

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
[www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



Attachment No. 2

INITIAL STATEMENT OF REASONS

## CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 107, Section 3395  
of the General Industry Safety Orders

Heat Illness PreventionSUMMARY

The Occupational Safety and Health Standards Board proposes to adopt amendments to Title 8 of the California Code of Regulations, Section 3395 of the General Industry Safety Orders. These proposed amendments are authorized by Labor Code Section 142.3.

Currently, Section 3395 requires that in outdoor places of employment, employees suffering from heat illness or believing a preventative recovery period is needed are required to be provided access to an area with shade that is either open to the air or provided with ventilation or cooling for a period of no less than five minutes. Existing Section 3395 also provides that access to shade shall be permitted at all times. There is an exception to the existing requirement for shade for employees other than those in the agriculture industry, that allows for provision of cooling measures other than shade (e.g., use of misting machines) if the employer can demonstrate that these measures are at least as effective as shade in allowing employees to cool. Existing Section 3395 also includes a definition of "preventative recovery period" as well as training requirements related to prevention of heat illness.

The amendments proposed in this rulemaking would require ongoing provision of shade at temperatures above 85° F in outdoor places of employment, unrelated to an employee request. This requirement would be subject to an exception for use of cooling measures other than shade (e.g. use of misting machines) in workplaces other than agricultural workplaces. The amendments would require that additional precautionary measures to prevent heat illness be taken when the temperature of outdoor places of employment is at or above 95° F. Additionally, the proposed amendments would add several new elements to existing requirements for employee training and would eliminate the definition of "preventative recovery period."

The specific rationale and necessity of the proposed amendments are outlined below:

Section 3395 Heat Illness Prevention in Outdoor Places of Employment.

Section 3395(a) Scope and Application.

Existing Section 3395(a) contains an advisory note specifying that the requirements of Section 3395 may be integrated into the employer's Injury and Illness Prevention Program (IIPP) as required by Title 8 Section 3203. It is proposed to amend this note to clarify that the measures to comply with the requirements of Section 3395 may be integrated into the employers written IIPP and may also acceptably be maintained in a separate document. Because it is only an advisory note that is being amended, there is no regulatory effect from this action.

Section 3395(b) Definitions.

Existing Section 3395(b) includes a definition for the term "Preventative recovery period." It is proposed to delete this definition, as this term would no longer be included in the proposed amended standard.

Existing Section 3395(b) includes a definition for the term "Shade." The existing second sentence of this definition specifies that shade for the purposes of the regulation may be provided by means of canopies, umbrellas, and other temporary structures or devices. It is proposed to clarify and relocate this second sentence of the existing definition of shade from the beginning to the end of the definition and to state that natural or artificial sources of shade may be used to provide shade, and that shade may be provided by any combination of these sources. The necessity for this amendment is to clarify that shade adequate to allow the body to cool may be provided from natural or artificial means that do not expose employees to unsafe or unhealthy conditions.

Existing Section 3395(b) does not include a definition of the term "Temperature." It is proposed to add a definition of "Temperature" specifying that this term, as used in the regulation, applies to measurement in degrees Fahrenheit using a thermometer in an area where there is no shade, and that this measurement should be done with the bulb or sensor of the device shielded from direct contact with sunlight. The necessity for this proposed amendment is to specify a simple and uniform technique for obtaining the workplace temperature used as the basis for several proposed new requirements of the regulation as detailed below.

Section 3395(c) Provision of water.

Existing Section 3395(c) details requirements for provision of drinking water to employees covered by the regulation. It is proposed to amend the existing language of this section to clarify that the drinking water shall be provided at no cost to the employee, and shall be fresh, pure, and suitably cool. This provision of drinking water at no cost is consistent with an employer's obligation to pay for and provide all safety provisions and is specifically required by Labor Code section 2441. Additionally, the reference to the subsection addressing training about consumption of small quantities of water is amended in accordance with the proposed renumbering of that subsection. The necessity for these amendments is to clarify the requirements of the standard regarding access to drinking water. The amendment referencing subsection (f)(1)(C) is without regulatory effect.

Section 3395(d) Access to shade.

Existing Section 3395(d) requires employers with outdoor places of employment to provide access to shade for a period of no less than 5 minutes to employees suffering from heat illness or believing a preventative recovery period is needed. Existing Section 3395(d) also provides that for employers other than those in agriculture, cooling measures other than shade may be provided if the employer can demonstrate that these measures are at least as effective as shade in allowing employees to cool.

It is proposed to amend Section 3395(d) to require that when the temperature of an outdoor workplace exceeds 85° F the employer shall have and maintain one or more shade areas sufficient to accommodate 25 percent of the employees on the work shift at any time, located as close as practicable to where employees are actually working. It is further proposed to amend Section 3395(d) to require that in outdoor workplaces when temperatures do not exceed 85° F, employers shall provide shade either as required where temperatures exceed 85° F or in a timely manner in response to an employee's request for shade. The necessity for these amendments is to provide a concrete, easy to understand temperature trigger for shade requirements and clear guidelines for the minimum amount of shade needed when the temperature trigger is exceeded.

It is further proposed to amend Section 3395(d) to add a new requirement that employers with outdoor workplaces encourage employees to take a cool-down rest in the shade for a period of no less than 5 minutes if they feel they need to do so to protect themselves from overheating. The necessity for this requirement is to set clear guidelines for minimum rest periods to be provided so that employees may avoid developing a heat illness.

Section 3395(e) High-heat procedures.

It is proposed to relocate the existing language of Section 3395(e) to a new Section 3395(f) and replace it with new requirements for procedures to reduce the risk of heat illness in outdoor workplaces when the temperature equals or exceeds 95° F. The newly proposed procedures, required to be implemented by employers in outdoor workplaces when practicable, are for ensuring the capability of contacting a supervisor when necessary, for observing employees for alertness and signs or symptoms of heat illness, for reminding employees throughout the work shift to drink plenty of water, and for close supervision of new employees for the first 14 days of their employment unless they provide specified information establishing that they are acclimatized to work in heat in excess of 95° F. The necessity for this proposal is to require extra precautions, where practicable, under high heat conditions that potentially pose heightened risks to employees.

Section 3395(f) Training.

It is proposed to renumber existing Section 3395(e), which specifies requirements for employee and supervisor training, as Section 3395(f) and to add additional requirements. It is proposed to add language clarifying that no employee or supervisor shall begin outdoor work to which Section 3395 applies unless they have received the training required by this regulation. It is also proposed that an element of training be added on the burden of heat load on the body caused by exertion, clothing, and personal protective equipment. It is also proposed to add to the existing elements for training procedures for designating a person to be available to ensure that

emergency procedures are invoked when appropriate. Also, it is proposed to add to the current procedures on which supervisors are required to be trained an element on how to monitor weather reports and how to respond to hot weather advisories. The necessity for the proposed amendments is to make the required training more comprehensive and effective.

#### DOCUMENTS RELIED UPON

United States Department of Commerce, National Oceanic and Atmospheric Administration, Heat Index Chart. [www.noaa.gov/themes/heat.php](http://www.noaa.gov/themes/heat.php).

Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

#### REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

#### SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

#### COST ESTIMATES OF PROPOSED ACTION

##### Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

##### Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

##### Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

##### Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

#### Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

#### Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

### DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

### ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.