

VIA Electronic Mail – OIRA\_submission@omb.eop.gov

June 28, 2024

Office of Information and Regulatory Affairs  
1800 F. Street, N.W.  
Washington, D.C. 20405

**RE: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings; Docket No. OSHA-2021-0009**

To whom it may concern:

Thank you for meeting with members of the Construction Industry Safety Coalition (CISC or the Coalition) on Thursday, June 27, 2024, as part of the Executive Order 12866 public stakeholder process. The CISC previously submitted comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings and then submitted additional comments following its review of the SBAR Panel materials and the Panel's final report.<sup>1</sup> Several CISC members also had members participate in the Heat Injury and Illness SBREFA Panel as Small Entity Representatives. Through these efforts, the Coalition outlined the concerns its members have regarding OSHA's forthcoming heat injury and illness prevention standard for indoor and outdoor work settings.

As reiterated during yesterday's meeting, CISC members have substantive concerns with OSHA's pending heat injury and illness prevention standard. Their primary concerns focus on flexibility for the regulated community and the need for a separate standard for the construction industry. These concerns involve several unique components that OSHA must consider before publishing a proposed standard.

Any regulatory approach OSHA proposes must be flexible and incorporate the concepts of "water, rest, and shade." A heat injury and illness standard should focus on robust, yet simple, training methods. The CISC members, like much of the construction industry, have effectively protected workers from the hazards of extreme heat for many years. These efforts have proven successful because they are simple, easy to understand, and most importantly, provide the necessary tools and information to allow construction employers to determine how to best combat extreme heat at each individual worksite.

Within the concept of flexibility is training. Effective training should emphasize employees' personal risk factors, and how different behaviors can affect an employee when working in high heat conditions. These could include age, overall health, whether they have recently consumed caffeinated drinks or alcoholic beverages, medications, and a host of other factors. OSHA should not require employers to collect information about these personal risk factors. Instead, OSHA's proposal should place the responsibility on employees to assess their personal conditions, as has been done in other State-OSHA plans.

Flexibility is also an essential consideration for recordkeeping. OSHA must consider what records are essential to support its purpose and objectives, while at the same time avoid overburdening the regulated community who will be required to develop and maintain such records. The proposed recoding of daily heat temperatures is one example of an overburdensome administrative requirement. Businesses,

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<sup>1</sup> See <https://www.regulations.gov/comment/OSHA-2021-0009-0748> and <https://www.regulations.gov/comment/OSHA-2021-0009-2002>.

especially small businesses, may not have the financial wherewithal to hire a dedicated person to record daily heat temperatures. Furthermore, this information is readily available on numerous websites, so requiring employers to specifically record daily weather conditions is unnecessary. In addition, documenting rest breaks does not account for employers who build in rest breaks as part of an employee's daily schedule. This is a common practice in the construction industry. Moreover, a log documenting all heat-related injury or illness is inappropriate and unnecessary. The proposed log does not include a work-relatedness element to tether the entry back to the employer. In fact, any work-related heat-related injury or illness that meets OSHA's recording criteria will already be documented.

Returning workers and acclimatization also requires flexibility and remains a key concern to CISC members. A prescriptive, one-size-fits-all approach to addressing extreme heat in the workplace will not work in the construction industry. As CISC members discussed yesterday, heat affects each worksite, and the workers on that site, differently based on a combination of factors that are too nuanced to effectively address with a prescriptive set of requirements. Likewise, acclimatization schedules should not prevent already acclimatized workers from working. Construction workers are far more likely to be naturally acclimated to their work environment before starting a job than other workers due to the transient nature of the construction industry workforce with workers who move from job to job seamlessly. Therefore, acclimatization schedules must be flexible and focus on heat hazard awareness training and acclimatization protocols tailored to individual worksites.

Rest break requirements also require flexibility. Strict mandatory rest break requirements could jeopardize the actual work being performed and undermine the safety of the worksite. OSHA must be mindful that it is not always feasible to pull workers away from a task once it has begun, as doing so could jeopardize the task itself, such as during a concrete pour that must have a worker managing the task until it is complete. Mandatory breaks can also jeopardize employee safety when there may not be enough workers to safely perform a task due to imposed rest breaks. Similarly, the process of taking a break itself can expose a worker to unnecessary hazards, such as a roofer who must ascend or descend ladders to take a mandatory break. Mandatory breaks can deter workers from taking breaks when needed as they may feel the need to continue working until the designated time for their break has arrived. Instead, employers should encourage their employees to take rest breaks as-needed to prevent overheating.

Relatedly, water requirements must not be overly prescriptive. Any requirement dictating the specific quantity of water to be made available for, or consumed by, each worker on a construction site would be unduly burdensome. Given the size and the number of workers on each construction site, between the general contractor employees and each subcontractor, it would be virtually impossible to keep track of each worker's water consumption. Instead, water availability requirements must be flexible and allow construction employers to replenish water supplies in manner that ensures employees will have an ample supply of water or other acceptable beverages.

Finally, as explained during yesterday's the meeting, the CISC reiterates the need for a separate standard for the construction industry. The Coalition has grave concerns with a standard that aims to cover all affected industries with a one size fits all approach to heat injury and illness. Construction work is simply too distinct from other general industries to be covered by the same rule. In addition to the concerns discussed throughout this letter, construction sites change continuously as projects begin, are built out, and wrap up. Sometimes construction sites are a purely outdoor environment, sometimes they become an indoor environment, but oftentimes construction sites are a combination of both environments. The administrative and engineering controls that construction employers implement must adapt as each project progresses.

Likewise, unlike in other general industries, multi-employer worksites are prevalent throughout the construction industry. It would not be appropriate to put a general contractor in charge of heat safety for the subcontractors on site. These subcontractors are skilled tradesmen who are often best equipped to perform their specialized tasks safely and have a better understanding of the heat-related hazards they may face. While multi-employer concerns may not impact other general industry employers, OSHA should not place multi-employer obligations on construction employers under a heat standard.

Again, we appreciate the opportunity to meet with you. For the reasons discussed above and those discussed in its prior comments, and absent a withdrawal of the rulemaking in its entirety, the CISC strongly recommends that OSHA create a separate heat injury and illness prevention standard for construction, as it has done with prior rulemakings.

Sincerely,

The Construction Industry Safety Coalition