

July 24, 2017

Amalia Neidhardt , Senior Safety Engineer  
DOSH Research & Standards Health Unit  
495-2424 Arden Way  
Sacramento, CA 95825

Subject: Heat Illness Prevention in Indoor Places of Employment  
Comments on Discussion Draft #2 Dated May 25, 2017

Dear Ms. Niedhardt:

The organizations representing agricultural employers signing this letter appreciate the opportunity submit comments regarding the May 25, 2017 discussion draft of a to-be-proposed standard on Heat Illness Prevention in indoor workplaces. For reasons enumerated in comments submitted on July 7 by a broad employer coalition in which many of our organizations participated, and certain other reasons that will be explained below, we believe this proposal is too complex and ambiguous. It will result in a regulation that will be confusing and prohibitively expensive to implement.

Agricultural employers have been involved from its earliest stages with the development and implementation of the existing Heat Illness Prevention standard (Section 3395). We have significant experience with heat illness prevention. As you know, the HIP standard relies heavily on specific procedures applied to prevent heat illness and deal with effectively it if it occurs. Recent drafts of a possible indoor heat illness prevention standard add layers of complexity that will be difficult and expensive to implement, that will result in misunderstanding and confusion and therefore will result on non-compliance and less protection for employees than could be offered by a simpler, more performance-oriented standard.

It also is not evident, either from reading the May 25 discussion draft or participating in the stakeholder meetings thus far, that DOSH can tie various, complex requirements (e.g., use of wet-bulb thermometers, assessment of individual indoor spaces for possible heat risk, special procedures for radiant heat sources) directly to instances where employees working indoors have experienced risk of heat illness. The legislative mandate of SB 1167 (Leyva) requires the agency to move forward with this regulation, but actual data can indicate conditions found in indoor workplaces that actually pose a heat illness risk, providing meaningful context to the agency's proposed regulation, and helping to crafting an indoor heat illness regulation that can protect workers without imposing unnecessary and ineffective mandates on covered employers.

Statutory Timing Requirement. The agency unfortunately is rushing the process of creating an indoor heat illness standard because of a misinterpretation of the statutory deadline for a regulation. SB 1167 (Leyva), which provides the legislative mandate for the indoor heat illness rulemaking, sets forth a timeline requiring the agency to submit a proposed regulation to the California Occupational Safety and Health Standards Board by January 1, 2019. This is apparent from the legislative language directing the agency to propose the regulation, Labor Code §6720:

*"By January 1, 2019, **the division shall propose to the standards board for the board's review and adoption** a standard that minimizes heat-related illness and injury among workers working in indoor places of employment."*

A plain-English reading of this language clearly mandates that the agency “propose” a standard to the Standards Board, and does not require adoption of a standard by the Board by January 1, 2019. After the board’s receipt of the proposed rule, the process of review and stakeholder interaction with the division should begin. The final regulation should be a rule with which employers can comply, that protects employees and results from a measured, thoughtful process that is not needlessly rushed by a misinterpretation of the agency’s statutory mandate.

Cost, complexity, scope, and definitions. With respect to these aspects of the discussion draft, we would like to associate ourselves with the comments submitted by a coalition of employer organizations submitted on July 7, 2017.

We cannot over-emphasize the importance of harmonizing the requirements of the new indoor heat illness prevention standard and the existing HIP standard. Many employers have worked for many years to understand and implement with the HIP standard, and the agency has recognized the industry’s successful efforts to comply with the standard. Additionally, there are several specific aspects of a possible indoor heat illness regulation that will impact agricultural employers that we would like to call to your attention:

Applicability to buildings associated with agricultural activity: Agricultural employers commonly operate facilities to house supporting activities in buildings of differing types to accommodate the needs of their operations. These buildings may include packing sheds, on-farm processing facilities, and equipment storage sheds. These buildings may consist merely of a roof resting on a supporting structure to provide overhead weather protection and unfettered access to whatever machinery or activity is taking place under the roof; a roof with two or three full or partial walls to afford access to the machinery or activity occurring within; or a building that may have one or more walls consisting of moveable or retractable walls or high-bay doors that are moved or removed to facilitate access.

These buildings are unlikely to be climate-controlled for obvious reasons, though extensive mechanically-assisted ventilation is often provided for the comfort, protection, and efficiency of employees. These buildings may incorporate climate-controlled office or break room space, or such facilities may be situated nearby.

We suggest to the agency that such non-climate-controlled structures associated with agricultural production more closely resemble agricultural production areas than the types of buildings envisioned by a possible indoor heat illness standard. We recommend that employers otherwise covered as agricultural employers within the scope of Section 3395 continue to be covered by it in all aspects of their operations, including those occurring in the above-described buildings. In terms of the heat illness hazards that might be encountered, the simplest and most effective means of protecting employees from heat illness hazards would be to apply Section 3395, with certain practical modifications to adapt to the partially-enclosed work environment. One important aspect of the requirement for provision of water as close as practicable to work areas will be to recognize the existing exception to replenishment requirements if a permanent plumbed water supply is available.

The familiarity of employers who operate these facilities and employees who work in them with existing requirements of Section 3395 will facilitate their immediate compliance and afford workers working in these facilities immediate protection.

Workers who work both indoors and outdoors: Many workers regularly rotate between indoor and outdoor work in a workday. The definition of the scope of the draft indoor heat illness prevention standard does not provide a practical method for employers of such workers to determine whether they are covered by the existing Heat Illness Prevention standard or the proposed indoor standard. In this regard, we associate ourselves with the comments made in the July 7 general industry comment. In our view the simplest approach for employers of agricultural employees is to apply Section 3395 for employees who work outdoors or in the types of buildings associated with agricultural production most of the day, and limit applicability of the new indoor heat illness standard to workers working a large part of the day indoors. We recommend that such workers who work indoors for less than four hours continuously in any one day be considered outdoor workers, covered by Section 3395. Outdoor workers who seek shade and or cooling in indoor spaces for short periods of time should continue to be covered by Section 3395.

Sincerely,

Agricultural Council of California  
California Association of Winegrape Growers  
California Citrus Mutual  
California Cotton Ginners Association  
California Farm Bureau Federation  
California Fresh Fruit Association  
Grower-Shipper Association of Central California  
Far West Equipment Dealers Association  
Western Agricultural Processors Association  
Western Growers Association

cc: Steve Smith, DOSH  
Eric Berg, DOSH  
Juliann Sum, DOSH  
Christine Baker, Department of Industrial Relations