



The Voice of the  
Construction Industry

**PRESIDENT**

Jerome Di Padova

**SR. VICE PRESIDENT**

Mike Blach

**VICE PRESIDENT**

Dina Kimble

**TREASURER**

Steve Rule

**IMMEDIATE PAST PRESIDENT**

Walt Johnson

**CEO**

Peter Tateishi

**STATE OFFICE**

3095 Beacon Blvd.  
West Sacramento, CA 95691  
Office: 916.371.2422  
Fax: 916.371.2352  
agcsac@agc-ca.org

**NORTHERN CALIFORNIA**

1390 Willow Pass Rd., Suite 250  
Concord, CA 94520  
Office: 925.827.2422  
Fax: 925.827.4042  
agcnorth@agc-ca.org

**SOUTHERN CALIFORNIA**

1906 W. Garvey Ave. South, Suite 100  
West Covina, CA 91790  
Office: 626.608.5800  
Fax: 626.608.5810  
agcsouth@agc-ca.org

February 21, 2019

State of California  
Department of Industrial Relations

*Comments submitted electronically to: [rs@dir.ca.gov](mailto:rs@dir.ca.gov)*

SUBJECT: Heat Illness Prevention in Indoor Places of Employment – Comments on Revised Standard Draft (January 29, 2019)

The Associated General Contractors (AGC) has been the voice of the construction industry since 1920. We are a member-driven organization comprised of construction firms and industry-related companies committed to improving our physical environment through our dedication to the principles of skill, integrity and responsibility. With over 1,000 members statewide, contractors of all specialties and tens of thousands of employees work together within AGC to educate owners, agencies and the general public on safe and healthy business practices within the construction field.

With this approach at the forefront of our association, the AGC of California submits the following comments and proposed revisions to the draft regulations around Indoor Heat Illness:

**(a) Definitions.**

**Revisions to the term “Globe temperature”**

The types of thermometers allowed to be utilized by an employer should be expanded to accept other types of measurement, including but not limited to, the use of the OSHA-NIOSH Heat Safety Tool App.

**Revisions to the term “Heat Illness”**

AGC of California is requesting clarification of the definition. The Definition as proposed in the draft: “means a serious medical condition resulting from the body’s inability to cope with a particular heat load, and includes heat cramps, heat exhaustion, heat syncope and heat stroke” Which by default classifies all cases of heat illness as a serious medical condition.

It is our understanding that the severity of a case of heat illness can vary anywhere from a minor incident up to a serious medical condition. The definition should elaborate on the various levels of heat illness and not immediately classify all cases as “serious.”

### **Revisions to the term “Indoor”**

The current definition of indoor leaves a variety of structures in question as to whether the Indoor or Outdoor Heat Illness Plan should be utilized for prevention/protocol by the employer. A list of questions below provides examples in which an expanded definition of indoor would eliminate confusion ensuring that employees have the best working conditions available:

1. How would a building under construction be classified throughout the course of construction?
2. Would a structure with a movable wall (such as a warehouse) fall under the regulations of the Indoor standards even if the garage wall remains open throughout the day while operations are taking place?
3. If work/operations are being performed by employees that require a lot of indoor/outdoor movement (such as delivery drivers) how is it determined as to which regulation should be utilized?

It is our recommendation that the definition of “indoor” clearly identify all structures to which it applies, providing for the “Exception” to default to “outdoor” regulations. AGC of California makes the following recommendation for the definition of indoor:

*“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 opened 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. Additionally, all structures within the phases of new construction will be exempt from the indoor regulations and will be covered by Section 3395 until a Certificate of Occupancy is received.*

*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.*

**(c)Provision of water. Employees shall have access to potable drinking water meeting the requirements of Sections 1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working and in cool-down areas required by subsection (d).**

In this section, the phrase “as close as practicable” needs to have expanded definition. If the building is plumbed for water and provides accessible water that meets the requirements listed above, does the employer need to provide alternatives solutions based on the proximity of the drinking fountain/sink?

**(d) Access to Cool-Down Areas.**

**(1) The temperature in the cool-down area shall be maintained at less than 82 degrees Fahrenheit, unless the employer demonstrates it is infeasible.**

The section requires that a designated cool-down area be available at all times and maintained at less than 82 degrees Fahrenheit, unless demonstrated infeasible. Examples of acceptable factors that would meet this level should be incorporated into the section to provide guidelines and clarification. Additionally, the standards do not align with the current requirements of Outdoor Heat Illness Prevention, and because the cool-down area is authorized to be either indoor or outdoor, what regulation would the area be subject to?

*It is the suggestion of AGC of California to match the requirements to Section 3395 (d)(1).*

*A flow chart or guiding document that outlines the proper steps of protocol should be used to better define the definition of "infeasible".*

**(C) Instruments used to measure the heat index shall utilize the National Weather Service heat index tables.**

It is recommended that any guiding documents or reference items listed under the regulations be attached.

With charting the regulations and monitoring the temperature, would employers be authorized to use the OSHA-NIOSH Heat Safety Tool App for electronic tracking/monitoring purposes?

**(e)(B) Temperature or heat index measurements, whichever are required, shall be taken where employees work and at times during the work shift when employee exposures are expected to be the highest.**

For indoor heat illness standards, what is the definition of an area within the structure? Structures range from 1 story to multiple stories and can vary greatly in total square footage. For example, when measurements are required to be taken in an open warehouse that is one floor and expands over 105,000 square feet with interior walls or dividing spaces where would those measurements be taken?

**(e)(D) The employer shall have effective procedures to obtain the active involvement of employees and their union representatives in performing the following:**

The addition of a union representative in this section, is inconsistent with outdoor regulations and should be stricken from this regulation.

**(h) Training.**

**(2)(D) Where the work area is affected by outdoor temperatures, how to monitor weather reports and how to respond to hot weather advisories.**

As this section calls out the requirement of monitoring climate and weather advisories, supporting tools and resources need to be incorporated into the regulation that clearly defines the appropriate level of training and due diligence that would allow for an employer to successfully comply with this requirement.

Throughout the indoor heat illness prevention regulation, supervisors/employers are required to "respond to signs and symptoms of possible heat illness, including by not limited to first aid measures and how emergency medical services will be provided." These sections are forcing the

requirement for a first aid trained/certified employee which would require an additional section under training.

*It is the recommendation of AGC of California to revise the following sections:*

*Section (d)(3): If an employee exhibits signs or reports symptoms of heat illness while taking a preventative cool down rest or during a preventative cool-down rest period, the employer shall take the proper steps in notifying emergency services accordance to subsection (f) of this section.*

*Section (f)(2) Responding to signs and symptoms of possible heat illness, including but not limited to how emergency medical services will be provided.*

We greatly appreciate the opportunity to share our recommendations and concerns with the proposed regulation, and additionally, would welcome another opportunity to meet with the department for another in-person Advisory meeting. There are several issues that still remain outstanding after the last round of revisions that are of great concern to our industry. If you have any questions regarding the comments or any of the suggested language used in the document, please contact Kate Mergen, Associate Vice President, Government Affairs, at 626-608-5800 ([mergenk@agc-ca.org](mailto:mergenk@agc-ca.org)).

Sincerely,



Kate Mergen  
Associate Vice President, Government Affairs  
Associated General Contractors of California

cc: Amalia Neidhardt