SOUTHERN CALIFORNIA EDISON®
An EDISON INTERNATIONAL® Company

February 22, 2019

James Mackenzie, CSP
Principal Manager, Edison Safety - Safety Programs & Compliance
Southern California Edison
6042 N. Irwindale Ave. Suite B
Irwindale, CA 91702

SENT VIA EMAIL to: rs@dir.ca.gov and aneidhardt@dir.ca.gov

Amalia Neidhardt, MPH, CSP, CIH
Research and Standards
Division of Occupational Safety and Health
California Department of Industrial Relations
1515 Clay Street
Oakland, CA 94612

Dear Ms. Neidhardt:

Southern California Edison (SCE) appreciates the opportunity to provide input and recommendations to the proposed Heat Illness Prevention in Indoor Places of Employment. We recognize the complexity surrounding prevention of heat illness in indoor work environments. While we are aligned in our desire to protect all workers, we have continued concerns relating to the administrative complexity of this proposed regulation and believe there are opportunities to simplify the approach and better align these requirements with protections already implemented for workers in outdoor work environments. These concerns and recommendations are outlined below. We appreciate the effort put forth by the Division in continuing to work with stakeholders on this issue. Our objective is to collaborate to provide a safe workplace for all workers.

Specific comments, suggestions, and requests related to areas of proposed regulation within the latest draft are included below. Recommended insertions are shown in underlined font and proposed deletions are shown using strikethrough font (i.e., underlined and ~~strikethrough~~). Some of the edits shown are those presented by the Division in the most recent draft document. We retained those edits to either show support, or to allow for discussion around further proposed improvements. Additionally, to provide clarity between SCE's proposed edits and those existing in previous documents, **bold** font is used to show those edits recommended by SCE.

SCE believes that this regulation, which will cover virtually all employers in the State, is best suited to address high risk work activities and industries. The current emphasis in safety is hazard recognition and risk mitigation. Crafting a regulation based upon risk is consistent with OSHA enforcement, targeting specific work activities and industries that are high risk. It is not helpful to create additional administrative burden on businesses and industries where there is not a risk to the health and safety of workers. Not only does it not add benefit in the current subject area, but it degrades overall safety efforts, as workers clearly see that they are performing tasks in the name of safety that do not benefit their health or well-being. SCE requests that these regulations be focused on those work environments that present a risk to workers. It is important to note that limiting this indoor heat illness prevention regulation to high risk work environments does not limit protections to workers, as workers in high heat settings not covered by this regulatory section would be protected by the outdoor heat illness prevention protections.

As noted in previous comments submitted to DOSH, SCE believes that the latest draft proposal does not reflect the level of risk from indoor heat for our employees. We also believe the DOSH shares our interest in safety and health resources being invested where there will be benefits to the worker's health and safety. The investment of substantial resources to develop and implement an indoor heat illness prevention program, in work areas without identified hazards and where there will not be improvement to worker health and safety, would be a misuse of these resources.

SCE has numerous employees who work both indoors and outdoors and we have trained those employees on the risk of outdoor heat illness and the measure to take to protect their health. Our employees recognize that the risk of heat illness is far greater in outdoor environments compared to our indoor work environments, and requiring them to take measures more stringent and restrictive than those required for outdoor work will certainly create questions regarding whether we are truly protecting their health. The indoor and outdoor heat illness prevention programs should mirror each other, particularly in regard to associated administrative processes, in order to provide clarity for employees as these programs are implemented.

Additionally, it appears this proposed rule is currently written from the point of view of a fixed site (e.g., manufacturing facility, warehouse, foundry). At these types of large facilities, where there are multiple employees, supervision and management, EH&S staff, and others residing and working, the proposed approach may be successful and practicable. However, many employers, such as SCE, have employees working in various work locations, most of which are typically not staffed (e.g., sheds, equipment rooms at unstaffed substations). At these locations, there is not always supervision or management on site to take the required temperature measurements. Additionally, these facilities do not have a radiant heat source and do not create an identified heat-related risk to workers. Currently, these employees comply with our company protocols, which follow CalOSHA's Outdoor Heat Illness Prevention regulations, to protect them from heat-related hazards. If the employees are following outdoor heat illness requirements, due to the environmental conditions of the day, they would follow those requirements as they enter any indoor structures at that work location. However, with the new proposal, they would be required to transition to a different set of requirements and follow several administrative procedures (e.g., temperature readings, data logging) when they are already implementing heat illness prevention safeguards. It is important to note that organizations, such as SCE, already have solo/remote worker programs in place to address

hazards associated with working in remote locations or working alone. The administrative requirements proposed in this regulation significantly outweigh the benefit and would be challenging to implement in these work environments, as they differ significantly from the outdoor heat illness prevention regulations.

Below are specific recommendations and requests related to the draft language:

**SCOPE AND APPLICATION**:

***Current Draft Language with Proposed Language Revisions:***

*(a) Scope and Application*

*(1) This standard applies to all indoor work areas where the* ***typical ambient*** *temperature equals or exceeds ~~82~~* ***85*** *degrees Fahrenheit* ***in the following industries, operations, or locations:*** ~~*when employees are present.:*~~

***(A) Agriculture;***
***(B) Commercial and institutional kitchens;***
***(C) Commercial and institutional laundries;***
***(D) Construction;***
***(E) Manufacturing;***
***(F) Mining;***
***(G) Oil and gas extraction;***
***(H) Steam plants, geothermal plants, steam tunnels, and boiler rooms;***
***(I) Warehousing and storage.***

*(2) Conditions under which an indoor work area is subject to subsection (e):*

*(A) ~~The~~* ***When the typical ambient*** *temperature equals or exceeds ~~87~~* ***90*** *degrees Fahrenheit; or*
*(B) ~~The~~* ***When the typical ambient*** *heat index equals or exceeds ~~87~~* ***90*** *degrees Fahrenheit; or*
*(C)* ***When*** *~~E~~employees wear clothing that restricts heat removal and the temperature equals or exceeds ~~82~~* ***85*** *degrees Fahrenheit; or*
*(D)* ***When*** ~~*Employees*~~ ***employees*** *work in a high radiant heat work area and the temperature equals or exceeds ~~82~~* ***85*** *degrees Fahrenheit.*

SCE requests that the above text that was stricken in the recent CalOSHA draft, in (a)(1), be restored in final version of this regulation. As stated earlier, regulations must address high risk work activities and industries. The current emphasis in safety is hazard and risk mitigation, instead of additional administrative burdens to businesses and industries.

**DEFINITIONS:**

***Current Draft Language with Proposed Language Revisions:***

(b) Definitions

*"High radiant heat work area" means a work area* where ***the employee works at least 25% of their time****, and the globe temperature is at least ~~5~~* ***15*** *degrees Fahrenheit greater than the "temperature," as defined in this subsection.*

Since this definition is relative to the definition of "temperature", the time of worker exposure in the high radiant heat area and the radiant work area needs to be defined with its relationship to the work area mentioned in the definition of "temperature". In addition, 5 degrees is too low. For example, if the bulb temperature was at 82 degrees, a "high radiant heat work area" would be at 87 degrees and require a section (e) assessment. Entire areas are not section (e) areas until 90 degrees is hit per *(a)(2)(A). To structure this temperature similarly to the Heat Illness Prevention regulation, CCR Title 8 3395*, SCE recommends that "High Radiant Work Area" temperature should be 15 degrees greater than 82 degrees as mentioned in the definition of "temperature". This is comparable to the temperature differential utilized by CalOSHA for Outdoor Heat Illness Prevention for high heat procedures.

*"Indoor" refers to a space* ***designed for continuous human occupancy*** *that is under a ceiling or overhead covering; and is enclosed along its perimeter by walls, doors, windows, dividers, or other physical barriers, whether open or closed****, and is not a vehicle****. All work areas that are not indoor are considered outdoor and covered by section 3395.*

The current Cal-OSHA definition is too broad. The proposed definition would include areas that are occupied intermittently and for short durations. For example, electrical rooms, vaults, utility basements, storage sheds or buildings, mines, and tunnels could be included in this definition. In addition, various types of semi-trailers and cargo containers would need to be evaluated for periods of inspection, loading and unloading. Every confined space would need to be evaluated. This would also include truck, passenger vehicles, and equipment cabs. Perhaps, including some verbiage in the "Scope and Application" section to exclude these from consideration as indoor places would better balance compliance with actual risk. **It is important to note that those work areas not considered to be indoor places would be governed by the outdoor heat illness prevention regulations, providing complete coverage for workers.**

*"Preventative cool-down rest" means a* ***recovery period*** *~~rest break~~ taken in a cool-down area to prevent overheating.* ***For purposes of this section, preventative cool-down rest period has the same meaning as "recovery period" in Labor Code Section 226.7(a).***

The term “rest break” will be confused with other California labor law which requires employers to provide meal and rest periods. The term “break” is not used in the outdoor heat illness prevention regulation. The term “recovery period” is used in Labor Code 226.7, the outdoor heat illness prevention regulation, and in paragraph (d)(1) of the proposed draft of the indoor heat illness prevention regulation. A reference to Labor Code section 226.7(a) should be added to be consistent with its usage in the outdoor heat illness prevention regulation.

**ACCESS TO COOL-DOWN AREAS:**

***Current Draft Language with Proposed Language Revisions:***

> *(2) Employees shall be allowed and encouraged to take a preventative cool-down rest in a cool-down area when they feel the need to do so to protect themselves from overheating. Such access to cool-down areas shall be permitted at all times. An individual employee who takes a preventative cool-down rest ~~(A) shall be monitored and asked if he or she is experiencing symptoms of heat illness;~~ ~~(B)~~ **(A)** shall be encouraged to remain in the cool-down area; and ~~(C)~~ **(B)** shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time needed to access the cool-down area.*

SCE remains concerned with the language in (d)(2)(A), noted above. We request that this section be deleted, since asking this question could easily be interpreted by an employee to mean that either the employer does not want them to take a preventative cool-down rest, or that they should only take one when they are experiencing heat and illness symptoms. We believe it is sending the wrong message. The intention of the requirement and the desire of SCE is for our employees to take a cool-down rest ***before*** experiencing heat illness symptoms. SCE also suggest that a note be added to address when employees are working alone.

**ASSESSMENT AND CONTROL MEASURES:**

***Current Draft Language with Proposed Language Revisions:***

> (e) Assessment and Control Measures (1)
>
> *(1) As specified in subsections (e)(1)(A) through (e)(1)(D), the employer shall **include in their assessment the** ~~**measure and record the**~~ **measurements of** temperature or heat index **when the RH is greater than 40%**, ~~whichever is greater,~~ and shall identify and evaluate all other ~~environmental~~ risk factors for heat illness.*

CalOSHA’s rewording of this requirement is implying an ongoing recording and retention of measurements. Recording temperature measurements alone are inadequate to assess risk. An assessment is a much more comprehensive approach and is in line with the consideration of other factors included in this regulation, such as clothing. In addition, an initial assessment should be valid for as long as no significant change occurs in the factors considered in the assessment and the

verbiage should be modified accordingly. In addition, Heat Index is not a factor until RH reaches 40%. Quantifying when to measure for Heat Index provides clear and precise direction.

> ***(1)(B) 2.*** ~~*Measurements shall be taken again when they are reasonably expected to be 10 degrees or more above the previous measurements*~~. ***Applicable work areas shall be reassessed when significant changes occur in the factors considered in the assessment.***

An initial assessment should be valid for as long as no significant change occurs in the factors considered in the assessment. There are more factors to consider in an assessment than just temperature.

> (*1)(D) The employer shall have effective procedures to* ~~***obtain the active involvement of***~~ ***communicate to*** *employees and their union representative* ***of the results of the assessment***. ~~***.in performing the following:***~~
>
> > ~~***1. Designing, conducting, and recording the measurements of temperature or heat index, whichever is greater.***~~
> > ~~***2. Identifying and evaluating all other environmental risk factors for heat illness.***~~

A number of issues surface with the inclusion of this requirement:

1) Not all employees have a union representative;
2) Very few employees or their union representatives have the training or technical expertise to accomplish or meaningfully contribute to much of the listed tasks, which are typically functions of industrial hygienists or safety professionals;
3) The requirement is outside the scope of the IIPP regulation, which requires an active "system for communicating" to employees/union and not mandating employee/union involvement;
4) Mandating the involvement of the union may confound the collective bargaining process on safety issues with compliance to the proposed regulation, and infringe upon the union's right to not participate;
5) If the employer's procedure is unsuccessful in obtaining the active involvement of the employee and/or union in these tasks, it could be argued that the employer's procedures are ineffective and are not compliant with the regulation, which seems to be unequitable, given a good faith effort;
6) It is the employer who has responsibility and liability under the general duty clause to provide the safe work environment, not the union. As such, it is requested that the language be modified to require communication of assessment results and elimination of the requirement to jointly design and conduct the assessments.

*~~(1)(D)(2)~~ (2) The employer shall use control measures as specified in subsections (e)(2)(A) through (e)(2)(C) to minimize the risk of heat illness. The selection of control measures shall be based on the **~~environmental~~** risk factors for heat illness present in the work area.*

This change is requested as not all risk factors that impact heat illness are environmental in nature.

**ASSESSMENT AND CONTROL MEASURES – (2)(A):**

***Current Draft Language with Proposed Language Revisions:***

*(e) Assessment and Control Measures [(2)(B)]*

*(B) Administrative controls. Where feasible engineering controls are not sufficient to reduce and maintain the temperature and heat index to below **90** ~~87~~ degrees Fahrenheit or the temperature to below 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat work areas, administrative controls shall be used to minimize the risk of heat illness, except to the extent that the employer demonstrates such controls are **not practicable** ~~infeasible~~.*

The term "feasible" can have in its meaning the concept of whether or not something is capable of being done, without consideration of a cost-benefit analysis. Whereas, the term "practicable" can have in its meaning the concept of whether or not something can be done given the reasonableness of weighing other factors such as complexity, cost, benefit, quality, efficiency, and time.

The term "practicable" is used in paragraphs (c) and (d)(1) of the proposed draft regulation for indoor heat illness prevention as applied to how close water is to be placed with respect to where employees are working. Whereas, it might be feasible to locate water two feet from each worker location, it might not be practicable.

Similarly, providing a relief operator every 10 minutes might be feasible; however, the scheduling complexity, cost and efficiency of this administrative control would be an unreasonable burden for a business.

To further support the suggested change, the use of the term "practicable" is consistent with its use in the current CalOSHA regulations found in 8 CCR 5141(b) Control of Harmful Exposure to Employees:

> (b) Administrative Controls. Whenever engineering controls are not feasible or do not achieve full compliance, administrative controls shall be implemented if practicable.

Finally, to further clarify the meaning behind the words, consideration should be given to adding "feasible" and "practicable" to the definitions section.

**CLOSE OBSERVATION DURING ACCLIMATIZATION:**

***Current Draft Language with Proposed Language Revisions:***

*(g) Precautions ~~Close Observation~~ during Acclimatization*

*(1) ~~All employees shall be closely observed by a supervisor or designee when the temperature in the work area~~ **The employer shall take precautions when the temperature experienced by the employee** is **at least 85 degrees Fahrenheit and** at least 10 degrees Fahrenheit higher than the average high daily temperature in the **employee's** work area during the preceding five days.*

*(2) An employee who has been newly assigned to any of the following shall be closely observed by a supervisor or designee for the first 14 days of the employee's employment:*

*(A) To a work area where the temperature or heat index, whichever is greater, equals or exceeds ~~87~~ **90** degrees Fahrenheit; or*

*(B) To work involving the use of clothing that restricts heat removal where the temperature equals or exceeds ~~82~~ **85** degrees Fahrenheit; or*

*(C) To a high radiant heat work area where the temperature equals or exceeds ~~82~~ **85** degrees Fahrenheit.*

From a practical standpoint for indoor locations, the temperature changes should be relative to what the employee experiences instead of what changes occur in a particular work area. For example, if a worker is transferred to work on the loading dock from the refrigerated section of the warehouse, the change that the employee experiences is more relevant than the change in temperature of the dock from day to day. In addition, the language as revised for (g)(2)(A), (B) and (C) would align better with the "high heat" areas of concern of the outdoor heat illness prevention program section on acclimation.

**HEAT ILLNESS PREVENTION PLAN:**

***Current Draft Language with Proposed Language Revisions:***

*(i) Heat Illness Prevention Plan*

*(2) Procedures, in accordance with subsection (e), to ~~measure and record the temperature or heat index, whichever is greater, identify and evaluate all other environmental risk factors for heat illness:~~ **assess work areas for heat illness risk factors,** and implement control measures.*

The focus should remain on assessment of hazards and any potential changes that could impact the level of hazard to workers.

Again, we are thankful for your willingness to hold meaningful dialogue that will lead to the improvement of this proposed regulatory language and the successful implementation of these changes across the state of California. We look forward to continued partnership in these efforts and to the implementation of a regulation that provides important protections for workers and is reasonable, as well as prudent in its design and implementation.

If you require further information on the comments listed above, please do not hesitate to contact me at 626-633-7120 or at James.Mackenzie@sce.com.

Sincerely,

James Mackenzie, CSP
Principal Manager, Edison Safety – Safety Programs & Compliance
Southern California Edison
6042 N. Irwindale Ave. Suite B
Irwindale, CA 91702