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January 14, 2025

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

Re: Notice of Proposed Rulemaking on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, Docket No. OSHA-2021-0009

Dear Assistant Secretary Parker:

The International Foodservice Distributors Association ("IFDA") appreciates the opportunity to submit these comments in response to the Occupational Safety and Health Administration's ("OSHA" or the "Agency") Notice of Proposed Rulemaking concerning the Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70698 (August 30, 2024) ("NPRM" or the "proposed rule").

IFDA is the premier trade association representing foodservice distributors throughout the United States. IFDA members play a crucial role in the foodservice supply chain, delivering 12 billion cases of food and related products annually to professional kitchens, including restaurants, K-12 schools, hospitals and care facilities, hotels and resorts, U.S. military bases and government facilities, and other operations that make meals away from home possible. The industry generates $382 billion dollars in sales, employs 431,000 people, and operates 17,100 distribution centers in all 50 states and the District of Columbia.

IFDA and its members are fully committed to workplace safety and health, and we support common-sense policies that reduce workplace injuries and illnesses. While IFDA shares OSHA's goal of protecting employees from exposure to excess heat and preventing heat illness, we believe a rigid, one-size-fits-all rule is inappropriate and unworkable. Accordingly, IFDA requests that the Agency withdraw the proposed rule.

If OSHA decides to proceed with the rulemaking, IFDA believes the rule must be substantially modified to create a more flexible approach that will allow employers to tailor heat illness prevention programs to their unique work environments and their employees' needs.

I. The Scope of the Proposed Rule Does Not Allow Sufficient Flexibility and is Too Prescriptive

IFDA is disappointed that OSHA has issued a broadly impactful rule that applies equally and without variance to such an expansive list of industries with employers and employees who have vastly different jobsites, tasks, and needs. General industry work sites vary significantly from those in agriculture, construction, and maritime. To lump them into one regulatory approach ignores the differences in each industry sector covered by the proposal and does a disservice to those industries that already take the necessary steps to protect their workers. Moreover, OSHA combines all employers conducting outdoor and indoor work in each of these industries into one regulatory category. Such an approach is not well-reasoned.

Foodservice distributors have significant differences in the types of job tasks, work performed, and even the environmental conditions in which their employees may work. For example, IFDA member companies have warehouses, product distribution services, sales, and delivery routes to a variety of customers. Thus, their work sites are not static locations consisting of the same tasks on a continuous basis. Moreover, IFDA's membership is composed of employers of all sizes throughout the United States, working in different geographic locations that may have vastly different considerations. The more complex a standard is, and the more prescriptive the compliance obligations are, the greater the chance it will result in ineffective and inefficient implementation across employers.

A. The Heat Triggers are Unworkable and Should be Revisited.

OSHA proposes two heat triggers in the NPRM that are unworkable and should be revisited. In the proposal, OSHA defines the initial heat trigger as a heat index of 80 degrees Fahrenheit (80°F) or a wet bulb globe temperature ("WBGT") equal to the National Institute for Occupational Safety and Health (NIOSH) Recommended Alert Limit.[1] Using that definition, when the initial heat trigger is reached, OSHA will require employers to implement a number of controls that will include suitably cool water of sufficient quantity, break area(s) for indoor and outdoor work sites, indoor work area controls, acclimatization of new and returning employees, rest breaks if needed to prevent overheating, effective communication, and maintenance of personal protective equipment (PPE) cooling properties if employers provide PPE.[2]

Next, OSHA defines the high heat trigger as a heat index of 90 degrees Fahrenheit (90°F) or a WBGT equal to the NIOSH Recommended Exposure Limit. Once the high heat trigger is met, the proposed rule requires employers to implement not only the controls applicable for the initial heat trigger, but additional controls that include providing mandatory rest breaks, having a supervisor observe employees for signs and symptoms of heat illness or establishing a "buddy system" among employees, placing warning signs for excessively high heat areas, and establishing a hazard alert, among other requirements.[3]

[1] 89 Fed. Reg. at 70771.
[2] *Id.*
[3] 89 Fed. Reg. at 70771.

IFDA is concerned these initial and high heat triggers fail to adequately consider the environmental and operational differences foodservice distributors encounter across the United States. IFDA members have operations in all 50 states, and, while the heat metrics OSHA recommends in the proposed rule do offer employers the choice of using the heat index or WBGT, OSHA fails to fully account for geographic differences. For example, a humid 80°F in Florida will feel vastly different from a more arid 80°F such as that in Nevada, and even 80°F in Colorado. Instead, OSHA applies the basic heat triggers across the board to all employers depending on when and which heat trigger applies.

To complicate matters further, OSHA is clear that the scope of the proposed rule does not apply to an employee's work activities when there is no reasonable expectation they will be exposed at or above the initial heat trigger,[4] or for short duration exposures of 15 minutes or less in any 60-minute period.[5] IFDA members may have employees who would be excluded from the rule based on the initial heat trigger of 80°F, particularly those who are operating air-conditioned vehicles or refrigerated trailers. However, short-duration tasks are not a guarantee these employees would be excluded, since some tasks such as unloading food products and supplies may take longer than what is scheduled or anticipated, or longer than what the proposed rule allows.

IFDA is concerned that the short duration exposure limited to 15 minutes or less in any 60-minute period means, practically speaking, that essentially all foodservice distributors would need to plan as if they are covered or risk running afoul of the prescriptive requirements in the proposed rule. For those situations that are out of a distributor's control, where deliveries may unexpectedly take longer than 15 minutes or are dependent on delivery locations or amount of product, even having air-conditioned cabs and refrigerated trailers would not preclude them from having to comply with the regulation as proposed. Consequently, IFDA maintains OSHA's proposed exclusion is neither flexible nor workable in practical application.

B. The Prescriptive Requirements Triggered by the Initial and High Heat Temperatures are Also Problematic.

1. Drinking Water.

The proposed rule requires employers to provide their employees with drinking water in a location that is readily accessible and suitably cool. Employers must also provide employees with suitably cool water of sufficient quantity. The NPRM requires employers to provide employees with access to 1 quart of drinking water per employee per hour for the entire shift.[6]

IFDA has concerns with what the phrase "readily accessible" means, particularly if employees are making a delivery at a work site not controlled by the employer. IFDA members already provide employees with access to water coolers, water bottles, and/or electrolyte-containing fluids, or otherwise provide unlimited water depending on the particular work site.

[4] 89 Fed. Reg. at 70768 and 71069.
[5] 89 Fed. Reg. at 70768 (noting the "activity is only 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").
[6] 89 Fed. Reg. at 70800 and 71070.

And while IFDA members make cool water available to employees, the rule's prescriptive amount is unduly burdensome and unnecessary. Moreover, employers remind their employees of the need to stay hydrated, especially during warmer temperatures.

2. Acclimatization Procedures are Too Inflexible and Must be Revised.

The Agency proposes acclimatization schedules for two groups of workers—those who are new and those workers who are returning to the work site after being away for more than 14 days (the "returning employees").[7] The NPRM requires employers to acclimatize these workers either by implementing their high heat procedures for seven days (whenever the heat index is at or above the initial heat trigger) or by imposing a gradual ramp-up schedule limiting the number of hours these individuals can work during a one-week period.[8] OSHA's proposed rule contains an exception to these acclimatization requirements when the employer can demonstrate the employee consistently worked under the same or similar conditions as the employer's working conditions within the prior 14 days.[9]

While IFDA recognizes that acclimatization may help to combat the effects of extreme heat, any acclimatization requirements must allow for flexibility based on an employer's individual circumstance. For IFDA members, not all employees will continuously be subject to the initial and high heat triggers. For those employees whose exposure to the initial heat trigger occurs for more than 15 minutes in any 60-minute period, these employees would need to be acclimated, under the rule. The dilemma IFDA members face is that the length of employee exposure may not always be easy to predict, as it may be dependent on delivery circumstances and/or work sites not within the member's control. Foodservice distributors are not continuously working in hot conditions, so using one of the acclimatization methods prescribed by OSHA in the NPRM is unwarranted.

IFDA recommends that any acclimatization proposal should focus on heat hazard awareness and training to allow employers to develop protocols tailored to their work sites rather than imposing a one-size-fits-all approach. Mandating the exact same requirements across all industries covered by OSHA's proposed rule is inflexible and unworkable.

3. Mandatory Rest Breaks May Create Challenges.

As proposed, the rule will require employers to allow and encourage their employees to take paid rest breaks as needed in the break area when the temperatures are at or above the initial heat trigger of 80°F.[10] In addition, when the temperature reaches the high heat trigger of 90°F, employers will be required to provide employees a minimum 15-minute paid rest break at least every two hours.[11] Adding to that amount of time, the NPRM excludes from the rest break the

[7] 89 Fed. Reg. at 70784 and 71071.
[8] 89 Fed. Reg. at 71071 (requiring the employer restrict employees to no more than 20% of a normal work shift exposure duration on the first day of work, 40% on the second day, 60% on the third day, and 80% on the fourth day of work.)
[9] *Id.*
[10] 89 Fed. Reg. at 71071.
[11] *Id.*

time it takes for employees to walk to and from the break area.[12] The proposed rule does allow a meal break to be counted as a rest break, even if that meal break is not otherwise required by law to be paid.[13]

To be clear, IFDA members generally allow paid rest breaks as needed. However, some IFDA members expressed concerns that mandated additional rest breaks every two hours when the high heat trigger occurs could result in a hazard depending on the task being performed. It could also affect the quality of the product IFDA members distribute. Similar to the examples cited by OSHA regarding continuous production work and tasks such as pouring concrete,[14] which cannot be interrupted or stopped during the pour, stopping or holding food distribution to allocate time for mandatory breaks could affect the quality of the product, particularly when it needs to be offloaded without delay. Additional paid breaks, in combination with potential food quality issues caused by mandatory rest breaks, could affect production levels across all aspects of a company. Employers, by necessity, will need to analyze the impact these additional mandatory paid breaks will have on compensation and the company's operations as a whole.

Finally, IFDA members raised administrative concerns when they have employees working in the field, such as delivering food products, and how they will effectively manage their obligations to monitor or track mandatory breaks under the rule. Specifically, the NPRM requires employers to implement at least one of two ways to observe employees for signs and symptoms of heat-related illness when the high heat trigger applies.[15] OSHA proposes that employers can either use a mandatory buddy system or have a supervisor or the heat safety coordinator ("HSC") observe the employees. However, not all foodservice distributors can utilize a mandatory buddy system. IFDA members with employees who work alone will not be able to have these solo employees under the direct observation of their supervisor or HSC, nor will the employer have the option to use a buddy system when the heat triggers apply. Here, IFDA member companies will need to implement procedures to communicate with these solo employees. Finding effective means of communication that will satisfy the requirements OSHA proposed in the NPRM may take some time, depending on the work tasks of these employees and the employer's company structure.

C. Training Requirements Should be More Straightforward.

IFDA supports heat safety awareness training methods that will address the hazards employees encounter when working in extreme heat and agrees that training in this area is important. Accordingly, IFDA members already have procedures generally to train their employees, and those members who work in states with existing state heat regulations also already have procedures in place.

Therefore, the prescriptive training requirements in the proposed standard are unnecessary. The NPRM requires all employees to be trained on the 16 separate topics

[12] 89 Fed. Reg. at 71071.
[13] *Id.*
[14] 89 Fed. Reg. at 70790.
[15] 89 Fed. Reg. at 70791 and 71071.

enumerated in the proposal before they are allowed to perform any work at or above the initial heat trigger.[16] Supervisors and heat safety coordinators ("HSCs") must receive additional training on the policies and procedures developed to comply with the proposed standard, including monitoring heat conditions and the procedures supervisors or HSCs must follow if an employee exhibits signs and symptoms of heat-related illness.[17]

Any training requirements should be more straightforward, consistent, and concise. All employees should receive the same training. Consistency is key, and training all employees, regardless of role, to recognize the signs and symptoms of heat illness (via self-assessment and observation of co-workers), and what to do in the event of a heat-related illness or emergency, will be the most effective way to address the hazards related to heat illness.

II. Establishing a Written HIIPP Will Create Additional Administrative Compliance Burdens

The additional administrative compliance obligations created by the NPRM are unduly burdensome. IFDA members, even those with operations in states with existing or newly adopted heat plan requirements, will have to develop new heat injury and illness prevention plans ("HIIPP") to comply with the requirements in the proposed rule. IFDA urges OSHA to streamline the requirements in the HIIPP, making it simpler and allowing employers to tailor it to their own respective work sites.

A. The Heat Injury and Illness Prevention Plan Should Be Streamlined to be Less Complicated.

OSHA's proposed rule requires employers to develop and implement a HIIPP.[18] The NPRM also requires employers to tailor the HIIPP to each "work site," which is defined as "a physical location (e.g., fixed, mobile) where the employer's work or operations are performed. It includes outdoor and indoor areas, individual structures or groups of structures, and all areas where work or any work-related activity occurs …. A work site may or may not be under the employer's control."[19] The NPRM then lists numerous requirements that employers must include in their HIIPPs. These requirements are not insignificant.

In addition to the site-specific requirement in the HIIPP, the proposal sets forth numerous other requirements to include in each HIIPP. For example, employers will be required to include the types of work activities covered by the plan, all policies and procedures necessary to comply with the standard's requirements, and an identification of which heat metric the employer will use.[20] The NPRM also requires employers to designate one or more heat safety coordinators ("HSC") to implement and monitor the HIIPP, and employers must identify the HSC by name in

[16] 89 Fed. Reg. at 71071-72.
[17] *Id.* at 71072.
[18] 89 Fed. Reg. at 70773.
[19] *Id.*
[20] 89 Fed. Reg. at 71069-70.

the written plan.[21] The HSC must have the authority to ensure compliance with the HIIPP.[22] The HIIPP must also include an emergency response plan with additional requirements for that section.[23]

Although the Agency appears to allow flexibility for employers with multiple work sites that are substantially similar to develop the HIIPP by work site *type* rather than individual work sites,[24] such flexibility is limited. While a corporate HIIPP could include information about job tasks or exposure scenarios that apply across the multiple sites, the employer would still need to ensure compliance on the site-specific element required in the HIIPP for those work sites not controlled by the employer. This includes maintaining communication with employees, ensuring these employees receive hazard alerts (including reminders to drink plenty of water and take breaks, as well as locations of break sites and drinking water).[25] This element necessitates an employer's coordination with other employers—well in advance of writing the HIIPP—to identify where their employees can access drinking water and where they can take breaks if they do not do so in their vehicles, for example. Moreover, per the proposed rule, all of this information must be in the HIIPP and cover each work site.

Such a complex and multi-faceted approach means employers will not be able to effectively demonstrate compliance unless they have extremely detailed written plans incorporating all of these requirements, *for each work site,* whether it is their own or another employer's site. Failure to do so means a compliance safety and health officer could issue a citation for failing to adequately develop and implement the HIIPP.

Finally, since the NPRM adds additional components into the HIIPP that may not be found in several State Plan states, even those IFDA members who have an existing written plan will still need to spend significant time updating and incorporating the requirements as outlined in OSHA's proposal.

B. The Agency Must Clarify Who Can Serve as a Heat Safety Coordinator.

As mentioned earlier, the proposed rule requires employers to have a heat safety coordinator ("HSC") at each work site, and that the HSC be listed by name in the HIIPP when the employer is required to have a written HIIPP.[26] IFDA seeks clarification about who may serve as the HSC, given the proposed rule currently requires HSCs to have the training to implement the HIIPP, control the work site to make sure employees comply, and have the authority to stop work and take action in the event any heat related issues arise.[27]

As set out in the NPRM, OSHA has essentially described the duties and obligations of a "competent person," as the term is used in other OSHA standards and documents. However, the

[21] *Id.* at 71070.
[22] *Id.*
[23] *Id.*
[24] 89 Fed. Reg. at 70773.
[25] *Id.*
[26] 89 Fed. Reg. at 71070.
[27] 89 Fed. Reg. at 71041.

NPRM appears to suggest that OSHA is not requiring employers to designate a competent person as their HSC.[28] IFDA members request that OSHA clarify who is able to serve as the HSC so they can appropriately allocate job duties and responsibilities, or shift roles and responsibilities based on current assignments.

IFDA members also expressed concerns about identifying the HSC by name. If someone leaves the company or is away from work either for vacation or illness, employers will need to have alternative employees trained in this role to fill in or replace the absent employee. Because the HSC has additional duties required by the proposed rule, IFDA members will need time to ensure the employees serving in these roles are clear on their obligations when compared with existing employees who may already serve as the competent person. IFDA recommends that OSHA amend the proposed rule to recognize that the competent person may also be designated as the HSC.

C. Maintaining Indoor Heat Temperatures for Six Months is Unnecessary.

OSHA's proposed rule requires employers with 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 to conduct on-site temperature measurements and maintain records of these temperature measurements for six months.[29] This requirement is of limited utility for IFDA members because most of their indoor work sites are climate-controlled.

Moreover, to the extent IFDA members may be covered by this requirement, the NPRM creates an unnecessary, burdensome recordkeeping requirement that has limited usefulness or benefit. It would require taking and recording daily temperatures, acquiring proprietary measuring devices that require maintenance and testing to ensure functionality, and include the additional costs associated with these activities.

III. The Compliance Timeline is Too Short

Finally, OSHA's proposed compliance timeline in the NPRM is too short. OSHA proposed an effective date that is sixty (60) days after the standard is first published in the Federal Register.[30] The compliance date for employers to meet the rule's requirements will be "150 days after date of publication of the final rule in the Federal Register."[31] This means that once the rule is final, and the 60 days have elapsed, employers will only have an additional 90 days to come into compliance with all the requirements in the standard – writing and implementing an HIIPP, ensuring everyone is trained, developing effective communication methods for employees working alone, and identifying supervisors or heat safety coordinators, who will also need extra training.

IFDA members are concerned that the 150-day period does not allow enough time or flexibility for them to implement, and comply with, all the requirements in the rule. Should the

[28] 89 Fed. Reg. at 71041.
[29] 89 Fed. Reg. at 70799.
[30] 89 Fed. Reg. at 71072.
[31] *Id.*

rule become final, IFDA members will have to work through the standard's requirements and determine how to apply them across multiple sites involving different job functions and different work site conditions, potentially revising delivery schedules and work processes. Because IFDA members' work sites are not static, and involve several differences, additional time for implementation is essential. Rather than having a 150-day compliance period, IFDA seeks at least 12 months to comply.

IV. Conclusion

IFDA appreciates the opportunity to provide comments on this proposed rule, respectfully requests that it be withdrawn, and looks forward to ongoing engagement with OSHA on this important issue.

Respectfully submitted,

Mala Parker

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