



January 14, 2025

Mr. Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

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

Dear Assistant Secretary Parker:

FMI – The Food Industry Association appreciates the opportunity to provide comments on the Occupational Safety and Health Administration’s (OSHA) notice of proposed rulemaking (NPRM) on *“Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.”*

One of the top priorities of FMI and its member companies is the safety and health of employees and customers. As a result, FMI member companies understand the goal of the NPRM but note that the food industry already implements safety measures pertaining to temperatures in various workplace settings. Given the nature of the work in retail, at manufacturing and warehousing settings, and through distribution and logistics, FMI is concerned about the inflexible and burdensome nature of the NPRM. In addition to the comments in this letter, FMI is a member of and aligns itself with comments filed by Employers Heat Illness Prevention Rulemaking Coalition and the Coalition for Workplace Safety.

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain – from retailers that sell to consumers, to producers that supply food and other products, as well as a variety of companies providing critical services – to amplify the collective work of the industry. Safety and hygiene procedures are held to the highest regard in all aspects of the industry’s supply chain – from protecting our workforce and customers to the production, warehousing, and distribution of food and consumer goods.

A diverse collective of our membership manufactures, distributes, and sells the food and consumer goods found in all pantries, refrigerators, medicine cabinets, and laundry rooms across the country. These products are offered for sale in over 45,000 grocery stores and 12,000 supermarket pharmacies operated by FMI’s retail members in every community across the country. The food industry employs over 5.5 million individuals and FMI members ultimately touch the lives of more than 100 million U.S. households per week.



As noted above, FMI is a member of both the Employers Heat Illness Prevention Rulemaking Coalition and the Coalition for Workplace Safety. FMI aligns itself with the detailed comments filed by these two organizations which represent numerous industries throughout the U.S. economy that are impacted by the NPRM. Because the coalition letters capture shared policy responses across sectors, for purposes of this letter, FMI emphasizes the following points on behalf of the food industry:

- The food industry already implements effective safety measures to address temperature fluctuations in various workplace settings which are tailored to specific locations and operational needs; and
- The NPRM creates inflexible, confusing, and in some cases, unattainable requirements that will exasperate an already taxed food industry supply chain and challenging workforce shortage environment.

The Food Industry Implements Effective Temperature-Related Safety Measures Tailored to Fit Workplace Settings and Operations

The safety of employees in every facet of the grocery supply chain – from production line, to warehousing, to front and back of store operations – and our customers who shop in our retail locations is paramount. FMI’s membership includes a diversity of sizes of businesses, workplaces, occupations, and duties in indoor and outdoor settings including the manufacturing, distribution, transport and delivery, and retail sale of food and consumer goods, and operations of these facilities, including, in some cases, fleets of transportation vehicles.

FMI member companies implement workplace safety measures to address temperature-related conditions to meet the unique needs of their workforce, operations and facilities across the country, including addressing the wide variation of climates in states and regions. For example, in manufacturing, warehousing and distribution facilities when temperatures reach certain levels, workplaces provide hydration including water and electrolyte beverages, cooling stations, towels and bandanas, increase break frequency, and relax uniform standards to allow for flexibility of attire. In these facilities, some of which may be configured to enable installation of fans and open ventilation, there is acute awareness of temperature variations over the normal course of a year or in specific production processes. Pre-shift huddles and team meetings include reiteration of information about the signs and symptoms of heat-related incidents and reinforcement of policies and measures to ensure safety.

Further, at retail store locations, grocers of all sizes implement temperature-related safety measures for various tasks including gathering shopping carts in parking lots, collecting trash from receptacles on property, attending to products displayed and sold outside and near entrances, unloading products, and producing fresh baked goods and prepared food items. These tailored safety measures include varying the time of the day and duration period for



which to retrieve carts and trash, implementing buddy-system monitoring and production schedule adjustments, and installing tenting and awnings.

The NPRM Will Exasperate an Already Taxed Food Industry Supply Chain and Challenging Workforce Shortage Environment

The nation's economy is continuing to experience workforce shortages, inflationary pressures, and supply chain disruptions, and will continue to do so for the foreseeable future. The food industry is a critical infrastructure sector of the economy and strives for efficiency in the food and consumer goods supply chain every day. While the food industry holds workplace safety to the highest regard, FMI is concerned that the nature of one-size-fits-all approaches in many aspects of the heat injury and illness prevention NPRM creates inflexible, confusing, and in some cases, unattainable requirements that will exasperate an already taxed food industry supply chain and challenging workforce shortage environment.

Additionally, as noted in the preamble of the NPRM, several individual states have already implemented heat injury and illness prevention requirements to which workplaces must comply. For businesses that operate in multiple locations and jurisdictions, this variation of requirements leads to confusion and increased compliance costs. Because there is no federal preemption in the NPRM there will be a heightened level of confusion and compliance costs, especially for smaller and midsize businesses that may have challenges scaling compliance measures for multiple jurisdictions and levels of government. FMI's concerns about heat injury and illness prevention NPRM include the following, as detailed further below:

- Application and Definitions;
- Heat Injury and Illness Prevention Plan;
- Acclimatization;
- Initial Heat and High Heat Trigger Requirements; and
- Other Issues

Application and Definitions. The NPRM references heat-related incidents more broadly than under OSHA's jurisdiction regarding workplace incidents. FMI believes the NPRM sets a dangerous precedent of overreaching in areas that are not uniquely occupational. It can be extremely difficult to distinguish between a workplace-related heat injury and illness and a non-workplace-related incident, including when someone comes to work already ill or has an ongoing medical condition unrelated to his or her occupation.

The NPRM defines the Initial Heat Trigger at a heat index of 80 degrees or wet bulb globe temperature equal to the National Institute for Occupational Safety and Health (NIOSH) Recommend Alert Limit (RAL), and the High Heat Trigger at a heat index of 90 degrees or wet bulb globe temperature equal to the NIOSH Recommended Exposure Limit (REL). FMI believes these thresholds are too low, they do not consider the wide variation of climate conditions across states, regions, and the country, and are confusing and too complicated to calculate for



many workplaces. Additionally, the use of a wet bulb global may be a costly expense for certain businesses and with the large footprint of manufacturing, warehousing and logistics facilities in the food industry, businesses would be forced to hire additional personnel to just take temperature readings throughout facilities. FMI strongly supports providing businesses with the maximum flexibility to assess conditions based on potential occupational exposure to heat-related incidences, which will differ in climatic conditions and workplace operations.

Heat Injury and Illness Prevention Plan (HIIPP). The NPRM requires a written HIIPP for each specific workplace site to include a comprehensive list of duties, compliance policies and procedures, designation of a heat metric, and name(s) of Heat Safety Coordinator(s). The HIIPP must be reviewed annually and when there is a heat-related incident that needs treatment beyond first aid even when an incident is not workplace related. It must also be available in multiple languages and developed in conjunction with non-supervisors and their representatives. FMI urges the adoption of flexible solutions that enable businesses to: utilize an existing HIIPP; allow for a standardized HIIPP that can be applicable across multiple facilities including those of similar purpose and production and is not site-specific; eliminate the requirement of a comprehensive list of all duties; and allow for the good faith utilization of a HIIPP in a language understood by the workforce.

Acclimatization. The NPRM mandates employers to implement one of two options for acclimatizing new employees during the first week of employment or existing employees that have been away from the workplace for 14-days or longer when the initial heat trigger level is met. The first option is to apply the high heat trigger requirements at the initial heat trigger level and the second option is to implement a gradual work exposure schedule over 5 days for new employees and over 4 days for returning employees. FMI does not believe either option is feasible. As discussed in the subsequent section, FMI has numerous concerns about the high heat trigger requirements. Per the second option, the gradual work exposure schedule is very problematic as it does not allow for integration of full duties until the fourth or fifth day of work. Instead, it requires businesses to compensate employees the equivalent of completing full duty days during the acclimatization and does not allow for swifter integration into duties even if the weather changes or temperatures drop over the acclimatization period. FMI is very concerned about the arbitrary and inflexible nature of an acclimatization schedule on supply chain operations. As a critical infrastructure sector of the U.S. economy, the food industry must be agile to respond to evolving economic conditions, weather related events, natural and man-made disasters and supply chain disruptions, and consumer demands. Workforce shortage remains a large supply chain challenge for the food industry. Our industry continues to face significant challenges with maintaining adequate staffing despite extraordinary efforts to attract and retain talent – from truck drivers to warehouse and logistics professionals to store associates. The gradual work exposure schedule runs counter to the dynamic staffing and operations requirements of the food industry and may be nearly impossible for some workplaces to meet without increasing the size of the entire workforce.



Initial Heat and High Heat Trigger Requirements. The NPRM mandates workplaces to comply with several requirements before and when the two heat thresholds are triggered. These requirements include providing mandatory annual training, hazard alerts, breaks and hydration, prescribing a supervisory threshold level and recordkeeping, and indoor work area controls. Further added to the complexities for the food industry is how the NPRM would apply to the fleet of transportation vehicles that are relied upon to deliver food necessities and consumer goods every day and the duties that these fleet drivers perform, chief among them loading and unloading product in every kind of weather conditions.

FMI believes that the requirement of providing employees with hazard alerts before a work shift or upon reaching the high heat trigger is unnecessary and redundant given other monitoring, communications, and training requirements and policies. In areas of the country that experience seasonably high temperatures, a daily written notification could lead to warning fatigue and decreased effectiveness of repetitive communication each shift. FMI also believes that the proposed 15-minute, every two-hour rest break increments are too prescriptive, unnecessary, and have the potential to disrupt supply chain operations. Workplaces already implement temperature-related safety measures and have break schedules in facilities, some of which are prescribed by collective bargaining agreements, and should have the flexibility to continue to do so on a basis that not only protects the safety and health of the workforce but ensures the effectiveness of production and distribution operations.

In addition, as previously noted, food industry workplaces make available water and electrolyte beverages during temperature-related events and have done so without a federal mandate. FMI urges flexibility to continue making available hydration, including electrolyte beverages, without prescribing a specific per-employee amount or require the workplace to force an employee to consume a specific amount. The NPRM's requirement of initial and annual training could be cost prohibitive for many businesses especially if the training is mandated to be offered in many different languages. Further, the NPRM requirement that all employees receive supplemental training every time a heat-related injury or illness occurs at the work site that results in a recordable injury, on top of the requirement of initial and annual training, is outweighed by the burden it creates. FMI believes that utilizing currently available resources such as posted notices, visuals, recorded messages, and incorporating information into existing safety and health and first aid courses should suffice for a training requirement. Should the NPRM's supplemental training requirement following an isolated incident remain, the focus should be narrowed significantly to be applicable only in the aftermath of a work-related injury or illness as confirmed by a qualified medical professional to be heat-related and only to pertinent employees, not the entire workforce.

FMI also believes that the NPRM supervisory requirement threshold of 20 workers to every supervisor is arbitrary and cannot be met by certain facilities. Under this arbitrary threshold, a business might be required to significantly shift schedules or be forced to employ additional supervisors to comply. The NPRM requires supervisors and employees to observe signs and symptoms of heat-related illness, some of which are not outwardly visible. FMI is concerned that



the NPRM requirement would be too prescriptive and training requirements would be costly. Additionally, the costs of creating and maintaining a recordkeeping system, in addition to the previously noted hiring of extra personnel to track temperatures throughout large facilities daily, are potentially exorbitant for many workplaces. Further, equipping employees with electronic means of communication would be cost prohibitive for many businesses as well.

Workplaces and facilities in the food industry supply chain are diverse due to the nature of manufacturing, production, warehousing and distribution. As noted, where applicable, facilities may be equipped with fans and cooling systems, and cross-ventilation through windows and doors. Conversely, some facilities are prohibited from such measures due to production requirements and space constraints. FMI urges OSHA to provide businesses with maximum flexibility to continue to protect the safety and health of workforces in a manner that reflects the operational needs of individual facilities.

Other Issues. The NPRM discusses other issues such as workplace use of wearable devices and physiological monitoring. FMI is concerned that an OSHA proposed requirement for businesses to utilize wearables or implement physiological monitoring may run counter to Equal Employment Opportunity Commission (EEOC) employer requirements, and federal discrimination and health privacy laws. The NPRM makes references to but does not define “employee representative.” As is the case with the OSHA walkaround rule, FMI would oppose granting third-party representatives of the employee’s choosing access to facilities or the ability to influence anything under this NPRM.

Conclusion

At the heart of the food industry is our commitment to a safer, healthier, and more efficient consumer food supply chain. The landscape of workplace regulations directly impacts the effective and efficient movement of food necessities and consumer goods throughout complex domestic and global supply chains. FMI is very concerned that if implemented as proposed, the heat injury and illness prevention NPRM has the potential to increase complexities and costs throughout the supply chain, without corresponding benefits to workplace safety. FMI member companies currently have the flexibility to implement processes and procedures, including customized HIIPP, and want to retain this flexibility to ensure continued safety of their workforce.

Sincerely,



Christine Pollack
Vice President, Government Relations

