

June 15, 2018

TO: rs@dir.ca.gov

FROM: California Chamber of Commerce
Agricultural Council of California
American Pistachio Growers
Associated General Contractors
Building Owners and Managers Association
California Association of Joint Powers Authorities
California Association of Winegrape Growers
California Attractions and Parks Association
California Building Industry Association
California Business Properties Association
California Citrus Mutual
California Construction and Industrial Materials Association
California Cut Flower Commission
California Farm Bureau Federation
California Framing Contractors Association
California Hospital Association
California League of Food Producers
California Manufacturers & Technology Association
California New Car Dealers Association
California Professional Association of Specialty Contractors
California Refuse Recycling Council
California Restaurant Association
California Retailers Association
California Trucking Association
Chemical Industry Council of California
Construction Employers' Association
Elk Grove Chamber of Commerce
Family Business Association
Family Winemakers of California
Far West Equipment Dealers Association
Flasher Barricade Association
Fresno Chamber of Commerce
International Council of Shopping Centers
Murrieta/Wildomar Chamber of Commerce
National Association of Industrial and Office Properties
National Elevator Industry, Inc.
National Federation of Independent Business
North Orange County Chamber of commerce
Official Police Garages of Los Angeles
Rancho Cordova Chamber of Commerce
Residential Contractors Association
Santa Maria Valley Chamber of Commerce
Western Carwash Association
Western Growers Association
Western Plant Health Association
Western Steel Council
Wine Institute

SUBJECT: HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT
COMMENTS ON DISCUSSION DRAFT – MAY 16, 2018

The above-signed organizations (the Coalition) submit these comments regarding the subject discussion draft. The Coalition represents employers large and small across many diverse industries. We appreciate the revisions incorporated into this new draft, and we propose further revisions to provide clarity and to lead to better compliance and employee safety and health.

We take the safety and health of our employees very seriously. Many members of the Coalition were involved with the development and implementation of the outdoor heat illness regulation, Section 3395, and have significant experience with how to effectively prevent heat illness.

Coalition Suggested Revisions to Discussion Draft. Our comments are described below subsection by subsection. Recommended revisions are in bold text/or ~~strikeout~~.

(a) Scope and Application

Warehousing and storage. “Warehousing and storage” as referenced in subparagraph (1)(I) should be defined to indicate the types of warehousing and storage facilities covered and not covered by this paragraph. As written, storage rooms in office buildings, hospitals and grocery stores could be considered warehousing and storage.

Vehicles. To provide clarity for employers, how the standard applies to vehicles should be noted in this subsection, which describes the sections’ scope and application. Existing paragraph (4), reading as follows, should be added:

(4) This standard applies to vehicles not covered by section 3395, from which employees exit to make pick-ups or deliveries. Employers are not required to perform for such vehicles assessments required by subsection (e).

(b) Definitions

“Cool-down area.” The outdoor environment surrounding many indoor workplaces that this standard will cover is often cooler than the indoor environment, whether measured by temperature or heat index. In many of those instances, an area of outdoor shade provides very effective cooling and thus should be allowed for the purpose of compliance. Accordingly, this definition should include an area of outdoor shade as a cool-down area for any indoor employee, not just those also covered by section 3395 during the work shift. The definition should therefore read as follows:

“Cool-down area” means an area that is indoor, shielded from high radiant heat sources, provided with ventilation or cooling, and provided with a supply of cool drinking water. A cool-down area does not include a location where environmental risk factors defeat the purpose of providing relief and allowing the body to cool. A cool-down area may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use. ~~For employees also covered by section 3395 during the work shift, an area of shade meeting the requirements of section 3395 may be used instead of as a cool-down area.~~

“Clothing that restricts heat removal.” As recommended by The Phylmar Regulatory Roundtable, clothing with flame-resistant or arc-rated properties that is constructed only of knit or woven fibers, has a fabric weight typical of work clothing, and is used as the outer layer of clothing should not be covered under the definition of “clothing that restricts heat removal.” The definition should thus be revised to read as follows:

“Clothing that restricts heat removal” means full-body clothing covering the arms, legs, and torso that is any of the following:

- (1) Waterproof; or
- (2) Designed to protect the wearer from a chemical, biological, radiological, or fire hazard, except for clothing with flame-resistant or arc-rated properties that is constructed only of knit or

woven fibers, has a fabric weight typical of work clothing, and is used as the outer layer of clothing; or

- (3) Designed to protect the work process from contamination.

“Indoor.” The Coalition appreciates the clarity and flexibility provided by the new definition of an indoor work area. So employers can understand and comply with their obligations even better, we recommend further clarity as indicated in the following discussion.

Generation or use of water. In exceptions (1) and (2) to the definition of “indoor,” the phrase “work processes in the space that use or generate water” requires clarification. In some workplaces, water used for environmental cooling (e. g. misters) or served in restaurants should not cause the assessment requirement to be changed from temperature to heat index. The phrase should thus be tightened by including the condition that the process is one that increases relative humidity, as follows:

- (1) Where employees in the space are already covered by section 3395 during the work shift, there are no work processes in the space that use or generate water and increases relative humidity, and the space has openings to the outdoors that allow the temperature in the space to be the same as or less than the outdoor temperature throughout the work shift;
- (2) Where employees in the space are already covered by section 3395 during the work shift, there are work processes in the space that use or generate water and increases relative humidity, and the space has openings to the outdoors that allow the heat index in the space to be the same as or less than the outdoor heat index throughout the work shift;

Furthermore, exception (2) implies that a heat index assessment must be taken. However, nowhere in the draft does it specify when employers must assess the heat index versus the temperature. Subsection (e) Assessment and Control Measures, should provide direction for employers on what to assess. We provide recommended revisions for that subsection.

Vehicles and drivers. Assessing the application of section 3395 versus this indoor standard to vehicles is complex and deserves more clarity so employers and Cal/OSHA alike will understand which standard applies and when it applies. The Coalition suggests replacing the language in exception (3) and adding an exception (4) to the definition of “indoor” as follows:

- (3) Inside vehicles and equipment cabs.
 - a. Space inside vehicles or equipment cabs, either with or without air conditioning, that are covered under subparagraph (a) (2) (E) of section 3395 are outdoor work spaces and remain covered under section 3395 and not under this section.
 - b. Space inside vehicles and equipment cabs otherwise covered under section 3395 remain covered under section 3395 and not under this section.
 - c. In accordance with subsection (a) (3) of this standard, vehicles and equipment cabs in which the temperature is below 85 degrees are indoor spaces to which this standard does not apply.
- (4) Employees driving vehicles used for pick-up or delivery are covered by section 3395.

Define “equipment cab.” Exception (3) refers to “equipment cab.” To help employers determine the scope and application of that exception to various types of equipment, employers would appreciate a definition of “equipment cab.”

- (d) Access to Cool-Down Areas.

The draft language in paragraph (1) begins “The employer shall have and maintain one or more cool-down areas at all times.” Sometimes employees are not present in a work area when the temperature or heat index is at or exceeds the coverage threshold. Other times, the temperature or heat index in a work area is below the coverage threshold when employees are there. In those situations, an employer should not be required to have and maintain one or more cool-down areas. Accordingly, this directive should be limited to require the provision of cool-down areas only when this standard applies, as follows:

- (1) The employer shall have and maintain one or more cool-down areas at all times for a work area when it is covered by this section. The cool-down area shall be at least large enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the cool-down area without having to be in physical contact with each other. The cool-down area shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the size of the cool-down area during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite.

(e) Assessment and Control Measures.

- (1) Assessment. The Coalition recommends simplifying and clarifying paragraph (1) of this subsection, as well as clarifying when an employer must measure temperature versus when to measure heat index. In paragraph (1), the employer must to assess environmental risk factors. In subparagraph (1)(A) the employer must to describe the environmental risk factors, and in subparagraph (1)(B) the employer must use assessments that are representative of the environmental risk factors. To simplify requirements so employers can more readily comply with them, consideration of environmental risk factors should be combined into one provision. Furthermore, the draft proposes in (e)(1)(A) requires a written description of the assessment. The Coalition asserts that documenting the date, time, location and environmental risk factors comprises the description of the assessments, and therefore, documenting the description is unnecessary and confusing. We recommend deletion of this requirement.

Accordingly, the Coalition suggests paragraph (1) be revised to read as follows:

- A. The employer shall measure the temperature in a work area where employees will be working when any of the following conditions are anticipated:
 - I. The temperature equals or exceeds 90 degrees Fahrenheit; or
 - II. Employees wear clothing that restricts heat removal and the temperature equals or exceeds 80 degrees Fahrenheit; or
 - III. Employees work in high radiant heat work areas and the temperature equals or exceeds 80 degrees Fahrenheit.
 - B. The employer shall measure the heat index in a work area where employees will be working when the employer anticipates work processes that will generate or use water that increases relative humidity, and the heat index equals or exceeds 90 degrees Fahrenheit.
 - C. Measurements shall be taken in work areas and at times when employees are exposed to the highest expected temperature or heat index, as applicable.
 - D. For each work area described in paragraph (A) or (B), the employer shall assess the environmental risk factors for heat illness defined in subsection (b), Definitions, as applicable.
 - E. The measurements and assessments shall be in writing and shall include the date, time, location of all measurements and descriptions of all other environmental risk factors.
 - F. Employers may use representative measurements for multiple work areas that share similar conditions.
 - G. The employer shall have procedures to obtain and consider input from employees and their union representative in designing and conducting the assessments.
- (2) Control measures. Paragraph (2) specifies a hierarchy of for the imposition of control measures: engineering controls, administrative controls, and personnel heat-protective equipment. Such a rigid hierarchy prevents employers from being able to choose those control measures that will be most effective and practicable in addressing heat in indoor work area. Accordingly, paragraph (2) should be revised to read as follows:

(2) The employer shall use one or more control measures as specified in subsections (e)(2)(A), (B), and (C) in the following situations: where the temperature equals or exceeds 90 degrees Fahrenheit; where work processes use or generate water and the heat index equals or exceeds 90 degrees Fahrenheit; where employees wear clothing that restricts heat removal and the temperature equals or exceeds 80 degrees Fahrenheit; or where employees work in high radiant heat work areas and the temperature equals or exceeds 80 degrees Fahrenheit. The employer shall implement one or more of the following control measures based on the written assessments of environmental risk factors for heat illness required in subsection (e)(1) and based on the employer's written evaluation of control measure alternatives after considering all three categories of control measures.

(A) Engineering controls. ~~Engineering controls shall be used to reduce the temperature or heat index, as applicable, to the lowest temperature or heat index possible, except to the extent that the employer can demonstrate that such controls are not feasible or practicable.~~ Engineering controls include, but are not limited to: isolation of hot processes, isolation of employees from sources of heat, air conditioning, cooling fans, local exhaust ventilation, shielding, and insulation of hot surfaces.

(B) Administrative controls. ~~Where engineering controls are not feasible or do not reduce the temperature or heat index, as applicable, to below 90 degrees Fahrenheit or to below 80 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat work areas, administrative controls shall be implemented except to the extent that the employer can demonstrate that such controls are not practicable.~~ Administrative controls include, but are not limited to: acclimatizing employees, rotating employees, scheduling work earlier or later in the day, using work/rest schedules, reducing work intensity or speed, changing required work clothing, and using relief workers.

(C) Personal heat-protective equipment. ~~Where engineering controls are not feasible or do not reduce the temperature or heat index, as applicable, to below 90 degrees Fahrenheit or to below 80 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat work areas and administrative controls are not practicable, personal heat-protective equipment shall be used to reduce the risk of heat illness, except to the extent that the employer can demonstrate that use of such equipment is not feasible.~~ Personal heat-protective equipment that can reduce the risk of heat illness includes, but is not limited to: water-cooled garments, air-cooled garments, cooling vests, wetted over-garments, heat-reflective clothing, and supplied-air personal cooling systems.

(h) Training.

Employers with employees working in both indoor and outdoor areas should be able to provide one training program to comply, and should not be required to provide separate training for indoor heat illness prevention, and outdoor heat illness prevention. As training requirements in both standards are similar, training provided in compliance with this section would be compliant also for section 3395. Furthermore, the language in the draft should clarify that the training is required before an employee starts the job that should be reasonably anticipated to result in exposure to the risk of heat illness, not each day that the employee may be exposed. Accordingly, the following revision is recommended:

(1) Employee training. Where employees are covered by section 3395 and this section, compliance with this section or section 3395 will satisfy compliance with this section. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins employment that includes work that should reasonably be anticipated to result in exposure to the risk of heat illness:

(i) Heat Illness Prevention Plan

Written plan. Employers with employees working both in indoor and outdoor areas should be able to provide one written Heat Illness Prevention Plan to cover employees who are covered by either section

3395 or this section. As plan requirements in both standards are similar, an employer that provides a heat illness prevention plan in compliance with this section would be compliant also for section 3395. Accordingly, the following language is recommended for this subsection:

Heat Illness Prevention Plan. Where employees are covered by section 3395 and this section, compliance with this section or 3395 will satisfy compliance with this section. The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program required by section 3203, and shall, at a minimum, contain

Reference to section 3203. Essentially, paragraph (5) states that employers not subject to this standard shall use section 3203 provisions (Illness and Injury Prevention Plan) to address hazards not already addressed by this standard where the risk of heat illness is present. As employers not subject to the scope and application of this standard will not follow the requirements of paragraph (5), it is not appropriate to include in that paragraph a provision that applies to employers not subject to the standard.

Furthermore, paragraph (5) of subsection (a), Scope and Application, states clearly "This is also not intended to exclude the application of section 3203 to indoor work areas not covered by this section where one or a combination of environmental risk factors can still cause heat illness in employees." That provision suffices to alert employers of their obligation to identify and address heat illness hazards in their Illness and Injury Prevention Program.

Therefore, paragraph (5) should be deleted.

Conclusion. The Coalition is very concerned that because of its complexity as written, the discussion draft will not result in increased employee protection. Employers need to be able to understand the requirements to comply with the regulation and to continue to keep employees safe and healthy.

The Coalition has drafted the proposed recommendations to better prevent heat illness for employees working indoors. We appreciate the opportunity to provide this input and your thoughtful and serious consideration of our recommendations. To discuss this subject further, please contact Marti Fisher, California Chamber of Commerce, (916) 444-6670.

Copy: André Schoorl, Juliann Sum, Eric Berg, Amalia Neidhardt

From: Roger Isom
To: [DIR RS](#)
Cc: [Lauren M. Noland-Hajik](#)
Subject: Chamber Letter
Date: Monday, June 18, 2018 8:50:52 AM

Can you please add California Cotton Ginners and Growers Association and the Western Agricultural Processors Association to the Chamber Coalition Letter. Both of our organizations fully support the letter.

Sincerely,

Roger A. Isom
President/CEO

Sent from my iPhone.