Occupational Safety and Health Standards Board

Public Meeting, Public Hearing and
Business Meeting

June 20, 2024

SCIF Vacaville Learning Center
Claude Fellows Conference Room
1010 Vaquero Circle
Vacaville, California

AND

Via teleconference / videoconference

Occupational Safety and Health Standards Board

Meeting Agenda

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(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.

June 20, 2024 at 10:00 a.m.

Attend the meeting in person:

SCIF Vacaville Learning Center
Claude Fellows Conference Room
1010 Vaquero Circle
Vacaville, CA 95688

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. **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

III. **PUBLIC HEARING**

A. EXPLANATION OF PROCEDURES

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

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 5204
Occupational Exposures to Respirable Crystalline Silica

IV. **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**
New Section 3396
Heat Illness Prevention in Indoor Places of Employment
(Heard at the May 18, 2023 Public Hearing)

B. PROPOSED PETITION DECISION FOR ADOPTION

1. United Steel Workers Local 5, (USW)
Tracy W. Scott, President, Staff Representative
Petition File No. 601

Petitioner requests to amend Title 8, General Industry Safety Orders (GISO), section 5189.1, Process Safety Management (PSM) for Petroleum Refineries. The Petitioner requests to expand the scope of section 5189.1, Process Safety Management (PSM) for Petroleum Refineries, to include refineries that are now processing renewable feedstocks in place of petroleum. The Petitioner notes that physical properties of petroleum crude oil versus renewable fats, oils and greases may be different, but those differences end at the point of delivery to the facility where the feedstock is processed into highly flammable gasoline, jet fuel, diesel and industrial chemicals.

Petitioner states that because the scope of 5189.1 does not explicitly include refineries that process renewables, management has exempted their plant from 5189.1 (California's groundbreaking PSM regulation for oil refineries that the Standards Board adopted in 2017) and decided to revert to the antiquated 1992 PSM standard, section 5189. Petitioner states that Section 5189 is ineffective and adds that under section 5189, this refinery is on the path to a catastrophic loss of

containment that could injure or kill many workers and could threaten the safety and health of thousands of nearby residents.

The Petitioner requests an Emergency Temporary Standard (ETS) to correct this flaw in Cal/OSHA's refinery safety regulations after one of their members was critically burned at their refinery from a loss of containment of flammable liquids.

2. National Safety Council (NSC)
Lorraine M. Martin, President and CEO
Petition File No. 602

Petitioner requests to amend Title 8, General Industry Safety Orders (GISO), section 3400, Medical Services and First Aid, and Construction Safety Orders (CSO) section 1512, Emergency Medical Services. The Petitioner requests to include a requirement to have opioid overdose reversal medication stocked at job sites and worker administration training as part of these regulations. The Petitioner notes that with the number of workplace overdose deaths on the rise, opioid overdose reversal medication is now an essential component of an adequate first-aid kit and that no industry or occupation is immune to this crisis.

Petitioner states that workplace overdose deaths have increased 536 percent since 2011, that nationally, overdoses now account for nearly 1 in 11 worker deaths on the job, but, in California, over 18 percent of workplace fatalities in 2021 were due to an unintentional overdose. Including these medications at worksites – either in a first aid kit or elsewhere – and training employees to use it is a critical component of emergency response to help save a life and would help California combat the opioid crisis by ensuring worksites are appropriately equipped to respond to such an emergency.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. **Consent Calendar**

D. REPORTS

1. Legislative Update

2. Cal/OSHA Update

3. Acting Executive Officer's Report

E. 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).).

F. CLOSED SESSION

Pending Decisions

1. Permanent Variance No. 20-V-096 (Tutor Perini/O&G JV)

Matters Pending Litigation

2. 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

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

Personnel

G. RETURN TO OPEN SESSION

1. Report from Closed Session

H. ADJOURNMENT OF THE BUSINESS MEETING

Next Meeting: July 18, 2024
Ronald Reagan State Building
Auditorium
300 South Spring Street
Los Angeles, CA 90013
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

Occupational Exposures to Respirable Crystalline Silica

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

SECTION 5204

OCCUPATIONAL EXPOSURES TO RESPIRABLE CRYSTALLINE SILICA

HYPERLINKS TO RULEMAKING DOCUMENTS:

From: Chris Culhane
To: DIRInfo; DIR OSHSB; DIR DOSH Outreach Coordination Program
Subject: Quick Silica Dust Safety Question
Date: Tuesday, May 14, 2024 7:08:21 AM

Hi State of California DIR Team,

Happy Tuesday!

I hope this email finds you well!

My name is Chris, and I work with ConsumerNotice.org; a consumer advocacy website that provides reliable health and safety information. I saw you shared some useful resources, https://www.dir.ca.gov/dosh/respiratory-silica-FAQ.html, and I wanted to share this information with you.

Silica is a mineral found in many common products and fine silica dust particles can penetrate the lungs, leading to a variety of health complications such as COPD, lung cancer, and more. Certain occupations such as construction workers, masons, potters, and more are the most at risk for exposure due to their use of products containing silica dust. According to OSHA, over 2 million people are exposed to silica dust at work.

We created a guide on silica dust to help educate others on the risks, where they can be found, and more. Please take a look:

https://www.consumernotice.org/environmental/silica-dust/

I am also including our guide on silicosis, a lung disease caused by silica dust exposure for reference:

https://www.consumernotice.org/environmental/silica-dust/silicosis/

I thought these guides would be beneficial to share with your community! Would you consider adding them as resources to your website to better inform people about the potential risks of silica dust?

Thank you for taking the time to read this email, I hope to hear your thoughts!

All the best,

Chris Culhane, MBA | Outreach Coordinator

Consumer Notice

1 S Orange Ave. STE 203 | Orlando, FL 32801

U.S. Department of Labor

Occupational Safety and Health Administration
San Diego Area Federal OSHA Office
550 West C Street, Suite 970
San Diego, CA 92101

May 21, 2024

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

Ms. Deitrich:

This letter is in response to the advisory opinion request made May 9, 2024 concerning the occupational safety and health standard: Title 8, General Industry Safety Orders, Section 5204; Occupational Exposures to Respirable Crystalline Silica.

We completed our review of the revisions to the regulation. The proposed occupational safety and health standard appears to be at least as effective as the federal standard.

Thank you for providing the necessary documentation to conduct an analysis. If you have any questions, I can be reached at 619-557-2910.

Sincerely,

Derek Engard

Derek Engard, CIH, CSP
Area Director

FEDERAL: Title 29 Code of Federal Regulations Section 1910.1053	STATE: Title 8 General Industry Safety Orders Permanent	RATIONALE
§1910.1053 - Respirable crystalline silica.	§ 5204. Occupational Exposures to Respirable Crystalline Silica.	No proposed change to the title of regulation.
(a) Scope and application.	**(a) Scope and application.**	Numbering throughout the subsection has been modified for consistency with current formatting. This revision is at least as effective as the federal regulation.
1910.1053(a)(2) This section does not apply where the employer has objective data demonstrating that employee exposure to respirable crystalline silica will remain below 25 micrograms per cubic meter of air (25 µg/m^3) as an 8-hour time-weighted average (TWA) under any foreseeable conditions.	5204(a) Scope and application. (a)(2) This section does not apply where the employer has objective data demonstrating that employee exposure to respirable crystalline silica will remain below 25 micrograms per cubic meter of air (25 µg/m^3) as an 8-hour time-weighted average (TWA) under any foreseeable conditions.	This subsection is identical to the federal regulations; however, an exception was added to subsection (a)(2) and new section (a)(3) was created to ensure that certain work known to endanger workers (“high-exposure trigger tasks”) is not excluded from the regulation. This revision is at least as effective as the federal regulation.

No equivalent federal provision.	<u>EXCEPTION: Subsection (a)(2) does not apply to high-exposure trigger tasks, as defined in subsection (b).</u>	The proposed regulation would add a new "Exception" to subsection (a)(2), as follows: "EXCEPTION: Subsection (a)(2) does not apply to high-exposure trigger tasks, as defined in subsection (b)." The proposed "Exception" to subsection (a)(2) removes this regulatory gap from section 5204 for "high-exposure trigger tasks," as defined in the proposal. The effect of this proposed addition is to prevent employers from using subsection (a)(2) as a way to avoid complying with section 5204. This revision is at least as effective as the federal regulation.

No equivalent federal provision.	(a)(3) This section applies to high-exposure trigger tasks regardless of employee exposures, exposure assessments, or objective data.	The proposed regulation would add a new subsection (a)(3), as follows: "High-exposure trigger tasks are covered by this section regardless of employee exposures, exposure assessments, or objective data." This definition is necessary to ensure that the scope of 5204 covers high-exposure trigger tasks. This revision is at least as effective as the federal regulation.
(b) Definitions	**(b) Definitions.**	Numbering was added to each definition for consistency with current requirements from the California Office of Administrative Law. There were also "quotes" added around each defined term. This revision is at least as effective as the federal regulation.
No corresponding federal definition	(b)(2) "Artificial Stone" means any reconstituted, artificial, synthetic, composite, engineered, or manufactured stone, porcelain, or quartz. It is commonly made by binding crushed or pulverized stone with adhesives, polymers, epoxies, resins, or other binding materials to form a slab.	A definition for "artificial stone" is necessary to identify this exceptionally hazardous form of silica containing material.

		This revision is at least as effective as the federal regulation.
No corresponding federal definition	(b)(3) "Chief" means the Chief of the Division of Occupational Safety and Health (Division), or designee.	This change is necessary to clarify that the term "Division," as used throughout the proposed emergency regulation, refers to the Division of Occupational Safety and Health. This revision is at least as effective as the federal regulation.
No corresponding federal definition	(b)(4)"Confirmed Silicosis" means any one of the following: (A) A written diagnosis of silicosis is made by a PLHCP accompanied by one or more of the following: 1. A chest X-ray, interpreted by an individual certified by the National Institute for Occupational Safety and Health (NIOSH) as a B Reader, classifying the existence of pneumoconioses of category 1/0 or higher; or 2. Results from a chest, computer tomography (CT) scan or other imaging technique that are consistent with silicosis; or 3. Lung histopathology consistent with silicosis; or (B) Death certificate listing silicosis or pneumoconiosis from silica dust as an underlying or contributing cause of death; or (C) Exposure to airborne respirable crystalline silica accompanied by one or more of the following: 1. Chest X-ray (or other imaging technique, such as a chest CT scan) showing abnormalities interpreted as consistent with silicosis; or 2. Lung histopathology consistent with silicosis.	This definition is necessary to identify workers with confirmed silicosis who need additional protections as identified in the regulation. This revision is at least as effective as the federal regulation.

Employee exposure means the exposure to airborne respirable crystalline silica that would occur if the employee were not using a respirator.	(6) "Employee Exposure" means the exposure to airborne respirable crystalline silica that would occur if the employee were not using a respirator. For high-exposure trigger tasks, employee exposure includes employees performing these tasks and employees working in the regulated area where the high-exposure trigger task is performed.	Additional information was added to the definition of "employee exposure" that is necessary to describe which employees are exposed to high-exposure trigger tasks. This revision is at least as effective as the federal regulation.
No corresponding federal definition	(b)(8) "High-Exposure Trigger Task" means machining, crushing, cutting, drilling, abrading, abrasive blasting, grinding, chiseling, carving, gouging, polishing, buffing, fracturing, intentional breaking, or intentional chipping of artificial stone that contains more than 0.1 percent by weight crystalline silica, or natural stone that contains more than 10 percent by weight crystalline silica. High-exposure trigger tasks also includes clean up, disturbing, or handling of wastes, dusts, residues, debris, or other materials created during the above-listed tasks.	High-exposure trigger tasks are those in which employees work with artificial stone that contains more than 0.1% silica, or with natural stone that contains more than 10% silica. The effect of this proposed addition is to establish that these tasks present unique health risks to employees and therefore require specific workplace protections described throughout the proposed changes, irrespective of monitoring data obtained by the employer, or "objective data" claimed by the employer, or feasibility considerations, all of which give employers the ability to avoid implementing certain

		workplace protections under the existing language of section 5204. This revision is at least as effective as the federal regulation.
No corresponding federal definition	EXCEPTION: Geologic field research is not a high-exposure trigger task when employees work in the field with natural stone for less than 30 days in a 12-month period and use respiratory protection in accordance with section 5144 during such work.	The exception to the definition of "high exposure trigger task" is needed to exempt geologic field research, where employees might handle natural stone that contains more than 10% silica for less than 30 days in a 12-month period. This exception is necessary because employees working in geologic field research are not able to install many of the protections required under the proposed revisions to section 5204. This revision is at least as effective as the federal regulation.
Physician or other licensed health care professional [PLHCP] means an individual whose legally permitted scope of practice (*i.e.*, license, registration, or certification) allows him or her to independently provide or be delegated the responsibility to provide some or all of the particular health care	(b)(10) "Physician or Other Licensed Health Care Professional (PLHCP)" means an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows ~~him or her~~ them to independently provide or be delegated the responsibility to provide some or all of the particular health care services required by subsection (j~~i~~).	The cross reference to subsection (i) was changed to subsection (j) due to additions and renumbering of the regulation. "Him or her" changed to "them" for gender neutrality.

services required by paragraph (i) of this section.		This revision is at least as effective as the federal regulation.
No corresponding federal definition	(b)(11) "Qualified Person", for purposes of this section only, means a person who, by extensive instruction, knowledge, training, and experience, has demonstrated their ability to effectively perform, and interpret the results of, representative air monitoring for occupational exposure to respirable crystalline silica.	This new definition for "qualified person" is needed to describe which persons are allowed to conduct air monitoring when required by section 5204. This revision is at least as effective as the federal regulation.
Regulated area means an area, demarcated by the employer, where an employee's exposure to airborne concentrations of respirable crystalline silica exceeds, or can reasonably be expected to exceed, the PEL	(b)(12) "Regulated Area" means an area, demarcated by the employer, where an employee's exposure to airborne concentrations of respirable crystalline silica exceeds, or can reasonably be expected to exceed, the permissible exposure limit (PEL) as described in subsection (c).	This change clarifies that the term "PEL" refers to "permissible exposure limit," which is further defined in subsection (c). This revision is at least as effective as the federal regulation.
No corresponding federal definition	(b)(15) "Suspected Silicosis" means any one of the following: (A) An employee with respirable crystalline silica exposure who has one or more of the following symptoms for 14 or more days unless the symptom is explained by another illness: cough, difficulty breathing, fatigue, shortness of breath, chest pain, weakness, fever, or unexplained weight loss; or (B) An employee with clinical findings suggestive of silicosis; or	This new definition includes three possible classifications of silicosis based on signs and symptoms, radiological findings or abnormal spirometry. This definition is necessary to clarify the meaning of "suspected silicosis" as it applies to the proposed amendments to section 5204. Suspected silicosis can be

	(C) An employee with respirable crystalline silica exposure with abnormal spirometry regardless of symptoms that is not yet a confirmed silicosis case.	identified in each of these three ways; it is not necessary, for example, to await radiological confirmation. This definition allows for early action to protect an employee from continued exposure, and to ensure proper medical support, rather than waiting for radiological confirmation of disease, at which point serious damage to the lungs has likely already taken place. This revision is at least as effective as the federal regulation.
No corresponding federal definition	(b)(17) "Wet Methods" means effectively suppressing dust by one of the methods listed below, such that exposures do not exceed the action level at any time. Regardless of the method used, water shall cover the entire surface of the work object where a tool, equipment, or machine contacts the work object. (A) Applying a constant, continuous, and appropriate volume of running water directly onto the surface of the work object. When water flow is integrated with a tool, machine, or equipment, water flow rates shall equal or exceed manufacturer recommendations and specifications to ensure effective dust suppression. (B) Submersing the work object underwater.	This new definition describes three wet methods for effectively suppressing dust: (A) Applying water directly onto the work object; (B) submersing the work object under water; or (C) using a water jet cutting tool. The effect of this proposed addition is to clarify that only certain types of wet methods qualify as such under the proposed amendments to section 5204. Ineffective wet methods

	(C) Water jet cutting (use of high-pressure water to cut material).	that rely on an inadequate volume of water, for example, would be prohibited under the revised section 5204. This revision is at least as effective as the federal regulation.
(c) Permissible exposure limit (PEL)	**(c) Permissible exposure limit (PEL)**	No proposed changes to this subsection.
(d) Exposure assessment.	**(d) Exposure assessment.**	
(d)(1) ***General***. The employer shall assess the exposure of each employee who is or may reasonably be expected to be exposed to respirable crystalline silica at or above the action level in accordance with either the performance option in paragraph (d)(2) or the scheduled monitoring option in paragraph (d)(3) of this section.	**(d)(1) General**. The employer shall assess the exposure of each employee who is or may reasonably be expected to be exposed to respirable crystalline silica at or above the action level in accordance with either the performance option in subsection (d)(2) or the scheduled monitoring option in subsection (d)(3). Regardless of exposures or expected exposures, all high-exposure trigger tasks shall be assessed by scheduled monitoring in accordance with subsection (d)(3).	An addition to subsection to (d)(1) is needed to identify tasks where employers must monitor employee exposures regardless of previous measurements or expected exposures. This revision is at least as effective as the federal regulation.
(d)(2) ***Performance option***. The employer shall assess the 8-hour TWA exposure for each employee on the basis of any combination of air monitoring data or objective data sufficient to accurately characterize employee exposures to respirable crystalline silica.	**(d)(2) Performance option**. The employer shall assess the 8-hour TWA exposure for each employee on the basis of any combination of air monitoring data or objective data sufficient to accurately characterize employee exposures to respirable crystalline silica. Subsection (d)(2) does not apply to high-exposure trigger tasks; these tasks shall be assessed by scheduled monitoring in accordance with subsection (d)(3).	The proposed regulation would add a new sentence to subsection (d)(2), which prohibits employers from using the performance option set out in subsection (d)(2) for high-exposure trigger tasks. This exemption is necessary because the full complement of

		workplace protections required under the proposed changes to section 5204 must be implemented when employees are engaged in high-exposure trigger tasks, as defined, irrespective of monitoring data obtained by the employer, or "objective data" claimed by the employer, or feasibility considerations, all of which give employers the ability to avoid implementing certain workplace protections under the existing language of section 5204. This revision is at least as effective as the federal regulation.
(d)(3) **Scheduled monitoring option**. (i) The employer shall perform initial monitoring to assess the 8-hour TWA exposure for each employee on the basis of one or more personal breathing zone air samples that reflect the exposures of employees on each shift, for each job classification, in each work area. Where several employees perform the same tasks on the same shift and in the same work area,	**(d)(3) Scheduled monitoring option.** (d)(3)(A) The employer shall perform initial monitoring to assess the 8-hour TWA exposure for each employee on the basis of one or more personal breathing zone air samples that reflect the exposures of employees on each shift, for each job classification, in each work area. Where several employees perform the same tasks on the same shift, on the same material and in the same work area, the employer may sample a representative fraction of these employees in order to meet this requirement. In representative sampling, the employer	The proposed regulation would add the phrase at subsection (d)(3)(A) "…on the same material…" This addition is necessary because the silica content can vary greatly between different materials handled by employees covered by this section. This subsection pertains to exposure monitoring

the employer may sample a representative fraction of these employees in order to meet this requirement. In representative sampling, the employer shall sample the employee(s) who are expected to have the highest exposure to respirable crystalline silica.	shall sample the employee(s) who are expected to have the highest exposure to respirable crystalline silica.	conducted by the employer to determine whether ongoing monitoring is needed. This addition helps ensure the veracity of these assessments. This revision is at least as effective as the federal regulation.
(d)(3) (ii) If initial monitoring indicates that employee exposures are below the action level, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring.	(d)(3**)**(B) If initial monitoring indicates that employee exposures are below the action level, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring. Monitoring shall not be discontinued for high-exposure trigger tasks. High-exposure trigger tasks shall be monitored at least every 12 months, or more frequently as required in this section.	The addition is necessary to ensure that monitoring is not discontinued for high exposure trigger tasks. This revision is at least as effective as the federal regulation.
(d)(3) (v) Where the most recent (non-initial) exposure monitoring indicates that employee exposures are below the action level, the employer shall repeat such monitoring within six months of the most recent monitoring until two consecutive measurements, taken 7 or more days apart, are below the action level, at which time the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring, except as	(d)(3)(E) Where the most recent (non-initial) exposure monitoring indicates that employee exposures are below the action level, the employer shall repeat such monitoring within six months of the most recent monitoring until two consecutive measurements, taken 7 or more days apart, are below the action level, at which time the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring, except as otherwise provided in subsection (d)(4). Monitoring shall not be discontinued for high-exposure trigger tasks. High-exposure trigger tasks shall be monitored by a qualified person, as	The addition is necessary to ensure that monitoring is not discontinued and that monitoring is repeated at least every 12 months for high-exposure trigger tasks. This revision is at least as effective as the federal regulation.

otherwise provided in paragraph (d)(4) of this section.	defined under subsection (b), at least every 12 months or more frequently as required in this section.	
1910.1053(e) *Regulated areas*	**(e) Regulated areas.**	
1910.1053(e)(1) ***Establishment***. The employer shall establish a regulated area wherever an employee's exposure to airborne concentrations of respirable crystalline silica is, or can reasonably be expected to be, in excess of the PEL.	(e)(1**)** Establishment. The employer shall establish a regulated area wherever an employee's exposure to airborne concentrations of respirable crystalline silica is, or can reasonably be expected to be, in excess of the PEL. All high-exposure trigger tasks shall be conducted within a regulated area regardless of employee exposures, exposure assessments, or other objective data.	The proposed regulation would add a new sentence at subsection (e)(1) that requires all high-exposure trigger tasks to be conducted in a "regulated area," regardless of the employer's measured exposure levels or objective data. The existing regulation requires the employer to establish "regulated areas" whenever an employee's exposure to RCS is likely to exceed the PEL; therefore, under the existing regulation, the use of regulated areas is subject to the findings of the employer's exposure assessments, which are highly variable, difficult to perform properly, and easily manipulated. The effect of this addition is to ensure that all high-exposure trigger tasks will be conducted inside a "regulated area," regardless of the

		employer's exposure monitoring findings. This approach assumes that high-exposure trigger tasks will produce RCS exposure levels over the PEL and should therefore always be performed in the facility's "regulated area," as defined. This revision is at least as effective as the federal regulation.
1910.1053(e)(2)(ii) The employer shall post signs at all entrances to regulated areas that bear the legend specified in paragraph (j)(2) of this section.	(e)(2)(B) The employer shall post signs at all entrances to regulated areas that bear the legend specified in subsection (l~~j~~)(~~2~~3).	At subsection (e)(2)(B), the proposal changes "subsection (j)(2)" to "subsection (l)(3)" because a new subsection (g), Imminent Hazards, has been added, which requires renumbering. This revision is at least as effective as the federal regulation.
(e)(4) ***Provision of respirators***. The employer shall provide each employee and the employee's designated representative entering a regulated area with an appropriate respirator in accordance with paragraph (g) of this section and shall	(e)(4) Provision of respirators. The employer shall provide each employee and the employee's designated representative entering a regulated area with an appropriate respirator in accordance with subsection (h~~g~~) and shall require each employee and the employee's designated representative to use the respirator while in a regulated area.	At subsection (e)(4), the proposal changes "subsection (g)" to "subsection (h)" because a new subsection (g), Imminent Hazards, has been added, which requires renumbering.

require each employee and the employee's designated representative to use the respirator while in a regulated area.		This revision is at least as effective as the federal regulation.
1910.1053(f) ***Methods of compliance-***	**(f) Methods of compliance.**	
(f)(1) ***Engineering and work practice controls***. The employer shall use engineering and work practice controls to reduce and maintain employee exposure to respirable crystalline silica to or below the PEL, unless the employer can demonstrate that such controls are not feasible. Wherever such feasible engineering and work practice controls are not sufficient to reduce employee exposure to or below the PEL, the employer shall nonetheless use them to reduce employee exposure to the lowest feasible level and shall supplement them with the use of respiratory protection that complies with the requirements of paragraph (g) of this section.	(f)(1) Engineering and work practice controls. The employer shall use engineering and work practice controls to reduce and maintain employee exposure to respirable crystalline silica to or below the PEL, unless the employer can demonstrate that such controls are not feasible. Wherever such feasible engineering and work practice controls are not sufficient to reduce employee exposure to at or below the PEL, the employer shall nonetheless use them to reduce employee exposure to the lowest feasible level and shall supplement them with the use of respiratory protection that complies with the requirements of subsection (~~hg~~). Subsection (f)(1) does not apply to high-exposure trigger tasks. High-exposure trigger tasks shall comply with subsection (f)(2).	Numbering has been modified for consistency with current formatting. The proposed regulation would add several new provisions in lieu of existing subsection (f)(1) and instead require that certain tasks be performed with specific protections, as established by this subsection. The proposal does this by adding the following sentence: "Subsection (f)(1) does not apply to high-exposure trigger tasks, which are covered by subsection (f)(2)." At subsection (f)(1), the proposal changes "subsection (g)" to "subsection (h)" because a new subsection (g), Imminent Hazards, has been added, which requires renumbering. This revision is at least as effective as the federal regulation.

No equivalent federal provision.	(f)(2) The employer shall use the following engineering controls and work practices for all high-exposure trigger tasks, regardless of employee exposures, exposure assessments, or objective data.	The new subsection is necessary to ensure specific and effective engineering and work practice controls are used for high exposure trigger tasks explained in new subsection (f)(2). This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(2)(A) Engineering Controls. Effective wet methods that reduce exposure levels below the action level, as defined in subsection (b), shall be used.	The proposed regulation would add a new subsection (f)(2)(A) entitled "Engineering Controls" that would require effective wet methods to be used pursuant to subsection (f)(2)(A)1., as defined in subsection (b). This provision is necessary because wet methods are the most effective means of protecting employees and capturing silica dust that is generated during high-exposure trigger tasks. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(2)(B) Housekeeping and Hygiene.	The proposed regulation would add a new subsection (f)(2)(B)

No equivalent federal provision.	(f)(2)(B)1. Wastes, dusts, residues, debris, or other materials that are generated from high-exposure trigger tasks or that otherwise contain or are contaminated with respirable crystalline silica shall be promptly and properly cleaned up and placed into leak-tight containers, bags, or equivalent. At a minimum, all such wastes, dusts, residues, debris, or other materials shall be cleaned up at the end of each shift or more frequently as needed to ensure there is no visible dust build-up in the workplace. (f)(2)(B)2. Wet methods or vacuum cleaners equipped with HEPA filters shall be used to collect all wastes, dusts, residues, debris, or other materials that are generated from high-exposure trigger tasks or that otherwise contain or are contaminated with respirable crystalline silica. (f)(2)(B)3. Employees engaged in housekeeping tasks shall use respiratory protection in accordance with subsection (h)(3). (f)(2)(B)4. The employer shall provide readily accessible washing facilities in accordance with Section 3366 (Washing Facilities).	entitled "Housekeeping and Hygiene." New subsection (f)(2)(B)1., would require that dust and other materials generated from high-exposure trigger tasks be promptly cleaned up and placed into leak-tight containers to ensure there is no visible dust build-up in the workplace. New subsection (f)(2)(B)2., would require that wet methods or vacuum cleaners equipped with HEPA filters be used to clean up dust and other materials to ensure airborne silica is not generated during housekeeping activities. New subsection (f)(2)(B)3., would require that employees involved in housekeeping tasks be provided with appropriate respiratory protection, in accordance with subsection (h). New subsection (f)(2)(B)4., would require employers to provide washing facilities in accordance with existing title 8, section 3366.

		This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(2)(C) The Division may require the employer to take additional actions to protect employees through the issuance of an Order to Take Special Action in accordance with Section 332.3.	The new subsection is necessary to allow DOSH to issue Orders to Take Special Action. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(2)(D) Prohibitions. The following practices are prohibited for high-exposure trigger tasks, regardless of exposure levels. 1. Any use of compressed air: a. On waste, dust, debris, residue, or other materials that may contain crystalline silica; b. On any surface or clothing or body surface that may contain crystalline silica; and c. To back flush, backwash, or clean water, air, or other types of filters that may contain crystalline silica. 2. Any dry sweeping, shoveling, disturbing, or other dry clean-up of wastes, dusts, debris, or other materials that may contain crystalline silica. 3. Use of employee rotation as a means of reducing employee exposure to respirable crystalline silica.	The proposed regulation would add a new subsection (f)(2)(D) entitled “Prohibitions” that describes specific work practices that are expressly prohibited for high-exposure trigger tasks, regardless of measured employee exposure levels. This revision is at least as effective as the federal regulation.

	4. Walking or moving equipment on or through dry dust, debris, residue, or other materials that may contain crystalline silica.	
(f)(2) ***Written exposure control plan***.	(f)(3~~2~~) **Written exposure control plan.**	Subsection (f)(2) renumbered to (f)(3). This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(3)(D) In addition to the requirements of subsections (f)(3)(A) through (f)(3)(C), workplaces where high-exposure trigger tasks occur shall also include the following in their written exposure control plan:	A new subsection was added to the written exposure control plan to ensure documentation of protective methods to protect employees from high-exposure trigger tasks. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(3)(D)1. Results of air monitoring conducted by a qualified person, as defined under subsection (b), demonstrating whether engineering controls are effective at continuously maintaining exposure levels below the action level.	New subsection (f)(3)(D)1., a record of exposure measurements demonstrating that exposure levels are continuously below the AL. This element is necessary to ensure that RCS exposure controls are working effectively.

		This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(3)(D)2. Procedures for the proper donning and doffing of personal protective equipment, including work clothing and respiratory protection, to effectively prevent exposures to respirable crystalline silica above the action level and prevent take-home exposures.	New subsection (f)(3)(D)2., procedures for proper donning and doffing of work clothing and respiratory protection. This element is necessary because these activities can cause significant employee exposure to RCS if done improperly. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(3)(D)3. Documentation of proper reporting to the Division, pursuant to Section 5203, (Carcinogen Report of Use Requirements).	New subsection (f)(3)(D)3., documentation that the employer has registered their operations with Cal/OSHA in accordance with section 5203, Carcinogen Report of Use Requirements. This element is necessary to allow Cal/OSHA to identify and track stone fabrication shops. This revision is at least as effective as the federal regulation.

No equivalent federal provision.	(f)(3)(D)4. The procedures the employer will use to ensure that employees are properly trained to prevent respirable crystalline silica exposures, in accordance with subsection (l)(4).	New subsection (f)(3)(D)4., procedures the employer will use to ensure that employees are properly trained to prevent silica exposures in accordance with subsection (l)(4). This is necessary to ensure that training procedures are formally adopted into the employer's written exposure control plan, which improves their effectiveness. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(f)(3)(D)5. The procedures the employer will use to provide medical surveillance in accordance with subsection (j) and medical removal, if necessary, in accordance with subsection (k).	This addition is necessary to ensure that employers have a plan in place to provide for initial and periodic medical exams and, if warranted by findings of medical tests, to remove employees from exposure to RCS who may be at risk of developing silicosis. This revision is at least as effective as the federal regulation.

1910.1053(f)(3) ***Abrasive blasting***.	(f)(4~~3~~) **Abrasive blasting.**	Renumbered subsection (f)(3) to subsection (f)(4) due to new subsection (f)(2) above. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	**(g) Imminent Hazards.** (g)(1) Failure to comply with subsection (f)(2)(A), Engineering Controls, shall be considered an imminent hazard and shall be subject to an Order Prohibiting Use (issued pursuant to Labor Code Section 6325) by the Division. (g)(2) Failure to comply with any of the following shall be considered an imminent hazard and may be subject to an Order Prohibiting Use from the Division: (A) Subsection (f)(2)(D) Prohibitions; (B) Subsection (h) Respiratory protection; (C) Subsection (m) Reporting of silicosis; and (D) Section 5203 Carcinogen Report of Use Requirements.	The proposed regulation would add a new subsection (g) titled "Imminent Hazards" that lists specific activities associated with high-exposure trigger tasks. If observed by a Cal/OSHA Compliance Safety and Health Officer (CSHO), these activities would trigger either a mandatory Order Prohibiting Use (OPU), in the case of a violation of subsection (f)(2)(A) regarding wet methods, or an optional OPU, in the case of violations of subsection (f)(2)(D), Prohibitions; and subsection (h), Respiratory Protection. The optional OPU list also includes violations of subsection (m) Reporting of silicosis and the Carcinogen Reporting requirements of section 5203.

		This revision is at least as effective as the federal regulation.
1910.1053(g) ***Respiratory protection***-	**(hg) Respiratory protection.**	Existing subsection (g) would be changed to (h). Numbering has been modified for consistency with current formatting. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(h)(2) Subsection (h)(1) does not apply to high-exposure trigger tasks. High-exposure trigger tasks shall comply with subsection (h)(3).	New subsection was added to ensure employers follow more protective requirements in (h)(3) in lieu of less protective requirements in (h)(1). This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(h)(3) For all employees exposed to a high-exposure trigger task the employer shall provide, and shall ensure employees properly use, the following respiratory protection, in accordance with Section 5144:	New subsection (h)(3) would require employers to provide respiratory protection to employees who perform high-exposure trigger tasks or other work in regulated areas where high-exposure trigger tasks occur.

		This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(h)(3)(A) A full face, tight-fitting powered-air purifying respirator (PAPR), a helmet or hood PAPR with an Assigned Protection Factor (APF) of 1000 pursuant to section 5144, or a respirator providing equal or greater protection (APF of 1000 or greater) equipped with a HEPA, N100, R100, or P100 filter shall be used.	New subsection (h)(3)(A) requires that employers provide a full face, tight-fitting powered-air purifying respirator (PAPR) or a respirator providing equal or greater protection equipped with a HEPA, N100, R100, or P100 filter. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	EXCEPTION: The employer may provide employees with a loose-fitting PAPR (APF of 25), a half-face PAPR (APF of 50), a full facepiece air-purifying respirator (APF of 50), or another respirator providing equal or greater protection where the employer demonstrates that employee exposures to respirable crystalline silica are continuously maintained below the action level through representative air sampling conducted by a qualified person, as defined under subsection (b), at least once every six months, in accordance with subsection (d)(3)(A). This exception does not apply if the PLHCP or specialist recommends use of a full face, tight-fitting PAPR or other more protective respirator.	A second exception allows for the use of a loose-fitting PAPR, a half-mask PAPR, a full facepiece air-purifying respirator (APR), or another respirator providing equal or greater protection with an assigned protection factor of 25 or greater, where the employer demonstrates that employee exposures to RCS are continuously maintained below the AL through representative air sampling conducted at least once every six months by a qualified person, as defined under subsection (b), and

		in accordance with subsection (d)(3)(A). This exception does not apply if the PLHCP or specialist recommends use of a full face, tight-fitting PAPR, or another, more protective respirator. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(h)(3)(B) A full face, tight-fitting supplied-air respirator in pressure-demand or other positive pressure mode for any employees known to the employer to be diagnosed with confirmed silicosis, or who meet the definition of suspected silicosis, or whenever the PLHCP or specialist recommends use of a supplied-air respirator. The air source for the supplied-air respirator shall be located outside the regulated area and in an area that is free of respirable crystalline silica and other airborne contaminants.	New subsection (h)(3)(B) would require employers to provide a supplied-air respirator to employees who have been diagnosed with silicosis or suspected silicosis, or as recommended by the PLHCP or specialist. The subsection would require the employer to locate the air source supplying this respirator in an area that is free of RCS and other airborne contaminants. The effect of this addition is to ensure maximum protection for workers who are likely already on the path to silicosis. This revision is at least as effective as the federal regulation.

1910.1053(g)(2) ***Respiratory protection program***. Where respirator use is required by this section, the employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134.	(h)(4~~2~~) Respiratory protection program.	Subsection was changed to (h)(4). This revision is at least as effective as the federal regulation.
1910.1053(h) *Housekeeping*.	**(i~~h~~) Housekeeping.**	Subsection was renumbered to (i). This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(i)(3) The exceptions for feasibility in subsection (i) do not apply to high-exposure trigger tasks. High-exposure trigger tasks shall comply with subsection (f)(2).	New subsection (i)(3) would negate the feasibility exceptions in the existing 5204 that prohibit dry sweeping/brushing and use of compressed air for high-exposure trigger tasks covered by subsection (f)(2). This revision is at least as effective as the federal regulation.
1910.1053(i) *Medical surveillance*	**(j~~i~~) Medical surveillance.**	Subsection was renumbered to (j).

		This revision is at least as effective as the federal regulation.
1910.1053(i)(1)(i) The employer shall make medical surveillance available at no cost to the employee, and at a reasonable time and place, for each employee who will be occupationally exposed to respirable crystalline silica at or above the action level for 30 or more days per year.	(J)(1) General. (j)(1)(A) The employer shall make the initial and periodic medical examinations ~~surveillance~~ that are required by this subsection available at no cost to the employee, and at a reasonable time and place.~~,~~ ~~for each employee who will be occupationally exposed to respirable crystalline silica at or above the action level for 30 or more days per year.~~	This subsection (j)(1)(A) requires the employer to provide initial and periodic medical exams as part of a medical surveillance program. The subsection describes requirements based on whether the employee performs high-exposure trigger tasks. This revision is at least as effective as the federal regulation.
1910.1053(i)(1)(ii) The employer shall ensure that all medical examinations and procedures required by this section are performed by a PLHCP as defined in paragraph (b) of this section.	(j)(1)(B) The employer shall ensure that all initial and periodic medical examinations and procedures required by this section are performed by a PLHCP, as defined in subsection (b).	(j)(1)(B) The amendments to this paragraph make it clear that the initial and periodic exams required by the subsection must be performed by a physician or other licensed health care provider (PLHCP). This requirement ensures that these exams are performed by a qualified person. This revision is at least as effective as the federal regulation.

1910.1053(i)(2) **Initial examination**. The employer shall make available an initial (baseline) medical examination within 30 days after initial assignment, unless the employee has received a medical examination that meets the requirements of this section within the last three years. The examination shall consist of:	(j)(2) **Initial medical examination.** (j)(2)(A) For each employee exposed to a high-exposure trigger tasks for at least 10 days each year, ~~T~~the employer shall make available, ~~an~~ and shall inform employees of their right to, an initial (baseline) medical examination within 30 days after initial assignment, unless the employee has received a medical examination that meets the requirements of ~~this~~ subsection (j)(4) within the last ~~three~~ years. ~~The examination shall consist of:~~	(j)(2)(A). The amendments to this subsection require the employer to make an initial medical exam available within the first 30 days of employment to any employee who will perform high-exposure trigger tasks for at least 10 days each year, and to inform employees of this right. The employer is not required to make this exam available if the employee has had an exam that meets the requirements of (j)(4) within the last year. This revision is at least as effective as the federal regulation.
1910.1053(i)(2)(i) A medical and work history, with emphasis on: Past, present, and anticipated exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system; any history of respiratory system dysfunction, including signs and symptoms of respiratory disease (e.g., shortness of breath, cough, wheezing); history of tuberculosis; and smoking status and history;	~~(A) A medical and work history, with emphasis on: Past, present, and anticipated exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system; any history of respiratory system dysfunction, including signs and symptoms of respiratory disease (e.g., shortness of breath, cough, wheezing); history of tuberculosis; and smoking status and history;~~ ~~(B) A physical examination with special emphasis on the respiratory system;~~	This standardized set of requirements has been relocated and renumbered to new subsection (j)(4), Medical examination procedures, to ensure the effectiveness of the medical surveillance program, whose purpose is the early detection of disease.

1910.1053(i)(2)(ii) A physical examination with special emphasis on the respiratory system; 1910.1053(i)(2)(iii) A chest X-ray (a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems), interpreted and classified according to the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader; 1910.1053(i)(2)(iv) A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV1) and FEV1/FVC ratio, administered by a spirometry technician with a current certificate from a NIOSH-approved spirometry course; 1910.1053(i)(2)(v) Testing for latent tuberculosis infection; and 1910.1053(i)(2)(vi) Any other tests deemed appropriate by the PLHCP	~~(C) A chest X-ray (a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems), interpreted and classified according~~ ~~to the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader;~~ ~~(D) A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV1) and FEV1/FVC ratio, administered by a spirometry technician with a current certificate from a NIOSH-approved spirometry course;~~ ~~(E) Testing for latent tuberculosis infection; and~~ ~~(F) Any other tests deemed appropriate by the PLHCP~~	This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(j)(2)(B) For each employee who is occupationally exposed to respirable crystalline silica at or above the action level for 30 or	(j)(2)(B). This new paragraph is identical to (j)(2)(A) except that it

	more days per year, and who is not covered by subsection (j)(2)(A), the employer shall make available, and shall inform employees of their right to, an initial (baseline) medical examination within 30 days after initial assignment, unless the employee has received a medical examination that meets the requirements of this section within the last three years.	pertains to employees who do not perform high-exposure trigger tasks but who are otherwise exposed to RCS at or above the action level for 30 or more days per year. The employer is not required to make this exam available if the employee has had an exam that meets the requirements of (j)(4) within the last three years. The time period for exposure is longer (30 days) compared to the time period for high-exposure trigger tasks (10 days) because natural stone (with <10% silica) is inherently less hazardous than artificial stone. This revision is at least as effective as the federal regulation.
1910.1053(i)(3) **Periodic examinations**. The employer shall make available medical examinations that include the procedures described in paragraph (i)(2) of this section (except paragraph (i)(2)(v)) at least every three	(j)(3) **Periodic medical examinations.** (j)(3)(A) For each employee covered by subsection (j)(2)(A), ~~T~~the employer shall make available, and shall inform employees of their right to, a medical examinations ~~once a year, or more frequently if recommended by the PLHCP,~~ that ~~includes~~ meets the requirements of ~~procedures described in~~	(j)(3)(A). This amended paragraph would require the employer to make annual medical exams available to employees who perform high-exposure trigger tasks for at least 10 days each year, and to inform employees of this right. Annual medical exams

years, or more frequently if recommended by the PLHCP.	subsection (j~~i~~)(~~2~~4) ~~(except subsection (ji)(2)(E)) at least every three years, or more frequently if recommended by the PLHCP.~~	are necessary for these employees because the RCS particles generated from artificial stone are uniquely toxic. Compared to natural stone-associated silicosis, artificial stone-associated silicosis is characterized by short disease latency, rapid radiological progression, accelerated decline in lung function and high mortality. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	EXCEPTION: Subsection (j)(3)(A) does not apply where the employer demonstrates that employee exposures to respirable crystalline silica during high-exposure trigger tasks are continuously maintained below the action level through representative air sampling conducted by a qualified person, as defined in subsection (b), at least once every six months, in accordance with subsection (d)(3)(A). This exception does not apply if the PLHCP or specialist recommends periodic medical examinations. Employers who meet the requirements of this Exception shall still make available, and inform employees of their right to, medical examinations that meet the requirements of subsection (j)(4) every three years, regardless of measured exposure levels or objective data.	An exception to this requirement is triggered if the employer is able to demonstrate that employee exposures to respirable crystalline silica are continuously maintained below the action level through representative air sampling conducted by a qualified person at least once every six months. The exception does not apply if the PLHCP or specialist recommends periodic medical examinations. Employers who meet the requirements of the exception

		would be able to conduct period medical exams every three years, rather than every year, for all employees, including those who perform high-exposure trigger tasks. This revision is at least as effective as the federal regulation.
1910.1053(i)(3) ***Periodic examinations***. The employer shall make available medical examinations that include the procedures described in paragraph (i)(2) of this section (except paragraph (i)(2)(v)) at least every three years, or more frequently if recommended by the PLHCP.	(j)(3)(B) For each employee covered by subsection (j)(2)(B), the employer shall make available, and shall inform employees of their right to, medical examinations that meet the requirements of subsection (j)(4) at least every three years, or more frequently if recommended by the PLHCP or specialist.	(j)(3)(B). This new subsection has the same effect as existing section 1910.1053(i)(3). It covers employees who are not exposed to high exposure trigger tasks. This revision is at least as effective as the federal regulation.
1910.1053(i)(2)(i) A medical and work history, with emphasis on: Past, present, and anticipated exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system; any history of respiratory system dysfunction, including signs and symptoms of respiratory disease (e.g., shortness of	(j)(4) Medical examination procedures (j)(4)(A) Except as noted in (j)(4)(A)5., the initial and periodic medical examinations required by this subsection shall consist of the following: (j)(4)(A)1. A medical and work history that includes past, present, and anticipated exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system, including as a result of performing high-exposure trigger tasks; the approximate percentage of time the employee performed	(j)(4)(A)1 to 6. This amended provision requires that the initial and periodic medical exams include specific assessments and tests, each of which is intended to assist the PLHCP in identifying early signs and symptoms of silicosis. This standardized set of requirements is necessary to

breath, cough, wheezing); history of tuberculosis; and smoking status and history;	high-exposure trigger tasks, if any, over their working lifetime; the type of respiratory protection used by the employee for protection against respirable crystalline silica, if any, over their working lifetime, and the approximate percentage of time the employee used the respiratory protection; current or preexisting respiratory system health conditions or impairment, including signs and symptoms of respiratory disease (e.g., shortness of breath, cough, wheezing); history of tuberculosis; and smoking status and history;	ensure the effectiveness of the medical surveillance program, whose purpose is the early detection of disease. Early detection of silicosis—followed by action to eliminate exposure to RCS—is necessary to prevent the development of silicosis, which is not reversible and, at its more advanced stages, is permanently disabling and often fatal. This revision is at least as effective as the federal regulation.
1910.1053(i)(2)(ii) A physical examination with special emphasis on the respiratory system;	(j)(4)(A)2. A physical examination with special emphasis on the respiratory system;	Relocated and renumbered from (j)(2)(A). This revision is at least as effective as the federal regulation.
1910.1053(i)(2)(iii) A chest X-ray (a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems), interpreted and classified according to the International Labour Office	(j)(4)(A)3. A chest X-ray (a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems), interpreted and classified according to the International Labour Organization (ILO) International Classification of Radiographs of Pneumoconioses, by a NIOSH-certified B Reader. A chest computed tomography (CT) scan at the lowest	Relocated and renumbered from (j)(2)(A). An addition to the subsection include a provision to include, a chest computed tomography (CT) scan at the lowest possible dose may be substituted for the chest X-ray

(ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader;	possible dose may be substituted for the chest X-ray when deemed appropriate by the PLHCP or specialist;	when deemed appropriate by the PLHCP or specialist; This revision is at least as effective as the federal regulation.
1910.1053(i)(2)(iv) A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV_1) and FEV_1/FVC ratio, administered by a spirometry technician with a current certificate from a NIOSH-approved spirometry course;	(j)(4)(A)4. A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV_1) and FEV_1/FVC ratio, administered by a spirometry technician with a current certificate from a NIOSH-approved spirometry course;	Relocated and renumbered from (j)(2)(A). Rational above. This revision is at least as effective as the federal regulation.
1910.1053(i)(2)(vi) Testing for latent tuberculosis infection; and	(j)(4)(A)5. Testing for latent tuberculosis infection as part of the initial medical examination only; and	The phrase “as part of the initial medical examination only” was added to keep the requirement of the subsection the same as 1910(i)(2)(vi). This revision is at least as effective as the federal regulation.
1910.1053(i)(2)(vi) Any other tests deemed appropriate by the PLHCP.	(j)(4)(A)6. Any other tests deemed appropriate by the PLHCP or specialist.	Relocated and renumbered from (j)(2)(A). An addition to the subsection include “or specialist”. This revision is at least as effective as the federal regulation.

No equivalent federal provision.	(j)(4)(B) For each employee covered by subsection (j)(2)(A), a chest CT scan shall be performed at the lowest dose possible, as well as a test of lung diffusing capacity for carbon monoxide, and any additional recommended pulmonary function testing, shall be included in initial and periodic examinations for all the following: 1. For any employee when deemed appropriate by the PLHCP. 2. For any employee with suspected silicosis, as defined under subsection (b). 3. For any employee who has been exposed to a high-exposure trigger tasks for at least 30 days each year for at least three consecutive prior years, regardless of exposure assessments or objective data.	This new provision requires that a computerized tomography (CT) scan and other tests to assess signs of silicosis be used under the following conditions: 1. when it is deemed to be appropriate by the PLHCP; 2. for any employee with suspected silicosis, as defined; and 3. for any employee who has performed, or been exposed to, high-exposure trigger tasks for a specific period of time. This new requirement is necessary because these tests are more reliable in detecting early signs of silicosis, compared to the tests required under (j)(4)(A)1 to 6. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	EXCEPTION: Subsection (j)(4)(B)3. does not apply where the employer demonstrates that employee exposures to respirable crystalline silica have been continuously maintained below the action level through representative air sampling conducted by a qualified person, as defined in subsection (b), at least once every six months, in accordance with subsection (d)(3)(A) for the entirety of the three years.	Exception added for employers who demonstrate that employee exposures to respirable crystalline silica have been continuously maintained below the action level through representative air sampling conducted by a qualified person, as defined in subsection

		(b), at least once every six months, in accordance with subsection (d)(3)(A) for the entirety of the three years. This revision is at least as effective as the federal regulation.
1910.1053(i)(4) ***Information provided to the PLHCP***. The employer shall ensure that the examining PLHCP has a copy of this standard, and shall provide the PLHCP with the following information:	(j)(~~4~~5) Information provided to the PLHCP. The employer shall ensure that the examining PLHCP has a copy of this standard, and shall provide the PLHCP with the following information:	Renumbered from (j)(4) to (j)(5). This revision is at least as effective as the federal regulation.
1910.1053(i)(4)(i) A description of the employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to respirable crystalline silica;	(j)(5)(A) A description of the employee's former, current, and anticipated duties, including high-exposure trigger tasks, as they relate to the employee's occupational exposure to respirable crystalline silica;	(j)(5)(A). This revised provision adds new language requiring the employer to inform the PLHCP whether the employee performs high-exposure trigger tasks. This is necessary because these tasks are associated with high levels of exposure to RCS from artificial stone, which is uniquely hazardous compared to RCS from natural stone.

		This revision is at least as effective as the federal regulation.
1910.1053(i)(4)(ii) The employee's former, current, and anticipated levels of occupational exposure to respirable crystalline silica;	(j)(5)(B) The employee's former, current, and anticipated levels of occupational exposure to respirable crystalline silica;	No proposed changes to this subsection
1910.1053(i)(4)(iii) A description of any personal protective equipment used or to be used by the employee, including when and for how long the employee has used or will use that equipment; and	(j)(5)(C) A description of the type of respiratory protection ~~any personal protective equipment~~ used ~~or to be used~~ by the employee, if any, ~~including when~~ and ~~for~~ how ~~long~~ often the employee used it ~~has used or will use that equipment~~; and	(j)(5)(C). This paragraph replaces "personal protective equipment" with "type of respiratory protection," which the employer must communicate to the PLHCP. This is necessary because respiratory protection is the most relevant PPE with respect to silicosis. Information on the use of gloves or aprons, for example, is not relevant to silicosis. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(j)(5)(E) Name, phone number, email, and physical address of any previous PLHCP or Specialist.	(j)(5)(E). This new sentence requires employers to provide contact information for previous PLHCPs or Specialists to the employee's PLHCP. This information allows the PLHCP to

		consult with previous providers on the employee's health status, including signs and symptoms of silicosis, which is necessary to ensure continuity of care for the employee. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	<u>(j)(5)(F) The obligation of PLHCPs and specialists to report confirmed silicosis and lung cancer cases to the Division, in addition to complying with the silicosis reporting requirements under California Code of Regulations (CCR) Title 17.</u>	(j)(5)(F). This new paragraph requires employers to inform the PLHCP of the requirement under this section to report silicosis and lung cancer cases to Cal/OSHA, in addition to the silicosis reporting requirements under CCR title 17. These requirements are necessary to improve the flow of information on disease cases provided to these agencies, which enables the agencies to intervene at a scale commensurate with the problem. Without notification by the employer of these reporting requirements, it is likely that some PLHCPs would be unaware of their reporting responsibilities.

		This revision is at least as effective as the federal regulation.
1910.1053(i)(5) ***PLHCP's written medical report for the employee***. The employer shall ensure that the PLHCP explains to the employee the results of the medical examination and provides each employee with a written medical report within 30 days of each medical examination performed. The written report shall contain:	(j)(6) PLHCP's written medical report for the employee. The employer shall ensure that the PLHCP explains to the employee the results of initial and periodic ~~the~~ medical examinations and provides each employee with a written medical report within ~~30~~ 14 days of each medical examination performed. The written report shall contain:	Renumbered from (j)(5) to (j)(6). The addition of "initial and periodic" in this paragraph makes it clear which examinations are covered by the written reporting requirements of this subsection. This sentence also requires the employer to ensure that the PLHCP provides each employee with a written medical report within 14 calendar days. The existing language gives the PLHCP 30 days to provide the report to the employee; this extensive time period is unnecessary, and the information is essential for the employee to take steps to protect themselves from exposure to RC if they are at risk of silicosis. This is especially important for employees who perform high-exposure trigger tasks. This revision is at least as effective as the federal regulation.

1910.1053(i)(5)(iii) Any recommended limitations on the employee's exposure to respirable crystalline silica; and	(j)(6)(C) Any recommended limitations on the employee's exposure to respirable crystalline silica~~;~~ including during high-exposure trigger tasks; ~~and~~	(j)(6)(C). This sentence includes a new phrase, "including during high-exposure trigger tasks" because these are the riskiest tasks that are most likely to result in silicosis among employees. This revision is at least as effective as the federal regulation.
1910.1053(i)(5)(iv) A statement that the employee should be examined by a specialist (pursuant to paragraph (i)(7) of this section) if the chest X-ray provided in accordance with this section is classified as 1/0 or higher by the B Reader, or if referral to a specialist is otherwise deemed appropriate by the PLHCP.	(j)(6)(D) A statement that the employee should be examined by a specialist ~~(pursuant to subsection (i)(7))~~ if the chest X-ray provided in accordance with this section is classified as 1/0 or higher by the B Reader if applicable, or if referral to a specialist is otherwise deemed appropriate by the PLHCP.	(j)(6)(D). The sentence includes "if applicable" because the subsection (j)(4)(A)3 allows PLHCPs to substitute a CT scan for the chest X-ray. This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(j)(6)(E) If applicable, a statement describing the findings of a chest CT scan or equivalent; a lung diffusing capacity exam; and any additional pulmonary function testing.	(j)(6)(E). This new sentence requires reporting of CT scans, which are not required in the existing section 5204. CT scans are more sensitive in detecting early signs of silicosis compared to chest X-rays. This addition is necessary to ensure that the results of these tests are reported to the affected employee.

		This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(j)(6)(F) For each employee covered by subsection (j)(2)(A), a recommendation on whether a supplied-air respirator is needed for the employee.	(j)(6)(F). This new sentence requires the PLHCP to advise the employee if they should be using a supplied-air respirator, based on the findings of the medical exam. This is necessary if an employee has early signs of silicosis, because this type of respirator is able to substantially reduce exposure to RCS. This revision is at least as effective as the federal regulation.
1910.1053(i)(6) ***PLHCP's written medical opinion for the employer***.	**(j)(~~6~~7) PLHCP's written medical opinion for the employer**	Subsection renumbered. This revision is at least as effective as the federal regulation.
1910.1053(i)(6)(i) The employer shall obtain a written medical opinion from the PLHCP within 30 days of the medical examination. The written opinion shall contain only the following:	(j)(7)~~(A)~~ The employer shall obtain a written medical opinion from the PLHCP within ~~30~~ 14 calendar days of each initial or periodic ~~the~~ medical examination~~.~~ and shall immediately provide it to the employee. The written opinion shall contain only the following:	Renumbered (j)(7)(A) to (j)(7). There are three changes to this sentence. The first reduces the time period from 30 days to 14 days by which employers must obtain the written medical

		opinion from the PLHCP. This is necessary because employees who are at risk of silicosis, as identified by the PLHCP, must reduce their exposure to RCS as quickly as possible, rather than waiting for up to 30 days. This is especially important for employees who perform high-exposure trigger tasks. The second change clarifies that the written opinions are required for both initial and periodic exams. The third change requires the employer to immediately provide the medical opinion to the affected employee. The existing language at (6)(C) gives the employer 30 days to provide the report to the employee; this extensive time period is unnecessary, and the information is essential for employees to take steps to protect themselves from exposure to RCS if they are at risk of silicosis. This revision is at least as effective as the federal regulation.

1910.1053(i)(6)(i)(A) The date of the examination;	~~1.~~(j)(7)(A) The date of the examination;	Existing subsection (i)(6)(A)(1) renumbered to (j)(7)(A). This revision is at least as effective as the federal regulation.
1910.1053(i)(6)(i)(B) A statement that the examination has met the requirements of this section; and	~~2.~~(j)(7)(B) A statement that the examination has met the requirements of this section; ~~and~~	Existing subsection (i)(6)(A)(2) renumbered to (j)(7)(B). Deleted "and". This revision is at least as effective as the federal regulation.
1910.1053(i)(6)(i)(C) Any recommended limitations on the employee's use of respirators.	~~3.~~(j)(7)(C) Any recommended limitations on the employee's use of respirators	Existing subsection (i)(6)(A)(3) renumbered to (j)(7)(C). This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(j)(7)(D) For each employee covered by subsection (j)(2)(A), an opinion on whether a supplied-air respirator is needed for the employee; and	(j)(7)(D). This new subsection requires the PLHCP to offer an opinion to the employer regarding the use of a supplied-air respirator for an employee. This is necessary because a SAR is able to substantially reduce exposure to RCS and might be needed to

		protect an employee who is showing early signs of silicosis. This revision is at least as effective as the federal regulation.
1910.1053(i)(6)(ii)If the employee provides written authorization, the written opinion shall also contain either or both of the following:	~~(B) If the employee provides written authorization, the written opinion shall also contain either or both of the following:~~	Included in (j)(7)(A). This revision is at least as effective as the federal regulation.
1910.1053(i)(6)(ii)(A) Any recommended limitations on the employee's exposure to respirable crystalline silica;	~~1.~~(j)(7)(E) Any recommended limitations on the employee's exposure to respirable crystalline silica~~;~~ including during high-exposure trigger tasks.	Former (i)(6)(B)(1) renumbered as (j)(7)(E). The addition to this sentence makes it clear that the PLHCP must provide specific information on limiting exposure to RCS for employees who perform high-exposure trigger tasks. This is necessary because these tasks are uniquely hazardous and more likely to cause silicosis compared to other tasks. This revision is at least as effective as the federal regulation.
1910.1053(i)(6)(ii)(B)	~~2. A statement that the employee should be examined by a specialist (pursuant to subsection (ji)(7)) if the chest X-ray~~	Deleted former (i)(6)(B)(2). The requirement to include a

A statement that the employee should be examined by a specialist (pursuant to paragraph (i)(7) of this section) if the chest X-ray provided in accordance with this section is classified as 1/0 or higher by the B Reader, or if referral to a specialist is otherwise deemed appropriate by the PLHCP.	~~provided in accordance with this section is classified as 1/0 or higher by the B Reader, or if referral to a specialist is otherwise deemed appropriate by the PLHCP.~~	statement pertaining to the need for a referral to a specialist has been moved to subsection (j)(6)(D). This information would be provided directly to the employee rather than to the employer. This protects the employee's medical privacy. This revision is at least as effective as the federal regulation.
1910.1053(i)(6)(iii) The employer shall ensure that each employee receives a copy of the written medical opinion described in paragraph (i)(6)(i) and (ii) of this section within 30 days of each medical examination performed.	~~(C) The employer shall ensure that each employee receives a copy of the written medical opinion described in subsection (ii)(6)(A) and (B) within 30 days of each medical examination performed.~~	Former (i)(2)(C). The requirement of the employer to provide a written copy of the medical opinion to affected employees within 30 days has been deleted and replaced with (j)(7), which requires the employer to provide the opinion "immediately." Employees at risk of silicosis should be protected immediately from further RCS exposure, rather than waiting 30 days. This revision is at least as effective as the federal regulation.

1910.1053(i)(7) Additional examinations 1910.1053(i)(7)(i) If the PLHCP's written medical opinion indicates that an employee should be examined by a specialist, the employer shall make available a medical examination by a specialist within 30 days after receiving the PLHCP's written opinion.	(j)(~~7~~8) **Additional examinations.** (j)(8)(A) If the PLHCP's written medical opinion indicates that an employee should be examined by a specialist, the employer shall make available a medical examination by a specialist within 30 days after receiving the PLHCP's written opinion.	Renumbered existing language for consistency with changes made to this section. This revision is at least as effective as the federal regulation.
1910.1053(i)(7)(ii) The employer shall ensure that the examining specialist is provided with all of the information that the employer is obligated to provide to the PLHCP in accordance with paragraph (i)(4) of this section.	(j)(8)(B) The employer shall ensure that the examining specialist is provided with all of the information that the employer is obligated to provide to the PLHCP in accordance with subsection (~~i~~i)(~~4~~5).	Renumbered existing language for consistency with changes made to this section. This revision is at least as effective as the federal regulation.
1910.1053(i)(7)(iii) The employer shall ensure that the specialist explains to the employee the results of the medical examination and provides each employee with a written medical report within 30 days of the examination. The written report shall meet the requirements of paragraph (i)(5) (except paragraph (i)(5)(iv)) of this section.	(j)(8)(C) The employer shall ensure that the specialist explains to the employee the results of the medical examination and provides each employee with a written medical report within ~~30~~ 14 days of the examination. The written report shall meet the requirements of subsection (~~i~~i)(~~5~~6) (except subsection (~~i~~i)(~~5~~6)(D)).	Renumbered existing language for consistency with changes made to this section. The requirement to provide the specialist's report to the employee within 14 days, rather than 30 days, is necessary because employees who are at risk of silicosis, as identified by the specialist, must reduce their exposure to RCS as quickly as possible, rather than waiting for

		up to 30 days. This is especially important for employees who perform high-exposure trigger tasks. This revision is at least as effective as the federal regulation.
1910.1053(i)(7)(iv) The employer shall obtain a written opinion from the specialist within 30 days of the medical examination. The written opinion shall meet the requirements of paragraph (i)(6) (except paragraph (i)(6)(i)(B) and (i)(6)(ii)(B)) of this section.	(j)(8)(D) The employer shall obtain a written opinion from the specialist within ~~30~~14 days of the medical examination. The written opinion shall meet the requirements of subsection (j~~i~~)(~~6~~7) ~~(except subsection (i)(6)(A)2. and (i)(6)(B)2.).~~	Renumbered existing language for consistency with changes made to this section. The requirement of the employer to obtain a written opinion within 14 days, rather than 30 days is necessary because employees who are at risk of silicosis, as identified by the specialist, must reduce their exposure to RCS as quickly as possible, rather than waiting for up to 30 days. This is especially important for employees who perform high-exposure trigger tasks. The reference to subsection (j)(7)(C) is renumbered from existing subsection (i)(6)(A)2. and is necessary because the specialist is performing a medical exam beyond that of the PLHCP;

		therefore the specialist's exam will not necessarily meet the requirements of subsection (j)(7). The reference to subsection (i)(6)(B)2. is removed because it refers to a sentence that is no longer in subsection (j)(7). This revision is at least as effective as the federal regulation.
No equivalent federal provision.	**(k) Medical Removal** (k)(1)When the PLHCP recommends that an employee covered by subsection (j)(2)(A) be removed from a job assignment or that the employee's job be modified to reduce exposure to respirable crystalline silica, the employer shall modify the employee's job or transfer the employee to comparable work for which the employee is qualified, or for which the employee can be trained within a period of six months.	Subsection (k)(1) specifies that when a PLHCP recommends that an employee be removed from their normal job, or that the job be modified to reduce RCS exposure, the employee will be transferred to comparable work for which the employee is qualified or for which the employee can be trained within a period of six months. This provision is necessary to protect an employee from job loss if they are medically removed from their normal job as a consequence of exposures to RCS that occurred on that job.

		This revision is at least as effective as the federal regulation.
No equivalent federal provision	(k)(2)The employer shall maintain the employee's current earnings, seniority, and other benefits for up to six months. If there is no work available that meets the PLHCP's recommended restrictions, the employer shall maintain the employee's current earnings, seniority, and other benefits until any of the following occurs: (A) Such work becomes available. (B) The employee is determined by the PLHCP, or in accordance with subsection (k)(5), to be able to return to his or her original job status. (C) The employee is determined by the PLHCP, or is determined in accordance with subsection (k)(5), to be permanently unable to return to work that could involve exposure to respirable crystalline silica during high-exposure trigger tasks. (D) Six months have elapsed since the beginning of the current medical removal period.	Subsection (k)(2) specifies that if comparable work is unavailable, the employer must maintain the employee's pay, seniority and benefits until any one of the following occurs: such work becomes available; or the employee is medically determined by the PLHCP to be able to return to their original job status; or the employee is determined by the PLHCP to be permanently unable to return to work involving exposure to RCS; or six months have elapsed. The provision is necessary to protect the employee from loss of pay, seniority and benefits if they are medically removed from their normal job and no comparable job is available, but it is also necessary to limit the employer's liability to six months when no comparable job is available. Requiring employers to support a medically removed employee for six months

		is one of several provisions that helps motivate employers to prevent employee RCS exposure. This revision is at least as effective as the federal regulation.
No equivalent federal provision	(k)(3) Workers' Compensation Claims. If a removed employee files a claim for workers' compensation for a silica-related disability, the employer shall provide medical removal benefits to the employee at the employee's normal hourly wage and weekly work schedule for a period of up to six months, pending final disposition of the claim.	Subsection (k)(3) requires employers to pay the employee's normal hourly wage and weekly work schedule for up to six months while the employee's worker's compensation claim is being processed. Requiring employers to support a medically removed employee for up to six months is one of several provisions that helps motivate employers to prevent employee RCS exposure. The six month time frame is necessary because it can take at least this amount of time for medical tests to be performed that are necessary to determine if a decline in pulmonary function, for example, is in fact a result of silicosis. This protection is also necessary to ensure that economic considerations do not

		prevent the employee from actively participating in medical surveillance procedures, which are necessary to ensure that silicosis is detected at an early stage. This revision is at least as effective as the federal regulation.
No equivalent federal provision	(k)(4) Other Credits. The employer's obligation to provide medical removal benefits to a removed employee may only be reduced by the amount that the employee receives in compensation for: (A) Earnings lost during the period of removal from a public or employer-funded compensation program, including a workers compensation program, or (B) Income received from employment with another employer made possible by virtue of the employee's removal.	Subsection (k)(4) specifies offsets in the amounts employers would have to pay to medically removed employees when no comparable work is available. For example, if an employee received partial wages from a workers' compensation program, the employer may reduce the employee's payments during the six months by that amount. This subsection is necessary to ensure that medically removed employees are not over-compensated during the six month period when employers are paying their full wages and benefits.

		This revision is at least as effective as the federal regulation.
No equivalent federal provision	(k)(5) Independent Medical Review. (A) For each employee covered by subsection (j)(2)(A), after any medical evaluation or consultation conducted pursuant to subsections (j) or (k), the employee may designate an independent PLHCP to review any findings, determinations, or recommendations and to conduct such examinations, consultations, and laboratory tests as this second PLHCP deems necessary and appropriate to facilitate this review. (B) The costs of this review shall be borne by the employer. (C) The determination of the second PLHCP shall be binding on all parties.	Subsection (k)(5) provides employees with the opportunity to obtain an independent medical review for silicosis. The employee designates the PLHCP who will conduct the review, and the employer must pay the costs of the review, which is then binding on all parties. This provision is based on research showing that silicosis is often misdiagnosed for bacterial pneumonia (30% of cases) or tuberculosis (27% of cases).[1] This provision is necessary because an employee is only able to obtain the rights associated with medical removal if their silicosis is properly diagnosed. This revision is at least as effective as the federal regulation.

[1] Fazio J, et al. Silicosis Among Immigrant Engineered Stone (Quartz) Countertop Fabrication Workers in California. *JAMA Internal Medicine*. 183(9): 991-998. Published online July 24, 2023. https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2807615. Accessed August 16, 2023.

1910.1053(j) ***Communication of respirable crystalline silica hazards to employees***.	**(l~~j~~) Communication of respirable crystalline silica hazards to employees.**	Renumbered subsection (l) (formerly subsection (j) Communication of respirable crystalline silica hazards to employees). This revision is at least as effective as the federal regulation.
No equivalent federal provision.	(l)(1) Any training, communications, signs, labels, and written information required by subsection (l) shall be provided in a language understood by employees and shall be appropriate for their level of education and literacy.	New subsection (l)(1) would require that training and communications materials be provided in a language and at a literacy level appropriate for the employees. This is necessary to ensure that information on the risks of silicosis are effectively communicated to employees. This revision is at least as effective as the federal regulation.
1910.1053(j)(1) ***Hazard communication***. The employer shall include respirable crystalline silica in the program established to comply with the hazard communication standard (HCS) (29 CFR 1910.1200). The employer shall ensure that each employee has access to labels on	(l)(2)~~(i)~~(~~1~~) **Hazard communication**. The employer shall include respirable crystalline silica in the program established to comply with the hazard communication standard (HCS) (Section 5194). The employer shall ensure that each employee has access to labels on containers of crystalline silica and safety data sheets, and is trained in accordance with the provisions of HCS and subsection (l~~j~~)(~~3~~4). The employer shall	Renumbered subsection (l)(2) refers to renumbered subsection (l)(4). This revision is at least as effective as the federal regulation.

containers of crystalline silica and safety data sheets, and is trained in accordance with the provisions of HCS and paragraph (j)(3) of this section. The employer shall ensure that at least the following hazards are addressed: Cancer, lung effects, immune system effects, and kidney effects.	ensure that at least the following hazards are addressed: Cancer, lung effects, immune system effects, and kidney effects.	
(j)(2) ***Signs***. The employer shall post signs at all entrances to regulated areas that bear the following legend: DANGER RESPIRABLE CRYSTALLINE SILICA MAY CAUSE CANCER CAUSES DAMAGE TO LUNGS WEAR RESPIRATORY PROTECTION IN THIS AREA AUTHORIZED PERSONNEL ONLY	(l)(3)(~~i~~)(~~2~~) **Signs**. The employer shall post signs at all entrances to regulated areas that bear the following legend: DANGER RESPIRABLE CRYSTALLINE SILICA CAUSES PERMANENT LUNG DAMAGE THAT MAY LEAD TO DEATH MAY CAUSE CANCER ~~CAUSES DAMAGE TO LUNGS~~ WEAR RESPIRATORY PROTECTION IN THIS AREA AUTHORIZED PERSONNEL ONLY PELIGRO SÍLICE CRISTALINA RESPIRABLE PROVOCA DAÑO PERMANENTE A LOS PULMONES QUE PODRIA CAUSAR LA MUERTE PUEDE PROVOCAR CÁNCER USAR PROTECCIÓN RESPIRATORIA EN ESTA ÁREA	The subsection was renumbered and amended to clarify silica hazards warnings and provide hazard warning in Spanish, which is the most common language spoken by the workforce exposed to high exposure trigger tasks. This revision is at least as effective as the federal regulation.

	SOLO PERSONAL AUTORIZADO	
1910.1053(j)(3)(i) The employer shall ensure that each employee covered by this section can demonstrate knowledge and understanding of at least the following: 1910.1053(j)(3)(i)(A) The health hazards associated with exposure to respirable crystalline silica; 1910.1053(j)(3)(i)(B) Specific tasks in the workplace that could result in exposure to respirable crystalline silica; 1910.1053(j)(3)(i)(C) Specific measures the employer has implemented to protect employees from exposure to respirable crystalline silica, including engineering controls, work practices, and respirators to be used; 1910.1053(j)(3)(i)(D) The contents of this section; and 1910.1053(j)(3)(i)(E) The purpose and a description of the medical surveillance program required by paragraph (i) of this section.	(l)(4)~~(3)~~ Employee information and training. (A) The employer shall ensure that each employee covered by this section can demonstrate knowledge and understanding of at least the following: 1. The health hazards associated with exposure to respirable crystalline silica; 2. Symptoms related to exposure to respirable crystalline silica such as cough, difficult breathing, fatigue, shortness of breath, weakness, fever, chest pain, or unexplained weight loss; ~~2~~3. Specific tasks in the workplace that could result in exposure to respirable crystalline silica, including high-exposure trigger tasks, and how to prevent respirable crystalline silica exposure while performing those tasks; ~~3~~4. Specific measures the employer has implemented to ~~protect~~ prevent employee~~s from~~ exposure to respirable crystalline silica, including engineering controls, work practices, and respirators to be used, including for high-exposure trigger tasks; 5. How to properly use and implement engineering controls, work practices, and respiratory protection in order to prevent employee exposure to respirable crystalline silica; ~~4~~6. The contents of this section; ~~and~~ ~~5~~7. The purpose and a description of the medical surveillance program required by subsection (j~~i~~)~~.~~;	The subsection was renumbered and amended to include specific symptoms of exposure to respirable crystalline silica at (A)(2); to ensure that information and training includes specific material on high-exposure trigger tasks at (A)(3) and (A)(4); to ensure that information and training including material on engineering controls, work practices and respiratory protection from RCS at (A)(5); and to include information and training on smoking and tuberculosis infections as related to RCS exposure at (A)(8) and (A)(9), respectively. These provisions are necessary to ensure effective communication and training for employees who perform high-exposure trigger tasks and for all employees who are at potential risk of silicosis. This revision is at least as effective as the federal regulation.

	8. The increased risk of death that results from the combined effects of smoking and respirable crystalline silica exposure; and 9. The increased risk of a latent tuberculosis infection becoming active that results from the effects of respirable crystalline silica exposure.	
(B) The employer shall make a copy of this section readily available without cost to each employee covered by this section.	(B) The employer shall make a copy of this section readily available without cost to each employee covered by this section.	No change from the Federal language. This is at least as effective as the federal regulation.
No equivalent federal provision.	(l)(4)(C) The employer shall encourage employees to report any symptoms related to exposure to respirable crystalline silica without fear of reprisal. Employers are prohibited from taking or threatening to take any adverse action against employees who report symptoms or who suffer from a silica-related illness.	New subsection (l(4)(C) would require employers to encourage employees to report symptoms related to RCS exposure, without fear of reprisal, and it prohibits employers from taking any adverse action against an employee who reports symptoms or who suffers from a silica-related illness. The effect of this addition is to encourage reporting, which will ensure that employers are aware as early as possible that one or more employees may be developing silicosis. This will allow the

		employer to take action to improve protections for employees by ensuring the effectiveness of exposure controls. This revision is at least as effective as the federal regulation.
No equivalent federal provision No equivalent federal provision.	(m) Reporting of silicosis. (m)(1) Within 24 hours of receiving information regarding a confirmed silicosis case or lung cancer related to respirable crystalline silica exposure, the employer shall report the following information to the California Department of Public Health (CDPH) and to the Division by phone or a specified online mechanism established by these agencies: (A) The name, phone number, email, and mailing address of each employee identified with silicosis or lung cancer, or their next of kin; (B) Date of birth of employee; (C) The employer's business name, including any aliases or dba identifiers, and the employer's phone number, email, and mailing address; (D) The name, phone number, email, physical address, and mailing address of the manager responsible for the facility where each employee with silicosis or lung cancer is, or was, employed;	New subsection (*m*) titled "Reporting of silicosis" would require the employer to report certain information listed within subsections (m(1)(A) through (m)(1)(K) to the CDPH and to Cal/OSHA within 24 hours of receiving notification of a confirmed silicosis or lung cancer case related to silica exposure. This provision allows CDPH and Cal/OSHA to take early action to prevent further cases and to track the incidence and prevalence of cases statewide. This revision is at least as effective as the federal regulation.

No equivalent federal provision	(E) The name, phone number, email, and mailing address of the diagnosing PLHCP, and the date of diagnosis; (F) The number of years each employee identified with silicosis has been, or was, employed by the employer, and the tasks the employee engaged in during this time period, including the number and frequency of high-exposure trigger tasks; (G) The specific protections, if any, that were implemented by the employer throughout the employee's period of employment, to prevent exposure to respirable crystalline silica; (H) Results of any and all air monitoring for respirable crystalline silica at the workplace throughout the employee's period of employment; (I) A description of any personal protective equipment provided by the employer and used by the employee throughout the employee's period of employment; (J) Whether or not the employer has reported the facility with the Division as required by Section 5203; and (K) Prior employers, if known, where employee had respirable crystalline silica exposure. (m)(2) Within 24 hours of identifying a confirmed silicosis or lung cancer case, PLHCPs and specialists shall report the case to the Division by phone or a specified online mechanism, in addition to complying with the silicosis reporting requirements	New subsection (m)(2) would require PLHCPs and specialists to report confirmed cases of silicosis or lung cancer to Cal/OSHA with

	under California Code of Regulations (CCR) Title 17. The report shall contain the following information: (A) Name of employer; (B) Name of employer representative; (C) Phone number and email for the employer; (D) Physical and mailing address of the workplace; (E) The employee's levels of occupational exposure to respirable crystalline silica, if known; (F) A description of any personal protective equipment used by the employee, if known; and (G) Name, date of birth, phone number, email, and physical address of affected employee.	certain information listed within subsections (*m*)(2)(A) through (*m)*(2)(F). This sentence also requires PLHCPs and specialists to comply with the silicosis reporting requirements under CCR title 17. This provision provides a second vehicle that allows Cal/OSHA and CDPH to take early action to prevent further cases and to track the incidence and prevalence of cases statewide. This revision is at least as effective as the federal regulation.
1910.1053(k) ***Recordkeeping*** -	(n~~k~~) **Recordkeeping.**	Subsection (k) is renumbered to (n). Cross-referenced in subsection. No changes were made to the regulatory language. This revision is at least as effective as the federal regulation.
1910.1053(l) Dates. (l)(1) This section is effective June 23, 2016.	~~(*l*) Dates.~~ ~~(1) This section is effective October 17, 2016.~~	Former subsection (*l*) Dates deleted. All the applicable dates have passed and the subsection no longer serves any purpose.

(l)(2) Except as provided for in paragraphs (l)(3) and (4) of this section, all obligations of this section commence June 23, 2018. (l)(3)For hydraulic fracturing operations in the oil and gas industry: (l)(3)(i) All obligations of this section, except obligations for medical surveillance in paragraph (i)(1)(i) and engineering controls in paragraph (f)(1) of this section, commence June 23, 2018; (l)(3)(ii) Obligations for engineering controls in paragraph (f)(1) of this section commence June 23, 2021; and (l)(3)(iii) Obligations for medical surveillance in paragraph (i)(1)(i) commence in accordance with paragraph (l)(4) of this section. (l)(4) The medical surveillance obligations in paragraph (i)(1)(i) commence on June 23, 2018, for employees who will be occupationally exposed to respirable crystalline silica above the PEL for 30 or more days per year. Those obligations commence June 23, 2020, for employees who will be occupationally exposed to respirable crystalline silica at or above the action level for 30 or more days per year.	~~(2) Except as provided for in subsections (l)(3) and (4), all obligations of this section commence June 23, 2018.~~ ~~(3) For hydraulic fracturing operations in the oil and gas industry:~~ ~~(A) All obligations of this section, except obligations for medical surveillance in subsection (i)(1)(A) and engineering controls in subsection (f)(1), commence June 23, 2018;~~ ~~(B) Obligations for engineering controls in subsection (f)(1) commence June 23, 2021; and~~ ~~(C) Obligations for medical surveillance in subsection (i)(1)(A) commence in accordance with subsection (l)(4).~~ ~~(4) The medical surveillance obligations in subsection (i)(1)(A) commence on June 23, 2018, for employees who will be occupationally exposed to respirable crystalline silica above the PEL for 30 or more days per year. Those obligations commence June 23, 2020, for employees who will be occupationally exposed to respirable crystalline silica at or above the action level for 30 or more days per year.~~	This revision is at least as effective as the federal regulation.
Appendix A to § 1910.1053 - Methods of Sample Analysis	Appendix A to Section 5204 - Methods of Sample Analysis (Mandatory)	No changes from the Federal regulation.

programs;		This is at least as effective as the federal regulation.
No Federal equivalent	Appendix B to Section 5204 - Medical Surveillance Guidelines (Non-Mandatory) *Introduction* The purpose of this Appendix is to provide medical information and recommendations to aid physicians and other licensed health care professionals (PLHCPs) regarding compliance with the medical surveillance provisions of the respirable crystalline silica standard (Section 5204). Appendix B is for informational and guidance purposes only and none of the statements in Appendix B should be construed as imposing a mandatory requirement on employers that is not otherwise imposed by the standard. Specific references to section 5204 and its subsection are made throughout the Appendix to help clarify for the PLHCPs and specialists what the regulation requires that can impact an employee's health and exposure to respirable crystalline silica. Medical screening and surveillance allow for early identification of exposure-related health effects in individual employees and groups of employees, so that actions can be taken to both avoid further exposure and prevent or address adverse health outcomes. Silica-related diseases can be fatal, encompass a variety of target organs, and may have public health consequences when considering the increased risk of a latent tuberculosis (TB) infection becoming active. Thus, medical surveillance of silica-exposed employees requires that PLHCPs have a thorough knowledge of silica-related health effects.	This addition provides non-mandatory guidance to healthcare providers regarding the identification and management of patients with silicosis. This is provided to improve the quality of patient care.

	This Appendix is divided into seven sections. Section 1 reviews silica-related diseases, medical responses, and public health responses. Section 2 outlines the components of the medical surveillance program for employees exposed to silica. Section 3 describes the roles and responsibilities of the PLHCP implementing the program and of other medical specialists and public health professionals. Section 4 provides a discussion of considerations, including confidentiality. Section 5 provides a list of additional resources and Section 6 lists references. Section 7 provides sample forms for the written medical report for the employee, the written medical opinion for the employer and the written authorization. *1. Recognition of Silica-Related Diseases* 1.1. Overview. The term "silica" refers specifically to the compound silicon dioxide (SiO2). Silica is a major component of sand, rock, and mineral ores. Exposure to fine (respirable size) particles of crystalline forms of silica is associated with severe adverse health effects, such as silicosis, lung cancer, chronic obstructive pulmonary disease (COPD), and activation of latent TB infections. Exposure to respirable crystalline silica can occur in industry settings such as foundries, abrasive blasting operations, paint manufacturing, glass and concrete product manufacturing, brick making, china and pottery manufacturing, manufacturing of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuck-pointing. New uses of silica continue to emerge. These include countertop manufacturing, finishing, and installation (Kramer et al. 2012; OSHA 2015) and hydraulic fracturing in the oil and gas industry (OSHA 2012). Silicosis is an irreversible, often disabling, and sometimes fatal fibrotic lung disease. Progression of silicosis can occur despite	

	removal from further exposure. Diagnosis of silicosis requires a history of exposure to silica and radiologic findings characteristic of silica exposure. Three different presentations of silicosis (chronic, accelerated, and acute) have been defined. Accelerated and acute silicosis are ~~much~~ less common than chronic silicosis. However, an epidemic of silicosis cases (Hoy et al., 2022, Hua et al., 2023, Fazio et al., 2023) has emerged associated with artificial stone countertop manufacturing and installation, and it is critical to recognize all cases of accelerated and acute silicosis because these are life-threatening illnesses and because they are caused by substantial overexposures to respirable crystalline silica. Although any case of silicosis indicates a breakdown in prevention, a case of acute or accelerated silicosis implies current high exposure and a very marked breakdown in prevention. In addition to silicosis, employees exposed to respirable crystalline silica, especially those with accelerated or acute silicosis, are at increased risks of contracting active TB and other infections (ATS 1997; Rees and Murray 2007). Exposure to respirable crystalline silica also increases an employee's risk of developing lung cancer, and the higher the cumulative exposure, the higher the risk (Steenland et al. 2001; Steenland and Ward 2014). Symptoms for these diseases and other respirable crystalline silica-related diseases are discussed below. 1.1.1 Exceptional risk of artificial stone The respirable crystalline silica particles generated from artificial stone have a more severe toxicologic profile than	

	respirable crystalline silica particles generated from natural stone. Artificial stone associated silicosis is characterized by a shorter latency, more rapid radiological progression, more accelerated decline in lung function, and higher mortality rate than natural stone associated silicosis (Wu et al, 2020, Rose et al. 2019, Fazio et al. 2023). The toxicological characteristics of artificial stone include the following: • High concentration of respirable particles: Cutting artificial stones generates much high concentrations of respirable crystalline silica content (>80%), whereas cutting natural stones produces respirable crystalline silica content of only 4-30% (Carrieri 2020) • Ultrafine particles: Cutting artificial stone produces high concentrations of ultrafine particles (< 0.1um in diameter), which exhibit very large reactive surface areas and enter the deep lung (Ramkissoon 2022). • Irregular shapes: Artificial stone particles show more irregular shapes with sharp edges and fractures along the surface compared to natural stone dust particles, which exhibit far fewer surface fractures. (Ramkissoon 2022). • Sensitizing VOCs: During active cutting, the predominant volatile organic compound (VOC) emitted is styrene, with phthalic anhydride, benzene, ethylbenzene, and toluene also detected. Phthalic anhydride has a Respiratory Sensitization (RSEN) Notation by the ACGIH and has been the most	

	abundant VOC identified, at 26–85% of the total VOC composition of artificial stone emissions Benzaldehyde and styrene were also present in all twelve samples. Styrene is a respiratory irritant. (Ramkissoon 2023). • Free radicals. Freshly cut RCS dust contains a high concentration of free radicals. A free radical is an atom or molecule containing one or more unpaired electrons in its outer orbit. This makes it unstable, short lived and highly reactive (Pavan 2016). *1.2. Chronic Silicosis*. Chronic silicosis is the most common presentation of silicosis and usually occurs after at least 10 years of exposure to respirable crystalline silica. The clinical presentation of chronic silicosis is: 1.2.1. Symptoms - shortness of breath and cough, although employees may not notice any symptoms early in the disease. Constitutional symptoms, such as fever, loss of appetite and fatigue, may indicate other diseases associated with silica exposure, such as TB infection or lung cancer. Employees with these symptoms should immediately receive further evaluation and treatment. 1.2.2. Physical Examination - may be normal or disclose dry rales or rhonchi on lung auscultation. 1.2.3. Spirometry - may be normal or may show only a mild restrictive or obstructive pattern. 1.2.4. Chest X-ray - classic findings are small, rounded opacities in the upper lung fields bilaterally. However, small irregular opacities and opacities in other lung areas can also occur. Rarely, “eggshell calcifications” in the hilar and mediastinal lymph nodes are seen.	

	1.2.5. Clinical Course-chronic silicosis in most cases is a slowly progressive disease. Under the respirable crystalline silica standard, the PLHCP is to recommend that employees with a 1/0 category X-ray be referred to an American Board Certified Specialist in Pulmonary Disease or Occupational Medicine. The PLHCP and/or Specialist should counsel employees regarding work practices and personal habits that could affect employees' respiratory health. *1.3. Accelerated Silicosis*. Accelerated silicosis generally occurs within 5-10 years of exposure and results from high levels of exposure to respirable crystalline silica. The clinical presentation of accelerated silicosis is: 1.3.1. Symptoms - shortness of breath, cough, and sometimes sputum production. Employees with exposure to respirable crystalline silica, and especially those with accelerated silicosis, are at high risk for activation of TB infections, atypical mycobacterial infections, and fungal superinfections. Constitutional symptoms, such as fever, weight loss, hemoptysis (coughing up blood), and fatigue may herald one of these infections or the onset of lung cancer. 1.3.2. Physical Examination - rales, rhonchi, or other abnormal lung findings in relation to illnesses present. Clubbing of the digits, signs of heart failure, and cor pulmonale may be present in severe lung disease. 1.3.3. Spirometry – restrictive~~, or~~ mixed restrictive/obstructive and/or obstructive pattern. 1.3.4. Chest X-ray - small rounded and/or irregular opacities bilaterally. Large opacities and lung abscesses may indicate infections, lung cancer, or progression to complicated silicosis, also termed progressive massive fibrosis.	

	1.3.5. Clinical Course - accelerated silicosis has a rapid, severe course. Under the respirable crystalline silica standard, the PLHCP can recommend referral to a Board Certified Specialist in either Pulmonary Disease or Occupational Medicine, as deemed appropriate, and referral to a Specialist is recommended whenever the diagnosis of accelerated silicosis is being considered. *1.4. Acute Silicosis*. Acute silicosis is a rare disease caused by inhalation of extremely high levels of respirable crystalline silica particles. The pathology is similar to alveolar proteinosis with lipoproteinaceous material accumulating in the alveoli. Acute silicosis develops rapidly, often, within a few months to less than 2 years of exposure and is almost always fatal. The clinical presentation of acute silicosis is as follows: 1.4.1. Symptoms - sudden, progressive, and severe shortness of breath. Constitutional symptoms are frequently present and include fever, weight loss, fatigue, productive cough, hemoptysis (coughing up blood), and pleuritic chest pain. 1.4.2. Physical Examination - dyspnea at rest, cyanosis, decreased breath sounds, inspiratory rales, clubbing of the digits, and fever. 1.4.3. Spirometry restrictive~~,~~ ~~or~~ mixed restrictive/obstructive, and/or obstructive pattern. 1.4.4. Chest X-ray - diffuse haziness of the lungs bilaterally early in the disease. As the disease progresses, the “ground glass” appearance of interstitial fibrosis will appear. 1.4.5. Clinical Course - employees with acute silicosis are at especially high risk of TB activation, nontuberculous mycobacterial infections, and fungal superinfections. Acute silicosis is immediately life-threatening. The employee should	

	be urgently referred to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine for evaluation and treatment. Although any case of silicosis indicates a breakdown in prevention, a case of acute or accelerated silicosis implies a profoundly high level of silica exposure and may mean that other employees are currently exposed to dangerous levels of silica. 1.4.6. Suspected Silicosis. The Standard defines "suspected silicosis" to mean any one of the following: 1.4.6.1. An employee with respirable crystalline silica exposure who has one or more of the following symptoms for 14 or more days unless the symptom is explained by another illness: cough, difficulty breathing, fatigue, shortness of breath, chest pain, weakness, fever, or unexplained weight loss; or 1.4.6.2. An employee with clinical findings suggestive of silicosis; or 1.4.6.3. An employee with respirable crystalline silica exposure with abnormal spirometry regardless of symptoms that is not yet a confirmed silicosis case. 1.4.7. Confirmed Silicosis. The Standard defines "confirmed silicosis" to mean any one of the following: 1.4.7.1. A written diagnosis of silicosis made by a PLHCP that is accompanied by one or more of the following: 1.4.7.1.1. A chest x-ray, interpreted by an individual certified by the National Institute for Occupational Safety and Health (NIOSH) as a B-Reader, classifying the existence of pneumoconiosis of category 1/0 or higher; or	

	1.4.7.1.2. Results from a chest x-ray, chest computer tomography (CT) scan or other imaging technique that are consistent with silicosis; or 1.4.7.1.3. Lung histopathology consistent with silicosis; or 1.4.7.2. Death certificate listing silicosis or pneumoconiosis from silica dust as an underlying or contributing cause of death; or 1.4.7.3. Exposure to airborne respirable crystalline silica accompanied by one or more of the following: 1.4.7.3.1. Chest x-ray (or other imaging technique, such as chest CT scan) showing abnormalities interpreted as consistent with silicosis; or 1.4.7.3.2. Lung histopathology consistent with silicosis. 1.5. COPD. COPD, including chronic bronchitis and emphysema, has been documented in silica-exposed employees, including those who do not develop silicosis. Periodic spirometry tests are performed to evaluate each employee for progressive changes consistent with the development of COPD. In addition to evaluating spirometry results of individual employees over time, PLHCPs may want to be aware of general trends in spirometry results for groups of employees from the same workplace to identify possible problems that might exist at that workplace. (See Section 2 of this Appendix on Medical Surveillance for further discussion.) Heart disease may develop secondary to lung diseases such as COPD. A ~~recent~~ study by Liu et al. 2014 noted a significant exposure-response trend between cumulative silica exposure and heart disease deaths, primarily due to pulmonary heart disease, such as cor pulmonale.	

	1.6. Renal and Immune System. Silica exposure has been associated with several types of kidney disease, including glomerulonephritis, nephrotic syndrome, and end stage renal disease requiring dialysis. Silica exposure has also been associated with other autoimmune conditions, including progressive systemic sclerosis, systemic lupus erythematosus, and rheumatoid arthritis. Studies note an association between employees with silicosis and serologic markers for autoimmune diseases, including antinuclear antibodies, rheumatoid factor, and immune complexes (Jalloul and Banks 2007; Shtraichman et al. 2015). *1.7. TB and Other Infections*. Silica-exposed employees with latent TB are 3 to 30 times more likely to develop active pulmonary TB infection (ATS 1997; Rees and Murray 2007). Although respirable crystalline silica exposure does not cause TB infection, individuals with latent TB infection are at increased risk for activation of disease if they have higher levels of respirable crystalline silica exposure, greater profusion of radiographic abnormalities, or a diagnosis of silicosis. Demographic characteristics, such as immigration from some countries, are associated with increased rates of latent TB infection. PLHCPs can review the latest Centers for Disease Control and Prevention (CDC) information on TB incidence rates and high risk populations online (See Section 5 of this Appendix). Additionally, silica-exposed employees are at increased risk for contracting nontuberculous mycobacterial infections and other mycotic infections, including Mycobacterium avium-intracellulare and Mycobacterium kansaii, coccidioidomycosis, and aspergillosis (Iossifova et al. 2010).	

	1.8. Lung Cancer. The National Toxicology Program has listed respirable crystalline silica as a known human carcinogen since 2000 (NTP 2014). The International Agency for Research on Cancer (2012) has also classified silica as Group 1 (carcinogenic to humans). Several studies have indicated that the risk of lung cancer from exposure to respirable crystalline silica and smoking is greater than additive (Brown 2009; Liu et al. 2013). Employees should be counseled on smoking cessation. *2. Medical Surveillance* PLHCPs who manage silica medical surveillance programs required by section 5204, should have a thorough understanding of the many silica-related diseases and health effects outlined in Section 1 of this Appendix. The employer must make available initial and periodic medical examinations that are required by this standard. At each ~~clinical encounter~~ initial and periodic examination, the PLHCP should consider silica-related health outcomes, with particular vigilance for acute and accelerated silicosis. In this s~~S~~ection, the required components of medical surveillance under the respirable crystalline silica standard are reviewed, along with additional guidance and recommendations for PLHCPs performing medical surveillance examinations for silica-exposed employees. 2.1. History 2.1.1. The respirable crystalline silica standard requires the following: A medical and work history that includes ~~, with emphasis on:~~ ~~P~~past, present, and anticipated exposure to respirable crystalline silica~~, dust,~~ and other agents affecting the respiratory system~~;~~, including as a result of performing high-exposure trigger tasks; the approximate percentage of time	

	the employee performed high-exposure trigger tasks, if any, over their working lifetime; the type of respiratory protection used by the employee for protection against respirable crystalline silica, if any, over their working lifetime, and the approximate percentage of time the employee used the respiratory protection; current or preexisting ~~any history of~~ respiratory system health conditions or ~~dysfunction~~ impairment, including signs and symptoms of respiratory disease (e.g., shortness of breath, cough, wheezing); history of TB; and smoking status and history. Taking the time to create a detailed timeline of relevant exposure to respirable crystalline silica, available respiratory protection, and development of other known health conditions is critical to understanding the employee's cumulative impact from current, past and anticipated exposures. 2.1.2. Further, the employer must ~~provide~~ ensure that the examining PLHCP has a copy of this standard, and shall provide the PLHCP with the following information: 2.1.2.1. A description of the employee's former, current, and anticipated duties, including high-exposure trigger tasks, as they relate to the employee's occupational exposure to respirable crystalline silica; 2.1.2.2. The employee's former, current, and anticipated levels of occupational exposure to respirable crystalline silica; 2.1.2.3. A description of the type of respiratory protection ~~any personal protective equipment~~ used ~~or to be used~~ by the employee, if any, ~~including when~~ and ~~for~~ how ~~long~~ often the employee ~~has used or will use that equipment~~ uses it; and	

	2.1.2.4. Information from records of employment-related medical examinations previously provided to the employee and currently within the control of the employer. 2.1.2.5 Name, phone number, email, and physical address of any previous PLHCP or Specialist. 2.1.2.6 The obligation of PLHCPs and specialists to report confirmed silicosis and lung cancer cases to the Division, in accordance with subsection (m)(2), detailed below in Section 3.2.7., in addition to complying with the silicosis reporting requirements under California Code of Regulations (CCR) Title 17. 2.1.3. Additional guidance and recommendations: A history is particularly important both in the initial evaluation and in periodic examinations. A history of and ~~i~~information on past and current medical conditions (particularly a history of kidney disease, cardiac disease, pulmonary disease, connective tissue disease, and other immune diseases), medications, hospitalizations and surgeries may uncover health risks, such as immune suppression, that could put an employee at increased health risk from exposure to silica. This information is important when counseling the employee on risks and safe work practices related to silica exposure. 2.2. Physical Examination 2.2.1. The respirable crystalline silica standard requires the following: INITIAL EXAMINATIONS: An initial physical examination, with special emphasis on the respiratory system, for each employee occupationally exposed to high-exposure trigger tasks for at least 10 days each year. This examination shall be made available within 30 days after initial assignment, unless the	

	employee has received a medical examination that meets the requirements of subsection (j)(4) within the last calendar year. PERIODIC EXAMINATIONS: For each employee covered by subsection (j)(2)(A), a medical examination must be offered once a year, or more frequently if recommended by the PLHCP, that meets the requirement of subsection (j)(4). For each employee covered by subsection (j)(2)(B), medical examinations meeting the requirements of subsection (j)(4) shall be made available at least every three years, or more frequently if recommended by the PLHCP. 2.2.2. Additional guidance and recommendations: Elements of the physical examination that can assist the PHLCP include: An examination of the cardiac system, an extremity examination (for clubbing, cyanosis, edema, or joint abnormalities), and an examination of other pertinent organ systems identified during the history. 2.3. TB Testing 2.3.1. The respirable crystalline silica standard requires the following: Baseline testing for TB on initial examination only. 2.3.2. Additional guidance and recommendations: 2.3.2.1. Current CDC guidelines (See Section 5 of this Appendix) should be followed for the application and interpretation of Tuberculin skin tests (TST). The interpretation and documentation of TST reactions should be performed within 48 to 72 hours of administration by trained PLHCPs. 2.3.2.2. PLHCPs may use alternative TB tests, such as interferon-γ release assays (IGRAs), if sensitivity and specificity are comparable to TST (Mazurek et al. 2010; Slater et al. 2013).	

	PLHCPs can consult the current CDC guidelines for acceptable tests for latent TB infection. 2.3.2.3. The silica standard allows the PLHCP to order additional tests or test at a greater frequency than required by the standard, if deemed appropriate. Therefore, PLHCPs might perform periodic (e.g., annual) TB testing as appropriate, based on employees' risk factors. For example, according to the American Thoracic Society (ATS), the diagnosis of silicosis or exposure to silica for 25 years or more are indications for annual TB testing (ATS 1997). PLHCPs should consult the current CDC guidance on risk factors for TB (See Section 5 of this Appendix). 2.3.2.4. Employees with positive TB tests and those with indeterminate test results should be referred to the appropriate agency or specialist, depending on the test results and clinical picture. Agencies, such as local public health departments, or specialists, such as a pulmonary or infectious disease specialist, may be the appropriate referral. Active TB is a nationally notifiable disease. PLHCPs should be aware of the reporting requirements for their region. All States have TB Control Offices that can be contacted for further information. (See Section 5 of this Appendix for links to CDC's TB resources and State TB Control Offices.) 2.3.2.5. The following public health principles are key to TB control in the U.S. (ATS-CDC-IDSA 2005): (1) Prompt detection and reporting of persons who have contracted active TB; (2) Prevention of TB spread to close contacts of active TB cases;	

	(3) Prevention of active TB in people with latent TB through targeted testing and treatment; and (4) Identification of settings at high risk for TB transmission so that appropriate infection-control measures can be implemented. 2.4. Pulmonary Function Testing 2.4.1. The respirable crystalline silica standard requires the following: Pulmonary function testing must be performed at ~~on~~ both the initial examination and ~~every three years thereafter~~ periodic examinations referenced above. The required pulmonary function test is spirometry and must include forced vital capacity (FVC), forced expiratory volume in one second (FEV1), and FEV1/FVC ratio. Testing must be administered by a spirometry technician with a current certificate from a National Institute for Occupational Health and Safety (NIOSH)-approved spirometry course. 2.4.2. Additional guidance and recommendations: Spirometry provides information about individual respiratory status and can be used to track an employee's respiratory status over time or as a surveillance tool to follow individual and group respiratory function. For reference ~~quality results~~, the ATS and the American College of Occupational and Environmental Medicine (ACOEM) recommend use of the third National Health and Nutrition Examination Survey (NHANES III) values, and ATS publishes recommendations for spirometry equipment (Miller et al. 2005; Townsend 2011; Redlich et al. 2014). OSHA's publication 3637, Spirometry Testing in Occupational Health Programs: Best Practices for Healthcare Professionals, provides helpful guidance (See Section 5 of this Appendix). Abnormal spirometry results may warrant further	

	clinical evaluation and possible recommendations for limitations on the employee's exposure to respirable crystalline silica. 2.5. Chest X-ray 2.5.1. The respirable crystalline silica standard requires the following: A single posteroanterior (PA) radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems. A chest X-ray must be performed on the initial examination and every three years thereafter. The chest X-ray must be interpreted and classified according to the International Labour ~~Office~~ Organization (ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader. Chest radiography is necessary to diagnose silicosis, monitor the progression of silicosis, and identify associated conditions such as TB. If the B reading indicates small opacities in a profusion of 1/0 or higher, the employee is to receive a recommendation for referral to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine. 2.5.2. Additional guidance and recommendations: Medical imaging has largely transitioned from conventional film-based radiography to digital radiography systems. The ILO Guidelines for the Classification of Pneumoconioses has historically provided film-based chest radiography as a referent standard for comparison to individual exams. However, in 2011, the ILO revised the guidelines to include a digital set of referent standards that were derived from the prior film-based standards. To assist in assuring that digitally-acquired	

	radiographs are at least as safe and effective as film radiographs, NIOSH has prepared guidelines, based upon accepted contemporary professional recommendations (See Section 5 of this Appendix). Current research from Laney et al. 2011 and Halldin et al. 2014 validate the use of the ILO digital referent images. Both studies conclude that the results of pneumoconiosis classification using digital references are comparable to film-based ILO classifications. Current ILO guidance on radiography for pneumoconioses and B-reading should be reviewed by the PLHCP periodically, as needed, on the ILO or NIOSH Web sites (See Section 5 of this Appendix). 2.6. A chest computed tomography (CT) scan at the lowest dose possible, as well as, a test of lung diffusing capacity from carbon monoxide, and any additional recommended pulmonary function testing, shall be included in initial and periodic examinations when deemed appropriate by the PLHCP or specialist. The chest CT can be offered in lieu of the CXR at the discretion of the PLHCP or specialist. It must be included for any employee with suspected silicosis, as defined in the standard, or for any employee who has performed, or been exposed to, high-exposure trigger tasks for at least 30 days each year during a total of at least three prior years, regardless of exposure assessment or objective data, unless detailed exposure data is available as outlined in EXCEPTION under subsection (j)(4)(B)(3). There is growing evidence that chest radiography and spirometry are inadequately sensitive for early detection of silicosis. Australian and Italian cases series have documented superior identification of abnormalities consistent with silicosis with the addition of chest computed tomography (CT) (Newbigin et al., 2019; Hoy et al., 2020) and with Chest CT and diffusing capacity of lung for carbon	

	monoxide (DLCO) (Guarnieri et al., 2020), compared to chest radiographs and routine spirometry alone. A recent study has indicated that chest CTs can identify cases of simple silicosis not identified by CXRs evaluated according to the International Labour Organization(ILO) classifications (Hoy et al. 2023) Such findings have prompted the Thoracic Society of Australia and New Zealand to recently recommend the addition of low-dose CT of the Chest and DLCO to screening protocols for countertop fabrication workers (Perret et al., 2020). *2.7~~6~~. Other Testing*. Under the respirable crystalline silica standards, the PLHCP has the option of ordering additional testing ~~he or she~~ they deem~~s~~ appropriate. Additional tests can be ordered on a case-by-case basis depending on individual signs or symptoms and clinical judgment. For example, if an employee reports a history of abnormal kidney function tests, the PLHCP may want to order a baseline renal function test~~s~~ (e.g., serum creatinine and urinalysis). As indicated above, the PLHCP may order annual TB testing for silica-exposed employees who are at high risk of developing active TB infections. Additional tests that PLHCPs may order based on findings of medical examinations include, but are not limited to, chest computerized tomography (CT) scan for silicosis, lung cancer, or COPD, in addition to suspected silicosis, testing for immunologic diseases, and cardiac testing for pulmonary-related heart disease, such as cor pulmonale. *3. Roles and Responsibilities* 3.1. PLHCP. The PLHCP designation refers to “an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide or be delegated the responsibility to provide some or all of the particular health care services	

	required" by the respirable crystalline silica standard. The legally permitted scope of practice for the PLHCP is determined by each State. PLHCPs who perform clinical services for a silica medical surveillance program should have a thorough knowledge of respirable crystalline silica-related diseases and symptoms. Suspected cases of silicosis, as defined in the standard, advanced COPD, or other respiratory conditions causing impairment should be promptly referred to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine. Once the medical surveillance examination is completed, the employer must ensure that the PLHCP explains to the employee the results of the initial and periodic medical examinations and provides the employee with a written medical report within 30 days of the examination. The written medical report must contain a statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any medical conditions that require further evaluation or treatment. In addition, the PLHCP's written medical report must include any recommended limitations on the employee's use of respirators, any recommended limitations on the employee's exposure to respirable crystalline silica; including during high-exposure trigger tasks; and a statement that the employee should be examined by a Board Certified Specialist in Pulmonary Disease or Occupational medicine if the chest X-ray is classified as 1/0 or higher by the B Reader, if applicable, or if referral to a Specialist is otherwise deemed appropriate by the PLHCP. The written report must also include a statement describing the	

	findings of a chest CT scan or equivalent; a lung diffusing capacity exam; and any additional pulmonary function testing, if applicable; and a recommendation on whether a supplied-air respirator is needed for the employee. The PLHCP should discuss all findings and test results and any recommendations regarding the employee's health, worksite safety and health practices, and medical referrals for further evaluation, if indicated. In addition, it is suggested that the PLHCP offer to provide the employee with a complete copy of their examination and test results, as some employees may want this information for their own records or to provide to their personal physician or a future PLHCP. Employees are entitled to access their medical records. Under the respirable crystalline silica standard, the employer must ensure that the PLHCP provides the employer with a written medical opinion within ~~30~~14 days of each initial and periodic ~~the~~ employee examination, and that the employee also gets a copy of the written medical opinion ~~for the employer within 30 days~~ immediately. The PLHCP may choose to directly provide the employee a copy of the written medical opinion. This can be particularly helpful to employees, such as construction employees, who may change employers frequently. The written medical opinion can be used by the employee as proof of up-to-date medical surveillance. The following lists the elements of the written medical report for the employee and written medical opinion for the employer. (Sample forms for the written medical report for the employee, the written medical opinion for the employer, and the written authorization are provided in Section 7 of this Appendix.)	

	3.1.1. PLHCP's ~~The~~ written medical report for the employee must include the following information: 3.1.1.1. A statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any medical conditions that require further evaluation or treatment; 3.1.1.2. Any recommended limitations upon the employee's use of a respirator; 3.1.1.3. Any recommended limitations on the employee's exposure to respirable crystalline silica; including during high-exposure trigger tasks; and 3.1.1.4. A statement that the employee should be examined by a Board Certified Specialist in Pulmonary Disease or Occupational Medicine, where the standard requires or where the PLHCP has determined such a referral is necessary. The standard requires referral to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine for a chest X-ray B reading indicating small opacities in a profusion of 1/0 or higher, or if the PHLCP determines that referral to a Specialist is necessary for other silica-related findings. 3.1.1.5 A statement describing the finding of a chest computed tomography (CT) scan or equivalent; a lung diffusing capacity exam; and any additional pulmonary function testing, if applicable. 3.1.1.6 A recommendation on whether a supplied-air respirator is needed for the employee.	

	3.1.2. The PLHCP's written medical opinion for the employer must include ~~only~~ the following information: 3.1.2.1. The date of the examination; 3.1.2.2. A statement that the examination has met the requirements of this section; ~~and~~ 3.1.2.3. Any recommended limitations on the employee's use of respirators. 3.1.2.4 An opinion on whether a supplied-air respirator is needed for the employee; and 3.1.2.5 Any recommended limitations on the employee's exposure to respirable crystalline silica, including during high-exposure trigger tasks. 3.1.2.6 Note on respirators. When employees perform high-exposure trigger tasks or work within a regulated area where high-risk exposure tasks occur, the regulation specifies the type and conditions under which a powered-air purifying respirator (PAPR). Also specified in the Standard is the use of a supplied-air respirator for any employees known to the employer to be diagnosed with confirmed silicosis, or who meet the definition of suspected silicosis, or whenever the PLHCP or specialist recommends the use of a supplied-air respirator. This specified higher level of protection is critical for minimizing the exposure to hazardous respirable crystalline silica while performing high-exposure trigger tasks and associated work duties. Research on exposures and emissions involving workers exposed to respirable crystalline silica (Cooper at al., 2015; Salamon et al., 2021; Ramkisson et al., 2022), including a "real-world" study on measured exposures amongst engineered stone workers in California (Surasi et al.,	

	2022) support the need for higher levels of respiratory protection for these workers. 3.1.2.74. If the employee provides the PLHCP with written authorization, the written opinion for the employer shall also contain either or both of the following: (1) Any recommended limitations on the employee's exposure to respirable crystalline silica; and (2) A statement that the employee should be examined by a Board Certified Specialist in Pulmonary Disease or Occupational Medicine if the chest X-ray provided in accordance with this section is classified as 1/0 or higher by the B Reader, or if referral to a Specialist is otherwise deemed appropriate. 3.1.2.~~5~~8. In addition to the above referral for abnormal chest X-ray, the PLHCP may refer an employee to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine for other findings of concern during the medical surveillance examination if these findings are potentially related to silica exposure. 3.1.2.~~6~~9. Although the respirable crystalline silica standard requires the employer to ensure that the PLHCP explains the results of the medical examination to the employee, the standard does not mandate how this should be done. The written medical opinion for the employer could contain a statement that the PLHCP has explained the results of the medical examination to the employee. *3.2. Medical Specialists.* The silica standard requires that all employees with chest X-ray B readings of 1/0 or higher be referred to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine. Referrals can also be made for other	

	relevant findings or concerns at the discretion of the PLHCP. If ~~the employee has given written authorization for the employer to be informed, then~~ the PLHCP's written medical opinion indicates that an employee should be examined by a specialist, the employer shall make available a medical examination by a s~~S~~pecialist within 30 days after receiving the PLHCP's written medical opinion. 3.2.1. The employer must ~~provide~~ ensure that the examining specialist is provided with all the information that the employer is obligated to provide the PLHCP, which includes the following information: ~~to the Board-Certified Specialist in Pulmonary Disease or Occupational Medicine:~~ 3.2.1.1. A description of the employee's former, current, and anticipated duties, including high-exposure trigger tasks, as they relate to the employee's occupational exposure to respirable crystalline silica; 3.2.1.2. The employee's former, current, and anticipated levels of occupational exposure to respirable crystalline silica; 3.2.1.3. A description of ~~any personal protective equipment~~ the type of respiratory protection used ~~or to be used~~ by the employee, if any, and how often the employee uses it; ~~including when and for how long the employee has used or will use that equipment;~~ and 3.2.1.4. Information from records of employment-related medical examinations previously provided to the employee and currently within the control of the employer. 3.2.1.5 Name, phone number, email, and physical address of any previous PLHCP or Specialist.	

	3.2.1.6. The obligation of PLHCPs and specialist to report (see section 3.2.7. below for details) confirmed silicosis and lung cancer cases to the Division, in accordance with the Standard, in addition to complying with the silicosis reporting requirements under California Code of Regulations (CCR) Title 17. 3.2.2. The PLHCP should make certain that, with written authorization from the employee, the Board Certified Specialist in Pulmonary Disease or Occupational Medicine has any other pertinent medical and occupational information necessary for the specialist's evaluation of the employee's condition. 3.2.3. Once the Board Certified Specialist in Pulmonary Disease or Occupational Medicine has evaluated the employee, the employer must ensure that the Specialist explains to the employee the results of the medical examination and provides the employee with a written medical report within 30 days of the examination. The employer must also ensure that the Specialist provides the employer with a written medical opinion within 30 days of the employee examination. (Sample forms for the written medical report for the employee, the written medical opinion for the employer and the written authorization are provided in Section 7 of this Appendix.) 3.2.4. The Specialist's written medical report for the employee must include the following information: 3.2.4.1. A statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any	

	medical conditions that require further evaluation or treatment; 3.2.4.2. Any recommended limitations upon the employee's use of a respirator; ~~and~~ 3.2.4.3. Any recommended limitations on the employee's exposure to respirable crystalline silica~~.~~, including during high-exposure trigger tasks; 3.2.4.4. A statement describing the findings of a chest computed tomography (CT) scan or equivalent; a lung diffusing capacity exam; and any additional pulmonary function testing, if applicable; and 3.2.4.5. A recommendation on whether a supplied-air respirator is needed for the employee. 3.2.5. The Specialist's written medical opinion for the employer must include the following information: 3.2.5.1. The date of the examination; ~~and~~ 3.2.5.2. A statement that the examination has met the requirements of the standard; 3.2.5.3~~2~~. Any recommended limitations on the employee's use of respirators~~.~~; 3.2.5.4. An opinion on whether a supplied-air respirator is needed for the employee; and 3.2.5.5. Any recommended limitation on the employee's exposure to respirable crystalline silica. ~~3.2.5.3. If the employee provides the Board Certified Specialist in Pulmonary Disease or Occupational Medicine with written authorization, the written medical opinion for the employer~~	

	~~shall also contain any recommended limitations on the employee's exposure to respirable crystalline silica.~~ 3.2.5.6~~4~~. Although the respirable crystalline silica standard requires the employer to ensure that the Board Certified Specialist in Pulmonary Disease or Occupational Medicine explains the results of the medical examination to the employee, the standard does not mandate how this should be done. The written medical opinion for the employer could contain a statement that the Specialist has explained the results of the medical examination to the employee. 3.2.6. After evaluating the employee, the Board Certified Specialist in Pulmonary Disease or Occupational Medicine should provide feedback to the PLHCP as appropriate, depending on the reason for the referral. OSHA believes that because the PLHCP has the primary relationship with the employer and employee, the Specialist may want to communicate his or her findings to the PLHCP and have the PLHCP simply update the original medical report for the employee and medical opinion for the employer. This is permitted under the standard, so long as all requirements and time deadlines are met. 3.2.7 Reporting of silicosis. Both the employer and the PLHCP have reporting obligations under the respirable crystalline silica standard. 3.2.7.1. Employer responsibilities for reporting. Within 24 hours of receiving information regarding a confirmed silicosis case or lung cancer related to respirable crystalline silica exposure, the employer must report the following information to the California Department of Public Health (CDPH) and to	

	the Division by phone or a specified online mechanism established by these agencies: 3.2.7.1.1. The name, phone number, email, and mailing address of each employee identified with silicosis or lung cancer, or their next of kin; 3.2.7.1.1.2 Date of birth of employee; 3.2.7.1.3. The employer's business name, including any aliases or dba identifiers, and the employer's phone number, email, and mailing address; 3.2.7.1.4. The name, phone number, email, physical address, and mailing address of the manager responsible for the facility where each employee with silicosis or lung cancer is, or was, employed; 3.2.7.1.5. The name, phone number, email, and mailing address of the diagnosing PLHCP, and the date of diagnosis; 3.2.7.1.6. The number of years each employee identified with silicosis has been, or was, employed by the employer, and the tasks the employee engaged in during this time period, including the number and frequency of high-exposure trigger tasks; 3.2.7.1.7. The specific protections, if any, that were implemented by the employer throughout the employee's period of employment, to prevent exposure to respirable crystalline silica; 3.2.7.1.8. Results of air monitoring for respirable crystalline silica conducted by the employer throughout the employee's period of employment;	

	3.2.7.1.9. A description of any personal protection equipment provided by the employer and used by the employee throughout the employee's period of employment; 3.2.7.1.10. Whether or not the employer has reported the facility with the Division as required by Section 5203 (Carcinogen Report of Use Requirements); and 3.2.7.1.11. Prior employers, if known, where the employee had respirable crystalline silica exposure. 3.2.7.2. PLHCP and specialist responsibilities for reporting. Within 24 hours of identifying a confirmed silicosis case, PLHCPs and specialists must report the case to the Division by phone or a specified online mechanism, in addition to complying with reporting requirements under California Code of Regulations (CCR) Title 17. The report must include the following information: 3.2.7.2.1. Name of the employer; 3.2.7.2.2. Name of employer representative; 3.2.7.2.3. Phone number and email for the employer; 3.2.7.2.4. The employee's levels of occupational exposure to respirable crystalline silica, if known; 3.2.7.2.5. A description of any personal protective equipment used by the employee, if known, and 3.2.7.2.6. Name, date of birth, phone number, email, and physical address of affected employee. *3.3. Public Health Professionals*. PLHCPs might refer employees or consult with public health professionals as a result of silica medical surveillance. For instance, if individual cases of active TB are identified, public health professionals from state or	

	local health departments may assist in diagnosis and treatment of individual cases and may evaluate other potentially affected persons, including coworkers. Because silica-exposed employees are at increased risk of progression from latent to active TB, treatment of latent infection is recommended. The diagnosis of active TB, acute or accelerated silicosis, or other silica-related diseases and infections should serve as sentinel events suggesting high levels of exposure to silica and may require consultation with the appropriate public health agencies to investigate potentially similarly exposed coworkers to assess for disease clusters. These agencies include local or state health departments or OSHA. In addition, NIOSH can provide assistance upon request through their Health Hazard Evaluation program. (See Section 5 of this Appendix) *4. Medical Removal* If a worker has suspected or confirmed silicosis, as defined in the Standard, or needs to restrict exposure to respirable crystalline silica for other related concerns, the PLHCP, alone or in consultation with the Specialist, should determine if the worker can safely remain in the workplace. If conditions are unsafe, the worker should be effectively and immediately removed from further exposure to respirable crystalline silica. This work status change may be initiated when the worker begins further evaluation and before a full characterization of the worker's medical condition. The employer should be advised that respirator use, even in the case of supplied-air respirator use, in an exposed environment is not equivalent to removal from exposure. Finally, caution should be exercised when considering returning a worker to usual work tasks even if the health condition has improved and engineering controls have been implemented.	

	4.1 When the PLHCP determines that an employee needs to be removed from a job assignment or that the employee's job needs to be modified to reduce exposure to respirable crystalline silica, the employer must modify the employee's job or transfer the employee to comparable work for which the employee is qualified, or for which the employee can be trained within a period of six months. 4.2 The employer must maintain the employee's current earnings, seniority, and other benefits for up to six months. If there is no work available that meets the PLHCP's recommended restrictions, the employer must maintain the employee's current earnings, seniority, and other benefits until any of the following occurs: 4.2.1. Such work becomes available; 4.2.2. The employee is determined by the PLHCP, or determined in accordance with the subsection (k)(4), to be able to return to his or her original job status; 4.2.3. The employee is determined by the PLHCP, or is determined in accordance with subsection (k)(4), to be permanently unable to return to work that could involve exposure to respirable crystalline silica; and/or 4.2.4. Six months have elapsed since the beginning of the current medical removal period. 4.3 Workers' Compensation Claims. If a removed employee files a claim for workers' compensation for a silica-related disability, the employer must provide medical removal benefits to the employee at the employee's normal hourly wage and weekly work schedule for a period of up to six months, pending final disposition of the claim.	

	4.4. Other Credits. The employer's obligation to provide medical removal benefits to a removed employee may only be reduced by the amount that the employee receives in compensation for: 4.4.1 Earnings lost during the period of removal from a public or employer-funded compensation program, including a workers' compensation program; or 4.4.2 Income received from employment with another employer made possible by virtue of the employee's removal. 4.4 Independent Medical Review. 4.4.1 After any medical evaluation or consultation conducted as outlined in subsections (j) or (k), the employee may designate an independent PLHCP to review any findings, determinations, or recommendations and to conduct such examinations, consultations, and laboratory tests as this second PLHCP deems necessary and appropriate to facilitate this review. 4.4.2 The costs of this review will be borne by the employer. 4.4.3 The determination of the second PLHCP shall be binding on all parties. *54. Confidentiality and Other Considerations* * * * * ~~5~~6. *Resources* ~~5~~6.1. American College of Occupational and Environmental Medicine (ACOEM):	

	ACOEM Code of Ethics. Accessed at: http://www.acoem.org/codeofconduct.aspx Raymond, L.W. and Wintermeyer, S. (2006) ACOEM evidenced-based statement on medical surveillance of silica-exposed workers: Medical surveillance of workers exposed to crystalline silica. *J Occup Environ Med*, 48, 95-101. ~~5~~6.2. Center for Disease Control and Prevention (CDC) Tuberculosis Web page: http://www.cdc.gov/tb/default.htm State TB Control Offices Web page: http://www.cdc.gov/tb/links/tboffices.htm Tuberculosis Laws and Policies Web page: http://www.cdc.gov/tb/programs/laws/default.htm CDC. (2013). Latent Tuberculosis Infection: A Guide for Primary Health Care Providers. Accessed at: http://www.cdc.gov/tb/publications/ltbi/pdf/targetedltbi.pdf ~~5~~6.3. International Labour Organization International Labour ~~Office~~ Organization (ILO). (2011) Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2011. Occupational Safety and Health Series No. 22: http://www.ilo.org/safework/info/publications/WCMS_168260/lang- en/index.htm ~~5~~6.4. National Institute of Occupational Safety and Health (NIOSH) NIOSH B Reader Program Web page. (Information on interpretation of X-rays for silicosis and a list of certified B-readers). Accessed at:	

	http://www.cdc.gov/niosh/topics/chestradiography/breader-info.html NIOSH Guideline (2011). Application of Digital Radiography for the Detection and Classification of Pneumoconiosis. NIOSH publication number 2011-198. Accessed at: http://www.cdc.gov/niosh/docs/2011-198/. NIOSH Hazard Review (2002), Health Effects of Occupational Exposure to Respirable Crystalline Silica. NIOSH publication number 2002-129: Accessed at http://www.cdc.gov/niosh/docs/2002-129/ NIOSH Health Hazard Evaluations Programs. (Information on the NIOSH Health Hazard Evaluation (HHE) program, how to request an HHE and how to look up an HHE report). Accessed at: http://www.cdc.gov/niosh/hhe/ ~~5~~6.~~.~~5. National Industrial Sand Association: Occupational Health Program for Exposure to Crystalline Silica in the Industrial Sand Industry. National Industrial Sand Association, 2nd ed. 2010. Can be ordered at: http://www.sand.org/silica-occupational-health-program ~~5~~6.6. Occupational Safety and Health Administration (OSHA) Contacting OSHA: http://www.osha.gov/html/Feed_Back.html OSHA's Clinicians Web page. (OSHA resources, regulations and links to help clinicians navigate OSHA's Web site and aid clinicians in caring for workers.) Accessed at: http://www.osha.gov/dts/oom/clinicians/index.html OSHA's Safety and Health Topics Web page on Silica. Accessed at: http://www.osha.gov/dsg/topics/silicacrystalline/index.html	

	OSHA (2013). Spirometry Testing in Occupational Health Programs: Best Practices for Healthcare Professionals. (OSHA 3637-03 2013). Accessed at: http://www.osha.gov/Publications/OSHA3637.pdf OSHA/NIOSH (2011). Spirometry: OSHA/NIOSH Spirometry InfoSheet (OSHA 3415-1-11). (Provides guidance to employers). Accessed at http://www.osha.gov/Publications/osha3415.pdf OSHA/NIOSH (2011) Spirometry: OSHA/NIOSH Spirometry Worker Info. (OSHA 3418-3-11). Accessed at http://www.osha.gov/Publications/osha3418.pdf ~~5~~6.7. Other Steenland, K. and Ward E. (2014). Silica: A lung carcinogen. *CA Cancer J Clin*, 64, 63-69. (This article reviews not only silica and lung cancer but also all the known silica-related health effects. Further, the authors provide guidance to clinicians on medical surveillance of silica-exposed workers and worker counselling on safety practices to minimize silica exposure.) ~~6~~7. References American Thoracic Society (ATS). Medical Section of the American Lung Association (1997). Adverse effects of crystalline silica exposure. *Am J Respir Crit Care Med*, 155, 761-765. American Thoracic Society (ATS), Centers for Disease Control (CDC), Infectious Diseases Society of America (IDSA) (2005). Controlling Tuberculosis in the United States. *Morbidity and Mortality Weekly Report* (MMWR), 54(RR12), 1-81. Accessed at: http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5412a1.htm.	

	American Thoracic Society/European Respiratory Society (ATS/ERS) Task Force: Standardization of Spirometry. *Eur Respir J*, 26, 319-338 Attfield, M. D., and J. Costello, "Quantitative Exposure-Response for Silica Dust and Lung Cancer in Vermont Granite Workers," *Am J of Ind Med*, Vol. 45, No. 2, February 2004, pp. 129–138. Brown, T. (2009). Silica exposure, smoking, silicosis and lung cancer-complex interactions. *Occupational Medicine*, 59, 89-95. Buchanan, D., B. G. Miller, and C. A. Soutar, "Quantitative Relations Between Exposure to Respirable Quartz and Risk of Silicosis," *Occ and Env Med,* Vol. 60, 2003, pp. 159–164. Cooper JH, Johnson DL, Phillips ML. Respirable silica dust suppression during artificial stone countertop cutting. Ann Occup Hyg. 2015 Jan;59(1):122-6. doi: 10.1093/annhyg/meu083. Epub 2014 Oct 17. PMID: 25326187; PMCID: PMC4290629. Fazio JC, Gandhi SA, Flattery J, et al. Silicosis Among Immigrant Engineered Stone (Quartz) Countertop Fabrication Workers in California. *JAMA Intern Med.* 2023;183(9):991–998. doi:10.1001/jamainternmed.2023.3295 Guarnieri G, Salasnich M, Lucernoni P, Sbaraglia M, Putzu MG, Zuliani P, Rossi F, Vio S, Bianchi L, Martinelli A, Gottardo O, Bizzotto R, Maestrelli P, Mason P, Carrieri M. Silicosis in finishing workers in quartz conglomerates processing. Med Lav. 2020 Apr 30;111(2):99-106. doi: 10.23749/mdl.v111i2.9115. PMID: 32352423; PMCID: PMC7810008.	

	Halldin, C.N., Petsonk, E.L., and Laney, A.S. (2014). Validation of the International Labour ~~Office~~ Organization digitized standard images for recognition and classification of radiographs of pneumoconiosis. *Acad Radiol*, 21, 305-311. Halldin, C.N., Petsonk, E.L., and Laney, A.S. (2014). Validation of the International Labour ~~Office~~ Organization digitized standard images for recognition and classification of radiographs of pneumoconiosis. *Acad Radiol*, 21, 305-311. Hoy RF, Glass DC, Dimitriadis C, et al. Identification of early-stage silicosis through health screening of stone benchtop industry workers in Victoria, Australia. Occupational and Environmental Medicine. 2021 Apr;78(4):296-302. DOI: 10.1136/oemed-2020-106897. PMID: 33115923. Hoy et al., Prevalence and risk factors for silicosis benchtop workers (2023). *Occup Environ Med*, 80(8). https://pubmed.ncbi.nlm.nih.gov/37328266/. International Agency for Research on Cancer. (2012). Monographs on the evaluation of carcinogenic risks to humans: Arsenic, Metals, Fibers, and Dusts Silica Dust, Crystalline, in the Form of Quartz or Cristobalite. A Review of Human Carcinogens. Volume 100 C. Geneva, Switzerland: World Health Organization. Jalloul, A.S. and Banks D.E. (2007). Chapter 23. The health effects of silica exposure. In: Rom, W.N. and Markowitz, S.B. (Eds). Environmental and Occupational Medicine, 4th edition. Lippincott, Williams and Wilkins, Philadelphia, 365-387. Kramer, M.R., Blanc, P.D., Fireman, E., Amital, A., Guber, A., Rahman, N.A., and Shitrit, D. (2012). Artifical stone silicosis: Disease resurgence among artificial stone workers. *Chest*, 142, 419-424.	

	Laney, A.S., Petsonk, E.L., and Attfield, M.D. (2011). Intramodality and intermodality comparisons of storage phosphor computed radiography and conventional film-screen radiography in the recognition of small pneumonconiotic opacities. *Chest*, 140, 1574-1580. Liu, Y., Steenland, K., Rong, Y., Hnizdo, E., Huang, X., Zhang, H., Shi, T., Sun, Y., Wu, T., and Chen, W. (2013). Exposure-response analysis and risk assessment for lung cancer in relationship to silica exposure: A 44-year cohort study of 34,018 workers. *Am J Epi*, 178, 1424-1433. Liu, Y., Rong, Y., Steenland, K., Christiani, D.C., Huang, X., Wu, T., and Chen, W. (2014). Long-term exposure to crystalline silica and risk of heart disease mortality. *Epidemiology*, 25, 689-696. Iossifova Y, Bailey R, Wood J, Kreiss K. Concurrent silicosis and pulmonary mycosis at death. Emerg Infect Dis. 2010 Feb;16(2):318-20. doi: 10.3201/eid1602.090824. PMID: 20113570; PMCID: PMC2958007. Mandler et al. Hazardous dusts from the fabrication of countertop: a review (2022) Arch Environ Occup Health. 2023 ; 78(2): 118–126. doi:10.1080/19338244.2022.2105287. Mazurek, G.H., Jereb, J., Vernon, A., LoBue, P., Goldberg, S., Castro, K. (2010). Updated guidelines for using interferon gamma release assays to detect Mycobacterium tuberculosis infection-United States. *Morbidity and Mortality Weekly Report* (MMWR), 59(RR05), 1-25. Miller, M.R., Hankinson, J., Brusasco, V., Burgos, F., Casaburi, R., Coates, A., Crapo, R., Enright, P., van der Grinten, C.P., Gustafsson, P., Jensen, R., Johnson, D.C., MacIntyre, N., McKay,	

	R., Navajas, D., Pedersen, O.F., Pellegrino, R., Viegi, G., and Wanger, J. (2005). ~~American Thoracic Society/European Respiratory Society (ATS/ERS) Task Force: Standardization of Spirometry. *Eur Respir J*, 26, 319-338~~ National Toxicology Program (NTP) (2014). Report on Carcinogens, Thirteenth Edition. Silica, Crystalline (respirable Size). Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service. http://ntp.niehs.nih.gov/ntp/roc/content/profiles/sili- ca.pdf. Newbigin K, Parsons R, Deller D, Edwards R, McBean R. Stonem asons with silicosis: Preliminary findings and a warning message from Australia. *Respirology*. 2019; 24: 1220–1221. https://doi.org/10.1111/resp.13672 Occupational Safety and Health Administration/National Institute for Occupational Safety and Health (OSHA/NIOSH) (2012). Hazard Alert. Worker exposure to silica during hydraulic fracturing. Occupational Safety and Health Administration/National Institute for Occupational Safety and Health (OSHA/NIOSH) (2015). Hazard alert. Worker exposure to silica during countertop manufacturing, finishing, and installation. (OSHA-HA-3768-2015). Park, R., F. Rice, L. Stayner, R. Smith, S. Gilbert, and H. Checkoway, "Exposure to Crystalline Silica, Silicosis, and Lung Disease Other Than Cancer in Diatomaceous Earth Industry Workers: A Quantitative Risk Assessment," *Occ and Env Med*, Vol. 59, No. 1, January 2002, pp. 36–43. Pavan C, Polimeni M, Tomatis M, Corazzari I, Turci F, Ghigo D, Fubini B. Editor's Highlight: Abrasion of Artificial Stones as a	

	New Cause of an Ancient Disease. Physicochemical Features and Cellular Responses. Toxicol Sci. 2016 Sep;153(1):4-17. doi: 10.1093/toxsci/kfw101. Epub 2016 Jun 2. PMID: 27255382. Perret JL, Miles S, Brims F, Newbigin K, Davidson M, Jersmann H, Edwards A, Zosky G, Frankel A, Johnson AR, Hoy R, Reid DW, Musk AW, Abramson MJ, Edwards B, Cohen R, Yates DH. Respiratory surveillance for coal mine dust and artificial stone exposed workers in Australia and New Zealand: A position statement from the Thoracic Society of Australia and New Zealand. Respirology. 2020 Nov;25(11):1193-1202. doi: 10.1111/resp.13952. Epub 2020 Oct 13. PMID: 33051927; PMCID: PMC7702073. Ramkisson C, et al. Engineered Stone Fabrication Work Releases Volatile Organic Compounds Classified as Lung Irritants. Annals of Work Exposures and Health. February 13, 2023); 67(2) 288–293. https://pubmed.ncbi.nlm.nih.gov/36239208/. Accessed August 16, 2023. Redlich, C.A., Tarlo, S.M., Hankinson, J.L., Townsend, M.C, Eschenbacher, W.L., Von Essen, S.G., Sigsgaard, T., Weissman, D.N. (2014). Official American Thoracic Society technical standards: Spirometry in the occupational setting. *Am J Respir Crit Care Med*; 189, 984-994. Rees, D. and Murray, J. (2007). Silica, silicosis and tuberculosis. *Int J Tuberc Lung Dis*, 11(5), 474-484. Rose C, et al. Severe Silicosis in Engineered Stone Fabrication Workers—California, Colorado, Texas, and Washington, 2017–2019. Morbidity and Mortality Weekly Report. September 27, 2019;68(38):813-818.	

	https://www.cdc.gov/mmwr/volumes/68/wr/mm6838a1.htm. Accessed May 9, 2023. Salamon F, Martinelli A, Vianello L, Bizzotto R, Gottardo O, Guarnieri G, Franceschi A, Porru S, Cena L, Carrieri M. Occupational exposure to crystalline silica in artificial stone processing. J Occup Environ Hyg. 2021 Dec;18(12):547-554. doi: 10.1080/15459624.2021.1990303. Epub 2021 Nov 19. PMID: 34643481. Shtraichman, O., Blanc, P.D., Ollech, J.E., Fridel, L., Fuks, L., Fireman, E., and Kramer, M.R. (2015). Outbreak of autoimmune disease in silicosis linked to artificial stone. *Occup Med*, 65, 444-450. Slater, M.L., Welland, G., Pai, M., Parsonnet, J., and Banaei, N. (2013). Challenges with QuantiFERON-TB gold assay for large-scale, routine screening of U.S. healthcare workers. *Am J Respir Crit Care Med*, 188, 1005-1010. Steenland, K., Mannetje, A., Boffetta, P., Stayner, L., Attfield, M., Chen, J., Dosemeci, M., DeKlerk, N., Hnizdo, E., Koskela, R., and Checkoway, H. (2001). International Agency for Research on Cancer. Pooled exposure-response analyses and risk assessment for lung cancer in 10 cohorts of silica-exposed workers: An IARC multicentre study. *Cancer Causes Control*, 12(9):773-84. Steenland, K. and Ward E. (2014). Silica: A lung carcinogen. *CA Cancer J Clin*, 64, 63-69. Steenland, N. Kyle, and Scott Michael Bartell, Silica Exposure: Risk Assessment for Lung Cancer, Silicosis, and Other Diseases, Washington, D.C.: U.S. Department of Labor, Directorate of Standards and Guidance, Occupational Safety and Health Administration, OSHA-2010-0034-0469, December 7, 2004.	

	Steenland K., M. Attfield, and A. Mannejte, 2002. Pooled analyses of renal disease mortality and occupational crystalline silica exposure in three cohorts. *Annals of Occ Hygiene*. Vol 46, Supplement 1, pp. 4-9. Surasi et al., Elevated exposures to respirable crystalline silica among engineered stone fabrication workers in California (2022). Townsend, M.C. ACOEM Guidance Statement. (2011). Spirometry in the occupational health setting-2011 Update. *J Occup Environ Med*, 53, 569-584. Wu N, et al. Artificial stone-associated silicosis in China: A prospective comparison with natural stone-associated silicosis. *Respirology.* May 2020; 25, 518–524. ~~7~~8. *Sample Forms* * * * * Note: Authority cited: Sections 142.3, 9020, 9030 and 9040, Labor Code. Reference: Sections 142.3, 9004(d), 9009, 9020, 9031 and 9040, Labor Code.	

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 Vacaville, California and via teleconference and videoconference, on June 20, 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

_____
JOSEPH M. ALIOTO JR., CHAIRMAN

_____

_____

_____

_____

_____

_____

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

BY:_____
Autumn Gonzalez, Chief Counsel

DATED: March 21, 2024

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

UPDATED INFORMATIVE DIGEST

CALIFORNIA CODE OF REGULATIONS

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

Heat Illness Prevention in Indoor Places of Employment

UPDATED INFORMATION

The 45-Day public comment period began March 31, 2023, and ended May 18, 2023. The Board held a public hearing on May 18, 2023, in San Diego, California. The Board issued the first 15-Day Notice of Proposed Modifications on August 4, 2023. A second 15-Day Notice of Proposed Modifications was issued on November 9, 2023. The Board issued the third 15-Day Notice of Proposed Modifications on December 22, 2023.

On March 29, 2024, the Board submitted the proposed regulation to the Office of Administrative Law (OAL). On May 9, 2024, OAL issued a decision disapproving the proposed regulation and returned it to the Board. Under Government Code section 11349.4, the Board may resubmit the revised regulation to OAL within 120 days.

The Board issued the fourth 15-Day Notice of Proposed Modifications on May 10, 2024.

As a result of public comments, OAL decision, and evaluation by Occupational Safety and Health Standards Board (Board) and Division of Occupational Safety and Health (Division) staff, the following substantial, non-substantial or sufficiently related modifications have been made to the Informative Digest published in the California Regulatory Notice Register dated March 31, 2023.

Subsection (a) Scope and Application.

The proposed regulation was modified to include a new exception (C) to subsection (a)(1). This exception was modified, and various alternatives were considered throughout the rulemaking process to address the stakeholders' concerns regarding the incidental indoor heat exposures without compromising the intent of the proposed regulation. Exception (C) specifies that employee exposures to temperatures at or above 82 degrees Fahrenheit and below 95 degrees Fahrenheit for less than 15 minutes in any 60-minute period are exempted from the scope of the proposed regulation. This aligns with the high heat threshold of 95 degrees Fahrenheit in section 3395 and follows the same scientific logic as National Institute of Occupational Safety

and Health (NIOSH)'s recommended work/rest schedules. This exception does not apply to vehicles without effective and functioning air conditioning, nor shipping or intermodal containers during loading, unloading or related work. This will allow more practical implementation of the proposed exception while still protecting employees working in more hazardous environments.

The proposed regulation was modified to include a new exception (D) to subsection (a)(1). This exception specifies that this section does not apply to emergency operations directly involved in the protection of life or property. This would apply to active firefighting and rescue operations, and public safety operations. This will prevent delays in response times, and hindrance of emergency operations.

The proposed regulation was modified to include a new exception (E) to subsection (a)(1) to exempt correctional facilities operated by the state or a local government from the scope of the proposed regulation. This will exclude correctional facilities operated by the state or a local government have unique implementation challenges from the scope of the proposed regulation.

The proposed regulation was modified to add a new Note No. 3 to subsection (a). It states that this section does not exempt state entities and departments from complying with State Administrative Manual section 1805.3. This will provide clarification that the state entities and departments are obligated to comply with State Administrative Manual section 1805.3, standard operation efficiency procedures.

<u>Subsection (b) Definitions.</u>

The numbering for the exception to proposed subsection (b)(3) was changed for editorial purposes. The definition of "clothing that restricts heat removal" was modified to remove flame or arc-flash resistant properties. This change expands the application of the exception to include all types of clothing rather than that specifically with flame or arc-flash resistant properties. This will clarify that the exceptions are not specifically limited to flame or arc-flash resistant properties.

Additionally, exception (A) was modified to include an air and water vapor permeable material and not simply knit or woven fibers. Furthermore, the exception was modified to include clothing worn without a full-body vapor barrier. These modifications will provide clarification and expand the application of the exception to include additional types of clothing that do not restrict heat removal.

The definition of "cool-down area" in proposed subsection (b)(4) was modified to areas shielded from other high radiant heat sources "to the extent feasible." This modification will recognize the feasibility limitations.

The definition of "heat index" in proposed subsection (b)(9) was modified to make it clear that the use of the National Weather Service (NWS) heat index values in Appendix A is required. This modification will improve clarity.

The definition of "heat wave" in proposed subsection (b)(10) was modified to clarify that the application of the definition is specific to the proposed regulation only. This will ensure that the definition does not create confusion and conflict with other regulations.

Proposed subsection (b)(11), definition of "high radiant heat area," was modified to reflect the revision to the cross-referenced definition of "temperature." The modification will harmonize the reference with the new numbering.

The proposed regulation was modified to include a new definition of "high radiant heat source" in subsection (b)(12). "High radiant heat source" means any object, surface, or other source of radiant heat that, if not shielded, would raise the globe temperature of the cool-down area five degrees Fahrenheit or greater than the dry bulb temperature of the cool down area. This modification will provide clarity where the term is cross-referenced in the definition of "cool-down area."

Proposed subsections (b)(13) through (b)(21) were renumbered after the new definition of "high radiant heat source" was added at subsection (b)(12).

<u>Subsection (d) Access to Cool-Down Areas.</u>

The proposed regulation was modified to add a clarifying statement in subsection (d)(3) that preventative cool-down rest period has the same meaning as "recovery period" in Labor Code section 226.7(a). This will ensure consistency with section 3395.

<u>Subsection (e) Assessment and Control Measures.</u>

Proposed subsections (e)(1)(B) and (e)(1)(B)1. and 2. were modified to clarify where and when temperature and heat index measurements must be taken. This will clearly inform employers where and when they need to take measurements to assess the temperature or heat index in the workplace.

Proposed subsection (e)(1)(B)3. was modified to allow designated representatives as defined in section 3204 access to records of either the temperature or heat index as required by subsection (e)(1)(A). This will ensure that appropriate access rights are granted as necessary.

Proposed subsection (e)(1)(C) was modified to allow the use of instruments that provide the same results as those in the NWS heat index chart in Appendix A to measure heat index. This will provide clarity that instruments used to measure the heat index must provide the same results as those in the NWS heat index chart in Appendix A.

Non-substantial changes were made to proposed exceptions in subsection (e)(1) to provide clarity by modifying the title of the exceptions and adding numbering to exceptions.

New exception (B) was added to proposed subsection (e)(1) for vehicles with effective and functioning air conditioning. This will clarify that work in these vehicles is not subject to the assessment and recordkeeping requirements of subsection (e)(1).

Proposed subsection (e)(2)(C) was modified to be consistent with subsection (e)(2)(B) and clarify that the use of personal heat-protective equipment is required where feasible administrative controls do not minimize the risk of heat illness. This will clarify that administrative controls do not necessarily reduce the temperature or heat index but rather are used to minimize the risk of heat illness.

<u>Subsection (f) Emergency Response Procedures.</u>

Proposed subsection (f)(2)(C) was modified to add “including contacting emergency medical services.” This clarifies the requirement to contact emergency medical services without delay in accordance with an employer’s emergency response procedures when an employee shows symptoms consistent with possible heat illness that may require emergency medical services. This will ensure that there are no delays in providing emergency medical services thereby minimizing the severity of heat-related illnesses or fatalities.

<u>Subsection (g) Close Observation During Acclimatization.</u>

A non-substantial change was made to the title of proposed subsection (g) to be consistent with existing subsection 3395(g).

Proposed subsections (g)(2)(B) and (C) were rephrased to clarify the requirement of subsection (g)(2). This will clearly identify areas that require close observation of newly assigned employees by a supervisor or designee for the first 14 days of employment.

<u>Subsection (h) Training.</u>

Proposed subsection (h)(1)(D) was modified to remove "and of close observation during acclimatization." This will ensure consistency with subsection 3395(h)(1)(D).

A new note was added to proposed subsection (h) to clarify that an employer can integrate the training program for the proposed regulation with existing section 3395 training. This will inform employers that they have the flexibility to combine the training for employees covered by existing section 3395 and the proposed regulation.

Subsection (i) Heat Illness Prevention Plan.

A non-substantial change was made in subsection (i) to correct a typographical error and changed "Illness and Injury Prevention Program" to "Injury and Illness Prevention Program."

Proposed subsection (i)(5) was modified to reflect the modification of the title in subsection (g). This will ensure consistency with the proposed regulation and subsection 3395(i)(4).

Appendix A to Section 3396: National Weather Service Heat Index Chart (2019).

Proposed appendix A was modified to update the temperature range to 80 to 125 degrees Fahrenheit. This will provide a wider range of temperatures since these temperatures as well as corresponding heat index values are required to be recorded by subsection (e)(1)(A).

Appendix A was further modified to update eight heat index readings in the chart that differed from the NWS Heat Index Chart 2019 used as a document relied upon in this rulemaking. This will correct discrepancies noted by a commenter and provide accurate values.

ADDITIONAL DOCUMENTS RELIED UPON

Pursuant to Government Code Section 11346.8(d), the Board gave notice of the opportunity to submit comments concerning additional documents relied upon. The additional documents were added to the rulemaking file on August 4, 2023, with modifications to the proposal and comments on the documents were received during the 15-day notice of proposed modifications from August 4, 2023, to August 22, 2023.

1. Bernard TE, Caravello V, Schwartz SW and Ashley CD. WBGT Clothing Adjustment Factors for Four Clothing Ensembles and the Effects of Metabolic Demands. Journal of Occupational and Environmental Hygiene. 2007; 5 (1): 1–5. https://doi.org/10.1080/15459620701732355

2. Division of Occupational Safety and Health (Cal/OSHA) Heat Illness Prevention Enforcement Q&A. Updated July 2018. Accessed June 6, 2023. https://www.dir.ca.gov/dosh/heatIllnessQA.html

3. Cal/OSHA Policy and Procedures Manual. C-1C, Multi-Employer Worksite Inspections. Revised December 8, 2000. https://www.dir.ca.gov/DOSHPol/P&PC-1C.pdf

4. Cal/OSHA Policy and Procedures Manual. C-1D, Dual-Employer Inspections. Revised December 12, 2017. https://www.dir.ca.gov/DOSHPol/P&PC-1D.pdf

5. Definition of "Cup." *Merriam-Webster.com*. Updated June 21, 2023. Accessed June 22, 2023. https://web.archive.org/web/20230627225544/https://www.merriam-webster.com/dictionary/cup

6. Garzón-Villalba XP, Wu Y, Ashley CD and Bernard TE. Heat stress risk profiles for three non-woven coveralls. Journal of Occupational and Environmental Hygiene. 2018; 15 (1): 80–85. https://doi.org/10.1080/15459624.2017.1388514

7. 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/safety/heat/heatindex.png

8. NWS Heat Index Equation. Modified May 12, 2022. Accessed July 24, 2023. https://www.wpc.ncep.noaa.gov/html/heatindex_equation.shtml

9. U.S. Department of Health and Human Services (DHHS), Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH). Heat Stress Hydration. DHHS (NIOSH) Publication No. 2017-126. https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-126.pdf

10. United Steelworkers of Am., AFL-CIO-CLC v. Marshall, 647 F.2d 1189 (D.C. Cir. 1980). https://casetext.com/case/united-steelworkers-of-america-afl-cio-clc-v-marshall-2

Pursuant to Government Code sections 11346.8(d), 11346.9(a)(1) and 11347.1, the Board gave notice of the opportunity to submit comments concerning additional documents relied upon. A document relied upon was withdrawn from the rulemaking file on November 9, 2023, with modifications to the proposal and no comments on the documents were received during the second 15-day notice of proposed modifications from November 9, 2023, to November 28, 2023.

Campbell Soup Company, Cal/OSHA App. 77-0701, Decision After Reconsideration (May 5, 1980).

The Board's rulemaking files on the proposed action are open to public inspection BY APPOINTMENT Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. Appointments can be scheduled via email at oshsb@dir.ca.gov or by calling (916) 274-5721.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

NO CHANGE IN APPLICABLE LAWS

Other than described above, there have been no changes to the section of the Notice titled INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW. There have been no changes to the applicable laws or regulations as described in the Notice of Proposed Regulatory Action.

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

Safe Children. Healthy Families. Strong Communities.

Sign up for DCFS News

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
Serving Schools Since 1980
Alpine · Amador · Calaveras · Tuolumne

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

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

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

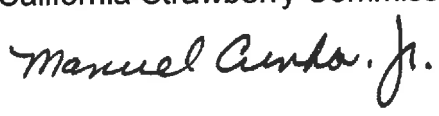
Roger Isom, President/CEO
California Cotton Ginners and Growers Association
Western Agricultural Processors Association

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

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

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

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
Keummi Park kpark@dir.ca.gov
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

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

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

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

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

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.
Attorney and Counselor at Law

Administrative and Employment Law
Environmental and OSHA Regulations
Dufour Seminars & Training

819 F Street, Sacramento, California 95814-1305
TEL (916) 553-3111 FAX (916) 400-2591
dufourlaw@dufourlegal.com

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
aoseguer@wm.com

1415 L Street, Suite 1200
Sacramento, California 95814
Cell 209 327 5017

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

RECEIVED

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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:

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

> "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***:

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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.

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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).

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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.

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

(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-

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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.

WM
1415 L Street, Suite 1200
Sacramento, California 95814
T: 209.327.5017

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
Director, Government Affairs
California Retailers Association
1121 L Street, Suite 607
Sacramento, CA 95814
(916) 443-1975
Ryan@calretailers.com

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

---

[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

---

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

---

[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
Roseville, CA 95661
916-343-2108
email: greg.stevenson@basalite.com
web: www.basalite.com

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.

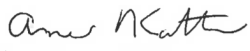
3396 (e)(1)(B) Temperature and heat index measurements:
We support the increased specificity of requiring that both initial and follow-up temperature or heat index measurements be taken where employees work and at times when employee exposures are expected to be the greatest.

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

10945 Le Conte Avenue, Suite 2107
Los Angeles, CA 90095-1478
Cell: 310-617-8288

Website | Facebook | Twitter | Instagram | Donate

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.

Join Our Mailing List

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
P.O. Box 944246
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

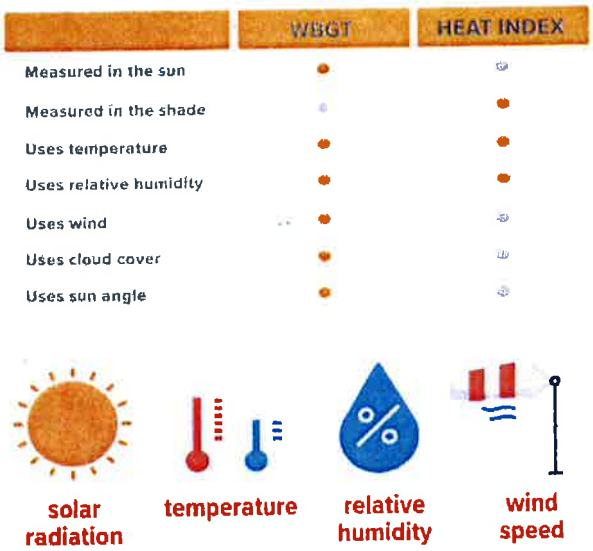
While the WBGT and Heat Index both attempt to describe how "hot" it is and the potential for heat related stresses, they go about it in different ways.

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.

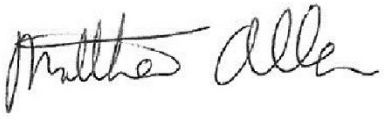
Sincerely,

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
Keummi Park kpark@dir.ca.gov
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

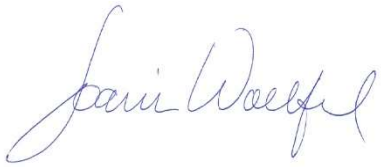
Tricia Geringer
Vice President of Government Affairs
Agricultural Council of California

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
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

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
w: www.phylmar.com/regulatory-roundtable

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

---

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
Alpine · Amador · Calaveras · Tuolumne

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

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: 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.

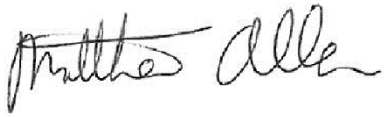
Sincerely,

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

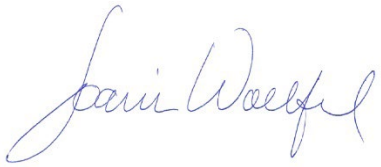
Tricia Geringer
Vice President of Government Affairs
Agricultural Council of California

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

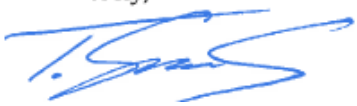


Joani Woelfel
President & CEO
Far West Equipment Dealers Association

Casey Creamer
President
California Citrus Mutual

Rick Tomlinson
President
California Strawberry Commission

Manuel Cunha, Jr.
President
Nisei Farmers League

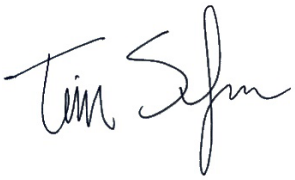


Todd Sanders
Executive Director
California Apple Commission
California Blueberry Association
California Blueberry Commission
Olive Growers Council of California

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

FOURTH 15-DAY NOTICE (MAY 10, 2024)

HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

From: cynthia mahoney
To: DIR OSHSB
Cc: Marc Futernick
Subject: Public comment: Heat Illness Prevention in Indoor Places of Employment
Date: Friday, May 17, 2024 4:05:26 PM

- Chair Thomas and Members of the Standards Review Board.

My name is Cynthia Mahoney. I'm a physician with Voting 4 Climate & Health.

Thank you for the opportunity to support expediting the 120-day procedure to cure the Office of Administrative Law deficiencies for the Heat Illness Prevention in Indoor Places of Employment standard.

As human beings, we've all experienced heat waves and endured uncomfortable indoor conditions. Climate change and global heating is now causing those heat waves to be more extreme and longer lasting, beyond the conditions in which humans evolved to live and work.

- As a physician who specializes in kidney problems, I'm acutely aware of the dangers of heat. Acute heat exposure can clearly cause acute kidney injury, In addition, chronic heat stress and recurrent dehydration are associated with kidney stones and strongly suspected of contributing to chronic kidney disease through subclinical bouts of ischemic kidney injury. [Nerbass et al 2017; doi: 10.1016/j.ekir.2017.08.012 ; Shi et al; 2022; DOI: 10.1136/oemed-2021-107933]. Although we usually think of
outdoor workers being at risk, indoor workers are also at risk - from working near furnaces, ovens and boilers, but also in airports, warehouses and transport vehicles.

Heat threatens the health and safety, and productivity of workers, especially for workers in low income communities of color that are five times more vulnerable to the impacts of high heat than those in the top-income tier. We can expect more harm as the frequency and intensity of heat stress climbs with unabated climate change. For example, heat deaths in the Phoenix area nearly doubled in 2023, to a staggering 645 fatalities, as they endured 30 straight days above 110°F.

Thankfully, OSHA has enacted protections for outdoor workers, but indoor workers remain at the mercy of employers with no heat standard in place. Please act now to protect indoor workers from unnecessary heat related illness, kidney injury and death.

I respectfully ask that you act quickly and approve the revised version of the regulation as soon as possible before deadly heat arrives this summer.

Thank you.

Cynthia Mahoney MD
510-566-6199

Clinical Associate Professor of Medicine, Stanford University(ret.)

-

From:	ofc ilwu26.com
To:	AnaStacia Wright; Emma De La Rosa; Yelisa Ambriz; Yardenna Aaron; Shelley Kessler; Ruth Silver-Taube; Kathryn Melendez; Amber Baur; Robert.Harrison; Renee Guerrero Deleon; Bayardo, Rene; TTrigueiro@cta.org; Tim Shadix; Swati Sharma; Christopher Calhoun; Ramon Castellblanch; Beth Spitler; Louie Costa; Amaya Lin; Barbara J. Chisholm; Christian Ramírez; Stephen Knight; Estella Cisneros; comworkeradvocate@gmail.com; Tim Robertson; FiveCountiesCLC@gmail.com; Jassy Grewal; msiegel@cwa-union.org; Mitchell Steiger; Anne Katten; djimenez@seiucal.org; Glenn Shor; Madeline Harris; Cecille Isidro; Oscar Antonio Alvarez; Stasha Lampert; Shane Gusman; cliff.tillman@ca.afscme57.org; Efrain Mercado; Lucia Marquez; Ryan Snow; Laura STOCK; npuryear@csea.com; Matt Legé; Aboud, Fred; Zane Preciado; Michael Young; Katherine Wutchiett; Fran Schreiberg; Laura Kurre; Eddie Sanchez; Natalie Herendeen; Alice Berliner; Suzanne Teran; LoriChu100@yahoo.com; El"gin Avila; Caitlin Vega; Stacey Leyton; Daisy Gonzalez; Kate Hallward; Levi Pine; William Kelly; Chou, Annie; Malinowski, Beth; Denise Velasco; Amardeep Gill; jnielson@nuhw.org; Carmen Comsti; Katherine Hughes; Bradley Cleveland; MDegeneffe@cta.org; Kevin Riley; Jessica Early; Raul Pickett; Eric Frumin; Rachel van Geenhoven; Eriberto Fernandez; Lee Sandahl; Mirella Deniz-Zaragoza; bberney1@gmail.com; Zulema Aleman; Sofia Cardenas; Arturo Aguilar; Debbie Berkowitz; Yvonne Medrano; Kirsten Clemons; Jesús Quiñonez; Saskia Kim; Chris Seymour
Cc:	DIR OSHSB
Subject:	"Fourth 15 day Notice" Comments due by 5-3024
Date:	Monday, May 20, 2024 8:03:53 AM
Attachments:	Fourth 15 day notice.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

MAY 20, 2024 BY E-MAIL

To: oshsb@dir.ca.gov

To: ANASTACIA WRIGHT <awright@worksafe.org>

To: ANNE KATTEN <akatten@crlaf.org>

To: AUTUMN GONZALEZ <oshsb-dir.ca.gov@shared1.ccsend.com>

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

RE: "FOURTH 15 DAY NOTICE" COMMENTS DUE BY 5-30-2024.
TITLE 8 NEW SECTION OF GEN. INDUSTRY SAFETY ORDERS NEW SEC. 3396
~~CALIF. CODE OF REGULATIONS~~
"HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT"

HELLO ALL

UPON REVIEW OF THE ATTACHED "FOURTH NOTICE" OF PROPOSED MODIFICATIONS, I WROTE NOTES ON MANY PAGES IN AREAS THAT I BELIEVE ARE AMBIGUOUS, OR NEED MODIFICATION FOR THE IDENTIFIED WORKPLACE APPLICATIONS TO BE A USEFUL TOOL FOR HEAT ILLNESS PROTECTION.

OUR MEMBERS WORK IN THIS HEAT & HUMIDITY, IN WAREHOUSES, MANUFACTURING PRODUCTS, LOADING VANS & CONTAINERS, DRIVING TRUCKS, AND ALSO IN

SOME NON AIR CONDITIONED OFFICES. THIS STANDARD IS LONG OVERDUE. WE ARE ALL FACING THE EFFECTS OF CLIMATE CHANGE, HEAT, COLD, & HUMIDITY. MOST WORKERS WILL NOT GET AN AIR CONDITIONED PLACE TO WORK. THEIR HEALTH & ABILITY TO WORK DIMINISHES WITHOUT INDOOR HEAT & HUMIDITY CONTROL. WORKER HEALTH, NOT POLITICS MUST BE A PRIORITY FOR ALL OF US.

RESPECTFULLY

Luis Prado - PRESIDENT

LOCAL 26, ILWU

ATTACHMENT: "MY NOTES PURSUANT TO FOURTH NOTICE OF PROPOSED MODIFICATION" TO TITLE 8 §3396

PROPOSED MODIFICATIONS

(Deleted regulatory language is shown in bold italic double strikethrough and new regulatory language is shown in bold italic double underline.)

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

Subchapter 7. General Industry Safety Orders
Group 2. Safe Practices and Personal Protection
Article 10. Personal Safety Devices and Safeguards

Add new Section 3396 to read:

§3396. Heat Illness Prevention in Indoor Places of Employment.

(a) Scope and Application.

HEAT INDEX

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

EXCEPTIONS:

IDENTIFY

(A) For indoor work areas not subject to any of the conditions listed in subsection (a)(2), the employer is not required to comply with subsection (e).

(B) This section does not apply to places of employment where employees are teleworking from a location of the employee's choice, which is not under the control of the employer.

delete

(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 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)~~. This exception does not apply to the following:*

REQUIRE REPAIR

1. Vehicles without effective and functioning air conditioning, or

INCLUDE

2. Shipping or intermodal containers during loading, unloading, or related work

(D) This section does not apply to emergency operations directly involved in the protection of life or property.

(E) The following employers and places of employment are exempt from this section:

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

1. Prisons, as defined by section 6082 of the Penal Code, operated by the California Department of Corrections and Rehabilitation.

2. "Local detention facilities" as defined by Section 6031.4 of the Penal Code that are operated by a local government.

include KIDS NEED PROTECTION TOO

3. "Juvenile facilities" pursuant to Section 850 of the Welfare and Institutions Code and subdivision (q) of Section 875 of the Welfare and Institutions Code that are operated by a local government.

~~(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:~~

~~1. The indoor 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~~

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

(2) Conditions under which an indoor work area is subject to all provisions of this section, including subsection (e):

(A) The temperature equals or exceeds 87 degrees Fahrenheit when employees are present; or

? too HIGH - USLESS NUMBER FOR THIS STANDARD

(B) The heat index equals or exceeds 87 degrees Fahrenheit when employees are present; or

(C) Employees wear clothing that restricts heat removal and the temperature equals or exceeds 82 degrees Fahrenheit; or

Heat INDEX

(D) Employees work in a high radiant heat area and the temperature equals or exceeds 82 degrees Fahrenheit.

(3) This section applies in any other setting identified in writing by the Division of

TITLE 8, DIVISION 1, CHAPTER 4

Occupational Safety and Health (the Division) through the issuance of an Order to Take Special Action, in accordance with section 332.3.

(4) This section applies to the control of risk of occurrence of heat illness. This is not intended to exclude the application of other sections of title 8, including, but not necessarily limited to, sections 1512, 1524, 3203, 3363, 3395, 3400, 3439, 3457, 6251, 6512, 6969, 6975, 8420 and 8602(e).

~~(5) Employers may comply with this section in lieu of section 3395 for employees that go back and forth between outdoors and indoors.~~

NOTE NO. 1: The measures required here may be integrated into the employer's written Injury and Illness Prevention Program required by section 3203, the employer's written Heat Illness Prevention Plan required by subsection 3395(i), or maintained in a separate document.

NOTE NO. 2: This section is enforceable by the Division pursuant to Labor Code sections 6308 and 6317 and any other statutes conferring enforcement powers upon the Division. It is a violation of Labor Code sections 6310, 6311, and 6312 to discharge or discriminate in any other manner against employees for exercising their rights under this or any other provision offering occupational safety and health protection to employees.

NOTE NO. 3: This section does not exempt state entities and departments from complying with State Administrative Manual section 1805.3.

(b) Definitions.

(1) "Acclimatization" means temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to it. Acclimatization peaks in most people within four to fourteen days of regular work for at least two hours per day in the heat.

(2) "Administrative control" means a method to limit exposure to a hazard by adjustment of work procedures, practices, or schedules. Examples of administrative controls that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to: acclimatizing employees, rotating employees, scheduling work earlier or later in the day, using work/rest schedules, reducing work intensity or speed, reducing work hours, changing required work clothing, and using relief workers.

MUST BE IN COMPLIANCE WITH UNION CONTRACT TERMS & CONDITIONS —

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

(3) "Clothing that restricts heat removal" means full-body clothing covering the arms, legs, and torso that is any of the following:

(A) Waterproof; or

(B) Designed to protect the wearer from a chemical, biological, physical, radiological, or firehazard; or

(C) Designed to protect the wearer or the work process from contamination.

EXCEPTION to subsection (b)(3): "Clothing that restricts heat removal" does not include clothing ~~with flame or arc-flash resistant properties~~ demonstrated by the employer to be all of the following:

(~~1~~**A**) Constructed only of knit or woven fibers**, or otherwise an air and water vapor permeable material**; and

(~~2~~**B**) Worn in lieu of the employee's street clothing; and

(~~3~~**C**) Worn without a full-body thermal**, vapor,** or moisture barrier.

(4) "Cool-down area" means an indoor or outdoor area that is blocked from direct sunlight and shielded from other high radiant ~~heat~~ sources **to the extent feasible** and is either open to the air or provided with ventilation or cooling. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. A cool-down area does not include a location where:

(A) Environmental risk factors defeat the purpose of allowing the body to cool; or

(B) Employees are exposed to unsafe or unhealthy conditions; or

(C) Employees are deterred or discouraged from accessing or using the cool-down area.

(5) "Engineering control" means a method of control or a device that removes or reduces hazardous conditions or creates a barrier between the employee and the hazard. Examples of engineering controls that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to: isolation of hot processes, isolation of employees from sources of heat, air conditioning, cooling fans,

cooling mist fans, evaporative coolers (also called swamp coolers), natural ventilation where the outdoor temperature or heat index is lower than the indoor temperature or heat index, local exhaust ventilation, shielding from a radiant heat source, and insulation of hot surfaces.

(6) "Environmental risk factors for heat illness" means working conditions that create the possibility that heat illness could occur, including: air temperature, air movement, relative humidity, radiant heat from the sun and other sources; conductive heat sources such as the ground, workload severity and duration, protective clothing, and personal protective equipment worn by employees.

(7) "Globe temperature" means the temperature measured by a globe thermometer, which consists of a thermometer sensor in the center of a six-inch diameter hollow copper sphere painted on the outside with a matte black finish, or equivalent. The globe thermometer may not be shielded from direct exposure to radiant heat while the globe temperature is being measured.

(8) "Heat illness" means a serious medical condition resulting from the body's inability to cope with a particular heat load, and includes: heat cramps, heat exhaustion, heat syncope, and heat stroke.

(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, heat index refers to conditions in indoor work areas. Radiant heat is not included in the heat index. ~~***NOTE: A***~~ ***The required chart listing*** NWS heat index ~~***values chart***~~ (2019) ~~***can be found is***~~ in Appendix A to section 3396.

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.**

(11) "High radiant heat area" means a work area where the globe temperature is at least five degrees Fahrenheit greater than the temperature, as defined in subsection (b)(~~1~~920).

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

(12) "High radiant heat source" means any object, surface, or other source of radiant heat (inside or outside the work area) that, if not shielded, would raise the globe temperature of the cool-down area five degrees Fahrenheit or greater than the dry bulb temperature of the cool-down area.

(13~~2~~) "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: Indoor does not refer to a shaded area that meets the requirements of subsection 3395(d) and is used exclusively as a source of shade for employees covered by section 3395.

(14~~3~~) "Personal heat-protective equipment" means equipment worn to protect the user against heat illness. Examples of personal heat-protective equipment that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to: water-cooled garments, air-cooled garments, cooling vests, wetted over-garments, heat-reflective clothing, and supplied-air personal cooling systems. (PROVIDED BY The employer or employee ??

(15~~4~~) "Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, alcohol consumption, caffeine consumption, and use of medications that affect the body's water retention or other physiological responses to heat. WORK PRACTICES re: Repetitive motion lifting (light or heavy) etc —

(16~~5~~) "Preventative cool-down rest" means a rest taken in a cool-down area to prevent overheating.

(17~~6~~) "Radiant heat" means heat transmitted by electromagnetic waves and not transmitted by conduction or convection. Sources of radiant heat include the sun, hot objects, hot liquids, hot surfaces, and fire.

(18~~7~~) "Relative humidity" means the amount of moisture in the air relative to the amount that would be present if the air were saturated.

(19~~8~~) "Shielding" means a physical barrier between radiant heat sources and employees that reduces the transmission of radiant heat.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

(20~~19~~) "Temperature" means the dry bulb temperature in degrees Fahrenheit obtainable by using a thermometer freely exposed to the air without considering humidity or radiant heat, to measure the temperature in the immediate area where employees are located.

(21~~8~~) "Union representative" means a recognized or certified collective bargaining agent representing the employees. Including union stewards working for the same employer

(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.

(d) Access to Cool-Down Areas.

(1) The employer shall have and maintain one or more cool-down areas at all times while employees are present. The cool-down area shall be at least large enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the cool-down areas without having to be in physical contact with each other. The cool-down area shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the size of the cool-down area during meal periods shall be at least large enough to accommodate the number of employees on the meal period who remain onsite. The temperature in indoor cool-down areas shall be maintained at less than 82 degrees Fahrenheit, unless the employer demonstrates it is infeasible. demonstrates to whom? When? How

(2) Employers shall allow and encourage employees to take a preventative cool-down rest in a cool-down area when employees feel the need to do so to protect themselves from overheating. Such access to cool-down areas shall be permitted at all times. An individual employee who takes a preventative cool-down rest:

(A) Shall be monitored and asked if they are experiencing symptoms of heat illness;

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

(B) Shall be encouraged to remain in the cool-down area; and

(C) Shall not be ordered back to work until any signs or symptoms of heat illness have abated, and in no event less than five minutes in addition to the time needed to access the cool-down area.

(3) If an employee exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest or during a preventative cool-down rest period, the employer shall provide appropriate first aid or emergency response according to subsection (f). **For purposes of this section, preventative cool-down rest period has the same meaning as "recovery period" in Labor Code subsection 226.7(a).**

(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).

(1) As specified in subsections (e)(1)(A) through (e)(1)(D), 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.

(A) The employer shall establish and maintain accurate records of either the temperature or heat index measurements, whichever value is greater, as required by subsection (e)(1). The records shall include the date, time, and specific location of all measurements.

(B) Temperature and heat index measurements, as required by subsection (e)(1), shall be **taken as follows:~~taken where employees work and at times during the work shift when employee exposures are expected to be the greatest.~~**

1. Initial measurements shall be taken when it is reasonable to suspect that subsection (e) applies **where employees work and at times during the work shift when employee exposures are expected to be the greatest.**

2. Measurements shall be taken again when they are reasonably expected to be 10 degrees or more above the previous measurements **where employees work and at times during the work shift when employee exposures are expected to be the greatest.**

Include ALL AREAS WHERE PHYSICAL WORK IS performed.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

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, ~~and made available at the worksite to employees and to representatives of the Division upon request~~. **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.**

(C) Instruments used to measure the temperature or heat index shall be used and maintained according to the manufacturers' recommendations. Instruments used to measure the heat index shall ***provide the same results as those in the*** ~~***utilize***~~ NWS heat index ***chart in Appendix A*** ~~***equation or tables***~~.

(D) The employer shall have effective procedures to obtain the active involvement of employees and their union representatives in the following:

1. Planning, conducting, and recording the measurements of temperature or heat index, whichever is greater, as required by subsection (e)(1).

2. Identifying and evaluating all other environmental risk factors for heat illness.

EXCEPTIONS **to subsection (e)(1):**

(A) In lieu of complying with subsection (e)(1), an employer may assume a work area is subject to one or more of the conditions listed in subsection (a)(2). Such employers shall comply with subsection (e)(2).

(B) Vehicles with effective and functioning air conditioning.

(2) The employer shall use control measures as specified in subsections (e)(2)(A) through (e)(2)(C) to minimize the risk of heat illness. The selection of control measures shall be based on the environmental risk factors for heat illness present in the work area.

TOO HIGH –

(A) 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, or to reduce the temperature to below 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat areas, except to the extent that the employer demonstrates such controls are infeasible. When such controls are infeasible to meet the temperature

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

and heat index thresholds, the employer shall:

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

TO whom define

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

too HIGH for MOST WORKERS

(B) Administrative controls. Where feasible engineering controls are not sufficient to reduce and maintain the temperature and heat index to below 87 degrees Fahrenheit when employees are present or the temperature to below 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat areas, administrative controls shall be used to minimize the risk of heat illness, except to the extent that the employer demonstrates such controls are infeasible. INCLUDE HUMIDITY - use heat index

(C) Personal heat-protective equipment. Where feasible engineering controls ~~and administrative controls~~ are not sufficient to reduce and maintain the temperature and heat index to below 87 degrees Fahrenheit when employees are present or the temperature to below 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat areas **and feasible administrative controls do not minimize the risk of heat illness**, personal heat-protective equipment shall be used to minimize the risk of heat illness, except to the extent that the employer demonstrates that use of such equipment is infeasible. EMPLOYER SHALL PROVIDE THE PERSONAL PROTECTIVE EQUIPMENT WHEN REQUESTED BY AN EMPLOYEE

(f) Emergency Response Procedures. The employer shall implement effective emergency response procedures including:

(1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the worksite can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable. If an electronic device will not furnish reliable communication in the work area, the employer will ensure a means of summoning emergency medical services.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

(2) Responding to signs and symptoms of possible heat illness, including but not limited to first aid measures and how emergency medical services will be provided.

(A) If a supervisor observes, or any employee reports, any signs or symptoms of heat illness in any employee, the supervisor shall take immediate action commensurate with the severity of the illness.

(B) If the signs or symptoms are indicators of severe heat illness (such as, but not limited to, decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior or convulsions), the employer must implement emergency response procedures.

(C) An employee exhibiting signs or symptoms of heat illness shall be monitored and shall not be left alone or sent home without being offered onsite first aid and/or being provided with emergency medical services in accordance with the employer's emergency response procedures **including contacting emergency medical services.**

(3) Contacting emergency medical services and, if necessary, transporting employees to a place where they can be reached by an emergency responder.

(4) Ensuring that, in the event of an emergency, clear and precise directions to the worksite can and will be provided as needed to emergency responders.

(g) ~~**Close Observation During**~~ Acclimatization.

Add Humidity

(1) Where no effective engineering controls are in use to control the effect of outdoor heat on indoor temperature, all employees shall be closely observed by a supervisor or designee during a heat wave.

(2) An employee who has been newly assigned to any of the following shall be closely observed by a supervisor or designee for the first 14 days of employment:

reduce

(A) In a work area where the temperature or heat index, whichever is greater, equals or exceeds 87 degrees Fahrenheit; or

(B) ~~**During work involving wearing**~~ **In a work area where the temperature** ~~**or heat index, whichever is greater,**~~ **equals or exceeds 82 degrees**

TITLE 8, DIVISION 1, CHAPTER 4

Fahrenheit for employees who wear clothing that restricts heat removal ~~**where the temperature equals or exceeds 82 degrees Fahrenheit**~~; or

(C) ~~**During work in**~~**In** a high radiant heat area where the temperature equals or exceeds 82 degrees Fahrenheit.

AND REST AREAS +

(h) Training. MUST BE POSTED IN ALL WORK AREAS ^

(1) Employee training. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins work that should reasonably be anticipated to result in exposure to the risk of heat illness:

(A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.

(B) The employer's procedures for complying with the requirements of this section, including, but not limited to, the employer's responsibility to provide water, cool-down areas, cool-down rests, control measures, and access to first aid as well as the employees' right to exercise their rights under this section without retaliation.

(C) The importance of frequent consumption of small quantities of water, up to four cups per hour, when the work environment is hot and employees are likely to be sweating more than usual in the performance of their duties.

(D) The concept, importance, and methods of acclimatization ~~**and of close observation during acclimatization**~~ pursuant to the employer's procedures under subsection (i)(5).

(E) The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and/or emergency responses to the different types of heat illness, and in addition, that heat illness may progress quickly from mild symptoms and signs to serious and life-threatening illness.

(F) The importance of employees immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

(G) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

(H) The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency responder.

(I) The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the worksite can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

(2) Supervisor training. Prior to supervising employees performing work that should reasonably be anticipated to result in exposure to the risk of heat illness, effective training on the following topics shall be provided to the supervisor: "POST" IN ENGLISH & SPANISH

(A) The information required to be provided by subsection (h)(1).

(B) The procedures the supervisor is to follow to implement the applicable provisions in this section.

(C) The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures.

(D) Where the work area is affected by outdoor temperatures, how to monitor weather reports and how to respond to hot weather advisories.

NOTE: Where employees are covered by section 3395 and this section, the training program for this section can be integrated into section 3395 training.

GOOD!!

(i) Heat Illness Prevention Plan. The employer shall establish, implement, and maintain an effective Heat Illness Prevention Plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The

POST POST POST

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

Heat Illness Prevention Plan may be included as part of the employer's ~~***Illness and***~~ Injury ***and Illness*** Prevention Program required by section 3203 or Heat Illness Prevention Plan required by section 3395 and shall, at a minimum, contain:

(1) Procedures for the provision of water in accordance with subsection (c).

(2) Procedures for access to cool-down areas in accordance with subsection (d).

(3) Procedures, in accordance with subsection (e), to measure the temperature and heat index, and record whichever is greater; identify and evaluate all other environmental risk factors for heat illness; and implement control measures.

(4) Emergency response procedures in accordance with subsection (f).

(5) Procedures for ~~**close observation during**~~ acclimatization in accordance with subsection (g).

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3, 144.6, and 6720, Labor Code.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

Add new Appendix A to new Section 3396 to read:

EXPLAIN HOW TO READ THIS CHART

Appendix A to Section 3396. National Weather Service Heat Index Chart (2019).

TEMPERATURE

Relative Humidity %

Temperature °F	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
80	77	78	78	79	79	79	80	80	80	81	81	82	82	83	84	84	85	86	86	87
81	78	79	79	79	79	80	80	81	81	82	82	83	84	85	86	86	87	88	90	91
82	79	79	80	80	80	80	81	81	82	83	84	84	85	~~88~~ 86	88	89	90	91	93	95
83	79	80	80	81	81	81	82	82	83	84	85	86	87	~~90~~ 88	90	91	93	95	97	99
84	80	81	81	81	82	82	83	83	84	85	86	88	89	~~92~~ 90	~~93~~ 92	94	96	98	100	103
85	81	81	82	82	82	83	84	84	85	86	88	89	91	~~95~~ 93	~~96~~ 95	97	99	102	104	107
86	81	82	83	83	83	84	85	85	87	88	89	91	93	95	97	100	102	105	108	112
87	82	83	83	84	84	85	86	87	88	89	91	93	95	98	100	103	106	109	113	116
88	83	84	84	85	85	86	87	88	89	91	93	95	98	100	103	106	110	113	117	121
89	84	84	85	85	86	87	88	89	91	93	95	97	100	103	106	110	113	117	122	
90	84	85	86	86	87	88	89	91	~~93~~ 92	95	97	100	103	106	109	113	117	122	127	
91	85	86	87	87	88	89	90	92	94	97	99	102	105	109	113	117	122	126	132	
92	86	87	88	88	89	90	92	94	96	99	101	105	108	112	116	121	126	131		
93	87	88	89	89	90	92	93	95	98	101	104	107	111	116	120	125	130	136		
94	87	89	90	90	91	93	95	97	100	103	106	110	114	119	124	129	135	141		
95	88	89	91	91	93	94	96	99	102	105	109	113	118	123	128	~~134~~ 134	140			
96	89	90	92	93	94	96	98	101	104	108	112	116	121	126	132	138	145			
97	90	91	93	94	95	97	100	103	106	110	114	119	125	130	136	143	150			
98	91	92	94	95	97	99	102	105	109	113	117	123	128	134	141	148				
99	92	93	95	96	98	101	104	107	111	115	120	126	132	138	146	153				
100	93	94	96	97	100	102	106	109	114	118	124	129	136	143	150	158				
101	93	95	97	99	101	104	108	112	116	121	127	133	140	147	155					
102	94	96	98	100	103	106	110	114	119	124	130	137	144	152	160					

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

103	95	97	99	101	104	108	112	116	122	127	134	141	148	157	165						
104	96	98	100	103	106	110	114	119	124	131	137	145	153	161							
105	97	99	102	104	108	112	116	121	127	134	141	149	157	166							
106	98	100	103	106	109	114	119	124	130	137	145	153	162	172							
107	99	101	104	107	111	116	121	127	134	141	149	157	167								
108	100	102	105	109	113	118	123	130	137	144	153	162	172								
109	100	103	107	110	115	120	126	133	140	148	157	167	177								
110	101	104	108	112	117	122	129	136	143	152	161	171									
111	102	106	109	114	119	125	131	139	147	156	166	176									
112	104	107	111	115	121	127	134	142	150	160	170	181									
113	104	108	112	117	123	129	137	145	154	164	175										
114	105	109	113	119	125	132	140	148	158	168	179										
115	106	110	115	121	127	134	143	152	162	173	184										
116	107	111	116	122	129	137	146	155	166	177											
117	108	112	118	124	132	140	149	159	170	181											
118	108	113	119	126	134	142	152	162	174	186											
119	109	114	121	128	136	145	155	166	178												
120	110	116	122	130	138	148	158	170	182												
121	111	117	124	132	141	151	162	174	187												
122	111	118	125	134	143	154	165	178													
123	112	119	127	136	146	157	169	182													
124	113	120	129	138	148	160	172														
125	114	121	130	140	151	163	176														

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3, 144.6, and 6720, Labor Code.

From: Lee Sandahl
To: DIR OSHSB
Subject: Fwd: Indoor Heat
Date: Tuesday, May 21, 2024 10:01:44 AM

---------- Forwarded message ---------
From: **Lee Sandahl** <leesandahl@gmail.com>
Date: Tue, May 21, 2024 at 9:45 AM
Subject: Indoor Heat
To: <osha@dir.ca.gov>, Melvin Mackay <melmackay@aol.com>, marina seccitano <ibusf@pacbell.net>, Stephen Knight <sknight@worksafe.org>

The northern California District Council of the International Longshore and Warehouse Union and it's affiliate the Inland Boatman's union Are deeply concerned about the indoor heat situation.

Are members From Eureka to Fresno work in indoor situations that are not air conditioned..Driving vehicles. Operating large machinery, in container port facilities.and members in our warehouse division that work in indoor recycling sorting operations.

We feel that it is your mission as a state of California agency to make sure that all workers jobs
are safe.

SB-1167 (Leyva) , employment safety indoor workers heat regulations was signed into law in2016, Nearly eight years ago. During those eight years how many workers, union and noon union, have suffered because of the lack of rule making that they were guaranteed by law.

Summer is upon us. Last year world temperatures rose to record breaking highs. The time is now to give workers in indoor situations that are not protected with air conditioning the safety they were promised by law.

U.S. Department of Labor

Occupational Safety and Health Administration
San Diego Area Federal OSHA Office
550 West C Street, Suite 970
San Diego, CA 92101

May 21, 2024

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

Ms. Deitrich:

This letter is in response to the advisory opinion request made May 14, 2024 concerning the occupational safety and health standard: Title 8, General Industry Safety Orders, new section 3396; Heat illness Prevention in Indoor Places of Employment.

We completed our review of the revisions to the regulation. As OSHA does not have an existing standard for the prevention of heat illness, the proposed occupational safety and health standards appear to be more effective than the federal requirements.

Thank you for providing the necessary documentation to conduct an analysis. If you have any questions, I can be reached at 619-557-2910.

Sincerely,

Derek Engard

Derek Engard, CIH, CSP
Area Director

From: Anastasia Christman
To: DIR OSHSB
Subject: NELP Comments on Proposed Indoor Heat Standard
Date: Wednesday, May 29, 2024 9:56:16 AM
Attachments: NELP Comment CA OSHS Board 05292024 Indoor Heat Standard.pdf

Attached please find comments from the National Employment Law Project concerning the most recent iteration of the proposed indoor heat illness prevention standards. Please don't hesitate to reach out if you have any difficulties accessing the file or have any questions.

Sincerely,
Anastasia Christman

Anastasia Christman, **She/her**
Senior Policy Analyst
National Employment Law Project
90 Broad Street • New York, NY • 10004
Phone: 509-739-7767 | E-mail: achristman@nelp.org

Let's Build a Good-Jobs Economy!

www.nelp.org | **Donate Today**

NELP NATIONAL EMPLOYMENT LAW PROJECT

May 29, 2024

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: Support for Prevention of Heat Illness and Injury in Places of Indoor Employment Standard

Dear Chair Thomas and Members of the California Occupational Safety and Health Standards Board,

We appreciate the opportunity to participate in this fourth notice of public comment on the California indoor heat standard. The National Employment Law Project (NELP) supports the standard in that it will help prevent thousands of entirely preventable heat-related illnesses and injuries in the state's indoor workplaces. However, we are disappointed that with the newly added exceptions for workers in the carceral system (§3396(a)(E)) we cannot support it without reservation. NELP is a national nonprofit advocacy organization that for more than 50 years has sought to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs. We believe that labor standards are most effective when they extend to all workers, regardless of occupation or the nature of the workplace.

NELP is outraged by this exemption out of concern for the workers left out and the racial implications of this decision (detailed below), but we also object to the way it was effected.[1] California's indoor workers have been waiting nearly 20 years to have the kind of protections their outdoor counterparts won in 2005. Workers across multiple industries have been calling for protection from entirely preventable heat illnesses and injuries, including workers in warehouses, fast food restaurants, and delivery trucks. [2]

Rebecca Dixon
President and
Chief Executive Officer
www.nelp.org

NELP National Office
212-285-3025
90 Broad Street
Suite 1100
New York, NY 10004

Washington DC Office
202-887-8202
1350 Connecticut Avenue NW
Suite 1050
Washington, DC 20036

California Office
510-982-5945
2030 Addison Street
Suite 420
Berkeley, CA 94704

Recognizing the imperative to protect these workers and millions of others as quickly as possible, NELP supports the proposed rule even as we deplore how the exception ignores the dire needs of those who work in the state's carceral system both as staff and as inmates.

We strongly urge the Department of Industrial Relations (DIR) and the Occupational Safety and Health Standards Board to immediately begin the process of developing heat safety protections for *all* of these workers even as you move to implement and enforce new section 3396 of the General Industry Safety Orders addressing heat illness prevention in indoor places of employment.

Carving out the carceral system from indoor heat protections reflects racial bias.

This exemption will have discriminatory effects because it explicitly excludes two distinct, but both disproportionately Black, Indigenous, and Other People of Color (BIPOC), segments of the workforce: employees of the CDCR and other carceral employers and incarcerated workers. Both are often overlooked as their labor typically goes unseen, making it easier for their needs to be continually unmet. The proposed carveout represents another choice of neglect.

As of 2023, California incarcerated nearly 97,000 people[3] with people of color overrepresented in the carceral population. While white people are incarcerated at a rate of 143 per 100,000 state residents in the state's prisons and a rate of 153 per 100,000 in its jails, Black people are incarcerated at rates of 1,349 and 727 per 100,000 respectively, and Indigenous people are incarnated at rates of 934 and 483 per 100,000.[4]

An estimated 64,788 of California's incarcerated people are also workers either within the carceral facility itself or under contract for public works or prison-sponsored manufacturing.[5] Unlike other workers, they have no recourse to get relief from heat once their job duties are done. Many cells lack air conditioning and garnishment of incredibly low wages means few can afford to purchase a fan or other means to cool themselves.

There are also more than 38,000 California workers classified as correctional officers and jailers. The CDCR additionally employs thousands of other workers like teachers, librarians, and counselors.[6] Nearly three quarters of these workers identify as BIPOC, and 28 percent are women.[7] In some counties where state carceral facilities are located Black workers are significantly overrepresented in this workforce. For example, while Black workers comprise 6.6 percent of all occupations in San Joaquin County, they account for 8.3 percent of the bailiffs, correctional officers, and jailers' occupational category. In Riverside County, 6.1

percent of all occupations are held by Black workers, but they account for 17.3 percent of the correctional category. And in Sacramento County, while Black workers comprise 9 percent of all occupations, they fill nearly 24 percent of corrections jobs.[8]

Carceral workplaces are consistently dangerous when temperatures rise.

Carceral workplaces can get excruciatingly hot. In August of 2021 when wildfires hit in rural Northern California near the Nevada border, power lines went down and the generator at the California Correctional Center failed for almost *a month*.[9] According to the National Weather Service, daytime temperatures that month rose to the mid- to high-90s.[10] There were 1,080 corrections staff working there, along with 2,064 incarcerated people, many of whom also performed work inside the facility.[11] The CCC has since closed, but it was not alone in being vulnerable to climate dangers including excessive heat.

According to research by the Ella Baker Center, at least 8 of California's state prisons are located in areas with extreme heat.[12] A report from the CDCR itself acknowledges that 5 facilities that once experienced fewer than 5 days above the extreme heat threshold annually will see as many as 24 days by mid-century and potentially 41 days by 2070.[13] Researchers at Fordham University have warned that without retrofitting, many carceral facilities will become so unbearable from climate change effects that corrections employment recruitment may suffer.[14]

Already, correctional officers nationally experience occupational injuries and illnesses at a rate over three times higher than the workforce average and have the second-highest rate of workplace injuries requiring absences from work.[15] They also experience disproportionate exposure to hazardous contaminants on the job and they have high rates of serious medical problems including heart disease, hypertension, and other physical health issues.[16] All of these circumstances can exacerbate the effects of extreme heat and may contribute to increased personal vulnerability to the dangers of workplace heat.

California must swiftly mitigate the ongoing dangers of workplace heat in carceral facilities.

This is not the first time that California has endorsed maintaining conditions of slavery in the state. Two years ago, lawmakers also took advantage of a zero-sum model of scarcity when they pitted incarcerated people against "taxpayers" in arguing that paying a fair wage to incarcerated workers would simply be too expensive.[17] We urge the DIR to end this scarcity

mindset by swiftly drafting and implementing heat protection standards for *all* workers in the carceral system.

Finally, we strongly agree with and have signed onto the comments submitted by Worksafe expressing further concern about the impact this cruel carve out will have on all workers employed by the CDCR, immigrants who are detained and working in immigrant detention centers, and young people detained and working in juvenile detention centers. We do appreciate the Board's commitment to other indoor workers in the state and the efforts to draft a strong heat protection standard to keep them safe as excessive heat becomes an ever more frequent workplace hazard. NELP believes that this standard will save lives.

Sincerely,

Anastasia Christman
Senior Policy Analyst
National Employment Law Project

---

[1] The Department of Finance withdrew its approval for the regulations on the eve of the California Occupational Safety and Health Standards Board's hearing based on a claim that the California Department of Corrections and Rehabilitation (CDCR) and other carceral facilities could not afford compliance. Subsequently, it refused to even make the records public on which it based this claim. See Jeanne Kuang, "California workers must wait even longer for indoor heat protections," CalMatters, April 18, 2024 https://calmatters.org/politics/capitol/2024/03/california-worker-safety-indoor-heat/ and Jeanne Kuang, "California officials won't say why it would cost 'billions' to protect prison workers from heat," CalMatters, May 3, 2024 https://calmatters.org/politics/capitol/2024/05/california-public-records-indoor-heat-cost-prisons/

[2] Anna Phillips, "How hot is it inside Southern California's warehouses? Ask the workers at Rite Aid," Los Angeles Times, October 12, 2021 https://www.latimes.com/environment/story/2021-10-12/heat-risk-rite-aid-workers-southern-california-warehouse; WorkSafe and SEIU, "Heat, hazards, and indifference to safety in California's fast food restaurants," September 2023 https://fastfoodjusticeahora.com/wp-content/uploads/2023/10/SEIUaguantate.pdf; Michelle Bandur, "Oh heels of California heat wave, UPS workers want better ways to deal with hot conditions," KCRA NBC News, September 9, 2022 https://www.kcra.com/article/california-heat-wave-ups-air-conditioning-delivery/41142244

[3] California Legislative Analyst's Office, "The 2023-2024 Budget, The California Department of Corrections and Rehabilitation," February 16, 2023. https://lao.ca.gov/Publications/Report/4686#:~:text=State%20Currently%20Operating%2032%20State,and%20operated%20by%20the%20state.

[4] Prison Policy Initiative, "California Profile Webpage," undated. https://www.prisonpolicy.org/profiles/CA.html

[5] American Civil Liberties Union and the University of Chicago Law School, Global Human Rights Clinic, "Captive Labor: Exploitation of Incarcerated Workers," 2022. https://www.aclu.org/publications/captive-labor-exploitation-incarcerated-workers

[6] Department of Labor, Bureau of Labor Statistics, "Occupational Employment and Wages, May 2023, 33-3012 Correctional Officers and Jailers," https://www.bls.gov/oes/current/oes333012.htm

[7] CDCR/CCHCS Government Alliance on Race and Equity, "Staff Demographic Data," undated. https://www.cdcr.ca.gov/gare/staff-demographic-data/

[8] American Community Survey estimates, available at the California Employment Development Department's website. https://labormarketinfo.edd.ca.gov/geography/demoaa.html

[9] Alleen Brown, "Dark, Smoky Cells: As Wildfires Threaten More Prisons, the Incarcerated Ask Who Will Save Their Lives," The Intercept, February 12, 2022. https://theintercept.com/2022/02/12/wildfires-prisons-climate-california/

[10] National Oceanic and Atmospheric Administration, National Weather Service, Online Weather Data Search. https://www.weather.gov/wrh/Climate?wfo=rev

[11] California Department of Corrections and Rehabilitation, "News Release: CDCR Announces Deactivation of California Correctional Center in Susanville," April 13, 2021. https://www.cdcr.ca.gov/news/2021/04/13/cdcr-announces-deactivation-of-california-correctional-center-in-susanville/

[12] The Ella Baker Center for Human Rights and Aishah Abdala, Abhilasha Bhola, Guadalupe Guttierez, and Mara O'Neill, "Hidden Hazards: The Impacts of Climate Change on Incarcerated People in California State Prisons," June 2023. https://issuu.com/ebchr/docs/hidden_hazards_report?fr=sNjRjMDU1MTA4ODk

[13] Deanna Beland, "Sustainability Roadmap 2020-2021, California Department of Corrections and Rehabilitation," undated. https://www.cdcr.ca.gov/green/wp-content/uploads/sites/176/2020/04/R_2020-21-CDCR-Sustainability-Roadmap-FINAL-Electronic-Signature.pdf

[14] Paloma Wu and D. Korbin Felder, "Hell and High Water: How Climate Change Can Harm Prison Resident and Jail Residents, and Why COVID-19 Conditions Litigation Suggests Most Federal Courts Will Wait-And-See When Asked to Intervene," Fordham Urban Law Journal 49(1), 2022. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2866&context=ulj

[15] NELP analysis of ORS data; Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses, available at https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/table-1-injury-and-illness-rates-by-industry-2022-national.htm; E. Harrell, "Workplace Violence, 1993-2009," Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. 2011.

[16] Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses, https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/table-1-injury-and-illness-rates-by-industry-2022-national.htm; Jaime Brower, "Correctional Officer Wellness and Safety Literature Review," U.S. Department of Justice Office of Justice Programs Diagnostic Center, July 2013. https://s3.amazonaws.com/static.nicic.gov/Public/244831.pdf

[17] Adam Beam and Don Thompson, "California Senate rejects involuntary servitude amendment," AP News, June 23, 2022 https://apnews.com/article/prisons-california-gavin-newsom-minimum-wage-slavery-a0aed840fc6dc54c7eb0da98d0f6bb05 ; Department of Finance Bill Analysis, Bill Number ACA 3 Involuntary Servitude, undated https://esd.dof.ca.gov/LegAnalysis/getPdf/562367F1-B9FC-EC11-913B-00505685B5D1

From: Matthew Brush
To: DIR OSHSB
Subject: Public Comment-Heat Standard
Date: Wednesday, May 29, 2024 12:39:17 PM
Attachments: Outlook-efwtofx1.png
Heat_Brush_2024.docx

Hello,

Attached please find my public comment in regards to the Indoor Heat standard. ("TITLE 8: New Section 3396 of the General Industry Safety Orders")

Please let me know if you have any questions. Thank you for your time!
Matt

Matthew "Matt" Gray Brush (*he/him*)
Project Coordinator
UCLA Labor Occupational Safety & Health Program

10945 Le Conte Avenue, Suite 2107
Los Angeles, CA 90095-1478
Work (Zoom): 310-794-5992
Cell (Personal/Work): 607-207-8901

Facebook | Twitter | Instagram | Donate

May 28th, 2024
To: Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Dear Chair Thomas and Members of the Occupational Safety and Health Standards Board,

My name is Matthew Brush and I am a public health professional working in LA County. A great deal of my professional work involves connecting workers to resources that can help improve their overall health, reduce workplace injuries and illnesses, and promote social and economic justice for all. I believe in supporting the health and well-being of workers in an empowering, community-oriented way that promotes inter-group collaboration and creative problem solving.

While I write you today to emphasize the urgency of passing comprehensive indoor heat protections for workers, I am horrified at the forced and false dichotomous choice being presented to this board today. The choice by the governor to exclude prisons, detainment facilities, and juvenile facilities from this Standard will undoubtedly subject thousands of incarcerated workers to inhumane and deadly conditions. It flies in the face of the California Department of Corrections and Rehabilitation's own mission to provide rehabilitative and restorative justice in a "safe and humane environment". I want to stress my concern for the exclusion of ANY work force from these labor protections, be they de jure or de facto.

As you are already aware, OSHA excludes most incarcerated workers, namely those in state correctional facilities, from its protections. Incarcerated people are not considered "workers", and are therefore exempt from worker protections, all while performing dangerous labor at virtually no cost to the state. Many other federal statutes also exclude incarcerated workers, many of whom will one day leave the institutions that incarcerate them. In our justice system, incarceration is intended to be the punishment for a social or community injustice. That is to say, prison is the punishment. Excluding workers from protections at jobs that many hold by force or necessity is to compound the harms of incarceration by denying workers even the most basic protections from environmental circumstances well beyond their control. States like TX and FL have already gone so far as to ban protections for such vulnerable workers (including migrant agricultural workers), a pre-emptive action that may well be foreboding of a very hot, dangerous future. It concerns me that a state like California that has gone to great lengths to protect its workers is aligning its policy with states like these.

The specific exclusion of facilities that detain children from this provision is of particular concern from a health and safety perspective, particularly from a labor perspective. The EPA and most major medical organizations recognize that children are more vulnerable to heat-related mortality and morbidity, and have a slower rate of acclimatization[1]. I ask the Board to consider: what rehabilitation is provided to incarcerated *children* suffering from heat illness while in the care and custody of the state? Further, what "rehabilitation" is provided by paying workers sub-minimum wages?

Beyond concerns about age or individual characteristics, a 2023 Report by the UCLA Luskin School of Public affairs showed that CA prisons are highly susceptible to climate hazards, including extreme

[1] https://www.epa.gov/children/protecting-childrens-health-during-and-after-natural-disasters-extreme-heat

temperatures[2]. Climate change affects everyone, incarcerated or not. Incarcerated workers hold essential positions working inside of prisons, ranging from janitorial services, food services, administrative work, and other maintenance jobs that literally keep prisons going. In some facilities, incarcerated people make up over half of staff that keep the facility operational on a daily basis. To exclude these workers from this standard is not only to disregard the un(der)paid labor of incarcerated workers, but also puts at risk the very work force that keeps these facilities running. A recent report by the Associated press[3] also found that privacy laws make it very difficult to obtain true statistics about deaths of incarcerated workers; over 700 injuries were reported in the California prison industries program from 2018-2022, a number likely vastly undercounting the number of workers hurt or killed on the job while incarcerated.

There is longstanding evidence of an association between fatal occupational injuries and low wages, but no concern about these injuries and fatalities among workers who are incarcerated.[4] It is rare for jobs for incarcerated people to pay even one dollar an hour, and limited data about workplace injuries make it difficult to assess the true impact of low wages and dangerous work on those inside. After court fees, fines, or fees associated with imprisonment are paid, incarcerated workers typically have very little to support themselves, let alone send home to their families.

Workers who are incarcerated have also long provided essential services outside the facilities that detain them. This includes dangerous jobs like firefighting, often for wages as low as $1—a job which, upon release, most convicted felons will be legally barred from holding. Shawna Lynn Jones was one such incarcerated firefighter who lost her life in 2016, just weeks away from being released for a non-violent offense. Dozens of others report receiving minimal or no training before being sent to fight fires, received grave injuries and burns due to poor PPE, and many more have chronic pain or injury. During COVID-19, many incarcerated workers did the devastating work of digging graves, moving bodies, and building coffins to offset the strain on our overwhelmed health system. Some even produced PPE that they were barred from using themselves. These and other countless examples of the use and abuse of prison labor demonstrate a clear association between penal labor and American slavery.

The prison labor force has a massive effect on the US economy. While CA's correctional industries program sold over $191 million in manufactured goods in 2020-21, thousands of released individuals struggled to find jobs to get back on their feet. Unemployment is a chronic problem for many formerly incarcerated people, and costs them about $55,200,000,0000 (55.2 Billion) in lost earnings annually. Further, underemployment related to imprisonment or conviction reduces wages for all-- as much as $372.3 billion annually, all of which could be invested into local communities. For relative comparison, one report showed this is enough money to give every unhoused person in the US a house worth a half a million dollars, outright, with money left over[5].

Finally, and perhaps most importantly, I urge the board to consider the rampant lack of transparency around this decision, and continue to investigate thoroughly why a separate regulation need be crafted

---

[2] https://ellabakercenter.org/reports/hiddenhazards/

[3] https://apnews.com/article/prison-to-plate-inmate-labor-investigation-injuries-deaths-0ff52ff1735d7e9f858248177a2a60c3

[4] https://pubmed.ncbi.nlm.nih.gov/35597567/#:~:text=Introduction%3A%20Low%20wages%20are%20associated,nonfatal%20occupational%20injuries%20and%20illnesses

[5] https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf

for a highly vulnerable population. The health and safety of workers should not be dependent on their incarcerated status. To that end, incarceration itself is a non-permanent state for most who encounter it; one in three Americans has been arrested by age 23[6] and one in five have a criminal record of some kind[7]. Many of these facilities hold pretrial individuals, those who are yet to be convicted, and those simply too poor to afford bail/bond. Furthermore, Black men are six times more likely to be incarcerated than white men (and 2.5x for Hispanic men), a harrowing statistic that also shows the glaring racial bias that exists in American prisons and legal system. With the power of rulemaking comes great responsibility, in particular to protect those most vulnerable to harm and abuse in our society. Such substantial, last-minute changes to a meticulously crafted and thoughtful regulation demonstrates a wanton disregard for incarcerated people and their families who may hope and expect their loved one to one day return home.

Work in prison should not be a death sentence. Moreover, the governor's concerns about financial feasibility for implementing such a standard reflect the limited 'value' of a prisoner to the state based on their capacity for profitable labor. While the state rakes in record-breaking profits by exploiting incarcerated labor both inside and outside its prisons' walls, the same rulemaking body cannot be bothered to extend protections to the same labor force in its custody that keeps it running at reduced costs. By excluding incarcerated people and juveniles from common-sense safety standards around heat, this change to the standard effectively serves to further punish incarcerated and detained people, and flagrantly ignores well-established facts about the deadly effects of heat on all human bodies regardless of conviction or guilt. In short, workers in prison, detainees, and juveniles deserve to be protected on the job, too.

I urge the Board to consider rejecting this standard with exemptions on the basis of its' bias and exclusion of among the most vulnerable members of our community. Should this necessitate a "do-over" of the rulemaking process, I am confident the community can step up and support this effort. Further, I welcome conversation about how we arrived at this unique situation and how we might prevent or limit last minute changes in the future.

I am grateful for the board's continued efforts to incorporate community stakeholder feedback about this regulation, and I am proud of the work we have done together to shape it into what it is today. Thank you for your time and service.

Sincerely,

Matthew G Brush, MPH, CHES

[6] https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf

[7] https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf

From:	Michael Miiller
To:	DIR OSHSB
Cc:	agonzalez@dir.ca.gov; Park, Keummi@DIR; Berg, Eric@DIR; Neidhardt, Amalia@DIR
Subject:	COMMENTS ON PROPOSED REGULATION (May 10 Amendments) HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT
Date:	Thursday, May 30, 2024 6:55:48 AM
Attachments:	image001.png image005.png Ag Coalition Letter Indoor Heat Regulation 4th 15 Day Notice FINAL.pdf

Good Morning,

Attached is a comment letter from a coalition of agricultural organizations.

Thank you for your consideration of our concerns and please confirm receipt.

Take care,

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 28, 2025***

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

PACIFIC COAST RENDERERS ASSOCIATION

May 30, 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: COMMENTS ON PROPOSED REGULATION (May 10 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 respectfully provide comments on the amendments released on May 10 to the proposed Heat Illness Prevention in Indoor Places of Employment draft regulation. Please refer to our prior comments submitted on May 17, 2023, November 27, 2023, and January 12, 2024, for our continued concerns.

This letter is focused only on the May 10 amendments and raises concerns relative to scope and application. Specifically, we are concerned with how the recent amendments fail to deal with incidental heat exposure (especially relative to vehicles). This is of note because the Office of Administrative Law (OAL) raised concerns with the incomplete calculation of the costs of compliance (presumably related to prisons). We respectfully submit that costs of compliance were also not calculated for incidental heat exposure in vehicles.

Decision of Disapproval of Regulatory Action (costs)

When OAL rejected the proposed regulation, OAL concluded, "The Board must resolve all other issues raised in this Decision of Disapproval of Regulatory Action prior to the resubmittal of this regulatory action." OAL specifically highlighted the Board's failure to comply with Sections 6614 and 6615 of the State Administrative Manual (SAM) relative to how it calculated costs.

We believe this deficiency in calculating costs goes beyond costs for prisons. This is because the Board has not calculated the costs for state and local agencies to comply with the regulation relative to incidental heat exposure, especially for vehicles.

At the May 16, 2024 meeting of the Board, Eric Berg, Cal/OSHA's Deputy Chief of Health, addressed the issue of whether vehicles are included in the regulation. He stated the following:

> *"They're covered if they're, you know, they're fully enclosed. A normal passenger vehicle's covered. If it has air conditioning and it cools it down, it won't be covered, if it cools it down below 82. And there may be a momentary brief period when you get in the car and before it cools down. And obviously, we're not gonna enforce that. That won't be covered. So, it's treated like any other indoor space."*
>
> https://videobookcase.org/oshsb/2024-05-16/ 2:13:00

This confirms what our organizations have been telling the Board for more than a year – Vehicles are "treated like any other indoor space" and are included in the proposed regulation.

Unfortunately, though, the costs of compliance for state agencies relative to vehicles are not included in the Board's analysis. This failure to calculate costs is likely due to the part of Mr. Berg's statement where he stipulates that the regulation does not cover a "momentary brief period" before the vehicle cools down.

We appreciate Mr. Berg's approach to Cal/OSHA taking no enforcement action when an employee steps into a vehicle that is at 100 degrees and within a few minutes, it cools down to 75 degrees. However, while that approach smacks of commonsense, language achieving that commonsense approach is found nowhere in the text of the regulation.

Unfortunately, to make things even more confusing, the regulation has three provisions that seem to be contrary to Mr. Berg's commonsense approach:

- The scope of the regulation states, "This section applies to all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present."
- The regulation includes an exception for incidental heat. But that exception is capped at 95 degrees.
- The regulation also includes an exception for vehicles. But that exception for vehicles is limited to subsection (e)(1).

If Mr. Berg is correct that the regulation is not intended to cover a "momentary brief period" before the vehicle cools down, this should be made clear in the text of regulation. At a minimum, if there is to be no enforcement of the regulation for that "momentary brief period" before the vehicle cools down, such an enforcement policy needs to be made clear in the Final Statement of Reasons.

Incidental Heat Exposure

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.

Conclusion

As currently written, the regulation does not match Mr. Berg's explanation of how it applies to vehicles. Consequently, the calculations under SAM Sections 6614 and 6615 are incomplete unless the regulation is amended to reflect Mr. Berg's statement. Please keep in mind that, beyond failing to calculate the costs for compliance for vehicles (workplaces) in fields, orchards, and vineyards, the Board has also failed to calculate costs of vehicle fleets at Cal Trans, Cal Fire, and other state and local agencies.

Therefore, the May 10 amendments may not fully resolve the issues raised in OAL's Decision of Disapproval of Regulatory Action. Our organizations believe this needs to be fully addressed before sending the regulation back to the OAL.

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

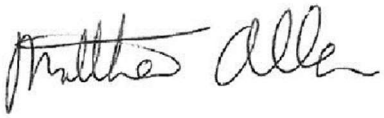
Sincerely,

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

Director of Government Relations
California Association of Winegrape Growers

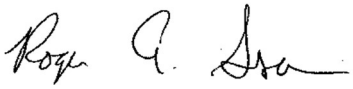


Matthew Allen
Vice President, State Government Affairs
Western Growers

Tricia Geringer
Vice President of Government Affairs
Agricultural Council of California

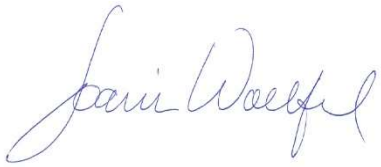
Timothy A. Johnson
President/CEO
California Rice Commission

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

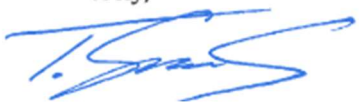


Joani Woelfel
President & CEO
Far West Equipment Dealers Association

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

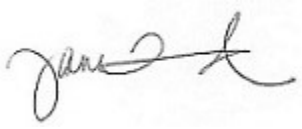
Richard Matoian
President
American Pistachio Growers

Ian LeMay
President
California Fresh Fruit Association

Pete Downs
President
Family Winemakers of California

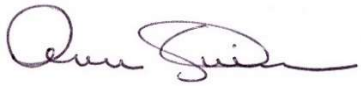
Tim Schmelzer
Vice President, California State Relations
Wine Institute

Debbie Murdock
Executive Director
Association of California Egg Farmers
Pacific Egg & Poultry Association
California Pear Growers Association



Jane Townsend
Executive Officer
California Bean Shippers Association

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



Ann Quinn
Executive Vice President
California Warehouse Association

Chris Zanobini
Chief Executive
California Grain and Feed Association
Pacific Coast Renderers Association

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

From: Bruce Wick
To: DIR OSHSB
Subject: Public Comment on 4th 15 day notice on Indoor Heat Illness Prevention
Date: Thursday, May 30, 2024 9:27:36 AM
Attachments: image001.png
image003.png

To: California Occupational Safety and Health Standards Board.

Housing Contractors of California provides the following public comments regarding Indoor Heat Illness Prevention.

We are concerned with the Division's lack of response to the issues involving workers de minimis exposure to entering storage units. The FSOR seems to clearly state in "Response to Comment 5.1" beginning on page 199 that we should not be concerned about these exposures creating a violative condition. The problem continues to be that the way the regulation is worded does not clearly reflect that thinking, and employers will likely be in conflict with Cal/OSHA inspectors regarding those exposures.

We request the Board to do two things, in the likely event that the current proposal is adopted June 20, 2024.

1. Give written commentary to Cal/OSHA enforcement and consultation personnel regarding the information in "Response to Comment 5.1".
2. Require staff to conduct an advisory committee by zoom, to make the regulation clearly comport with the information in "Response to Comment 5.1". There are several simple options to amend the regulation.

I have included the salient excerpts of "Response to Comment 5.1" below.

Response to Comment 5.1 The Board is not persuaded by the commenters' arguments and declines to adopt the commenters' proposed modification. The proposed temperature limit of 95 degrees Fahrenheit aligns with the high heat threshold in section 3395 and follows the same scientific logic as NIOSH's recommended work/rest schedules. Workers momentarily accessing storage sheds to obtain necessary items would not have sufficient exposure to high heat to be exposed to the hazard of heat illness. Shipping or intermodal containers excluded from application of subsection (a)(1) exception (C) are limited to "during loading, unloading, or related work" to address shipping containers that are repurposed as storage units at worksites, which may be similar to sheds, trailers, or bungalows in their features. These containers should be treated different from shipping containers used as storage units as loading, unloading, or related operations involve moderate to high level of exertion and there is increased risk of heat illness based on the Division's experience.

Sincerely, Bruce Wick

Bruce Wick
Director of Risk Management
Housing Contractors of California
Office: 909.793.9932
Cell: 760.535.9623
bwick@housingcontractors.org

From: Louis Blumberg
To: DIR OSHSB; Money, Sarah@DIR
Cc: Parfrey Jonathan; Huerta Enrique
Subject: Comments on 15-day notice - Heat Illness Prevention at Indoor Places of Employment
Date: Thursday, May 30, 2024 11:38:29 AM
Attachments: CR ltr 5-30-24.docx

Please see attached comments and include in the record for this item

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

Climate Resolve

May 30, 2024

Occupational Safety and Health Standards Board
2520 Ventura Oaks Way, Suite 350. Sacramento, CA 95833

Website address www.dir.ca.gov/oshsb

Re: FOURTH NOTICE OF PROPOSED MODIFICATION TO CALIFORNIA CODE OF REGULATIONS TITLE 8: New Section 3396 of the General Industry Safety Orders: **Heat Illness Prevention in Indoor Places of Employment**

Climate Resolve supports the proposed revised regulation on Heat Illness Prevention in Indoor Places of Employment as provided in the Fourth 15-Day Notice. Further delay is unacceptable and will put the health, safety and lives of a large and growing sector of the workforce in danger. Injuries, illness and death from extreme heat are preventable.

We urge the Department of Industrial Relations to bring the regulation to the Standards Board for a vote at the earliest opportunity and to enact and enforce the rule this summer. Further delay is unacceptable and will put the health, safety and lives of a large and growing sector of the workforce in danger. We are submitting for the record the editorial linked below from the Los Angeles Times commenting on the delay in the process to date.

> "Indoor Heat Protection for Workers is Long Overdue: the State has lagged on rules to keep people cool …." Editorial, LA Times, May 24, 2024. "Thanks to ineptitude by state officials, California is heading into another summer without rules to protect the nearly 1 million people who labor inside sweltering warehouses, boiler rooms, kitchens and other facilities…. State officials, including Gov. Gavin Newsom, whose office recently boasted that no other governor has done as much to protect people from extreme heat, should be ashamed."

In addition, we urge you to begin now drafting a new regulation to for Heat Illness Prevention in Indoor Places of Employment managed by the Department of Corrections. The state has a legal and moral obligation to protect the health and safety, and lives, of everyone working, and living, in its prisons.

Sincerely,

Louis Blumberg

Climate Policy Advisor to Climate Resolve

From: AnaStacia Wright
To: DIR OSHSB
Subject: Worksafe"s Written Comment - Prevention of Heat Illness and Injury in Places of Indoor Employment standard.
Date: Thursday, May 30, 2024 12:19:25 PM
Attachments: Support for Prevention of Heat Illness and Injury in Places of Indoor Employment Standard.pdf

Hello,

Please find attached Worksafe's written comment on the proposed Prevention of Heat Illness and Injury in Places of Indoor Employment standard, endorsed by 16 additional organizations and unions.

AnaStacia Nicol
--
AnaStacia Nicol Wright
Policy Manager
(she/her)
(510) 815-3300
Worksafe: *Safety, Health, & Justice for Workers*
1736 Franklin St., Ste. 500, Oakland, CA 94612
www.worksafe.org | Twitter | Facebook

Why include pronouns? I include pronouns in an effort to share my personal and professional commitment to transgender inclusivity and visibility. Through sharing my pronouns, I hope to support a safer and braver space for transgender professionals to share their pronouns.

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

May 30, 2024

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

Re: Support for Prevention of Heat Illness and Injury in Places of Indoor Employment Standard

Dear Chair Thomas and Members of the California Occupational Safety and Health Standards Board,

Worksafe is writing to express strong support for the passage of the Prevention of Heat Illness and Injury in Places of Indoor Employment standard. We believe that adoption of this regulation without further delay is crucial for protecting workers from the dangers of heat-related illnesses and injuries in indoor workplaces.

However, we are deeply concerned that the California Department of Corrections and Rehabilitation, local detention and juvenile facilities have been excluded from the Prevention of Heat Illness and Injury in Places of Indoor Employment standard §3396(a)(E).

A critical concern is being overlooked: the well-being of prison and detention center staff. The California Department of Corrections, employs over 57,000 employees across 35 institutions.[1] This includes correctional officers, healthcare professionals, and maintenance staff, who are all at risk of heat exhaustion and dehydration.[2] Many of these workers are employed in archaic, poorly ventilated buildings and are exposed to extreme temperatures while performing their duties.

It is imperative that we prioritize the safety and well-being of prison staff, not just for their own health and well-being, but also for the effectiveness of our corrections system as a whole. By providing them with a safe and healthy working environment, we can ensure that they are able to perform their duties and help ensure the safety of those they are responsible for.

Incarcerated and detained workers are workers. There is a common misconception that prisoners are excluded from worker protections. However, this is not the case. As stated in Section 6404.2 of the California Labor Code, "any state prisoner engaged in the correctional industry, as defined by the Department of Corrections, shall be deemed to be an 'employee,' and the Department of Corrections shall

[1] National Association of State Chief Information Officers (NASCIO) & California Department of Corrections and Rehabilitation (CDCR), "Standard Operating Procedures Manual Supplement" (2015), available at https://www.nascio.org/wp-content/uploads/2020/09/2015CA6-NASCIO-CDCR-SOMS-2015.pdf (last visited May 30, 2024).
[2] *Id.*

be deemed to be an employer, with regard to such prisoners."[3] Additionally, the Division can and has cited state agencies for violations of occupational safety and health standards found in Title 8, California Code of Regulations.[4]

This means that incarcerated workers are indeed considered employees under California Labor Code and are subject to the same workplace safety regulations as any other employee. However, they often face unique challenges and hazards on the job. Failing to include them in the heat standard will only further exacerbate the unique challenges and hazards that they face.

Extreme heat is a critical problem in California prisons and detention center buildings. California's corrections systems employ over 40,000 incarcerated workers who are exposed to hazardous conditions, including extreme heat.[5] The fact that many of these facilities are old and dilapidated exacerbates the risk of heat-related illnesses and injuries.[6] The age of county facilities in California presents a significant challenge.[7] With construction dating back to the 1900s and the most recent remodel occurring in 2003, many counties are operating outdated facilities that are in dire need of repair.[8]

For example, Fresno's South Annex Facility, built in 1941, is known to be plagued by structural and maintenance issues.[9] A report from the Ella Baker Center and UCLA Luskin School of Public Affairs surveyed nearly 600 incarcerated individuals across California and found that an alarming 66% of them cited extreme heat as one of the primary climate hazards they faced.[10]

County juvenile halls throughout the state are poorly equipped as well. Notably, Los Angeles county's juvenile halls were recently deemed "unsuitable" by the state's oversight agency. This facility and many others across the state are plagued by outdated facilities, overcrowding, and understaffing, forcing

---

[3] Cal. Labor Code § 6404.2; Cal. Labor Code § 6304.2.
[4] In the Matter of the Appeal of CA Prison Industry Authority, Employer, 2911 CA OSHA App. Bd. LEXIS 117 (2011).
[5] American Civil Liberties Union (ACLU). (2022). Heat Wave: Global Warming and the Impacts of Extreme Heat on Prisoners and Communities. Retrieved from https://www.aclu.org/report/heat-wave-global-warming-and-impacts-extreme-heat-prisoners-and-communities
[6] Magnum Lofstrom & Brandon Martin, Key Factors in California's Jail Construction Needs, Pub. Pol. Inst. of Cal. (May 2014), https://www.ppic.org/publication/key-factors-in-californias-jail-construction-needs.
[7] *Id*.
[8] Magnum Lofstrom & Brandon Martin, Key Factors in California's Jail Construction Needs, Pub. Pol. Inst. of Cal. (May 2014), https://www.ppic.org/publication/key-factors-in-californias-jail-construction-needs.; Key Factors in California's Jail Construction Needs, Pub. Pol. Inst. of Cal., https://www.ppic.org/wp-content/uploads/content/data/County_Jail_Construction_and_Remodel_Years.pdf (last visited May 22, 2024).
[9] *Id.* at 4.
[10] Ella Baker Center for Human Rights, "Hidden Hazards: A Call to Action for Safer Chemicals in Prisons and Jails" (June 2023), available at https://ellabakercenter.org/wp-content/uploads/2023/06/Hidden-Hazards-Report-FINAL.pdf (last visited May 30, 2024).

youth officers to take on additional and repeated responsibilities during periods of high heat.[11] These dangerous working conditions are exacerbated during periods of extreme heat.[12]

Moreover, many corrections facilities throughout California lack basic amenities, including air conditioning, proper ventilation, and adequate shade structures.[13] This underscores the urgent need for infrastructure improvements to ensure a safer and healthier working environment for incarcerated workers and corrections staff.

California's incarcerated workforce constitutes a major part of our economy. A 2022 study by the American Civil Liberties Union and the University of Chicago highlights the significant economic contribution of incarcerated workers, with over 800,000 individuals in the US producing goods and services worth an estimated $10 billion annually, with over $2 billion of that value generated for clients outside the prison system.[14] This underscores the importance of recognizing the economic value and dignity of prison workers, who should not be treated as lesser than other workers. It is essential that we prioritize their safety and well-being, just as we would for any other worker.

As reported by the National Employment Law Project (NELP), "Workers Doing Time: Must Be Protected by Safety Laws" (2022), incarcerated workers face numerous hazards on the job, including heat-related illnesses.[15] It is unacceptable that California is essentially carving out one of the most vulnerable populations we have from basic worker protections.

In closing, we strongly urge reconsideration of the decision to exclude corrections facilities from the new standard. While we are deeply disappointed by the exclusion of corrections facilities from the new heat standard, we acknowledge that the proposed standard is still a significant step forward in protecting workers from heat-related illnesses and injuries. As such, **Worksafe and the undersigned organizations support the passage of the heat standard, even though it does not include corrections facilities.** We hope that the proposed heat standard will be a first step towards creating a safer and healthier workplace

---

[11] Corrections1, "New mandate to put 250 field officers in LA County juvenile halls," Corrections1 (March 5, 2024), available at https://www.corrections1.com/prison-staffing/new-mandate-to-put-250-field-officers-in-la-county-juvenile-halls (last visited May 30, 2024).
[12] UCLA Luskin Institute on Inequality and Democracy (July 16, 2021), available at https://innovation.luskin.ucla.edu/2021/07/16/high-temperatures-increase-workers-injury-risk-whether-theyre-outdoors-or-inside/#:~:text=A%20UCLA%20study%20published%20today%20shows%20that,California's%20workers'%20compensation%20system%2C%20the%20nation's%20largest. (last visited May 30, 2024).
[13] Leah Wang, Heat, floods, pests, disease and death: What climate change means for people in prison, Prison Pol. Initiative (July 19, 2023), https://www.prisonpolicy.org/blog/2023/07/19/climate_change.
[14] *Supra* at note 5.
[15] National Employment Law Project, "Disaster Injustice: How Incarcerated Workers Are Compromised in Natural and Public Health Emergencies" (April 2024), available at https://www.nelp.org/app/uploads/2024/04/Report_Incarcerated_Workers_Disasters_v2.pdf (last visited May 30, 2024).

environment for workers in California, however future efforts must focus on finding a solution that includes corrections facilities.

Thank you for your time and consideration.

Sincerely,

Worksafe

International Longshore and Warehouse Union, Local 26 (I.L.W.U. Local 26)

Instituto de Educación Popular del Sur de California (IDEPSCA)

United Steelworkers Local 675

United Food and Commercial Workers (UFCW) Western States Council

California Fast Food Workers Union, SEIU - Maria Maldonado, Director,

National Union of Healthcare Workers

California Nurses Association

California Immigrant Policy Center

California School Employees Association

CFT, A Union of Educators and Classified Professionals

National Employment Law Project

Five Counties Central Labor Council

American Federation of State, County & Municipal Employees (AFSCME) Local 3299

Legal Aid at Work

Community Legal Services in East Palo Alto

Food Chain Workers Alliance

From:	Angus Crane
To:	DIR OSHSB
Subject:	Comments on Fourth Notice of Proposed Modification to California Code of Regulations - Title 8: New Section 3396 of the General Industry Safety Orders
Date:	Thursday, May 30, 2024 1:14:05 PM
Attachments:	image001.png RAC5308.pdf
Importance:	High

Dear Ms. Gonzales:

Please find attached the North American Insulation Manufacturers Association's ("NAIMA") comments on CalOSHA's Fourth Notice of Proposed Modification to California Code of Regulations - Title 8: New Section 3396 of the General Industry Safety Orders – Heat Illness Prevention in Indoor Places of Employment.

Sincerely,

Angus E. Crane
Executive Vice President, General Counsel
North American Insulation Manufacturers Association
Ph: (703) 300-3128

Visit NAIMA online at:
www.NAIMA.org
www.PipeInsulation.org

NAIMA
NORTH AMERICAN INSULATION MANUFACTURERS ASSOCIATION

VIA E-MAIL (oshsb@dir.ca.gov)

May 30, 2024

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

RE: Comments of the North American Insulation Manufacturers Association ("NAIMA") on the Department of Industrial Relations, Occupational Safety and Health Standard's Board's Fourth Notice of Proposed Modification to California Code of Regulations to Title 8: New Section 3396 of the General Industry Safety Orders: Heat Illness Prevention in Indoor Places of Employment

Dear Ms. Gonzalez:

The North American Insulation Manufacturers Association ("NAIMA") appreciates the opportunity to provide comments on the California Department of Industrial Relations, Occupational Safety and Health Standard Board's (hereinafter "CalOSHA") proposed revisions on Title 8: New Section 3396 of the General Industry Safety Orders: Heat Illness Prevention in Indoor Places of Employment. NAIMA is the trade association for fiber glass and rock and slag wool (rock and slag wool are also known as mineral wool) insulation products. NAIMA promotes energy efficiency and the pollution reduction achieved through the use of fiber glass and mineral wool insulation.

NAIMA's members have three manufacturing plants in the State of California: CertainTeed in Chowchilla; Johns Manville in Willows; and Knauf in Shasta Lake. All three of these facilities would be subject to CalOSHA's proposal.

NAIMA is specifically concerned about the regulation of vehicles. The first concern is that vehicles are not defined in the proposal. If a definition is prepared, NAIMA recommends that open cab vehicles, such as forklifts, fork trucks, or similar vehicles commonly used in manufacturing facilities, should not be included in the definition of vehicle. If a definition of vehicle is not developed, NAIMA requests that the open cab vehicles or vehicles that do not have windows, would not be subject to any of the requirements for vehicles contemplated in the New Section 3396.

To impose the same requirements as other vehicles have imposed on them on the smaller and differently designed forklifts or similar vehicles would be burdensome and would render little to no benefit.

Again, NAIMA is grateful for the opportunity to submit comments. If you have any questions or need further clarification on NAIMA's concern, please do not hesitate to contact the undersigned.

Sincerely,

Angus E. Crane

Angus E. Crane
Executive Vice President, General Counsel
(703) 300-3128
acrane@naima.org

From: Anne Katten
To: DIR OSHSB
Subject: Comment on 4th revision of proposed indoor heat regulation
Date: Thursday, May 30, 2024 1:16:08 PM
Attachments: Indoor Heat 4th rev CRLAF comment.pdf

Please see comment attached. Thank you.

--
Anne Katten
Pesticide and Work Health and 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

California
Rural
Legal
Assistance
Foundation

Amagda Pérez, Esq.
Executive Director

Mark S. Schacht
Deputy Director

REGIONAL PROJECTS

Ceres/Modesto
- Rural Health Advocacy
- Sustainable Rural Communities

Fresno
- Immigration & Citizenship
- Sustainable Rural Communities

Oakland
- California Advocacy for Farm Workers
- Temporary Foreign Workers Project

Sacramento
- California Advocacy for Farm Workers
- Citizenship & Immigration
- Education Equity
- Labor & Civil Rights Litigation
- Labor & Employment Law Project
- Pesticides & Work Safety Project
- Rural Health Advocacy
- Rural Housing Project
- Special Projects
- Sustainable Rural Communities

2210 K. Street, Suite 201
Sacramento, CA 95816

1921 N. Gateway Blvd., Suite 102
Fresno, CA 93727

May 20, 2024

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

RE: Comments on 4th 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 vote to adopt the proposed CCR 3396 Standard for Heat Illness Prevention in Indoor Places of Employment at the May 20th Board meeting. A specific indoor heat regulation is long overdue and urgently needed to prevent debilitating heat illness, heat-related injuries and fatalities in packing houses, hoop houses, warehouses and other indoor work places as we head into another summer where record breaking heat is again expected.

We note that many revisions have been made to the proposed regulation to address concerns raised by employer groups. While we are concerned that these revisions have weakened protections for workers we conclude on balance that the regulation will provide much needed protection. Preventing heat-related illnesses, injuries and fatalities will be a great benefit for both employees and employers.

We are, however, very concerned about the exemption of correctional facilities operated by state and local governments from the scope of this regulation because employees of these facilities and incarcerated individuals who are working in kitchens, laundries and other indoor locations, like other workers, urgently need protection from indoor heat exposure. We urge the Board and Division to work quickly to draft and propose a regulation to protect these workers.

In conclusion we urge you to vote to enact this regulation.

Sincerely,

Anne Katten, MPH
CRLAF Pesticide and Work Health and Safety Specialist

From: CALFIRE Department Safety Officer@CALFIRE
To: DIR OSHSB
Cc: Lawson, Jeremy@CALFIRE; CALFIRE Department Safety Officer@CALFIRE; Wiseman, David@CALFIRE
Subject: CAL FIRE Comments on Proposed Section 3396
Date: Thursday, May 30, 2024 3:54:29 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
Indoor Heat Regulation May 2024 Comment Period.pdf

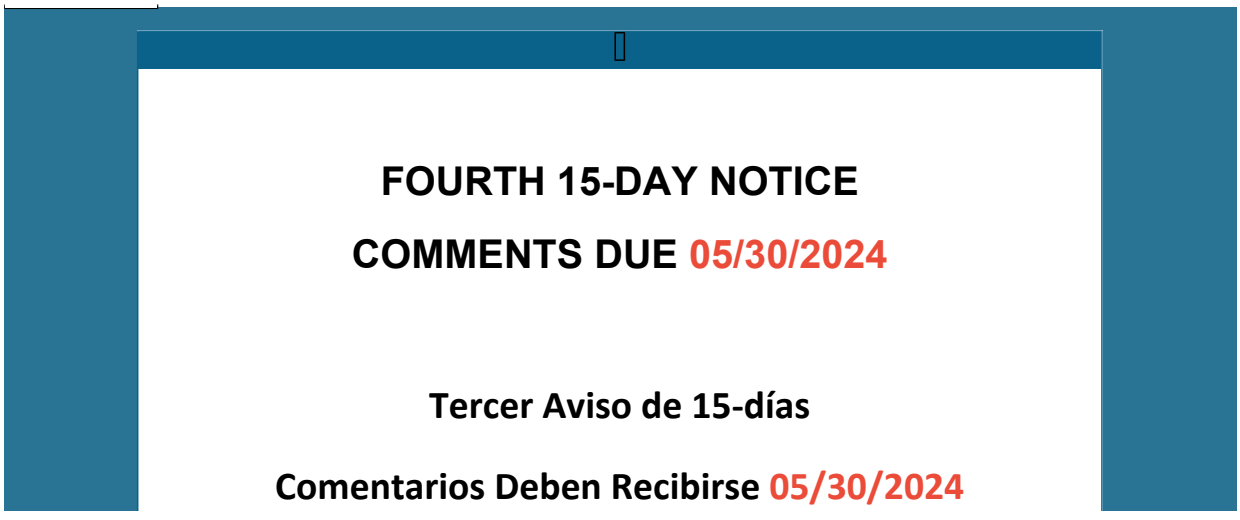
Occupational Safety and Health Standards Board,

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 warehouse in Davis and our aircraft hangar in McClellan.

Thanks,

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

From: Autumn Gonzalez <oshsb-dir.ca.gov@shared1.ccsend.com>
Sent: Monday, May 13, 2024 3:19 PM
To: Billows, Hannah@CALFIRE <Hannah.Billows@fire.ca.gov>
Subject: FOURTH 15-DAY NOTICE: Heat Illness Prevention in Indoor Places of Employment



Occupational Safety and Health Standards Board

FOURTH 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 must be received

by **5:00 p.m. on May 30, 2024** 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 May 30, 2024 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.

This proposal will be scheduled for adoption at a future Standards Board Business Meeting.

Access the Fourth 15-Day Notice for

Heat Illness Prevention in Indoor Places of Employment.

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

Join Our Mailing List

Junta de Normas de Seguridad y Salud Ocupacional

CUARTO 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 por calor en lugares de trabajo interiores

Comentarios por escrito sobre estas modificaciones se deben recibir

antes de **las 5:00 p.m. el 30 de mayo de 2024** 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

Comentarios recibidos después de las 5:00 p.m. del 30 de mayo de 2024 no se incluirá en el expediente y no será considerado por la Junta.

Por favor limite sus comentarios a la modificación del texto.

Esta propuesta se programará para su adopción en una futura Reunión de negocios de la Junta de Normas.

Acceda al Tercer Aviso de 15 días para

Prevención de enfermedades causadas por el calor en lugares de trabajo interiores.

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
P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 653-7772
Website: www.fire.ca.gov

May 30, 2024

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 Heat Illness Prevention in Indoor Places of Employment.

Thank you for the opportunity to comment on the proposed new California Code of Regulation, Title 8, Section 3396 on Heat Illness Prevention in Indoor Places of Employment. After review of the changes made to the exceptions of this section from prior comment periods, the California Department of Forestry and Fire Protection (CAL FIRE) would like to engage in this comment period with suggested changes for consideration by the Occupational Safety and Health Standards Board ("Board"). CAL FIRE would also like to thank the Board for their acknowledgement of previous comments and the exemption that was provided for emergency response operations including structural firefighting operations.

CAL FIRE previously explained concerns with the implementation of the newly proposed Section 3396 as it relates to mobile equipment workshops and aircraft hangar operations, with the belief that these should be considered for addition under (a)(1) as an exception from this section. 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.

In response to CAL FIRE's concerns, the Board declined to add these workplaces to section (a)(1), citing that effective exhaust systems under Section 5143 were necessary to prevent exposures from vehicle exhaust in indoor locations. CAL FIRE agrees that Section 5143 is a regulation that should be followed to prevent indoor exhaust exposure, however part of that regulation requirement is to provide "clean, fresh air, free of contamination" and that the outside air supply "not reduce the effectiveness of any local exhaust systems" under Section 5143(d). In order to provide this clean and fresh air, in addition to having an exhaust system, CAL FIRE is required to utilize the roll-up doors explained above and therefore the ability to keep the workplace cool as an indoor workplace remains.

Additionally, outside of the concerns for exhaust exposures, CAL FIRE is required to keep these doors open at times to facilitate the movement of large vehicles, such as fire engines, or large aircraft, such as the C-130 aircraft, used for firefighting operations. The doors needed to move this equipment into a mobile equipment workshop and/or aircraft hangar are not typical sized roll up doors, as they are larger is size to accommodate the size of the equipment. Opening doors of this size, even for short periods of time to move the equipment, creates a workplace that CAL FIRE believes should instead be considered an outdoor place of employment under Section 3395. While CAL FIRE can and does utilize cooling fans and measures to keep employees protected from heat, these measures only provide a microclimate around the employees. They do not always provide the entire workshop or hangar with the cooled air due to the size of the workplace and the outdoor air temperature.

CAL FIRE is proposing that these workplaces be classified as an outdoor workplace and instead be covered by Section 3395. This specific workplace exemption 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.


CAL FIRE
1721
CAL FIRE
118


PORTACOOL
PORTACOOL

PETITION NO. 602

Petitioner requests to amend Title 8, General Industry Safety Orders (GISO), section 3400, Medical Services and First Aid, and Construction Safety Orders (CSO) section 1512, Emergency Medical Services. The Petitioner requests to include a requirement to have opioid overdose reversal medication stocked at job sites and worker administration training as part of these regulations. The Petitioner notes that with the number of workplace overdose deaths on the rise, opioid overdose reversal medication is now an essential component of an adequate first-aid kit and that no industry or occupation is immune to this crisis.

Petitioner states that workplace overdose deaths have increased 536 percent since 2011, that nationally, overdoses now account for nearly 1 in 11 worker deaths on the job, but, in California, over 18 percent of workplace fatalities in 2021 were due to an unintentional overdose. Including these medications at worksites – either in a first aid kit or elsewhere – and training employees to use it is a critical component of emergency response to help save a life and would help California combat the opioid crisis by ensuring worksites are appropriately equipped to respond to such an emergency.

HYPERLINKS TO PETITION NO. 602 DOCUMENTS:

PROPOSED PETITION DECISION

BOARD STAFF EVALUATION

CAL/OSHA EVALUATION

ORIGINAL PETITION (RECEIVED 01/26/2024)

From: Matthews, Ariana on behalf of Moutrie, Robert
To: DIR OSHSB
Cc: Gonzalez, Autumn@DIR; Park, Keummi@DIR; Berg, Eric@DIR; Neidhardt, Amalia@DIR
Subject: Comment Letter - 4th 15-Day Change Notice re Heat Illness Prevention
Date: Thursday, May 30, 2024 4:29:37 PM
Attachments: 5.30.2024 - CalChamber 4th 15-day Change Heat Illness Comment Letter.pdf
Importance: High

Good afternoon,

Attached is our coalition comment letter for the 4th15-day change notice regarding 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

May 30, 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 4th 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 Fourth 15-day change notice related to the draft Heat Illness Prevention in Indoor Places of Employment regulation, issued on May 10th, 2024, with comments due on May 30, 2024 ("Fourth 15-day Change"). Notably, at times this letter will reference prior versions of the draft 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.

Employers Still Have Substantive Concerns About the Regulation

As an initial matter, we incorporate the concerns expressed in our prior comment letters regarding the Draft Regulation, including our most recent letter dated January 12, 2024, regarding the Third 15-day Change to the Draft Regulation. We are disappointed that many of our substantive comments raised in those letters have not been addressed, but understand that those provisions were not altered in the Fourth 15-day Change, and so we will not re-list them all here.

Private Employers Will Face Considerable Cost to Comply with the Regulation

Though we do not oppose the Fourth 15-day Change (which will largely exempt California's correctional facilities from the scope of the Draft Regulation), we do oppose the underlying norm that it represents: that state compliance costs are somehow more important than private sector compliance costs. Here, California employers will expend millions of dollars to comply with the Draft Regulation, which will obligate large-scale testing, training, monitoring, recordkeeping, and potential engineering changes across a multitude of workplaces – but the State will avoid compliance costs for years as it relates to correctional facilities, due to the Fourth 15-day Change Order.

Procedural Concerns Regarding 15-day Notice – Substantial Changes Necessitate a 45-day Change

In addition, we are concerned of a potential violation of the Administrative Procedures Act set forth in Government Code Section 11340 and California Code of Regulations, Title 1, Sections 1-280. Cal/OSHA's modifications to the regulatory language trigger a 45-day commentary period, not a 15 day commentary period. Substantial changes alter the meaning of the regulatory provisions and require further notice to the public. Substantial changes that are sufficiently related (i.e., reasonably foreseeable based on the notice of proposed action) must be made available for public comment for at least 15 days. If a change is substantial, but not sufficiently related to the original proposal (i.e., not reasonably foreseeable based on the notice of proposed action), the agency must then publish another 45-day notice in the California Regulatory Notice

Register similar to the original notice of proposed action. We are concerned that the exclusion of an entire industry (here, corrections) may meet this threshold, and therefore not be suitable for a 15-day change.

To the extent the concerns we have expressed above and in prior letters have not been addressed, we request that the Board and Division work together to address these ongoing problems in a future regulatory package as soon as possible. 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

Associated Roofing Contractors of the Bay Area Counties
California Association of Winegrape Growers
California Chamber of Commerce
California Farm Bureau
California Framing Contractors Association
Housing Contractors of California
Residential Contractors 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
Subject: COMMENTS ON PROPOSED REGULATION (May 10 Amendments) HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT
Date: Thursday, May 30, 2024 4:46:23 PM
Attachments: image001.png
image005.png
CAWG Letter Indoor Heat Regulation 4th 15 Day Notice.pdf

Good Afternoon,

Attached is a public comment letter from the California Association of Winegrape Growers.

We appreciate your review and consideration of the attached and ask for confirmation of receipt.

Thank you very much,

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 28, 2025***

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

May 30, 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: COMMENTS ON PROPOSED REGULATION (May 10 Amendments)
HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT

Dear Chair Thomas and Members of the Board:

This letter is to provide comments in response to the 4th set of amendments to the proposed regulation for Heat Illness Prevention in Indoor Places of Employment. This letter is focused only on the process by which the safety standard was initially approved by the board on March 21. Our policy concerns with the amendments are reflected in the agricultural coalition letter dated May 30.

Specifically, we believe the regulation was never properly submitted to the Office of Administrative Law (OAL) due to the board's violations of the Bagley-Keene Open Meeting Act when the regulation was approved on March 21.

Due to the reasons discussed in this letter, under the Bagley-Keene Open Meeting Act, the proposed regulation was not properly before the board on March 21 because the regulation was pulled from the agenda but was nonetheless approved by the Board and was approved only after the Board announced the meeting was adjourned.

Therefore, the proposed regulation was not adopted prior to the March 31 deadline. Consequently, this proposed regulation as proposed to be amended in the 4th set of amendments can no longer be considered. This means that it was never properly submitted to the OAL in the first place.

The 4th set of amendments are written to satisfy the OAL, which rejected this regulation. Whenever the OAL returns a regulation to a state agency under Section 11349.4 of the Government Code, the OAL routinely states it has the right to review the resubmitted regulation and rulemaking record for "compliance with all substantive and procedural requirements of the APA." With these comments we request such review by OAL.

If the board has a different perspective on the issues raised in this letter, we respectfully ask the board to include in the Final Statement of Reasons a detailed discussion of how the board's actions on March 21 were in strict compliance with the Bagley-Keene Open Meeting Act and the Administrative Procedure Act (ACA).

Board Irregularities Relative to the Bagley-Keene Open Meeting Act

Below are a few of the irregularities (and public comments verifying those irregularities) that occurred at the board's meeting on March 21 as well as a link to a video recording of that meeting:
https://videobookcase.org/oshsb/2024-03-21/
Each irregularity below is followed by a brief comment on why it is important:

- At 22:20 in the video recording, the chair announced that action on this regulation was "pulled" from the agenda. He stated, "*I know that many of you today have heard, that, what we are really here for today, is the indoor heat. That that has been pulled. And we don't really have an explanation as to why, and it certainly wasn't us. But I want everybody who were going to comment on it to make their comments. We are going to go through this meeting just like any other meeting, and we will come to that. We will have the explanation from Eric Berg. And then, we're going to discuss it. And then we're going to go from there. So, I don't want anybody not to comment on this, because it was pulled, right? So, that's where we're at right now*."
  WHY THIS IS IMPORTANT: The Chair announced the item was pulled and that it was important to the public. It is not clear what "*And then we're going to go from there"* is intended to mean, but was widely interpreted as exploring options in future hearings.

- At 44:30 in the video recording, Mitch Steiger with the California Federation of Teachers testified that he understood the proposed regulation was pulled from the agenda. He said, "*We were being informed by the Administration that the standard was being pulled because of compliance costs tied to an unspecified state agency . . . All of the sudden, last night we're told that these, this concern is so serious that the whole thing needs to die. Right, right, right today. It needs to be pulled off the agenda*." A speaker from the California Labor Federation followed Mr. Steiger and condemned "*the decision to pull the proposed heat illness prevention in indoor places of employment standard from today's agenda*."
  WHY THIS IS IMPORTANT: The public understood that the item had been pulled from the agenda.

- Beginning at 1:35:00 in the video recording, the public continued expressing their disappointment that the proposed regulation was pulled from the agenda. Things got so carried away that the Warehouse Workers Resource Center falsely blamed "corporations" for the situation and ultimately led a protest to shut down the hearing.

WHY THIS IS IMPORTANT: The public was upset that the item had been pulled from the agenda.

- At 2:01:30 in the video recording, the chair adjourned the meeting. This was as protesters were chanting through a mega-phone and beating a drum. The chair was frustrated and said, "*Hey God damn it. Shut up. Stop this shit right now. We are adjourned!*" The chair then left the room. Most of the people in attendance also left the room. The chair later came back into the room and surprisingly resumed the meeting.
  WHY THIS IS IMPORTANT: When a meeting is adjourned, the Bagley-Keene Act provides that it is adjourned until a time and date stated in the motion to adjourn or until the next scheduled meeting if no other date is announced. Nonetheless, the board came back into the meeting after the room had cleared out and order was restored.

- At 2:22:00 in the video recording, Eric Berg explained to the board why the item was pulled from the agenda due to the board's incomplete analysis of the fiscal effect on public agencies. This means that the proposed regulation did not meet the requirements of the APA.
  WHY THIS IS IMPORTANT: This demonstrates that the board knew it was not complying with the APA, but moved forward anyway.

- At 2:23:56 in the video recording, the chair questioned the fiscal concerns and acknowledged that the item was pulled from the agenda. "*That [the fiscal analysis] was already approved, right? And then it was disapproved. Or we would not have been voting on this today up until sometime last evening. The state had already approved the SRIA. They said it was fine. They had some discussions, and then they approved it. And then last night, we get a call that it's being pulled*."
  WHY THIS IS IMPORTANT: This leads the public (whether intentional or not) to believe that there would be no vote on the item because it had been pulled.

- At 2:30:00 in the video recording, the board began consideration of taking up the proposed regulation for a vote and acknowledged that the proposed regulation did not comply with the APA. There was minimal discussion of the detailed policy of the regulation, or how the regulation would be applied to protect employees from heat illness. Instead, the focus was mostly on the process. The chair expressed his frustration at the process and said, "*It's either up or down and let them deal with it. Because we're giving them exactly what they gave us. So, I believe OAL would just kick it back and say it's not appropriate. But that's all right*."

WHY THIS IS IMPORTANT: This demonstrates that the board knew it was not complying with the APA, but moved forward anyway.

- At 2:31:20 in the video recording, Board Member Harrison also acknowledged that the rulemaking had been stopped and that the board was facing a deadline. He stated the following, "*This board, the general public deserves to know what happened to stop everything. Which agency, undeclared agency, was responsible for the last minute stunt to stop rulemaking, knowing what the exact timeline was.*"
  WHY THIS IS IMPORTANT: This demonstrates that the board members knew the rulemaking had been stopped.

- Then at 2:31:55 in the video recording, the Chair explained that "*We got a call at 5:20 last night . . . And that's when it came up. We had a phone call, and I think Eric was on the line. And I don't know who the call was originally from, was it Eric or somebody else that said, 'Hey, it's getting, it's getting pulled now*.'"
  WHY THIS IS IMPORTANT: The chair again reiterated that the item had been pulled from the agenda.

- At 2:37:40 in the video recording, after the regulation was approved by the board, the chair stated, "*I don't know what Finance is going to do, and personally, I don't care. Because, they didn't say anything to us. No warning, no anything, just hey, 'Pull It'. And you know what, this is disrespectful. They don't have to face the people, you know. We do. And even though I know they were venting, I got a little, you know, heated, because this is what I thought we were going to do before the outburst, and I was hoping it was anyway. But then it went on a little bit too long, for my taste. But I didn't want anybody to be arrested over it. I understand it, everybody was heated up and ready to go. And that is fine. And so was I a little bit. I don't know what they're going to do at this point. All I know is that we did the right thing*."
  WHY THIS IS IMPORTANT: The chair acknowledged that the item was pulled and that he seemed to think the board would vote for it anyway in that meeting.

- At 3:19:00 in the video recording, the Chair revisited the issue of whether the meeting was previously adjourned. The Chair stated, "*I want to make clear to the folks out there, that when we had our demonstration, I didn't adjourn the meeting. It was a recess. A very violent recess. But it was a recess*."
  WHY THIS IS IMPORTANT: While the chair's statement is false. But, it shows that the board members were aware there was a problem when the meeting was adjourned earlier.

When taking all the above into consideration, a reasonable person must conclude that the regulation was not properly before the board on March 21.

This is because the public was officially notified in a public hearing and then members of the public confirmed in that same hearing their understanding that the proposed regulation had been pulled from the board's agenda. This means that the item was no longer on the agenda.

Additionally, the board adjourned the meeting prior to taking up the proposed regulation and then reconvened the meeting without public notice. Both seem to be clear violations of the Bagley-Keene Open Meeting Act.

Finally, the board knew the regulation did not comply with the APA, but the board intentionally passed it anyway.

Pulled from the Agenda

The Bagley-Keene Open Meeting Act requires public notice of the agenda of any meeting. Section 11123.2 (f) of the Government Code states, "The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7."

The Office of the Attorney General has opined that:

> "... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate under the circumstances."

The Attorney General concluded in its opinion that items not included on the agenda may not be acted on or discussed, even if no action is to be taken by the agency.

Relative to March 21 actions by the board, the public notice properly included the proposed regulation. But during the meeting, the Chair stated four times that the proposed regulation had been pulled from the agenda. Additionally, another board member reiterated that the rulemaking had been stopped.

Several times during public comment, members of the public confirmed their understanding that the proposed regulation was pulled from the agenda. The public reasonably believed that there would be no action taken on the proposed regulation at the March 21 meeting as it was no longer on the agenda. This resulted in the protest that shut down the meeting.

In this context, “pulled” commonly means, “to remove from a place or situation.” This would be to cancel or withdraw.

The Bagley-Keene Open Meeting Act is intended to assure that the public knows what actions may be acted upon by any state body in any public meeting. In practice, this law would protect against the following hypothetical situation:

- A state body publicly noticing a potential item;
- Announcing at the start of the meeting that the item was pulled from the agenda; and then
- Taking up that same item once the public had left the meeting.

If the board is allowed to take up this proposed regulation in the manner that it did on March 21, the above hypothetical would seem to be perfectly legal.

The Attorney General anticipated this kind of situation and has opined:

> “*We believe that Section 11125 was and is intended to nullify the need for . . . guesswork or further inquiry on the part of the interested public*.” (67 Ops.Cal.Atty.Gen. 85, 87)

Nonetheless, relative to the board meeting on March 21, it turns out the public guessed wrong as to the legitimacy of the board’s statements that the proposed regulation was pulled from the agenda and that the rulemaking had been stopped. Meaning the item would not be voted on.

From the chair’s initial statements, and subsequent statements throughout the hearing, the public was led to believe that the item would be discussed but had been pulled from the agenda for purposes of advancing a rulemaking. (NOTE: The Attorney General advises against even discussing an item that is not on the agenda.)

All of this means that the vote on the proposed regulation on March 21 was not in compliance with the Bagley-Keene Open Meeting Act. Consequently, the proposed regulation is no longer before the board for proper consideration, as the March 31 deadline for its adoption has come and gone.

We Are Adjourned!

Writers of the Bagley-Keene Open Meeting Act contemplated the type of protest that shut down the hearing on March 21. Which is why Section 11126.5 of the Government Code addresses this very issue. However, it does NOT authorize the type of adjournment that occurred on March 21.

Instead, Section 11126.5 states the following:

> *"In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section."*

Relative to the announced adjournment of the March 21 hearing, Section 11128.5 of the Government Code provides. "*The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. . . . When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meeting by law or regulation*."

In this case, the process under Section 11126.5 was not utilized and instead the meeting was adjourned under Section 11128.5. There can be no question of this. This is even though the chair later denied the adjournment action. It may not have been the chair's intent to adjourn the meeting, but that is exactly what he did.

This means that when the chair adjourned the meeting, it was done for the day. The meeting was over. The public and board members alike were free to go. There was nothing to see here. NOTE: The board's next scheduled meeting after March 21 was in April.

To be clear: When the board reconvened that same day, any action taken by the board subsequent to the adjournment was not properly before the board. This is because the continued meeting of the board was not in compliance with the Bagley-Keene Open Meeting Act.

This law was created to protect against the following hypothetical situation whereby a state body could:

- Announce that a meeting was adjourned;
- Wait for the public to leave the meeting room;
- Then resume the meeting; and

- Take actions on any issue (pending regulatory action for example) that was before the state body.

All the above could be achieved without public comment or review. If the board's action on March 21 is allowed to stand, the unfortunate hypothetical situation above would seem to be perfectly legal.

We Did The Right Thing

After the vote, the chair touched on two important considerations:

- Even though he had announced that the item was pulled from the agenda, he seemed to state that he had every intention of passing the resolution at that same meeting.
- Even though he knew that the regulation did not comply with APA (because the board failed to do the fiscal analysis to the satisfaction of the Department of Finance (DOF)) the board intentionally passed the regulation anyway because, as the chair stated, "All I know is that we did the right thing."

While the board has much with which to be frustrated relative to the March 21 hearing, how the board expressed its frustration was by failing to comply with the APA's requirements for DOF sign off and seemingly by failing to be transparent about its intent to take up the item after telling the public that it was pulled. This was not the "right thing" to do.

Keep in mind that Section 11349.4 of the Government Code was never intended to provide a method for agencies to buy more time when a regulation is up against a deadline. This section was intended to allow an opportunity to address and resolve unintentional shortcomings in the regulation itself or in the rulemaking process or issues where there is disagreement of what is required.

However, in this case, the board clearly knew it was out of compliance with the APA when the chair announced, "I don't know what Finance is going to do, and personally, I don't care."

Essentially, DOF told the board there were problems, and the board chose to play a game of chicken with DOF. Section 11349.4 was never intended to be used in this manner.

Conclusion

We are not opposed to the public policy of this proposed regulation. However, for the reasons stated in the May 30 letter from the agricultural coalition, the regulation needs further amendment to address our outstanding concerns. Fortunately, though, those policy concerns are easily resolved through straight forward amendments which are consistent with the stated intent of the proposed regulation.

However, relative to process, we are very concerned. Through violations of the Bagley-Keene Open Meeting Act, and the board deliberately ignoring the requirements of the APA, the wheels came off and the board's process broke down on March 21. This resulted in this regulation failing to meet the March 31 deadline for adoption.

NOTE: To give context to why it is important for state bodies to operate openly and to keep the public informed, in its Bagley-Keene Open Meeting Act Guide, the Attorney General reminds state bodies of potential penalties under Section 11130.7 of the Government Code. However, whether the board knowingly intended to deprive the public of information the public needed to know is irrelevant, as this was the exact outcome of the board's actions on May 21.

The chair stated at the beginning "what we are really here for today, is the indoor heat." Throughout the meeting, every member of the board was reminded by the public of their interest in this issue and the importance of board actions. So, the board knew this regulation was an important issue with lots of public interest.

Additionally, the public acknowledged that it understood the item was pulled from the agenda and that the rulemaking had been stopped.

If at any time, a member of the board intended to later move for approval of this regulation, even though it was clear to the public that the regulation had been pulled from the agenda, that board member had a duty to notify the public through a statement in the meeting.

Unfortunately, that just did not happen here. Instead, the chair seemed to admit after the dust settled, that he had intended to approve the regulation even though he had announced it was pulled from the agenda. All of this means that the public was ultimately misled by the board (whether intentional or not) when it announced that this regulation was being pulled from the agenda.

It should be noted that it appeared as though the board was making decisions in real time, absent any active awareness of the requirements for public notice or what an adjournment of a meeting means under the law.

Perhaps the chair never intended to indicate that the item was “pulled” from the agenda or that the meeting was “adjourned.” However, no state agency is above the law and no proposed regulation should move forward amidst this kind of chaotic public meeting that is clearly outside the law.

Pushing forward the 4th set of amendments to this proposed regulation, in an attempt to resolve OAL concerns, ignores the elephant in the room – This regulation, under the law, is already procedurally dead. Due to the board’s failure to comply with both the Bagley-Keene Open Meeting Act and the APA, the proposed regulation did not meet the March 31 deadline.

There are several options available to the board for moving forward quickly on this issue in a manner that respects and complies with the APA and the Bagley-Keene Open Meeting Act.

Unfortunately, the proposal currently before the Board is not one of them.

Therefore, we urge the board to reexamine its actions on March 21 and to review the requirements under the Bagley-Keene Open Meeting Act and the APA. In doing so, you will find that moving forward with this regulation at this point in the process is, at a minimum, contrary to the intent and spirit of an open meetings process and a rulemaking process that serves the public interest.

Nonetheless, if the board decides to move forward, we ask that the Final Statement of Reasons include a detailed discussion of how the board’s actions on March 21 were in strict compliance with the Bagley-Keene Open Meeting Act and the ACA.

Sincerely,

Michael Miiller
Director of Government Affairs
California Association of Winegrape Growers

Occupational Safety and Health Standards Board

Business Meeting
Petition 601

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 a Petition by:	)	
	)	
Tracy W. Scott	)	
President, Staff Representative	)	**PETITION FILE NO. 601**
USW Local 5	)	
1333 Pine Street, Suite A	)	
Martinez, CA 94553	)	
	)	
Applicant.	)	

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOESEPH M. ALIOTO JR., Chairman

KATHLEEN CRAWFORD, Member

DAVE HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

DAVID THOMAS, Member

By:
Autumn Gonzalez, Chief Counsel

DATE: June 20, 2024
Attachments

PETITION NO. 601

Petitioner requests to amend Title 8, General Industry Safety Orders (GISO), section 5189.1, Process Safety Management (PSM) for Petroleum Refineries. The Petitioner requests to expand the scope of section 5189.1, Process Safety Management (PSM) for Petroleum Refineries, to include refineries that are now processing renewable feedstocks in place of petroleum. The Petitioner notes that physical properties of petroleum crude oil versus renewable fats, oils and greases may be different, but those differences end at the point of delivery to the facility where the feedstock is processed into highly flammable gasoline, jet fuel, diesel and industrial chemicals.

Petitioner states that because the scope of 5189.1 does not explicitly include refineries that process renewables, management has exempted their plant from 5189.1 (California's groundbreaking PSM regulation for oil refineries that the Standards Board adopted in 2017) and decided to revert to the antiquated 1992 PSM standard, section 5189. Petitioner states that Section 5189 is ineffective and adds that under section 5189, this refinery is on the path to a catastrophic loss of containment that could injure or kill many workers and could threaten the safety and health of thousands of nearby residents.

The Petitioner requests an Emergency Temporary Standard (ETS) to correct this flaw in Cal/OSHA's refinery safety regulations after one of their members was critically burned at their refinery from a loss of containment of flammable liquids.

Occupational Safety and Health Standards Board

Business Meeting
Petition 602

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 a Petition by: Lorraine M. Martin President and CEO NSC 1121 Spring Lake Drive Itasca, IL 60143 Applicant.	)	**PETITION FILE NO. 602**

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOESEPH M. ALIOTO JR., Chairman

KATHLEEN CRAWFORD, Member

DAVE HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

DAVID THOMAS, Member

By:
Autumn Gonzalez, Chief Counsel

DATE: June 20, 2024
Attachments

PETITION NO. 602

Petitioner requests to amend Title 8, General Industry Safety Orders (GISO), section 3400, Medical Services and First Aid, and Construction Safety Orders (CSO) section 1512, Emergency Medical Services. The Petitioner requests to include a requirement to have opioid overdose reversal medication stocked at job sites and worker administration training as part of these regulations. The Petitioner notes that with the number of workplace overdose deaths on the rise, opioid overdose reversal medication is now an essential component of an adequate first-aid kit and that no industry or occupation is immune to this crisis.

Petitioner states that workplace overdose deaths have increased 536 percent since 2011, that nationally, overdoses now account for nearly 1 in 11 worker deaths on the job, but, in California, over 18 percent of workplace fatalities in 2021 were due to an unintentional overdose. Including these medications at worksites – either in a first aid kit or elsewhere – and training employees to use it is a critical component of emergency response to help save a life and would help California combat the opioid crisis by ensuring worksites are appropriately equipped to respond to such an emergency.

HYPERLINKS TO PETITION NO. 602 DOCUMENTS:

PROPOSED PETITION DECISION

BOARD STAFF EVALUATION

CAL/OSHA EVALUATION

ORIGINAL PETITION (RECEIVED 01/26/2024)

Occupational Safety and Health Standards Board

Business Meeting

Proposed Variance Decisions

CONSENT CALENDAR—PROPOSED VARIANCE DECISIONS
JUNE 20, 2024, MONTHLY BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED DECISIONS FOR BOARD CONSIDERATION, HEARD ON May 22, 2024

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
1. 24-V-146	The William L. Bentley and Sharron R. Bentley Family Trust	Elevator	GRANT
2. 24-V-150	Rose town Apartments LP	Elevator	GRANT
3. 24-V-151	CSU Northridge	Elevator	GRANT
4. 24-V-152	SGCLMC-Weld Investment Company, L.P.	Elevator	GRANT
5. 24-V-153	CRP Dry Creek Crossing LP	Elevator	GRANT
6. 24-V-154	HRL Laboratories, LLC	Elevator	GRANT
7. 24-V-155	Victory & Woodman, LP	Elevator	GRANT
8. 24-V-156	Metflo, L.P.	Elevator	GRANT
9. 24-V-157	Hunters Point Block 56, L.P.	Elevator	GRANT
10. 24-V-158	Greens Fifth Street, LLC	Elevator	GRANT
11. 24-V-159	Greens Fifth Street, LLC	Elevator	GRANT
12. 24-V-160	Monte 38, LLC	Elevator	GRANT
13. 24-V-161	Sterling City Science South Development, LLC	Elevator	GRANT
14. 24-V-162	Sterling City Science South Development, LLC	Elevator	GRANT
15. 24-V-163	Sterling City Science South Development, LLC	Elevator	GRANT
16. 24-V-164	CRP-GREP Upper Temecula Owner, LLC	Elevator	GRANT
17. 24-V-167	Regents of the University of California	Elevator	GRANT
18. 24-V-168	Regents of the University of California	Elevator	GRANT
19. 24-V-169	Regents of the University of California	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
20. 24-V-170	21300 Devonshire LP	Elevator	GRANT
21. 24-V-171	3045 Crenshaw Blvd (LA) OZ Owner, LLC	Elevator	GRANT
22. 24-V-172	Nova Capital, LP	Elevator	GRANT
23. 24-V-173	8300 Sunset Owner LLC	Elevator	GRANT
24. 24-V-174	PHK Pano, L.P.	Elevator	GRANT
25. 24-V-175	3550 Hayden Owner, LLC	Elevator	GRANT
26. 24-V-176	Mirka 3515 Vista Lane, LP	Elevator	GRANT
27. 24-V-177	Shihing Rowland Company LLC	Elevator	GRANT
28. 24-V-178	5223 W. Adams (LA) OZ, LLC	Elevator	GRANT
29. 24-V-179	Grandview Apartments, L.P.	Elevator	GRANT
30. 24-V-180	Tamien Affordable, LP	Elevator	GRANT
31. 24-V-181	College of Marin	Elevator	GRANT
32. 24-V-182	SBC-CV South Bay X JV, LLC	Elevator	GRANT
33. 24-V-183	Potrero Housing Associates II, L.P.	Elevator	GRANT
34. 24-V-184	Potrero Housing Associates II, L.P.	Elevator	GRANT
35. 24-V-185	California State University Northridge	Elevator	GRANT
36. 24-V-186	Sonoma County Junior College District	Elevator	GRANT
37. 24-V-187	Bridge Street P1, LP	Elevator	GRANT
38. 24-V-190	FSN B Apartments, L.P.	Elevator	GRANT
39. 24-V-191	FSN A Apartments, L.P.	Elevator	GRANT
40. 24-V-192	FSN A Apartments, L.P.	Elevator	GRANT
41. 24-V-193	320 S Flower LLC	Elevator	GRANT
42. 24-V-194	South Capistrano Enterprises LLC	Elevator	GRANT
43. 24-V-195	Sweetwater Union High School District	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
44. 24-V-196	Scripps College	Elevator	GRANT
45. 24-V-197	SI 78 LLC	Elevator	GRANT
46. 24-V-198	City of San Jose	Elevator	GRANT
47. 24-V-199	Cornerstone Housing for Adults with Disabilities	Elevator	GRANT
48. 24-V-200	Cornerstone Housing for Adults with Disabilities	Elevator	GRANT
49. 24-V-201	Ranch Lot Studios Owner, LLC	Elevator	GRANT
50. 24-V-202	HCP BTC, LLC	Elevator	GRANT
51. 24-V-203	HCP BTC, LLC	Elevator	GRANT
52. 24-V-205	800 W Carson LP	Elevator	GRANT
53. 24-V-207	Commune Parc LLC	Elevator	GRANT
54. 24-V-208	RIDA Chula Vista	Elevator	GRANT
55. 24-V-210	Menlo Park Portfolio II, LLC	Elevator	GRANT
56. 24-V-211	City of San Luis Obispo	Elevator	GRANT
57. 24-V-212	The Retail Property Trust, a Massachusetts Business Trust	Elevator	GRANT
58. 24-V-213	San Francisco Zen Center	Elevator	GRANT
59. 24-V-214	Sanger Unified School District	Elevator	GRANT
60. 24-V-215	TS Dev Topanga, LLC	Elevator	GRANT
61. 24-V-216	Broadway Properties La Jolla LLC	Elevator	GRANT
62. 24-V-217	County of Sacramento Dept of Airports	Elevator	GRANT
63. 24-V-218	Manteca Luxury Apartments	Elevator	GRANT
64. 24-V-219	Northeastern University	Elevator	GRANT
65. 24-V-220	City of Placentia	Elevator	GRANT
66. 24-V-221	3945 Judah Street, LLC	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
67. 24-V-222	Louis Vuitton USA	Elevator	GRANT
68. 24-V-223	Wisteria Warner Center CCRC LLC	Elevator	GRANT
69. 24-V-224	Century City Realty	Elevator	GRANT
70. 24-V-225	Mercy Housing California 108, LP	Elevator	GRANT
71. 24-V-226	MMX Investment LLC	Elevator	GRANT
72. 24-V-227	CenterPoint Properties	Elevator	GRANT
73. 24-V-228	Richman Santa Fe Springs Apartments, LP	Elevator	GRANT
74. 24-V-229	Kaiser Permanente	Elevator	GRANT
75. 24-V-230	Hospitality Management, Inc.	Elevator	GRANT
76. 24-V-231	CRP Eucalyptus Grove LP	Elevator	GRANT
77. 24-V-233	Bolsa Row Terrace, LLC	Elevator	GRANT
78. 24-V-234	IV1 1411 Harbour Way S Owner LLC	Elevator	GRANT
79. 24-V-235	SANTA MONICA BELOIT LP	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 for Permanent Variance by: The William L. Bentley and Sharron R. Bentley Family Trust	Permanent Variance No.: 24-V-146 Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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 by: The William L. Bentley and Sharron R. Bentley Family Trust	Permanent Variance No.: 24-V-146 PROPOSED DECISION Hearing Date: May 22, 2024 Location: Zoom

A. Subject Matter

1. The William L. Bentley and Sharron R. Bentley Family Trust ("Applicant") has applied for a permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations[1], regarding vertical platform (wheelchair) lifts, with respect to one vertical platform (wheelchair) lift proposed to be located at:

330 Bonita Ave
Claremont, 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 May 22, 2024 via videoconference by the Occupational Safety and Health Standards Board with Hearing Officer, Michelle Iorio, 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 Division of Occupational Safety and Health ("Cal/OSHA").

3. At the hearing, oral evidence was received and by stipulation of all parties, documents were accepted 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 application per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OHSA Review of Variance Application
PD-4	Review Draft-1 Proposed Decision

4. Official notice is taken of the Board's files, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On May 22, 2024, the hearing and record was closed, and the matter was taken under submission by the Hearing Officer.

C. Findings of Fact

1. The Applicant proposes to install one (1) vertical platform (wheelchair) lift at a location having the address of:

330 Bonita Ave
Claremont, CA

2. The subject vertical lift is proposed to be a Symmetry Model VPL SL-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. The Cal/OSHA 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.

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 for Permanent Variance of The William L. Bentley and Sharron R. Bentley Family Trust, Permanent Variance No. 24-V-146, is conditionally GRANTED to the limited extent, upon the Board's adoption of this Proposed Decision, The William L. Bentley and Sharron R. Bentley Family Trust, shall have permanent variance from California Code of Regulations, 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) Symmetry Model VPL SL-168 Vertical Platform Lift, to be located at:

330 Bonita Ave
Claremont, CA

The above referenced vertical platform lift shall be subject to the following further conditions and limitations:

1. 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.

2. 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.

3. 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.

4. 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:

   (a) Platform driving means examination;

(b) Platform examination;

(c) Suspension means examination;

(d) Platform alignment;

(e) Vibration examination;

(f) Door/gate electrical; and

(g) Mechanical lock examination.

5. The lift shall be tested annually for proper operation under rated load conditions. Cal/OSHA 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.

6. 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.

7. The Applicant shall notify the CQCC if the lift shuts down for any reason. The lift shall only be restarted by the CQCC.

8. 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.

9. 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.

10. Any CQCC performing inspections, maintenance, servicing or testing of the elevators shall be provided a copy of this variance decision.

11. 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.

12. 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 California Code of Regulations, sections 411.2 and 411.3.

13. 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, the procedural manner prescribed.

Pursuant to section426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: May 22, 2024

Michelle Iorio

Michelle Iorio, 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: Otis Gen2S/Gen3Edge Elevator & Medical Emergency Elevator Car Dimensions (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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: May 22, 2024 Location: Zoom

A. Subject Matter

1. Each below listed applicant ("Applicant") has applied for permanent variances 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
24-V-150	Rose Town Apartments LP	170 N. Halstead St. Pasadena, CA	1
24-V-151	CSU Northridge	Student Housing Building 22 & 23 17950 Lassen St. Northridge, CA	2
24-V-153	CRP Dry Creek Crossing LP	2388 S. Bascom Ave. San Jose, CA	2
24-V-156	Metflo, L.P.	7220 Maie Ave. Los Angeles, CA	2
24-V-157	Hunters Point Block 56, L.P.	11 Innes Ct. San Francisco, CA	1
24-V-158	Greens Fifth Street, LLC	Home2 Suites Riverside - Hotel 3870 5th St. Riverside, CA	2
24-V-170	21300 Devonshire LP	21300 Devonshire St. Chatsworth, CA	2
24-V-171	3045 Crenshaw Blvd (LA) OZ Owner, LLC	3045 S. Crenshaw Blvd. Los Angeles, CA	2

[1] Unless otherwise noted, all references are to title 8, California Code of Regulations.

24-V-172	Nova Capital, LP	539 N. Hobart Blvd. Los Angeles, CA	1
24-V-173	8300 Sunset Owner LLC	8300 Sunset Blvd. West Hollywood, CA	2
24-V-175	3550 Hayden Owner, LLC	3550 Hayden Ave. Culver City, CA	1
24-V-176	Mirka 3515 Vista Lane, LP	3509 Vista Lane San Diego, CA	1
24-V-177	Shining Rowland Company LLC	4109 Matthews Pl. El Monte, CA	1
24-V-178	5223 W. Adams (LA) OZ, LLC	5217 West Adams Blvd. Los Angeles, CA	2
24-V-179	Grandview Apartments, L.P.	714 S. Grand View St. Los Angeles, CA	2
24-V-180	Tamien Affordable, LP	1221 Lick Ave. San Jose, CA	2
24-V-181	College of Marin	Learning Resources Center 835 College Ave. Kentfield, CA	2
24-V-182	SBC-CV South Bay X JV, LLC	12888 Crenshaw Blvd. Gardena, CA	3
24-V-183	Potrero Housing Associates II, L.P.	1108 Connecticut St. San Francisco, CA	2
24-V-184	Potrero Housing Associates II, L.P.	1192 Connecticut St. San Francisco, CA	2
24-V-196	Scripps College	Grace Scripps Clark Hall 324 E. 12th St. Claremont, CA	1
24-V-197	SI 78 LLC	1401 Broadway Redwood City, CA	2
24-V-198	City of San Jose	Police Department Academy & Training 300 Enzo Dr. San Jose, CA	1
24-V-199	Cornerstone Housing for Adults with Disabilities	Traction Elevators 1400 Glenville Dr. Los Angeles, CA	2

24-V-213	San Francisco Zen Center	300 Page Street San Francisco, CA	1
24-V-215	TS Dev Topanga, LLC	6600 N Topanga Canyon Blvd. Suite 1230 Canoga Park, CA	1
24-V-222	Louis Vuitton USA	796 American Way Glendale, CA	1
24-V-223	Wisteria Warner Center CCRC LLC	21300 Burbank Blvd. Woodland Hills, CA	10
24-V-225	Mercy Housing California 108, LP	1633 Valencia Street San Francisco, CA	2
24-V-228	Richman Santa Fe Springs Apartments, LP	13227 Lakeland Rd. Santa Fe Springs, CA	2
24-V-229	Kaiser Permanente	Orchard Plaza MOB 7150 N. Corporate Dr. Fresno, CA	4
24-V-230	Hospitality Management, Inc.	Woodland Courtyard Hotel 1981 E. Main St. Woodland, CA	2
24-V-231	CRP Eucalyptus Grove LP	1875 California Dr. Burlingame, CA	2
24-V-233	Bolsa Row Terrace, LLC	10000 Bolsa Avenue Westminster, 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.

B. Procedural

1. This hearing was held on May 22, 2024, via videoconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Michelle Iorio, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration.

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 files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On May 22, 2024, the hearing and record 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 positions 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

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 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. 12.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: May 22, 2024

Michelle Iorio

Michelle Iorio, 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: KONE Monospace 300 Elevators (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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: May 22, 2024 Location: Zoom

A. Subject Matter

1. Each below listed applicant ("Applicant") applied for a 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
24-V-152	SGCLMC-Weld Investment Company, L.P.	1756 Weld Blvd. El Cajon, CA	1
24-V-164	CRP-GREP Upper Temecula Owner, LLC	41464 Buecking Dr. Temecula, CA	2
24-V-218	Manteca Luxury Apartments	1279 West Lathrop Rd. Manteca, CA	1

2. The 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 May 22, 2024, via videoconference, by the Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Michelle Iorio, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with section 426.

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

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 May 22, 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 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 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 Title 8, 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 the Elevator Safety Orders (ESO), 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 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 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 has scrutinized the material and structural specifications, and performance testing data, of this particular proposed rope, and concluded 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 positionsat 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 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: May 22, 2024

Michelle Iorio

Michelle Iorio, 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)
24-V-152	Elevator 1	7	150	12247
24-V-164	Elev. 1	7	150	12247
24-V-164	Elev. 2	7	150	12247
24-V-218	1	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: Mitsubishi Elevator (Inset Car Top Railing) (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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 Elevator (Inset Car Top Railing) (Group IV)	Permanent Variance Nos.: See section A.1 table below PROPOSED DECISION Hearing Date: May 22, 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
24-V-154	HRL Laboratories, LLC	3011 Malibu Canyon Rd. Malibu, CA	1
24-V-201	Ranch Lot Studios Owner, LLC	411 N. Hollywood Way Burbank, CA	18

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 May 22, 2024 via videoconference by the Board with Hearing Officer Michelle Iorio, both presiding and hearing the matter on its merit in accordance with section 426.

2. 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 the Division of Occupational Safety and Health ("Cal/OSHA").

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

3. 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

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 May 22, 2024, the hearing and record closed and the matter taken under submission by the Hearing Officer.

C. Findings of Fact

1. Each section A table specified Applicant intends to utilize Mitsubishi elevators at the location and in the number stated in the table in Item A. 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. The Board takes official notice and incorporates herein, Subsections D.3 through D.5 of the February 20, 2014, Decision of the Board in Permanent Variance File No. 13-V-270.

3. As reflected in the record of this matter, including 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 Applicant's 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. 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 duly modified or revoked upon application by the Applicant, affected employee(s), Cal/OSHA, or by the Board on its own motion, in the manner prescribed.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: May 22, 2024

Michelle Iorio

Michelle Iorio, 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.: see section A.1 table of
Proposed Decision Dated: May 22, 2024

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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: See section A.1 table below PROPOSED DECISION Hearing Date: May 22, 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:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
24-V-155	Victory & Woodman, LP	13716 Victory Blvd. Van Nuys, CA	1
24-V-190	FSN B Apartments, L.P.	232 N Judge John Aiso St. Los Angeles, CA	1
24-V-191	FSN A Apartments, L.P.	232 N Judge John Aiso St. Los Angeles, CA	2
24-V-211	City of San Luis Obispo	609 Palm St. San Luis Obispo, CA	2

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

1. This hearing was held on May 22, 2024 via videoconference by the Board with Hearing Officer Michelle Iorio, both presiding and hearing the matter on its merit in accordance with section 426.

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

2 At the hearing, Jennifer Linares with Schindler Elevator Corporation 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. 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 of Proposed Decision

4. Official notice taken of the Board's files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On May 22, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

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.

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-ropedata:

(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.

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[.]

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

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.

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. Each respective Applicant intends to utilize Schindler model 3300 MRL elevator cars, in the quantity, at the locations, specified per the above Section A.1 table in Jurisdictional and Procedural Matters.

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 preponderence 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 being 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 to the following conditions:

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 California Code of Regulations, sections 411.2 and 411.3.

8. 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: May 22, 2024

Michelle Iorio

Michelle Iorio, 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 al/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 NO. 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: Otis Medical Emergency Elevator Car Dimensions (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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 Section A.1 Table Below PROPOSED DECISION Hearing Date: May 22, 2024 Location: Zoom

A. Subject Matter

1. Each below listed applicant ("Applicant") has applied for permanent variances 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
24-V-159	Greens Fifth Street, LLC	Home2 Suites Riverside - Parking Garage 3565 Market St. Riverside, CA
24-V-174	PHK Pano, L.P.	8209 Sepulveda Blvd. Van Nuys, CA
24-V-185	California State University Northridge	Equity Innovation Hub 18111 Nordhoff St. Northridge, CA
24-V-186	Sonoma County Junior College District	Tauzer Gym 905 Bear Cub Way Santa Rosa, CA
24-V-187	Bridge Street P1, LP	277 Bridge St. San Luis Obispo, CA
24-V-194	South Capistrano Enterprises LLC	Revolve Church 27121 Calle Arroyo, Bldg. 2200 San Juan Capistrano, CA

[1] Unless otherwise noted, all references are to the California Code of Regulations, title 8.

24-V-195	Sweetwater Union High School District	Olympian High School Bldg. 800 1925 Magdalena Ave. Chula Vista, CA
24-V-200	Cornerstone Housing for Adults with Disabilities	Hydro Elevator 1400 Glenville Dr. Los Angeles, CA
24-V-214	Sanger Unified School District	Sanger West High School 1760 S. Fowler Avenue Fresno, CA
24-V-216	Broadway Properties La Jolla LLC	1150 Silverado Drive La Jolla, CA
24-V-224	Century City Realty	Standard Suspension Elevators 1950 Avenue of the Stars Los Angeles, CA
24-V-226	MMX Investment LLC	15861 Main Street La Puente, CA
24-V-227	CenterPoint Properties	5860 Paramount Blvd. Long Beach, CA
24-V-234	IV1 1411 Harbour Way S Owner LLC	1411 Harbour Way S. Richmond, CA

2. This proceeding is conducted in accordance with Labor Code section 143, and section 401, e. seq. of the Occupational Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

3. This hearing was held on May 22, 2024, via videoconference, by the Board with Hearing Officer Michelle Iorio, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, 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

Exhibit Number	Description of Exhibit
PD-4	Review Draft-1 Proposed Decision

6. 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 May 22, 2024, the hearing and record 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 accordance with then in effect administrative procedures of the Board.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

DATED: 5/22/2024

Michelle Iorio

Michelle Iorio, 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.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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: See section A.1 table below PROPOSED DECISION Hearing Date: May 22, 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:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
24-V-160	Monte 38, LLC	6151 Montezuma Rd. San Diego, CA	1
24-V-161	Sterling City Science South Development, LLC	9955 Pacific Heights Blvd. Bldg A San Diego, CA	7
24-V-162	Sterling City Science South Development, LLC	9925 Pacific Heights Blvd. Bldg B San Diego, CA	5
24-V-163	Sterling City Science South Development, LLC	5975 Pacific Mesa Ct. Bldg G San Diego, CA	4
24-V-207	Commune Parc LLC	2820 Polk Ave. San Diego, CA	1
24-V-208	RIDA Chula Vista	1050 H Street Chula Vista, CA	3
24-V-210	Menlo Park Portfolio II, LLC	1350 Adams Ct. Menlo Park, CA	5

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

2. These proceedings are conducted in accordance with Labor Code section 143, and section 401, et seq. of the Occupation Safety and Health Standards Board's ("Board" or "OSHSB") procedural regulations.

B. Procedural

1. This hearing was held on May 22, 2024 via videoconference by the Board with Hearing Officer, Michelle Iorio presiding and hearing the matter on its merit in accordance with section 426.

2. At the hearing, James Day with TK Elevator appeared on behalf of the 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 May 22, 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:

$$f = \frac{S \times N}{W}$$

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

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 of Fact

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*, Permanent Variance No. 15-V-349 (Nov. 17, 2016), and the *Patton Equities, LLC* Permanent Variance 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 (*Permanant Variance 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.

E. 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)

<u>Inset Car Top Railing (Variance Request No. 1):</u>

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 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.

<u>Inspection Transfer Switch and Seismic Reset Switch (Variance Request Nos. 5 and 6):</u>

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 California Code of Regulations, sections 411.2, and 411.3.

8.0 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.

Date: May 22, 2024

Michelle Iorio

Michelle Iorio, 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 toCal/OSHA, to the following address (or to such other address as Cal/OSHA might specify in the future): Cal/OSHA 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 toCal/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
Cal/OSHA-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: Otis Gen2O and/or Gen3Peak with Variant Governor Rope and Sheaves (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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 Gen2O and/or Gen3Peak with Variant Governor Rope and Sheaves (Group IV)	Permanent Variance No: See section A.1 table below PROPOSED DECISION Hearing Date: May 22, 2024 Location: Zoom

A. Subject Matter

1. The applicants ("Applicant") below have applied for permanent variances 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
24-V-167	Regents of the University of California	3015 Voigt Dr. La Jolla, CA	3
24-V-168	Regents of the University of California	3025 Voigt Dr. La Jolla, CA	3
24-V-169	Regents of the University of California	3035 Voigt Dr. La Jolla, CA	4

2. These proceedings are 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 May 22, 2024 via videoconference by the Board with Hearing Officer Michelle Iorio, 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 Company, appeared on behalf of each Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA")

[1] Unless otherwise noted, all references are to title 8, California Code of Regulations.

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	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 May 22, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

C. Applicable Regulation

1. The Applicants request variance from some or all of the following sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:

   a. 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 (to permit the use of the Elastomeric Coated Steel Belts proposed by the Applicant in lieu of circular steel suspension ropes.);

   b. Cartop Railing: 2.14.1.7.1 (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);

   c. Inspection transfer switch: 2.26.1.4.4(a) (to permit the inspection transfer switch to reside at a location other than the machine room);

   d. Seismic reset switch: 8.4.10.1.1(a)(2)(b) (to permit the seismic reset switch to reside at a location other than the machine room);

   e. Governor Rope Diameter: 2.18.5.1 (to permit the use of the governor rope proposed by the Applicant, where the rope has a diameter of 8 mm [0.315 in.]); Note: A variance from the section above is not required. However, the Board has included a variance from this code requirement in similar previous variances.

   f. Pitch Diameter: 2.18.7.4 (to permit the use of the speed governor system, proposed by the Applicant, where the rope sheave pitch diameter is less than what is required by the Elevator Safety Orders).

D. Findings of Fact

1. The Board incorporates by reference the findings stated in:

   a. Items 3 through 5.c, 5.e, and 5.f of the "Findings of Fact" section of the Proposed Decision adopted by the Board on February 19, 2009, in Permanent Variance No. 08-V-247;

   b. Item D.3 of the Proposed Decision adopted by the Board on July 16, 2009, in Permanent Variance No. 09-V-042;

   c. Item D.4 of the Proposed Decision adopted by the Board on September 16, 2010, in Permanent Variance No. 10 V 029;

   d. Items D.4, D.5, and D.7 of the Proposed Decision adopted by the Board on July 18, 2013, in Permanent Variance No. 12-V-146; and

   e. Items D.4 and D.5 of the Proposed Decision adopted by the Board on September 25, 2014, in Permanent Variance No. 14-V-170.

2. Regarding requested variance in governor sheave diameter, and governor rope diameter, in variance from section 3141, incorporated ASME A17.1-2004, sections 2.18.7.4 and 2.18.5.1, respectively, the Board incorporates by reference the following previous findings of record: Items 8 through 12 of the Proposed Decision adopted by the Board on December 13, 2018, in Permanent Variance No. 18-V-425, and further substantiating bases per therein cited Permanent Variance Decisions of the Board.

3. The installation contracts for elevators, the subject of the permanent variance application, were signed on or after May 1, 2008, making the elevators subject to the Group IV Elevator Safety Orders ("ESO").

4. Cal/OSHA's safety engineer, 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.

E. 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.

F. 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, Applicant shall have permanent variances from section 3141 and from the following sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:

- 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 (to permit the use of the Elastomeric Coated Steel Belts proposed by the Applicant in lieu of circular steel suspension ropes.);
- Cartop Railing: 2.14.1.7.1 (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);
- Inspection transfer switch: 2.26.1.4.4(a) (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) (to permit the seismic reset switch to reside at a location other than the machine room);
- Governor Rope Diameter: 2.18.5.1 (to permit the use of the governor rope proposed by the Applicant, where the rope has a diameter of 8 mm [0.315 in.]); *Note: A variance from the section above is not required. However, the Board has included a variance from this code requirement in similar previous variances.*
- Pitch Diameter: 2.18.7.4 (to permit the use of the speed governor system, proposed by the Applicant, where the rope sheave pitch diameter is less than what is required by the Elevator Safety Orders).

The variance shall be subject to, and limited by, the following additional conditions:

1. Each elevator subject to this variance shall comply with all applicable Group IV Elevator Safety Orders and with all ASME provisions made applicable by those Group IV Elevator Safety Orders, except those from which variances are granted, as set forth in the prefatory portion of this Decision and Order.
2. The suspension system shall comply with the following:
    a. The coated steel belt shall have a factor of safety at least equal to the factor of safety that ASME A17.1-2004, section 2.20.3, would require for wire ropes if the elevator were suspended by wire ropes rather than the coated steel belt.
    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.

g. The installation of belts and connections shall be in conformance with the manufacturer's specifications, which shall be provided to Cal/OSHA.

3. With respect to each elevator subject to this variance, the applicant shall comply with Cal/OSHA Circular Letter E-10-04, a copy of which is attached hereto as Addendum 1 and incorporated herein by this reference.

4. The Applicant shall not utilize each 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 shall make those procedures and criteria available to Cal/OSHA upon request.

5. 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 who, 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;

   g. Lubrication information.

6. 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).

7. 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.

8. 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.

9. When the inspection and test control 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.

10. 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.

11. 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 from the car top perimeter shall be limited to no more than 6 inches.

    c. All exposed areas of the car top 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 the car top outside the railing, shall be clearly marked. The markings shall consist of alternating four-inch diagonal red and white stripes.

    e. The Applicant shall provide, on each inset railing, durable signs with lettering not less than ½ inch on a contrasting background. 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).

12. The speed governor rope and sheaves shall comply with the following:
    a. The governor shall be used in conjunction with a 8 mm (0.315 in.) diameter steel governor rope with 8-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 240 mm (9.45 in.).
13. Each 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 Gen2(O) and/or Gen3 Peak elevator system the Applicant proposes to use, in accordance with the written procedures and criteria required by Condition No. 4 and the terms of this permanent variance.
14. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
15. Cal/OSHA shall be notified when each elevator is ready for inspection. Each elevator shall be inspected by Cal/OSHA, and a Permit to Operate shall be issued before each elevator is placed in service.
16. The Applicant shall be subject to the suspension means replacement reporting condition stated in Addendum 2; that condition is incorporated herein by this reference.
17. 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 application for permanent variance, per sections 411.2 and 411.3.
18. 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: 5/22/2024

Michelle Iorio

Michelle Iorio, 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: Schindler Model 3300 Elevators, W/Variant Governor Ropes and Sheaves (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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) (Group IV)	Permanent Variance No.: See section A.1 table below PROPOSED DECISION Hearing Date: May 22, 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:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
24-V-192	FSN A Apartments, L.P.	232 Judge John Aiso St. Los Angeles, CA	1
24-V-212	The Retail Property Trust, a Massachusetts Business Trust	1065 Brea Mall Dr. Brea, CA	1

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 May 22, 2024 via videoconference, by the Board with Hearing Officer Michelle Iorio, both 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.

3. At the hearing, Jennifer Linares, with the Schindler Elevator Company, appeared on behalf of each Applicant; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

4. 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 table in Jurisdictional and Procedural Matters
PD-2	OSHSB Notice of Hearing
PD-3	Cal/OSHA Review of variance application
PD-4	Review Draft-1 Proposed Decision

5. 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 May 22, 2024the hearing and record was closed, and the matter taken under submission by the Hearing Officer.

C. 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.

D. Findings of Fact

1. Each respective Applicant intends to utilize Schindler model 3300 MRL elevator cars, in the quantity, at the locations specified in Jurisdictional and Procedural Matters, section 1.

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.

E. Conclusive Findings

A preponderance of the evidence supports the finding that each Applicant's 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 Order from which variance is being sought.

F. 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 table in Jurisdictional and Procedural Matters shall have permanent variances from sections 3041, subdivision (e)(1)(C) and 3141.7, subdivision (b) subject of the following conditions:

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 the 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 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 above, the Proposed Decision, is submitted to the Board for consideration of adoption.

DATED: May 22, 2024

Michelle Iorio

Michelle Iorio, 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 the 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 the 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 the 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 the 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 the 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 the 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 the Cal/OSHA, to the following address (or to such other address as the 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 the Cal/OSHA regarding the replacement of the suspension means or fastenings.

3. In addition to the submission of the report to the 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 the Cal/OSHA referencing the information contained in item 2a above.

3.

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 and Gen3 Core Elevator & Medical Emergency Elevator Car Dimensions (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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 and Gen3 Core Elevator & Medical Emergency Elevator Car Dimensions (Group IV)	Permanent Variance Nos.: See section A.1 table below PROPOSED DECISION Hearing Date: May 22, 2024 Location: Zoom

A. Subject Matter

1. Each below listed applicant ("Applicant") has applied for permanent variances 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
24-V-193	320 S Flower LLC	320 S. Flower St. Burbank, CA	1

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 May 22, 2024, via videoconference, by the Board with Hearing Officer Michelle Iorio, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration.

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

[1] Unless otherwise noted, all references are to title 8, California Code of Regulations.

Exhibit Number	Description of Exhibit
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 May 22, 2024, the hearing and record closed, and the matter taken under submission by the Hearing Officer.

C. Findings of Fact

1. Each Applicant intends to utilize Otis Gen2S/Gen3Edge and Gen3 Core elevators at the locations and in the numbers stated in the above section A.1 table.The Otis Gen3 Core elevator design employs an overhead suspension configuration, where suspension sheaves and belts are located on top of the elevator car. Alternatively, the Gen3 Edge, and Gen2S elevator designs employ underslung suspension, where suspension sheaves and belts are located below the elevator car.

2. Gen3 Core utilizes the same flat belt technology used by Gen2, Gen3 Peak, Gen2S, and Gen3 Edge MRL elevators. The Gen3 Core's driving machine is installed at the top of the elevator hoistway, and an inspection and test panel may be mounted in one of the upper floor landing door jambs. The speed governor is mounted on the elevator car.

3. The drive machine in the hoistway restricts the clearance between the bottom of the drive machine beam and the car top railings. To obtain the necessary overhead clearance to the drive machine, the Applicant proposed to inset the car top railings from the car perimeter. The code requires that the railings be installed at the perimeter of the car top on all sides where the perpendicular distance between the edge of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.

4. No machine room is provided, preventing the seismic reset switch from being located in the elevator machine room. To provide access to the seismic reset switch the Applicant has proposed relocating it to the inspection and test panel located at one of the upper floor landing door jambs or control room. The code requires that the seismic reset switch be located in the control panel, in the elevator machine room.

5. No machine room is provided, preventing the inspection transfer switch from being located in the elevator machine room. To provide access to the inspection transfer switch the Applicant has proposed relocating it to the inspection and test panel located at one of the upper floor landing door jambs or control room. The code requires that the inspection transfer switch be located in the elevator machine room.

6. Due to the arrangement of the governor overspeed switch to open at 100% of governor tripping speed, a governor speed-reducing switch is required on the governor set to open at 90% of governor tripping speed. The Applicant intends to use a channel of the existing velocity encoder

attached to the driving machine to allow the controller to monitor for an overspeed condition and signal for a reduction in the speed of the elevator. The code requires the governor speed-reducing switch be located on and be opened by the speed governor.

7. 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. The Applicant intends to install a governor rope that provides an increased factor of safety in order to compensate for the use of a governor sheave of reduced diameter.

8. The applicant's proposed 6 mm (0.25 in.) diameter, 6 strand, steel governor rope with a factor of safety of 8 or greater is compliant with the Elevator Safety Orders (see CCR, Title 8,3141.7(a)(10)). No variance from ASME A17.1-2004, section 2.18.5.1 is required in the Division's opinion.

9. The Applicant intends to provide a medical emergency service elevator(s), with an internal dimensional area that deviates from the minimum inside platform dimension requirements of the Elevator Safety Orders for elevators designated as medical emergency service elevators.

10. 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.

11. 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

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 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:

- 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 (to permit the use of the Elastomeric Coated Steel Belts proposed by the Applicant, in lieu of circular steel suspension ropes.);

- Cartop Railing: 2.14.1.7.1 (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);

- Speed governor over-speed switch: 2.18.4.2.5(a) (to permit the use of the speed-reducing system proposed by the Applicant, where the speed-reducing switch functionality resides within the elevator control system, rather than on the speed governor);

- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (to permit the seismic reset switch to reside at a location other than the machine room. room);

- Inspection transfer switch: 2.26.1.4.4(a) (to permit the inspection transfer switch to reside at a location other than the machine room);

- Pitch Diameter: 2.18.7.4 (to permit the use of the speed governor system proposed by the Applicant, where the rope sheave pitch diameter is not less than 180 mm [7.1 in.]);

- Governor Rope Diameter: 2.18.5.1 (to permit the use of the governor rope proposed by the Applicant, where the rope has a diameter of 6 mm [0.25 in.]). A variance for the proposed reduced diameter governor rope is not required, however the Board has included a variance from this code requirement in similar previous variances;

- Minimum Inside Car Platform Dimensions: 3041(e)(1)(C) (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 Gen2S/Gen3Edge and Gen3 Core (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 a factor 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. Coated steel belts that have been installed and used on another installation shall not be re-used.

c. The coated steel belts shall be fitted with a monitoring device which has been accepted by the Division 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 inspections the readings from the monitoring device shall be documented and submitted to the Division.

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 the Division.

2. With respect to each elevator subject to this variance, the Applicant shall comply with the Division Circular Letter E-10-04, a copy of which is attached hereto as Exhibit 1 and incorporated herein by 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 the Division upon request.

4. The flat coated steel belts shall be provided with a metal data tag that that is securely attached to one of the flat coated steel belts. This data tag shall bear the following flat coated steel belt data:

a. The width and thickness in millimeters (mm) or inches (in.)

b. The manufacturer's rated breaking strength in (kN) or (lbf.)

c. Name of the person or organization who installed the flat coated steel belts

d. The month and year the ropes were installed

e. The month and year the ropes were first shortened

f. Name or trademark of the manufacturer of the flat coated steel belts

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 (mm) or inches (in.)

   c. The manufacturer's rated breaking strength per belt or in (kN.) or (lbf.)

6. 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 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 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 outside the railing shall preclude standing or placing of objects or persons that may fall, and shall be beveled from the mid or top rail to the outside edge of the car top.

   d. The top of the beveled area shall be clearly marked. The marking shall consist of alternating four-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, which states:

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 will be measured from the car top and not from the required bevel).

8. 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 inspection and test control panel located in one of the upper floor hoistway door jambs or in the control room (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 of the upper floor hoistway door jambs or in the control room (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 the use of a Security Group I restricted key.

11. 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 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.

12. 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 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 not 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 the Division upon request.

13. 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 180 mm (7.1 in.).

14. All medical emergency service elevators shall comply with the following:

    a. The requirements of the 2019 California Building Code (CBC), Section 3002.4.1a:

    > *CBC-2019, "3002.4.1a Gurney Size 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 24inches 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 the Division, at the time of inspection, for all medical emergency service elevators.

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. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division and a "Permit to Operate" issued before the elevator is placed in service.

17. The Applicant shall be subject to the suspension-means replacement-reporting conditions stated in Exhibit 2; those conditions are incorporated herein by 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.

Pursuant to section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: May 22, 2024

Michelle Iorio

Michelle Iorio, 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: KONE Monospace 500 Elevators (Group IV)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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: May 22, 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
24-V-202	HCP BTC, LLC	331 Oyster Pt. Blvd. South San Francisco, CA	2
24-V-203	HCP BTC, LLC	333 Oyster Pt. Blvd. South San Francisco, CA	2
24-V-205	800 W Carson LP	800 West Carson St. Torrance, CA	2
24-V-219	Northeastern University	5000 MacArthur Blvd. Oakland, CA	1
24-V-220	City of Placentia	2999 E. La Jolla St. Placentia, CA	1
24-V-235	SANTA MONICA BELOIT LP	11261 SANTA MONICA BLVD. LOS ANGELES, 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.

[1] Unless otherwise noted, references are to the California Code of Regulations, title 8.

B. Procedural

1. This hearing was held on May 22, 2024, via videoconference, by the Board with Hearing Officer Michelle Iorio, 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 theElevator Safety Order requirements from which variance shall issue. On May 22, 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 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 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 submissions to the record (Exhibits PD-3 and PD-4 respectively), and stated positions 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: May 22, 2024

Michelle Iorio

Michelle Iorio, 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)
24-V-202	Elevator 1	8	350	11706
24-V-202	Elevator 2	8	350	11706
24-V-203	Elevator 1	8	350	11706
24-V-203	Elevator 2	8	350	11706
24-V-205	Elevator 1	7	150	12247
24-V-205	Elevator 2	7	150	12247
24-V-219	1	6	150	10497
24-V-220	Elevator 1	5	200	8254
24-V-235	1	7	200	11556
24-V-235	2	8	200	13207

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 Sleepmode Escalator (with controller)	Permanent Variance No.: see section A.1 table of Proposed Decision Dated: May 22, 2024 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Michelle Iorio, Hearing Officer.

_____
JOSEPH M. ALIOTO JR., Chairman

_____
KATHLEEN CRAWFORD, Member

_____
DAVID HARRISON, Member

_____
NOLA KENNEDY, Member

_____
CHRIS LASZCZ-DAVIS, Member

_____
DAVID THOMAS, Member

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Date of Adoption: June 20, 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 Sleepmode Escalator (with controller)	OSHSB File Nos. See Section A.1 Table below PROPOSED DECISION Hearing Date: May 22, 2024 Location: Zoom

A. Procedural Matters

1. Each of the following entities applied for a 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 Escalators
24-V-217	County of Sacramento Dept of Airports	Terminal A 6851 Airport Blvd. Sacramento, CA	4

2. This proceeding is conducted in accordance with Labor Code section 143, and section 401, et seq.

3. This hearing was held on May 22, 2024 via videoconference, by the Board with Hearing Officer, Michelle Iorio, presiding and hearing the matter on its merit in accordance with section 426.

4. At the hearing, Fuei Saetern appeared on behalf of the Applicants' representative, KONE, Inc.; Jose Ceja and Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Cal/OSHA").

5. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

[1] Unless otherwise noted, all references are to title 8, California Code of Regulations.

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

7. 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 May 22, 2024, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

B. Findings

1. Applicant seeks variance from certain California Code of Regulations, title 8, Elevator Safety Orders, toward the stated purpose of installing new escalators that include a "sleep mode" capability that will cause the escalator to run at a reduced speed when not in use, thus resulting in conservation of electrical energy.

2. The Applicant's proposed sleep mode feature is not compliant with existing Elevator Safety Orders, which prohibits the intentional variation of an escalator's speed after start-up.

3. In order to install escalators that include a sleep mode capability, Applicant requires a permanent variance from the provisions of section 3141.11 [ASME A17.1-2004, section 6.1.4.1] regarding the variation of escalator speed.

4. Concerning variance in escalator speed, section 3141.11 [ASME A17.1-2004, section 6.1.4.1] states:

> *"6.1.4.1 Limits of Speed. The rated speed shall be not more than 0.5 m/s (100 ft/min), measured along the centerline of the steps in the direction of travel. The speed attained by an escalator after start-up shall not be intentionally varied."*

5. An intent of section 3141.11 is to ensure that the speed of the escalator during normal operation is kept constant to prevent passengers from losing their balance.

6. The Applicant contends that equivalent safety is achieved through the use of a controller that is capable of varying the escalator drive motor speed in conjunction with dual redundant sensors strategically placed at each end of the unit to detect passenger traffic. When the sensors indicate a lack of traffic approaching the

escalator for a specified period, the control system will initiate the “sleep mode” function, decelerating the escalator to not less than 10 feet per minute at a rate no greater than 1ft/sec^2. If passenger traffic is detected while the escalator is in “Sleep Mode”, a signal will be sent to the controller to "wake up” resulting in the escalator accelerating to normal operating speed within 1.5 seconds at a rate no greater than 1ft/sec^2.

7. Applicant proposes using passenger traffic sensors capable of detecting passengers at a distance greater than a walking person could travel in 2 seconds, thereby causing the escalator to be running at normal speed prior to passenger boarding.

8. Applicant proposes design features such that if a passenger detected approaching the escalator opposite the motion of the escalator steps on it while it is in “sleep mode”, an alarm will sound and the escalator will exit “sleep mode” and accelerate until it reaches normal operating speed at a rate no greater than 1 ft/sec^2. Applicant contends this arrangement will safely discourage passengers from entering the escalator opposite the motion of the steps while at reduced speed.

9. The Applicant proposes sensors used to detect passenger traffic being installed and arranged in a double redundant, fail-safe fashion with 2 sensors installed at each end of the escalator providing the same coverage field.

10. Applicant’s proposed sensor arrangement and redundancy can be reasonably expected to provide for passenger traffic detection in the event of any single sensor failure and provide for signal comparison by the controller to detect sensor failure.

11. Applicant proposes a design in which detected failure of any one of the passenger traffic sensors, result in a disabling of “sleep mode” such that the escalator would remain at normal operating speed until all sensors have resumed normal function. In addition the proposed design would have passenger traffic sensors wired to the escalator controller in a fail-safe manner that prevents “sleep mode” activation if the sensor wiring is cut or disconnected.

12. As evidenced by written Review of Application (Exhibit PD-4), as well as statements at hearing, it is the well informed opinion of Cal/OSHA that the Applicant proposed “sleep mode” function meets the requirements of ASME A17.1-2010, section 6.1.4.1.2 regarding the varying the speed of an escalator after start-up.

13. ASME A17.1-2010, section 6.1.4.1.2 states:

> "Variation of the escalator speed after start-up shall be permitted provided the *escalator installation conforms to all of the following:*
>
> *(a) The acceleration and deceleration rates shall not exceed 0.3 m/s^2 (1.0 ft/sec^2).*
>
> *(b) The rated speed is not exceeded.*
>
> *(c) The minimum speed shall be not less than 0.05 m/s (10 ft/min).*
>
> *(d) The speed shall not automatically vary during inspection operation.*
>
> *(e) Passenger detection means shall be provided at both landings of the escalator such that*
>
> *(1) detection of any approaching passenger shall cause the escalator to accelerate to or maintain the full escalator speed conforming to 6.1.4.1.2(a) through (d)*
>
> *(2) detection of any approaching passenger shall occur sufficiently in advance of boarding to cause the escalator to attain full operating speed before a passenger walking at normal speed [1.35 m/s (270 ft/min)] reaches the combplate*
>
> *(3) passenger detection means shall remain active at the egress landing to detect any passenger approaching against the direction of escalator travel and shall cause the escalator to accelerate to full rated speed and sound the alarm (see 6.1.6.3.1) at the approaching landing before the passenger reaches the combplate*
>
> *(f) Automatic deceleration shall not occur before a period of time has elapsed since the last passenger detection that is greater than 3 times the amount of time necessary to transfer a passenger between landings.*
>
> *(g) Means shall be provided to detect failure of the passenger detection means and shall cause the escalator to operate at full rated speed only."*

14. The Applicant's proposed "sleep mode" function is similar to other installations for which a permanent variance has been granted (Permanent

Variance No. 17-V-369). In these previous variance decisions it was concluded that a variance was required from ASME A17.1-2004, section 6.1.6.4 regarding handrail speed monitoring. Conditions set forth in the previous variance decisions allow for the disabling of the handrail speed monitoring device while the escalator is operating in slow speed "sleep mode."

15. Concerning handrail speed monitoring, section 3141.11 [ASME A17.1-2004, section 6.1.6.4] states:

> *"6.1.6.4 Handrail Speed Monitoring Device. A handrail speed monitoring device shall be provided that will cause the activation of the alarm required by 6.1.6.3.1(b) without any intentional delay, whenever the speed of either handrail deviates from the step speed by 15% or more. The device shall also cause electric power to be removed from the driving machine motor and brake when the speed deviation of 15% or more is continuous within a 2 s to 6 s range. The device shall be of the manual reset type."*

16. It is the well informed professional opinion of Cal/OSHA(see Exhibit PD-3) that that the escalator "sleep mode" function design, as proposed by the Applicant, subject to certain conditions and limitations, will provide occupational safety and health equivalent or superior to the requirements from which variance is being sought, and recommends that the applied for permanent variance issue subject to conditions and limitations in material conformity with those incorporated into the Decision and Order below.

C. Conlcusive 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 above section A.1 table specified Applicant is conditionally GRANTED permanent variance, at the respectively specified location, as to respectively specified number of conveyances, subject to all below enumerated conditions and limitations:

Elevator Safety Orders:

- Variation of Escalator Speed: 6.1.4.1 (Only to the extent necessary to permit

the variation of the escalator speed where the speed is reduced absent any passengers); and

- Handrail speed monitoring: 6.1.6.4 (Only to the extent necessary to permit the disabling of the handrail speed monitoring device, where monitoring of the handrail speed is not necessary during slow speed [Seep Mode] operation).

Recommended Conditions:

1. The Applicant may intentionally vary the escalator speed and install proximity sensors for traffic detection subject to the following:

    a. The rate of acceleration and deceleration shall not exceed 0.3 m/s2 (1 ft/sec^2) when transitioning between speeds.

    b. Failure of a single proximity sensor including its associated circuitry, shall cause the escalator to revert to its normal operating speed at an acceleration of not more than 0.3 m/s^2 (1 ft/sec^2).

    c. Automatic deceleration shall not occur before a period of time of not less than three times the time it takes a passenger to ride from one landing to the other at normal speed has elapsed.

    d. Detection of any passenger shall cause the escalator to reach full speed before a passenger, walking at 4.5ft/sec, reaches the comb plate.

    e. The passenger detection means shall detect a person within a sufficient distance along all possible paths to the escalator that do not require climbing over barriers or escalator handrails to assure that the escalator attains full operating speed before a person walking at 4.5 ft/sec reaches the escalator comb plate. The minimum detection distance shall be calculated according to the following formula or alternatively according to Exhibit 1 (Detection Distance Sleep Mode Operation) attached hereto and incorporated herein by this reference:

$$d = (Vf - Vs) x$$

$$(Vw / a)$$

where d =

detection

distance (ft)
Vf = normal speed (ft/min) [not to exceed 100

ft/min]
V_S = slow "sleep" speed (ft/min) [not less than 10 ft/min] V_W = passenger walking speed (4.5 ft/sec)
a = acceleration/deceleration rate (ft/sec^2)[not to exceed 1 ft/sec^2]

f. Detection of any passenger approaching against the direction of escalator travel shall cause the escalator to reach full speed before a passenger, walking at 4.5 ft/sec, reaches the comb plate and shall cause the escalator alarm to sound. The sounding of the alarm may include a 3 to 5 second alarm or three 1 second alarm soundings.

g. The minimum speed of the escalator shall not be less than 0.05 m/s (10 ft/min). The "Sleep Mode" functionality shall not affect the escalator inspection operation. The speed of the escalator shall not vary during Inspection Mode.

h. There shall be two means of detecting passengers at each end of the escalator for redundancy and for detection of failure in the passenger detection means.

i. The passenger sensors (detectors) at each end of the escalator must be verified by the control system for proper operation in the following manner:

    1. If any of the passenger detection sensors remains tripped for at least 5 minutes but no more than 10 minutes, then the control system shall generate a fault to indicate which sensor is faulted while causing the escalator to exit the Sleep Mode and remain at the normal run speed until the faulted sensor begins to function properly.

    2. If one of the paired sensors at either end of the escalator does not trip while the other paired sensor trips at least five times but no more than ten times, the control system shall generate a fault to indicate which sensor is faulted while causing the escalator to exit the Sleep Mode and remain at the normal run speed until the faulted sensor begins to function properly.

j. The handrail speed monitoring device required by Section 6.1.6.4 may be disabled while the escalator is operating in the slow speed (Sleep Mode) condition.

2. The Applicant shall have the controller schematic diagrams available in the control space together with a written explanation of the operation of the controller.

3. An annual test shall be conducted by a Certified Competent Conveyance Mechanic (CCCM) employed by a Certified Qualified Conveyance Company (CQCC) which maintains and services the escalators, to demonstrate that the escalator is transitioning between "Normal Mode" and "Sleep Mode" and back in conformance with the terms of this variance. The instrumentation used shall be capable of allowing the CCCM to determine the acceleration and deceleration rates of the escalator.

4. The results of each annual test required by Condition No. 3 shall be submitted to the appropriate Elevator Unit District Office in tabular and graphic form (speed vs. time).

5. Whenever practicable, as determined by the Applicant and subject to the concurrence of Cal/OSHA, the variable speed system is to be installed without the installation of new bollards or other such new structures, if the bollards or other structures would impede passenger movement at the destination end of the escalator. If new bollards or other such structures of that sort are constructed in connection with the variable speed system, the Applicant will take all practicable steps to minimize the impact of same on the movement of passengers at the destination end of the escalator.

6. Any Certified Qualified Conveyance Company (CQCC; elevator contractor) performing inspection, maintenance, servicing or testing of the escalators shall be provided a copy of the variance decision.

7. Cal/OSHA shall be notified when the escalator is ready for inspection, and the escalator shall be inspected by the Cal/OSHA and a "Permit to Operate" issued before the escalator may be placed in service.

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, or by the Board on its own motion, in the manner prescribed.

Pursuant section 426(b), the Proposed Decision is submitted to the Board for consideration of adoption.

Dated: May 22, 2024

Michelle Iorio

Michelle Iorio, Hearing Officer

Exhibit 1

Detection Distance Sleep Mode Operation

Acceleration Rate (ft./sec^2) vs. Escalator Sleep Mode Speed (ft./min)

	10	**15**	**20**	**25**	**30**	**35**	**40**	**45**	**50**	**55**	**60**	**65**	**70**	**75**	**80**	**85**	**90**	**95**	**100**
1.00	6.76	6.39	6.01	5.64	5.26	4.88	4.51	4.13	3.76	3.38	3.01	2.63	2.25	1.88	1.50	1.13	0.75	0.38	0.00
0.95	7.12	6.72	6.33	5.93	5.54	5.14	4.75	4.35	3.96	3.56	3.16	2.77	2.37	1.98	1.58	1.19	0.79	0.40	0.00
0.90	7.52	7.10	6.68	6.26	5.85	5.43	5.01	4.59	4.18	3.76	3.34	2.92	2.51	2.09	1.67	1.25	0.84	0.42	0.00
0.85	7.96	7.52	7.07	6.63	6.19	5.75	5.30	4.86	4.42	3.98	3.54	3.09	2.65	2.21	1.77	1.33	0.88	0.44	0.00
0.80	8.45	7.98	7.52	7.05	6.58	6.11	5.64	5.17	4.70	4.23	3.76	3.29	2.82	2.35	1.88	1.41	0.94	0.47	0.00
0.75	9.02	8.52	8.02	7.52	7.01	6.51	6.01	5.51	5.01	4.51	4.01	3.51	3.01	2.51	2.00	1.50	1.00	0.50	0.00
0.70	9.66	9.13	8.59	8.05	7.52	6.98	6.44	5.90	5.37	4.83	4.29	3.76	3.22	2.68	2.15	1.61	1.07	0.54	0.00
0.65	10.41	9.83	9.25	8.67	8.09	7.52	6.94	6.36	5.78	5.20	4.62	4.05	3.47	2.89	2.31	1.73	1.16	0.58	0.00
0.60	11.27	10.65	10.02	9.39	8.77	8.14	7.52	6.89	6.26	5.64	5.01	4.38	3.76	3.13	2.51	1.88	1.25	0.63	0.00
0.55	12.30	11.61	10.93	10.25	9.56	8.88	8.20	7.52	6.83	6.15	5.47	4.78	4.10	3.42	2.73	2.05	1.37	0.68	0.00
0.50	13.53	12.78	12.02	11.27	10.52	9.77	9.02	8.27	7.52	6.76	6.01	5.26	4.51	3.76	3.01	2.25	1.50	0.75	0.00
0.45	15.03	14.20	13.36	12.53	11.69	10.86	10.02	9.19	8.35	7.52	6.68	5.85	5.01	4.18	3.34	2.51	1.67	0.84	0.00
0.40	16.91	15.97	15.03	14.09	13.15	12.21	11.27	10.33	9.39	8.45	7.52	6.58	5.64	4.70	3.76	2.82	1.88	0.94	0.00
0.35	19.32	18.25	17.18	16.10	15.03	13.96	12.88	11.81	10.74	9.66	8.59	7.52	6.44	5.37	4.29	3.22	2.15	1.07	0.00
0.30	22.55	21.29	20.04	18.79	17.54	16.28	15.03	13.78	12.53	11.27	10.02	8.77	7.52	6.26	5.01	3.76	2.51	1.25	0.00
0.25	27.05	25.55	24.05	22.55	21.04	19.54	18.04	16.53	15.03	13.53	12.02	10.52	9.02	7.52	6.01	4.51	3.01	1.50	0.00
0.20	33.82	31.94	30.06	28.18	26.30	24.42	22.55	20.67	18.79	16.91	15.03	13.15	11.27	9.39	7.52	5.64	3.76	1.88	0.00
0.15	45.09	42.59	40.08	37.58	35.07	32.57	30.06	27.56	25.05	22.55	20.04	17.54	15.03	12.53	10.02	7.52	5.01	2.51	0.00
0.10	67.64	63.88	60.12	56.36	52.61	48.85	45.09	41.33	37.58	33.82	30.06	26.30	22.55	18.79	15.03	11.27	7.52	3.76	0.00
0.05	135.27	127.76	120.24	112.73	105.21	97.70	90.18	82.67	75.15	67.64	60.12	52.61	45.09	37.58	30.06	22.55	15.03	7.52	0.00

$$d = (V_f - V_S) \times \frac{V_w}{a}$$

d Detection distance (ft.)

V_f Escalator Rated Speed (Escalators with rated speeds of 100 ft./min.)

V_s Slow Speed[“Sleep mode” Speed] (ft./min.)

V_w Passenger Walking Speed of 4.5 ft./sec.

a Acceleration/Deceleration Rate (ft./sec.^{2})

Note: 1 ft./min. = 0.0167 ft./sec.

Occupational Safety and Health Standards Board

Business Meeting

Legislative Update

Legislative Update
Prepared June 7, 2024 for the June 20, 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-1976 Occupational safety and health standards: first aid kits: naloxone hydrochloride. (2023-2024) - UPDATE

AB-1976

AB-1976 Occupational safety and health standards: first aid materials: opioid antagonists. **(2023-2024)**

(Haney)

Date	Action
06/05/24	Referred to Com. on L., P.E. & R.

05/23/24	In Senate. Read first time. To Com. on RLS. for assignment.
05/22/24	Read third time. Passed. Ordered to the Senate. (Ayes 69. Noes 0.)
05/21/24	Read second time. Ordered to third reading.
05/20/24	Read second time and amended. Ordered returned to second reading.
05/20/24	From committee: Amend, and do pass as amended. (Ayes 11. Noes 0.) (May 16).
4/17/24	In committee: Set, first hearing. Referred to suspense file.
4/4/24	From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (April 3). Re-referred to Com. on APPR.
4/3/24	Set FOR Hearing ON 03-APR-24 1:30 p.m
03/13/24	In committee: Set, first hearing. Hearing canceled at the request of author.
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 materials: opioid antagonists.

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 first aid materials in a workplace to include naloxone hydrochloride or another opioid antagonist approved by the United States Food and Drug Administration to reverse opioid overdose and instructions for using the opioid antagonist. The bill would require the standards board to adopt revised standards for the standards described above on or before July 1, 2027. Board staff is monitoring for potential impacts on Board operations.

AB-2408 Firefighter personal protective equipment: perfluoroalkyl and polyfluoroalkyl substances. (2023-2024) - UPDATE

AB-2408

AB-2408 Firefighter personal protective equipment: perfluoroalkyl and polyfluoroalkyl substances. **(2023-2024)**

(Haney)

Date	Action
05/29/24	Referred to Coms. on E.Q. and L., P.E. & R.
05/22/24	In Senate. Read first time. To Com. on RLS. for assignment.
05/21/24	Read third time. Passed. Ordered to the Senate.
05/20/24	Read second time. Ordered to third reading.
05/16/24	Read second time and amended. Ordered returned to second reading.

05/16/24	From committee: Amend, and do pass as amended. (Ayes 11. Noes 0.) (May 16
05/16/24	Assembly Rule 63 suspended.
05/08/24	In committee: Set, first hearing. Referred to suspense file.
04/18/24	From committee: Do pass and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 7. Noes 0.) (April 17). Re-referred to Com. on APPR.
04/10/24	From committee: Do pass and re-refer to Com. on L. and E. (Ayes 7. Noes 0.) (April 9). Re-referred to Com. on L. and E.
04/01/24	Re-referred to Com. on E.S. & T.M.
03/21/24	From committee chair, with author's amendments: Amend, and re-refer to Com. on E.S. & T.M. Read second time and amended.
03/21/24	Referred to Coms. on E.S. & T.M. and L. & E.
02/13/24	From printer. May be heard in committee March 14.
02/12/24	Read first time. To print.

Summary:

AB 2408, as amended, Haney. Firefighter personal protective equipment: perfluoroalkyl and polyfluoroalkyl substances.

Existing law requires any person that sells firefighter personal protective equipment to provide written notice to the purchaser if the equipment contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS). Existing law requires the seller to retain a copy of the written notice and provide the notice to specified law enforcement entities, including the Attorney General, upon request. Existing law makes a violation of those provisions subject to a penalty of up to $5,000 for a first violation and up to $10,000 for a subsequent violation.

This bill, commencing July 1, 2026, would prohibit a person from manufacturing, knowingly selling, offering for sale, distributing for sale, distributing for use, or purchasing or accepting for future use in this state firefighter personal protective equipment containing intentionally added PFAS chemicals. The bill would make a violation of this provision subject to the civil

	penalty provisions described above. The bill would specify that an individual firefighter shall not be personally liable for payment of the civil penalty. Existing law requires the Occupational Safety and Health Standards Board, in consultation with the Department of Industrial Relations, every 5 years, as specified, to review all revisions to National Fire Protection Association (NFPA) standards pertaining to personal protective equipment covered by specified safety orders. If the review finds the revisions provide a greater degree of personal protection than the safety orders, existing law requires the board to consider modifying existing safety orders and to render a decision regarding changing safety orders or other standards and regulations to maintain alignment of the safety orders with the NFPA standards no later than July 1 of the subsequent year. This bill would require the board, in consultation with the department, within one year of the NFPA updating a specified standard on protective ensemble for structural firefighting and proximity firefighting to include PFAS-free turnout gear, to update the applicable safety orders, or other standards or regulations, to maintain alignment with the NFPA standard. The bill would state related findings and declarations of the Legislature. Board staff is monitoring for potential impacts on Board operations.

AB-2975 Occupational safety and health standards: workplace violence prevention plan. (2023-2024) - UPDATE

AB-2975

AB-2975 Occupational safety and health standards: workplace violence prevention plan. **(2023-2024)**

(Gipson)

Date	Action
06/05/24	Referred to Coms. on L., P.E. and R. and HEALTH.
05/23/24	In Senate. Read first time. To Com. on RLS. for assignment.

05/22/24	Read third time. Passed. Ordered to the Senate. (Ayes 55. Noes 0.)
05/20/24	Read second time. Ordered to third reading.
05/16/24	From committee: Do pass. (Ayes 11. Noes 1.) (May 16).
05/08/24	In committee: Set, first hearing. Referred to suspense file.
04/18/24	From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (April 17). Re-referred to Com. on APPR.
04/03/24	Re-referred to Com. on L. & E.
04/02/24	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.
04/01/24	Re-referred to Com. on L. & E.
03/21/24	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.
03/21/24	Referred to Com. On L. and E.
02/17/24	From printer. May be heard in committee March 18.
02/16/24	Read first time. To print.

Summary:

AB 2975, as amended, Gipson. Occupational safety and health standards: workplace violence prevention plan.

Existing law, the California Occupational Safety and Health Act of 1973, imposes safety responsibilities on employers and employees, including the requirement that an employer establish, implement, and maintain an effective injury prevention program, and makes specified violations of these provisions a crime. Existing law also requires the Occupational Safety and Health Standards Board to adopt standards developed by the Division of Occupational Safety and Health that require specified types of hospitals to adopt a workplace violence prevention plan as part of the hospital's injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior.

	This bill would require the standards board, by March 1, 2025, to amend the standards to include a requirement that a hospital maintain metal detectors at specific entrances of a hospital, a requirement that a hospital assign appropriate security personnel who meet training standards, a requirement that the hospital have reasonable protocols for alternative search and screening for patients, family, or visitors who refuse to undergo metal detector screening, and a requirement that a hospital adopt reasonable protocols for storage of patient, family, or visitor property that might be used as a weapon. This bill would require that the standards include a requirement that a hospital post, within reasonable proximity of any metal detectors maintained at public entrances, a notice adopted by the standards board, notifying the public that the hospital conducts screenings for weapons upon entry but that no person shall be refused medical care for failure to undergo screening by a metal detector. By expanding the scope of an existing crime, this bill would impose a state-mandated local program. 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-3043 Occupational safety: fabrication activities. (2023-2024) - UPDATE

AB-3043

AB-3043 Occupational safety: fabrication activities (2023-2024)

(Rivas)

Date	Action
06/05/24	Referred to Com. on L., P.E. and R.
05/23/24	In Senate. Read first time. To Com. on RLS. for assignment.

05/22/24	Read third time. Passed. Ordered to the Senate. (Ayes 62. Noes 0.)
05/21/24	Read second time. Ordered to third reading.
05/20/24	Read second time and amended. Ordered returned to second reading.
05/20/24	From committee: Amend, and do pass as amended. (Ayes 11. Noes 4.) (May 16).
05/08/24	In committee: Set, first hearing. Referred to suspense file.
04/23/24	From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (April 23). Re-referred to Com. on APPR
04/18/24	From committee: Do pass and re-refer to Com. on JUD. (Ayes 6. Noes 1.) (April 17). Re-referred to Com. on JUD.
04/09/24	Re-referred to Com. on L. & E.
04/08/24	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. and E. Read second time and amended.
03/21/24	In committee: Set, first hearing. Hearing canceled at the request of author.
03/11/24	Referred to Coms. on L. & E. and JUD.
02/17/24	From printer. May be heard in committee March 18.
02/16/24	Read first time. To print.

Summary:

AB 3043, as amended, 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 require, on or before July 1, 2025, the department to consult with representatives of approved apprenticeship programs to adopt a training curriculum regarding the safe performance of fabrication activities that meets specified requirements, including classroom instruction, and to certify an individual who has completed that curriculum immediately upon completion. The bill would prohibit, beginning July 1, 2026, an owner or operator of a slab product fabrication shop from permitting any individual from performing fabrication activities or employing an individual to perform work on the shop floor where those activities are conducted, unless the individual 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 development and licensing 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 specified 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 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 establish the Slab Fabrication Activity Account in the Occupational Safety and Health Fund in the State Treasury, and require all fees, penalties, or other moneys collected by the department under the above-described provisions to be deposited into the account. The bill would authorize moneys in the account to be expended by the department for the purposes of administering the above-described provisions, and would make that authorization contingent on an appropriation of funds for that express purpose. The bill would require, beginning January 1, 2026, 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. 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 relating to respirable crystalline silica adopted by the board, and the geographic areas in the state with the highest numbers of those violations. 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 pursuant to the above-described provisions. The bill would require the department to collect and include in those reports the disaggregation of applicable data by stone industry, as specified. The bill would also require the department and the division to consider the findings of the reports to prioritize enforcement of the requirements of the bill's provisions in geographic areas with the highest numbers of violations or other penalties issued by the department relating to respirable crystalline silica. 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 School employees: COVID-19 cases: protections. (2023-2024) - NO UPDATE

AB-3106

AB-3106 School employees: COVID-19 cases: protections **(2023-2024)**

(Schiavo)

Date	Action
05/16/24	In committee: Held under submission.
05/08/24	In committee: Set, first hearing. Referred to suspense file.
04/18/24	From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (April 17). Re-referred to Com. on APPR.
04/02/24	Re-referred to Com. on L. & E.
04/01/24	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.
03/11/24	Referred to Com. on L. & E.
02/17/24	From printer. May be heard in committee March 18.
02/16/24	Read first time. To print.

Summary:

AB 3106, as amended, Schiavo. School employees: COVID-19 cases: protections.

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 employer, defined to be a school district, county office of education, or charter school, to ensure that COVID-19 cases, defined as specified school employees, who have a positive COVID-19 test, are excluded from the workplace until prescribed return-to-work requirements are met. To the extent administering these provisions imposes additional duties on local educational agencies, the bill would impose a state-mandated local program. The bill, with specified exceptions, would require an employer to continue and maintain an excluded school 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 for those school employees. 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. 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above. Board staff is monitoring for potential impacts on Board operations.

AB-3258 Refineries and chemical plants. (2023-2024) - UPDATE

AB-3258	**AB-3258** Refineries and chemical plants. **(2023-2024)** (Bryan)

Date	Action
06/03/24	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on L., P.E. & R.
05/29/24	Referred to Com. on L., P.E. & R.
05/16/24	In Senate. Read first time. To Com. on RLS. for assignment.
05/16/24	In Senate. Read first time. To Com. on RLS. for assignment.
05/16/24	Read third time. Passed. Ordered to the Senate. (Ayes 71. Noes 0.)
05/09/24	Read second time. Ordered to Consent Calendar.
05/08/24	From committee: Do pass. To Consent Calendar. (Ayes 15. Noes 0.) (May 8).
04/18/24	From committee: Do pass and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 7. Noes 0.) (April 17). Re-referred to Com. on APPR.
04/01/24	Re-referred to Com. on L. & E.
03/21/24	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.
03/21/24	Referred to Com. on L. & E.
02/17/24	From printer. May be heard in committee March 18.
02/16/24	Read first time. To print.

	Summary: AB 3258, as amended, Bryan. Refinery and chemical plants. Existing law, the California Refinery and Chemical Plant Worker Safety Act of 1990, requires the Occupational Safety and Health Standards Board to adopt process safety management standards for refineries, chemical plants, and other manufacturing facilities, as prescribed. Existing law requires a petroleum refinery employer to submit an annual schedule of planned turnarounds, as defined, for all affected units for the following calendar year and to provide prescribed access onsite and to related documentation. Existing law also establishes requirements for Division of Occupational Safety and Health access to, and disclosure of, trade secrets, as defined, including information relating to planned turnarounds of petroleum refinery employers. This bill would remove references in existing law to petroleum refineries and petroleum refinery employers and, instead, refer to refineries and refinery employers. The bill would define "refinery" to mean an establishment that produces gasoline, diesel fuel, aviation fuel, or biofuel, as defined, through the processing of crude oil or alternative feedstock. Board staff is monitoring for potential impacts on Board operations.

Occupational Safety and Health Standards Board

Business Meeting

Acting Executive Officer's Report

OSHSB Advisory Committee Status