



January 14, 2025

The Honorable Doug Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
Washington, DC 20210

Submitted electronically: www.regulations.gov

Re: Proposed Rule, Occupational Safety and Health Administration; Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings; Docket No. OSHA-2021-0009; RIN 1218-AD39 (89 Fed. Reg. 70698, August 30, 2024)

Dear Assistant Secretary Parker:

On August 30, 2024, OSHA published in the *Federal Register* the proposed rule, *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings* (hereafter the “Proposed Heat Standard”). The comprehensive and prescriptive Proposed Heat Standard would apply to all employers nationwide and be triggered when employees are exposed to a heat index of 80°F for more than 15 minutes in any given sixty-minute period,¹ and it would require, among other things, a written heat injury and illness prevention plan; substantial heat injury-related precautions; training; recordkeeping; and regular, comprehensive program reviews and updates. The U.S. Chamber of Commerce (the “Chamber”) believes the proposed standard would result in OSHA micromanaging workplaces, imposing unreasonable burdens, and creating confusion as to what employers would be required to do. Because of these concerns, the Chamber urges OSHA to withdraw this proposed standard so that one can be promulgated focusing on heat injury and illness prevention using a performance orientation that will allow employers to tailor their protections to their geography, environment, workplaces, and workers. In doing so, employers will be expected to incorporate widely accepted elements for an effective heat illness and prevention program—training, acclimatization/enhanced supervision for new or returning employees, and the provision of water, rest, and shade—but the ways in which they do so should be driven by the goal of protecting workers rather than meeting OSHA’s specifications for each element.

¹ More specifically, the Proposed Heat Standard sets the initial heat trigger at a heat index of 80°F or a wet bulb globe temperature equal to the National Institute for Occupational Safety and Health (“NIOSH”) Recommended Alert Limit (RAL).

There is universal agreement that employers should protect employees from heat-related injuries and illnesses in both indoor and outdoor work environments where there is extreme heat. While extreme heat is an important issue, and one that Americans increasingly face, OSHA's steps to further address the issue must be both consistent with the agency's regulatory authority and feasible for the country's millions of employers.² Unfortunately, OSHA's Proposed Heat Standard applies a one-size-fits-all approach, fails to account for regional differences in climate, and creates unworkable requirements for small employers and certain industries, while providing little evidence that these burdens will keep workers safer. Indeed, they may actually increase administration and recordkeeping such that employers and their supervisors have less time to focus on eliminating other hazards in the workplace.

While the *Notice of Proposed Rulemaking* ("NPRM") for the Proposed Heat Standard claims that the proposed standard has a "flexible nature," see NPRM, 89 Fed. Reg. 70698, 70700 (Aug. 30, 2024),³ it is anything but flexible. Contrary to OSHA's claim that the Proposed Heat Rule is a performance standard, it contains the particularity of a specification standard.⁴ If this was actually a performance standard, employers would be held accountable for the end goal of protecting employees from over exposure to heat rather than the myriad of specific requirements contained in the proposed standard.⁵

The Chamber suggests that OSHA consider an alternative approach that directs employers to develop a heat injury and illnesses prevention program that includes identified components but acknowledges that what is reasonable and necessary to abate heat hazards and protect employees may vary across industries, employer size, and geography. This adaptability will ensure that any promulgated regulation is practical and achievable across American businesses.

² A recent [Small Business Index](#) survey for Q4 2024 from MetLife and the Chamber finds that 51% of small businesses say navigating regulatory compliance requirements is negatively impacting their growth. The Chamber, while recognizing that heat is an important issue and may even be one appropriate for OSHA regulation if it is consistent with the authority delegated to the agency by Congress, seeks to protect American businesses from burdensome and unreasonable regulation that impacts their growth.

³ See also NPRM, "OSHA's Responses to SBAR Panel Recommendations," 89 Fed. Reg. at 70989 (in response to Small Business Entities' ("SERs") concern that a heat standard should not be a "one-size-fits-all" approach and it would be difficult for a standard to reasonably and effectively cover heat hazards in all settings and all regions of the U.S., OSHA claims that "[t]he agency has drafted a proposed standard that ensures flexibility for workplaces").

⁴ Performance standards "require an employer to identify the hazards peculiar to its own workplace and determine the steps necessary to abate them." *Thomas Indus. Coatings, Inc.*, 21 BNA OSHRC 2283, 2287 (No. 97-1073, 2007) (see also *id.* ("[P]erformance standards ... are interpreted in light of what is reasonable.")). Specification standards have detailed rules on how to comply with an OSHA regulation.

⁵ In fact, the OSH Act favors performance standards: "Whenever practicable the standard [protecting against toxic materials or harmful physical agents] shall be expressed in terms of objective criteria and the performance desired." 29 U.S.C. 655 (b)(5).

We offer the following comments, first with broad issues of concern, then section-by-section correlating to the text of OSHA’s proposed standard. We request that OSHA reconsider its burdensome and overly prescriptive approach to rulemaking on this issue, and we look forward to continuing the discussion with OSHA.⁶

I. OSHA’S HISTORICAL APPROACH TO EXTREME HEAT

Most employers in the United States understand and respect the need for a program addressing excessive heat to protect their employees against heat injury and illness. However, as OSHA is aware, the need for a standard from OSHA, and the nature of one, has been an ongoing debate. In 2012, then Assistant Secretary of Labor for Occupational Safety and Health, Dr. David Michaels, denied a petition by four labor and public interest organizations that sought the issuance of a heat standard, claiming a lack of justification for such a standard. Instead, OSHA published guidance centered around the core message of “water, rest, shade.” Other petitions seeking a heat standard followed—also to be denied.

In 2019, the Occupational Safety and Health Review Commission’s decision in *A.H. Sturgill Roofing, Inc.* overturned a citation issued under the general duty clause of section 5(a)(1) of the OSH Act alleging a hazard of “excessive heat.” In the *Sturgill* case, the Commission majority held that the Secretary of Labor had failed to meet his burden of proof for the general duty clause citation. The Commission found in *Sturgill* that “[u]pon weighing the evidence, we conclude that the Secretary has not established the existence of a hazard likely to cause death or serious physical harm,” which is one of the long-standing elements necessary to proving a violation of the general duty clause of the OSH Act. 27 BNA OSHC 1809, 1811 (No. 13-0224, 2019); *see also Quick Transport of Ark.*, 27 BNA OSHC 1947, 1949 (No. 14-0844, 2019).

A concern noted in *Sturgill* was the use of the general duty clause in imposing requirements on employers in areas that were not clearly defined by OSHA regulations. *Sturgill*, 27 BNA OSHC at 1813, fn. 8 (“The Secretary’s failure to establish the existence of an excessive heat hazard here illustrates the difficulty in addressing this issue in the absence of an OSHA standard.”). The Commission wrote, “[w]hile practical considerations may have led OSHA, over the years, to rely on the general duty clause in lieu of setting standards, the provision

⁶ While this rulemaking initiative has been ongoing since 2021, the deadline for submitting comments on the Proposed Heat Rule (and its 376 pages in the Federal Register) appears rushed to accommodate the out-going Administration. Following the proposed rule’s publication on August 30, 2024, there were numerous requests submitted to OSHA to extend the comment deadline—particularly, from trade associations that need additional time to understand the technical complexity of the Notice of Proposed Rulemaking (and cited research) and the impact of the proposed rule upon their industries and members. The extensive data and information available from diverse stakeholders—on topics such as existing heat injury and illness prevention efforts; varying impacts of heat on geographic regions; engineering controls, administrative controls, and personal protective equipment (“PPE”); worker training; and detailed economic impacts, particularly on small business—is invaluable to the rulemaking process. The two-week extension of time to submit comments, which was ultimately granted, is insufficient for this important topic.

seems to have increasingly become more of a ‘gotcha’ and ‘catch all’ for the agency to utilize, which as a practical matter often leaves employers confused as to what is required of them.” *Id.* at fn.9.

While the Chamber appreciates that OSHA accepted the invitation to make it clear to employers what is expected of them in addressing heat injury and illness prevention, the Proposed Heat Standard represents a burdensome and unreasonable regulation of employers – particularly, for small businesses who, while committed to safety as a core value, do not have the resources for the overly prescriptive requirements of the Proposed Heat Standard. The Proposed Heat Standard is drafted as a “one-size-fits-all” with requirements that are difficult to implement and administer, and the proposed standard is much more prescriptive than OSHA’s previous “water, rest, shade” message; thereby expanding OSHA’s impact from giving employers necessary assistance with protecting employees to micromanaging their workplaces in the name of protecting against a broad and hard to define hazard.

II. CONGRESS HAS NOT SPOKEN CLEARLY ON OSHA’S AUTHORITY TO BROADLY REGULATE HEAT.

The Proposed Heat Standard seeks to broadly regulate hundreds of thousands of businesses across agricultural, construction, retail, wholesale, warehousing, transportation, logistics, theme park, travel, and other commercial industries that collectively employ millions of Americans. Therefore, a preliminary issue is whether OSHA has statutory authority for the Proposed Heat Standard that addresses both indoor and outdoor heat exposure for essentially all business in the United States.

In 1970, when Congress enacted the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, it authorized the Secretary of Labor (the “Secretary”) “to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce.” 29 U.S.C. § 651(b)(3). More specifically, the OSH Act granted Secretary of Labor the authority to promulgate *occupational* standards pursuant to the provisions set forth in section 6 of the OSH Act, *id.* at § 655(b). Such standards must be “reasonably necessary or appropriate to provide safe or healthful *employment*,” *id.* § 652(8) (emphasis added), as OSHA is tasked with *occupational* safety—that is, “safe and healthful working conditions.” *Id.* at § 651(b).

Such authority for regulating occupational safety is not unbridled. First, it is clear that “no provision of the OSH Act addresses public health more generally, which falls outside of OSHA’s sphere of expertise.” *Nat’l Fed’n of Indep. Bus. v. DOL*, 595 U.S. 109, 118 (2022) (“*NFIB*”). The Supreme Court in *NFIB* made it clear that the OSH Act “empowers the Secretary to set *workplace* safety standards, not broad public health measures.” *Id.* at 117 (emphasis in original).

Second, courts “expect Congress to speak clearly when authorizing an agency to exercise powers of ‘vast economic and political significance.’” *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)) (internal quotations omitted). This is exactly the kind of power that the Secretary claims here over a significant issue. See NPRM, 89 Fed. Reg. at 70702 (“heat exposure effects millions of workers in the United States”). The agency imposes substantial compliance costs on virtually every business in America while acknowledging there is long-standing “documentation of occupational heat-related illness beginning in ancient times and from the eighteenth century through the regulatory interest in the twentieth century.” *Id.* at 70703.

Heat and its impact on health is increasingly a broad public health issue and not one limited to being a work-related danger. For example, the World Health Organization (“WHO”) has stated that “extreme heat is growing exponentially due to climate change in all world regions.” The WHO noted that “[h]eat-related mortality for people over 65 years of age increased by approximately 85% between 2000-2004 and 2017-2021.” <https://www.who.int/news-room/fact-sheets/detail/climate-change-heat-and-health> (“WHO facts”). The WHO noted that heat stress is the leading cause of weather-related deaths and can exacerbate underlying illnesses, including cardiovascular disease, diabetes, mental health, and asthma. Heat stress can also increase the risk of accidents and transmission of some infectious diseases. *Id.* In other words, it is a risk of daily life “no different from the day-to-day dangers that all face from crime, air pollution, or any number” of other risks that most Americans face whether they are on or off the clock,⁷ and vulnerability to heat is closely shaped by physiological factors, such as age and health status.⁸ *NFIB*, 595 U.S. at 118.

Specific personal characteristics such as age, gender, physical fitness, mental health, lifestyle, experience, preventive behaviors, and physical exertion play a fundamental role in heat tolerance. See Peymaneh Habibi et al., *Climate Change and Occupational Heat Strain Among Women Workers: A Systematic Review*, Indian J. Occup. Environ. Med. (Jan.-Mar. 2024); Andreas Flouris et al., *Workers’ Health and Productivity Under Occupational Heat Strain: A Systematic Review and Meta-Analysis*, The Lancet Planetary Health (2018). Individuals with chronic illnesses such as heart problems, high blood pressure, and asthma—or who may take specific medications—can be at increased risk of heat-related illness and injuries. Kristie Ebi et al., *Hot Weather and Heat Extremes: Health Risks*, The Lancet (2021), Jingwen Liu et al., *Heat Exposure and Cardiovascular Health Outcomes: A Systematic Review and Meta-Analysis*, The Lancet Planetary Health (2022). Often, these personal characteristics of workers are not evident

⁷ In *NFIB*, the Court’s decision invalidating the mandate was informed by the recognition that “[p]ermitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA’s regulatory authority without clear congressional authorization.”). 595 U.S. at 118. Heat from weather can be distinguished from work operations industrial processes that expose workers to sources of radiant heat, such as ovens and furnaces.

⁸ See WHO facts, *supra*.

to their employer; in fact, even well-meaning inquiries can place an employer at risk for violating other Federal statutes, such as the Americans with Disabilities Act and the Age Discrimination in Employment Act.⁹

In *NFIB*, the Court in considering a challenge to OSHA’s vaccine mandate found it “telling that OSHA, in its half century of existence, ha[d] never before adopted a broad public health regulation” under the authority of the OSH Act. 595 U.S. at 119. The Court “‘typically greet[s]’ assertions of ‘extravagant statutory power over the national economy’ with ‘skepticism.’” *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (quoting *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014)). To overcome that skepticism, the Government must—under the major questions doctrine—point to “clear congressional authorization” to regulate in that manner. *Utility Air*, 573 U.S. at 324 (2014).¹⁰

So, while heat exposure may demand a response, whether OSHA has the authority under the OSH Act to regulate it as a workplace hazard is an open question. The more OSHA hews to a performance orientation that reflects the agency’s promotion of “water, rest, shade,” the less OSHA’s authority to issue such a regulation is likely to be challenged. If, nevertheless, OSHA determines to move forward with this regulatory initiative pursuant to section 6 of the Act, the Chamber offers the following comments.

III. SPECIFIC COMMENTS ON THE PROPOSED STANDARD’S PROVISIONS

OSHA’s one-size-fits-all approach fails to account for regional differences—something with which many commenters have already taken issue. Both the initial heat trigger (a heat index of 80°F or a wet bulb globe temperature equal to the NIOSH Recommended Action Level (RAL)) and the high heat trigger (a heat index of 90°F or a wet bulb globe temperature equal to the NIOSH Recommended Exposure Limit (REL)) fail to account for regional differences.¹¹

⁹ The Chamber noted the tension between employers benefitting from knowing employees’ health issues and the privacy protections contained in various laws, and recommended OSHA work with the EEOC to develop guidance allowing job-related health inquiries in our comments submitted to OSHA’s ANPRM on “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.” Comments [available here](#).

¹⁰ The Supreme Court has indicated that the major question doctrine applies when an agency claims the power to resolve a matter of great “political significance,” *NFIB*, 595 U.S. at 117 (internal quotation marks omitted) or end an “earnest and profound debate across the country,” *West Virginia*, 597 U.S. at 732 (quoting *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006)). It is worth noting here that OSHA pursues this regulatory initiative as a legislative “workaround” after Congress declined to act. See, e.g., “Asuncion Valdivia Heat Illness and Fatality Prevention Act,” H.R. 4897 (118th Cong., 2023-2024), H.R. 2193 (117th Cong., 2021-2022), H.R. 3668 (116th Congress, 2019-2020), and S. 1068 (117th Cong., 2021-2022) (bills introduced to direct the Secretary to promulgate a heat standard); see also “Farmworker Smoke and Excessive Heat Protection Act of 2021,” S. 2751 (117th Cong., 2021-2022), indicating that Congress has not directed OSHA to issue this standard. See *NFIB*, (Gorsuch, J. concurring opinion), 595 U.S. at 122 (noting Congress had not afforded OSHA the authority to issue a vaccine mandate).

¹¹ For these reasons, the heat triggers—or at least the initial heat trigger—may not be appropriate everywhere. See, e.g., Nevada OSHA’s heat illness regulation, which lacks temperature trigger points, providing flexibility for

Businesses operating in consistently high-heat regions, such as Arizona, Florida, and Texas, where these temperatures are the norm, would face a disproportionate compliance burden under these guidelines compared to those in more temperate climates. People in hotter climates tend to be more acclimatized to heat, including working in temperatures above 80°F, and thus have a lower risk of heat injury or illness.¹²

Another issue prevalent throughout the Proposed Heat Rule is the requirement for employers to designate a heat safety coordinator to implement the HIIPP with site-specific information; assume individual work site responsibilities, such as observing for signs and symptoms of heat-related illness; and ensure compliance with all aspects of the HIIPP.¹³ The heat safety coordinator will also be required to undergo additional employee education and may also be tasked with monitoring other workers for signs of heat illness on days when it reaches the high heat trigger. This provision will particularly burden small businesses. To comply with this provision, small businesses may either have to hire additional staff or redirect their employees' job duties away from the needs of the business or other safety hazards.

Requiring employers to designate a specific person to assume this role, rather than allowing employers to blend it into their already existing workplace safety programs, is an example of how this proposed standard would result in OSHA micromanaging employer operations and workplaces.

Below, we offer the additional specific comments, section-by-section, on the Proposed Heat Standard.

Section 1910.148(a)(2)—Exemptions from Scope of Standard

each business to evaluate workplace hazards associated with heat to develop and implement a plan that addresses their specific needs.

¹² See Yoram Epstein and Daniel Moran, *Extremes of Temperature and Hydration*, in *Travel Medicine* (3rd Edition, 2023) (acclimatization to heat is specific to the climate conditions to which a person is exposed); see also Kazutaka Oka et al., *Potential Effect of Heat Adaption on Association Between Number of Heatstroke Patients Transported by Ambulance and Wet Bulb Globe Temperature in Japan*, *Environmental Research*, (January 2023); Yutaka Tochihara et al., *How Humans Adapt to Hot Climates Learned from the Recent Research on Tropical Indigenous*, *J Physiol Anthropol* (July 14, 2022) (both discussing research that shows that people living in warmer climates tend to be more acclimatized to heat, demonstrating physiological adaptations like lower core body temperatures compared to those from cooler regions).

¹³ See, e.g., §§ 1910.148(c)(5) (HIIPP must designate heat safety coordinator(s) to implement and monitor the HIIPP; the identity of the heat safety coordinator must be documented in any written HIIPP; the heat safety coordinator must have the authority to ensure compliance with all aspects of the HIIPP); (f)(3)(ii) (heat safety coordinator or supervisor must observe for signs and symptoms of heat-related illness, with no more than 20 employees observed per heat safety coordinator or supervisor); (h)(1)(xii); (h)(2) (safety coordinator training); (h)(3) (refresher training).

What is Proposed:

Paragraph (a)(2) describes the exemptions for the proposed standard based on work activities. Paragraph (a)(2)(i) would exclude work activities for which there is no reasonable expectation of exposure at or above the initial heat trigger. Paragraph (a)(2)(ii) would exclude short duration employee exposures at or above the initial heat trigger of 15 minutes or less in any 60-minute period.

Comments:

The exceptions to the scope of the Proposed Heat Standard, contained in § 1910.148(a)(2), show the overbreadth and specificity of the proposed standard. When discussing subsection (a)(2)(ii) (“[s]hort duration employee exposure at or above the initial heat trigger of 15 minutes or less in any 60-minute period”), the NPRM discusses the example of an employee who drives an air-conditioned vehicle but exits the vehicle to deliver product in temperatures at or above the initial heat trigger. The NPRM states “this activity would only be exempt from the standard if *cumulative* exposure in any 60-minute period at or above the initial heat trigger is for 15 minutes or less.” NPRM, 80 Fed. Reg. at 70768 (emphasis added). While there should be a general understanding of exempting short-term exposure when employers consider a programmatic approach to heat exposure and heat injury and illness prevention, the administrative burdens, as proposed, associated with tracking tens of thousands of drivers who perform work from air-conditioned vehicles but frequently step in and out of it outweigh the level of risk.¹⁴ This example is only one of many where tracking exposure time would be wholly impracticable. Others include employees who move between buildings or some construction settings.

Section 1910.148(c)—Heat Injury and Illness Prevention Plan (HIIPP)

What is Proposed:

The Proposed Heat Standard requires an employer to develop and implement a HIIPP with worksite specific information that must include: a comprehensive list of the types of work activities covered by the plan; all policies and procedures necessary to comply with the requirements of the standard; and identification of the heat metric the employer will monitor to comply with this provision. If the employer has more than 10 employees, the HIIPP must be written and readily available at the work site to all employees performing work there and available in a language each employee understands.

¹⁴ To incentivize employers to adopt controls, a better approach would be to exempt all climate-controlled work areas or vehicles.

In addition, the employer must designate one or more heat safety coordinators to implement and monitor the HIIPP. The identity of the heat safety coordinator(s) must be documented in any written HIIPP, and the heat safety coordinator(s) must have the authority to ensure compliance with all aspects of the HIIPP. The employer must seek the input and involvement of non-managerial employees and their representatives, if any, in the development and implementation of the HIIPP. Employers would be required to review and evaluate the effectiveness of the HIIPP whenever a recordable heat illness occurs and update the HIIPP as necessary, or at least annually.

Comments:

While having a plan and strategy is important, the provisions of § 1910.148(c) seem to set up a checklist for enforcement rather than providing protections for employees—particularly for employers that have multiple work sites or where employees do not have a single work site (e.g., travel from customer to customer, enter private residences, or work in the field). In many work environments, making the HIIPP “readily available at the work site” is impracticable. Rather than the factors set forth here which are not applicable to many workplaces, OSHA should draft a model HIIPP for employers to guide them in the development of a HIIPP that they could tailor to their work environments.¹⁵

Identifying Hazards—Paragraph (d)

What is Proposed:

Paragraph (d) provides that employers must monitor heat conditions and sets forth requirements for assessing where and when employees are exposed to heat at or above the initial and high heat triggers. The employer must include the monitoring plan in the HIIPP.

This paragraph also would require employers with outdoor work sites to monitor heat conditions at outdoor work areas (“at or as close as possible to the work area(s)”) by tracking local heat index forecasts or measuring the heat metric of their choosing (heat index or wet bulb globe temperature (WBGT)). It would require employers with indoor work sites to identify work areas where there is a reasonable expectation that employees are or may be exposed to heat at or above the initial heat trigger and implement a plan for monitoring these areas to determine when exposures above the initial and high heat triggers occur, using the heat metric of their choosing (heat index or WBGT).

¹⁵ OSHA’s proposed HIIPP is reminiscent of previous expansive and impracticable OSHA plan requirements such as what would have been required under the Injury and Illness Prevention Program standard OSHA wanted to issue during the Obama administration, and the musculoskeletal disorder prevention standard issued by the Clinton administration, later invalidated under the Congressional Review Act.

The employer must seek input and involvement of non-managerial employees and their representatives, if any, when evaluating the work site to identify work areas with a reasonable expectation of exposures at or above the initial heat trigger and in developing and updating monitoring plans.

Comments:

The proposed requirement for frequent location-specific monitoring of heat conditions in multiple work areas, as close as possible to the employee, is administratively burdensome for many companies, particularly those with multiple or remote work sites. In addition, in some areas of the country, conditions change frequently, and the costs of devices and labor to monitor conditions continuously will place an undue financial burden on small- to medium-sized companies. Adapting to real-time conditions as heat index triggers are reached throughout the workday may be unrealistic at some work sites, such as in operations that require adherence to a timeline or with tasks that are planned or sequenced in advance. A more feasible approach would involve allowing less frequent or broader monitoring, as long as responses are in place for high-risk conditions. The overly prescriptive nature of the hazard identification requirements of the Proposed Heat Standard will lead to safety managers and other managers being burdened with the administration of this standard; resulting in them spending less time managing unsafe conditions and behaviors.¹⁶

Initial Heat Trigger—Paragraph (e)—Employers must implement the controls described in paragraph (e) when employees are exposed to heat at or above the initial heat trigger of 80°F or a wet bulb globe temperature equal to NIOSH RAL.

Drinking Water

What is Proposed:

Paragraph (e)(2) of the proposed standard establishes specific requirements for drinking water when employees are exposed to heat at or above the initial heat trigger, which includes that the water be “suitably cool,” “readily accessible,” and of a quantity to provide “1 quart ... per employee per hour.”

Comments:

The inquiries by OSHA as to whether the agency should require a specific temperature for drinking water or whether it should require the provision of electrolyte

¹⁶ The Chamber notes OSHA’s direction that employers must “seek the input and involvement of non-managerial employees and their representatives” in identifying heat hazards. “Representatives” as used here could be given the expansive meaning used in OSHA’s walkaround regulation which the Chamber is currently challenging in court. The Chamber objects to such a meaning in this proposal.

supplements/solutions in addition to water is an example of the unnecessary and prescriptive nature of the Proposed Heat Standard. OSHA should not require a specific temperature for drinking water or mandate electrolyte supplements in addition to water. Employers are capable of supplying water at a drinkable temperature without an OSHA requirement. Nor are electrolyte supplements, which have added sugars, always appropriate—most people do not need to consume sports drinks to replenish fluids and electrolytes lost during moderate physical activity. Rather, sports drinks are a specific tool for the hydration and nutrition needs of athletes and people engaged in intense and prolonged physical activity. See Nicolas Muñoz-Urtubia et al., *Healthy Behavior and Sports Drinks: A Systematic Review*, *Nutrients* (2023).

Break Area(s) at Outdoor Work Sites

What is Proposed:

Paragraph (e)(3) of the proposed standard contains the proposed requirements for outdoor break areas when temperatures meet or exceed the initial heat trigger. This paragraph requires employers to provide one or more employee break areas at outdoor work sites that can accommodate the number of employees on break, is readily accessible to the work area(s), and has either shade or air conditioning if in an enclosed space. An employer is required to pay employees their normal rate of pay for time to get to the break area, as well as time on break.

Paragraph (e)(3)(ii) of the proposed standard describes the requirements for the use of air-conditioned break areas. Even more specifically, the proposed standard states that if an air-conditioned vehicle is used for a break area, the vehicle would need to remain “readily available during work periods when the initial heat trigger is met or exceeded.” The NPRM also asks whether OSHA should require that break rooms and vehicles used for breaks be pre-cooled prior to the start of the employee’s break. The proposed requirements related to shade state that the shade be artificial (e.g., tent or pavilion), if it is open to the outside air, or natural (e.g., trees), but the proposal does not allow shade from equipment that provides blockage of direct sunlight and is open to the outside air.

Comments:

Employers provide breaks from the heat in various ways, depending on factors such as workers’ needs, the nature of the work, and workplace environmental conditions. Employers and employees should be allowed flexibility to assess what is an appropriate break area at their outdoor work sites—as opposed to needing to verify that every employee’s shadow is not visible during their break, as suggested by this paragraph.

Requiring pre-cooling of vehicles is troubling. It is not only burdensome and administratively challenging (e.g., is OSHA suggesting that employers hire a worker to run around fetching keys from another worker to start their vehicle prior to the start of their break

so that it is pre-cooled?), it will also result in increased fuel consumption and vehicle emissions while vehicles idle. Also, who is to attend to the idling vehicle so that a running vehicle is not left unattended? Again, the prescriptive requirements impose burdens upon employers that will either divert existing resources or require considerable new resources with questionable impact on improving workplace safety.

Break Area(s) at Indoor Work Sites

What is Proposed:

Paragraph (e)(4) of the proposed standard outlines the requirements for break areas at indoor work sites. Specifically, it would require that the employer provide one or more areas for employees to take breaks (e.g., break room) that is air-conditioned or has increased air movement and, if appropriate, de-humidification (to be implemented only in high temperature and high humidity environments when employers are relying on increased air movement to comply with this paragraph); can accommodate the number of employees on break; and is readily accessible to the work area(s).

Comments:

Again, the requirements set forth in the Proposed Heat Standard for break areas at indoor work sites are too prescriptive and infeasible for many employers. OSHA wondering if the standard should set a temperature differential between work areas and break areas or specify a temperature that break areas must be kept below reveals how detailed OSHA's vision for this requirement is. Requirements such as those proposed may require businesses to build a "cool room" for breaks—a requirement that could require taking space away from customers and causing devastating financial impact upon businesses (e.g., in restaurants where creating a cool break room would reduce restaurant revenue).

Most employers with indoor work sites use some form of ventilation and air movement to cool their facilities. In some buildings, however, it is technically or economically infeasible to install air-conditioning—e.g., it is an old or large building to effectively install air-conditioning, or the employer is a tenant and does not own the building. OSHA should offer as much flexibility as possible to allow employers to implement engineering and administrative controls that are feasible and appropriate for the workplace and activities.

Indoor Work Area Controls

What is Proposed:

Paragraph (e)(5) contains the proposed requirements for indoor work area controls when temperatures meet or exceed the initial heat trigger. Indoor work areas would be

required to be equipped with a combination of increased air movement and, if appropriate, de-humidification; air-conditioning; or, in the case of radiant heat sources, other cooling measures that effectively reduce employee exposure to radiant heat in the work area.

Comments:

As discussed above regarding paragraph (e)(4), some of the controls suggested by OSHA are not feasible in all indoor work environments—e.g., air conditioning or de-humidification of large, older buildings. Any final heat standard should err on the side of adaptability so that it is practical and achievable across American businesses.

Fan Use

What is Proposed:

Paragraph (e)(6) of the proposed standard would require employers using fans under certain conditions to determine if fan use is harmful when ambient temperatures exceed 102°F. Employers using fans to comply with paragraphs (e)(4) or (e)(5), would be required to evaluate the humidity levels at the work site and discontinue the use of fans if the employer determines that fan use is harmful.

Comments:

The requirements regarding fans are complex and vague. Many employers will not be equipped to determine if fan use is “harmful” when ambient temperatures exceed 102°F. Moreover, OSHA has not indicated how fan use could be “harmful.”

Acclimatization

What is Proposed:

Paragraph (e)(7) of the proposed standard would establish requirements to protect new and returning employees who are not acclimatized. This paragraph would require that employers implement one of two options for an acclimatization protocol for new employees during their first week on the job and for returning employees who have been away from the job for more than 14 days.

- Option A, at a minimum, includes the measures required at the high heat trigger set forth in paragraph (f) when the high heat index is at or above the initial heat trigger during the employee’s first week of work—a minimum 15 minute paid rest break at least every two hours in the break area that meets the requirements of the proposed standard; observation for signs and symptoms of heat related illness; and providing

hazard alerts with specified information about heat illness prevention and how to seek help if needed.

- Option B, would require a gradual exposure to the heat at or above the initial heat trigger to allow for acclimatization to the heat conditions of the workplace. The gradual exposure protocol would involve restricting employee exposure to heat to no more than 20% of a normal work shift exposure duration on the first day of work and increasing exposure by 20% of the work shift exposure duration on each subsequent day from day 2 through 4. Employers may satisfy option B requirements by utilizing some of the employees' work time in ways that do not require exposure to heat at or above the initial heat trigger.

There are exceptions to the acclimatization requirements if the employer can demonstrate that the employee consistently worked under the same or similar conditions, including similar exertion and heat conditions, as the employer's working conditions within the previous 14 days.

Comments:

Employers recognize that acclimatization is an important component of a heat injury and illness prevention program. However, employers should be provided more flexibility in their approach to acclimatization, whether it is in the form of providing employees with a gradual exposure to heat; allowing employees to ramp up in the type of work performed; or allowing employers to develop other forms of acclimatization, such as close observation by a supervisor or designee of an employee during the first 14 days of employment or when newly assigned to a job or work area with risk of heat injury or illness. For example, some employers provide new hires with initial training followed by light duty tasks during their first weeks, as they work alongside a supervisor or "buddy" who oversees heat tolerance of the new employee. A regimented acclimatization schedule is logistically and financially infeasible for some operations because it would require constant monitoring and adjusting of work schedules based on shifting schedules and hiring decisions. The stringent acclimatization requirements will add to labor shortage issues and will mean employers will not be getting the full value of a new or returning employee, while presumably still paying that employee as if they were working full time (see paragraph (j)). Nor does the acclimatization requirement allow employers to evaluate the employee based on their specific capacities and tolerances, it treats all employees as fungible commodities.

Unscheduled Rest Breaks If Needed

What is Proposed:

Paragraph (e)(8) of the proposed standard would require employers to allow and encourage employees to take paid rest breaks in the required break areas if needed to prevent overheating. This paragraph also states that unscheduled rest breaks may help to protect employees who are more susceptible to heat-related incidents (e.g., chronic health conditions; recent recovery from illness, pregnancy, prior heat-related illness; or use of certain medications). In addition, OSHA states that unscheduled rest breaks may also help reduce heat strain in employees who are assigned to new job tasks that are more strenuous than the tasks they were performing, or to allow employees an opportunity to remove any PPE that may be contributing to heat strain.

Employees would be allowed to decide on the timing and frequency of unscheduled rest breaks to prevent overheating. However, if the work process is such that allowing employees to leave their workstation at their election would present a hazard to the employee or others, or if it would result in harm to the employer's equipment or product, the employer could require the employee to notify a supervisor and wait to be relieved—provided a supervisor is immediately available and relieves the employee as quickly as possible.

Comments:

The requirements contained in paragraph (e)(8)—employees “are allow[ed] and encourage[d] ... to take paid rest breaks ... if needed to prevent overheating”—combined with the required 15-minute paid rest break every two hours at or above the high heat trigger in paragraph (f) and the requirement in paragraph (j) (requiring implementation of the Proposed Heat Rule's requirements to be at no cost to employees) are ripe for abuse; leaving employers with no defense and subjecting them to retaliation claims should they try to rein in suspected overuse by employees taking repeated breaks under the guise of needing them to prevent overheating. This is exactly the type of regulatory overreach that impacts American businesses and constrains growth and undermines OSHA's credibility with employers about whether the agency is focused on workplace safety or giving employees leverage to use against employers.

Effective Communication

What is Proposed:

Paragraph (e)(9) of the proposed standard establishes requirements for effective communication at the initial heat trigger. Requirements include regular, two-way communication, which OSHA states is “every few hours.” This requirement also applies for employees who work alone on the work site.

Comments:

The requirements of paragraph (e)(9) are another example of a one-size-fits-all approach that does not address employees who work alone in remote areas where cell phone coverage is not always a reliable means of communication. In addition, required communication at specified intervals may interrupt workers at times that their attention should be focused on the task at hand—e.g., driving, tree trimming, working at heights. Employers will incur costs to employ labor to assure adherence to the communication requirements. While regular and effective communication is an important mechanism for early notification of heat-related hazards so that appropriate precautions can be taken, detection and communication with the employer about signs and symptoms of heat-related illness, and appropriate response measures (e.g., first aid, emergency response), flexibility is needed to ensure that any promulgated regulation is practical and achievable across American businesses.

Requirements at the High Heat Trigger—Paragraph (f)

What is Proposed:

In addition to the requirements in paragraph (e) of the proposed standard, in paragraph (f), employers must implement controls when employees are exposed to heat at or above the high heat trigger, defined as a heat index of 90°F or a wet bulb globe temperature equal to the NIOSH REL—including providing employees a minimum 15-minute paid rest break at least every two hours in the break area required by the proposed standard. The time for employees to walk to and from the break area is not included in the time for rest breaks.

The employer must also implement a method of observing employees for signs and symptoms of heat-related illness—either a mandatory buddy system in which coworkers observe each other or observation by a supervisor or heat safety coordinator, with no more than 20 employees observed per supervisor or heat safety coordinator. For employees who are alone at a work site, the employer must maintain a means of effective, two-way communication with those employees and contact the employees at least every two hours.

Comments:

Again, the specificity of paragraph (f) is a one-size-fits-all approach that does not fit every work environment. The requirement at the proposed high heat trigger to provide a 15-minute break every two hours will put employers in some industries out of business or put workers at greater risk of injury or illness as they cover for employees taking breaks.

There are some industries where giving 15-minute breaks every two hours is unworkable—e.g., there are times for employers in construction and manufacturing that work

cannot stop while workers take breaks, such as while pouring concrete, and during certain industrial processes.¹⁷

Restaurants that have been short-staffed since the pandemic will struggle to stay in business with this requirement as it will force restaurants to hire even more staff to implement. Executing on menus and orders is complex, often with chefs trained in certain areas of the kitchen on or technical skills. A 15-minute break every two hours will destroy productivity and create a financial breakpoint for many struggling restaurants.

Another example is crews who are responsible for climbing and maintaining communications facilities and who perform tasks at significant heights, often hundreds of feet above ground level. The proposed provision for a 15-minute break every two hours, requires, along with this, descending and ascending towers, which introduces additional risks:

- Climbing up and down towers repeatedly adds significant physical exertion, including contributing to fatigue and compounding the risk of heat-related illnesses rather than mitigating it.
- Each ascent and descent increases exposure to potential falls or slips, even with proper safety gear.
- Frequent climbing disrupts workflows, potentially extending exposure to heat as technicians remain on-site for longer durations.

Similar concerns are presented for workers in roofing and tree care. Workers who wear complex PPE often prefer to complete their work rather than stop for a break that requires removing and redonning their PPE. Arbitrarily mandating a rest break when an employee is not experiencing any symptoms of heat stress and would rather continue in their function is another example of how this proposed standard seeks to micromanage workplaces and employer operations.

In addition, the requirement that an employer must maintain a means of effective, two-way communication with those employees who are alone at a work site and contact the employees at least every two hours is overly prescriptive. Employers should be provided with flexibility to implement a communication system that works with their work environment and does not present greater risk. For example, contacting workers while they are driving to meet the two-hour deadline is not only an increased burden, it also interjects an additional risk.

Hazard Alert

What is Proposed:

¹⁷ See NPRM, 89 Fed. Reg. at 70990 (SERS' findings and recommendations regarding 15-minute break requirements).

Paragraph (f)(4) of the proposed standard would require employers to issue a hazard alert to employees prior to a work shift, or when employees are exposed to heat at or above the high heat trigger. Specifically, the employer would be required to notify employees of the following: the importance of drinking plenty of water; employees' right to, at the employees' election, take rest breaks if needed and the rest breaks required by paragraph (f)(2); how to seek help and the procedures to take in a heat emergency; and for mobile work sites, information on the location of break area(s) required by paragraph (e)(3) or (4) and drinking water as required by paragraph (e)(2).

Comments:

Again, the provisions in paragraph (f)(4) of the Proposed Heat Standard fail to account for regional differences. In many parts of the country, the proposed Hazard Alert would need to be issued every day for weeks or months on end; requiring a repetitive daily alert may result in employees tuning out the same information that they receive daily.

Heat Illness and Emergency Response and Planning—Paragraph (g)

What is Proposed:

Paragraph (g) of the proposed standard would establish requirements for heat illness and emergency response and planning. It would require that employers develop and implement a heat emergency response plan as part of their HIIPP, as well as specify what an employer's responsibilities would be if an employee experiences signs and symptoms of heat-related illness or heat emergency. The employer would need to seek the input and involvement of non-managerial employees and their representatives, if any, in the development and implementation of the emergency response plan. If the employer has multiple work sites that are distinct from each other, the plan would be tailored to each work site or type of work site. Other requirements include: a description of how employees can contact a supervisor and emergency medical services; the individual(s) designated to ensure the heat emergency procedures are invoked when appropriate; and a description of how to transport employees to a place where they can be reached by an emergency medical provider.

Paragraph (g) would also require employers to monitor employees who are experiencing signs and symptoms of heat related illness, make sure they are not left alone, and are relieved from duty, with pay, while experiencing signs and symptoms of heat-related illness. Employers would be required to offer employees who are experiencing signs and symptoms of heat-related illness on-site first aid or medical services, including means to reduce their body temperature, before ending any monitoring. In addition, employers would be required to take immediate action to reduce the employee's body temperature before emergency medical services arrive.

The requirements in proposed paragraph (g)(1)(iv) would require the emergency response plan to have a description of how to transport employees to a place where they can be reached by an emergency medical provider. Proposed paragraph (g)(1)(v) would require the emergency response plan to include clear and precise directions to the work site, including the address of the work site, which can be provided to emergency dispatchers. For certain work sites that are remote/hard to reach or do not have an address, GPS coordinates may be necessary to share with emergency responders, or a description of how to get to their location from the main road, entrance, building, etc. If an employee's work site changes frequently, the emergency response plan would need to include a clear strategy to account for their changing locations and ensure directions to the work site are readily accessible when needed to provide to emergency dispatchers.

Comments:

The proposed requirements for emergency response again attempt to create a one-size-fits-all solution that takes into account every minute detail. Some employers have hundreds or thousands of work sites (e.g., HVAC contractors), remote and isolated work sites (e.g., oil and gas, logging), or lone workers where incorporating the emergency response plan into the HIIPP and meeting the requirements of this paragraph are not only burdensome but infeasible. This provision is another that appears to set up a checklist for enforcement purposes.

Training—Paragraph (h)

What is Proposed:

Paragraph (h) of the proposed standard establishes requirements for training on heat injury and illness prevention. It addresses the topics to be addressed in training, the types of employees who are to be trained, the frequency of training, triggers for supplemental training, and how training is to be conducted.

Comments:

Employers agree that training to prevent heat injury and illness is a necessary component of an effective HIIPP. While annual refresher training is appropriate, the training provisions of a heat standard should not state, as suggested, that annual training be no sooner than 30 days before the start of an employer's "heat season" as there is vagueness for employers in such a requirement.

In addition, the proposed requirement for supplemental training is overly broad as it would require such training while an employer works to determine the cause of commonplace symptoms, such as muscle cramping, sweating, shortness of breath, dizziness, headaches, weakness, and nausea. These symptoms can occur for any number of reasons, not just heat

illness, and an employer should not have to risk a training violation as it appropriately determines the root cause of symptoms. Further, the proposed supplemental training is not limited to employees working under the same conditions at the same worksite as those under which the injured employee worked. For example, it would be unnecessarily burdensome for an employer to have to re-train night shift employees following an isolated incident involving a day shift employee or to re-train employees working indoors when the incident occurred outdoors.

Recordkeeping—Paragraph (i)

What is Proposed:

Paragraph (i) of the proposed standard would require certain employers to create written or electronic records of on-site temperature measurements and establishes the duration of time that employers must retain those records. Specifically, it applies to employers that have indoor work areas where there is a reasonable expectation that employees are or may be exposed to heat at or above the initial heat trigger and are therefore required to conduct on-site temperature measurements. These employers must have and maintain written or electronic records of these measurements for a minimum of six months.

Comments:

The proposed requirements for maintaining on-site temperature measurements are both burdensome and unnecessary while providing little evidence that these burdens will keep workers safer—they may actually increase administration and recordkeeping such that employers and their supervisors have less time to focus on eliminating hazards in the workplace. These records would seem to serve no purpose other than providing OSHA and/or plaintiffs' attorneys with exposure data. Any benefit of maintaining such records is outweighed by protecting American businesses from burdensome, unreasonable, and unnecessary regulation.

Requirements Implemented at No Cost to Employees—Paragraph (j)

What is Proposed:

Paragraph (j) of the proposed standard provides that implementation of all requirements of the standard must be at no cost to employees, including paying employees their normal rate of pay when compliance requires employee time. OSHA considers costs to include not only direct monetary expenses to the employee, but also the time and other expenses necessary to perform required tasks (e.g., acclimatization time and rest breaks).

Comments:

The implementation of the Proposed Heat Standard's requirements to be at no cost to employees— including paying employees their normal rate of pay when employees “are allow[ed] and encourage[d] ... to take paid rest breaks ... if needed to prevent overheating” creates opportunities for misuse and exposes employers to claims of retaliation if they should try to address improper employee behavior. This provision is another example of the overreach of this burdensome proposed regulation.

IV. CONCLUSION

We encourage OSHA to withdraw this proposal and revise it to focus on preventing heat injury and illness prevention using generally accepted elements for an effective heat illness and prevention program—training, acclimatization/enhanced supervision for new or returning employees, and the provision of water, rest, and shade—but with a performance orientation providing more flexibility and allowing employers to tailor their program to their work environment and workers. The current proposal is layers on many specific requirements that would result in OSHA micromanaging employer operations and their workspaces. We are prepared to continue working with OSHA to find an appropriate approach.

Sincerely,



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