African-American Farmers of California
California Citrus Mutual
California Cotton Ginners and Growers Association
California Fresh Fruit Association
Milk Producers Council
Nisei Farmers League
Western Agricultural Processors Association

March 31, 2017

Ms. Amalia Neidhardt
DOSH Research and standards Health Unit
1515 Clay Street, Suite 1901
Oakland, CA 94612

Re: ***Proposed Standard for Heat Illness Prevention in Indoor Places of Employment***

Dear Ms. Neidhardt,

On behalf of the above listed organizations, we appreciate the opportunity to provide comments on the proposed standard entitled *Heat Illness Prevention in Indoor Places of Employment*. We have reviewed the proposed standard and attended the recent workshop held in Oakland on the proposed standard. Based upon that review we have serious concerns with the proposed regulations and the impact they could have on the operations we represent. This standard would be destructive to our workforce. We feel strongly that the proposed standard is not warranted or justified in the agricultural industry, is overly cumbersome and complicated and costly to implement, while also causing tremendous burden for workers.

Applicability

First and foremost, while we understand that legislation was passed and signed by the Governor that requires CalOSHA to "propose to the Standard Board for the board's review and adoption" a standard that minimizes heat-related illness and injury among workers in indoor places of employment, it does not state or require that the standard be applied across all industries, facilities or operations. In fact, the legislation (SB 1167) specifically states that the standard could be limited to "certain industry sectors." We believe that to mean industry sectors where indoor heat illness has been shown to be a demonstrated problem, and most likely sectors that have sources of high heat located within the buildings. In reviewing all reported accident information that we are aware of, we cannot find a single incidence of a worker in an agricultural building, (i.e. farm shop, cotton gin, etc.) reportedly suffering from a heat related injury or illness. We find the applicability of this standard to the agricultural industry under this mandated standard to be unnecessary and unwarranted.

Definitions

The listed organizations have serious concerns with some of the proposed definitions. For example, since many of our operations will have both outdoor and indoor places of

employment, the definitions in the proposed regulation should be identical. For example, the acclimatization in Title 8, §3395 is as follows:

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

While in the proposed regulation it is proposed to say:

> **"Acclimatization" means temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to it. Acclimatization peaks in most people within four to 14 days of regular work for at least two hours per day in the heat. For purposes of this section, employees who have worked at least two continuous hours per day for at least 10 days within the previous 14 days in places of work covered by this section are considered acclimatized, and all other employees are considered unacclimatized.**

This inconsistency and increased burden in the proposed standard not only causes confusion, it imposes substantial restrictions on the work ability of the employee. It is our recommendation that the definition for acclimatization remain the same as in the existing outdoor the illness standard.

Proposed Rule Complexity and Cost

Second, for those that would be subject to the proposed regulation, the standard is much too difficult to understand and follow, let alone comply with. It is not reasonable, or prudent, for supervisors or foremen to be knowledgeable on "wet bulb globe temperature (WBGT)" or to utilize a WBGT device. Nor is it reasonable for supervisors or foremen to refer to a "chart" and compare and consider work activity levels, clothing adjustment factors, and acclimatized vs. unacclimatized employees. For those facilities that will ultimately be subject to this regulation, we urge CalOSHA to utilize standard temperature thresholds and measuring devices and to limit the variables in terms of triggers. Additionally, we believe it is reasonable to expect all affected employers to place a primary emphasis on the implementation of effective heat-illness training to employees, specifically those with supervisorial or managerial responsibilities, in order to ensure awareness of heat-related illness symptoms and the execution of an appropriate reaction when responding to heat-illness symptoms. In order to achieve consistency and attain widespread compliance, any such standard must be directly aligned with the requirements of an Injury and Illness Prevention Program (IIPP) as then employers would be expected to continue to place an emphasis on implementing an effective IIPP that reduces the risk of exposure to the hazard while advancing the detection of heat-related illness symptoms and protective reactionary measures. .

Related to this concern with complexity is the proposed requirement to use a WBGT measuring device. Upon a search of www.amazon.com, (referenced by CalOSHA during the workshop) to determine the cost of a WBGT meter similar to the one on display at the CalOSHA meeting, it

was determined that the cost to be $2,180.49[1]. This is an unbelievable and unacceptable amount of money to determine rule applicability. We feel strongly this could be done much simpler and cheaper by using a simple thermometer and simple temperature thresholds. CalOSHA is required to follow the Administrative Procedures Act (APA), which would require a Cost Effectiveness Analysis to be performed.

Plan Development and Implementation

One particular area of concern is the requirement in subsection (c)(1) of the proposed rule, which requires the procedures in the Heat Illness Prevention Plan to obtain the active involvement of employees "and their representatives". For employees in a non-union setting, this is not only not applicable, it is not appropriate or legal. We clearly see the need to have employees involved in the development of the heat illness plan, but bringing outside direction, separate from the company will be highly problematic and opens the door to a lot of unwarranted issues. The requirement that includes "their representatives" must be stricken from the proposed code.

Recordkeeping

The coalition is also concerned with the recordkeeping requirements proposed in this regulation. For consistency, the recordkeeping requirements should be the same as is required in CCR Title 8, §3203.

In closing, we appreciate the opportunity to provide comments on the proposed regulations. We reiterate the lack of supporting information and cause for this regulation to be applied to operations that do not have sources of high heat indoors. We would urge CalOSHA to limit applicability of this rule to where it is truly needed.

Sincerely

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[1] 3M WIBGET Heat Stress Monitor, 1 Kit/Case, https://www.amazon.com/3M-WIBGET-Stress-Monitor-WB-300/dp/B00HNJV8GG/ref=sr_1_fkmr0_1?s=hi&ie=UTF8&qid=1489077456&sr=1-1-fkmr0&keywords=3m+wbgt+meter , March 9, 2017.