AmericanHort

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

*Via electronic submission to www.regulations.gov*

December 20, 2024

RE: Comment on Notice of Proposed Rulemaking for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (RIN 1218-AD39)

Dear Assistant Secretary Parker:

AmericanHort is submitting this comment on the Occupational Safety and Health Administration's (OSHA's) notice of proposed rulemaking "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings" RIN 1218-AD39; Docket No. OSHA-2021-0009; 89 Fed. Reg. 70698 (August 30, 2024) ("Proposed Standard").

With a rich history of serving horticultural professionals, AmericanHort supports 20,000 members and affiliated businesses that include breeders, greenhouse and nursery growers, garden retailers, distributors, interior and exterior landscape professionals, florists, students, educators, researchers, manufacturers, and all of those who are part of the industry market chain. The horticulture industry's production, wholesale, retail, and landscape service components have annual sales of $346 billion, and sustain over 2.3 million full- and part-time jobs. AmericanHort works to impact the growth, performance, and successful future for the industry through advocacy, research, education, and advancing industry standards.

Our organization and membership strive to protect our valued workforce from workplace safety concerns including heat injuries and illnesses, and we are appreciative of the opportunity to comment on the Proposed Standard.

## GENERAL COMMENT ON ECONOMIC IMPACT

Our primary concern with the Proposed Standard is its potential impact on employers' operations across diverse climates in the United States. Many of our members, even in states without existing heat standards, have already implemented comprehensive measures to protect their valued workforce. These measures include acclimatization protocols, access to water and shade

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breaks, heat illness training, and monitoring—all of which align with the provisions in the Proposed Standard. However, the Proposed Standard, as written, risks being overly restrictive in certain climates, potentially driving compliance costs beyond OSHA's estimates. This could lead to workforce shortages during critical harvest periods, escalating food costs already strained by inflation.

For instance, OSHA significantly underestimates the cost and time required to familiarize employers with the Proposed Standard. At over 300 pages with three-column formatting in the Federal Register, the document demands considerable effort to understand. Reviewing such a complex document takes over an hour, and interpreting it often requires costly legal consultation. OSHA's estimate of 30 hours to draft a Heat Injury and Illness Prevention Plan (HIIPP)[1] underscores the complexity—drafting the HIIPP will likely be less demanding than fully comprehending and implementing the Proposed Standard.

To gain more accurate cost and feasibility assessments across different geographic regions and climates, OSHA should conduct hearings to gather testimony from employers in states with existing Heat Standards, as well as those in states with diverse climate conditions. Input from employers in California, Oregon, and Washington, where Heat Standards are already in place, illustrates the economic and logistical challenges these standards impose.

For example, Oregon's prescriptive Heat Standard has prompted many employers to halt operations on days exceeding 90°F, resulting in lost wages for employees. In Washington and California, work schedules, such as starting shifts as early as 4 AM to avoid the midday heat, disrupt employees' family logistics and routines. These examples highlight unintended consequences that impact both employers and employees.

OSHA must better account for these economic realities before finalizing the Heat Standard. Conducting broader outreach and incorporating insights from a wider array of stakeholders will ensure a more balanced and practical approach that protects workers without imposing undue burdens on employers.

## HEAT INJURY AND ILLNESS PREVENTION PLAN

Agricultural employers often operate across multiple worksites, ranging from indoor packing sheds or greenhouses to outdoor locations that span many

[1] *Id*. At 70835

acres and may be miles apart. For some, such as Farm Labor Contractors, these locations may change annually. While all employers agree that having a plan to address heat-related injuries and illnesses is essential, the Proposed Standard is overly prescriptive and fails to account for the dynamic nature of agricultural worksites. As a result, the assumption that each agricultural employer will only need one HIIPP, updated annually, is inaccurate and underestimates the associated costs.

The proposal to allow employers to develop a HIIPP for a single type of worksite is appreciated. However, in practice, flexibility is limited. Even worksites classified similarly—such as fields for harvesting nursery stock or packing sheds—can vary significantly in size, distance, and operational needs. For example, shade, water provisions, and other requirements may differ substantially between two fields, even if they involve similar tasks. Additionally, work activities evolve throughout the year; employees may be planting or pruning in one season and harvesting in another. Will employers be required to create separate HIIPPs for each crop activity? While a distinction between fieldwork and indoor environments like greenhouses or packing sheds is logical, requiring separate HIIPPs for each activity or crop would unnecessarily inflate compliance costs without providing meaningful benefits to workers.

A single HIIPP for similar worksites, supplemented by training and daily pre-work instructions, should suffice. Oral instructions before high-heat workdays are far more effective in conveying critical, site-specific information than a static written plan that employees are unlikely to consult.

Regarding the “heat safety coordinator” requirement, this role may need to be replicated across worksites to ensure compliance. A site-specific heat safety coordinator can relay essential information to workers before work begins, including details on shade, water availability, and monitoring for heat-related illnesses. This approach provides real-time, actionable guidance, ensuring safety measures are current and practical. Requiring such coordinators to implement controls and monitor conditions would be far more effective than relying on a year-old written plan.

In any Final Standard, the HIIPP should include flexibility to convey general safety information, such as heat illness symptoms and monitoring protocols, while directing employees to consult their site-specific heat safety coordinator for real-time details, including emergency contacts and site-specific safety measures. This approach balances worker safety with practical compliance for the agricultural industry.

## IDENTIFYING HEAT HAZARDS

Allowing employers to choose between the heat index and the Wet Bulb Globe Thermometer (WBGT) for monitoring heat conditions is a welcome provision. The heat index, as noted in the Proposed Standard, is both easily obtainable and widely understood. The option to use the heat index in both outdoor and indoor work environments is also appreciated. Additionally, the ability to rely on local forecasts from reputable sources, such as the National Weather Service, is particularly beneficial for agricultural employers managing outdoor worksites that may be miles apart. This flexibility makes monitoring the initial and high-heat triggers more practical.

However, many members have raised concerns about the variability in geographical conditions across the United States. For example, data from the National Weather Service indicates that in Tampa, Florida, the initial heat trigger of 80°F is met almost daily from mid-March through late November, based on historical records from January 1, 1948, to November 12, 2024[2]. In contrast, locations such as Yuma, Arizona, and El Centro, California typically experience heat warning days from April through July, with conditions subsiding by early September, based on data from 2008 to 2023[3]. While both regions are considered warm, Florida's high humidity results in more days meeting the initial heat trigger compared to the arid conditions of Arizona and California.

This illustrates that a uniform temperature trigger does not account for regional differences in climate and worker acclimatization. Employees accustomed to the Southeast's high humidity, for instance, can often work effectively beyond the initial heat trigger. A one-size-fits-all approach is insufficient to address the diverse conditions across the country.

Moreover, as noted in the Proposed Standard, heat is just one factor influencing worker health. An employee's medical conditions, hydration levels, and dietary habits also significantly impact their ability to tolerate heat. These individual factors further underscore the need for a more nuanced and flexible approach to setting heat triggers that consider regional and personal variables.

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[2] Heat Tools and Statistics for West Central and Southwest Florida, https://www.weather.gov/tbw/heat (last visited November 21, 2024).

[3] NWS Phoenix Heat Page, Historical Heat Warning Dates, https://www.weather.gov/psr/heat (last visited November 21, 2024).

## REQUIREMENTS AT OR ABOVE THE INITIAL HEAT TRIGGER

As noted, the initial heat trigger of 80°F may not be practical for all geographical locations across the United States. For example, Washington sets its initial heat trigger at 89°F, while California uses an 80°F heat index, and Oregon relies on an 80°F WBGT — resulting in three different standards for three neighboring states. A more effective approach, particularly for labor-intensive agricultural work, may be to focus on consistent controls such as training, monitoring, and ensuring adequate water intake, especially in regions where the initial heat trigger is frequently met throughout the year.

Employers also appreciate the flexibility to provide shade through natural or man-made options. However, the proposed requirement for 12x12 pop-up tents[4] may be impractical in certain weather conditions. For instance, high winds can render these tents hazardous to employees, creating a potential safety risk rather than mitigating heat exposure.

The Proposed Standard outlines two methods for acclimatizing new or returning workers. However, the second method—reducing workload to 80%, 60%, 40%, and 20% over the first four workdays—is largely unworkable in the agriculture industry. It is challenging to provide limited workloads in this sector, as it disrupts operations and productivity. Most agricultural employers will likely adopt the first method, requiring workers to take 15-minute breaks every two hours.

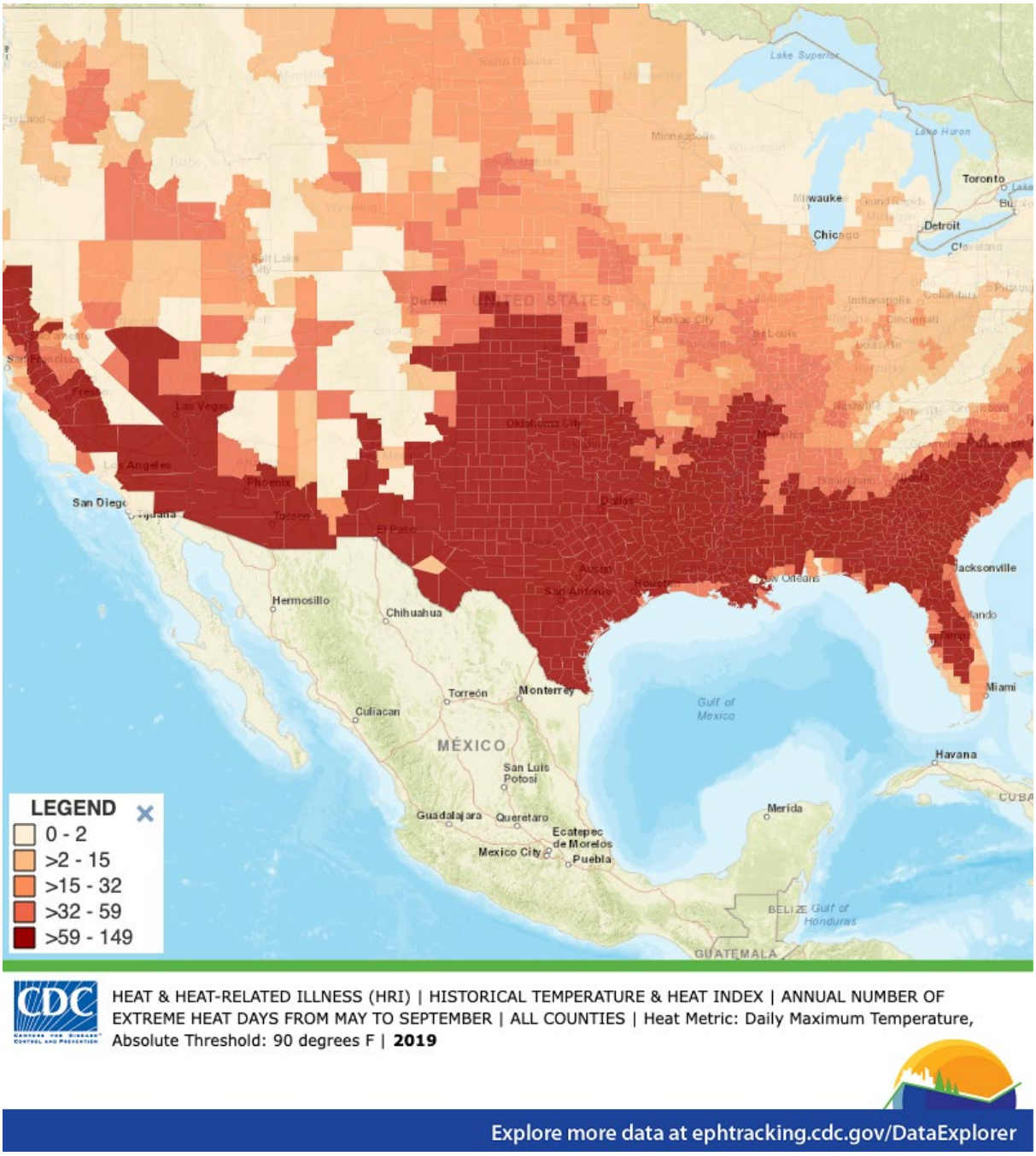
This mandatory 15-minute break poses significant implementation challenges for piece-rate employers. Calculating appropriate pay for breaks, including adjusting payroll software and performing extensive calculations, becomes burdensome. This is further complicated by existing regulatory requirements, such as those under the H-2A temporary agricultural visa program, which already mandate specific pay rates. Additionally, while rest breaks may be easier to track for payroll purposes, allowing workers to take breaks as needed at the initial heat trigger creates additional payroll complications. For piece-rate workers, logging when breaks are taken and calculating pay for those periods introduces administrative difficulties.
Further, in piece-rate scenarios, employees are often reluctant to take breaks as it reduces their earnings. This reluctance diminishes the effectiveness of requiring employers to encourage breaks, as the message may be disregarded. Encouraging breaks under these circumstances would require significant effort to change worker behavior and ensure compliance.

[4] 89 Fed. Reg. at 70840.

**REQUIREMENTS AT OR ABOVE THE HIGH HEAT TRIGGER**

As noted previously in the General Comment on Economic Impact, employers subject to mandatory rest breaks at or above the 90°F high heat trigger have adopted various strategies to comply. One common approach is shifting work schedules to earlier hours, often starting before sunrise. While this mitigates heat exposure, it places additional strain on employees, as such schedules can conflict with familial responsibilities and transportation logistics.

Another strategy is ending the workday once the high heat trigger is reached. While this may be feasible in certain regions, it poses significant challenges in high-humidity areas. In such conditions, the high heat trigger may be met early in the day, leaving insufficient time for harvesting crops within the limited harvest period. This can result in crops left to rot in the field, reducing supply and contributing to higher food prices for consumers.




Above, a map from the Centers for Disease Control and Prevention illustrates the number of high heat days—days exceeding 90°F—in 2019. This map highlights significant agricultural production areas across the Pacific Southwest, the Southwest, the Midwest, the South Midwest, the Gulf, and the Southeast, where temperatures exceeded 90°F for 59 to 149 days annually. These regions are home to the agricultural operations responsible for producing much of the food that stocks American grocery stores.

For example, Coffee County, Georgia, where Sunbelt Greenhouses is located, experienced 117 high-heat days in 2019. This disparity in climate conditions underscores the challenges posed by the Proposed Standard. A uniform standard across diverse geographical locations does not adequately account for such regional differences. Agricultural producers need compliance options beyond simply ceasing operations at 90°F or shifting work hours to the early morning, often before sunrise. In many areas, the high heat trigger is met shortly after sunrise, leaving little room for operational flexibility.

Agricultural employers are committed to protecting their employees from heat-related illnesses. However, as currently written, the Proposed Standard will make it difficult for agricultural businesses to remain operational while staying compliant. A Final Standard must include additional flexibility to ensure that food continues to reach grocery shelves at reasonable prices for American consumers. It is important to note that agricultural producers are price takers, not price setters, meaning they cannot simply pass on compliance costs to customers, as the Proposed Standard assumes.

One viable option for agricultural employers is the observation requirements at the high heat trigger included in the Proposed Standard. This provision allows employees to assist in monitoring co-workers and enables heat safety coordinators to implement the HIIPP promptly when an employee shows signs of heat-related illness. For instance, employees displaying symptoms could be directed to take breaks in shaded areas, consume water and electrolytes, and receive medical attention if necessary. A robust observation program, paired with a plan for addressing heat-related illnesses and mandatory 15-minute breaks every two hours at the high heat trigger, could effectively mitigate many reported incidents of heat-related illness.

## TRAINING AND NO-COST COMPLIANCE

Training should be the cornerstone of preventing heat-related illnesses, particularly in the agricultural industry. As discussed earlier, America's food supply depends on consistent agricultural production and packaging. Measures such as starting the workday before sunrise or ending it upon reaching the high heat trigger may not be feasible to sustain agricultural production at the level needed to keep American-grown food on grocery shelves. Comprehensive training is essential to ensure employees recognize the signs and symptoms of heat-related illness, understand the importance of adequate hydration, are aware of how medical conditions and dietary decisions may exacerbate heat-related risks, and are familiar with their employer's policies, procedures, and controls.

A key element in addressing heat-related illness is ensuring that employees feel confident taking breaks to drink water or cool down without fear of losing pay. However, many agricultural workers are paid on a piece-rate basis, creating challenges in aligning pay practices with rest break requirements. OSHA's inclusion of a California-based calculation for determining the regular rate of pay for piece-rate workers during breaks is appreciated. However, complications arise for employers who participate in the H-2A temporary nonimmigrant visa program, which imposes its own pay and disclosure requirements. These requirements may conflict with OSHA's proposed calculation method. Moreover, some employers cannot simply switch to an hourly wage on high-heat days without straining their operations and compliance efforts. This conflict highlights a discrepancy between OSHA's cost estimations for the rule and the actual financial impact on H-2A program employers. To address this, we strongly encourage OSHA to hold hearings with H-2A employers and employees to better understand how the proposed "no-cost compliance" provision would affect piece-rate calculations for rest breaks.

Lastly, regarding the proposal requiring employers to pay for and support the recovery of heat-related illnesses, there are significant concerns about determining liability. OSHA acknowledges in the Proposed Rule that factors such as underlying health conditions, dietary decisions, and even illicit drug use can contribute to heat-related illnesses. How are employers and OSHA expected to differentiate between heat-related illnesses directly caused by workplace conditions and those resulting from an employee's preexisting conditions or personal choices?

Employers committed to maintaining a safe working environment and fully complying with the Proposed Standard should not be held liable for heat-related illnesses that stem from factors beyond their control. If an employer fails to follow the Proposed Standard and an illness occurs, liability is clear and justified. However, imposing liability on compliant employers for illnesses arising from an employee's medical or lifestyle choices raises serious fairness and feasibility issues. We urge OSHA to consider these scenarios carefully and provide clearer guidance on employer responsibilities to avoid unnecessary burdens and liabilities.

## CONCLUSION

AmericanHort appreciates the opportunity to provide comments on the Proposed Standard. We strongly urge OSHA to hold multiple hearings across various geographic regions of the United States to engage with the agricultural industry and address the issues outlined in this comment. The unique

challenges of agriculture necessitate certain exemptions to ensure the continued availability of American-grown food on grocery store shelves.

Without reasonable exemptions from some requirements, such as rest break provisions, there is a real risk that crops will rot in the field, packing and shipping will be delayed, and food prices will rise—impacting every American consumer. It is important to recognize that many of our members are already implementing key measures outlined in the Proposed Standard to protect their valued employees, even in the absence of a mandated heat standard.

We respectfully request that OSHA conduct hearings to collaborate with agricultural employers who are proactively safeguarding their workforce from heat-related illnesses. By incorporating existing best practices into a tailored exemption for the agricultural sector, OSHA can ensure worker safety and American horticulture's sustainability.

Sincerely,

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