

JOINT OVERSIGHT HEARING

**Senate Food and Agriculture Committee
Senator Dean Florez, Chair**

and

**Senate Labor and Industrial Relations Committee
Senator Mark DeSaulnier, Chair**

A Review of Regulations to Prevent Heat Illness and Deaths: Are Current Efforts Sufficient to Protect Outdoor Workers in the Fields?

**July 14, 2010
Sacramento, California**

SENATOR DEAN FLOREZ: ...Senate Food and Agriculture Committee and the Senate Labor and Industrial Relations Committee. I'm Senator Dean Florez, and I know we will have Senator DeSaulnier joining us at some point in time during the hearing.

The goal of today's hearing is *A Review of Regulations to Prevent Heat Illness and Deaths: Are the Current Efforts Sufficient to Protect Outdoor Workers in the Fields?* and that is the title of the hearing. I, of course, would like to thank everyone for coming. The goal today is obviously to try to get a better understanding of the proposed heat regulations—why they're needed, of course, and what we've accomplished to date. It was about 2005, as I remember, the governor making a very important announcement on negotiated heat regulations that were administratively driven. Cal/OSHA was given a huge responsibility at that time, and we do want to thank them for their efforts to date. However, the goal today is to try to deal with the existing heat regulations.

As you know, in 2008, three years after the particular time, there were six farmworker deaths and some of them, obviously, have been covered in the

press. But I should say that there is also some note about two farmworker deaths already occurring, fatalities in the fields, and I'd like to talk a little bit about that today sometime this year, and we're just beginning the season. So as the workers begin, at least in some of the counties, this is a good time, having a budget impasse and having some time to really look at this gives us an opportunity to look at the harvest season, what we can expect, and, you know, whether or not the current regulations are adequate. There's no doubt that we have a differing of opinion right from the beginning of this. We have a bill moving through the legislature that sets a standard. We believe it's much safer for the workers. I know Cal/OSHA is now beginning to—or at least the administration is now beginning to—formulize and start to work on some other aspects of the particular regulations. I want to talk a little bit about that as well. But the goal of this obviously is to try to get some resolution this year and this season and to try to make sure we have some understanding of what's needed from a budgetary perspective to make this an implementable program.

So with that, let's go ahead and begin. We'd like to have Len Welsh who is the chief at OSHA to come up. Thank you for joining us. Good seeing you again.

MR. LEN WELSH: My pleasure. Thanks for having me. I was wondering if I could ask Erika Monterroza to come...

SENATOR FLOREZ: You can have as many people as you want.

MR. WELSH: Thank you.

SENATOR FLOREZ: You've got it.

MR. WELSH: This is on, right? Yeah, good.

SENATOR FLOREZ: It's on. Now I have a ton of questions, but I'd like to hear if you have an opening, we'd be glad to hear it.

MR. WELSH: Yeah, I'll give you a brief opening, Senator.

SENATOR FLOREZ: Please.

MR. WELSH: We were given an enormous responsibility in 2005. We were the first state in the nation stepping up to the issue of heat-illness prevention, and our state and several others had been in the process of debate

for literally decades over whether and how to adopt a heat standard. And with a few words, our governor said, we're going to do it and it was done in 2005. And you, Senator, had a part in that and I really do appreciate that. So we began a new era in this state. And in addition to adopting an emergency standard in 2005, we decided that we needed, I guess, a holistic approach, for lack of a better phrase, to try to deal with this hazard. So we didn't want to just adopt a standard and then kind of ride off into the sunset, you know, looking for a new wrong to right. We wanted to have a program of education, consultation, enforcement, everything you need to have with a regulation to get the gold standard which is compliance. The bottom line is, when you write a reg, you want people to actually do it, not just read it and be impressed with the language. So we embarked upon a campaign to do all of that stuff in tandem, in a coordinated fashion.

We also decided to try to track our progress. As far as I know, this has never been done. I mean, we've had several initiatives in the past in California as a nation's first, like with hazard communication, for example, and as best as registration. But this was sort of a program where we identified a new hazard. We adopted a reg and we put all the other building blocks in place we could to try to make something significant happen out of it, and so we tracked our progress over the years. We kept data on the number of fatalities, for example, and illnesses and number of inspections we've performed, the findings of the inspections.

And I want to go back actually to 2005 and 2006 because I think those two years are the most instructive data-wise. They provide a rare opportunity, or at least one that, the kind of opportunity that's rare in public health, a stark contrast in data, to really sort of show what's happening in a public health issue. And this was the rate of fatalities in 2005 and 2006. In 2005, you probably know, was the worst year we've ever had in the state's history of recorded fatalities due to heat—12—half of which were in agriculture. And we may well have had more than that in other years. But since we were actually looking at the issue and recording what happened and the word was out that

heat could kill you, we think we got perhaps some reports of injuries attributed to heat that we might not have seen in other years. But in any case, in 2005, 12 fatalities—that was the year we had two major heat waves, but they were not that long in duration and they at least involved cooling at nights, so the severity was not as great as it could have been.

In 2006, there was a single, very long heat wave that produced most of the fatalities. That was the year when the governor ordered cooling centers to be open in several communities in Central California, and we actually had over 150 non-occupational deaths due to heat that year. That was a state first. We had fewer than 30 in 2005. But the occupational fatalities dropped from 12 to 8, a 33 percent drop. And the contrast between those two trends, I think, is instructive. We were in full bore by 2006 getting the word out. You know, we certainly, every single year, I will never say we're doing enough—I'll always say we can do more—but we had certainly ramped up and gotten the word out, and I think that contrast of a 33 percent drop in occupational fatalities while the non-occupational fatalities were shooting up to over 150 was very instructive about the impact we were having.

In 2007, we had one fatality, not in ag—it was construction.

In 2008, I noted you said there were six agricultural deaths. Actually, by our count, it was three ag deaths due to heat. And whenever we get a report of a death that could possibly be related to heat, we initially log it as potentially heat related and we track it until we get a medical finding by the coroner. We also do a review by our own medical unit—and so by our calculation in '08 there were actually three agricultural deaths that were due to heat.

Last year, we had none. This year, we have two potential deaths, but I think the jury is still out on whether they're going to turn out to be heat related or not.

So we clearly have a downward trend and, you know, I will never be happy that we're doing enough until I see zero fatalities and zero serious injuries. I don't know if we'll ever get there but that's the goal obviously, and I think we have made a huge start. Our efforts haven't been perfect but they are

the first in the nation, and I think it's something we can all sort of say we've given it a good, honest effort to address.

SENATOR FLOREZ: Thank you. Thank you for the report.

Let's go over a few things in terms of the timeline that you mentioned. In 2005, we have emergency regs; 2006, the regs—did it become permanent?

MR. WELSH: They were made permanent, correct.

SENATOR FLOREZ: Okay, and then we had at least some expressed goals for the regulations in 2006. And then 2009, emergency amendments were proposed, and that was zero fatalities. What were the emergency amendments proposed by the Standards Board and why were they being pushed?

MR. WELSH: Well, the amendments were proposed by my agency, the Division of Occupational Safety and Health, through the Standards Board. I mean, that's the way it works for anything health. The proposal comes from DOSH.

As I mentioned to the board on the first occasion that I asked the board to adopt amendments on an emergency basis—and we tried twice that summer—as I mentioned to them, if they did nothing else, I said, you really should consider changing the provisions in the reg that apply to shade. Right now, the way the reg reads, access to shade has to be provided to employees who want take preventative—either have preventative recovery period or are feeling the effects of heat illness. And there are two problems with that language. One is that access to shade means different things to different people, and we are of the opinion that that phrase cannot be interpreted in an effective manner when the temperature is hot enough unless it's interpreted as meaning that shade has to actually be up so that workers can basically get under it any time they feel the need to do so. So we proposed...

SENATOR FLOREZ: When you say workers can be under it, is that 100 percent of the workers, 25 percent of the workers, 50 percent?

MR. WELSH: Well, the proposal is 25 percent at a time.

SENATOR FLOREZ: So some workers should be under?

MR. WELSH: Well, everybody should be able to get there when they feel the need to do it, and the question is, How much has to be actually up at one particular time so that you can assure that will be possible?

SENATOR FLOREZ: And then the hottest day, does that mean 25 percent of the workers, or what if 50 percent of the workforce says we want shade?

MR. WELSH: Well, can I—I'll get to that. I'd be happy—I just wanted to make sure I got the first concept...

SENATOR FLOREZ: Sure, go ahead.

MR. WELSH: ...across clearly. We felt that, you know—and this was controversial, the temperature trigger of 85 degrees Fahrenheit. We felt over that temperature, shade's got to actually be up, and that does enormous things if we have that requirement in place. That does enormous things to our ability to enforce and I can get into that later. So we felt that the shade actually being up was number one; and number two, related to the question you're just asking, there were two ways to get it when that requirement applied—when the employees wanted a preventative recovery period or when they felt like they were feeling the symptoms of heat illness. And that language seemed to be persistently misinterpreted as, you only get the shade when you're feeling sick. So we wanted to take that language out of there and just basically say, you get to go under the shade when you feel the need to do so.

So now your question, the 25 percent, you know, once you say the shade has to be up, the next question, you know, that naturally comes is, Well, how much shade? And getting shade up in the field and in certain settings can be a big undertaking. So what we try to do is land at a percentage which we think is enough to accommodate when, you know, employees, when they feel they need a recovery period, they can get it. When they feel they need to get out of the sun, it's going to be there for them to get out. Now if 100 percent of them say, I want to get out of the shade now, we're going to have a problem, no doubt about it. But our conclusion is that, you know, the employer knows that if the employee needs shade, they've got to have the shade. So if they get to a

situation where the employee says, I need shade and I can't get to it, they're out of compliance with the standard because, remember, the standard says, there has to be access to shade.

What we think is a starting point, at a minimum, you have 25 percent up at any one time. The employer can rotate people through; they can stagger the shifts; they can come up with procedures to make sure that everybody gets the shade they need when they want it. But the starting proposition is, we're going to call it a violation per se if we see that there isn't enough shade up at any one time to accommodate 25 percent of the employees.

SENATOR FLOREZ: Okay. So let's go through that a little slowly so I can understand the standard.

MR. WELSH: Sure.

SENATOR FLOREZ: So an employer is required to have, as part of, if you will, the equipment, the 25 percent shade, per the amount of workers. So the calculation is, if they have 100 workers, correct?

MR. WELSH: Those who are out there doing the work who are going to need to get out of the sun, yes.

SENATOR FLOREZ: Enough shade to meet at least, you know, 25 workers, correct, a 100 workers?

MR. WELSH: Yeah, like you were assuming that basically 25, at any one time, you're probably not going to have to accommodate more than 25 employees.

SENATOR FLOREZ: So that, even on the coolest day, they're supposed to have the equipment out there?

MR. WELSH: No, above 85 degrees Fahrenheit.

SENATOR FLOREZ: Above 85 degrees. So if I'm an employer, I don't have to have the equipment unless it reaches a certain 85 percent threshold first, right?

MR. WELSH: Eighty-five degrees, yes.

SENATOR FLOREZ: Degrees, right. Then I also don't have to have enough to account for 100 percent of the workforce, just 25 percent of the workforce?

MR. WELSH: Yes, as a per-se requirement, correct.

SENATOR FLOREZ: Okay. And you just told me a moment ago that, if all the employees needed shade, though, an employer would be responsible for finding that shade and that would be a violation?

MR. WELSH: Yeah, if they got into a situation where employees are saying, I wanted shade and I couldn't get it, yeah, that would be a violative situation.

SENATOR FLOREZ: Have you found a situation...

MR. WELSH: No, haven't found one. What we're finding out there, is when employers aren't complying with the shade requirements, there's no shade or there's some bushes that are four feet high and employees have to crouch under the bush to get out of the sun. That's the kind of stuff we find. When an employer is responsible enough to get the shade structure and the water coolers and all that stuff, I don't know of any situation where we had a problem with that.

SENATOR FLOREZ: Okay. I'm just wondering, I mean, just from the standard alone, we wouldn't require employers to have 25 percent of supplies for first aid, correct? I mean, you should have first aid at least available for everyone. Why would shade be a different standard?

MR. WELSH: Well, I think that kind of illustrates the point. I mean, the employer has a first-aid kit, assuming that there's only going to be so much need for that kit at any point in time. You don't have a kit for every single employee. You have a kit for what you're anticipating the need is.

SENATOR FLOREZ: But everyone is working under the same sun, correct? I mean, there's not a cooler side...

MR. WELSH: Well, they're working, right? They're there to work, right? I mean, I'm not trying to be cute. But I mean, they're there to work. They're not there to rest. They get the rest when they feel that they need the rest in

order to cool off. In a situation that is functioning properly, they're going to be taking time out from their work to get the rest or the shade only a percentage of the time—and hopefully not too much because they're not going to be able to get the work done that they want to do.

SENATOR FLOREZ: So they're there to work. They're not there to—are you making the assumption that they're there to rest? I mean, I don't understand. You are the Occupational Health and Safety, correct? So what would be—why would you begin a sentence with, well, they're there to work versus—I mean, wouldn't you err on the side of...

MR. WELSH: Because of the proposition of your question. I mean, you're saying, Why don't you have enough shade up for them so that everybody can get out of the sun?

SENATOR FLOREZ: How about, Why don't you have enough shade for them available and checkable by your agency if indeed everybody has to get out of the sun?

MR. WELSH: Well, that is a...

SENATOR FLOREZ: How hard is that? I mean, if you think about it, why wouldn't your agency...

MR. WELSH: You know, what, Senator? I would be happy to go out to one of those fields with you sometime and we could look at the situation and we can talk about how hard it would be to get enough shade up for everybody to get under it at the same time. I think you would find that that presents a significant amount of difficulty a lot of the time. And as we often do in rulemaking—and apparently you bought it in the beginning because you seem to incorporate the same language into your bill—you know, you try to sort of come up with something that is going to be feasible and doable, makes sense, and is going to address the need.

As far as we can tell, if an employer is managing the operation competently, they're going to have a situation where 25 percent of the shade there is going to be more than enough to accommodate those who feel they need it.

SENATOR FLOREZ: Okay. It looks like you and I are going to have a bit of a bantering session so I'll prepare myself correctly then. So just have you seen the latest amendments to the bill, it covers 100 percent, for your information, first and foremost. We did that and talked about that in the last committee hearing, and the reason we did that is because we see no reason that a farming operation could not have, if you will, or a contracting operation couldn't have, at least available, if needed, if you had 85 percent—85 degrees—the ability to have shade if indeed every person asked for it. What is wrong with that?

MR. WELSH: There's nothing wrong with that if..

SENATOR FLOREZ: Why didn't you guys ask for that? Why are you asking for 25 percent? If there's nothing wrong with it, as you just said, why are you asking for 25 percent?

MR. WELSH: Well, Senator, I mean, it's not up to me, first of all.

SENATOR FLOREZ: Well, you just said a moment ago that nothing was wrong with it, so why not ask for 100 percent?

MR. WELSH: Can I finish my sentence, please?

SENATOR FLOREZ: Yes, if you would answer my question first.

MR. WELSH: I'm trying to.

SENATOR FLOREZ: Go ahead.

MR. WELSH: It's not up to me. It's up to the Standards Board. I make a proposal to the Standards Board. I got slapped down twice last summer trying to get emergency amendments through. I couldn't get the votes so...

SENATOR FLOREZ: Did you ask for 100 percent?

MR. WELSH: No, I don't think I could have gotten 100 percent.

SENATOR FLOREZ: Okay.

MR. WELSH: You have to relate, to some extent, to the center. When you want to change the law, you have to work with the votes you think you have and that's the position...

SENATOR FLOREZ: Right. That's why we have a bill moving through the legislature because we get tired of your board not being able to provide for protection for farmworkers.

MR. WELSH: It's not my board.

SENATOR FLOREZ: Well, your recommendation didn't even reach the 100 percent standard, correct?

MR. WELSH: Correct.

SENATOR FLOREZ: So you didn't even shoot for that.

MR. WELSH: I'm sorry. What?

SENATOR FLOREZ: You didn't even shoot for that.

MR. WELSH: I shot for what I thought I might be able to get and that turned out to be too much.

SENATOR FLOREZ: What was that? Give me those two times you went to the board. What was it? It's 25 percent now, so what is it now? What were the two times that you went and asked? What was the number, the percentage?

MR. WELSH: On that issue, it was the same, 25 percent.

SENATOR FLOREZ: Okay. So you went once—it was 25 percent, got turned down. You went twice, you got turned down, and now the standard is still...

MR. WELSH: That's right.

SENATOR FLOREZ: So how is that—how is that—I'm trying to understand. You just said, I went to the board and got slapped down twice, and you asked for the very standard that is the same standard. You didn't ask for 50 percent, 75 percent, 100 percent. Why not?

MR. WELSH: I didn't think it was realistic to ask for that, Senator. I didn't think I'd get it.

SENATOR FLOREZ: Can you tell me why it's not realistic? Because you made that decision. This is an oversight hearing...

MR. WELSH: Because I think...

SENATOR FLOREZ: ...some of your thinking.

MR. WELSH: I'm trying. I'm happy to give you my thinking. Basically, my thinking is that many of the stakeholders get up at these meetings and they say why or why not something makes sense, and a lot of stakeholders would say that's too much and more than is needed and that there's a cost and there's a feasibility issue and the Standards Board listens to that, and I have to work with what they listen to.

SENATOR FLOREZ: What about the other stakeholders? What do they say, the ones that say there isn't a cost or it's a minimal cost or it's a cost that should be borne from safety?

MR. WELSH: That has been said. I mean, you know, there are stakeholders all over the map on this issue.

SENATOR FLOREZ: Okay. So in this case, the stakeholders that we listen to are the folks that say it costs too much money?

MR. WELSH: We listen to?

SENATOR FLOREZ: Yes, the board.

MR. WELSH: Well, the board is not we. The board is the board. That's, you know, again, I'm making a calculation here of what I think I can get votes on.

SENATOR FLOREZ: How do you know the board would turn you down if you don't ask for 100 percent?

MR. WELSH: Well, I couldn't even get an 85 degree trigger for any shade at all, okay? So that would be one indication.

SENATOR FLOREZ: Okay. So you couldn't get a trigger at 85 degrees.

MR. WELSH: In other words, that means the status quo, Senator, is no shade. If you literally read the standard, there's nothing in there that says shade has to be up. So the status quo is—I mean, we're saying it. We're saying above 85 degrees, the shade's got to be up.

SENATOR FLOREZ: So when the governor had the press conference with United Farmworkers saying we're going to have rest, shade, and so really there was no shade; we were just making that up that day?

MR. WELSH: No. We were saying access to shade. But the question is, How do you provide access to shade? And that language, which I think you were happy with it at the time, as was I, because it was start. I mean, you know, we're trying to get our foot in the door.

SENATOR FLOREZ: Right, but we're five years later now. I mean, this is not the year after, the year after, the year after. It's five years later. So the question most of us have is, Why wouldn't we have a standard that would be higher than the very beginning standard we started with in 2005?

MR. WELSH: Well, I think it's an improvement. I don't think it's, you know, perfect, but I think it's an improvement and I think you have to go in steps that are viewed as realistic by, you know, the stakeholders.

SENATOR FLOREZ: Okay, and the stakeholders you listen to again are the people that provide the shade?

MR. WELSH: The stakeholders I listen to? I listen to all the stakeholders.

SENATOR FLOREZ: Well, you keep saying, you have to provide a recommendation to what you believe the stakeholders believe are realistic. There's probably folks on the other side that believe that the 100 percent shade is an achievable standard, correct?

MR. WELSH: No, not correct.

SENATOR FLOREZ: The other stakeholders don't believe that the 100 percent shade is achievable?

MR. WELSH: I should say—you asked me three different questions, so why don't you ask me again the question you want answered and I'll do my best?

SENATOR FLOREZ: Which stakeholders do you listen to?

MR. WELSH: I listen to all of them.

SENATOR FLOREZ: Okay. And what gave you the impression that 100 percent shade for workers is not achievable? What gave you that particular impression? You're talking to what stakeholders?

MR. WELSH: You know, I think that anything is achievable, Senator, as to the question to how much trouble you have to go to do it and what whether you're going to get support for it.

SENATOR FLOREZ: You told me to ask you a question and you didn't answer it.

MR. WELSH: Well, I can't answer it the way you asked it.

SENATOR FLOREZ: Which stakeholders are you listening to that say that 100 percent shade is non-achievable? Which stakeholders?

MR. WELSH: First of all, I think it is achievable, okay? So it's not that it's not achievable. It's achievable. The question is whether it makes sense to make that requirement. And the more you require, the more achievability becomes an issue, okay? So I think it's fair to say, that if you talked to the agricultural industry, the ones who actually have to provide the shade, they will surface some issues for you that go to that, and I think you'll have one here later. You can ask him.

SENATOR FLOREZ: And are those the stakeholders you're referring to, that they're saying it's not feasible, achievable, or realistic, words you used?

MR. WELSH: I think in some cases—again, you know, you have to look at the situation. Let's say you have a crew of five people. You get a popup from Home Depot and you're going to be fine. If you've got a crew of 20 people, a couple of popups, you're going to be fine and that, you know, probably is going to—that's what employers will do. When you start having, like 50, 100, 150, that's when feasibility issues start to come to the fore. And so I think it depends, to some extent, on the situation.

SENATOR FLOREZ: What's wrong with having the equipment? I mean, is it the fact that it can't be put out in the fields or is it just too costly to have on a ratio per worker? You just mentioned five, ten. If it's 50, it starts becoming unachievable. I mean, is that based on the amount of workers, or is it based on the cost or the inability to store the equipment?

MR. WELSH: The amount of workers, the amount of space, conditions of the work.

SENATOR FLOREZ: Have you evaluated how hard it is to have popups for a crew of 100? Have you done that evaluation?

MR. WELSH: Yeah. I mean, well, not as a formal study but certainly that kind of discussion—actually, I have to tell you, Senator, that that issue has not been discussed very much in the stakeholder meetings we have. That has not been brought up as a central issue. It has come up, but there's been far more controversy over the trigger, over other issues like pay and things that like. That has not been one that has drawn a tremendous amount of commentary. But, you know, it's certainly fair game for discussion. I don't—you know, I'm not trying to say that's not a legitimate issue to talk about. I mean, we, you know, hadn't—we came up with a number and it's perfectly legitimate to talk about what that number means, but it has not been the major focus of our discussions. With all stakeholders present, there have been other issues that have really come to the fore.

SENATOR FLOREZ: Okay. We'll get to the other issues. But I'm trying to understand what you believe is unfeasible or they, the other folks, the other stakeholders, believe aren't feasible. And why wouldn't you explore that more because shade is one of the more central aspects of the three elements that the governor announced in 2005—you know, rest periods, water, and shade. I remember it very clearly. And I'm just wondering why Cal/OSHA wouldn't require contractors in most cases, or farmers in some cases, to have enough equipment to accommodate what they believe is the average size of working crews that they have based on either acreage or yield. I mean, they must have some equipment put away, ready for these things. I mean, I see in many cases, you know, farmers and contractors carrying a lot of equipment out to the field. I assume they're carrying Igloos out to the field to accommodate for enough workers to have so much water. So why wouldn't we require them to have the requisite shade available, if you will?

MR. WELSH: Well, I think basically it is. I mean, Senator, I have to say I haven't seen that come up as an issue in enforcement. I have not seen—you know, we've done an awful lot of inspections and that's not an issue. For

whatever reason, that doesn't seem to be an issue that comes up. And because it hasn't come up as an issue...

SENATOR FLOREZ: I know. But the point is, is that why are we going to wait for some deaths to occur to make it an issue? I mean, why are we going to wait for, you know the hottest day of the year out on Bell Pepper Road near Arvin to recognize, that if we only had enough shade for all of the workers, maybe some of this would have been prevented? I mean, are we waiting for, you know, a knee-jerk reaction of government to rush in and have a press conference announcing heat regs when we should have been working on them years before? I mean, the goal of the hearing is to try to point out issues that maybe may have not been discussed but in many cases make a lot of sense—having equipment, safety equipment, available, having it readily available, having it ready to go, will center on a standard? So if you're telling contractors and farmers that 25 percent of the standard, my guess is, they're just going to buy 25 percent.

If you're telling them that you should have some sense of an average of how many workers for that particular crop or the contractors have a certain ratio, then they'll bring the equipment to the field if they're required to. But if you're starting at a very low number, I'm just kind of wondering how we ever provide shade for a larger amount of folks if indeed it becomes one of those very hot heat waves, which we could have this year or we could have next year.

MR. WELSH: Well, if you think that's an issue, Senator, I think we should study it. What we have seen so far is that that's not an issue and not likely to become one. It has not been an issue in any of the fatalities that we've investigated, and we're not just waiting for more fatalities. We've thrown just about every resource we have at enforcement. In fact, I would like at some point for the folks here and for you to see some of the other ways we're going about this issue. It's not just little bitty words on a piece of paper that protects workers. It's an entire effort. And I think, you know, your theory that it should be 100 percent shade—and you're not the first one to raise it. I've thought

about it myself, but it does not seem to be a major issue at this point. The much more major issue seems to be them putting the shade up at all.

You know, there's a difference. I mean, you mentioned two other analogies. One is the emergency kits and the water. And we do say there has to be enough water there for everybody to drink because, you know, you've got to have the water, just like you have to have the shade. But not everybody in most cases is going to want the shade at the same time. And resources are an issue. You know, you can say, well, you know, workers' safety comes first and we're just going to have to think about resources. We just take care of the workers. You know, I believe that, but reality requires that we look at the whole situation and how do we actually achieve what sounds good on paper? And I believe, that if we have 25 percent, you know, structure up there at any one time, that is far better than what we have now. It's not perfect, but I think even you can see we have to move in what we all believe are realistic increments. We may differ on what, you know, is possible at any one time, in terms of how far we can go. But I think this whole effort from the very beginning has been one where we sort of try to figure out what, you know, what makes sense as a step forward right now. We made a lot of compromises back in 2005; 2006; there are compromises in this proposal. You've got a different approach now with your legislation and maybe that'll win the day. I'm not saying it's necessarily a bad approach.

SENATOR FLOREZ: And I guess that we would appreciate you studying that because I think it would make a lot of sense to see if indeed it is cost prohibited for contractors or farmers to have enough shade necessary if indeed you had two or three days of—you have very hot weather and workers want to all sit under the shade. I mean, it just seems to make sense. I mean, in your regs, every time we've talked about this, which we'll get to in a moment, you know, a worker has to request it, which is an issue in itself. But let's say all the workers say it's very, very hot out here; we're not going to sit under vines; we'd like to all sit under this tent; and the contractor says it's a mandatory break period because it really is, at that point in time, that hot. I'm just not

sure how you, as OSHA, supports something that says 25 percent of the workers got to sit under the tent and 75 percent didn't. I just don't know how you—I don't know how you explain that to people.

MR. WELSH: You know, that analogy sounds very—or that scenario, that posit sounds compelling, but it just hasn't been the case. I mean, supervisors know how many folks they've got out there. They're thinking, well, you know I've got to get some out of the sun. They'll stagger it. I mean, that's the kind of stuff you do when you manage. Figure out who needs what and when they need it, and you arrange it that way, same as the emergency kits. You don't have, you know, 15 emergency kits there in case somebody gets hurt. You have one or two because that's, you know, what you expect to be the maximum, plausible situation.

SENATOR FLOREZ: But everyone's under the same heat. There isn't a section of the field that's cooler than the next, particularly when you're out somewhere near Arvin or Lamont. I'm just wondering, what would be—I mean, do you not see the fact that—you say we haven't seen it. It doesn't mean much because you...

MR. WELSH: Well, it does Senator, because we see people not having shade up at all. I mean, we spend our time roving the highways looking for shade not being up. And when you find those people, we shut them down.

SENATOR FLOREZ: Yeah, but we're not talking about shade that they have to put up when they don't need it. I mean, you have your trigger at 85 degrees.

MR. WELSH: Well, you are. That's the point. If you have enough shade up for 100 percent of the employers, that means most of the time it's going to be sitting there unoccupied.

SENATOR FLOREZ: And what would be wrong with that?

MR. WELSH: Nothing. But that just, you know, just so we're clear on what the—you know, everybody's sort of looking at some scenario here, imagining what it's going to be like out there.

SENATOR FLOREZ: But I'm not asking contractors or farmers to go out and build permanent park space with seating that's part of in the field. We're talking about popups. We're talking about things that can be transported, correct?

MR. WELSH: Sure.

SENATOR FLOREZ: And so what would be wrong with asking them to do that? Could they not afford that?

MR. WELSH: Nothing wrong with asking them to do that. We're talking about...

SENATOR FLOREZ: I mean, this is not a permanent structure. I mean, this is something that they would simply carry out to the fields. I'm at a loss of why—what would be unaffordable about popups? I am.

MR. WELSH: Well, have you looked into it much?

SENATOR FLOREZ: I have looked into how much popups are, I can't that farming couldn't provide enough popups to, you know, be prepared for a 100-person crew. If poor swim teams can do that, I'm sure...

MR. WELSH: Well, you just said it right there, Senator, enough to be prepared. They have to be prepared for the need, okay?

SENATOR FLOREZ: And you have to set a standard so that they meet and are prepared.

MR. WELSH: They still have to have—they have to have enough for 100 percent of the...

SENATOR FLOREZ: Twenty...

MR. WELSH: Wait. Let me finish my sentence, please.

SENATOR FLOREZ: Sure. Go ahead.

MR. WELSH: They have to have enough shade for everybody who wants it. If 100 people raise their hand and say I want shade, they have to have the capability to put it up. It's just how much has to be up at any particular time. Please don't lose sight of that.

SENATOR FLOREZ: I'm not. What I'm asking is, Will they have the equipment to do that? If your standard is 25 percent, why would they have enough for everyone?

MR. WELSH: If they don't, they may be out of compliance. If they have a situation where people want the shade and they don't have enough to accommodate, they may be out of compliance.

SENATOR FLOREZ: And how are we going to make sure that we're going to find all of those folks? Are you telling me—we'll go over your staff in a moment.

MR. WELSH: That's the situation we have now.

SENATOR FLOREZ: I mean, if we can go over how well staffed you are on a ratio basis so let's do that.

MR. WELSH: Please do.

SENATOR FLOREZ: Let's move there.

MR. WELSH: Let's talk about staffing.

SENATOR FLOREZ: Tell me about your ratio—600,000 farmworkers in California. So tell me how many folks you have out in the field. I'm going to use that 600,000 farmworkers as a ratio. So tell me how many inspectors you have...

MR. WELSH: I'll tell you how many inspectors we have. But that last discussion, I just want to leave it with, right now, as we speak, there is no requirement for shade to be up in that reg. So it's always about, when we go out there, and there's no shade up, well, do you have the ability, Mr. Employer, to put the shade up if employees want it? And that's what will lead to a citation if they don't. So I just want to be clear on that. Now to answer your question about staffing...

SENATOR FLOREZ: What if they say they have 25 percent available?

MR. WELSH: Then we have to ask the employees if they've ever wanted shade and not gotten it. If the employer does actually put it up when they ask for it, which is usually the problem, you know—it's like, Are you going to ask for it in the first place and do you get it when you ask?

SENATOR FLOREZ: You have to require it, though, is my guess, right?

MR. WELSH: I'm sorry?

SENATOR FLOREZ: You should require it as Cal/OSHA?

MR. WELSH: Yes, we do require it.

SENATOR FLOREZ: You require the equipment, 25 percent?

MR. WELSH: No. We require 100 percent. You know, anybody who wants shade is supposed to get it. That's what the reg says. That's why you supported it when we adopted it.

SENATOR FLOREZ: And how many—but if you don't have the equipment to do that, how do you—I mean, it's nice to say it. I mean, everyone that wants shade should get it. How do you get...

MR. WELSH: I mean, we could do that. We could say the employers shall have enough equipment to do that.

SENATOR FLOREZ: Yeah, that would be great.

MR. WELSH: But right now we say the employer has to provide it, and that seemed like it was okay back in 2005. You know, if we're going to talk now in 2010...

SENATOR FLOREZ: Things have changed since 2005.

MR. WELSH: What has changed about that issue—it was the same issue back in 2005. There was nothing different.

SENATOR FLOREZ: Well, let me tell you what's changed. A lot has changed. There's been deaths.

MR. WELSH: I'm sorry?

SENATOR FLOREZ: There's been deaths.

MR. WELSH: What's changed about that issue? There were 12 deaths in 2005, the worse we've ever had. What was different then than now?

SENATOR FLOREZ: What is different? A different standard. We're seeking a different standard.

MR. WELSH: Yes, but why...

SENATOR FLOREZ: A standard that we believe—and quite frankly, I don't remember you on any of the calls when we negotiated this, so let me give

you a refresher course on what we negotiated because of Mr. Prosio, myself, the Governor's Office when we sat and discussed this on what shade should be. I'll tell you what. Some of the standards that some of the folks sitting behind you wanted, they thought tree-leaves shade was minimal sunlight, you know going through these particular—we wanted blocked shade. This is what we were negotiating for, blocked shade, shade that was actually real shade.

MR. WELSH: You wanted real shade?

SENATOR FLOREZ: Yeah, it's kind of like a tent, the things we're having a discussion about right now.

MR. WELSH: Not trees? Trees are no good?

SENATOR FLOREZ: Trees are no good. Are you telling me OSHA's standards, trees are good?

MR. WELSH: Senator...

SENATOR FLOREZ: That would worry me.

MR. WELSH: My folks have measure shade under trees versus shade under structures, and the shade trees provide, if it's real shade, is actually much better. It's cooler.

SENATOR FLOREZ: Interesting. So we're still at a standard.

MR. WELSH: And you talk to any worker, Senator—you talk to any worker who has a choice of shade under a tree, real shade. I'm not talking about, you know, you have a few leaves here and the sun shining. I'm talking about real shade under a tree. You talk to any worker who's been out there and gotten their choice. They're going to take the shade under the tree because it's a lot cooler.

SENATOR FLOREZ: Gotcha.

MR. WELSH: It is.

SENATOR FLOREZ: I have talked to a lot of workers. Most of those people are in my family.

MR. WELSH: I've actually been out there and tried it myself.

SENATOR FLOREZ: So have I. I've actually worked in fields. Have you?

MR. WELSH: Yes, I have, actually, as a kid, I did.

SENATOR FLOREZ: Yeah. Well, I can tell you, that if you make a preference between having an employer choose to have no shade and somehow trees are better shade standards than tents, that would amaze me.

So are you saying that trees are okay under your standard?

MR. WELSH: Absolutely, Senator.

SENATOR FLOREZ: That's why we have legislation...

MR. WELSH: It's in the language in your bill. Your bill accepts that language.

SENATOR FLOREZ: Then you need to look at our amendments because our amendments...

MR. WELSH: Your amendments don't change that.

SENATOR FLOREZ: If they don't, they certainly will. If there's some way for you to look that...

MR. WELSH: I am never going to recommend that natural shade not be an option.

SENATOR FLOREZ: Then why are you bringing it up then as a positive?

MR. WELSH: You...

SENATOR FLOREZ: You did. You just said, have you ever looked at it? Sometimes things under trees are better than tents. I'm sorry. That's what you said. I didn't say that.

MR. WELSH: Yeah, I said it but I said it in response to a question of yours. You seem to think natural shade is not acceptable and I disagree.

SENATOR FLOREZ: Thank you. I'm glad it's on the record because we'll have something to work on. Let's go back to your...

MR. WELSH: Been on the record for three years at least in our discussions. We had a whole discussion about this issue, and that actually led to a change in the shade language in the reg.

SENATOR FLOREZ: Yes, we did.

MR. WELSH: No, I mean, in our discussions in the last two years.

SENATOR FLOREZ: We'll continue to ask and push until this regulation is set to a point where, if you will, the elected officials in the state of California feel it's a good standard. Is that fair?

MR. WELSH: Sure.

SENATOR FLOREZ: Great. Let's talk about your enforcements. We have 600,000 farmworkers. Do you believe you have sufficient resources at this point in time?

MR. WELSH: I would like more. We had put forth three BCPs this season. We're one of the few agencies who've got them approved for more staff. One of those is for a new unit that would be centered in Bakersfield that would be to address agricultural and construction work situations in general throughout the state, among others. But I would still love to have more staff.

SENATOR FLOREZ: Okay. And what was your staffing level in 2005?

MR. WELSH: You mean, like the number of inspectors we had?

SENATOR FLOREZ: Yeah.

MR. WELSH: I'd say we had about, between 200 and 230, in that range.

SENATOR FLOREZ: Okay. And how many do you have today?

MR. WELSH: About the same amount.

SENATOR FLOREZ: All right. So how is that progress?

MR. WELSH: It's actually about maybe ten more from EEEEC.

SENATOR FLOREZ: Ten more.

MR. WELSH: We actually added ten positions, 11 positions, with the EEEEC program.

SENATOR FLOREZ: So from 2005 to 2010, we've added about two inspectors per year, correct?

MR. WELSH: If you want to look at it that way, sure.

SENATOR FLOREZ: There's no other way to look at it. It's two inspectors per year.

MR. WELSH: Well, we didn't do it two per year. We had one BCP for ten new positions, 11.

SENATOR FLOREZ: Okay. So we've gone—ten, roughly ten more folks in five years. And you've just mentioned all the enforcement inspections, things that need to take place. Does that seem like progress to you in terms of the actual enforcement progress?

MR. WELSH: I think we've made a lot of progress, yes.

SENATOR FLOREZ: No. I'm asking you specifically on the staffing, ten folks in five years for new regs that we've never had before. Does that seem like progress? Does that seem like something...

MR. WELSH: Better than no new positions. I mean, I did the best I could. We all did the best we could. There seems to be a budget crisis in the state now. I think that might have a little to do with it.

I will tell you one thing. I was very concerned about losing money because of pressure on the General Fund. So one thing we did at DIR was to try to get Cal/OSHA and DLSC off of General Fund and onto the workers' comp premium assessment that funds the division of Workers' Compensation, so I feel pretty good that we managed to preserve the positions we have and didn't lose any, frankly.

SENATOR FLOREZ: Okay. So do the positions that you have equate to the frequency of inspections that you have out in the fields, in other words, the frequency of inspections to worksites, to agricultural worksites particularly? I mean, does that equate—I mean, this is how you do this, right? So we have new heat regs, are in place; we have ten more people than we did before the heat regs were in place, so we have an additional ten more folks to do all of this new work, and I'm just kind of wondering how the work gets done. How do the inspections get done?

MR. WELSH: So your question is, How do we do inspections since we have a new heat reg and we don't have more than ten new, 11 new, staff to do it?

SENATOR FLOREZ: Yeah.

MR. WELSH: Is that the question?

SENATOR FLOREZ: Yeah, that's the question.

MR. WELSH: Well, it's a good question. Obviously we made heat inspections a priority. We did more heat inspections every year since 2005. But you should keep in mind that, you know, heat is not the only thing we look for when we do an inspection. We do any outdoor inspection. We add heat to the list of other things we look at, but we actually did try to do more inspections in agriculture on this issue because we wanted to, you know, for one thing, collect some data and see if we're actually going to change the behavior of employers. But we have to prioritize. I mean, when you have a limited number of staff and you have all kinds of workers you have to protect—I mean, we're not just talking ag workers; we're talking petroleum services workers; we're talking pizza delivery people. I mean, every worker in the state, we have an obligation to protect the health and safety of so we have to prioritize. And generally, what we try to do is, we try to go after the most hazardous places of employment first.

Now we sort of made a judgment in 2005 without data really to support it, but we made a judgment because we thought it was likely to be true that exposure to heat is a high-hazard concern and very likely ag work in the summer months is kind of per se going to qualify as high-hazard work because, you know, because heat can kill and we had fatalities. So we made it a high priority. And if that means a complaint about something that didn't seem so serious, didn't get responded to as quickly as it might have otherwise, that's what would happen. You have a finite force of inspectors and you have to do the work that you have to do.

SENATOR FLOREZ: Right. Given the increase of ten, what type of heat inspections are you planning for this year? In other words, is there going to be more as compared to prior years? Is this going to be—I mean, what's it look like for this particular growing season?

MR. WELSH: Well, so far, we've been given a high priority. We try to target heat waves as much as we can. We started out three years ago with a new enforcement policy which was—and this is why the shade structure is being up became so important in my mind—of shutting down employers who

have obvious violations, like no shade, no water, no training, no emergency preparedness. So we actually started issuing what we call an order prohibiting use—shutting down employers’ operations. One of the first cases, we did that with was the infamous Merced case, so we’re doing that. This summer, we’ve already shut down, I think, about six employers. We shut down one this morning and...

SENATOR FLOREZ: When you say *employers*, what does that mean? You mean contractors?

MR. WELSH: Most of the employers who see our inspection activity are farm labor contractors, but they can be farm operators and there can be others obviously.

SENATOR FLOREZ: So when you close something down, you’re not closing the actual, in many cases, operation. If someone’s picking grapes, for example, and you’re shutting down an operation, you’re not shutting down the actual field; you’re shutting down the workers or the crew?

MR. WELSH: Our jurisdiction is over the employer. So if the employer who was violating the reg was a farm labor contractor, we shut that employer down. Now that doesn’t stop the farmer from contracting with somebody else, for example. The idea, though, is that when they do, they’re going to contract with somebody who’s going to follow the law.

SENATOR FLOREZ: Yeah. When you go back from season to season and the folks that you are shutting down, is there a, if you will, is there some sort of a citation or violation of record that might lead you to, you know, a particular farmer or particular employer that’s hiring contractors? So if one contractor gets fired because they didn’t meet your standards, I mean, does it then, the next season, is that some sort of signal that you would go out to make sure that the people who are hiring the next contractor aren’t simply hiring the same type of folks? How do you find out where you’re going? Are these announced inspections, unannounced inspections? It’s a big agricultural state.

MR. WELSH: Most of what we do, Senator—it's a good question. You know, we have a huge state to cover, as you know, and mostly what we do is the sweep approach. We try to cover as much territory as we can and look for obvious signs of noncompliance. If, after doing that for a certain length of time in the day we're not finding it, then we'll open a few inspections and dig a little bit deeper. But generally speaking, if we get good intelligence beforehand about where we think activity is occurring—a big part of this is penetrating. We've had this sort of embarrassing thing come up from time to time where we sent people out on a sweep. And if they cite a guy—oh yeah, there was somebody else from a sweep here two weeks ago—you know, you don't want to fine the same person every time. You want to penetrate into where the activity's happening and you want to find out what's really going on. So we spend a fair amount of time developing intelligence. We spend a fair amount of time tracking what the agricultural rhythms are, you know, when they're doing the grape harvest, for example, when they're doing the pruning, and we try to hit the areas where that activity is occurring, you know, in the most concentrated form, and in particular, during high heat.

SENATOR FLOREZ: How many, as compared to prior years, inspections are you expecting again? That was my question.

MR. WELSH: For this summer?

SENATOR FLOREZ: Yeah.

MR. WELSH: It might be a little less this summer. I'm not sure yet. It might be the same amount as last...

SENATOR FLOREZ: It's depending on the heat, of course, right? The heat waves?

MR. WELSH: Yeah, the number of heat waves will affect it. If we have a milder summer, that'll mean fewer inspections. Also—what did I want to say? We have a different approach this summer. You know, I mentioned EEEEC, the Economic Enforcement Employment Coalition, which is sort of a—it's a multi-agency thing. But they have—they seem to do the best inspections, so we're having them lead the effort this summer in heat. We've worked with them in

prior years. We're trying to give them full responsibility this summer, and so we're using them because one thing we're finding is an increasing number of places that appear to be in compliance. They've got the shade up; they've got the water; the employees are trained. They know how to do emergency response. So far, we've developed like 82 percent in compliance, so the number of employers in compliance has gone up rather dramatically since 2006. And at a certain point, we're going to want to back out of that. We're going to want to turn the heat inspection function over to a unit dedicated to that function, and we're going to want to use the inspection process to essentially verify that employers are in comply—you know if we can sort of substantiate a high rate of being in compliance, we're going to want to use that unit to essentially make sure it stays that way.

SENATOR FLOREZ: And do you believe it's the EEEEC...

MR. WELSH: EEEEC, yeah.

SENATOR FLOREZ: EEEEC, is that—why was it created?

MR. WELSH: Well, it basically was a tool to go after the underground economy...

SENATOR FLOREZ: Okay.

MR. WELSH: ...and, you know, the employers who don't comply with the heat standard, a lot of them, sort of, are in that.

SENATOR FLOREZ: Okay. And tell me why you think it's an effective model.

MR. WELSH: Because, when those inspections are done, information is shared among the agencies more effectively because we've worked together as a team, and some of the people involved seemed to, you know, just by chance, I mean, some of them have just gotten very good at the intelligence. That's a skill you develop over several years' time.

SENATOR FLOREZ: Right. Let me ask you about—we're talking about—it's been mentioned earlier—the enforcement aspect of what you're doing. And the budget you've mentioned and the additional ten, since we put the heat regs in...

MR. WELSH: Eleven.

SENATOR FLOREZ: Eleven. One of the things I hear most frequently from the farmers in my area is that, you know, we really don't need any more regulation; we really don't need any more laws. What we really need is just enforcement of the laws that we have. It's kind of a mantra that, you know, it's really about enforcement. And if we only enforced—and of course, you're the enforcement agency for a lot of what we're doing—and I guess the reason I'm concerned, and it is a function of budget and it is a whole other issue when it comes to how much you put forward in terms of the task ?? to the Department of Finance or what not. But there was an LAO report, I think, a year after we did the heat regs, and it pointed to the fact that we have, at least in terms of inspectors, one of the lower ratios as compared to Oregon, Washington, Nevada.

What is that ratio again? I think I mentioned it earlier.

MR. WELSH: You know, Senator, I don't know what the current figure is but it's somewhere in the neighborhood of one inspector per 70,000—700—I'm sorry. What's the denominator?—70,000, I think workers. It's about the same as federal OSHAs and, true, the state of Oregon and the state of Washington have a much higher ratio of inspectors to workers. That's definitely true. However, if you look at the injury and illness rates, they don't—we're fairly competitive.

SENATOR FLOREZ: Okay. In terms of the actual farms, it mentioned, you know, 600,000 farmworkers, about 35,000 farms in California. I mean, what is the unit, even as you mentioned, trends moving from this EEEEC to a unit that is focused on this particular segment, the 35,000 farms, 600,000 farmworkers, how many folks need to be in that unit, given these types of inspections that you've seen out there, roughly? What would that ratio need to look like going forward in the future, in a good budget year? What would that look like?

MR. WELSH: In a good budget year, that seems so far away right now. But anyway, I can't say right now what I think the numbers should ultimately

be. I think it should be a data-driven thing. But if we are really getting a compliance rate of like 82 percent, 85, close to 90, that in my mind, as we start backing down the numbers of inspectors and moving them out to other places where employers are nowhere near that rate of compliance—and once you achieve that rate of compliance and you also achieve the effect of, you know, the world is watching—I mean, employers don't know whether an inspector is going to pop up some day. So if they have the impression that eyes are everywhere and they have the impression that workers know what their rights are and they're going to make a phone call if things aren't right, then you can get a lot of leverage on one inspector.

On the other hand, if you're trying for the first time to get that message across, you need more. So to me, getting this unit represents is, we have achieved a certain state of compliance. I don't think it's where we want to end up, but it does to me say that we've had a fair amount of success and this is all of us, including you. I mean, for all its flaws, that reg has been enough for us to go out and crack the whip and we've shut people down and we're getting compliance. So we want to get to a point where we actually—and I think this is a first in OSHA; you don't see too many situations where an OSHA regulatory agency sets a new standard and then actually goes out and figures out what percentage of folks are in compliance in that industry through a sweep approach and we've done that. I'm not saying that data collection is perfect, but we've done the best we can and we've seen a tremendous increase in compliance since '06. What I want to do is get to that state, do whatever it takes to get to that state, you know, approaching 90 percent, and then back off judiciously, taking inspectors out of there to go to other areas that are more high hazard. And as long as we can maintain that steady state and, you know, be verifying through data collection that employers actually are in compliance, then we have a success.

Senator, I want to just say this—and I think you're going to agree with me on this—the issue for us, the issue for effective government and all this work, has to be, Do we really change behavior? You know, do we talk about it,

do we throw the book at people who violate? That's all important, but in the end what we want to see is people not dying, people not getting sick, and behavior actually changing on the part of employers. And if we can actually say we did that, we've accomplished something.

SENATOR FLOREZ: And I think the question there is, How do we change behavior?

MR. WELSH: Sure.

SENATOR FLOREZ: And whether or not, you know—I will tell you, I think the governor shutting down some of these operations was a very good, strong signal, an appropriate signal, a very appropriate signal. Whether he did enough of them, whether it has everyone, whether or not these contractors are listening and understand it, clearly we're in a better situation with the shutting down of some of them because, to do nothing, I think, is again just a paper regulation that no one takes quite seriously. Whether you have the staffing in order to do the work necessary with 35,000 farms and 600,000 farmworkers is another matter. That is well beyond your pay grade and probably mine, as the governor and the legislature begin to negotiate, you know, what the numbers should be. But I will tell you that your receiving some additional money in the last year for the outreach, the \$135 million or something of that sort...

MR. WELSH: It was \$1.5 million for this.

SENATOR FLOREZ: One point five—and these are the kinds of things that I think take us forward, and I do think that there was one bright, very small, bright note, but we do need to give you more enforcement money, period, and there's just no doubt about if you have more people, the better the situation will look out there.

I want to talk about the violations for a moment, beyond what the governor—when a violation is found, I mean, how are the penalty amounts ultimately determined? I mean, how do we—is there a certain weight? You don't have shade; you don't have water. What's the violation ultimately and how is that penalty actually assessed and the amount determined?

MR. WELSH: All right. Well, the first thing we have to do when we find a violation is classify it. And if you've been reading the Cal/OSHA news lately, you know that's a big controversy here in the state.

SENATOR FLOREZ: Sure, right.

MR. WELSH: So we have to classify the violation and the big money, of course, is in violations. They classify it, get classified, as serious.

A general violation has a maximum penalty of \$7,000, and usually an average penalty is much lower than that. The maximum for a serious is \$25,000. So the first thing we do is classify the violation and the Labor Code says, if there is a substantial probability that serious, physical harm could result from the violation, then it deserves a serious classification unless the employer can show that it could not, did not know or could not know, of the exercise of reasonable diligence of the violation. So if we determine we think we have a serious violation, we classify it as that, and then the penalty formulas then will dictate what the penalty is going to be.

SENATOR FLOREZ: Okay. The fines are actually then collected by the department?

MR. WELSH: Yes.

SENATOR FLOREZ: And the adjudication process is through the department?

MR. WELSH: The root of appeal is to the Occupational Safety and Health Appeals Board.

SENATOR FLOREZ: Okay.

MR. WELSH: A three-member board of members appointed by the governor. The first level of appeal is to an ALJ, an administrative law judge. Those decisions are not precedential, according to the board. But if an ALJ issues a decision that either party doesn't like, that can be appealed to the board sitting as a whole. And if they issue a decision that a party doesn't like, then the offended party takes a writ to the superior court and on up to the appellate courts or the Supreme Court.

SENATOR FLOREZ: Okay. What percentage, at least in these farm violations that we've seen, or you may have classified as serious or willful purpose?

MR. WELSH: Well, let me just back up for a second. Serious basically is a violation where there's some degree of what you might call fault. A willful violation in state law is either something that was done while the employer was fully aware of the violation and just didn't do it or—and here's the rub that's a little bit interesting—it's the employer appreciated the hazard but didn't take reasonable action to address the hazard. That's the other prong of willful.

Usually we cite *serious*. *Willful* is a rare classification. We do cite them occasionally. But if we see something seriously wrong, usually that's going to be a serious violation. So if it's a shade violation, for example, a water violation, a training violation, emergency preparedness, and the temperature is hot, that's going to be serious.

SENATOR FLOREZ: Okay. If I'm a contractor that's actually in the category of having been shut down by you folks and the next growing season is now upon us, what am I to do as the contractor? Do I still have a business, or can I get back into the game?

MR. WELSH: We don't let them come back up into operation until they show us that they're in full compliance with the heat standard. They're still going to get their citations. They get, you know, the shutdown is in addition to getting a citation. Often they, usually they, appeal the citation and that can take two or three years to resolve finally. But, yes, to answer your question, yes, they can still operate.

SENATOR FLOREZ: Okay. Are any of the companies that have actually been shut down by the governor or your folks...

MR. WELSH: It's by us, actually.

SENATOR FLOREZ: ...by you...

MR. WELSH: By Cal/OSHA.

SENATOR FLOREZ: ...are they now—any of those operating today?

MR. WELSH: Yes.

SENATOR FLOREZ: They are? So is it a year in the penalty box then or it is it...

MR. WELSH: Well, they have...

SENATOR FLOREZ: How do they show you that we get it now and we're ready to go back out into the...

MR. WELSH: One of the conditions of them coming back into operation, in addition to showing to us that they've, you know, gotten their act together in terms of being able to provide the water and the shade and they've done the training, they have the emergency preparedness procedures, they have to give us a schedule of what their operations are going to be for the next several weeks, and we go back and we spot check them.

SENATOR FLOREZ: Okay.

MR. WELSH: But other than that, then they have the citations on their record for three years or actually for, right now, the way it works is three years until it's finally resolved. And if they get cited again within a three-year period, that can either be a repeat or it can be a willful.

SENATOR FLOREZ: And if they're cited again, at what point do they move into the, that you shouldn't be operating at all? Let's say it's one year—the next year they do it again—then that would probably put them in *willful*?

MR. WELSH: Well, if they operate under a license, for example, if they're a farm labor contractor, their license can be either taken away or not renewed. If they're not licensed, there's no way to take them out of business that I know of.

SENATOR FLOREZ: Let me ask a few. The folks you have, are they bilingual? I mean, when you're out in the fields, and most of the contractors probably themselves are bilingual, so what's the interaction? I mean, do your inspectors interact with workers or are the interacting with the contractor? How does it work?

MR. WELSH: Our sweeps are done exclusively by inspectors who have the capability of speaking Spanish anyway to workers. There are plenty of other languages out there that we run into problems with, but we have Spanish

speakers routinely on our staff and we do—it is part of the inspection procedure to interview the workers. Actually, to my chagrin—I mean, this has been actually an issue for us—but they often forget to get the admissions. We're trying to get the admissions from the supervisory folks, but they do make a point of interviewing the workers. If the worker convincingly says X or Y happened, then we'll basically base the citation on that. That gets us in trouble later on, on appeal, because often they disappear when it's time to prove up the citation and their hearsay statement will not support a citation by itself. But if they say it happened and they appear credible, then there's going to be a citation based on that statement.

SENATOR FLOREZ: Okay. And you mentioned the additional person in this new regimen moving forward in Bakersfield and OSHA doesn't have an office...

MR. WELSH: It's an additional unit.

SENATOR FLOREZ: Unit. Now it doesn't have an office in Kern, Tulare, or Kings County. So is this to make up for not having an office in that particular...

MR. WELSH: Yeah, we feel Bakersfield is a good location to try to get at an underserved area.

SENATOR FLOREZ: Right, okay. Let's go to training, heat training, if we could. Give us your—what's different from 2005, 2006, 2007, 2008, to 2010. What have we done from a training point of view in those years that one would call progress. Give me your rendition of things are better. I can see behind you they're better, just by looking at some of the advertisements and some of these things. But what's changed? I think we had a number at some point. Now we have a number. What's changed in that?

MR. WELSH: Well, we have done joint training with the agriculture industry for several years now, and Bryan can probably talk about that in the next panel. But we think a big part of the picture has been bringing in the farm labor—they're really the weak link in the chain. I mean, let's face it. That's where the action has to focus. So we have brought them into training

sessions for three years running now where we basically—in Spanish and in English, depending on their language preference—we run through the requirements of the heat standard, and the point is to make it so that, two things, they can't say they didn't know. I mean, they not only can't say they didn't know but they can't say they didn't know how to do it because we specifically answer those questions. We have an excellent trainer who does most of that, Molly Niedhart ???. And we also—I think it helps us to sort of let them know they're being watched and to convey the strong impression, that if they don't follow the rules, they're likely to get caught. So we've trained a huge chunk of that, probably the majority. We do that training every year. We can't force them to come in, but we can certainly, strongly encourage them to.

SENATOR FLOREZ: Is it possibly too logistically difficult to have the training a checkmark on their actual license, to get a license, or to be relicensed or to—you know, every so often have this training as part of being mandatory?

MR. WELSH: Well, there actually is a training requirement for them to be issued their license. We don't issue the license, by the way. That's another agency.

SENATOR FLOREZ: Who issues their license?

MR. WELSH: Division of Labor Standards Enforcement.

SENATOR FLOREZ: Okay. How did they relate to you folks, if at all?

MR. WELSH: Well, they're part of DIR so they're a fellow division.

SENATOR FLOREZ: So it's just down the hall or something of that sort, correct?

MR. WELSH: Not exactly but, you know, figuratively speaking, yes.

SENATOR FLOREZ: What would you think about having the divisions work on something that is more mandatory in terms of being licensed, in terms of making sure these folks have the training?

MR. WELSH: Well, there is a training requirement already. The question would be, Do we beef that requirement up? But they do actually have

to have training in order to get their license and to have it renewed. And if we find a bad actor, we make a referral over their DLSC for licensing purposes.

SENATOR FLOREZ: Okay. All right.

MR. WELSH: And I'm certainly open to any suggestions as to how we can tighten up our relationship.

SENATOR FLOREZ: Well, I'm just wondering. You know, it just seems—the percentage of folks that are being trained in this particular and evolving heat environment, right? So, I mean, there are different standards, right? You have an 85-degree standard. In my mind, it's 75 degrees. People are arguing which should be the proper standard. You have different regiments. The Army Corps has a certain heat procedure; BP, fixing its oil spill, has a different heat reg. You know, everybody has a different heat-reg approach, and so the question simply is, For the training side of this, ultimately what is the best of all of those programs are we actually sending folks out with? And then ultimately, what are the standards that you're putting forward? And that, I think, should be part of the licensing. It's nothing to do with you, but I think it's something that's interesting.

Let's go over—we're done with training. Let's go over some of the fatalities. You laid out the numbers, so I'm not going to ask you what the numbers are again. But I did mention that the Buttonwillow and Indio, the two deaths that have occurred thus far, and I think at the beginning you said, were still yet to be seen, what category that will fall under.

MR. WELSH: Yes.

SENATOR FLOREZ: Do you err on the side that it's okay to put it in our categories of heat related because it may not look like progress? Or is it, if it's heat related, it's heat related? I mean, how do we make sure that—is it subjective or is it pretty clear where it should fall, I guess is my question.

MR. WELSH: In many cases, it's crystal clear where it should fall, once a full analysis is done, but they're going to be somewhere it's not so clear.

SENATOR FLOREZ: Okay.

MR. WELSH: And that's just the way it is. I mean, with heat, I mean, there are certain markers of frank heat-illness death, you know, organ damage, core temperature immediately before the person died is often—I mean, if somebody had a core temperature of 108, 109 degrees, that's usually going to be a case that turns out to be heat related. But you do see heart attacks; you do see other episodes. You know, one can always argue, well, maybe the heat sort of brought the condition out or something like that.

But generally speaking, we look at the coroner's report. You know, they don't all go by the same standards. It's actually one thing we're looking into if we could get some sort of standardization of how the coroners go about this in the state. I think that would be helpful. But generally speaking, we wait for the coroner's report. We look at that. If it looks credible, we're going to go with that. If it doesn't look credible, then we're going to have our own medical people take a look.

SENATOR FLOREZ: Okay.

MR. WELSH: Either way, whatever they find.

SENATOR FLOREZ: Whatever they find, you will categorize; and they're making that determination, not you.

MR. WELSH: Yes, they are. I mean, some of them do very good work and there's no reason to look over their shoulder. Others, you know, they leave questions in their report and they have to be answered.

SENATOR FLOREZ: Okay. Let's move onto another set of questions.

Len, we started the hearing, the first two rounds, probably slugging each other. We had a little pause here in these rounds, resting up. So we're putting our boxing gloves on for...

MR. WELSH: Oh, let's not do that. We'd make much more progress...

SENATOR FLOREZ: No, we are. We're going to talk about the regulations, and I'd like to have a robust discussion with you again now at this point in time on what you believe, and maybe I have a differing opinion on the standard kick-in rate, if you will. So in other words, it's 85 degrees now. When we negotiated this ions ago, five years ago, we had a certain temperature

in mind. And believe it or not, in all fairness, we had a much higher standard, we were negotiating, because we were in the midst of a heat wave; 12 people just died. You know, it was something much higher. I believe in our discussions, it was something like 95 degrees. So we've gone from a 95 degree—at least in discussions, down to 85 degrees. Since that time, I've been reading a lot of information that said it should be much lower. So in other words, it should kick in at something like 75 degrees. Give us your thought of how that process between those three standards is actually discussed and something agreed upon in this particular regulation.

MR. WELSH: Okay. Well, first of all, I just want to say, there was no agreement.

SENATOR FLOREZ: Okay.

MR. WELSH: Okay, so we took our best shot at it.

SENATOR FLOREZ: Okay.

MR. WELSH: If you look at the heat index that is published by the U.S. Weather Service, the way to go, the best way to go, about assessing a heat-exposure risk, is by taking into account both temperature and humidity and that's what the heat index does. They have a nice little matrix and you can sort of look in blocks, given a certain range of humidity and a certain range of temperature, what the weather service characterizes as, you know, moderately hazardous, very hazardous, et cetera, in terms of heat exposure. And so it's always a matter of degree—what is the likelihood, what's the risk. And I think in that chart, even down at 75 degrees, and even lower in some cases, with very high humidity, there can be an appreciable risk of heat illness, and a lot of that is going to depend on the health of the person too. You know, we have to take people as we find them. Some are diabetic; some are very overweight. There are all kinds of conditions they might have we're never going to know about that can affect their resilience when it comes to heat. And remember, all it takes is, you know, of those 600,000 out there, all it takes is one and they get sick and they could die. So we arrived at 85 degrees as a matter of pragmatism, frankly.

In our records, almost all of the action occurs above 85 degrees. There are a couple of cases where a couple of fatalities where they appear to happen on days where the highest heat was below 80 degrees. One of them was below 80; one was below 85. There had been previous days where the temperature was much hotter and we're not entirely sure, even, I have to say, when we first started collecting these data, we weren't always getting all the information we would like to have gotten, like what was the temperature exactly that day? In some cases, we heard about a fatality a couple of days later and we don't really know what the temperature was. So the data from the earliest years are the ones that show the incidents at the lower temperatures.

So most of the action appears to be above 85 in our records, and we're just doing 85 degrees Fahrenheit, Senator. It's not the heat-index approach. Again, we made a calculation here. We want, you know, we want this to be understandable and doable. And if you load up the boat too much, it kind of sinks so we kept it simple. We said 85 degrees. There's no excuse. Talk about Home Depot, always gets—the Home Depot popup, the Home Depot thermometer, you know, you go there; you buy the thing. You can get it, you know, for a dollar.

SENATOR FLOREZ: Right.

MR. WELSH: So there's no excuse for not having a thermometer measuring the temperature, and so the idea was keep it simple and then demand compliance.

SENATOR FLOREZ: What would happen, in your mind, if we had gone or do go to a lower trigger? Does it make any difference in terms of the way the regulations are structured today? Does it mean more enforcement? Does it mean—what happens if we use 75 degrees, for example, given some studies?

MR. WELSH: Will you pardon a slightly indirect answer?

SENATOR FLOREZ: Go ahead.

MR. WELSH: You know, we always struggle. You know, what gets us into this area is you sort of alluded to yourself. You know, extreme weather, people drop dead, government's got to do something. Now we're in the territory

of, okay, we've got a problem here; we've got to fix it. And then it becomes a boundary problem. Okay. Well, how much are we going to fix? Let's certainly take care of the situation. Clearly, nobody should ever be expected to suffer. In fact, I think, when we started out in '05, there was better protection for circus elephants than there was for people, right? So you deal with the big problem of now we're here. Well, how much around the edges do we want to go? And so that's kind of where we're at now with this temperature trigger.

SENATOR FLOREZ: And who's the right forum to have—from your perspective, who are the folks to set that standard? I mean, you know, we have a standard in our legislation, lower. We looked at Worksafe and some of the things that they had worked on and kind of came to a conclusion in looking at other studies that that might be. Right now in our current regiment, who makes that determination and ultimately standard when it comes to implementation?

MR. WELSH: You know, in some ways, no one person does. But, like I said before, I mean, we make the proposal to the boards so that the proposal originally comes from me and that proposal, usually before I even do that, I hold some stakeholder meetings and I try to get everybody to come and sort of say what they think it should be and listen to the reasoning behind it and get some sense of where people are coming from and where the support and opposition is going to come from, depending on what we propose. And I propose something to the board that I think has a reasonable chance of getting the votes and I've been wrong.

SENATOR FLOREZ: You're counting votes a lot so let me—who is the board? Who are the members of the board? Appointed by the governor, appointed by the legis—I mean, give me some education about the board.

MR. WELSH: They're all appointed by the governor.

SENATOR FLOREZ: And the board is called...

MR. WELSH: The Occupational Safety and Health Standards Board.

SENATOR FLOREZ: And these are the three that you mentioned?

MR. WELSH: No, no. That's the appeals board. They are seven members on this board, the Standards Board.

SENATOR FLOREZ: Seven members. Are those all appointed by the governor?

MR. WELSH: Yeah.

SENATOR FLOREZ: Okay. And are they staggered terms, all one term?

MR. WELSH: Yes, they're staggered.

SENATOR FLOREZ: They're all staggered terms. Okay. And how often does it meet?

MR. WELSH: Once a month.

SENATOR FLOREZ: Once a month.

MR. WELSH: In fact, they're meeting tomorrow.

SENATOR FLOREZ: Yes. Okay. One of the forums could be the group or recommendation made to them somehow or something of this sort. They have a lower standard, but that would have continued discussion at some point?

MR. WELSH: We actually had quite a saucy debate over it last summer.

SENATOR FLOREZ: We did.

MR. WELSH: The second time around, we were a vote—it was a tie actually. It was 3 to 3. One of the board members didn't show up, which was terrible, so we didn't have the seven vote, and another member wouldn't, another member wanted stronger protection; the other members wanted weaker. And so it was one of those situations.

SENATOR FLOREZ: Interesting. How many—well, I'll talk to you about that off site.

In terms of the actual votes, though, by the board, they're voting not just on this. They're voting on a whole host of OSHA...

MR. WELSH: No. They vote on this. Each new standard or each amendment is voted on individually. Oh, sorry.

SENATOR FLOREZ: Meaning, not just heat-related deaths in fields. They're looking at a whole broad category of OSHA-related issues?

MR. WELSH: Well, they look at the rulemaking record for the heat standard, and there has to be a rulemaking record substantiating why we're making the change, you know, the APA thing, when you have to show the necessity and all that stuff.

SENATOR FLOREZ: Okay. Let's go back to shade.

MR. WELSH: I want to do that. I really do. I think we can clear this up.

SENATOR FLOREZ: No, no. I think we probably have a bit of a disagreement on shade. But let me ask you about rest periods and shade, if I could.

MR. WELSH: Okay.

SENATOR FLOREZ: The rest-period aspect of this. The rest period, as I remember it—you'll have to refresh me in my memory on this—it was, as negotiated at that point in time, was an asked rest period and it was quite controversial. You know, the worker had to ask for a rest period. And the question, What was the rest period; what did the rest period mean; how long is the rest period? Who ultimately approves the rest period, and is there retaliation for the rest period for the worker who said, hey, that guy's just too slow. Tomorrow, make sure he's not out here. He keeps asking for rest periods.

That was the debate in 2005. It was something now implemented under 2006. What did we implement in 2006 on this topic, and has anything changed since then on the rest period?

MR. WELSH: Well, it was a rest period of five minutes or more. I mean, actually, you kind of have to read that into ?? language. But I think the weight of legal opinion is, it's at least five minutes. That's not changed, so you can take a rest. The original language, the language that's on the books right now says employees suffering from heat illness or believing a preventative recovery period is needed, shall be provided access to an area with shade, and it's the shall-be-provided access that creates a lot. Well, it's actually, also, those two introductory things—suffering from heat illness or believing a preventative

recovery period is needed—the first one is just never should have been in there. It's like, you know, why did we put that in there?

SENATOR FLOREZ: Put them under right away. Got it.

MR. WELSH: Because, I mean, it's what everybody focuses on. They don't even finish reading the sentence.

SENATOR FLOREZ: Right. Then there's the preventive recovery period, and that's not exactly, you know, the kind of English you run into everyday. What does that mean? So that, to me, is just, in hindsight, that's a confusing phrase. So what we're saying now was, we're basically saying that employees can—let's see. What does it say here? It says employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time—and the added time, I think, is very important; you don't just get one per day—when they feel the need to do so to protect themselves from overheating. So we try to make it as crystal clear as we can. If the employee controls that decision, they can do it whenever they want.

SENATOR FLOREZ: Okay. And this is what I would like to ask you in terms of that, the employee owning the decision, if you will, to say I need a rest period. Has there been any discussion at OSHA about, you know, the reality of a worker, particularly, an immigrant worker in a field, saying, you now, I'm asking for too many. I can't keep up with the work, whatever the issue is. The heat, for some folks, is different thresholds of tolerance for all of us, right?

MR. WELSH: Right.

SENATOR FLOREZ: I just think it's—and we do have different tolerances. I mean, I'm spending a lot more time here in Sacramento on the weekends and people are saying it's really hot; it's 100 degrees, and I find it one of the cooler days. Kern County is 113 degrees with no breeze and it is very, very, very hot and dry. Between those two perspectives of different tolerances, the worker feeling retaliation as an issue, have you found that? Is it an issue that you've seen, dealt with? Your inspectors are out there asking questions. How does a worker come...

MR. WELSH: I think, Senator, that is always going to be a huge issue.

SENATOR FLOREZ: Yeah.

MR. WELSH: And I think it's not just in agriculture. We can't get employees to testify because they fear for their jobs, and in some cases that's a legitimate fear. There's no doubt about it. I don't know the answer to that, honestly.

SENATOR FLOREZ: Okay. And in terms of the mandatory-break aspect of this, I mean, asking for a rest period, is it seen as a mandatory break; is it seen as—how does one view this from, us, the employers, as when they come up? But I mean, ultimately, how is it viewed, a person asking for a rest period? Does it fall within a category of the mandatory break, or is it something that's outside of that particular process?

MR. WELSH: Well, I'm not sure I quite sure I understand the question. I mean, it's not mandatory. I mean, it's mandatory in the sense if the employee wants it, the employer has to give it. I think that's crystal clear. But for labor standards purposes, it's certainly, I think, paid, although pay is how it's paid, of course, an issue.

SENATOR FLOREZ: Okay. So from a retaliation point of view, the worker is always going to be worried. But yet, would it make sense—we could not mandate a—so if a worker says—tell me how you do view it. If a worker says I'm really tired, I need to sit down, I need rest, I feel overheated, what happens? What do you expect as OSHA at that point in time?

MR. WELSH: Well, first of all, there are legal protections, okay? But it's one thing for there to be legal protections; it's another thing for a worker to say I'm going to rely on those protections and exercise my rights. Of course, that's just life. So your question then is, How would OSHA treat it if a worker felt they were being retaliated against...

SENATOR FLOREZ: Yes.

MR. WELSH: ...for taking a break? We would work with DLSC. DLSC actually administers the, what we call, OSHA retaliation cases.

SENATOR FLOREZ: And in terms of that, workers—is there another standard for workers in terms of asking for a break, or is this the best standard

that we have? You mentioned, if needed *shall be*, is the strongest possible words in that particular—so when a worker is asking for a break, in your mind, as OSHA, they get it, correct?

MR. WELSH: Well, actually, the language says employees shall be allowed and encouraged. You know, we're doing the best we can to convey here that the employer does have a role in this. Their training should say, you need to take a break. And the hotter it is, the more you need to think about that. You need to drink water a lot so there is—there is a message here. I mean, how do you enforce encourage—right?—but we've got that language in there. The employer is supposed to encourage this, and that's supposed to be a robust part of the training. And so, you know, if we're surveilling an operation—we do this—we sometimes sort of drive up at a distance with binoculars and look at the situation and see if it appears to be a functioning healthy operation or one where maybe there are a couple of props but it isn't really happening. And if we see that nobody's taking a break, particularly on a hot day, we're going to go inquire.

SENATOR FLOREZ: Okay.

MR. WELSH: A lot of this depends on the skill of the inspector. Some of them are quite good at getting the information we want to get out of the workers.

SENATOR FLOREZ: With your inspectors out there, let's say they do exactly as you mentioned. In a lot of cases, there are, you know, water containers are, as they continue to move through the field very far away, become a lot further away than a 100 yards or something of that sort. I mean, how do you address these situations with employers? What would normally happen in that type of a situation?

MR. WELSH: Well, water is different from shade. People are in the habit, I think, you know—and this is kind of something that's evolved over time—but people are in the habit of thinking, well, the toilets and the shade and the water all sort of go together. You know, you all have them in the same place and so people can get quite far away from them. And the answer is, no.

The thing that we've been telling employers is, you have to evaluate with each thing.

You know, we may differ on this, Senator, but there are feasibility issues, depending on the operation, how close you can get the stuff to the workers and how close you can get shade is a different issue from how close you can get the water. Water is much easier and there's no excuse in almost all circumstances for not having water quite close so the employee doesn't really have to lose much work at all to take, you know, to get the water they need. So it's close basically as they can get it, as close as they can reasonably get it.

SENATOR FLOREZ: Have there been violations on this particular aspect, of the water side?

MR. WELSH: Sure.

SENATOR FLOREZ: Is that a pretty easy violation to...

MR. WELSH: No.

SENATOR FLOREZ: ...spot?

MR. WELSH: Oh, to spot? Yes.

SENATOR FLOREZ: To spot.

MR. WELSH: To spot, yes.

SENATOR FLOREZ: Okay. And in terms of the—you answered my question before I asked it—in terms of the violation, a pretty serious violation, I assume then, correct?

MR. WELSH: It would be a serious violation if they don't have water; it's too far away. It can be a tough one to win on appeal.

SENATOR FLOREZ: Okay. Let me ask you, if you will, about the—well, we've gone through the exemption, the shade. So we have this ongoing discussion about shade. Is this something that the board's taking up tomorrow or is this something...

MR. WELSH: No, next meeting, August.

SENATOR FLOREZ: The next meeting in August? Okay. And will you take to heart some of the discussion we've had here today?

MR. WELSH: Absolutely.

SENATOR FLOREZ: Okay.

MR. WELSH: I do want to come back to the natural shade there, though.

SENATOR FLOREZ: Sure.

MR. WELSH: We can talk about it offline, but really, seriously, honestly, if it's real shade and it's natural, it's much better than a Home Depot thing. Mean, first of all, the standard canvas that's the dark color, picks up the heat and radiates it.

SENATOR FLOREZ: Okay.

MR. WELSH: Trees, if it's real—we had a huge discussion on this, by the way, and it actually led to amending the language that defines shade so that everybody was happy with it. There was concern, the way we had it originally, because we said vines were okay for shade and everybody was picturing, you know, vines that are three or four feet from the ground and you can't—they're not shade. But there are such a thing as canopy vines that are high and really do cool you off. So the idea was, you want to say, look, use anything that is real shade; it's got to be real shade, and we issue citations on this all the time. If people try to get by with something that is a ruse, they're not going to get away with it. But there are situations where we actually do encourage them—if there is natural shade, use it because it's cooler. It is.

SENATOR FLOREZ: Okay.

MR. WELSH: Now you might be concerned. Maybe that's going to get abused and that is an issue. I understand that.

SENATOR FLOREZ: I guess, because I'm going back to our—Michael Prozio, Dean Florez battle on this.

MR. WELSH: I wasn't part of that...

SENATOR FLOREZ: I know.

MR. WELSH: ...so I didn't know the benefit of that.

SENATOR FLOREZ: But it was a real issue in terms of what shade was. And if there's new information, I'd appreciate hearing it because I remember us

being somewhat very clear that it would be blocked shade and blocked shade meant something different to me, so I think it's a continued discussion.

Let me ask you, if I could, about the actual structures you mentioned before we have some folks that tell us it could be done; it can't be done. What have you had in terms of discussion about it actually being feasible structures for fields particularly? I mean, what typically is the argument with putting up large canopies, you know, these types of things in the fields that you've heard, difficulty of? Or is the argument more of that we don't have the equipment? I mean, which argument is it?

MR. WELSH: You know, I think it becomes more of an issue, the larger the crew is. Sometimes it actually is a space issue. You know, you can't erect them in the crop area itself. It's got to be by the side of the road or it's got to be in some place that isn't in the way of things. It is a road so you can't be blocking traffic, that kind of thing. There's that.

When you put things up, if it's windy, the wind can blow them down, so there's a maintenance thing. The more stuff you have up, the more you have to make sure it stays up. So maybe Bryan can go into that in better detail, but I do think, that depending on the situation—actually, by the way, one thing that is in the reg that I don't think you picked up in your bill or in the proposed amendment is a provision for not having shade actually upwards is not feasible to have it up, and that's been somewhat controversial. But the reason it's there, in case you're wondering, is that there are operations. For example, people who cover a lot of ground—they're doing rigging work or irrigation work, they basically rove for large periods of time and there's no way to have shade follow them. But they can bring it with them. They can bring an umbrella. They can bring something they can put up any time they want, and they don't even have to ask for it. They just do it themselves. So there are situations where it is not feasible to have the shade up, and I think we don't help ourselves if we don't recognize that reality and try to, you know, construct a requirement around that.

SENATOR FLOREZ: I remember that discussion. So workers can—I'll ask the Farm Bureau this—but the workers can bring their own—if they're roving through, let's say a grape field, they can actually bring their own.

MR. WELSH: Well, we'd say the employer has to provide it. We'd say the employer has to bring them something they can carry with them so they can put it up when they need it.

SENATOR FLOREZ: Okay, okay. We'll go through just a few more questions, and then I'd like to have the other folks come up.

MR. WELSH: Did you want to hear at all about our public information campaign? It's worth five minutes.

SENATOR FLOREZ: Sure.

MS. ERICA MONTERROZA: Well, the public awareness campaign is one that was designed to be part of a multi-faceted approach to really complement—thank you—to complement the ongoing education, outreach, and enforcement efforts that Cal/OSHA has, had an effect since 2005 and definitely since 2006. It's one that incorporates billboards as well as other outdoor advertising, such as wall graphics. And you see here and along the wall some of the examples of that. They're in multiple languages. In fact, we've got 69 billboards across the state, and wall graphics, which are large ads installed in stores at check cashing locations, et cetera, where places frequented by our target groups, and these ads were created in Spanish, as well as Hmong and Punjabi—Hmong in Fresno, Punjabi in the Yuba City area. We also have ads on commuter vans for those that are going to their worksite, precisely in agricultural and as well as lunch trucks. Lunch trucks include construction sites as well as agricultural sites.

Another component of the campaign is radio, and we've got a radio campaign in Spanish, Hmong, as well as Mixteco, via Radio Bilingue. And the campaign itself was designed to complement the messages that you see here. And in fact, the other thing that we have ongoing with the—as a portion of the radio campaign, is something called our heat-alert network which we actually

initiated this week because of the high heat in the Bakersfield, Fresno, Sacramento regions.

SENATOR FLOREZ: Can you explain how that program works?

MS. MONTERROZA: Sure. We let those—we work with our partner. In fact, our partner is LOHP, UC Berkeley as well as...

MR. WELSH: Labor Occupational Health Program.

SENATOR FLOREZ: Okay.

MS. MONTERROZA: Thank you, as well as UCLA's LOSH and UC Davis Ag Center, and they are the groups that we viewed as experts in order to make this campaign happen. And so we notify the different radio groups in those counties, and we already have written text that they're able to let people know when there is a heat wave and to prepare for the heat wave and what to do. So, you know, make sure you have enough water, make sure you're looking for shade, and, again, just emphasizing the same messages and so those are actually ongoing.

The radio campaign itself, with the commercials that are airing, we've got six commercials that are airing with two voices so that it's very recognizable. It has at the end of each one specifically in Spanish. It has the Agua, Sombra, Descansos, so that the water, shade, rest, so that people are able to recognize that and relate it to the billboards that they see as well, and that's ongoing through September. So what we did was, you know, we had this campaign. We wanted to make that it was out there in the time that it would have the most exposure.

As I said, this is a multifaceted campaign, so another portion of that or some of the promotional materials that you see here and others—and we've got full information in these packets that we've provided for you so that you can see what those promotional materials are. These are being distributed at outreach events, at trainings, so this is one of them. And in fact, at the commuter vans that have the advertisement as well, we're distributing 2,000 of these, just on the onset, and the campaign itself, it's been designed so that it springboards. It carries through what we're doing, and then we don't want it

just to stop here so we're moving forward as well. And, of course, we're working with the groups that we just mentioned, UC Berkeley's LOHP, LOSH, and UC Davis Ag Center, to get that information out to different community advocates as well so that we can continue to move that forward.

Some of the other things that we have, we've designed a website that you see mentioned here—well, you don't see it mentioned here but you see perhaps mentioned here—which is www.99calor.org. Calor is, of course, heat in Spanish. And we also have a hotline so that, it's what we call our heat help line, and we've put that together in order to provide additional resources for the community and for community advocates, for employees to be able to call the helpline, get information on heat illness prevention and, in fact, we've worked a pilot program out with the Imperial ?? Call Center. It's staffed by volunteers with the San Bernardino Catholic Dioceses as well as counselor staff at the Los Angeles Mexican Consulate in order to provide information and also in order to contact our Cal/OSHA liaison when there are complaints. We have a protocol set up, so that when there is something that needs immediate response, it's able to get through, and we have actually received complaints that we're moving forward on as a result of that and that's from May forward.

The website also is a venue for our DVDs. People can actually log on and view the DVD via YouTube in the different languages that I mentioned, as well as Mixteco. There is a sampling of the different publications that are available for employees as well as community advocate groups and for employers as well. And so some of the publications that have been designed are depicted on that website and then we also have an email, heat@dir.ca.gov, so that anyone that needs additional materials can let us know. And we're working with different groups, including, of course, the groups that I just mentioned, Catholic Dioceses, the Mexican Consulate. We've worked with the Department of Education, Migrant Ed Program, as well as some of the other outreach groups. We have, as a portion of this packet that we provided for you, 144 different groups, including the UFW, CRLA, different dioceses across the state, because the idea is that we can't do this alone. We want to make sure that we get

information out to as many people as possible and especially to those that are trusted by workers that frankly don't always have the level of confidence in speaking to a state agency.

MR. WELSH: Yeah, I just wanted to say that last point, you know, the other angle I focused on sweeps in this discussion with you, Senator, but, you know, the other issue is, Do we have an effective way to get complaints? And that's something we're continuing to work on, and we're quite open to working with groups like CRLA, as we have for several years. If they want to serve as an intermediary to get us complaints, we are quite happy to work with them.

MS. MONTERROZA: And that's actually a key part of the campaign because we're realizing, you know, alone, we can't do it. But with the help of different groups that do reach out and work with workers and with their communities, that we're able to get a lot more done and that's something that we've done since 2005/2006 and we're confident with this campaign, we'll just continue to build on that. In fact, we've had a series of webinars, training webinars. And we've got *Train the Trainer* sessions set up specifically during July, six different ones in different parts across the state—Riverside, San Diego, LA, Davis, I believe Fresno, Bakersfield, in English as well as in Spanish, in order to reach out to those groups, including community health centers as well, so that they're able to know, you know, what kind of information is available, what the heat-illness prevention campaign is, what is the employee's right in terms of preventing and in terms of how to get information to us in the event that there are complaints or there's a lack of whatever it might be—water, shade, training—and getting information to us as quickly as possible in a way that we can respond.

So this was designed and actually we quite a bit of research. There were 24 informational interviews with some of those community advocates and employees in the different industries that have been identified, including, of course, agriculture, construction, landscaping, car wash, and then the different languages—Hmong, as well as Mixteco, and Spanish. There were focus groups that were put together. And the thing that really resonated amongst all the

groups was the fact that they wanted to see depictions of themselves, that they are confident in what they need to do, that heat-illness prevention is part of the job, and they can be more productive by really preventing heat illness.

SENATOR FLOREZ: Thanks. Very impressive and very much needed, so thank you for doing it. How was this paid for?

MR. WELSH: We actually got a BCP approved to do this last year.

SENATOR FLOREZ: Great. Okay. Thank you.

Then let's just go over a couple more things...

MR. WELSH: Sure.

SENATOR FLOREZ: ..and then we'll have the advocates come up. I just want to get your perspective about—I think I mentioned the U.S. Army regulations. Specifically, they have this monitoring heat-index levels and employing a flag system which kind of regulates work and rest periods. Of course, they push for water being consumed continuously throughout the day, and I guess the question I have is, at least with the U.S. Army, they have recommended work/rest cycles to prevent heat stress and I'm just wondering, How is this different than what we're doing, or should we implement a very similar program or do you see us moving in this direction at all?

MR. WELSH: You know, I think actually—excuse me—work that was done with the military was what started these discussions, like 25 years ago at Cal/OSHA about us trying to regulate heat illness as a risk. Clearly, you know, they have gone the furthest with this because they push people to their biological limits and they need to conserve their soldier workforce, you know, as a resource. I mean, if you lose your soldiers to combat, you're not going to do too well and they have total control over their soldiers. I mean, they basically, they house them, they feed them, they tell them where they're going to be at every single moment of the day pretty much, so they have a degree of control that employers don't. So I think you're going to, what you see the military coming up with is going to be the absolute gold standard in what we know about any heat illness and what things can be done to minimize their risk of it. How that translates into the real world of folks who, you know, come

to work voluntarily every day and work for employers who have a certain amount of control over them. But, you know, the main situation is they're coming to, in Ag, for example, they're coming to a place where they're way out in the boonies. And, you know, if things aren't taken care, they're there and they're isolated and they can't get out of there. So it's a different situation in a lot of ways. So to answer your question, I don't really know how you get from what the military has to something that is doable and enforceable in agriculture and other industries, but I think all of the things that they talk about are certainly fair game for discussion.

SENATOR FLOREZ: I also mentioned the BP stress management plan they have involved in the Gulf cleanup at this point in time. At least their action plan, which caught my interest, was developed by a board-certified doctor of occupational medicine. Have we, in our regs, do we consult with those folks? Are they part and parcel of what our particular program is?

MR. WELSH: Well, I mean, there's no requirement in the reg for them to have involvement. I mean, we do have occupational safety and health regs which provide for what you might call medical management. We have that for lead, for example, lead standards. But for this, no. This is really just about trying to get employers to take basic steps to protect workers that, you know, almost seem like common sense, in fact, pretty much do seem like common sense.

SENATOR FLOREZ: Okay. Is there anything else you'd like to add before we go onto the next panels?

MR. WELSH: I appreciate the invite to come here, even if we did lock horns a little bit. I think the discussion is all fair game.

SENATOR FLOREZ: Sure, absolutely.

MR. WELSH: And I appreciate your doing this. When is the next version going to be published? I didn't see that on the website.

SENATOR FLOREZ: Of our bill?

MR. WELSH: Of the bill.

SENATOR FLOREZ: My guess is probably in Appropriations.

UNIDENTIFIED SPEAKER: Yeah.

SENATOR FLOREZ: In Appropriations, and you've given us some things to fix, so thanks for the heads up on some of that. You may not like it but I think in terms of giving us some things that we thought, we finally found some holes and we'd like to have continued discussions on it as well. Thank you very much, appreciate it, and a great program.

Okay. Let's move onto, if we could, Panel 2. We have Michael Smith, attorney at Worksafe; Anne Katten—is it Annie?

UNIDENTIFIED SPEAKER: Anne Katten.

SENATOR FLOREZ: Anne Katten from Rural Legal Assistance; Alma Alvarez from the Rural Legal Assistance, Migrant Unit; and Esperanza Ross from the United Farm Workers.

Why don't we start with Michael, if we could?

MR. MICHAEL SMITH: Good afternoon, Senator. Thank you. I'm Michael Smith. I'm an attorney with Worksafe, and we are a nonprofit organization that advocates for better safety and health in California, for California workers, and I followed the heat-illness rulemaking for the past two years and I'm here to testify a little bit about what Worksafe believes is necessary to include in a workplace heat-illness regulation.

First of all, I do want to thank the senator for sponsoring SB 477 and for holding this hearing to bring attention to issues that we think are very important for California workers. I've got four points that I would like to discuss today, and I also want to mention off the bat that you and Mr. Welsh have already covered a lot of these points so I will summarize them fairly quickly, but they are important points that need to be made and that for a regulation to be protective of workers and to accomplish its goal, these are things that really need to be included.

The first one is that the bill or the regulation needs to protect all workers. The current proposal with the 25 percent shade requirement at 85 degrees doesn't do that. You talked about, if there were—or Mr. Welsh talked about—if they're rotating breaks so that all employees could in the shade during their

given entire break, then accommodating just 25 percent of workers would make sense. But under the current requirement, it just simply doesn't. Many employers already do provide shade for all employees, but we must remember that these regulations are written for those who don't and who wouldn't do so without a requirement.

The next issue or requirement that should be in a regulation is mandatory breaks. Below 85 degrees, the current proposal puts the onus on workers to request their breaks. Many agricultural workers work for piece rate or for other production incentive or quota systems, and they simply can't afford to take a break. Unless the employer requires the break, they won't be taken. In addition, low wage, vulnerable workers, such as almost all agricultural workers in California are with or without a union to represent them, risk their jobs if they speak up.

Last week, I gave a workers' rights presentation to a group of laborers. One of them interrupted me when I was talking about the rights that they had with regard to raise a complaint and said it was great that they had these rights. But if they speak up to demand them, they'll be immediately fired or never hired back, and that's the reality that most agricultural workers face in California today. We're fortunate enough to have Mr. Hernandez, as well as Sierra League Community worker, Alma Alvarez, here today who can speak more to that issue.

The next issue, which was also touched on in your discussion with Mr. Welsh, is the issue of infeasibility or the issue of lack of safety of meeting the shade requirement. The latest change or the change to create this requirement in the latest heat illness, proposed regulation, is simply to give back to employers. The previous regulation allowed cooling measures other than shade, except for employers in the agricultural industry. This new proposal allows exceptions to the shade requirement for all employers, including agricultural employers. We think, that unless and until employers are required to notify Cal/OSHA in advance of when shade is unsafe or infeasible and what their alternative plan is, the proposal invites all sorts of abuse by employers

who will attempt to create after-the-fact claims or rationalizations or backdated documents after they're actually cited. We think that it's going to encourage many more appeals, create more inefficiency in the system, and constitute an enforcement nightmare.

There's one actual employer advocate in the room here today, Mr. Sandoval from the Farm Labor Contractor Association, who advocated for putting the employer's plan for dealing with the exception to the shade requirement in writing. That was in his letter with regard to the proposed regulation last October. He suggested that it be in the employer's Injury and Illness Prevention Program. We think that that's a step in the right direction, but even that invites abuse because employers could create documents after the fact and present them at their appeals board hearing before an ALJ. We think that the proposal or that the employer's plan needs to be in the hands of Cal/OSHA at the time that it's created.

We've heard employers at hearings last year and earlier this year talk about the difficulties that they might have with the shade-up requirements. They know exactly what kind of problems they're going to have, and they know how they can deal with them and that's something that they can put in writing ahead of time, and that will avoid extra litigation as well as make sure that there's less potential fraud.

SENATOR FLOREZ: Explain that, how that would work, so I can get clear on it.

MR. SMITH: Cal/OSHA probably has a better idea of how they would keep track of all the records. But if it was something that was simply mailed to a central location in Cal/OSHA ahead of time, Cal/OSHA might not even—I'm just speaking off the top of my head here—they might not even have to review them all at that time, but they would be in hand so that if an employer was later inspected and found wanting with regard to meeting the shade requirement as written, there would be something on file with Cal/OSHA that showed how they were going to deal with that.

SENATOR FLOREZ: And what is the employer sending in again?

MR. SMITH: Their written plan for complying with the shade-up requirements.

SENATOR FLOREZ: Okay.

MR. SMITH: And if it's—and specifically, if they claim that it's unsafe or infeasible, their plan for providing alternate, equivalent measures for shade.

SENATOR FLOREZ: Okay. Then that gives Cal/OSHA at least an opportunity. When you say a *written plan*, are you allowing the employers to in essence write in paragraph form what their plan is? Or would a checked list of things you think need to be required be a better thing so we can compare operations to operations? I mean, what do you think would be a better way to get to this? And could we come up with an extensive list of items that an employer could check off?

MR. SMITH: You know, I hadn't conceived of it as a checklist. Certainly that would be one way. I mean, something that shows forethought, that they had put some thought into this, actually how they would comply with something that would provide equivalent protection for workers which is the way that the current proposal, the proposed regulation, is written.

SENATOR FLOREZ: Sure. I'd like to ask you, if you could, to make an attempt at what you think a checklist might look like, if you could.

MR. SMITH: Right now?

SENATOR FLOREZ: No, not now. (Laughter)

MR. SMITH: Okay.

SENATOR FLOREZ: No, when you go back and your group gets together and all of you. I mean, I think it would give—at least it would give Cal/OSHA an opportunity to, in many cases, evaluate where holes are. In other words, if someone is immediately checking the box or if they have some idea of what their workforce might look like, or it might vary—and by *vary*, I'm meaning very large blocs of workers, not, you know, ten to 12. It's like one to 50, 50 to 100, 100 to 200, 300 to 400. For a particular heat season, I think it would at least—and if we would, you know, ask that that be submitted electronically, that might at least allow instant statistics on areas to look for, somebody's

checking the box. Was that what you're thinking of, or are you actually allowing an employer to write a paragraph to you saying, I promise I have everything? I mean, what are you seeking?

MR. SMITH: Certainly we—you know, this is—I certainly talked about this with other advocates but we haven't talked about the specifics of it, and I think we'd like to get together to figure out what would be the best way to do that. But the issue that I had in mind by requiring advanced notice to Cal/OSHA would be prevention of fraud and after-the-fact creation of document that didn't exist at the time of the inspection and the violation.

SENATOR FLOREZ: Before we move onto the next witness, what was your viewpoint of the discussion about shade that you heard earlier at the beginning of the hearing?

MR. SMITH: With respect to the 25 percent requirement or...

SENATOR FLOREZ: Yeah, 25, 100. I mean, you mentioned that in your report, in fact, right?

MR. SMITH: Yeah. Well, I think I have a unique perspective because earlier this year Worksafe also reviewed every OSHA appeals board decision for the last five years, and we saw what I would consider examples of twisting the law and the regulations as written and often against Cal/OSHA or making it more difficult to prove cases. I think if there's a 25 percent requirement in the law, and despite what Mr. Welsh says about their, that shade would be required for all employees who request it, I think that the appeals board would revert to that 25 percent and I think that they would never find a violation if, you know, even if every employee requested shade. If there is only 25 percent, I think that would probably be sufficient for the appeals board.

SENATOR FLOREZ: Okay. I want to thank Senator DeSaulnier for allowing us to have the hearing. It's his committee that has the jurisdiction directly over Cal/OSHA but he has been very—whether it's been EDD or this particular farm-related issue of heat regulation—I just want to thank him for allowing us to do this.

Senator, I don't know if you have anything you want to say.

SENATOR MARK DeSAULNIER: I just want to apologize. What I thought was going to be, on my calendar, a half-hour meeting, turned out to be a three-and-a-half hour meeting. But it was a good meeting in relating to getting jobs in our refinery in my district, so I apologize for being late.

SENATOR FLOREZ: Thank you, Senator.

Okay. Anne, let's go ahead and get your perspective on this. Oh, I'm sorry.

MR. SMITH: I just wanted to sum up really quickly. We've submitted a couple of different sets of comments that also talk about the trigger temperature at which the shade requirements would go into effect. My colleague, Anne Katten, here is an industrial hygienist and she can speak more specifically to the technical issues involved there, but we certainly endorse CRLA's position statements on those issues.

SENATOR FLOREZ: Okay. Thank you.

MS. ANNE KATTEN: Thank you. Good afternoon, Chairman, and thank you very much for holding this hearing, and I am Anne Katten from California Rural Legal Assistance Foundation and I am not a lawyer and I'm an industrial hygienist.

Anyway, I just wanted to emphasize that between 2006 when the reg became permanent and last year Cal/OSHA confirmed 16 work-heat fatalities and 139 work illnesses in all industries—and we do feel that there is an undercount problem there because of the problem of some coroners being less trained than others than some emergency room doctors and then the issue of how cases are tracked when there could be an underlying condition, and heat exacerbates it so we're glad to hear that Mr. Welsh is addressing, is working on that.

I also wanted to point out that last year, in your packet you have a summary of last year's reported heat illnesses and fatalities. And in 60 percent of those, the situation was, they were found to be in compliance with the regulation which is a very strong indication that the regulation is not strong enough. I am, you know, very glad to see Cal/OSHA's current education

campaign and the message that water and rest in the shade are cornerstones of heat illness prevention. It's right on target, but the regulation leaves the workers out in the heat. As has been already been very well stated, the voluntary shade-period provision, it just will not be utilized by farmworkers, especially when they're working piece rate or machine-paced work or if they're under production quotas because they're afraid of being fired or otherwise disciplined.

There is a recent fed OSHA study, which I apologize—I haven't supplied yet—which found, that with DLSC claims for work-safety retaliation, they take an average of 484 days to resolve, and only about 20 percent of them are resolved in favor of the worker, so it's a very sobering statistic.

We also think the problem with voluntary heat—there's a health and safety problem with having voluntary rest periods because, when you have high heat conditions, there's a need for hourly rest periods, like there's a need for coolant in a car's radiator, that hourly period allows your body to cool down so you don't overheat, and that's why the military uses them. That's why they're now being used in the Gulf Oil spill, and they were developed by the American Council of Government Industrial Hygienists so they are science based. Excuse me.

Okay. Also, it's a matter of safety and also a matter of just basic decency to have enough shade for all the workers on a crew. It's like having enough life jackets for all the people in a boat. And it's very important; it will enable people to take their meal breaks and their already scheduled rest breaks in the shade to prevent overheating, and I'm sorry—I kind of skipped around here. We think we have advocated for having scheduled extra hourly breaks during high heat, high humidity, heavy work conditions, you know, to supplement those breaks. But at least, if we have trouble politically getting there, at least we would have the shade during the already scheduled rest breaks.

We think the shade should be up at 75 degrees rather than 85, particularly to protect workers who aren't acclimatized. If they're working in areas that are generally cooler areas of the state, if they've been wearing

protective gear, and also the National Weather Service, they do an adjustment for the radiant energy of the sun. And basically the equivalency there is that, if you're working at 75 degrees in the sun, in full sun, it's equivalent to being in the shade at 90 degrees, which is the weather service threshold for extreme caution in outdoor work activities.

We also think that, in Cal/OSHA's Q&A or advisory and sample, suggested measures, they recommend having a covering on the soil or having chairs so the workers will be protected from the heat radiating out of the soil, and that's an important thing to also require.

The additional high-heat provisions that are proposed to add to the standard are a really good idea of having an effective communication system and acclimatization procedures, but you really need that way before the trigger of 85 and—of 95, and 85 would be better and also for the proposed requirement for having close supervision for heat-illness symptoms. And arguably, you need the effective communication system really at any temperature.

I think Worksafe has already adequately addressed, very adequately addressed, the feasibility issue. We don't want to create a broad loophole for a very narrow need, and I think that it would also, by requiring the proposal to be submitted to Cal/OSHA ahead of time, it would also create an opportunity to evaluate whether they were truly effective alternative measures.

The one—it's not a safety—but I would call it not even a feasibility—the practicality issue in Ag that's been described of it being difficult to put up shade when an irrigation work crew is going field to field—I think there, there needs to be some sort of a line because, if the irrigation crew is going field to field, checking on irrigation equipment, yes, it doesn't make sense if you're going to be in the field, maybe less than an hour that you have to keep putting up your structure. But if you're going to be at a field for several hours setting up a complicated system, then you should have to have your shade up.

We continue to find work crews sometimes weeding and harvesting in the late afternoon, and this calls for the need to have a real entire program to make

sure you're scheduling, you know, the cooler part of the days. Again, we commend—we think the proposed amendments to AB 477 will address many of these flaws, but we also hope the Standards Board will correct them so workers can be protected as soon as possible. Thank you.

SENATOR FLOREZ: Maybe the both of you, before we move onto the other witnesses, what was your viewpoint on the tree shape? You agree with it, not agree with it?

MS. KATTEN: Well, it depends on the situation.

SENATOR FLOREZ: So you're okay with it then?

MS. KATTEN: I'm okay with it as long as it meets the conditions that you have adequate air circulation and it provides, you know, casts enough of a shadow but that sometimes it depends on the tree in this situation.

SENATOR FLOREZ: Okay. And I think Len mentioned earlier, the issue there is, if you're okay with it, how do you enforce what adequate tree shade is ultimately? I mean, in other words, is it—almond trees are looking pretty good for shade right now, after they shake them? It may not look as good for shade. I mean, what ultimately...

MS. KATTEN: I think you'd need to look at the air circulation and the amount of shade that it casts and also whether it's safe. If it's just been sprayed with pesticides, that's not a good source of shade and also whether the worker can be in a comfortable posture under the trees. That was one of our main objections with the grapevines. You can't be in a comfortable posture and you're right there next to the black widow spiders and who knows what else.

SENATOR FLOREZ: Gotcha, gotcha. Let me just ask a question about, from your viewpoint of the discussion of a mandatory rest period. You mentioned that, both of you mentioned—well, you mentioned it specifically—but does that work in this particular—do you see that working with agriculture at this point in time?

MS. KATTEN: I don't see why not. I actually think that you could get, in some cases, you could get higher, maybe not higher production, but you're

not going to have the fall off in production people predict because people will be more refreshed as they go. But the change you would need for it to work would be some sort of a compensation system for piece-rate workers. So when they take their breaks, they aren't losing pay. So that's the main obstacle I see. In ergonomics, mini-breaks have been used that actually they found haven't reduced production as well as have better preventative ____.

SENATOR FLOREZ: Thank you.

Okay. Alma.

MS. ALMA ALVAREZ: Yes. Thank you. As you mentioned, my name is Alma Alvarez. I'm a community worker at California Rural Legal Assistance, Inc. As long as I've been a Sierra League, my work has largely focused on health and safety in migrant and seasonal farmworkers. And as part of my work, I've conducted numerous field sanitation inspections, similar to the ones that Cal/OSHA conducts.

For the 2010 season, our field inspections in the Coachella Valley began as early as March, due to the temperatures in that area. In the Central Valley, they began in May. Only in those few months, our staff has already found several violations or worksites where workers did not have access to water, adequate shade. Some workers had not received any type of training in regards to heat stress, heat illnesses, and in some cases, there wasn't even a supervisor on site.

This is a huge problem because workers that are suffering from heat illness, not only do they, may not have anybody to call—a supervisor who they can say, hey, I'm feeling ill—but they may also not be trained to be able to identify what the symptoms are of heat stress, what to do if somebody is feeling ill, and what is the emergency plan. And in all of these situations, not only could heat illnesses have occurred, but they could have potentially led to death in some of these situations. In other cases, we've seen workers that are taking breaks, sitting next to large tractors, next to water pumps, and next to vehicles, next to other large machinery, and all because they didn't have access to enough shade or any shade at all. Again, all of these situations are extremely

dangerous. In some cases, we found that although water was available, there were no disposable cups. So technically, the water wasn't available.

We have two different situations that I'd like to mention to you. In a field in Mendota where workers were harvesting melons, they didn't have access to cups so the workers cut melons in half and they used the halves of the melons to drink the water out of. And in another situation in Coachella, we found workers that didn't have disposable cups, and they pretty much just cut the tops off of the bell peppers and were using the empty bell peppers to drink water. This is serious. Not only is it wrong, they should be able to have access to disposable cups. But these crops have pesticides and potentially other contaminants in them that are dangerous to the workers as well. All of these situations just pose a great danger to the workers in general, and these examples are from 2009 and 2010, after the regulation has already been in place, after 2005, so it clearly shows that, although the regulations are in place and some employers may be complying, a lot of employers are still not complying with the regulations. We've also been told by some packing-house workers, that although they do have access to water, at times, the water is dirty or it's kept in the same container and therefore sometimes it can mold; sometimes it tastes bad; and they don't have access to areas where fans are available or they're not air conditioned.

I think I'd like to clarify the type of packing houses that I'm talking about because I think some of the idea might be that the packing houses are insulated; they have air conditioning. But some of the packing houses in the Central Valley, the Coachella Valley, Salinas Valley are in structures that are made out of aluminum tin foils, and either a whole wall is missing or part of the wall is missing. It's large enough for equipment, forklifts, and tractors to be going through. They're not insulated. Therefore, the heat that's radiating down on them actually makes it hotter inside, so these are the type of packing houses that we're discussing here.

In some of these packing houses where they do have fans, the fans are used as a type of a reward system. There tends to be some kind of production

quota that is available or not available, a production quota that the employer sets. And therefore, if an employer or a worker asks to take a break to go get some water and they leave their post, the employer is jotting down how many times an employee is leaving their post to take a water break and then using it against them. If they're not meeting the production quota, then they say, well, you're taking too many water breaks or you're requesting shade breaks and it's used against them. At times, they can be fired.

In the Coachella Valley, we have heard that at least five women that were suffering from heat stress at a packing house were told to use the restroom facilities as a relief area from the shade. These restroom facilities did not have fans, were not air conditioned. So on top of it being a very unpleasant place to take a break, these areas were actually just as hot or hotter than the worksites that they were asking relief from.

These production quotas that I have mentioned exist both in outdoor field work and in packing houses, and they require workers to meet a certain, often very high levels of production or face termination or other discipline. These systems prevent workers from taking needed water breaks, shade breaks, and even restroom breaks for fear of losing their jobs. They also cause workers to work extra hard to meet quotas in extreme heat which can lead to heat illnesses, including death.

Under the current regulation, the burden is placed on the worker to request a minimum five-minute rest break, and we know that's really not going to happen. If an employer is risking their job to take a water break, to take a restroom break, to ask for shade, even though they're feeling heat illnesses, the reality is, they're not going to ask for the breaks. Farmworkers are some of the lowest-paid people in our country and they're not going to risk putting their family's well-being at risk to take a water break.

We have also had some reports in the Coachella Valley of a worker that suffered from some heat-related illnesses, possibly resulting in death, while he was working in a quota system in a bell pepper field. The quota was relatively high and the worker literally had to run with buckets of bell peppers from one

end of the field to the other end of the field, not giving him any time to take a water break or to request a relief period under the shade.

We have also had instances where workers have been brave enough to call Cal/OSHA and report violations. But because they don't want to identify themselves by giving their name, they make these calls anonymously, and both workers in Sierra League in some instances have been told by some Cal/OSHA offices that, unless the violation is life threatening, then Cal/OSHA may not be able to investigate. We take this to mean, that if workers call Cal/OSHA to report an employer who has not trained his workers on heat illnesses and symptoms and doesn't want to give their name, then those reports may not be investigated further.

Again, if a worker does not want to give his name to Cal/OSHA, these calls will not take priority. Sierra League has taken calls from workers who have been turned away from Cal/OSHA because they did not want to give their name, and some of these phone calls have had very precise details—locations, exact locations of the work—it's behind this canal; it's next to this tree; this is what we're doing; precise details with names of employers—the information that can be found on a paycheck stub, information on the violations, and yet we're able to find these fields and, you know, it's common that we have from Cal/OSHA that they either can't find the field or that it was an anonymous call and therefore they're not going to place a priority on it, some of the issues that we've been dealing with at Sierra League, what we've seen from workers, what we've seen first hand, when we did these field inspections, and the type of calls that we've been getting.

SENATOR FLOREZ: Thank you. That was very thorough. What would you take of the discussion on the enforcement numbers at Cal/OSHA that we mentioned? It was the ratio, in the small amount of enforcement officers compared to the 600,000 farmworkers, 35,000 farms?

MS. ALVAREZ: Yeah, I think, that according to the workers and what they've told us, there's definitely not as much enforcement—I'm not exactly sure where exactly the sweeps have been happening, but this season, from

what workers have told us, a few of them have seen any Cal/OSHA inspectors out in the fields, if at all.

SENATOR FLOREZ: Okay. Thank you.

MS. ALVAREZ: One more thing...

SENATOR FLOREZ: Yes, of course.

MS. ALVAREZ: ...I wanted to add, I heard earlier about the shade placement about maybe not being enough room—and especially I think I heard in the large crews. What I've seen in areas where we have crews of about 100, 200 workers, there tends to be a lot more acreage because you only need that many workers if it's a large area of land. And in these areas, there definitely seems to be enough room to have these shade structures. If there's enough room to have a trailer where they're loading pallets of boxes or, you know, whatever it is that they have, there's enough room for a semi-truck to be there and, on top of that, additional tractors. There's definitely enough room to have additional shade structures around.

SENATOR FLOREZ: Okay. Thank you.

MS. ALVAREZ: You're welcome.

MS. ESPERANZA ROSS: Good afternoon. First, I want to thank Senator Florez for his leadership in the past five years on this issue so thank you very much.

As you know, Senator, UFW—oh, sorry—Esperanza Ross on behalf of the United Farm Workers, and here I have Julio Hernandez who will speak in a minute. As you know, Senator, you UFW fought to negotiate heat regulation in 2005. You took a lead in those negotiations with the governor. UFW continues to work on this issue. Unfortunately, since the regulation was adopted in 2005, 11 farmworkers have died. And despite promises from the governor and his administration, of the men and women who work under the sun can rest assured that they are doing everything they can to hold those responsible for violating the heat regulation. The governor and his administration have failed. We are deeply concerned to provide an example of this failure. Giumarra Vineyards is where two farmworkers have died of heat illness in the past five

years, and more violations of heat illnesses have occurred every year since the heat regulation went into effect.

Julio Hernandez, who works for Giumarra as a grape worker, will share that he filed a complaint with Cal/OSHA last year because farmworkers and his crew were being discouraged from drinking water on a day when the temperature soared. The regulation requires that workers shall be encouraged to drink adequate water, not discouraged or pressured not to drink the water. Cal/OSHA came; they interviewed Julio's crew. His crew shared with Cal/OSHA the pressure from the employer to not drink the water, and yet Cal/OSHA did nothing about it. They did not file any charges.

So with that, I'd like to introduce Julio Hernandez.

MS. ALVAREZ: And I'll be doing the translation.

SENATOR FLOREZ: Okay.

MS. ROSS: We have a translator.

MS. ALVAREZ: Okay. Perfect.

MS. ESMERALDA SERENO: Good afternoon. My name is Esmeralda Sereno. I'll be translating.

MR. JULIO HERNANDEZ: (Through translator) Good afternoon. My name is Julio Hernandez and I work with the company as a farmworker, with the company Giumarra. So I work with Crew No. 59; and for the last five years, we've experienced a lot of pressure from our foreman and a while ago a couple of my workers and myself, we decided to call Cal/OSHA to explain to them what type of injustices the foreman and the contractors were doing to us.

So he said, that after he called Cal/OSHA, five days after they showed up to do an investigation, the worker explained to them thoroughly all the injustices that they were experiencing. Cal/OSHA then made note of all the injustices that the farmworkers told them, and they said they would investigate. They did. They showed up a few days later. One of his colleagues received a letter from them saying that they did not find any violations. And he just expressed, that as a farmworker, they don't know, you know—although laws and the rights that they have—but they feel that, you know, they want to

go somewhere to explain to them what is happening to them and to get some type of response to help them resolve these injustices.

So he says that a few years back, they started receiving training on how to do the work; and then half hour into the training, they were told by their supervisor and explained the type of, the amount of work that they were expected to do throughout the day and I'm assuming the quantity—so they give him a quota as to how much work they have to, they demand them to do. And he just wants to know where he should be going to, ensure that he has a representation to be able to figure out, you know, what are his rights and how to resolve the issue. So he's had conversations with his other colleagues on the job, and they talk about how they're being treated worse than slaves and working in the shadows where people don't know what type of experiences they're going through. He wants to know where he can go or who he can call to ensure that they are treated the way that they're supposed to. So initially they ask us for a quota; but half hour into our work, they increase the quota and they expect us to be like magicians, to really try to meet these quotas that are unrealistic.

MR. HERNANDEZ: (No translator) Thank you, gracias.

SENATOR FLOREZ: We have no questions after that. Thank you for coming in and we'll have the other panel come in. Thank you. Gracias.

Okay. We have the last panel. Bryan Little, the director of Labor Affairs, California Farm Bureau, and Guadalupe Sandoval, Managing Director, the California Farm Labor Contractor Association. Good afternoon.

MR. BRYAN LITTLE: Thank you, Mr. Chairman.

SENATOR FLOREZ: Thank you.

MR. LITTLE: Chairman Florez and Chairman DeSaulnier, thank you for the opportunity to appear today. The safety of our agricultural workforce is a high priority for the California Farm Bureau Federation and our membership, which includes more than 31,000 farm families.

California Agriculture and the Department of Industrial Relations have worked together to achieve two goals. First, to educate and train agricultural

employers, supervisors, farm labor contractors, and agricultural employees about heat illness and about compliance with the 2005 heat illness protection standard; our second goal has been to work with OSHA, to clarify the standards requirements, and to provide specific guidance to our members on how to comply with heat-illness rules. In 2008, we and other ag organizations train nearly 900 farm employers, including more than 350 farm labor contractors, who in turn employed more than 200,000 farmworkers. By 2009, by focusing on larger venues and fewer sites, we were able to train nearly 2,000 people who in turn employed 400,000 farmworkers. Thus far in 2010, we've organized training for more than 1,200 growers, supervisors, and farm labor contractors. And this, of course, does not include training offered by workers' compensation insurers or the Division of Occupational Safety and Health. Our goal for 2010 is to exceed the number of people we trained in 2009.

Farm labor contractors completing this training received personalized certificates with the contractor's name and state license number. The Farm Bureau and our partners encouraged farm employers to contract for workers exclusively with contractors who could produce the certificate. The Farm Bureau also has individually worked to educate people working in agriculture. During the heat seasons in 2008 and 2009, the Farm Bureau's Rural Health and Safety Committee produced and paid for educational radio ads on Spanish-language radio stations throughout the state, and we've printed and distributed nearly a quarter of a million bilingual heat-illness prevention brochures in the last few years.

In 2008, California agriculture approached the Igloo Corporation of Houston, Texas, and suggested they produce water coolers with heat-illness information printed directly on them. The front of the cooler features an embossed bilingual warning for workers about how to protect themselves from heat illness. These heat-illness education coolers can now be found on farms throughout the state. Demand for ways to convey this message is still strong, and we've recently offered the same message on decals to retrofit existing coolers. In addition, we offer a number of other training and education

resources to help agricultural employers and our members to comply with the heat-illness prevention standard.

The Farm Bureau has also worked closely with the agency to answer questions from agricultural employers. In response in 2008, the division produced question-and-answer guidance to allow the agency to better educate and train its own staff and to allow us to better advise agricultural employers. As a result, the division staff have told us they've seen widespread compliance with the water-and-shade requirements of the heat-illness prevention standard. In late spring 2009, the division sought to have the Standards Board adopt a regulation generally reflecting that question-and-answer guidance. California agriculture was the only industry to offer support for that revision. Unfortunately, the Standards Board did not see fit to act on the division's proposal at that time, but we're hopeful the agency at its August meeting will approve a similar division proposal which we unequivocally support.

In summary, California agriculture as a whole has been active in educating and training California farm employers about heat-illness prevention and compliance with the standard, providing resources to support farm employers in those regards and working with the division to approve the standard. As a result, we were fortunate that we had no heat-illness fatalities in 2009, and we will continue to work to educate farm employers, workers, supervisors, and to work with our industry partners in the division to prevent heat illness in the future.

Thank you for your time and your attention.

SENATOR FLOREZ: Thank you. Okay.

MR. GUADALUPE SANDOVAL: Chairman Florez, Chairman DeSaulnier, thank you for this opportunity to comment on this issue of great importance to the agricultural industry, as it should be for all industries. Although I have knowledge of occupational health and safety and heat-illness prevention efforts in a wide range of industries, I'll limit my commentary to the industry that I'm most familiar with and which appears to be the focus of today's hearing—agriculture.

As managing director of the California Farm Labor Contractor Association, which is a new association that just formed last year with a few members and as an occupational health and safety consultant in the industry for over 20 years, I'm well aware of the hazards faced by dedicated and hardworking individuals who toil in the fields. In my youth, I also performed a wide range of farm work in the San Joaquin Valley and a first-hand knowledge of the hazards such as the heat. The California Farm Labor Contractors Association was founded on the principal that all farmworkers have the right to a safe, healthy, and respectful workplace. We believe that it's to the benefit of workers, employers, and our society as a whole to ensure the safety of our workforce. We agree that it's our duty to protect our most valuable assets, our workers.

In recent years, we've become increasingly aware of the hazards of heat illness. However, the vast majority of contractors and growers have never had a worker who became sick as a result of heat exposure. In the many years that my large family—five brothers, three sisters, and two parents—while we were performing farm labor, we never had a member become ill due to heat illness. We picked cherries, we picked apricots, boysenberries, peaches, and tomatoes in the heat in the Central Valley. These were difficult, dirty, hot jobs, but our experience was, they can be performed without undue risk to the worker.

The current Cal/OSHA regulation, Section 3395, Title VIII of the California Code of Regulations, is somewhat onerous in its requirements to provide extensive training, constant replenishment of drinking water, adequate shade, emergency procedures, and detailed written programs. The requirements are extensive, but the agricultural industry has embraced the regulation and supports Cal/OSHA's ongoing efforts to protect our workers. Unlike representatives of some other industries, we agree that these requirements will be helpful in providing additional protections to our workforce. The agricultural employer community, including the farm labor contractors, has been supportive of Cal/OSHA in the ongoing rulemaking process.

We welcome the March 2009 question-and-answer document which helped to clarify details of the regulation. We provided testimony in November 2009 to the Cal/OSHA Standards Board in support of the amended heat-illness prevention regulation which the board failed to adopt at that time. We continue to support revisions that Cal/OSHA proposes for the Standards Board hearing next month. The agricultural industry will continue in its efforts to educate employers on how to fully comply with this regulation, whatever its final form may be.

Over the past four years, a wide range of organizations, such as Farm Bureau, FELS, AgSafe, State Compensation Insurance Fund, and our California Farm Labor Contractor Association, have conducted extensive outreach to the agricultural community. This includes training for thousands of growers, labor contractors, supervisors, and workers. Cal/OSHA representatives have generously donated their time to dozens of seminars around the state. Cal/OSHA has also recently funded the public information campaign, *Noventa y Nueve Calor*, to provide radio, TV, print, and other outreach to the farmworker community. I cannot recall a workplace safety issue that has garnered as much attention or resulted in so many organizations and individuals conducting educational outreach to the agricultural community. I believe you have already heard from Cal/OSHA representatives regarding the level of enforcement staff and activities dedicated to this regulation. The education's there, the enforcement's there, and the motivation's there to protect the farmworkers of California.

The death of Maria Isabel Vasquez Jimenez in May of 2008 was a serious wakeup call as to the potential hazards of work in escalating temperatures. The ensuing wave of targeted enforcement, with the threat of Orders Prohibiting Use, OPUs, or shut-down orders, has resulted in a new landscape in agriculture. It's a landscape that's dotted with portable shade structures and large numbers of Igloo water coolers. Take a ride down Highway 99, I-5, or any other route through farmland and you'll see a wide variety of portable shades, from popups to manufactured shade on wheel to the more extensive

and expensive cool-down structures with misting fans and emergency decontamination facilities.

We didn't see much of that a few years ago, but the message is getting through and the employers are beginning to comply to the best of their ability. The regulation is strict, but many farm labor contractors are going well beyond those requirements. While there's no requirement to stop at any specified temperature, many contractors will stop their crews when temperatures reach 95 degrees. It is safer, and they notice a decrease in productivity once they reach those temperatures anyway.

Others will work only until the temperature reaches 100 degrees. This seems to be the new norm in agricultural work in most of California. Unfortunately, this will not be the norm in the Imperial Valley where temperatures reach 95 by mid morning during the hot summer months. I was just in Yuma yesterday, and temperatures were about 112 over there. People were working. Fortunately, it seems that these workers are acclimated to the heat.

Several contractors have indicated they strongly encourage workers to ignore fashion trends and not wear those dark-colored hoodies popular among younger workers. Many contractors have increased their payrolls to include workers dedicated to replenishing drinking water supplies for workers, often driving ATVs or mules—mules, not the animals but mules the vehicles—with water jugs directly out to the work crews. We're making progress. After several years of multiple heat-related deaths in agriculture and other industries, in 2009, we saw that death rate tumble to zero. This is an incredible success story, pointing to the value and effectiveness of education and enforcement efforts. This year, I'm not aware of any worker deaths conclusively linked to heat illness. We're determined that this trend will continue.

Agriculture, as with all other industries, comes with its inherent risks. I believe that the risk of fatalities and serious heat illness from heat exposure has been significantly reduced through the regulatory and educational efforts undertaken in recent years. We understand the consequences of a screw up.

We're not perfect but we are getting a lot better. Agricultural employers will continue to maximize our efforts to provide healthful workplaces for the workers who toil to put food on our tables.

Again, thank you for this opportunity to provide this testimony.

SENATOR FLOREZ: Thank you very much. I don't have a lot of questions. Let me just first ask a threshold question to either of you. Do you favor having heat regs that are, that we actually agree with, that we have come to some agreement with, conclusions on, to put in statute, or to keep it at the regulatory level?

MR. LITTLE: I think that it—I think that you created an agency, Cal/OSHA, to house the expertise necessary to write regulations and to enforce regulations. I think that if you put standards and statute, it takes away the flexibility of the agency to be able to address changing conditions and situations. And as such, I think it makes more sense to allow the agency to exercise its expertise and exercise its statutory mission and to create regulations presented in the Standards Board for approval.

SENATOR FLOREZ: Okay. So I'm to take that you like—you wouldn't want to see this in statute, even though you may have come to some agreement. You may come to some agreement on it.

MR. LITTLE: I think it's probably, should conditions change in the future, it's probably going to be easier, or if we can learn more about heat illness, it's going to be easier to revise the regulation that fits into the California Code of Regulations than it would be if it's in the California Labor Code.

SENATOR FLOREZ: Okay. Are there anything in the regulations that are vague to you at this point in time that need clarification, and what are those?

MR. LITTLE: One thing we're struggling with right now is giving agricultural employers a good definition of what is *close as practical* means, and what we're telling them right now is, put the water in the shade as close as you can possibly get it and monitor where it is and where your crews are throughout the day, and make sure its as close as you can have it be without

them literally tripping over it. And if you can, make provisions for workers to be able to carry water with them as they work, in small thermoses or some other, by some other means.

SENATOR FLOREZ: And just to finish the regulation discussion, so you can't have regulations on top of a statute or the statute laid some very bare minimums in terms of what should be provided? You couldn't have regulations on top of that?

MR. LITTLE: I'm not—well, I'm not an attorney so I don't think I'm qualified to answer that question.

SENATOR FLOREZ: Okay. And what would change, from your perspective, in terms of, you know, that you would be worried about having it in statute?

MR. LITTLE: Again, I think it might take away the flexibility that the agency has now to be able to recommend changes to the board and ask the board to approve them.

SENATOR FLOREZ: And, of course, the board, we always hit some point where we can reach agreement, hard-fought agreement. But if the board is appointed by the governor and there's a new governor and the board, you know, isn't necessary reflective of the past governor's appointments, I mean, does that, would you be fine with that if indeed it's a different administration with maybe a different perspective? Wouldn't we want to lock in whatever hard-fought agreement we might have today?

MR. LITTLE: I think the agency has in the past exercised its expertise and used its expertise to try to write a regulation that makes sense, and we have tried to train our people and educate our people to be able to be in compliance with that regulation. And so should a future board and a future agency decide to go on a different direction than we've been going in the past, we will do our best to try to both engage them in that process and then to educate our agricultural employers in making sure that they're in compliance with that standard.

SENATOR FLOREZ: And in terms of the discussion we had earlier about shade and it being all possible in terms of 25 percent versus 100 percent, I'd like to get your perspective on that. Where are you folks on that particular—do you like the current approach, 25 percent? Should it be 100 percent, 75 percent? How do you view that, the discussion we had earlier?

MR. LITTLE: I prefer to defer to the agency and their expertise on how much shade should be out there at any given time. We have taken the position, that whatever the regulation is, we're educating employers to be in compliance with it, and we don't ever condone noncompliance and we encourage compliance at every opportunity. If I had a dime for every time I said, put the shade up, put the shade up—please put the shade up—I might not be able to retire but I could probably buy a nice putter.

SENATOR FLOREZ: Okay. So in other words, you don't see workers asking to put the shade up very often?

MR. LITTLE: No. What I have recommended to employers is, even if it's below 85 degrees and the current guidance from the agency doesn't require shade to be up at temperatures below 85 degrees, we've advised employers to go ahead and put the shade up, to have it there, because you never know what the weather might do; it can be very unpredictable, and it's better just to have it there as insurance.

SENATOR FLOREZ: Okay.

SENATOR DeSAULNIER: I have a couple of things, defer to your expertise on this, Senator Florez, but as a relative newcomer to it. So in the time that you've been able to have these successes, any feedback in terms of profitability from employers or contractors? When people argued against these kind of regulations, it was a burden to some businesses. Have you gotten feedback, that now that they're implemented, the things they, some of them, the regulated community might have said would be too great a burden? Have they come to fruition? Pardon of the use of the word. You sort of indicated, both of you, in your testimony, that what's good for the employee is good for the employer as well, which we hope is true.

MR. LITTLE: To be honest, I haven't asked. I've been concentrating on educating agricultural employers on what the standard requires and how they can be in compliance with it.

SENATOR DeSAULNIER: And for people who may have said that there's still a lot of cases where people aren't complying, is that more a function of education in your view, or is it more a willful determination to continue to do business as it used to be done?

MR. LITTLE: I don't think I have an answer to that question. I just don't know. I know that we're continuing to do all the education and outreach that we can do, and I hope that someday we will eliminate noncompliance.

SENATOR DeSAULNIER: Okay, appreciate those comments. Thank you.

MR. LITTLE: Thank you very much.

SENATOR FLOREZ: Okay. Any public comment? No public comment?

Senator DeSaulnier, we will now adjourn our joint committees and I want to thank everyone for coming, and there'll be a transcript available rather soon and appreciate everyone being here today. And, Len, thank you very much, look forward to working with you as it goes forward, and there's a bill out there, which happens to be my bill—I hope people pay attention to—and we're going to continue to push that forward and hopefully make some changes. Thank you.

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