

January 14, 2025

Via Electronic submission on regulations.gov

Stephen Schayer, Director
U.S. Department of Labor
Occupational Safety & Health Administration
Directorate of Standards & Guidance
200 Constitution Ave., NW
Washington, DC 20210

RE: Public Comment - Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings - Labor Docket No. OSHA-2021-0009/RIN 1218-AD-39

Dear Mr. Schayer:

The North American Blueberry Council respectfully submits the following comments in response to the U.S. Department of Labor's proposed rule, Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (Docket No. OSHA-2021-0009).

NABC is an agricultural trade association representing the interests and concerns of highbush blueberry growers, packers, and distributors. Our members operate throughout the United States, as well as in Mexico and Canada. NABC advocates for federal policies that support the sustainability and success of the U.S. highbush blueberry industry.

NABC members strive to always protect employees from all work-related injuries and work tirelessly to comply with state and federal labor laws. We welcome thoughtful regulation that is reasonable and feasible. Indeed, when regulations are clear and developed with stakeholder input, injuries such as heat illnesses can be eliminated.

NABC generally supports the concept of a federal heat illness prevention standard. However, the proposed standard does not provide reasonable flexibilities that account for differing climates and operations.

Heat is relative, and heat illness is attributed to multiple causes and can be mitigated in many ways. We strongly urge OSHA to hold regional stakeholder hearings throughout the U.S. to better understand the unique needs of various regions and industries. Mitigations that are effective in one region or industry may be ineffective – or impossible – in others. Greater flexibility will result in effective implementation of this rule by the employer and better protection for the employee.

As a national organization, some of our members operate in states such as California, Washington, and Oregon where heat illness prevention regulations are in place. Additionally, in states without a heat standard, many blueberry operations have measures in place to protect employee safety including heat acclimatization, ensuring water is available, providing shaded breaks, and conducting heat illness prevention training.

Our primary concern with the proposed rule is the initial heat trigger. Imposing an arbitrary initial heat trigger does not account for regional temperature norms and a workers' natural acclimatization. 80 degrees may be a reasonable trigger in one region, but in another region, 80 degrees may be a relatively cool day. For this reason, states with similar regulations have differing standards. In California and Oregon, the trigger is 80 degrees whereas in Washington it is 89 degrees.

While we appreciate the flexibilities proposed relative to measuring temperature – either by Wet Bulb Globe Thermometer or heat index – a risk mitigation approach may be more appropriate of a nationwide standard than a temperature trigger and ensure ample protection of workers. Again, we implore OSHA to host listening sessions throughout the country to better understand regional climatic differences and determine a more effective approach.

We appreciate that the proposed rule allows employers to implement a single Heat Injury and Illness Prevention Plan (HIIPP) for similar worksites rather than maintain multiple HIIPPs. Employers in the blueberry industry often have multiple indoor and outdoor worksites. For example, a blueberry grower may have multiple field locations, and own and operate a packinghouse, thus employing both indoor and outdoor employees. It stands to reason that such an employer may have a single HIIPP for similar worksites.

While we welcome the allowance for employers to develop a HIIPP, we are concerned by the requirement to designate a workplace heat safety coordinator (“coordinator”) to implement and monitor the HIIPP. Employers should be given flexibility regarding the roles and responsibilities of the coordinator. Further, employers should be afforded flexibility to implement the requirement to seek input and involvement on non-managerial employees in the development of the HIIPP.

All employees should participate in worksite training and have a responsibility for workplace safety. Many heat-related illnesses can be mitigated with an effective observation program in which all employees are aware of and actively monitoring for signs of heat illness amongst co-workers. Training must be at the forefront of the final rule as safety precautions are only effective if implemented correctly.

We appreciate that the proposed rule allows for the regulator rate of pay for required breaks to be calculated based on the employees' piece rate pay. However, the proposed rule does not contemplate how to apply the piece rate calculation for H-2A employees given that the H-2A program has its own pay requirements that do not allow employers to switch between piece rate and hourly pay rates. We encourage OSHA consult with H-2A employers as well as the

Employment and Training Administration to ensure alignment and consistency between this rule and existing H-2A regulations related to wages.

Once again, we appreciate the opportunity to provide comments on the proposed rule. We strongly encourage OSHA to conduct regional listening sessions and provide additional reasonable flexibilities that account for climatic differences. Further, we reiterate that blueberry employers prioritize employee safety, and we generally support a nationwide heat illness and injury prevention standard. However, the final rule must focus on mitigations and training while providing maximum effective flexibilities for implementation.

We hope these comments are informative and contribute to substantive improvements to the proposed rule.

Respectfully submitted,

Alyssa Houtby
Director of Government Affairs
North American Blueberry Council