CMTA
CALIFORNIA MANUFACTURERS & TECHNOLOGY ASSOCIATION

November 20, 2018

TO: rs@dir.ca.gov

FROM: The California Manufacturers & Technology Association

SUBJECT: **HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT**
Comments on Discussion Draft Dated October 24, 2018

The California Manufacturers & Technology Association (CMTA) appreciates the opportunity for continued engagement on the regulations to govern Heat Illness Prevention in Indoor Places of Employment. California manufacturers approach workers' health and safety as a serious and essential component of our daily operations, and take steps that are informed by industrial operating standards to maximize protection and mitigation exposure for our workforce, who are crucial part of our business. The October 24, 2018 Discussion Draft does offer some improvements; however, the manufacturing industry continues to have concerns about the breadth and scope of the regulation and its compatibility with our operations.

Scope and Application – Subsection (a)

Subsection (a)(1): We continue to be concerned about the use of a minimum arbitrary temperature threshold because there are too many variables that are both industry and environment-specific that make identifying an exact number problematic. Given the inherent nature of our industry, a temperature threshold that may work for one subsector, may not be compatible with the operations of another. For example, while an 85-degree threshold is doable for a brewery, in a steel manufacturing facility it is not; nor is it workable for a mineral extraction company in the middle of the desert.

Subsection (a)(1) EXCEPTION: We appreciate the Division's attempt to clarify when more rigorous assessment and monitoring is necessary, as identified in the **Subsection (a) EXCEPTION**. However, manufacturing is the process of converting raw materials into a newly created product and as such, periodic exposure to varying degrees of temperatures is an inherent component of our operations. Consequently, exposure mitigation is governed by strict industry standards and protocols designed to not only protect the health and safety of our workers but to be compatible with the constraints of our operations.

We have cautioned against trying to impose a one-size-fits-all solution given the diversity of not only our industry but of California's economy. As stated in our previous comments, we suggest the Division impose more flexibility into the regulation to support compliance and avoid prescriptive language that will only

frustrate, not further, the goal by increasing operating costs and administrative burdens. To that end, we offer the following language:

> Add to as subsection (j)(2):
> *(2) If an employer subject to subsection (e) has an established and compliant heat illness prevention plan that contains policies and procedures that substantially satisfies subsections (a)-(d) of this subdivision and subdivision (h) and the employer has had no reported incidents of heat illness in over 30 days, their plan shall be found to be effective and the employer will be deemed to be in compliance with every provision of this standard.*

As previously discussed, many of the protocols and procedures that manufacturers currently use to mitigate heat-related illnesses are informed by industry standards/practices and could be compliant under the envisioned regulation. This proposed addition to subsection (j) would require manufacturers to meet the goals of this regulation absent the prescriptiveness found in the current draft, which is inconsistent with industry standards and compromises the integrity of our operations.

Another approach might be to treat industries with inherent heat exposure differently under the regulation. For example, for heat-intensive industries, the regulation could focus on the length of exposure and the provided protection from the exposure and not focus on the temperature level defining the exposure since we acknowledge it will exist.

Assessment and Control Measures – Section (e)

Subsection (e)(1): Continuous monitoring would be impractical for manufacturing. For example, during the various construction stages of shipbuilding, employees need to work in spaces such as containers and compartments that will arguably fall within this definition. As these different "blocks" are constructed, those compartments are moved around, combined with other compartments, and assembled into blocks that ultimately become a ship (think of a Lego set). On any given day, there can be dozens or even hundreds of "block" compartments in various locations throughout the shipyard.

It would be infeasible to monitor each one of these "indoor" space as envisioned in this regulation. Further, in many cases, such monitoring and reporting would be duplicative of the procedures and objectives required by standards for this manufacturing subsector. This is just one of many different examples throughout California's vast and diverse manufacturing sector. Requiring this additional layer of prescriptive assessment would be costly and unproductive. Such duplication and inflexibility can cripple manufacturing operations, slow production and cost manufacturers millions in contract delays, unmet obligations and additional manpower.

Subsection (e)(1)(A) NOTE: Manufacturers are concerned by the addition of the **NOTE** in **subsection (e)(1)(A)** and find it excessive and unnecessary. Section 3204 deals with "Access to Employee Medical and Exposure Records" and is intended to address chronic health effects. Whereas, exposure to heat has acute health effects. Therefore, we suggest that provision be deleted as follows (in blue strikeout):

(e)(1)(A) The employer shall establish and maintain accurate records of temperature or heat index measurements, as applicable. The records shall include the date, time, and specific location of all measurements.

~~NOTE: The records shall be retained and made available in accordance with section 3204.~~

Subsection (e)(1)(B)1: The frequency of temperature or heat index measurements suggested in this section would require continuous monitoring by manufactures that could be inconsistent with and in some cases contradictory to current heat-related practices and protocols. This would lead to duplicative processes that that more than likely will not enhance current heat mitigation results.

Subsections (e)(2)(B) and (e)(2)(C): Based on the changes made in **section (a)** pertaining to the Scope and Application, the following language in these subsections should be deleted (in blue strikeout):

"… to below 90 degrees Fahrenheit or to below 82 ~~80~~ degrees Fahrenheit ~~where employees wear clothing that restricts heat removal or work in high radiant heat work areas~~ …"

Close Observation during Acclimatization – Section (g)

Changes made in **subsection (g)(1)** no longer make it an issue of acclimatization, but rather a new, additional generally monitoring requirement for "all employees" that is inconsistent with the Scope and Application contained in subsection (a)(1) and (a)(2). Further, the determination of the "average high daily temperature" will require another layer of measuring and recording requirements that would add more cost without measurable benefit. Therefore, **subsection (g)(1)** should be deleted.

Training – Section (h)

We remain concerned about the lack of clarity regarding the reference to the frequency of the training. The language says to provide training "*before* the employee begins work …" or "*[p]rior to* supervising employees performing work …" that could reasonably result in heat illness.

As stated in our previous comments, due to the growing shortage of middle-skilled workers, many employees of small and medium-sized manufacturers are cross-trained and can be responsible for several different operations in one shift. If the aforementioned frequency means, for example, each time an employee rotation occurs, it would cease to be an informative function and become an administrative nightmare.

Definitions – Subsection (b)

"Cool-down area": We remain confused by the word "shielded" and concerned that compliance will not be feasible in an industrial facility that may be constrained by configuration limitations.

"Indoor": We remain troubled by this definition. The new language provides some clarity, but manufacturers will be challenged in knowing how to comply.

We appreciate the opportunity to provide these recommendations and comments and thank you for your consideration of our requests. To discuss any of these issues further, please contact Nicole Rice, Policy Director with the California Manufacturers & Technology Association – (916) 498-3322 or nrice@cmta.net.

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