July 7, 2017

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FROM: California Manufacturers & Technology Association (CMTA)

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

The California Manufacturers & Technology Association (CMTA) is pleased to provide these comments to Cal/OSHA on the second Discussion Draft for the "Heat Illness Prevention in Indoor Places of Employment" regulation. In addition to associating ourselves with the general comments raised by the California Chamber of Commerce coalition (of which we are a member), we also wanted to provide you specific information as to how the proposed Discussion Draft will directly impact the manufacturing industry.

CMTA supports policies that will keep all manufacturers competitive and productive in California. Our State is home to more than 30,000 manufacturers that employ 1.3 million Californians and produce 11% of its GDP. The industry is both dynamic and diverse, including such sectors as aerospace, beverages, building materials, cement, consumer goods, energy and oil production, food processors and producers, glass, information technology, mining, plastic, paper, pulp and steel – just to name a few. A thriving manufacturing industry strengthens the State's middle class by providing careers with wages averaging $83,000 or more annually and stimulates innovation by advancing emerging technologies for increased productivity and efficiency.

California manufacturers are in unanimous agreement that this regulation cannot be a "one-size-fits-all" approach. The diversity in our industry alone should demonstrate the impracticality of that option. Our members need a rule that allows for maximum flexibility in the prevention, training and response to heat-related safety measures that responsibly balance the health and safety needs of our workforce with the inherent requirements of the manufacturing process – a process that involves converting raw materials or components into a newly created and finished product and at times can include unavoidable exposure to varying degrees of temperatures.

Instead of initially adopting a sweeping standard to cover a variety of workplace situations, we offer an alternative approach – developing a pilot program narrowly targeted to those limited sectors with a history of heat-illness related incidents and complaints. From that exercise, the Board can accomplish two goals – immediately address the occurrence of life-threatening incidents and, while doing so, uncover best practices and feasible approaches that can inform a standard applied to a wider scope of industry sectors.

We offer the following comments and welcome the opportunity to discuss our position in more detail if questions arise.

(a) Scope and Application

We suggest the Board does not use an arbitrary temperature threshold. There are too many variables that are both industry and environment specific that make identifying an exact temperature number problematic. Instead, employers should be allowed to implement their company-specific heat illness prevention plans and asses when to implement those plans.

If you select to impose a number that will trigger certain obligations of an employer, the minimum should be 90 degrees and the employer should be granted maximum flexibility in its ability to respond. For example, if the temperature in an indoor space reaches 90 degrees, the employer could respond by notifying employees to hydrate, provide employees water, provide rest when needed, and implement any additional resources that are informed by industry standards, such as current practices, type of work being done, etc. Such actions would already be determined in the employer's heat illness prevention plans that considers their operational needs.

We also suggest the Board consider different standards that accommodate for the location of the facility. For example, 90 degrees may constitute unusually high temperatures for a worker in the Bay Area but not for an acclimatized worker in the desert who lives and works in those temperatures every day.

(b) Definitions

"Cool-down area" – this definition is too prescriptive and we are concerned with the imposition of a specific temperature number. We suggest focusing on ensuring the employee has the ability to cool themselves when necessary instead of imposing a number. We also suggest using the term "suitably cooler" or provide that a cool-down area can be open to the air instead of imposing an arbitrary temperature number.

We also have concerns about requiring employers to provide cups in the cool-down area and suggest that reference be removed. This provision is incompatible with many of our member companies' policies. It is too prescriptive, unnecessary and, in many cases, conflicts with our environmentally-friendly policies of providing drinking stations, reusable bottles, or vessels that can be disposed of in a responsible manner. Furthermore, having an uncovered cup sitting around in a manufacturing facility could pose another health and safety concern because it could collect materials and dust that if ingested, could be harmful.

"Indoor" – We are unclear what types of "vehicles" would be covered under this definition. Would it include cranes and hoists that are commonly used in manufacturing? And, we find the monitoring requirement for a person alone in a vehicle to be impractical – how could the employer satisfy that requirement if the employee is alone in a vehicle?

We also suggest the Board consider how this regulation would apply in an air-conditioned indoor environment when the unit experiences an event outside the employer's control, such as a temporary shutdown due to a technical issue.

"Heat Index" – We are confused as to the use of different measurement units, namely, "heat index" (an outdoor measurement), "dry bulb temperature" (capable of being measured indoors) and "globe temperature" (which refers to radiant heat). If a unit is to be used, then it needs to be the same unit of measurement to avoid confusion as to what and where to measure. Additionally, the "Level" designations under this

definition are not workable for manufacturers. This is unnecessarily complicated and unduly burdensome to monitor in indoor spaces.

(c) Heat Illness Prevention Plan

We are concerned that the term "representative" in subsection (1) is broad and undefined. We suggest that it be limited to "union representatives, when applicable." Absent this qualifier, the employee could designate anyone to participate in this process, irrespective of their relationship to the employee and/or the employer.

(d) Assessment of Heat Illness Risk

This section is too prescriptive. We have concerns with subsection (1) particularly with respect to "all locations where heat exposure is at or near the highest levels and at times when heat exposure is at or near the annual high." When assessing indoor spaces, what is an employer to use as a basis for comparison? The levels within a particular space? The surrounding work area? The outdoor annual high? Which levels are supposed to be consulted by the employer? We also have concerns with subsections (2) and (3) related to posting of the heat index measurements. We suggest allowing for posting of the standard or customary industry signage currently used. These are notices that employees would have become familiar with during their industrial training programs and therefore will have relevance and significance. This will prevent against claims that the information posted was inaccurate or incorrect.

Further, we are concerned with the requirement in subsection (3) to reassess the heat illness risk annually. We find this requirement to be unworkable for manufacturers. This will be an evolving document that will require a full-time person dedicated to just this function, which will result in an additional cost burden for employers.

(e) Rest and Hydrations

As envisioned, this provision is not compatible with the production schedules within the manufacturing industry. Limiting the duration of the break without limiting the frequency it can be taken can be disruptive to operations and abused without providing control measure for employers to mitigate that outcome. The provision does not take into consideration other operations/processes that require constant monitoring to mitigate the occurrence of other safety risks.

(f) Acclimatization

We find this section confusing and unclear. Arguably every indoor area except those with central heating and air could be an area affected by outdoor temperatures.

(g) Control Measures

We caution the Board not to be too prescriptive in this area and encourage the adoption of measures that are cost-effective and feasible for manufacturers. Manufacturers will need as much flexibility as possible to maximize compliance and minimize interference with production schedules and operational processes.

Consequently, we discourage the application of overly prescriptive engineering controls that are costly and could result in the unintended consequence of disrupting the delicate balance needed in the industrial process. For example, some contained areas in a manufacturing site cannot be engineered because they are not designed to be (i.e. ship building/construction) and the imposition of such measures would severely disrupt the manufacturing process, which would hurt competitiveness. In addition, mandating specific controls such as ventilation would be impossible in many smaller work areas, and impractical in work areas where air cannot be circulated due to dust and debris; this would actually create a new hazard for employees.

Instead, we encourage the application of administrative controls and measures that can be customized to adapt to the diversity of California's industries and account for the differences in regional climates. For example, in areas of the State where the temperatures can climb, many employers institute "summer hours" to allow for operational efficiencies and worker safety. Administrative controls and measures which are already part of employers' heat illness prevention plans provide maximum flexibility which will allow the employer to be creative to adapt to their industry requirements.

The daily pre-shift meeting requirement is unpractical. For example, if you have staggering shifts that overlap, how would you implement this? And, if you are required to prioritize this function as envisioned every day, when will you have time to inform of other safety updates or implement other safety requirements? Further, disseminating this information as a daily routine increases the risk of the material becoming stale and tedious, defeating the purpose of ensuring people know what to do in the situation.

Finally, the breaks imposed in this section are unworkable and too prescriptive for the reasons stated under the Rest and Hydration section. We suggest allowing for more flexibility here.

(h) Training

We suggest that these requirements be less prescriptive and incorporated into existing training sessions. We are also concerned with the frequency identified. Given the skills shortage in industrial trades, many employees of small and medium-sized manufacturers are cross-trained and can be responsible for several different operations in one shift. If we have to provide the specified training "before the employee begins work in areas covered by this section," does that mean each time an employee rotation occurs? What if the training just occurred a few hours ago at the last rotation? What if it was just yesterday … last week … 6 months … a year? Reoccurrence of training should be standardized just like other required training, such as powered industrial vehicle training or lockout training.

(i) Recordkeeping

The document provision contained in this section should be available only upon request by the employee. Delivery should be limited to where and how the employee generally receives information from the employer. We are concerned about how long a company would have to make it available.

We suggest the term of "representative" be narrowed to "union representatives" for the reasons stated above. Moreover, it is unclear whether this provision requires continuous monitoring so that the information is available in real time, given other monitoring requirements elsewhere.

Finally, we are concerned that subsection (4) would introduce arbitrary and inaccurate information that could give rise to a claim against employers. In some subsectors of our industry, there could be safety concerns with allowing an employee to wear any extra device when performing manufacturing-related work.

We appreciate this opportunity to provide these comments for your thoughtful consideration and welcome questions or feedback. To discuss our position further, please contact Nicole Rice, Policy Director for CMTA, either at nrice@cmta.net or (916) 498-3322.