).

15. The applicant supplies tabulated data regarding the "Maximum Static Load on All Suspension Ropes." To obtain the tabulated data, the applicant uses the following formula derived from ASME A17.1 2004, section 2.20.3:

W = (S x N)/ f

where

W = maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

N = number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S = manufacturer's rated breaking strength of one rope

f = the factor of safety from Table 2.20.3

16. ASME A17.1-2010 sections 2.20.3 and 2.20.4 utilize the same formula, but provide for use of suspension ropes having a diameter smaller than 9.5 mm, under specified conditions, key among them being that use of ropes having a diameter of between 8 mm to 9.5 mm be engineered with a factor of safety of 12 or higher. This is a higher minimum factor of safety than that proposed by Applicant, but a minimum recommended by Cal/OSHA as a condition of variance necessary to the achieving of safety equivalence to 9.5 mm rope.

17. Cal/OSHA is in accord with Applicant, in proposing as a condition of safety equivalence, that periodic physical examination of the wire ropes be performed to confirm the ropes continue to meet the criteria set out in the (Application attachment) *Inspector's Guide to 6 mm Diameter Governor and 8 mm Diameter Suspension Ropes for KONE Elevators.* Adherence to this condition will provide an additional assurance of safety equivalence, regarding smaller minimum diameter suspension rope outer wire performance over the course of its service life.

18. Cal/OSHA, by way of written submission to the record (Exhibit PD-3), and stated position at hearing, is of the well informed opinion that grant of permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

E. Decision and Order

Each Application being the subject of this proceeding, per above section A.1 table, is conditionally GRANTED, to the extent that each such Applicant shall be issued permanent variance from section 3141 incorporated ASME A17.1-2004, section 2.20.4, in as much as it precludes use of suspension rope of between 8 mm and 9.5 mm, or outer wire of between 0.51 mm and 0.56 mm in diameter, at such locations and numbers of Group IV KONE Monospace 300 elevators identified in each respective Application, subject to the following conditions:

1. The diameter of the hoisting steel ropes shall be not less than 8 mm (0.315 in) diameter and the roping ratio shall be two to one (2:1).

2. The outer wires of the suspension ropes shall be not less than 0.51 mm (0.02 in.) in diameter.

3. The number of suspension ropes shall be not fewer than those specified per hereby incorporated Decision and Order Appendix 1 Table.

4. The ropes shall be inspected annually for wire damage (rouge, valley break etc.) in accordance with "KONE Inc. Inspector's Guide to 6 mm diameter and 8 mm diameter steel ropes for KONE Elevators" (per Application Exhibit B, or as thereafter amended by KONE subject to Cal/OSHA approval).

5. A rope inspection log shall be maintained and available in the elevator controller room / space at all times.

6. The elevator rated speed shall not exceed those speeds specified per the Decision and Order Appendix 1 Table.

7. The maximum suspended load shall not exceed those weights (plus 5%) specified per the Decision and Order Appendix 1 Table.

8. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of the elevator equipment in the hoistway is required. If the service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.

9. The installation shall meet the suspension wire rope factor of safety requirements of ASME A17.1-2013 section 2.20.3.

10. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing or testing the elevators shall be provided a copy of this variance decision.

11. Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA and a "Permit to Operate" issued before the elevator is placed in service.

12. The Applicant shall comply with suspension means replacement reporting condition per hereby incorporated Decision and Order Appendix 2.

13. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.

14. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA or by the Board on its own motion, in the procedural manner prescribed.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau, Hearing Officer

Appendix 1

Monospace 300 Suspension Ropes Appendix 1 Table

Variance Number	Elevator ID	Minimum Quantity of Ropes (per Condition 3)	Maximum Speed in Feet per Minute (per Condition 6)	Maximum Suspended Load (per Condition 7)
23-V-622	Elevator 1	7	150	12247
23-V-633	1	7	150	12247
24-V-028	1	7	150	12247
24-V-052	1	7	150	12247
24-V-052	2	7	150	12247
24-V-053	1	5	150	8748
24-V-053	2	7	150	12247
24-V-054	1	7	150	12247
24-V-054	2	7	150	12247
24-V-055	1	7	150	12247
24-V-055	2	7	150	12247
24-V-056	1	7	150	12247
24-V-057	1	7	150	12247
24-V-057	2	7	150	12247

Appendix 2

Suspension Means Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to Cal/OSHA within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable Cal/OSHA, to the following address (or to such other address as Cal/OSHA might specify in the future): Cal/OSHA Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering section.

2. Each such report shall contain, but not necessarily be limited to, the following information:

    a. The State-issued conveyance number, complete address, and Permanent Variance number that identifies the permanent variance.

    b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).

    c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.

    d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.

    e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.

    f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.

    g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

    h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that

pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

k. Any other information requested by Cal/OSHA regarding the replacement of the suspension means or fastenings.

3. In addition to the submission of the report to Cal/OSHA, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to Cal/OSHA referencing the information contained in above Appendix 2, section 2, Subsection (a), above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding: Otis Gen2S/Gen3Edge Elevator & Medical Emergency Elevator Car Dimensions (Group IV)	OSHSB File No.: see section A.1 table of Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

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DAVID HARRISON, Member

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NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: Otis Gen2S/Gen3Edge Elevator & Medical Emergency Elevator Car Dimensions (Group IV)	Permanent Variance Nos.: See section A.1 table below PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. The applicants ("Applicant") below have applied for permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1], as follows:

Permanent Variance No.	Applicant Name	Variance Location Address	No. of Elevators
23-V-626	William Ashley Inc.	11814 Aviation Blvd. Inglewood, CA	1
23-V-627	Campus Pointe Commercial, LP	Campus Pointe Studio Apartments 3150 E. Campus Pointe Dr. Fresno, CA	1
23-V-628	SI XX LLC	1501 Broadway Redwood City, CA	6
23-V-631	Hollywood Park Residential Investors, LLC	Hollywood Park Studios Parking Structure 3890 Stadium Dr. Inglewood, CA	4
23-V-632	Kendry Addition Venture, LLC	4855 Arrow Highway Montclair, CA	2
24-V-004	Western Landing, L.P.	25896 S. Western Ave. Harbor City, CA	2
24-V-005	TI Lots 3-4, LLC	Treasure Island Parcel C3.4 22 Johnson St. San Francisco, CA	2

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

24-V-006	Elements 2A, LLC	3000 Elements Way Irvine, CA	4
24-V-007	Euclid Investment Group LLC	320 North Euclid Ave. Ontario, CA	1
24-V-008	3240 Wilshire Boulevard Mid Rise, LLC	684 S. New Hampshire Ave. Los Angeles, CA	2
24-V-009	Moss Bros. Auto Group	12662 Auto Mall Dr. Moreno Valley, CA	1
24-V-016	City College of San Francisco	New STEAM Project 50 Frida Kahlo Way San Francisco, CA	3
24-V-017	Starwood Capital Group	1100 N. Mathilda Ave. Sunnyvale, CA	3
24-V-021	Smoky Hollow Industries, LLC	1330 E. Franklin Ave. El Segundo, CA	2
24-V-024	Jefferson Westchester, LLC	939 W. Manchester Blvd. Inglewood, CA	3
24-V-039	Nela Overland LLC	1822 S. Overland Ave. Los Angeles, CA	1
24-V-045	The Sobrato Organization	2441 Mission College Blvd. Santa Clara, CA	1
24-V-048	Bell Street Gardens, L.P.	38889 Bell St. Fremont, CA	2
24-V-049	986 South Van Ness, LLC	986 South Van Ness Ave. San Francisco, CA	1

2. This proceeding is conducted in accordance with Labor Code section 143 and section 401et seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

B. Procedural

1. This hearing was held on February 21, 2024, via videoconference by the with Hearing Officer, Kelly Chau, both presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja, appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

3. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per Section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

4. Official notice is taken of the Board's rulemaking records, and variance files and decisions, concerning the Elevator Safety Order standards at issue. At close of hearing on February 21, 2024, the record was closed, and the matter taken under submission by the Hearing Officer.

C. Findings of Fact

1. Each Applicant intends to utilize Otis Gen3 Edge/Gen2S elevators at the locations and in the numbers stated in the above section A.1 table.

2. The installation contracts for these elevators were or will be signed on or after May 1, 2008, making the elevators subject to the Group IV Elevator Safety Orders.

3. The Board incorporates by reference the relevant findings in previous Board decisions:

    a. Items D.3 through D.9 of the Proposed Decision adopted by the Board on July 18, 2013 for Permanent Variance No. 12-V-093;

    b. Item D.4 of the Proposed Decision adopted by the Board on September 25, 2014 for Permanent Variance No. 14-V-206; and

    c. Item B of the Proposed Decision adopted by the Board on September 15, 2022 for Permanent Variance No. 22-V-302 regarding medical emergency car dimensions.

4. Cal/OSHA, by way of written submissions to the record (Exhibit PD-3), and position stated at hearing, is of the well informed opinion that grant of requested permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings

E. A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent

safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought. Decision and Order

Each permanent variance application the subject of this proceeding is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, each Applicant listed in the above section A table shall have permanent variances from the following sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:

- Car top railing: sections 2.14.1.7.1 (only to the extent necessary to permit an inset car top railing, if, in fact, the car top railing is inset);

- Speed governor over-speed switch: 2.18.4.2.5(a) (only insofar as is necessary to permit the use of the speed reducing system proposed by the Applicants, where the speed reducing switch resides in the controller algorithms, rather than on the governor, with the necessary speed input supplied by the main encoder signal from the motor);

- Governor rope diameter: 2.18.5.1 (only to the extent necessary to allow the use of reduced diameter governor rope);

- Pitch diameter: 2.18.7.4 (to the extent necessary to use the pitch diameter specified in Condition No. 13.c);

- Suspension means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4 and 2.20.9.5.4—the variances from these "suspension means" provisions are only to the extent necessary to permit the use of Otis Gen2 flat coated steel suspension belts in lieu of conventional steel suspension ropes;

- Inspection transfer switch: 2.26.1.4.4(a) (only to the extent necessary to allow the inspection transfer switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room); and

- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (only to the extent necessary to allow the seismic reset switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room).

- Minimum Inside Car Platform Dimensions: 3041(e)(1)(C) and 3141.7(b) (Only to the extent necessary to comply with the performance-based requirements of the 2019 California Building Code section 3002.4.1a)

These variances apply to the locations and numbers of elevators stated in the section A table (so long as the elevators are Gen3 Edge/Gen2S Group IV devices that are designed, equipped, and installed in accordance with, and are otherwise consistent with, the representations made in the Otis Master File [referred to in previous proposed decisions as the "Gen2 Master File") maintained

by the Board, as that file was constituted at the time of this hearing) and are subject to the following conditions:

1. The suspension system shall comply with the following:

    a. The coated steel belt and connections shall have factors of safety equal to those permitted for use by section 3141 [ASME A17.1-2004, section 2.20.3] on wire rope suspended elevators.

    b. Steel coated belts that have been installed and used on another installation shall not be reused.

    c. The coated steel belt shall be fitted with a monitoring device which has been accepted by Cal/OSHA and which will automatically stop the car if the residual strength of any single belt drops below 60 percent. If the residual strength of any single belt drops below 60 percent, the device shall prevent the elevator from restarting after a normal stop at a landing.

    d. Upon initial inspection, the readings from the monitoring device shall be documented and submitted to Cal/OSHA.

    e. A successful test of the monitoring device's functionality shall be conducted at least once a year (the record of the annual test of the monitoring device shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).

    f. The coated steel belts used shall be accepted by Cal/OSHA.

2. With respect to each elevator subject to this variance, the applicant shall comply with Cal/OSHA Circular Letter E-10-04, the substance of which is attached hereto as Addendum 1 and incorporated herein by this reference.

3. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection, and testing of the belts and monitoring device and criteria for belt replacement, and the applicant shall make those procedures and criteria available to Cal/OSHA upon request.

4. The flat coated steel belts shall be provided with a metal data tag that is securely attached to one of those belts. This data tag shall bear the following flat steel coated belt data:

    a. The width and thickness in millimeters or inches;

    b. The manufacturer's rated breaking strength in (kN) or (lbf);

    c. The name of the person or organization that installed the flat coated steel belts;

    d. The month and year the flat coated steel belts were installed;

e. The month and year the flat coated steel belts were first shortened;

f. The name or trademark of the manufacturer of the flat coated steel belts; and

g. Lubrication information.

5. There shall be a crosshead data plate of the sort required by section 2.20.2.1, and that plate shall bear the following flat steel coated belt data:

   a. The number of belts;

   b. The belt width and thickness in millimeters or inches; and

   c. The manufacturer's rated breaking strength per belt in (kN) or (lbf).

6. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of elevator equipment in the hoistway is required. If service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.

7. If there is an inset car top railing:

   a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on railings to perform adjustment, maintenance, repairs or inspections. The applicant shall not permit anyone to stand on or climb over the car top railing.

   b. The distance that the car top railing may be inset shall be limited to no more than 6 inches.

   c. All exposed areas outside the car top railing shall preclude standing or placing objects or persons which may fall and shall be beveled from the mid- or top rail to the outside of the car top.

   d. The top of the beveled area and/or car top outside the railing, shall be clearly marked. The markings shall consist of alternating 4 inch diagonal red and white stripes.

   e. The applicant shall provide durable signs with lettering not less than ½ inch on a contrasting background on each inset railing; each sign shall state:

CAUTION
DO NOT STAND ON OR CLIMB OVER RAILING

   f. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing shall be measured from the car top and not from the required bevel).

8. If the seismic reset switch does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.

9. If the inspection transfer switch required by ASME A17.1, rule 2.26.1.4.4(a) does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.

10. When the inspection and testing panel is located in the hoistway door jamb, the inspection and test control panel shall be openable only by use of a Security Group I restricted key.

11. The governor speed-reducing switch function shall comply with the following:

    a. It shall be used only with direct drive machines; i.e., no gear reduction is permitted between the drive motor and the suspension means.

    b. The velocity encoder shall be coupled to the driving machine motor shaft. The “C” channel of the encoder shall be utilized for velocity measurements required by the speed reducing system. The signal from “C” channel of the encoder shall be verified with the “A” and “B” channels for failure. If a failure is detected then an emergency stop shall be initiated.

    c. Control system parameters utilized in the speed-reducing system shall be held in non-volatile memory.

    d. It shall be used in conjunction with approved car-mounted speed governors only.

    e. It shall be used in conjunction with an effective traction monitoring system that detects a loss of traction between the driving sheave and the suspension means. If a loss of traction is detected, then an emergency stop shall be initiated.

    f. A successful test of the speed-reducing switch system’s functionality shall be conducted at least once a year (the record of the annual test of the speed-reducing switch system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).

    g. A successful test of the traction monitoring system’s functionality shall be conducted at least once a year (the record of the annual test of the traction monitoring system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).

    h. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the maintenance, inspection, and testing of the speed-reducing switch and traction monitoring systems. The Applicant shall make the procedures available to Cal/OSHA upon request.

12. The speed governor rope and sheaves shall comply with the following:

    a. The governor shall be used in conjunction with a 6 mm (0.25 in.) diameter steel governor rope with 6-strand, regular lay construction.

    b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.

    c. The governor sheaves shall have a pitch diameter of not less than 180 mm (7.1 in.).

13. All medical emergency service elevators shall comply with the following:

    a. The requirements of the 2019 California Building Code (CBC), section 3002.4.1a;

    > *The medical emergency service elevator shall accommodate the loading and transport of two emergency personnel, each requiring a minimum clear 21-inch (533 mm) diameter circular area and an ambulance gurney or stretcher [minimum size 24 inches by 84 inches (610 mm by 2134 mm) with not less than 5-inch (127 mm) radius corners] in the horizontal, open position."*

    b. All medical emergency service elevators shall be identified in the building construction documents in accordance with the 2019 CBC, section 3002.4a.

    c. Dimensional drawings and other information necessary to demonstrate compliance with these conditions shall be provided to Cal/OSHA, at the time of inspection, for all medical emergency service elevator(s).

14. The elevator shall be serviced, maintained, adjusted, tested, and inspected only by Certified Competent Conveyance Mechanics who have been trained to, and are competent to, perform those tasks on the Gen3 Edge/Gen2S elevator system in accordance with the written procedures and criteria required by Condition No. 3 and in accordance with the terms of this permanent variance.

15. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.

16. Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA, and a Permit to Operate shall be issued before the elevator is placed in service.

17. The Applicant shall be subject to the Suspension Means – Replacement Reporting Condition stated in Addendum 2, as hereby incorporated by this reference.

18. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications.

19. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA, or by the Board on its own motion, in accordance with the Board's procedural regulations at section 426, subdivision (b).

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau

Kelly Chau, Hearing Officer

ADDENDUM 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows Cal/OSHA to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by Cal/OSHA is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by Cal/OSHA, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt Cal/OSHA from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of Cal/OSHA to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
Cal/OSHA-Elevator Unit HQS

ADDENDUM 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to Cal/OSHA within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to Cal/OSHA, to the following address (or to such other address as Cal/OSHA might specify in the future): Cal/OSHA Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering section.

2. Each such report shall contain, but not necessarily be limited to, the following information:

    a. The State-issued conveyance number, complete address, and Permanent Variance number that identifies the permanent variance.

    b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).

    c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.

    d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.

    e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.

    f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.

g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

k. Any other information requested by Cal/OSHA regarding the replacement of the suspension means or fastenings.

3. In addition to the submission of the report to Cal/OSHA, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to Cal/OSHA referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding: Otis Medical Emergency Elevator Car Dimensions (Group IV)	OSHSB File No.: see section A.1 table of Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance regarding: Otis Medical Emergency Elevator Car Dimensions (Group IV)	Permanent Variance No.: see table A.1 below PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter and Procedure

1. The applicants ("Applicant") below have applied for permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1], as follows:

Permanent Variance No.	Applicant Name	Variance Location Address
23-V-629	1850 Outer RP, LLC	1850 Outer Traffic Circle Long Beach, CA
23-V-630	City of Oakland	3612 Webster St. Oakland, CA
24-V-012	Merced County Employee's Retirement Association	MercedCERA 690 W. 19th St. Merced, CA
24-V-018	Union & B LLC	San Diego County Bar Association 330 A St. San Diego, CA
24-V-019	202 Nash, LLC	202 N. Nash St. El Segundo, CA
24-V-020	Village of Escaya II, LLC	1151 Encanto Loop Chula Vista, CA
24-V-025	Clawiter Industrial, LLC	25810 Clawiter Rd. Hayward, CA
24-V-044	The Sobrato Organization	2441 Mission College Blvd. Santa Clara, CA

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

24-V-046	Slevin Auto Capital	Palm Spring Nissan 68177 Kyle Rd. Cathedral City, CA
24-V-047	Lynx Property Management, Inc.	700 Linden Ave. Carpinteria, CA
24-V-050	202 Nash, LLC	202 Nash St. El Segundo, CA

2. This proceeding is conducted in accordance with Labor Code section 143 and section 401, et seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

3. This hearing was held on February 21, 2024via videoconference by the Board with Hearing Officer, Kelly Chau, both presiding and hearing the matter on its merit in accordance with section 426.

4. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

5. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	**Description of Exhibit**
PD-1	Permanent variance applications per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

6. Official notice is taken of the Board's rulemaking records, and variance files and decisions, concerning the Elevator Safety Order standards at issue. At close of hearing on February 21, 2024, the record was closed, and the matter taken under submission by the Hearing Officer.

B. Findings of Fact and Applicable Regulations

1. Applicant requests a permanent variance from section 3041, subdivision (e)(1)(C), which states:

> (1) All buildings and structures constructed after the effective date of this order that are provided with one or more passenger elevators shall be provided with not less than one passenger elevator designed and designated to accommodate the loading and transport of an ambulance gurney or stretcher maximum size

> 22 ½ in. (572 mm) by 75 in. (1.90 m) in its horizontal position and arranged to serve all landings in conformance with the following:
>
> …
>
> (C) The elevator car shall have a minimum inside car platform of 80 in. (2.03 m) wide by 51 in. (1.30 m) deep.

The intent of this language is to ensure that there is enough space to accommodate the access and egress of a gurney and medical personnel inside of a medical service elevator.

This standard is made applicable to Group IV by section 3141.7, subdivision (b), which reads, "Elevators utilized to provide medical emergency service shall comply with Group II, section 3041(e)."

2. Applicant proposes to comply with the requirements of the 2019 California Building Code, section 3002.4.1a in the design of its medical emergency service elevator. That section requires:

> The medical emergency service elevator shall accommodate the loading and transport of two emergency personnel, each requiring a minimum clear 21-inch (533 mm) diameter circular area and an ambulance gurney or stretcher [minimum size 24 inches by 84 inches (610 mm by 2134 mm) with not less than 5-inch (127 mm) radius corners] in the horizontal, open position.

The purpose of this requirement is to ensure that an elevator designated for emergency medical service will accommodate a minimum of two emergency personnel with an ambulance gurney or stretcher.

C. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

D. Decision and Order

Each permanent variance application the subject of this proceeding is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, each Applicant listed in the above section A.1 table shall have permanent variances from sections 3041, subdivision (e)(1)(C) and 3141.7, subdivision (b) subject of the following conditions:

1. All medical emergency service elevator(s) shall comply with the requirements of the 2019 California Building Code section 3002.4.1a:

The medical emergency service elevator shall accommodate the loading and transport of two emergency personnel, each requiring a minimum clear 21-inch (533 mm) diameter circular area and an ambulance gurney or stretcher [minimum size 24 inches by 84 inches (610 mm by 2134 mm) with not less than 5-inch (127 mm) radius corners] in the horizontal, open position.

2. All medical emergency service elevator(s) shall be identified in the building construction documents in accordance with the 2019 California Building Code, section 3002.4a.

3. Dimensional drawings and other information necessary to demonstrate compliance with the conditions of this permanent variance decision shall be provided to Cal/OSHA, at the time of inspection, for all medical emergency service elevator(s).

4. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing the elevators shall be provided a copy of this variance decision.

5. Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in service prior to the Permit to Operate being issued by Cal/OSHA.

6. Applicant shall notify its employees and their authorized representative, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.

7. This Decision and Order shall remain in effect unless duly modified or revoked upon application by Applicant, affected employee(s), Cal/OSHA, or by the Board on its own motion in the procedural manner prescribed.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

DATED: February 23, 2024

Kelly Chau

Kelly Chau, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding: Arrow Lift Symmetry Vertical Platform Lift	Permanent Variance No.: Per table, in Procedural Matters below Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: Arrow Lift Symmetry Vertical Platform Lift	Permanent Variance No.: Per table, in Procedural Matters below PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. Each below listed applicant ("Applicant") has applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8, of the California Code of Regulations[1] as follows:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
24-V-001	Residency at the Mayer LP	5500 Hollywood Blvd. Los Angeles, CA	1

2. 2. This proceding is conducted in accordance with Labor Code section 143 section 401, et seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

B. Procedural Matters

1. This hearing was held on February 21, 2024 via videoconference, by the Board with Hearing Officer, Kelly Chau, presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, Patrick Austin, with Arrow Lift of California appeared on behalf of the Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Department of Occupational Safety and Health ("Cal/OSHA").

3. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft of Proposed Decision

4. Official notice taken of the Board's rulemaking records, and variance decisions concerning the safety order requirements from which variance is requested. At close of hearing on , the record was closed, and the matter taken under submission by the Hearing Officer.

B. Findings of Fact

1. The Applicant proposes to install vertical platform (wheelchair) lift(s) at the location(s) below:

5500 Hollywood Blvd.
Los Angeles, CA

2. The subject vertical lift is proposed to be a Symmetry Model VPL/VPC SLH-168, with a vertical travel range of approximately 168 inches. That range of travel exceeds the 12 foot maximum vertical rise allowed by ASME A18.1-2003, section 2.7.1—the State of California standard in force at the time of this Decision.

3. Cal/OSHA's evaluation in this matter, states that the more recent consensus code ASME A18.1-2005 allows for vertical platform lifts to have a travel not exceeding 14 feet (168 in.).

4. Permanent variances regarding the extended travel of vertical platform lifts, of similar configuration to that of the subject proposed model, have been previously granted, absent subsequent harm attributable to such variance being reported by Cal/OSHA. (E.g. Permanent Variance Nos. 13-V-260, 15-V-097, 17-V-270, 18-V-278, 19-V-256).

5. With respect to the equivalence or superior of safety, conditions and limitations of the Decision and Order are in material conformity with findings and conditions of prior Board permanent variance decisions, including the above cited.

6. Per its written Review of Application for Permanent Variance, Exhibit PD-3, it is the informed opinion of Cal/OSHA that equivalent safety (at minimum) will be achieved upon grant of presently requested permanent variance, subject to conditions and limitations incorporated into the below Decision and Order.

C. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

D. Decision and Order

The Application for Permanent Variance of Permanent Variance No. 24-V-001 is conditionally GRANTED to the limited extent, upon the Board's adoption of this Proposed Decision. They shall have permanent variance from sections 3142(a) and 3142.1 incorporated ASME A18.1-2003, section 2.7.1, inasmuch as it restricts the vertical rise of a wheelchair lift to a maximum of 12 feet, with respect to one (1) Vertical Platform Lift Symmetry Model VPL/VPC SLH-168, to be located at:

5500 Hollywood Blvd.
Los Angeles, CA

The above referenced vertical platform lift shall be subject to the following further conditions and limitations:

a. This lift may travel up to 168 inches, unless the manufacturer's instructions provide for a lesser vertical travel limit, or lesser total elevation change, in which case, travel shall be limited to the lesser limit or elevation change.

b. The wheelchair lift shall be installed and operated in accordance with the manufacturer's instructions, unless the provisions of this variance or applicable provisions of the law provide otherwise.

c. Durable signs with lettering not less than 5/16 inch on a contrasting background shall be permanently and conspicuously posted inside the car and at all landings indicating that the lift is for the exclusive use of persons with physical impairments and that the lift is not to be used to transport material or equipment. The use of the lift shall be limited in accordance with these signs.

d. A maintenance contract shall be executed between the owner/operator and a Certified Qualified Conveyance Company (CQCC). The contract shall stipulate that the routine preventive maintenance required by section 3094.5(a)(1) shall be performed at least quarterly and shall include but not be limited to:

    i. Platform driving means examination;

    ii. Platform examination;

    iii. Suspension means examination;

    iv. Platform alignment;

    v. Vibration examination;

    vi. Door/gate electrical; and

    vii. Mechanical lock examination.

e. The lift shall be tested annually for proper operation under rated load conditions. Cal/OSHA's Elevator Unit District Office shall be provided written notification in advance of the test, and the test shall include a check of car or platform safety device.

f. The lift shall be shut down immediately if the lift experiences unusual noise and vibration, and the Applicant shall notify the CQCC immediately. The lift shall only be restarted by the CQCC.

g. The Applicant shall notify the CQCC if the lift shuts down for any reason. The lift shall only be restarted by the CQCC.

h. Service logs including, but not limited to, the device shutdown(s) shall be kept in the maintenance office and shall be available to Cal/OSHA. The shutdown information shall contain the date of the shutdown, cause of the shutdown, and the action taken to correct the shutdown.

i. The Applicant shall provide training on the safe operation of the lift in accordance with section 3203. Such training shall be conducted annually for all employees using or who will be assisting others in using the lift. The Applicant shall notify Cal/OSHA in writing that training has been conducted. A copy of the training manual (used for the subject training), and documentation identifying the trainer and attendees shall be maintained for at least 1 year and provided to Cal/OSHA upon request.

j. Any CQCC performing inspections, maintenance, servicing or testing of the elevators shall be provided a copy of this variance decision.

k. Cal/OSHA shall be notified when the lift is ready for inspection, and the lift shall be inspected by Cal/OSHA and a Permit to Operate shall be issued before the lift is put into service.

l. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.

m. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA, or by the Board on its own motion in the procedural manner prescribed.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: February 23, 2024

Kelly Chau, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding:

TK Elevator Evolution (Group IV)

Permanent Variance No.: Per Section A.1 table

Proposed Decision Dated: February 23, 2024

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: TK Elevator Evolution (Group IV)	Permanent Variance No.: Per Section A.1 table PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Subject Matter

1. The below listed Applicants ("Applicant") have applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1] as follows:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
24-V-015	TTLE Mirza, Inc.	501 Somi Ct. Hayward, CA	1

2. These proceedings are conducted in accordance with Labor Code section 143 and section 401, et seq. of the Board's procedural regulations.

B. Procedural

1. This hearing was held on February 21, 2024 via videoconference by the Board with Hearing Officer, Kelly Chau, presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, James Day with TK Elevators appeared on behalf of the Applicant, Jose Ceja and Mark Wickens appeared on behalf of Cal/OSHA of Occupational Safety and Health ("Cal/OSHA").

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

4. Official notice is taken of the Board's files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On February 21, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

C. Relevant Safety Orders

Variance Request No. 1 (ASME A17.1-2004, Section 2.14.1.7.1)

2.14.1.7.1 A standard railing conforming to 2.10.2 shall be provided on the outside perimeter of the car top on all sides where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.

Variance Request No. 2A (ASME A17.1-2004, section 2.20.1)

2.20.1 Suspension Means

Elevator cars shall be suspended by steel wire ropes attached to the car frame or passing around sheaves attached to the car frame specified in 2.15.1. Ropes that have previously been installed and used on another installation shall not be reused.

Only iron (low-carbon steel) or steel wire ropes, having the commercial classification "Elevator Wire Rope," or wire rope specifically constructed for elevator use, shall be used for the suspension of elevator cars and for the suspension of counterweights. The wire material for ropes shall be manufactured by the open-hearth or electric furnace process or their equivalent.

Variance Request No. 2B (ASME A17.1-2004, section 2.20.2[.1])

2.20.2.1 On Crosshead Data Plate.

The crosshead data plate required by 2.16.3 shall bear the following wire-rope data:

(a) the number of ropes

(b) the diameter in millimeters (mm) or inches (in.)

(c) the manufacturer's rated breaking strength per rope in kilo Newton (kN) or

pounds (lb)

Variance Request No. 2C (ASME A17.1-2004, section 2.20.2.2)

2.20.2.2 On Rope Data Tag.

A metal data tag shall be securely attached to one of the wire-rope fastenings. This data tag shall bear the following wire-rope data:

(a) the diameter in millimeters (mm) or inches (in.)

[…]

(f) whether the ropes were nonpreformed or preformed

[…]

Variance Request No. 2D. (ASME A17.1-2004, section 2.20.3)

2.20.3 Factor of Safety

The factor of safety of the suspension wire ropes shall be not less than shown in Table 2.20.3. Figure 8.2.7 gives the minimum factor of safety for intermediate rope speeds. The factor of safety shall be based on the actual rope speed corresponding to the rated speed of the car.

The factor of safety shall be calculated by the following formula:

$$ff = \frac{SS \times NN}{WW}$$

where

N = number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S = manufacturer's rated breaking strength of one rope

W = maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

Variance Request No. 2E (ASME A17.1-2004, section 2.20.4)

2.20.4 Minimum Number and Diameter of Suspension Ropes

The minimum number of hoisting ropes used shall be three for traction elevators and two for drum-type elevators.

Where a car counterweight is used, the number of counterweight ropes used

shall be not less than two.

The term" diameter," where used in reference to ropes, shall refer to the nominal diameter as given by the rope manufacturer.

The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

Variance Request No. 2F (ASME A17.1-2004, section 2.20.9[.1])

2.20.9 Suspension-Rope Fastening

2.20.9.1 Type of Rope Fastenings. The car and counterweight ends of suspension wire ropes, or the stationary hitch-ends where multiple roping is used, shall be fastened in such a manner that all portions of the rope, except the portion inside the rope sockets, shall be readily visible.

Fastening shall be

(a) by individual tapered rope sockets (see 2.20.9.4) or other types of rope fastenings that have undergone adequate tensile engineering tests, provided that

(1) such fastenings conform to 2.20.9.2 and 2.20.9.3;

(2) the rope socketing is such as to develop at least 80% of the ultimate breaking strength of the strongest rope to be used in such fastenings; or

(b) by individual wedge rope sockets (see 2.20.9.5); and

(c) U-bolt-type rope clamps or similar devices shall not be used for suspension rope fastenings.

Variance Request No. 3 (ASME A17.1-2004, section 2.26.9.4)

2.26.9.4 Redundant devices used to satisfy 2.26.9.3 in the determination of the occurrence of a single ground, or the failure of any single magnetically operated switch, contactor or relay, or of any single solid state device, or any single device that limits the leveling or truck zone, or a software system failure, shall be checked prior to each start of the elevator from a landing, when on automatic operation. When a single ground or failure, as specified in 2.26.9.3, occurs, the car shall not be permitted to restart. Implementation of redundancy by a software system is permitted, provided that the removal of power from the driving-machine motor and brake shall not be solely dependent on software-controlled means.

Variance Request No. 4 (ASME A17.1-2004, section 2.26.9.6.1)

2.26.9.6.1 Two separate means shall be provided to independently inhibit the flow of alternating-current through the solid state devices that connect the direct-current power source to the alternating-current driving motor. At least one of the means shall be an electromechanical relay.

Variance Request No. 5 (ASME A17.1-2004, section 2.26.1.4[.1](a))

2.26.1.4.1 General Requirements

(a) Operating devices for inspection operation shall be provided on the top of the car and shall also be permitted in the car and in the machine room.

Variance Request No. 6 (ASME A17.1-2004, section 8.4.10.1.1(a)(2)(b))

8.4.10.1.1 Earthquake Equipment (See Also Fig. 8.4.10.1.1)

(a) All traction elevators operating at a rated speed of 0.75 m/s (150 ft/min) or more and having counterweights located in the same hoistway shall be provided with the following:

(1) seismic zone 3 or greater: a minimum of one seismic switch per building

(2) seismic zone 2 or greater:

(a) a displacement switch for each elevator

(b) an identified momentary reset button or switch for each elevator, located in the control panel in the elevator machine room [see 8.4.10.1.3(i)]

D. Findings

1. Applicant proposes to utilize inset car top railings and guards in compliance with ASME 17.1-2013, section 2.14.1.7.1 and the *Vivante Westside, LLC* File No. 18-V-364 (Nov. 20, 2020) decision (*Vivante*). Applicant further claims that the request is consistent with the *Vivante*, the *Mack Urban, LLC*, File No. 15-V-349 (Nov. 17, 2016), and the *Patton Equities, LLC* File No. 20-V-128 (Nov. 12, 2020) decisions (*Patton Equities*).

2. Applicant proposes to utilize noncircular elastomeric-coated steel belts ("ECSBs") rather than steel ropes in a machine room-less ("MRL") elevator installation, with updated data plates, data tags, and wedge sockets designed for use with ECSBs, as well as the appropriate factor of safety criteria conforming to ASME 17.1-2013, with a continuous residual strength detection device ("RSDD") compliant with the *San Francisco Public Works (File No. 21-V-061, et al.)* decisions.

3. The installation shall utilize the TK Elevator Model 104DP001 RSDD, accepted by

Cal/OSHA on May 4, 2021.

4. Applicant proposes to comply with ASME A17.1-2013 sections 2.26.9.3, "Protection Against Failures", rather than the requirements of 2.26.9.3 and 2.26.9.4 in the ASME 2004 code.

5. Applicant proposes to use TKE's control systems, using the TKE TAC32T Controller with SIL3 rated elements, to provide equivalent safety to ASME A17.1-2004, section 2.26.9.4 as a means to inhibit flow of Alternating Current to the Driving Motor in compliance with ASME A17.1-2013, section 2.26.9.6.

6. Applicant proposes to locate the Inspection Transfer Switch within the machinery/control room/space in the MRL installation, in compliance with ASME 17.1-2013, section 2.26.1.4.

7. Applicant proposes to locate the Seismic-Operation Reset Switch in the machinery/control room/space in the MRL installation.

D. Decision and Order

Applicant is hereby conditionally GRANTED Permanent Variance as specified below, and to the limited extent, as of the date the Board adopts this Proposed Decision, with respect to the section A specified number of TKE EVO 200 elevator(s), at the specified location, each shall conditionally hold permanent variance from the following subparts of ASME A17.1-2004, currently incorporated by reference into section 3141 of the Elevator Safety Orders:

- Car-Top Railing: 2.14.1.7.1 (Limited to the extent necessary to permit the use of an inset car-top railing)

- Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, and 2.20.9.1 (Limited to the extent necessary to permit the use of the elastomeric-coated steel belts in lieu of circular steel suspension ropes)

- Inspection transfer switch: 2.26.1.4.4(a) (Limited to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room)

- Software Reliant Means to Remove Power: 2.26.9.4 (Limited to the extent necessary to permit the exclusive use of SIL-rated software systems as a means to remove power from the driving machine motor and brake)

- SIL-Rated Circuitry to Inhibit Current Flow: 2.26.9.6.1 (Limited to the extent necessary to permit the use of SIL-rated circuitry in place of an electromechanical relay to inhibit current flow to the drive motor)

- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Limited to the extent necessary to permit

the seismic reset switch to reside at a location other than the machine room)

Inset Car Top Railing (Variance Request No. 1):

1.0 Any and all inset car top railings shall comply with the following:

1.1 Serviceable equipment shall be positioned so that mechanics and inspectors do not have to stand on or climb over the railings to perform adjustments, maintenance, repairs or inspections. The Applicant shall not permit trained elevator mechanics or elevator service personnel to stand or climb over the car top railing.

1.2 The distance that the railing can be inset shall be limited to not more than six inches (6”).

1.3 All exposed areas of the car top outside the car top railing where the distance from the railing to the edge of the car top exceeds two inches (2”), shall be beveled with metal, at an angle of not less than 75 degrees with the horizontal, from the mid or top rail to the outside of the car top, such that no person or object can stand, sit, kneel, rest, or be placed in the exposed areas.

1.4 The top surface of the beveled area and/or car top outside the railing, shall be clearly marked. The markings shall consist of alternating 4” diagonal red and white stripes.

1.5 The Applicant shall provide durable signs with lettering not less than 1/2 inch on a contrasting background on each inset railing; each sign shall state:

CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING

1.6 The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing will be measured from the car top and not from the required bevel).

Suspension Means (Variance Request No. 2):

2.0 The elevator suspension system shall comply with the following:

2.1 The elastomeric coated steel belts (ECSBs) and their associated fastenings shall conform to the applicable requirements of ASME A17.1-2013, sections:

2.20.4.3 – Minimum Number of Suspension Members
2.20.3 – Factor of Safety
2.20.9 – Suspension Member Fastening

2.2 Additionally, ECSBs shall meet or exceed all requirements of ASME A17.6 2010,

Standard for Elevator Suspension, Compensation, and Governor Systems, Part 3 Noncircular Elastomeric Coated Steel Suspension Members for Elevators.

2.3 The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection and testing of the ECSBs and fastenings and related monitoring and detection systems and criteria for ECSB replacement, and the Applicant shall make those procedures and criteria available to the Certified Competent Conveyance Mechanic (CCCM) at the location of the elevator, and to Cal/OSHA of Occupational Safety and Health (Cal/OSHA) upon request.

2.4 ECSB mandatory replacement criteria shall include:

2.4.1. Any exposed wire, strand or cord;

2.4.2. Any wire, strand or cord breaks through the elastomeric coating;

2.4.3. Any evidence of rouging (steel tension element corrosion) on any part of the elastomeric coated steel suspension member;

2.4.4. Any deformation in the elastomeric suspension member such as, but not limited to, kinks or bends.

2.5 Traction drive sheaves must have a minimum diameter of 112 mm. The maximum speed of ECSBs running on 112 mm drive sheaves shall be no greater than 6.1 m/s.

2.6 If any one (1) ECSB needs replacement, the complete set of suspension members on the elevator shall be replaced. Exception: If a new suspension member is damaged during installation, and prior to any contemporaneously installed ECSB having been placed into service, it is permissible to replace the individual damaged suspension member. ECSBs that have been installed on another installation shall not be re used.

2.7 A traction loss detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.1. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.12.

2.8 A broken suspension member detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.2. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.13(a).

2.9 An elevator controller integrated bend cycle monitoring system shall monitor actual ECSB bend cycles, by means of continuously counting, and storing in nonvolatile memory, the number of trips that the ECSB makes traveling, and thereby being bent, over the elevator sheaves. The bend cycle limit monitoring means shall automatically stop the car normally at the next available landing before the bend cycle correlated residual strength of any single ECSB member drops below (60%)

sixty percent of full rated strength. The monitoring means shall prevent the car from restarting. Notwithstanding any less frequent periodic testing requirement per Addendum 2 (Cal/OSHA Circular Letter), the bend cycle monitoring system shall be tested semiannually in accordance with the procedures required per above Conditions 2.3 and 2.4.

2.10 The elevator crosshead data plate shall comply with the requirements of ASME A17.1-2013, section 2.20.2.1.

2.11 A suspension means data tag shall be provided that complies with the requirements of ASME A17.1-2013, section 2.20.2.2.

2.12 Comprehensive visual inspections of the entire length of each and all installed suspension members, in conformity with above Conditions 2.3 and 2.4 specified criteria, shall be conducted and documented every six (6) months by a CCCM.

2.13 The Applicant shall be subject to the requirements per hereto attached, and inhere incorporated, Addendum 1, "Suspension Means Replacement Reporting Condition."

2.14 Records of all tests and inspections shall be maintenance records subject to ASME A17.1-2004, sections 8.6.1.2, and 8.6.1.4, respectively.

2.15 The subject elevators(s) shall be equipped with a TK Elevator Model 104DP001 Residual Strength Detection Device accepted by Cal/OSHA on May 4, 2021 or Cal/OSHA accepted equivalent device.

Control and Operating Circuits
Combined Software Redundant Devices with Software Removal of Power from Driving Motor and Brake (Variance Request No. 3)
Removal of Power from Driving Motor Without Electro-mechanical Switches (Variance Request No. 4)

3.0 The SIL rated circuitry used to provide device/circuit redundancy and to inhibit electrical current flow in accordance with ASME A17.1-2004, sections 2.26.9.4 and 2.26.9.6.1 shall comply with the following:

3.1 The SIL rated systems and related circuits shall consist of:

3.1.1. ELGO LIMAX33 RED, (aka LIMAX3R-03-050-0500-CNXTG-RJU), Safe Magnetic Absolute Shaft Information System, labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/A 163), followed by the applicable revision number (as in 968/A 163.07/19).

3.1.2 Printed circuit board assembly SSOA (6300 AHE001), labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/FSP 1347), followed by the

applicable revision number (as in 968/FSP 1347.00/16).

3.1.3 Two circuit board components (Serializer S3I and S3O), each labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization and the SIL certification number (968/A 162), followed by the applicable revision number (as in 968/A 162.04/18)

3.2 The software system and related circuits shall be certified for compliance with the applicable requirements of ASME A17.1-2013, section 2.26.4.3.2.

3.3 The access door or cover of the enclosures containing the SIL rated components shall be clearly labeled or tagged on their exterior with the statement:

Assembly contains SIL rated devices.
Refer to maintenance Control Program and wiring diagrams
prior to performing work.

3.4 Unique maintenance procedures or methods required for the inspection, testing, or replacement of the SIL rated circuits shall be developed and a copy maintained in the elevator machine/control room/space. The procedures or methods shall include clear color photographs of each SIL rated component, with notations identifying parts and locations.

3.5 Wiring diagrams that include part identification, SIL, and certification information shall be maintained in the elevator machine/control room/space.

3.6 A successful test of the SIL rated circuits shall be conducted initially and not less than annually in accordance with the testing procedure. The test shall demonstrate that SIL rated devices, safety functions, and related circuits operate as intended.

3.7 Any alterations to the SIL rated circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the alteration of SIL rated devices, the alterations shall be made in conformance with ASME A17.1-2013, section 8.7.1.9.

3.8 Any replacement of the SIL rated circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the replacement of SIL rated devices, the replacement shall be made in conformance with ASME A17.1-2013, section 8.6.3.14.

3.9 Any repairs to the SIL rated circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the repair of SIL rated devices, the repairs shall be made in conformance with ASME A17.1-2013, section 8.6.2.6.

3.10 Any space containing SIL rated circuits shall be maintained within the temperature and humidity range specified by TKE. The temperature and humidity range shall be

posted on each enclosure containing SIL rated software or circuits.

3.11 Field software changes to the SIL rated system are not permitted. Any changes to the SIL rated system's circuitry will require recertification and all necessary updates to the documentation and diagrams required by Conditions 3.4 and 3.5 above.

Inspection Transfer Switch and Seismic Reset Switch (Variance Request Nos. 5 and 6):

4.0 Inspection Transfer switch and Seismic Reset switch placement and enclosure shall comply with the following:

4.1 If the inspection transfer switch required by ASME A17.1-2004, section 2.26.1.4.4, does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

4.2 If the seismic reset switch does not reside in the machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

5.0 The elevator shall be serviced, maintained, adjusted, tested, and inspected only by CCCM having been trained, and competent, to perform those tasks on the TKE EVO 200 elevator system in accordance with written procedures and criteria, including as required per above Conditions 2.3, and 2.4.

6.0 Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in full service prior to the Permit to Operate being issued by Cal/OSHA.

7.0 The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.

8.0 This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA, or by the Board on its own motion in the procedural manner prescribed.

Pursuant to section 426(b), the completed Proposed Decision is submitted to the Board for consideration of adoption.

Date: February 23, 2024

Kelly Chau, Hearing Officer

_

ADDENDUM 1

SUSPENSION MEANS REPLACEMENT REPORTING REQUIREMENTS

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to Cal/OSHA within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, Section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

(1) A separate report for each elevator shall be submitted, in a manner acceptable to Cal/OSHA, to the following address (or to such other address as Cal/OSHA might specify in the future): DOSH Elevator Unit, Attn: Engineering Section, 2 MacArthur Place Suite 700, Santa Ana, CA 92707.

(2) Each such report shall contain, but not necessarily be limited to, the following information:

(a) The State-issued conveyance number, complete address, and Permanent Variance file number that identifies the permanent variance.

(b) The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).

(c) The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.

(d) The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, and certification expiration date of each CCCM performing the replacement work.

(e) The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.

(f) A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.

(g) A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

(h) All information provided on the crosshead data plate per ASME A17.1-2004, Section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

(i) For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

(j) For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

(k) Any other information requested by Cal/OSHA regarding the replacement of the suspension means or fastenings.

In addition to the submission of the report to Cal/OSHA, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to Cal/OSHA referencing the information contained in item 2(a) above.

ADDENDUM 2

CIRCULAR LETTER E-10-04, October 6, 2010

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code Section 7318 allows Cal/OSHA to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by Cal/OSHA is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by Cal/OSHA, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt Cal/OSHA from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of Cal/OSHA to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQ

ADDENDUM 3

(A) A Residual Strength Detection Device (RSDD) shall continuously monitor all Elastomeric Coated Steel Belt suspension members (ECSB), automatically stopping the car if the residual strength of any belt drops below 60%. The RSDD shall prevent the elevator from restarting after a normal stop at a landing. The RSDD shall device shall apply a form of electrical current and/or signal through the entire length of the steel tension elements of the ECSB and measure the current and/or signal on its return. The values measured shall be continuously compared to values that have been correlated to the remaining residual strength of the ECSB through testing. The required RSDD shall not rely upon giant magnetoresistance technology, or other magnetic measurement means, for residual strength detection or monitoring.

The RSDD must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room or controller location. The removed RSDD must be replaced or returned to proper service within 30 days. If upon routine inspection, the RSDD device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room or controller location.

If upon inspection by Cal/OSHA, the RSDD is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service. If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

(B) On or before November 21, 2021 and thereafter, the above specified and documented RSDD shall be installed and operational on the subject elevator.

(C) A successful functionality test of each RSDD shall be conducted once a year, and a copy of completed testing documentation conspicuously located in the machine room or within proximity of the controller.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for Permanent Variance regarding: Schindler Model 3300 Elevators, w/Variant Governor Ropes and Sheaves (Group IV)	Permanent Variance No.: See table in Jurisdictional and Procedural Matters Proposed Decision Dated: February 23, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Kelly Chau, Hearing Officer.

_____
DAVID THOMAS, Chairman

_____
JOSEPH M. ALIOTO JR., Member

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: March 21, 2024

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED BY ANY PARTY WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be posted for the Applicant's employees to read, and/or a copy thereof must be provided to the employees' Authorized Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance regarding: Schindler Model 3300 Elevators, W/Variant Governor Ropes and Sheaves (Group IV)	Permanent Variance No.: See table in Jurisdictional and Procedural Matters PROPOSED DECISION Hearing Date: February 21, 2024 Location: Zoom

A. Jurisdictional and Procedural Matters

1. Each below listed applicant ("Applicant") has applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8, of the California Code of Regulations[1] as follows:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
24-V-022	RSF Calson 1 Propco, LLC	2375 South Bascom Ave. San Jose, CA	2

2. This proceeding is conducted in accordance with Labor Code section 143 and section 401, et seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

3. This hearing was held on February 21, 2024, via videoconference, by the Board with Hearing Officer, Kelly Chau, presiding and hearing the matter on its merit in accordance with section 426.

4. At the hearing, Jennifer Linares, with the Schindler Elevator Company, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

[1] Unless otherwise noted, all references are to California Code of Regulations, title 8.

5. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

6. Official notice taken of the Board's rulemaking records, and variance decisions concerning the safety order requirements from which variance is requested. At close of hearing on February 21, 2024, the record was closed, and the matter taken under submission by the Hearing Officer.

B. Relevant Safety Order Provisions

Applicant seeks a permanent variance from section 3141 [ASME A17.1-2004, sections 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, 2.20.9.5.4, 2.26.1.4.4(a), 8.4.10.1.1(a)(2)(b), 2.14.1.7.1, 2.18.7.4, and 2.26.9.6.1] of the Elevator Safety Orders, with respect to the suspension ropes and connections, inspection transfer switch relocation, seismic reset switch relocation, the location and construction of car-top railings, governor-sheave diameter, and means of removing power from the driving machine motor for one (1) Schindler model 3300 MRL elevator.

The relevant language of those sections are below.

1. Suspension Means

Section 3141 [ASME A17.1-2004, section 2.20.1, Suspension Means] states in part:

> Elevator cars shall be suspended by steel wire ropes attached to the car frame or passing around sheaves attached to the car frame specified in 2.15.1. Ropes that have previously been installed and used on another installation shall not be reused. Only iron (low-carbon steel) or steel wire ropes, having the commercial classification "Elevator Wire Rope," or wire rope specifically constructed for elevator use, shall be used for the suspension of elevator cars and for the suspension of counterweights. The wire material for ropes shall be manufactured by the open-hearth or electric furnace process, or their equivalent.

Section 3141 [ASME A17.1-2004, section 2.20.2.1(b), On Crosshead Data Plate] states in part:

The crosshead data plate required by 2.16.3 shall bear the following wire-rope data:

(b) the diameter in millimeters (mm) or inches (in.)

Section 3141 [ASME A17.1-2004, section 2.20.2.2(a) and (f) On Rope Data Tag] states in part:

A metal data tag shall be securely attached-to-one of the wire-rope fastenings. This data tag shall bear the following wire-rope data:

(a) the diameter in millimeters (mm) or inches (in.)
[…]
(f) whether the ropes were non preformed or preformed

Section 3141 [ASME A17.1-2004, section 2.20.3, Factor of Safety] states:

The factor of safety of the suspension wire ropes shall be not less than shown in Table 2.20.3. Figure 8.2.7 gives the minimum factor of safety for intermediate rope speeds. The factor of safety shall be based on the actual rope speed corresponding to the rated speed of the car.

The factor of safety shall be calculated by the following formula:

$$f = \frac{S\ x\ N}{W}$$

where:

N= number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S= manufacturer's rated breaking strength of one rope

W= maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

Section 3141 [ASME A17.1-2004, section 2.20.4, Minimum Number and Diameter of Suspension Ropes] states:

The minimum number of hoisting ropes used shall be three for traction elevators and two for drum-type elevators.

Where a car counterweight is used, the number of counterweight ropes used shall be not less than two.

The term "diameter," where used in reference to ropes, shall refer to the nominal diameter as given by the rope manufacturer.

The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

Section 3141 [ASME A17.1-2004, section 2.20.9.3.4] states:

Cast or forged steel rope sockets, shackle rods, and their connections shall be made of unwelded steel, having an elongation of not less than 20% in a gauge length of 50 mm (2 in.), when measured in accordance with ASTM E 8, and conforming to ASTM A 668, Class B for forged steel, and ASTM A 27, Grade 60/30 for cast steel, and shall be stress relieved. Steels of greater strength shall be permitted, provided they have an elongation of not less than 20% in a length of 50 mm (2 in.).

Section 3141 [ASME A17.1-2004, section 2.20.9.5.4] states:

When the rope has been seated in the wedge socket by the load on the rope, the wedge shall be visible, and at least two wire-rope retaining clips shall be provided to attach the termination side to the load-carrying side of the rope (see Fig. 2.20.9.5). The first clip shall be placed a maximum of 4 times the rope diameter above the socket, and the second clip shall be located within 8 times the rope diameter above the first clip. The purpose of the two clips is to retain the wedge and prevent the rope from slipping in the socket should the load on the rope be removed for any reason. The clips shall be designed and installed so that they do not distort or damage the rope in any manner.

2. Requested Transfer Switch Placement Variance

As it pertains to installation of the requisite transfer switch within a "machine room" location incompatible with machine-room-less design of the Schindler Model 3300 elevator, the Applicant presently seeks permanent variance from the following Elevator Safety Order incorporated ASME Code A17.1-2004, subsection:

Subsection 2.26.1.4.4(a)--Transfer Switch Placement in Machine Room

Section 3141[ASME A17.1-2004, section 2.26.1.4.4(a), Machine Room Inspection Operation] states:

When machine room inspection operation is provided, it shall conform to 2.26.1.4.1, and the transfer switch shall be

(a) located in the machine room[.]

3. Requested Seismic Reset Switch Placement Variance

As it pertains to installation of the requisite seismic reset switch within a "machine room" location incompatible with machine-room-less design of the Schindler Model 3300 elevator, the Applicant presently seeks permanent variance from the following Elevator Safety Order incorporated ASME Code subsection:

Subsection 8.4.10.1.1(a)(2)(b)--Seismic Reset Switch Placement in Machine Room

Section 3141[ASME A17.1-2004, section 8.4.10.1.1(a)(2)(b), Earthquake Equipment] states:

(a) All traction elevators operating at a rated speed of 0.75 m/s (150 ft/min) or more and having counterweights located in the same hoistway shall be provided with the following:

(1) seismic zone 3 or greater: a minimum of one seismic switch per building

(2) seismic zone 2 or greater:

(a) a displacement switch for each elevator

(b) an identified momentary reset button or switch for each elevator, located in the control panel in the elevator machine room

4. Requested Car Top Railing Inset Variance

As it pertains to top of car railing placement requiring space occupied by upper hoistway mounted elevator machinery characteristic of the Schindler Model 3300 elevator, the Applicant presently seeks permanent variance from the following Elevator Safety Order incorporated ASME Code A17.1-2004, section:

Section 2.14.1.7.1—Top of Car Perimeter Railing Placement

Section 3141[ASME A17.1-2004, section 2.14.1.7.1] states:

A standard railing conforming to 2.10.2 shall be provided on the outside perimeter of the car top on all sides where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.

5. Pitch Diameter of Governor Sheaves

Section 3141 [ASME A17.1-2004, Section 2.18.7.4] states:

> "The pitch diameter of governor sheaves and governor tension sheaves shall be not less than the product of the diameter of the rope and the applicable multiplier listed in Table 2.18.7.4, based on the rated speed and the number of strands in the rope."

Table 2.18.7.4 Multiplier for Determining Governor Sheave Pitch Diameter
[from ASME A17.1-2004]

Rated Speed m/s (ft./min)	Number of Strands	Multiplier
1.00 or less (200 or less)	6	42
1.00 or less (200 or less)	8	30
Over 1.0 (over 200)	6	46
Over 1.0 (over 200)	8	32

6. SIL-Rated System to Inhibit Current Flow to AC Drive Motor

Section 3141[ASME A17.1-2004, section 2.26.9.6.1] states:

> Two separate means shall be provided to independently inhibit the flow of alternating current through the solid state devices that connect the direct current power source to the alternating-current driving motor. At least one of the means shall be an electromechanical relay.

C. Findings of Fact

1. Applicant intends to utilize Schindler model 3300 MRL elevator cars at the locations listed in Jurisdictional and Procedural Matters, section A1.

2. The installation contract for these elevators was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.

3. The Schindler model 3300 MRL elevator cars are not supported by circular steel wire ropes, as required by the Elevator Safety Orders. They utilize non-circular elastomeric-coated steel belts and specialized suspension means fastenings.

4. No machine room is provided, preventing the inspection transfer switch from being located in the elevator machine room. The lack of machine room also prevents the seismic reset switch from being located in the elevator machine room.

5. Applicant proposes to relocate the inspection transfer switch and seismic reset switch in an alternative enclosure.

6. Due to the use of a 6 mm (0.25 in.) governor rope with 6-strand construction, the provided governor sheave pitch diameter is less than that required by the Elevator Safety Orders.

7. The driving machine and governor are positioned in the hoistway and restrict the required overhead clearance to the elevator car top.

8. Applicant proposes to insert the car-top railings at the perimeter of the car top.

9. Applicant intends to use an elevator control system, model CO NX100NA or CO NX300NA, with a standalone, solid-state motor control drive system that includes devices and circuits having a Safety Integrity Level (SIL) rating to execute specific elevator safety functions.

D. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

E. Decision and Order

The Application being the subject of this proceeding, per the table in Jurisdictional and Procedural Matters, section A1 above, is conditionally GRANTED, to the extent that the Applicant shall be issued permanent variance from section 3141 subject to the following conditions and limitations:

Elevator Safety Orders:

- Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, and 2.20.9.5.4 (Only to the extent necessary to permit the use of the Elastomeric-coated Steel Belts proposed by the Applicant, in lieu of circular steel suspension ropes.);
- Inspection transfer switch: 2.26.1.4.4(a) (Only to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room);
- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Only to the extent necessary to permit the seismic reset switch to reside at a location other than the machine room. room);

- Car-Top Railing: 2.14.1.7.1 (Only to the extent necessary to permit the use of the car-top railing system proposed by the Applicant, where the railing system is located inset from the elevator car top perimeter);
- Governor Rope and Sheave: The Applicant shall conditionally hold permanent variance from certain requirements of section 3141, incorporated section of ASME A17.1-2004, to the limited extent variance is necessary to allow for the below specified governor rope and governor sheave parameters: section 2.18.7.4.
- Means of Removing Power: 2.26.9.6.1 (Only to the extent necessary to permit the use of SIL-rated devices and circuits as a means to remove power from the AC driving motor, where the redundant monitoring of electrical protective devices is required by the Elevator Safety Orders).

Conditions:

1. The elevator suspension system shall comply to the following:
    a. The suspension traction media (STM) members and their associated fastenings shall conform to the applicable requirements of ASME A17.1-2013, sections:

    2.20.4.3 – Minimum Number of Suspension Members
    2.20.3 – Factor of Safety
    2.20.9 – Suspension Member Fastening

    b. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection and testing of the STM members, fastenings, related monitoring and detection systems, and criteria for STM replacement. The Applicant shall make those procedures and criteria available to the Certified Competent Conveyance Mechanic (CCCM) at the location of the elevator, and to Cal/OSHA upon request.

    STM member mandatory replacement criteria shall include:

        i. Any exposed wire, strand or cord;
        ii. Any wire, strand or cord breaks through the elastomeric coating;
        iii. Any evidence of rouging (steel tension element corrosion) on any part of the elastomeric-coated steel suspension member;
        iv. Any deformation in the elastomeric suspension member such as, but not limited to, kinks or bends;

    c. Traction drive sheaves must have a minimum diameter of 72 mm. The maximum speed of STM members running on 72 mm, 87 mm and 125 mm drive sheaves shall be no greater than 2.5 m/s, 6.0 m/s and 8.0 m/s respectively.

d. If any one STM member needs replacement, the complete set of suspension members on the elevator shall be replaced. Exception: if a new suspension member is damaged during installation, and prior to any contemporaneously installed STM having been placed into service, it is permissible to replace the individual damaged suspension member. STM members that have been installed on another installation shall not be re-used.

e. A traction loss detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.1. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.12.

f. A broken suspension member detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.2. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.13(a).

g. An elevator controller integrated bend cycle monitoring system shall monitor actual STM bend cycles, by means of continuously counting, and storing in nonvolatile memory, the number of trips that the STM makes traveling, and thereby being bent, over the elevator sheaves. The bend cycle limit monitoring means shall automatically stop the car normally at the next available landing before the bend cycle correlated residual strength of any single STM member drops below 80 percent of full rated strength. The monitoring means shall prevent the car from restarting. The bend cycle monitoring system shall be tested annually in accordance with the procedures required by condition 1b above.

h. The elevator shall be provided with a device to monitor the remaining residual strength of each STM member. The device shall conform to the requirements of Cal/OSHA Circular Letter E-10-04, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

i. The elevator crosshead data plate shall comply with the requirements of ASME A17.1-2013, section 2.20.2.1.

j. A suspension means data tag shall be provided that complies with the requirements of ASME A17.1-2013, section 2.20.2.2.

k. Comprehensive visual inspections of the entire length of each and all installed suspension members, to the criteria developed in condition 1b, shall be conducted and documented every six months by a CCCM.

l. The Applicant shall be subject to the requirements set out in Exhibit 2 of this Decision and Order, "Suspension Means Replacement Reporting Condition," Incorporated herein by this reference.

m. Records of all tests and inspections shall be maintenance records subject to ASME A17.1-2004, sections 8.6.1.2 and 8.6.1.4, respectively.

2. If the inspection transfer switch required by ASME A17.1-2004, section 2.26.1.4.4 does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

3. If the seismic reset switch does not reside in the machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

4. If there is an inset car-top railing:

    a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on the railings to perform adjustments, maintenance, repairs or inspections. The Applicant shall not permit anyone to stand or climb over the car-top railing.

    b. The distance that the railing can be inset shall be limited to not more than 6 inches.

    c. All exposed areas of the car top outside the car-top railing where the distance from the railing to the edge of the car top exceeds 2 inches, shall be beveled with metal, at an angle of not less than 75 degrees with the horizontal, from the mid or top rail to the outside of the car top, such that no person or object can stand, sit, kneel, rest, or be placed in the exposed areas.

    d. The top of the beveled area and/or car top outside the railing shall be clearly marked. The markings shall consist of alternating 4-inch diagonal red and white stripes.

    e. The applicant shall provide durable signs with lettering not less than 1/2 inch on a contrasting background on each inset railing. Each sign shall state:

CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING

f. The Group IV requirements for car-top clearances shall be maintained (car-top clearances outside the railing will be measured from the car top and not from the required bevel).

5. The speed governor rope and sheaves shall comply with the following:

    a. The governor shall be used in conjunction with a steel 6 mm (0.25 in.) diameter governor rope with 6 strand, regular lay construction.

    b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.

    c. The governor sheaves shall have a pitch diameter of not less than 200 mm (7.87 in.).

6. The SIL-rated devices and circuits used to inhibit electrical current flow in accordance with ASME A17.1-2004, section 2.26.9.6.1 shall comply with the following:

    a. The SIL-rated devices and circuits shall consist of a Variodyn SIL3 rated Regenerative, Variable Voltage Variable Frequency (VVVF) motor drive unit, model VAF013, VAF023, or VAF043 labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/FSP 1556.00), and followed by the applicable revision number (as in 968/FSP 1556.00/19).
    b. The devices and circuits shall be certified for compliance with the applicable requirements of ASME A17.1-2013, section 2.26.4.3.2.

    c. The access door or cover of the enclosures containing the SIL-rated components shall be clearly labeled or tagged on their exterior with the statement:

    Assembly contains SIL-rated devices.
    Refer to Maintenance Control Program and
    wiring diagrams prior to performing work.

    d. Unique maintenance procedures or methods required for the inspection, testing, or replacement of the SIL-rated circuits shall be developed and a copy maintained in the elevator machine/control room/space. The procedures or methods shall include clear color photographs of each SIL-rated component, with notations identifying parts and locations.

    e. Wiring diagrams that include part identification, SIL, and certification information shall be maintained in the elevator machine/control room/space.

    f. A successful test of the SIL-rated devices and circuits shall be conducted initially and not less than annually in accordance with the testing procedure. The test shall

demonstrate that SIL-rated devices, safety functions, and related circuits operate as intended.

g. Any alterations to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the alteration of SIL-rated devices, the alterations shall be made in conformance with ASME A17.1-2013, section 8.7.1.9.

h. Any replacement of the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the replacement of SIL-rated devices, the replacement shall be made in conformance with ASME A17.1-2013, section 8.6.3.14.

i. Any repairs to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the repair of SIL-rated devices, the repairs shall be made in conformance with ASME A17.1-2013, section 8.6.2.6.

j. Any space containing SIL-rated devices and circuits shall be maintained within the temperature and humidity range specified by Schindler Elevator Corporation. The temperature and humidity range shall be posted on each enclosure containing SIL-rated devices and circuits.

k. Field changes to the SIL-rated system are not permitted. Any changes to the SIL-rated system's devices and circuitry will require recertification and all necessary updates to the documentation and diagrams required by conditions d. and e. above.

7. Cal/OSHA shall be notified when the elevator is ready for inspection. The elevator shall be inspected by Cal/OSHA, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in service prior to the Permit to Operate being issued by Cal/OSHA.

8. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way that the Applicant was required to notify them of the docketed application for permanent variance per sections 411.2 and 411.3.

9. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA of Occupational Safety and Health, or by the Board on its own motion in the procedural manner prescribed per the Board's procedural regulations.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

DATED: February 23, 2024

Kelly Chau, Hearing Officer

EXHIBIT 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows Cal/OSHA to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by Cal/OSHA is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by Cal/OSHA, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt Cal/OSHA from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of Cal/OSHA to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
CAL/OSHA-Elevator Unit HQS

EXHIBIT 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to Cal/OSHA within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to Cal/OSHA, to the following address (or to such other address as Cal/OSHA might specify in the future): CAL/OSHA Elevator Unit, 2 MacArthur Pl., Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.

2. Each such report shall contain, but not necessarily be limited to, the following information:

    a. The State-issued conveyance number, complete address, and Permanent Variance file number that identifies the permanent variance.

    b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).

    c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.

    d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.

    e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.

    f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.

    g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

h. All information provided on the crosshead data plate per ASME Al7.l-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

k. Any other information requested by Cal/OSHA regarding the replacement of the suspension means or fastenings.

3. In addition to the submission of the report to Cal/OSHA, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to Cal/OSHA referencing the information contained in item 2a above.

Occupational Safety and Health Standards Board

Business Meeting

Legislative Update

Legislative Update
Prepared March 8, 2024 for the March 21, 2024
Meeting of the Occupational Safety and Health Standards Board

AB-1 Oil refineries: maintenance.(2023-2024) – NO UPDATE

AB-1

AB-1 Oil refineries: maintenance.(2023-2024)

(Ting)

Date	Action
12/06/22	From printer.
12/05/22	Read first time. To print.

Summary:

AB 1, as introduced, Ting. Oil refineries: maintenance.

The California Refinery and Chemical Plant Worker Safety Act of 1990 requires, among other things, every petroleum refinery employer to submit to the Division of Occupational Safety and Health a full schedule of planned turnarounds, meaning a planned, periodic shutdown of a refinery process unit or plant to perform maintenance, overhaul, and repair operations and to inspect, test, and replace process materials and equipment, as provided.

This bill would express the intent of the Legislature to enact subsequent legislation to ensure that only one oil refinery in the state is undergoing scheduled maintenance at a time.

Board staff is monitoring for potential impacts on Board operations.

AB-1424 Occupational safety and health: cannabis delivery employee. (2023-2024) - UPDATE

AB-1424

AB-1424 Occupational safety and health: cannabis delivery employee.**(2023-2024)**

(Jones-Sawyer)

Date	Action
01/31/24	Died pursuant to Art. IV, Sec. 10(c) of the Constitution.

04/05/23	In committee: Set, first hearing. Hearing canceled at the request of author.
04/04/23	Re-referred to Com. on L. & E.
04/03/23	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.
03/09/23	Referred to Com. on L. & E.
02/18/23	From printer. May be heard in committee March 20.
02/17/23	Read first time. To print.

Summary:

AB 1424, as amended, Jones-Sawyer. Occupational safety and health: cannabis delivery employee.

The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. MAUCRSA establishes the Department of Cannabis Control within the Business, Consumer Services, and Housing Agency to administer the act.

This bill would require a cannabis delivery employer, as defined, to develop, implement, and maintain specified driver safety protocols allowing a cannabis delivery employee, as defined, to not complete a delivery if the delivery would create a real and apparent hazard to the employee or fellow employees, providing for notification and documentation procedures relating to incomplete deliveries, and providing information relating to worker retaliation protections. The bill would impose various requirements on a cannabis delivery employer relating to access to the driver safety protocols, including requiring the employer to make the protocols available to the Department of Cannabis Control upon request. The bill would require a cannabis delivery employer to notify the department upon being notified or becoming aware of an attempted robbery, injury, or death in the course of a delivery. The bill would also require a cannabis delivery employer to ensure that containers used in the

	delivery of cannabis goods do not indicate that the delivery employee is carrying cannabis goods, as specified. Existing law prohibits an employee from being laid off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or fellow employees. Existing law creates a cause of action for wages for the time an employee laid off or discharged for a refusal is without work as a result. Existing law authorizes an employee who believes they have been discharged or otherwise discriminated against in violation of that provision to file a complaint with the Labor Commissioner, as specified. This bill would create a rebuttable presumption that the cannabis delivery employer violates the above-described prohibition if the employer lays off, discharges, or subjects an employee to an adverse employment action within 90 days of the employee reporting or documenting an incomplete delivery or refusing to complete a delivery that would create a real and apparent hazard, as described above. Board staff is monitoring for potential impacts on Board operations.

AB-1976 Occupational safety and health standards: first aid kits: naloxone hydrochloride. (2023-2024) - NEW

AB-1976

AB-1976 Occupational safety and health standards: first aid kits: naloxone hydrochloride. **(2023-2024)**

(Haney)

Date	Action
02/12/24	Referred to Com. On L. and E.
01/31/24	From printer. May be heard in committee March 1.
01/30/24	Read first time. To print.

	Summary: AB 1976, as introduced, Haney. Occupational safety and health standards: first aid kits: naloxone hydrochloride. Existing law grants the Division of Occupational Safety and Health, which is within the Department of Industrial Relations, jurisdiction over all employment and places of employment, and the power necessary to enforce and administer all occupational health and safety laws and standards. The Occupational Safety and Health Standards Board, an independent entity within the department, has the exclusive authority to adopt occupational safety and health standards within the state. Existing law, the California Occupational Safety and Health Act of 1973 (OSHA), requires employers to comply with certain safety and health standards, as specified, and charges the division with enforcement of the act. Existing law requires the division, before December 1, 2025, to submit to the standards board a rulemaking proposal to consider revising certain standards relating to the prevention of heat illness, protection from wildfire smoke, and toilet facilities on construction jobsites. Existing law also requires the standards board to review the proposed changes and consider adopting revised standards on or before December 31, 2025. This bill would require the standards board, before December 1, 2026, to draft a rulemaking proposal to revise a regulation on first aid materials to require all first aid kits in a workplace to include nasal spray naloxone hydrochloride. The bill would require the standards board to adopt revised standards for the standards described above on or before December 31, 2026. Board staff is monitoring for potential impacts on Board operations.

AB-3043 Occupational safety: fabrication activities. (2023-2024) - NEW

AB-3043	AB-13043 Occupational safety: fabrication activities (2023-2024) (Rivas)

Date	Action
02/17/24	From printer. May be heard in committee March 18.

02/16/24	Read first time. To print.

Summary:

AB 3043, as introduced, Luz Rivas. Occupational safety: fabrication activities.

Existing law establishes the Occupational Safety and Health Standards Board within the Department of Industrial Relations to promulgate and enforce occupational safety and health standards for the state, including standards dealing with exposure to harmful airborne contaminants. Existing law requires the Division of Occupational Safety and Health within the department to enforce all occupational safety and health standards, as specified. A violation of these standards and regulations under specific circumstances is a crime.

This bill would prohibit a person engaged in fabrication activities or fabrication shops from using dry methods, and require the use of effective wet methods in any fabrication activities. The bill would make a violation of these provisions grounds for, among other disciplinary action, an immediate order prohibiting continued fabrication activities. The bill would authorize the Attorney General, upon request of the department, to petition the superior court to impose civil penalties for a violation of these provisions.

The bill would require, on or before July 1, 2025, the department to consult with representatives of approved apprenticeship programs to establish a training curriculum regarding the safe performance of fabrication activities that meets specified requirements, including classroom instruction, and to certify a person who has completed that curriculum immediately upon completion. The bill would prohibit, beginning January 1, 2026, an owner or operator of a slab product fabrication shop from permitting a person from performing fabrication activities or employing a person to perform work near those activities, unless the person is certified by the department as having completed the training curriculum, except as specified.

The bill would require, on or before January 1, 2026, the department to develop an application and licensing process for fabrication shops to lawfully engage in fabrication activities known as a “slab product fabrication activity” license. The bill would authorize fabrication shops to engage in fabrication activities during the pendency of the application and licensing development process.

The bill would require, beginning January 1, 2026, the department to grant a 3-year license to a fabrication shop that demonstrates satisfaction of specified criteria involving workplace safety conditions and precautions, and would authorize license renewal, as specified. Among other conditions, the bill would establish certain regulatory fees in unspecified amounts for the license and renewal thereof. The bill would authorize the department to suspend or revoke a licensee in certain cases, including for gross negligence, as specified. The bill would

	prohibit a person or entity, or an employee thereof, from engaging in fabrication activities unless the person or entity has a license. The bill would require, beginning January 1, 2026, an owner or operator of a slab product fabrication shop to comply with specified requirements with respect to employees who perform fabrication activities, including paying each employee at least the general prevailing rate of per diem wages for the geographic area, except as otherwise specified. The bill would authorize the department to, among other disciplinary action, suspend or revoke a license if the department finds that the owner or operator willfully violated these provisions. The bill would prohibit, beginning January 1, 2026, a person from supplying a slab product directly to a person or entity engaged in fabrication activities if the person or entity does not have a valid license. The bill would require a person that, among other things, supplies a slab product to a person or entity engaged in fabrication services to verify the person or entity has a license, as specified. The bill would require a person that supplies a slab product to a person or entity that is not engaged in fabrication activities to rely on written certification issued under penalty of perjury that, among other things, they will not directly engage in fabrication activities with the product without a license. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill would specify that a violation of any of the above-described provisions may be grounds for disciplinary action, as specified, but is not a crime. The bill would require moneys recovered pursuant to the above-described provisions to be deposited in an unspecified account, for expenditure by the department, upon appropriation by the Legislature. The bill would require the Director of Industrial Relations to maintain a publicly accessible database on the department's internet website that includes, among other things, information on any active orders issued by the department in the prior 12 months prohibiting an activity at a fabrication shop, as specified. Beginning January 1, 2026, the bill would require that internet website to contain additional information in the database, including information on fabrication shops in the state licensed under the bill's provisions. On or before July 1, 2025, the bill would require the department, in consultation with specified agencies, to submit a report to the Legislature pursuant to prescribed requirements, including specifying the number of violations issued for failure to comply with any temporary or future standards adopted by the board. On or before January 1, 2027, and January 1, 2029, the bill would require the department, in consultation with other specified entities, to submit a report to the Legislature pursuant to prescribed requirements, including, in addition to the information contained in the initial report, the number of licenses issued by the department. The bill would define various terms for these purposes. The bill would make findings and declarations related to these provisions.

	The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason. Board staff is monitoring for potential impacts on Board operations.

AB-3106 Infectious disease: excluded employees. (2023-2024) - NEW

AB-3106	**AB-3106** Infectious disease: excluded employees. **(2023-2024)** (Schiavo) **Date** / **Action** 02/17/24 — From printer. May be heard in committee March 18. 02/16/24 — Read first time. To print. Summary: AB 3106, as introduced, Schiavo. Infectious disease: excluded employees. Existing law grants the Division of Occupational Safety and Health, which is within the Department of Industrial Relations, jurisdiction over all employment and places of employment, with the power necessary to enforce and administer all occupational health and safety laws and standards. The Occupational Safety and Health Standards Board, an independent entity within the department, has the exclusive authority to adopt occupational safety and health standards within the state. Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified, and charges the division with enforcement of the act. Other existing law relating to occupational safety imposes special provisions on certain industries and charges the division with enforcement of these provisions. This bill would require an employer to ensure that COVID-19 cases, defined as persons who have a positive COVID-19 test, are excluded from the workplace until prescribed return-to-work requirements are met. The bill, with specified exceptions, would require an employer

	to continue and maintain an excluded employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been excluded from the workplace, as prescribed. The bill would require the standards board, by February 3, 2025, to adopt a standard that extends these protections to any occupational infectious disease covered by any permanent infectious disease standard adopted to succeed an existing standard for COVID-19 prevention. The bill would require the division to enforce the bill by the issuance of a citation alleging a violation and a notice of civil penalty, as specified. The bill would authorize any person who receives a citation and penalty to appeal the citation and penalty to the Occupational Safety and Health Appeals Board. Board staff is monitoring for potential impacts on Board operations.

SB-686 Domestic workers: occupational safety.(2023-2024) – UPDATED

SB-686

SB-686 Domestic workers: occupational safety.(2023-2024)

(Durazo)

Date	Action
01/25/24	Veto sustained.
09/30/23	In Senate. Consideration of Governor's veto pending.
09/30/23	Vetoed by the Governor.
9/26/23	Enrolled and presented to the Governor at 2:30 p.m.
09/14/23	Assembly amendments concurred in. (Ayes 27. Noes 8.) Ordered to engrossing and enrolling.
09/13/23	In Senate. Concurrence in Assembly amendments pending.
09/13/23	Read third time. Passed. Ordered to the Senate.

09/08/23	Ordered to third reading.
09/08/23	Read third time and amended.
09/05/23	Read second time. Ordered to third reading.
09/01/23	Read second time and amended. Ordered to second reading.
09/01/23	From committee: Do pass as amended. (Ayes 11. Noes 4.) (September 1).
08/23/23	August 23 set for first hearing. Place on suspense file.
06/29/23	From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (June 28). Re-referred to Com. on APPR.
06/08/23	Referred to Com. on L. and E.
05/26/23	In Assembly. Read first time. Held at Desk.
05/26/23	Read third time. Passed. (Ayes 23. Noes 8.) Ordered to the Assembly.
05/18/23	Read second time. Ordered to third reading.
05/18/23	From committee: Do pass. (Ayes 5. Noes 2.) (May 18).
05/08/23	May 8 hearing: Placed on APPR suspense file.
05/01/23	Set for hearing on May 8.
04/26/23	From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 1.) (April 26). Re-referred to Com. on APPR.
04/13/23	Set hearing for April 26.
03/01/23	Referred to Com. on L., P.E. & R.

02/17/23	From printer. May be acted upon on or after March 19.
2/16/23	Introduced. Read first time. To Com. on RLS. for assignment. To print.

Summary:

SB 686, as amended, Durazo. Domestic workers: occupational safety.

Existing law establishes within the Department of Industrial Relations the Division of Labor Standards Enforcement and the Division of Occupational Safety and Health, with duties and powers, as prescribed.

Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. The act charges the Division of Occupational Safety and Health with enforcement of the act, subject to oversight by the Chief of the Division of Occupational Safety and Health. The act excludes household domestic service from the definition of "employment." The act requires the chief, or a representative of the chief, to convene an advisory committee for the purposes of creating voluntary guidance and making recommendations to the department and the Legislature on policies the state may adopt to protect the health and safety of privately funded household domestic service employees, except publicly funded household domestic service and family daycare homes, as specified. The act requires the advisory committee to develop voluntary industry-specific occupational health and safety guidance relating to workplace hazards and the prevention or minimization of work-related injuries and illnesses. The act requires the advisory committee to make recommendations, as specified, on additional policies to protect the health and safety of household domestic service employees. Under specified circumstances, a violation of the act is a crime.

Existing law requires the Division of Labor Standards Enforcement, upon appropriation of funding for this purpose, to establish and maintain an outreach and education program for the purpose of promoting awareness of, and compliance with, labor protections that affect the domestic work industry and fair and dignified labor standards in this industry and other low-wage industries. Existing law requires the Division of Labor Standards Enforcement to issue a competitive request to community-based organizations (CBOs) to provide education and outreach services in this connection and prescribes requirements for these organizations. Existing law makes CBOs responsible for developing and consulting with the Division of Labor Standards Enforcement regarding the core education and outreach materials, as specified. Existing law requires the Division of Labor Standards Enforcement and CBOs to meet at least biannually to coordinate efforts around outreach, education, and enforcement, including sharing information, in accordance with applicable privacy and confidentiality laws, that will shape and inform the overall enforcement strategy of the division regarding low-wage industries, including the domestic work industry. Existing law prohibits the Division of Labor

	Standards Enforcement from expending more than 5% of the budget allocation on the administration of the program. This bill would make CBOs responsible for developing and consulting with the Division of Occupational Safety and Health regarding the core education and outreach materials regarding health and safety standards, retaliation, and the division's workplace safety complaint and retaliation process, including specific issues that affect the domestic work industry differently. The bill would make CBOs responsible for all costs related to the development, printing, advertising, or distribution of the education and outreach materials. The bill would require the chief, representatives of the consultation services and enforcement branches of the Division of Occupational Safety and Health, and CBOs to meet periodically, as specified, to coordinate efforts around outreach, education, and enforcement. The bill would prohibit the Division of Labor Standards Enforcement and the Division of Occupational Safety and Health from expending more than 5% of the budget allocation on the administration of the program. The bill would remove the repeal date, thereby making these provisions operative indefinitely. This bill, for purposes of the California Occupational Safety and Health Act of 1973, commencing January 1, 2025, would narrow the exclusion of household domestic service from the definition of "employment" to exclude only publicly funded household domestic service and family daycare homes, as specified. The bill would require the Division of Occupational Safety and Health, by January 1, 2025, to adopt industry guidance to assist household domestic service employers on their legal obligations under existing occupational safety and health laws and regulations that apply to the work activity of household domestic service employees. The bill would require the guidance to be consistent with the voluntary industry guidelines established by the advisory committee. The bill would require a household domestic services employer, by January 1, 2025, to comply with, and adhere to, all applicable occupational safety and health regulations. The bill would require the Division of Occupational Safety and Health, if the division determines that additional industry-specific regulations are necessary, to propose those regulations to the standards board for its review, and would require the standards board to adopt regulations by January 1, 2026. The bill would require the Division of Occupational Safety and Health, upon appropriation of funds by the Legislature to the division for the specified purpose, to establish and administer the Household Domestic Services Employment Safety and Technical Assistance Program for the purpose of providing one-time grants and technical assistance to household domestic service employers, as prescribed. The bill would prohibit the Division of Occupational Safety and Health from expending more than 5% of the budget allocation on the administration of the program. The bill would require the program to commence by July 1, 2024, and continue until July 1, 2029, with an opportunity to expand or renew contingent on the additional allocation of state funds or identification of other revenue sources.

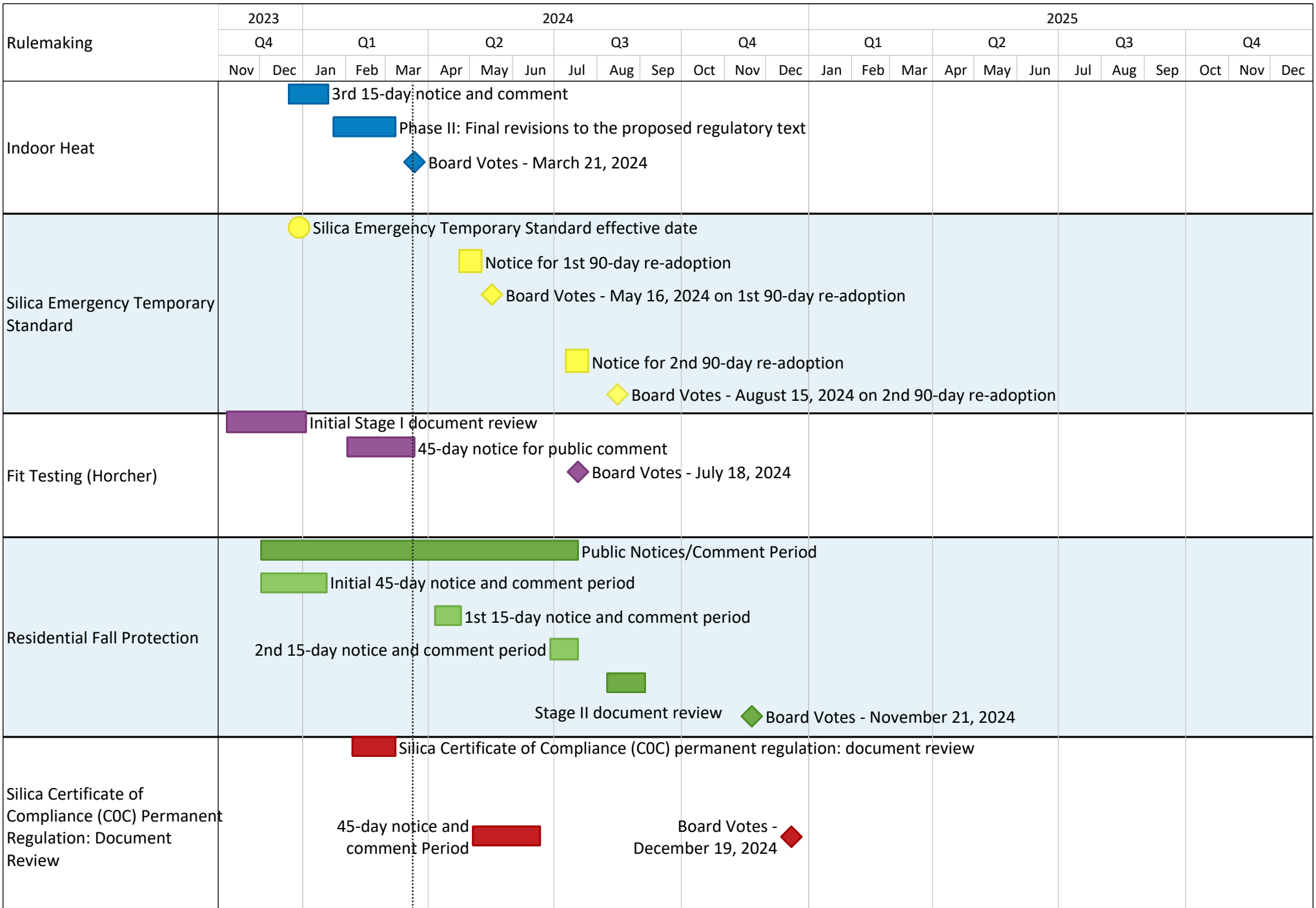
	By expanding the application of criminal penalties under the act to household domestic service employers, this bill would impose a state-mandated local program. The bill would make related legislative findings and declarations. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason. Board staff is monitoring for potential impacts on Board operations.

Occupational Safety and Health Standards Board

Business Meeting

Acting Executive Officer's Report

2024-2025 Rulemaking



2024-2025 Rulemaking