COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

December 19, 2024

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Su:

On August 30, the Department of Labor's (DOL or Department) Occupational Safety and Health Administration (OSHA) published a Notice of Proposed Rulemaking on "Heat Illness Prevention in Outdoor and Indoor Work Settings" to mandate measures for employers to follow related to workplace exposure to hazardous heat.[1] This proposed rule, pushed by climate activists and other Democrat special interest groups,[2] is yet another example of the out-of-touch, top down federal mandates that have come from the Biden-Harris DOL. Regulating the complex hazard of heat at the federal level without taking into account regional differences in climate make little sense. Further, the proposed rule's one-size-fits-all requirements are also unworkable for job creators, especially small businesses – and even worse, there is little evidence that increasing recordkeeping burdens on employers, as this proposed rule does, will keep workers safe. I strongly urge DOL to abandon this heavy-handed proposed rule and recommit to its existing efforts to keep workers safe from heat hazards.

The Proposed Rule Fails to Recognize Differences in Climate

The Department's one-size-fits-all proposed rule attempts to regulate heat at the federal level without considering regional differences in climate and their impact on worker safety. Specifically, the proposed rule establishes work practice control measures for employers to follow when the heat index in an indoor or outdoor workplace reaches an initial heat trigger above 80 degrees Fahrenheit and a high heat trigger above 90 degrees.[3] By setting overarching

[1] Heat Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70,698 (proposed Aug. 30, 2024) [hereinafter Proposed Rule].
[2] *See, e.g.*, Letter from Public Citizen et al. to James Frederick, Acting Assistant Sec. of Lab. for Occupational Safety & Health (Aug. 4, 2021) (petition to OSHA for a heat emergency temporary standard), https://www.citizen.org/wp-content/uploads/Public-Citizen-Petition-to-OSHA-for-Heat-ETS-8.4.2021.pdf.
[3] Proposed Rule, *supra* note 1, at 70,743.

heat triggers to cover the entire U.S. workforce, the proposed rule will unnecessarily burden employers and workers in regions where such temperatures are the norm for the majority of the year.

It is common sense that climate varies from region to region, and therefore, what may be considered extreme temperatures in one part of the country would be considered moderate in another. For example, a construction worker in Florida will be more acclimated to working in temperatures above 80 degrees than a construction worker in Maine and would, therefore, have a lower occupational risk. Further, as a safety professional testified to the then-Committee on Education and Labor, "there are a number of secondary factors that affect climate, such as nearness to large bodies of water, elevation, the rain shadow effect of mountains, global wind and ocean current patterns, cloud cover, and surface albedo."[4] The proposed rule fails to take these factors into account. OSHA's one-size-fits-all, national approach to heat ignores science and fails to address occupational risks sensibly.

One-Size-Fits-All Mandates Are Too Prescriptive

OSHA adopts requirements in the proposed heat rule that are too prescriptive and are unworkable across all workplaces. As Felicia Watson of Littler Mendelson, P.C. testified before the Workforce Protections Subcommittee, "One size does not fit all …. Yet under the Proposed Rule, employers and employees alike are regulated by a single standard, even though the workplaces will be vastly different, with some workplaces changing hourly or daily and others remaining the same."[5] Precautions that may be effective in protecting workers from hazardous heat in the agriculture industry may be different from those that are effective in manufacturing. Occupational exposure to heat is not a new issue, and employers have long adopted precautions to address the issue of heat that is best suited to their individual workplaces.

One such prescriptive requirement in the proposed rule is that employers must provide mandatory rest breaks of at least 15 minutes every two hours once it reaches the high heat trigger.[6] Such a requirement is unnecessary and disruptive to specific tasks in many industries. During the rulemaking process, construction industry participants in the Small Business Advocacy Review Panel told OSHA that it would not be feasible to take such prescriptive breaks while pouring concrete. Instead, the industry already uses other practices to keep workers safe, such as rotating workers between more strenuous and less strenuous tasks.[7] Panel participants also reported that their employees who work in industries such as construction, tree care, and

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[4] *From the Fields to the Factories: Preventing Workplace Injury and Death from Excessive Heat: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab.*, 116th Cong. 38 (2019) (statement of Kevin Cannon, Senior Director, Safety & Health Serv., Associated Gen. Contractors).
[5] *Safeguarding Workers and Employers from OSHA Overreach and Skewed Priorities: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & the Workforce*, 118th Cong. (July 24, 2024) (statement of Felicia Watson, Senior Couns., Littler Mendelson, P.C., at 8), https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=411798.
[6] Proposed Rule, *supra* note 1, at 70,790.
[7] REPORT OF THE SMALL BUSINESS ADVOCACY REVIEW PANEL ON OSHA'S POTENTIAL STANDARD FOR HEAT INJURY AND ILLNESS PREVENTION IN OUTDOOR AND INDOOR WORK SETTINGS 21 [hereinafter SBREFA REPORT], https://www.osha.gov/sites/default/files/Heat-SBREFA-Panel-Report-Full.pdf.

electric power and who wear complex personal protective equipment (PPE) sometimes prefer to finish their work rather than stop for a break, which would require removing and redonning their PPE.[8] Employers and workers are in a much better position to address heat hazards that are tailored to their specific workplaces, and a prescriptive regulation from OSHA will only complicate these efforts.

The Proposed Rule Imposes a Massive Paperwork Burden

The paperwork required to document compliance with the proposed heat rule is overly burdensome and will take resources away from actually keeping workers safe. In certain indoor workplaces, employers will be required to create written or electronic records of daily on-site temperature measurements and maintain these records for a minimum of six months.[9] In addition, the proposed rule requires employers to adopt written and extremely detailed heat injury and illness prevention plans, which include a comprehensive list of the types of work activities covered by the plan, a description of how the employer complies with all requirements of the standard, the means the employer will use to monitor temperatures, emergency phone numbers, and procedures employees must follow, among other details. The plan must also be reviewed and updated annually.[10] Beyond the records that are explicitly required by the rule, employers will also need to find ways to document compliance with each prescriptive mandate in order to satisfy OSHA in the course of a worksite inspection.

During the rulemaking process, small business entities reported that they may be forced to hire additional staff or take time away from other safety initiatives in order to complete the paperwork required by the proposed rule. They also said that the recordkeeping requirements were unnecessary and that they would rather spend time communicating with employees than recording information on paper.[11] With this proposed rule, OSHA ignored their concerns.

The Proposed Rule Harms Small Business

While all covered employers will face compliance challenges, the proposed heat rule's requirements will be particularly challenging and burdensome for small businesses. Familiarization with the 375-page proposed rule alone will take considerable resources that will stretch small employers thin. In a letter urging the agency to abandon the heat rulemaking effort, the National Federation of Independent Business explained:

> Small businesses cannot afford the lawyers, accountants, and clerks that larger companies use to decipher complex regulations. Small businesses mostly engage in do-it-yourself compliance, in which a business owner trying to keep the business afloat attempts to keep up with regulations as much as the owner can.[12]

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[8] *Id.* at 46.
[9] Proposed Rule, *supra* note 1, at 70,799.
[10] *Id.* at 70,748.
[11] SBREFA REPORT, *supra* note 7, at 17.
[12] Letter from David S. Addington, Exec. Vice President & Gen. Couns., NFIB, to Martin J. Walsh, Sec. of Lab., at 3 (Nov. 24, 2021), https://www.regulations.gov/comment/OSHA-2021-0009-0173.

Even OSHA acknowledges the proposed rule's requirements are especially burdensome to small businesses and for that reason exempts employers with 10 or fewer employees from the requirement to create a written heat injury and illness prevention plan.[13] Still, the small business exemption for this requirement is entirely too low, and the proposed rule ignores the impact of other mandates on small business operations.

One such provision that will particularly burden small businesses is the requirement for employers to designate a heat safety coordinator.[14] Under the proposed rule, this individual will be responsible for implementing the heat injury and illness prevention plan and ensuring compliance. The heat safety coordinator will also be required to undergo additional employee education and may also be tasked with monitoring other workers for signs of heat illness on days when it reaches the high heat trigger. To comply with this provision, small businesses may either have to hire additional staff or redirect their employees' job duties away from the needs of the business. This is yet another example of how this administration has ignored small business concerns during the rulemaking process.

Conclusion

Occupational exposure to heat is not a new hazard. OSHA has been addressing the risks of excessive heat for decades pursuant to the *Occupational Safety and Health Act*'s General Duty Clause,[15] and employers have long adopted measures that are best tailored to their individual workplaces to keep workers safe. With this proposed rule, the Biden-Harris DOL uses climate change as a pretext to impose one-size-fits-all federal mandates that will burden job creators and workers alike.[16] The proposed rule's prescriptive requirements will also impose a massive paperwork burden and unnecessarily harm small businesses. For these reasons, DOL should abandon the overly burdensome proposed rule.

Sincerely,

Virginia Foxx

Virginia Foxx
Chairwoman

[13] Proposed Rule, *supra* note 1, at 70,774.
[14] *Id.*
[15] 29 U.S.C. § 654(a)(1).
[16] Ariel Wittenberg, *Biden announces heat rule as climate-related deaths rise*, POLITICO, July 2, 2024 ("'Ignoring climate change is deadly, dangerous and irresponsible,' Biden said … with a map of heat across the United States behind him."), https://www.politico.com/news/2024/07/02/biden-heat-rules-climate-deaths-00166162.