

January 14, 2025

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Douglas Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
Room S2315
200 Constitution Avenue, NW
Washington, DC 20210

VIA ELECTRONIC SUBMISSION TO <https://www.regulations.gov/commenton/OSHA-2021-0009-4761>

RE: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings Proposed Rule, Docket (OSHA-2021-0009)

Dear Acting Secretary Su and Assistant Secretary Parker:

The Coalition for Workplace Safety (CWS) respectfully submits these comments in response to the Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings standard proposed by the Occupational Safety and Health Administration (OSHA) (Docket No. OSHA-2021-0009). See also the feedback presented by CWS during the Small Business Regulatory Enforcement Fairness Act (SBREFA) process on December 20, 2023. These comments supplement observations presented by the CWS on February 4, 2022, regarding OSHA's Advance Notice of Proposed Rulemaking on Heat Injury and Illness Prevention in Indoor and Outdoor Settings, 86 Fed. Reg. 59309 (October 27, 2021). We appreciate OSHA's consideration of our input.

The CWS is a coalition of trade associations and companies, representing many industries with millions of employees in every state in the nation who are focused on establishing reasonable and responsible workplace safety standards across the country. We are comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability.

CWS members agree that heat can pose risks to workers in a range of workplaces around the country. We have significant concerns, however, with the inflexible, "one-size-fits-all" principles reflected in OSHA's proposed rule, which do not take geographical and other variables into account. We request that the proposed rule be withdrawn for the purpose of significantly revising it for the reasons discussed below. The proposed rule creates requirements that are

unworkable for many businesses, while providing little commensurate benefit to workers. We respectfully request that the rule be substantially modified to create a more flexible approach that will allow employers to tailor heat illness prevention programs based on their unique work environments, employees' needs, and tolerances.

(1) **The proposed rule should be withdrawn because it fails to consider the extensive concerns provided during the SBREFA process regarding the inflexibility of the requirements.**

In August 2023, OSHA convened a Small Business Advocacy Review (SBAR) Panel to provide comments on OSHA's potential standard for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings ("heat standard" or "proposed heat standard"). OSHA then sought input from Small Entity Representatives (SERs) on various options included in the proposed heat standard, gathering input from eighty-two SERs.¹ OSHA concluded the SBREFA process on November 3, 2023 and released the SBAR Panel's Report ("Panel Report"). The CWS supports recommendations expressed in the Panel Report recognizing that flexibility, rather than a "one-size-fits-all" standard, is necessary for employers to most effectively prevent or mitigate heat-related injuries and illnesses in their workplaces. While OSHA did reconsider the overly burdensome and unnecessary proposed recordkeeping requirements in the draft heat standard, most of the recommendations of the Panel were largely ignored. None of the following concerns noted by SERs in the Panel Report are reflected in the proposed heat standard:

- *Flexibility and Scalability:* The standard should be flexible with a programmatic approach that allows employers to tailor their program to their particular workplace(s).
- *Heat Triggers:* The heat triggers suggested by OSHA are too low and confusing. The Panel recommended that OSHA reconsider and simplify the presentation of heat triggers and provide additional data supporting the levels selected.
- *Temperature Measurement:* More flexibility should be provided in monitoring methods, with clarity requested on requirements for those with indoor settings and mobile workforces.
- *Rest Breaks:* The Panel requested that OSHA consider allowing employers some flexibility in the frequency of rest breaks and clarify what activities employees can engage in during rest breaks.
- *Acclimatization:* The Panel recommended that OSHA provide flexible options for acclimatization to enable employers to determine the best method for acclimatizing workers.

¹ *Report of the Small Business Advocacy Review Panel on OSHA's Potential Standard for Heat Injury and Illness in Outdoor and Indoor Work* (Nov. 3, 2023), ("Panel Report") at ii.

- *Solo and Mobile Workers:* The Panel recommended that OSHA offer employers with solo and mobile workers who work alone or travel between jobsites flexibility related to supervision, temperature monitoring, and rest breaks.
- *Engineering and Administrative Controls:* The Panel recommended that OSHA offer flexibility to employers in implementing controls that are feasible and appropriate for their workplace, versus prescribing specific engineering controls (e.g., A/C, fans, etc.) and administrative controls, such as adjusting start times and monitoring employees, that would be difficult or infeasible to implement.

The SBREFA process was created by Congress in response to concerns expressed by the small business community that federal regulations were too numerous, too complex, and too expensive to implement, and that certain agencies were not considering the concerns of small businesses.² When OSHA determines that a proposed regulation is expected to have a significant impact on a substantial number of small business entities, OSHA is required to convene a panel to listen to small entities that would be affected by the proposal express their views on the impact that proposal would have. OSHA made that determination and convened the panel process. CWS is concerned that the proposed rule, as published, did not modify the rule in reaction to the well-informed concerns identified by the SERs.

(2) **OSHA’s existing “[Water.Rest.Shade](#)” resources provide excellent guidance, while the proposed rule creates more burdens than it solves.**

In addition to the concerns noted above in the Panel Report, SERs voiced strong concern regarding whether the underlying data on heat-related injuries from the Bureau of Labor Statistics (BLS) supports the need for a national heat standard.³ While OSHA has provided data related to heat injury levels, the agency has not demonstrated that this proposed standard, with its specification-oriented detail, is the best response. CWS members believe the flexibility needed by employers to effectively tailor heat illness prevention programs to their unique environments and employees’ is already available in OSHA’s “[Water. Rest. Shade](#)”⁴ heat illness prevention materials. However, OSHA’s prior work in creating the “Water. Rest. Shade” materials has been totally sacrificed in the proposal in the pursuit of nailing down every last detail. CWS members are using combinations of “[Water.Rest.Shade](#)” materials to prevent heat illness. The current landscape is not one where employers are generally ignoring the hazard. Instead, it is one where employers would benefit from clear guidance and reasonable requirements, in contrast to how the proposal operates. Employers who participate in the CWS are implementing practices such as the following:

- Ambient temperature control in indoor work settings

² <https://www.osha.gov/smallbusiness/sbrefa>

³ Panel Report at 45.

⁴ <https://www.osha.gov/heat-exposure/water-rest-shade> (last accessed 12/22/2024).

- Provide cool drinking water to employees that is readily available. Several members reported that, in addition to providing water, they also provide electrolyte-containing fluids, popsicles, coolers with ice and water, air-conditioned break rooms, cooling rooms, and vehicles, climate controlled operational control rooms, fans, and other approaches to minimize heat illness.
- Protective clothing, such as dry fit work shirts
- Job rotation
- Rest breaks as needed
- Training employees and supervisors on heat illness prevention and how to respond if an employee exhibits symptoms.

We encourage OSHA to take a closer look at the data collected during the SBREFA process that has been ignored in the proposed standard. During the SBAR Panel review process, the SERs found little quantifiable support for a national heat illness standard like the one OSHA has proposed.

The CWS strongly urges that the proposed rule be withdrawn so that OSHA can significantly modify it and take the Panel Report into consideration. This is necessary to closely examine the impact of unintended consequences related to lack of flexibility, and to the confusion created by several of the topics discussed further below. In its current form, the proposed standard creates significant compliance hurdles for employers, while providing little additional protection to employees beyond that already available through OSHA’s “[Water.Rest.Shade](#)” framework, the General Duty Clause, and OSHA’s National Emphasis Program for Outdoor and Indoor Heat-Related Hazards.⁵

(3) To move forward with the proposed rule, OSHA should substantially modify it with flexibility as the guidepost.

While CWS and its members support the mission of heat illness and injury prevention, CWS urges OSHA to revise the proposed standard considerably to provide a more flexible performance-based approach that will allow employers and employees to create heat illness protocols that take the needs of individuals, their unique workplaces, and geographical considerations into account. CWS joins the concerns voiced in the Panel Report that the proposed heat triggers are too low, and not appropriate for all regions and use environments.

The proposed standard ignores the fact that risks for heat-related injury and illness can vary significantly based on the individual, environmental, and work-related factors. Employers and employees need flexibility to account for differences among work sites, geographical locations, worker(s) unique risk factors and tolerances, work responsibilities, and available technology.

Whether any given employee is susceptible to heat illness, and at what point, is the product of performance-based individual health and fitness factors that are far outside the control of the employer. Yet, the proposed standard applies an unworkable “one-size-fits-all” approach to

⁵ <https://www.osha.gov/enforcement/directives/cpl-03-00-024>

acclimatization, rest breaks, and other topics in the rule based only on environmental temperatures. These rigid requirements ignore the fact that individual employees will not have the same reaction to environmental temperatures.

Seven main factors are associated with heat stress: temperature, air velocity, humidity, radiant heat, clothing, metabolic rate, and acclimatization.⁶ Two additional factors – body weight and work-rest schedule – affect metabolic rate.⁷ The significant contribution of metabolic rate to heat stress is recognized by the National Institute for Occupational Safety and Health (NIOSH). NIOSH defines occupational heat stress as “the combination of metabolic heat, environmental heat, clothing, and personal protective equipment (PPE), which results in increased heat storage in the body.”⁸ An employee’s personal risk factors, such as physical fitness and underlying health conditions, also present individualized factors. Yet, the proposed standard remains rigidly tied to environmental temperature, while ignoring geographical and other individualized differences.

The rigid focus on temperature also disregards regional differences. Ninety degrees may be considered a high temperature in one part of the country, but feel moderate in another state, like Arizona. As *Bloomberg Law* reported in its interview with a climatologist and researcher from Arizona State University, there is not a universal heat index temperature degree trigger point that would be equally effective nationwide.⁹ This is due to regional climate, amount of solar radiation, humidity, and an individual’s characteristics.¹⁰ Therefore, the researcher noted, “even if there were national trigger points, they would have to be adjusted regionally to account for local climate differences, working conditions, and workforce characteristics.”¹¹

With these individual and geographic differences in mind, definitions in the standard based only on heat exposure triggers need significant revisions. For example, the exemption available for “short duration” exposure at or above the initial heat trigger at 15 minutes or less in any 60-minute period is excessively limited and will not be applicable to many work environments if tied only to time of exposure versus a risk-based approach. A good example of the practical application of a “short duration exposure” assessment is found in maintenance personnel who occasionally service equipment outside during the summer. If they are outside for more than 15 minutes in a 60-minute period, then the standard is triggered, even if they are otherwise working in an air-conditioned building for the remainder of the day.

Consider also the scenario of what happens if an air-conditioning unit malfunctions and an indoor workplace gets hot briefly while the unit is being repaired. All of the requirements of the standard would then apply if the conditions last for more than 15 minutes during a 60-minute period, even if the building’s temperature is brought under the heat trigger for the remainder of the

⁶ “*It’s the Heat – And the Humidity: Critical Factors for Heat Stress Assessment and Prevention*,” by Robert N. Phalen and Catherine L. Besmar, <https://synergist.aiha.org/202004-heat-and-humidity> (last accessed 12/20/2024).

⁷ *Id.*

⁸ <https://www.cdc.gov/niosh/heat-stress/about/> (last accessed 12/20/2024)

⁹ “Workers Want Flexible Heat Standard as OSHA Eyes Trigger Temp,” *Bloomberg Law Occupational Safety and Health Reporter*, 9/3/2024 (last accessed 12/20/2024).

¹⁰ *Id.*

¹¹ *Id.*

day. For a final example of the impracticality of temperature-based heat triggers, many employers utilize deliver drivers with air-conditioned vehicles. Even though the drivers are in their climate-controlled vehicles for the majority of their workday, which would remove them from the application of the proposed rule, the “short duration” exception will not apply when they are outside of the vehicle for more than 15 minutes over a 60-minute period. If a driver also chooses to eat lunch outside for more than 15 minutes during a hot day because they enjoy doing so, then the requirements of the proposed standard arguably would also be triggered.

Rather than imposing a one-size-fits-all approach to rest breaks and acclimatization, CWS proposes that the proposed standard be withdrawn, and revised to provide a flexible approach that will allow employers to use the existing “[Water.Rest.Shade](#)” framework to provide the most benefit to employees based on a consideration of the work environment, geographical location, and other individualized risk factors.

(4) The proposed rule creates substantial confusion and burdens for employers in several areas, without proof of commensurate benefit to employees.

Several elements of the proposed rule create unnecessary burdens and compliance impediments to employers due to ill-defined requirements that cannot be applied in all work environments. While there are several areas of the proposed rule that raise more questions than they solve, we have focused the discussion that follows on the top concerns expressed by our members.

(a) *Rest break requirements at the high-heat trigger create substantial operational challenges and implicate additional risks.*

The overwhelming majority of members we surveyed indicated that providing mandatory rest breaks of 15 minutes at least every two hours creates significant operational challenges. For example, in work environments depending on trucks to load and unload products, workers unload trucks when they arrive. Otherwise, trucks are left waiting, creating the potential for traffic disruptions and related safety issues. Other members reported that, during summer months, they stagger work times so that strenuous outdoor work is done in the morning hours to avoid exposing workers to peak afternoon heat. If break times are rigidly applied in these environments, the outdoor work periods have the potential of being extended to account for mandatory 15-minute breaks, creating exposure during the higher heat periods.

Our members’ concerns are consistent with employer voices from the Panel Report noting that there are scenarios where it is not feasible to take prescriptive breaks while doing specific tasks, such as pouring concrete or being in the middle of a production run in a manufacturing operation. Requiring regimented rest breaks of 15 minutes during defined time periods can result in lower manpower than necessary to safely conduct an operation, and the loss of a critical co-worker with experience and operational knowledge at the exact “wrong” time to complete a job safely.¹² As SERs in industries working from heights noted, the unintended consequence from the

¹² General comments from Heat Illness SBAR/SBREF Panel (10/3/2023), at 33.

rigid application of rest breaks is that a greater hazard is likely to be created when workers are required to frequently climb up and down a ladder to take prescriptive breaks, exposing them to additional fall hazards.¹³ CWS strongly urges OSHA to provide employers with more flexibility to provide break times tailored to the needs of the specific workplace and employee tolerances.

- (b) *The requirements for the heat safety coordinator are unclear and are challenging for small businesses to implement.*

The proposed standard requires that employers designate “one or more” heat safety coordinators to implement and monitor the Heat Injury and Illness Prevention Program (HIIPP). CWS requests that OSHA provide more clarity around the heat coordinator’s role. In its current form, the proposed standard does not clarify what other job responsibilities the heat safety coordinator may have, or, whether this role must also be staffed year-round, including during times when temperatures will not reach initial trigger or high heat trigger thresholds. Companies with dedicated workplace safety staff may be able to designate existing trained safety team members as heat safety coordinators, if OSHA refines the language in the proposed standard to clarify other job duties that the heat safety coordinator may have. However, smaller businesses without such roles will have to hire new staff to file this role, creating significant financial burdens and hiring difficulties in a time when many employers are already facing workforce shortages.

- (c) *Exemptions for work-activities in indoor work areas and in air-conditioned vehicles will be impossible to apply in all but the most sedentary of work environments.*

Due to inflexible and unrealistic descriptions in the proposed standard regarding the applicability of exemptions to indoor work areas and air-conditioned vehicles, exemptions from HIIPP and other requirements are unusable for all but the most sedentary of roles in air-conditioned workplaces. The majority of CWS members who responded to survey questions indicated that they would have significant hurdles in taking advantage of the exemptions, given the fact that almost any level of work involving more than sitting would remove their work environments from the exemption.

Consider the example of a forklift operator who works in a temperature-controlled building with the majority of their work taking place indoors. The forklift operator must continually stand and move on and off the forklift for operational needs. The forklift operator also frequently moves loads on the forklift weighing more than 10 pounds, sometimes requiring some manual effort to position pallets on the forklift. In another example, employees work in an indoor location. Though most of the work is done while sitting, employees periodically will have to lift materials weighing up to 25 pounds to process customers’ orders. In these examples, the exemptions do not clearly apply.

Employers will be substantially burdened in assessing whether the exemptions apply to them. And if the exemption does not apply, the employers in these examples would be required to

¹³ *Id.* at 34.

follow all requirements in the proposed standard, including developing and implementing the HIIPP, designating heat safety coordinators, and frequently monitoring heat levels. CWS recommends that the rule be revised significantly to provide employers with flexibility to determine when heat poses health and safety risks to employees in their work environments, rather than having to follow the rigid requirements that carry the threat of undue burden.

- (d) *The requirements for conducting heat assessment and monitoring plans are unrealistic, overly burdensome, and expose the heat monitors to additional risks.*

The proposed standard requires that employers identify heat hazards in outdoor work areas “as close as possible to the work area” and “with sufficient frequency” to determine employees’ exposure to heat with reasonable accuracy. In indoor work settings, employers must identify each “work area” where there is a reasonable expectation that employees are or may be exposed to heat at or above the initial trigger. The vague nature of the wording creates compliance challenges in that “frequency” and “work area(s)” are not well-defined. In a multi-level work location, each level could potentially be a different “work area,” requiring its own separate monitoring. Not only does the wording lack specificity to instruct an employer as to how frequently monitoring should be conducted and where, but the requirements as written in the proposed standard carry risks for employees performing the monitoring tasks. Applying the rule as written would require employers to send a person to conduct a risk assessment each time someone ventures into a potential new “work area,” thereby exposing the heat monitor to additional risks, such as when the heat monitor must climb ladders or work from heights to conduct heat assessments. This risk increases each time the heat monitor must “frequently” measure the heat.

The recordkeeping requirements regarding heat assessments and measurements will also create excessive administrative burdens for employers. The proposed rule requires employers to create and maintain “written or electronic records” of indoor work area measurements and retain those records for six months. This requirement creates significant ongoing administrative burdens for employers, coupled with compliance risks if all measurements are not documented.

- (e) *The acclimatization requirements do not account for temperature fluctuations.*

In addition to its overall concerns regarding the inflexible approach taken by OSHA regarding acclimatization, CWS requests clarity around how to account for temperature fluctuations. The proposed rule requires gradual acclimatization for new and certain returning employees. However, the rule provides no guidance for how this is to be applied for brief spikes in temperature. The proposed standard reads that acclimatization is required whenever the heat index is at or above the initial heat trigger “during the employee’s first week at work.” However, the proposal makes no mention of how this is to be applied if the heat falls below the initial heat trigger on the remainder of the employee’s first week on the job. It would be overly burdensome to require an employer to rigidly follow all prescribed acclimatization steps in such a scenario where the initial heat trigger threshold is reached in only one day of the workweek.

- (f) *The proposed rule creates substantial costs for employers that have been downplayed and/or overlooked.*

A standard must be economically feasible.¹⁴ The proposed standard does not meet this requirement. We request that OSHA also re-visit economic assessment data while revising the proposed rule. As the above examples illustrate, employers will incur significant compliance costs. While the health and safety of workers is a priority for CWS members, the standard must be economically feasible. Yet, OSHA grossly underestimates compliance costs at only \$3,085 per establishment.¹⁵ The cost of hiring just one additional full-time employee to serve as a heat safety coordinator would easily total at least ten times this amount. This figure continues to increase when you add expenses for heat monitoring equipment, engineering and administrative controls, plus the considerable time and expense that it will take to create the HIIPP.

CONCLUSION

The CWS opposes the creation of a prescriptive “one-size-fits all” approach to heat illness. Without the flexibility to tailor heat illness programs based on an employer’s unique use environments, including geography and employee tolerances, a rigid rule carries the risk of being unduly burdensome and cost prohibitive, while failing to effectively protect workers from the specific hazards that would be identified through a site specific and tailored risk assessment. CWS respectfully urges withdrawal of the proposed standard so that it can be significantly revised to reflect OSHA’s “Water. Rest. Shade” program. Any standard that OSHA pursues should be substantially modified to create a more flexible approach that will allow employers to tailor heat illness prevention programs based on their unique work environments and employees’ needs.

We appreciate the opportunity to provide these comments and welcome the opportunity to continue to engage with the agency as it considers this important issue.

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¹⁴ *Forging Indus. Ass’n v. Secretary of Labor*, 773 F.2d 1436, 1453 (4th Cir. 1985).

¹⁵ *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, 89 Fed. Reg. 70824, August 30, 2024 (RIN 1218-AD39).