


November 20, 2018

TO: rs@dir.ca.gov

FROM: California Chamber of Commerce 

Agricultural Council of California
Almond Alliance of California
American Pistachio Growers
Associated General Contractors of California
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 Cotton Ginners and Growers Association
California Cut Flower Commission
California Farm Bureau Federation
California Framing Contractors Association
California Fresh Fruit Association
California Hotel and Lodging 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 of California
Family Winemakers of California
FarWest 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 Contractor's Association
Santa Maria Valley Chamber of Commerce
Western Agricultural Processors Association
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 – OCTOBER 24, 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, we continue to request revisions that we had previously requested, and we propose further revisions. Our recommended revisions will provide clarity to foster better compliance and improved 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

NOTE NO .1: The Coalition expressed concern about this note in its comments on the discussion draft of February 15, 2018 yet this note remains in the draft. As it has no regulatory authority for enforcement or compliance, we suggest the deletion of this note. Instead, it is appropriate to place the provision in subsection (i), Heat Illness Prevention Plan, to make it clear that the employer has the right to incorporate the requirements of this standard into any of several options, including integration into the employer's outdoor heat illness prevention plan in compliance with section 3395. The Coalition does not suggest a change in the employer program options, but merely that the provision allowing them be placed appropriately so it has the force of law and employers meeting its requirements will be deemed in compliance of it.

(b) Definitions

"Indoor." The Coalition appreciates the clarity provided by the new definition of an indoor work area. However, we recommend further specificity to the language so employers can better understand and comply with their obligations.

Here is an example of a space that could be construed as indoor under the proposed definition, yet is treated currently as outdoor. It is a manufacturing plant that has a tower with a "ceiling or overhead covering" (except for its top floor), and it has "physical barriers" around the perimeter (e. g., a chain link fence and/or a handrail). The four sides, however, are open to wind/sun/rain/etc., and the ceilings are 20 to 30 feet high. The tower has stairs and an elevator in it.

Other examples include a production facility with bays or equipment workshops with large roll up or garage doors that often extend from the floor to near the ceiling of the structure. During much of the day, one or more of these roll up doors will be open. Many of these structures may fall under the proposed definition of "indoor." However, employees will be both in the building and outside intermittently throughout the day.

Many construction employees perform interior work while frequently going outside to prepare or obtain materials, then going back inside.

Thus, the definition of "indoor" could make it unnecessarily burdensome for employers to determine whether an area is indoor or outdoor and to manage accordingly and correctly. Therefore, employers need clarity and the ability to harmonize the outdoor requirements as much as possible with the new indoor requirements so they may maintain and manage one plan.

The Coalition recommends further clarity as follows:

"Indoor" refers to a space that is under a **solid** ceiling or overhead covering; and is **fully** enclosed along its **entire** perimeter by **solid** walls, doors, windows, dividers, or other physical barriers, whether open or closed. **If the enclosure of the perimeter of the space consists of moveable walls, doors, dividers or other moveable physical barriers, it may be considered other than an indoor space for the purposes of this section if at least 50% of the perimeter of the space is open for at least 50% of the height between the floor and the ceiling or overhead covering. All work areas that are not indoor are considered outdoor and covered by section 3395.**

NOTE: Physical barriers that allow air circulation and are largely exposed to the outside environment, such as rails, mesh screens, chain link fences, grated walkways, or decorative features are not solid and do not fully enclose a perimeter.

We have concerns with the requirement that the shaded area be used exclusively for shade. This exception will preclude any structure not used solely for shade from the exception; that means a structure used for a

machine shed, storage, or even to shelter a hay pile could be “indoor.” That would mean that the only structure that could be used for shade under section 3395 would be a structure dedicated to the purpose of providing shade; otherwise it would be indoor. Furthermore, many of the bays and shops mentioned in the example above are cool-down areas for outdoor workers, in compliance with section 3395. Shade structures often serve as a lunch area, a meeting location for tailgate meetings, as well as for the morning crew daily briefing and stretching area. The requirement that an area be exclusively for shade is unreasonably limiting. Accordingly, we recommend the exception be revised to read as follows:

EXCEPTION: “Indoor” does not refer to a shaded area that meets the requirements of section 3395 and is used exclusively as a source of shade for employees covered by section 3395.

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.

For example, under the proposed definition of “indoor,” a tractor with a fiberglass overhead shade, a dashboard in front of the operator, and shin-high or knee-high enclosure of the floor, fixed or openable like a door, could be indoor and subject to subsection (e). There is an enormous variety of tractors, harvesters, tree shakers, windrowers, sweepers, hay squeezes, and other equipment that may or may not be enclosed to some degree and may or may not be air conditioned. Like all other vehicles, by their nature they move; making it challenging at best to assess heat hazards and abatements for one-person-sized “indoor spaces” scattered across a large outdoor area such as an agricultural field.

Another challenge is assessing which standard applies when an employee moves between indoor and outdoor areas. For example, consider an employee who exits an air-conditioned building to start an air conditioned but stationary car that has been sitting in the sun. In that time, the employee is covered under the indoor standard (unless covered by 3395 while walking from the building to the car); definitely covered by the indoor standard while the car is operating (at least until the temp in the car drops below 82 degrees), and then outdoor again when walking from the car to the destination building.

This is but one illustration of why the two standards must be harmonized and employers must have the ability to maintain one standard that provides clarity for heat illness prevention regardless of whether an employee is in an indoor or outdoor work area.

The Coalition continues to suggest including language in the definition of “indoor” as follows:

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) (1) of this standard, vehicles and equipment cabs in which the temperature is below 82 degrees are indoor spaces to which this standard does not apply.**
- d. **Employees driving vehicles used for pick-up and/or delivery are covered by section 3395.**

“Globe temperature.” This definition is outdated. When searching the internet using the definition’s specifications for a globe thermometer available for purchase, none was found on Google, Grainger or Amazon, except for one costing \$275 plus shipping; see <https://novalynx.com/store/pc/210-4417-Globe-Thermometer-with-stand-and-mounting-ring-p72.htm>. Thus, few employers will be able to comply. This definition needs to be revised to clearly state the required measurement and describe readily available equivalent equipment that will take the measurement.

(e) Assessment and Control Measures

(1) Directs employers to measure and record temperature or heat index, and to evaluate *all other* environmental risk factors. The evaluation of environmental risk factors should be limited to those defined as such in subsection (b) definitions – environmental risk factors. Therefore, “all other” should be deleted to reference simply environmental risk factors.

(1) (A) The Note in this subsection mandates employers to comply with section 3204 for record retention and access. Section 3204 requires records of assessment to be maintained for more than 30 years. There is no evidence that heat illness is a cumulative, chronic or long-term exposure requiring a “look back” for previous exposures. Retaining records for 30-plus years is excessive and unnecessarily burdensome for employers. The record-retention requirements in section 3203 should suffice in that records be kept for one year.

(1) (D) specifies that that the employer shall obtain the active involvement of “employees and their union representative.” The language should be revised to reflect the involvement of a union representative is limited to one that has been certified or recognized by the employer as the representative of the employees in the affected bargaining unit. We are opposed to any union representative being actively involved with the employer’s program, unless it meets the criteria. If it is not certified or employer-recognized, a union should have no representation role in the process. The following revision is suggested:

(DE) The employer shall have effective procedures to obtain the active involvement of employees and their **certified or employer-recognized** union representative, **if any**, in ~~designing and conducting the assessments.~~ performing the following:

(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 both indoor and outdoor heat illness prevention where employees work in both indoor and outdoor environments. Furthermore, the language in the draft should clarify that the training is required before an employee starts a 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, the training program for this section can be integrated into section 3395 training.** 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 and section 3395 should be compliant for both. Accordingly, the following language is recommended for this subsection:

Heat Illness Prevention Plan. 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, **or included as part of the employer’s Heat Illness Prevention Plan required under section 3395** and shall, at a minimum, contain:

Conclusion. The Coalition is very concerned that because of its complexity as written, this discussion draft will not result in increased employee protection and employers will not be able to comply. 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 drafted the proposed recommendations to more effectively prevent heat illness for employees working indoors and not to disrupt providing heat illness prevention for employees working outdoors. 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.

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