



February 4, 2022

VIA ELECTRONIC SUBMISSION: WWW.REGULATIONS.GOV

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

James Frederick
Deputy Assistant Secretary
U.S. Department of Labor
Occupational Safety and Health Administration
Room S2315
200 Constitution Avenue NW
Washington, DC 20210

Re: Docket No. OSHA-2021-0009; RIN1218-AD39; Comments on Advance Notice of Proposed Rulemaking on Heat Injury and Illness Prevention in Indoor and Outdoor Settings; 86 Fed. Reg. 59309 (October 27, 2021)

Dear Assistant Secretary Parker and Deputy Assistant Secretary Frederick:

The Coalition for Workplace Safety (“CWS”) respectfully submits these comments in response to the Occupational Safety and Health Administration’s (“OSHA” or “agency”) Advance Notice of Proposed Rulemaking (ANPRM) on Heat Injury and Illness Prevention in Indoor and Outdoor Settings. We appreciate OSHA’s consideration of these comments as the agency evaluates its current approach to heat illness and injury prevention and for starting this process with an ANPRM to gather input from stakeholders on this issue before issuing any proposed rule or change in guidance.

The CWS is comprised of a diverse group of associations, representing many industries with millions of employees in every state in the nation who believe strongly in improving workplace safety. CWS members and employers across the country recognize that heat illness in the workplace is an important concern for workers.

Many CWS members have designed effective heat injury and illness prevention programs consistent with OSHA’s existing approach to address heat-related illnesses, which has been to provide extensive guidance (“[Water, Rest, Shade](#)”) that can be flexibly applied to meet a wide range of circumstances. OSHA’s use of this guidance, coupled with the general duty clause in enforcement proceedings in heat illness cases, has had positive results. It gives employers the

The CWS is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability.

flexibility to create a program that fits their unique environment. Every worksite is different, from construction to manufacturing to retail, and all these workplaces have different safety considerations.

1. CWS Concerns with OSHA Issuing a Nationwide Rule

OSHA has announced in the ANPRM that it is considering promulgating a nationwide, “one-size-fits all” rule. CWS is concerned that a rule imposing the establishment of a “hazard” will not allow for specific industries and employers to continue to maintain their own individualized safety measures created for their particular operations and environmental conditions. CWS believes OSHA’s current approach to addressing heat hazards remains the best method across industries to help keep employees safe.

2. The Scope and Application of the Rule

A. Outdoor and Indoor Work Settings Should Be Addressed Separately

OSHA has stated that it intends to issue a rule covering both indoor and outdoor work settings. Because of the vast differences between outdoor and indoor heat related hazards and mitigation, we strongly recommend OSHA consider approaching indoor and outdoor settings separately.

A rule focused on indoor settings alone will be expansive in scope, covering a wide range of industries, occupations and working arrangements from restaurants to warehousing and manufacturing. As a result, any approach by OSHA to regulate indoor heat must recognize the large disparity in potential exposure to excessive indoor heat and the significant differences between various indoor places of employment.

Regardless of how OSHA decides to treat the distinction between inside and outside work, we recommend OSHA address circumstances where employees are working both inside and outside of the facilities during their shift. In these workplaces, OSHA should allow such employers to manage their obligations under one plan. Otherwise, employers will be required to constantly determine when an employee is working indoors or outdoors.

B. Industry-Specific Approaches

OSHA should take an industry-specific approach to address heat hazard mitigation. For example, the agency has issued standards and guidance to address the unique setting and hazards posed at construction sites, and it should do so again here.¹ This may be appropriate for other industries as well.

3. Continued Engagement with Stakeholders and Agencies

¹ See Construction Industry Safety Coalition comment letter, “Because the construction environment is ever-changing and fluid, any regulatory approach must be simple and adaptable. For the same reasons, the CISC encourages OSHA to consider a separate regulatory approach for the industry, as OSHA has done in other rulemakings, such as for Respirable Crystalline Silica.”

CWS requested additional time to comment on the ANPRM as this is a complex issue, and it impacts every workplace differently. There are different environmental concerns for different industries and workplaces. Accordingly, we encourage OSHA to conduct more outreach, such as stakeholder roundtables and listening sessions, before proceeding to develop a proposed regulation.

While the agency has taken steps to form a National Advisory Committee on Occupational Safety and Health Heat Injury and Illness Prevention Work Group, there are other OSHA advisory groups and stakeholders the agency should be reaching out to gain additional insight.

CWS also strongly urges OSHA to conduct a small business panel review under the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This is necessary due to the significant impact that such a rule would have on a substantial number of small businesses.

Additionally, because of the need for employers to understand specific health and condition factors of their employees, if OSHA moves forward with a proposed rule, the Equal Employment Opportunity Commission (EEOC) should be consulted about providing employers the ability to make inquiries that would otherwise run afoul of the Americans with Disabilities Act or the Age Discrimination in Employment Act. OSHA needs to consider the implications such a rulemaking would have on existing laws to ensure employers aren't put in a situation in which they cannot comply with all applicable rules.

OSHA needs to continue to engage with stakeholders to gain additional insight on what is the most appropriate way to prevent heat illness in the workplace.

4. Conclusion

The CWS appreciates the opportunity to provide these comments and welcomes the opportunity to continue to engage with the agency as it considers this important issue.