March 1, 2019

TO: rs@dir.ca.gov
Submitted electronically

FROM: The California Manufacturers & Technology Association

SUBJECT: HEAT ILLNESS PREVENTION IN INDOOR PLACES OF EMPLOYMENT
Comments on Discussion Draft Dated January 29, 2019

The California Manufacturers & Technology Association (CMTA) appreciates the opportunity for continued engagement on the regulations entitled, *Heat Illness Prevention in Indoor Places of Employment*. As stated in previous comments, California manufacturers approach workers' health and safety as a serious and essential component of our daily operations. Our workforce is a crucial part of our business and we are careful to take steps that are informed by industrial operating standards to maximize their protection and mitigate their exposure to hazards.

While we appreciate the careful consideration the Division has given to the issues raised by the manufacturing community, unfortunately we still have serious concerns about the breadth and scope of the regulation and its compatibility with our operations. In addition to associating ourselves with the comments offered in the California Chamber of Commerce coalition letter dated February 22, 2019, of which we are a named signatory, the additional observations are specific to the California manufacturing industry.

Remove Unworkable Arbitrary Temperature Threshold

We continue to be concerned about the use of an arbitrary temperature threshold set in **subsection (a)(1)**. Generally, the industries that make up California's economy are too diverse and their operations too varied to try and land on a specific number that is workable for every company environment. Additionally, many companies experience regional climates featuring severe weather that further punctuate the difficulty of setting random targets.

Specifically, Manufacturing is a cornerstone of California's economy. We are the fifth largest industry sector in the state, comprised of more than 30,000 companies with an economic output totaling $288 billion. Our workforce consists of 1.3 million Californians – the largest industrial workforce of all fifty states. There is no part of the state's economy that is not impacted by manufacturing and empowered by the tools, equipment and machinery we produce. Yet, this production process involves taking one thing and substantially transforming it into something else. In many instances, that catalyst of change is heat.

Given the importance and inherent nature of our industry, the adoption of such a broad and arbitrary regulation could ultimately mean that significant subsectors of the state's manufacturing industry would not

be able to manufacture. For example, while 87 degrees could be doable for a brewery, in a steel manufacturing facility it is not. Likewise, it would not be workable for a mineral extraction company located in the middle of the southeastern desert.

In order for this regulation to be workable for California's manufacturing industry, it must be adaptable to the inherent constraints of production and flexible to the circumstances of our operation and find balance between protection and operations.

Industry Standards that Mitigate Heat Exposure Should Govern

Because of the inherent exposure risk outlined above, manufacturers adhere to strict industry standards and protocols designed to not only protect the health and safety of our workers but be compatible with the constraints of our operations. Many of these protocols and procedures could therefore be compliant with the envisioned objective of this regulation.

To build in more flexibility and compatibility into the regulation, we suggest the Division account for these protocols and not try to impose a one-size-fits-all solution given the inherent exposure risk of our industry. Therefore, we again offer up the following addition to the regulation:

> **Add 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.*

This proposed language would allow manufacturers to meet the Division's objective absent the prescriptiveness found in the current draft, which is inconsistent with industry standards and compromises the integrity of our operations.

Yet, 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.

Continuous Assessment and Monitoring is Impractical for Manufacturing Work Environments

The continuous monitoring requirement outlined in **subsection (e)(1)** is impractical for manufacturers. 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 would cripple manufacturing operations, slow production and cost manufacturers millions in contract delays, unmet obligations and additional manpower.

Further, while we recognize that the changes made in **subsection (e)(1)(B)1** are an effort to provide some flexibility as to when one needs to begin initial measurements, based on our comments earlier in this document regarding the inherent exposure risk in our industry, the revisions provide no additional relief to manufacturing facilities.

We still maintain that 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 result in duplicative processes that more than likely will not enhance current heat mitigation results.

Clarity Needed Regarding Use of Control Measures

We previously cautioned the Division against being too prescriptive regarding the use of control measures in this regulation. We recognize and appreciate the attempt in **subsection (e)(2)(a)** to provide discretion to the employer in utilizing the identified control measure based on the broad definition of "environmental risk factors." However, the control measures are described in a manner that suggest a hierarch or prescribed order of use. For example, the use of engineering controls appears to come first, and *"where feasible engineering controls are not sufficient, then administrative controls"* should be used. And, *"where feasible engineering controls are not sufficient, [then] personal heat-protective equipment."*

We believe dictating the specific controls to utilize, the specific order in which to utilize the controls, and then requiring the employer to prove feasibility or lack thereof is a significant restriction on the employer's discretion. Accordingly, we respectfully request the deletion of language in this section that seeks to prescribe the order in which the various controls should be used, thereby leaving the employer with the discretion regarding which controls to utilize and the order in which to implement those controls.

Based on the changes made in section (a) under the Scope and Application, the following language in **subsections (e)(2)(B) and (e)(2)(C)** should be deleted (see 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~~ …"*

Delete General Monitoring Requirement

Changes made in **subsection (g)(1)** no longer make it an issue of acclimatization, but rather an additional general 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 that would add more cost without measurable benefit. Therefore, this subsection should be deleted.

Clarify Training Requirements to Avoid Unnecessary Duplication and Repetition

We remain concerned about the lack of clarity regarding the reference to the frequency of the training found in **subsection (h)**. The language currently requires employers to provide training **"*before* the employee begins work …"** [subsection (h)(1)] or **"*[p]rior to* supervising employees performing work …"** [subsection (h)(2)] that could reasonably result in heat illness (emphasis added are mine).

As stated in 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.

The reoccurrence of training should be standardized just like other required training, such as powered industrial vehicle training and lockout training. Therefore, we suggest the following revisions to those section (changes in blue/blue strikeout):

> *"(1) Employee training. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before ~~the employee begins work~~ being newly assigned to work that should reasonably be anticipated to result in exposure to the risk of heat illness: …"*
>
> *"(2) Supervisor training. Prior to supervising employees ~~performing~~ being newly assigned to work that should reasonably be anticipated to result in exposure to the risk of heat illness, effective training on the following topics shall be provided to the supervisor: …"*

Definitional Problems Still Remain in 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.

Again, 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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